

# Drafting a Constitution for ORBIS

by Spencer H. MacCallum

A Special Reprint from *Rampart Individualist: A Journal of Free Market Scholarship*

Vol. I, No. 1 & 2

## RAMPART INDIVIDUALIST A Journal of Free Market Scholarship

Editor  
Publisher

Kenneth R. Gregg, Jr.  
Rampart Institute

### Rampart Institute Board of Directors

Robert LeFevre  
*President Emeritus*

Lawrence Samuels  
*Executive Director*

Kenneth R. Gregg, Jr.  
*President*

Jane Heider Samuels  
*Treasurer*

Denison E. Smith  
*DeRand Corp.*

Harry Hoiles  
*Freedom Newspapers, Inc.*

Randall Smith  
*DeRand Corp.*

George H. Smith  
*Institute for Humane Studies*

John Pugsley  
*Common Sense Books*

Robert D. Love  
*Love Box Co.*

Richard N. Deyo  
*Atty-at-Law*

Caroline Roper-Deyo

RAMPART INDIVIDUALIST: A Journal of Free Market Scholarship is published quarterly by Rampart Institute, a non-profit, educational organization (incorporated in California) dedicated to the study of the principles of individualism and a free society. Rampart Institute supplies RAMPART INDIVIDUALIST to all its non-student fellows. Application for fellowship should be sent to:

Rampart Institute  
P.O.Box 4  
Fullerton CA 92632 USA

Annual subscription rate, without membership, is 20 dollars (30 for foreign subscriptions). 5 dollars for single copies (10 for special double issues).

No responsibility can be assumed for returning manuscripts unless the author encloses a stamped, self-addressed envelope. Address all inquiries, manuscripts and books for review to the Editor, RAMPART INDIVIDUALIST, Rampart Institute (address above).

Copyright restrictions are determined by the preference of the author. We do ask, however, that all reprints of uncopyrighted articles be accompanied by the following statement: "Published in RAMPART INDIVIDUALIST, available from Rampart Institute, P.O.Box 4, Fullerton CA 92632 USA, 20 dollars/yr." We also request that, if any of the essays are published elsewhere, a copy of the reprint be sent to Rampart Institute.

Conflicting opinions, positions and conclusions presented in RAMPART INDIVIDUALIST are those of the contributors and do not necessarily represent Rampart Institute, the Board of Directors or Editor.

**DRAFTING A CONSTITUTION FOR ORBIS**  
The Business of Providing Community Services in Space<sup>1</sup>

Spencer H. MacCallum  
Heather Foundation

Space colonies will be communities. As such, they will require community services. Those services will exceed in number and complexity anything dreamed of in earth communities. They will constitute whole life-support systems. Thought must be given to finding ways of providing those services, for it may be unsafe to assume that the traditional arrangements for providing common services in earth communities will work in space.

The political method of administering communal affairs, that is to say, by elected politicians out of tax revenues, has inherent weaknesses which thus far we have tolerated in the benign atmosphere of the earth. Only under extraordinary circumstances, with the eyes of the world upon it, does a political government occasionally achieve a spectacular result such as an Apollo moon shot. On a day-to-day basis, in the prosaic conduct of their normal duties, political governments have not demonstrated that they can reliably deliver a letter or make it safe to walk on a city's streets at night. This weakness might be magnified a thousand-fold in the harsh environment of space.

Nor might it be desirable, even if it were feasible, to create situations in which colonists would be dependent for their very existence upon agencies of government as we know it. At point is historian Karl Wittfogel's thesis linking the rise of Oriental despotism with "hydraulic societies"—societies which depended for their existence upon complex, government-sponsored irrigation works constituting life-support systems not unlike, in principle, those now being projected for space. Robert Heinlein depicted such a despotic development in his novel, *The Moon is a Harsh Mistress*.

This paper therefore looks to the development of *economic* as opposed to *political* means of administering community services in space. It introduces some unexpected possibilities in answer to the question, "By whom and on what basis will community services be provided in space, and how will they be financed?"

The rationale of a community in which all things would be contractually administered through voluntary private agreements without recourse to the relationship of sovereign and subject—a community without taxation or legislated laws—had some small development in the nineteenth century, but only in the twentieth was it given full exposition. Its chief expositor was Spencer Heath (1876-1963), the social philosopher who began his varied career as engineer, lawyer, and one of the more successful pioneers in the fledgling aviation industry. He described the basic rationale of the free community in 1936 in *Politics versus*

*Proprietorship* and more fully in 1957 in *Citadel, Market and Altar*. Fifty years after he accurately predicted, in 1910, a general aviation industry, Heath remarked that his confidence then had been as nothing compared to his confidence today in predicting the general proprietary administration of public services.

Spencer Heath's thought is evolutionary and not revolutionary. While he had a great deal to say about applied social technology, he invariably sought the answers in the autonomous processes of the market place. His ideas lend no support or encouragement to programs involving political action. This paper will review some of the empirical grounds for his confidence in predicting the advent of proprietary administration of public services—the emergence of private industry providing full community services on a private, contractual basis—and will then set out some applications of his general principles that might have practical or heuristic value in a future space colonization effort.

**Proprietary Community Administration: The State of the Art**

Like the dream of men flying, the ideal of a community freely structured on private agreements is undoubtedly very old. As was the case with flying, the dream may yet accurately reflect the unborn reality, the shape of things to come. For within the generation now living, certain crucial social structures have so far evolved that the dream of a purely contractual community might seem to an impartial person, on reviewing the evidence, to lie within our grasp. Some substantial empirical evidence, which I shall outline here, supports the notion that such a social "quantum leap" might be happening.

Although not widely recognized as such, there already exists a considerable body of practical experience in proprietary community administration, and the accumulation of empirical know-how has been accelerating in recent decades. I refer to the development in number, form, function and size of multiple-tenant income properties in real estate since the close of World War II. Examples are hotels, shopping centers, marinas, industrial estates, mobile-home communities, residential apartment communities, medical and professional centers, and some downtown complexes for which Rockefeller Center was a chief prototype. All of these forms are complex, fairly specialized communities, and they exhibit the normal administration problems encountered in communities of any size.<sup>2</sup>

If it seems strange to think of these phenomena as communities, we might reflect for a moment on any large hotel and observe how it is divided into public and private areas, how its hallways are its streets and alleys, its landscaped lobby like a municipal park or town square. There is effective zoning of land uses which separates the retail shopping areas from a professional office tower, perhaps, and from the residential parts of the community. There are public utilities, rapid transit—which happens to operate vertically instead of horizontally—a security force, artificial lighting and climate, and many other community service features. The turnover of occupants is more rapid than in most conventional communities—days or weeks rather than the three year average for suburban residential areas—but the principle is not changed. Shopping centers carry the same principle out-of-doors, with a somewhat different mix of land uses and a turnover rate as low or lower than in ordinary communities. Over all, the quality of public services provided for the residents of large multiple-tenant income properties is superior to and the services technologically more advanced than those provided through political means in conventional subdivided communities.

The significant structural feature which these forms all exhibit is that the underlying realty is organized in single, undivided ownership with the parts leased instead of being sold off. The developer's originally intact interest has survived and become the basis for the on-going administration of the community. It tends to be a direct economic interest in the community succeeding as a desirable place for people to live or work. Moreover, it is non-partisan; it is interested in the success of the community as a whole, rather than some parts of it at the expense of others. Such an administration is further endowed with a unique flexibility in land planning. Leasehold, unlike conventional subdivision, allows gradual phasing out of obsolete land uses and conversion to new uses as leases run out or come up for renewal. This flexibility extends even to the basic layout of the streets and common areas.

Proprietary communities also differ fundamentally in their mode of finance. Conventional, subdivided communities operate at a continual deficit, made up by taxation, whereas proprietary communities operate on a self-sustaining basis out of earnings. As a productive capital investment, the streets and other common areas and facilities of proprietary communities impose no economic burden on the inhabitants.

The contrast between these two kinds of community, the proprietary (leasehold) and the political (subdivision) might further be pointed up by a fantasy. Imagine that we are the stockholders of a hotel and that we have assembled to carry out the requirements of a new piece of welfare legislation which effectively outlaws undivided ownership interests. We must convert our shares of stock into separate and divided interests in particular parts and pieces of the hotel and its fixturing. As a result of our meeting, I might receive fourteen rooms in the South wing on the first floor and forty square feet along the west side of the lobby. One of you might have the entire third floor, another the Garden Court and others various other parts of the hotel.

Whereas an hour before this change took place, we had all been interested in the most efficient administration of the hotel as a whole, now each of our interests is tied up in the particular parts which we separately own. Our income, if any, now derives solely from those parts. The hotel is the same, but our relations with respect to it and to one another have changed. How will this affect the administration of the hotel? Suppose the corridors need recarpeting, but the budget won't allow it to be done all at once. On what floor shall we start? I must insist on the first floor of the South Wing, though each of you will insist differently. We have the best of intentions, since we are all in agreement that the hotel needs recarpeting (ignoring the fellow in the parking garage, who would give priority to painting). But we are at a standstill because of the way in which our interests were restructured when the hotel was subdivided.

How might something like this turn out? Let us leap ahead a year in our imaginations and see. In retrospect, the only solution had seemed to be to form a property owners' association. The association was duly formed, therefore, and empowered to assess the members (later on, it assessed anyone who used the hotel), to decide major policy, and generally to enforce the peace. The idea had been put forth by a popular fellow on the second floor who was adept in getting along with people. I and several others objected at the time, sensing that it would work against us more than it would serve us. But it was hard to argue against, under the circumstances, and so the association was formed.

It soon became apparent that the property owners' association did not reduce the conflict; for that was determined by the structure of the ownership interest. The association had only changed the form and the arena. What we had done had been to bring a political government into being. The new situation in which we now found ourselves, as citizens and subjects of a fledgling political state, simply reflected our lack of organization—because of the fractionation of our ownership interests, to successfully operate the hotel. The stand-off among us had constituted a crisis in which action of any kind had seemed better than no action at all.

We are indulging in fantasy. But outside of almost any hotel we might pick for an example, what seemed fantastic is only too real. A short distance away, there is likely a congested business street. Most of the businessmen on the street would agree that the street at least should be widened, and that is would be a good idea if City Hall also provided a free municipal parking lot. But they would not agree on the details of how each of these things should be done. On which side of the street should the widening take place? With the best of intentions, every property owner must insist that any widening take place on the *other* side of the street from his or her property. But for the parking lot, all would insist that it be located on *their* side of the street—and just as close to their property as possible without taking any of it.

We have just looked at some examples of the close relationship between the structuring of property rights and how people behave. The value of structuring property rights to provide incentives to accomplish a given job has not been lost on industry. In our public affairs, on the other hand, it has gone virtually unnoticed. The social significance of what is happening is multiple-tenant income properties in real estate has escaped notice because it is a matter of common concern and there is no organized interest representing that common concern.

If the community aspect of space colonies is to become a profitable space enterprise—perhaps in time the most profitable of all—what is the rationale on which it will be built? The business of the proprietors of a space community would be—as it is now with proprietary communities on earth—the manufacturing and/or selling of favorable human *environment*. Let me elaborate on this. The real estate industry has developed empirically, with little understanding of its rationale. What sets it apart from every other kind of business is that its stock in trade is *economic location*. *Economic location* simply means location that has value for someone such that they are willing to bid for it.

*Location* and *environment* are correlative terms; each conveys meaning only in terms of the other. Hence location value is the value of the environmental factors—amenities—afforded by a particular location. More precisely, it is the value of the *access* afforded by a particular location to some unique combination of environmental factors. A lot without utilities available, streets, protection and other community services, markets and industry within reach, neighbors, resort and recreation facilities, views, or some combination of these and/or other factors, is utterly without value. A mere place in space, without the earth or some substitute platform or means to attach improvements and without life-supporting air and climate available to it might have little or no value at all, depending again on where it is in relation to other things.

To the extent that a location owner creates environmental amenities, either within his own boundaries or beyond—in the latter case by combining with other property owners, or possibly by attracting them to develop compatibly with him, since the effect is reciprocal—to such extent he creates location value. To the ex-

tent that he does this as a business, *he is manufacturing and merchandising environment* and spinning off profits just as in the manufacture of any other good or service. This is the rationale and, as some see it, the future destiny of the real estate business—to deliberately and creatively build land values instead of merely speculatively brokering such land values as come about as the result of the unplanned actions of the market.<sup>2</sup>

When a location owner in this way develops a proprietary community, a multiple-tenant income property, he finds his interest directly aligned with the prosperity and well-being of his tenants, since it is only out of their productivity that they are able and willing to bid in the market for economic location. He has an interest in every environmental factor—social, cultural, or economic—that makes that location attractive.

### ORBIS: Applying the Proprietary Principle

Let us now look at two questions of an applied nature, questions that will arise at the outset of any proposal for the development of a proprietary habitat, that is to say, its security from attack or interference from without. The other concerns the internal organization and the nature and form of the agreements that would bind it together as a viable social entity.

How might the integrity of a proprietary community in space be assured? How might its capital investment be protected? It is a fair assumption that when such habitats are seriously projected, it will be because their presence in space will be of enormous economic value for people on earth. Such economic benefit, like the benefit, say, of the Suez or the Panama Canals, would accrue to the people of all nations.

Spencer Heath once proposed internationalizing the Suez and Panama Canals through the agency of multinational corporations, formed for the purpose, that would offer to purchase the interests of Egypt and Panama and operate the canals in strict neutrality. Since the considerations that led to that proposal apply as well to a space colony, I am reproducing his argument in his own words, slightly modified to fit present circumstances:<sup>3</sup>

The question of external security is a political problem—a problem not of property but of the threat of ex-propration. Its solution depends on the establishment of proprietary administration under a *wholly non-political ownership* that will benefit all parties and that all will feel themselves bound to respect.

The following general outline looks to such a proprietary administration:

The dozen or more governments most interested could invite the leading commercial interests who would use or be served by the space facility to form a development corporation to be chartered by each one and all of these governments, with powers and limitations to be agreed upon by them.

The great commercial interests, or a large part of them, might well then agree, upon condition of no discrimination of any would-be user of the space facility, to establish a corporation in which all would hold shares proportionate to their several contributions. The new corporation could be formed upon the expressed agreement and

consent of all the sovereign powers, avowing high interest and concern for the free and open and non-discriminatory use of the facility by all the world alike on equal terms. Such agreement could become part of a solemn covenant by and between all the interested governments *and with the new corporation*—a covenant of non-aggression against any of the tangible or intangible properties and rights of the new corporation as chartered by them all.

The interested governments, in consideration of absolutely non-discriminatory use of the space facility by themselves and all nationals under them, would thus relinquish all present or future claim to any sole or separate sovereignty or control over it.

Established in this manner, the new corporation would come not into sovereign but into a guaranteed proprietary jurisdiction over the proposed space facilities, with the right and duty to police and defend its properties, but over which, in the interest both of itself and of its patrons, it could exercise none but *proprietary* and not any coercive or non-contractual administration. It could establish itself as a productive enterprise, solvent and profitable out of the voluntary revenues which its high services to its patrons would command. Free from assessments and encroachments against its properties and from exactions out of its revenues, it could become enormously profitable and thereby able not only to maintain its facilities but to improve and extend them in all respects as patronage might justify or require.

As a highly productive and profitable business corporation, solvent and stable, its shares would come into wide demand internationally, especially among those persons and corporations most engaged in commerce among the nations and thus most interested in the operation and extension of this important commercial facility.

An arrangement such as here outlined would serve and support the objects avowed by all: (1) The open, free and non-discriminatory use of the space facility. (2) Avoidance of any measures provocative of war. (3) No compromise of sovereignty by the interested governments.

Such an owning and managing corporation, chartered by each nation and guaranteed by each and all the full freedom to earn, save and serve, without molestation of any kind, would be a truly free enterprise, serving all the world on equal terms to the enrichment of all, without menace of war and no sovereignty impugned.

By such an arrangement might the interests of all the nations concerned be structured so as to guarantee the strict neutrality of space colonies and assure the safety of private investment in space.

The other basic question, to be dealt with at greater length, concerns the internal organization of an hypothetical proprietary habitat in space. What would be the nature of the written agreements by which its communal life would be structured?

Lacking courts of law with power to enforce their judgments—one of the marks of sovereignty as we know it—what provisions would be called for in the

lease agreements? In the absence of legislative law, the only written law or charter or constitution of the community would be the sum of all of the lease provisions in effect at any given time. Hence the care with which those provisions would be studied and drawn.

When space colonies become a reality, the structure of agreements that will make them internally viable will be shaped by experience and precedent, probably in ways very different from anything we can now imagine. At some point, however, the first effort will be launched. Although that effort will be guided by commercial experience with multiple-tenant properties, it will not have the benefit of any precedent or any experience outside of the legal framework of nations. How might the agreements in that first effort be drawn to best assure the viability of the undertaking?

The following, interspersed with commentary, is a draft of a master lease for the hypothetical space habitat of ORBIS. Reader comment is respectfully sought in order to lessen the weaknesses and improve the strength of this first attempt at a constitution for a proprietary community in space.

### A MODEL LEASE FOR ORBIS

I. WHEREAS ORBITAL COMMUNITIES, INC., owner of the proprietary community known as Orbis and hereinafter called "O," is engaged in the business of developing, maintaining, and fostering the growth of urban environments conducive to the fullest enjoyment of community living, and of merchandising such environments by leasing private sites through which the occupants have full access to and enjoyment of same, and

WHEREAS JOE DOAKES, hereinafter called "J," desires regular access to the community of Orbis for the purpose of residing and/or conducting business there,

NOW THEREFORE "O," for the consideration set forth below, does convey to "J," his heirs and assigns, until such time as terminated by any of the conditions of this lease, and subject to the terms and conditions of this agreement, equal access with all other residents to the common areas and facilities of Orbis and, in addition, sole occupancy of that space, or space of equivalent character and utility, known as...[property description follows, reserving sub-surface rights and air rights above 000 meters].<sup>6</sup>

II. "O" FURTHER COVENANTS AND PROMISES to "J" as follows:

A. To secure to "J" quiet possession of the premises reserved for his exclusive use and, subject only to the terms and conditions of this agreement, freedom to make full and undisturbed use of these premises and of the public portions and facilities of Orbis enjoyed in common with other residents.<sup>5</sup> "O" promises not to impose, or permit to be imposed within Orbis, any tax upon the person or property of "J," or of any other resident of Orbis. The word *tax* shall be understood to mean any imposition of any levy, fine or assessment other than as provided for by the terms of this agreement.

B. To exercise at all times the utmost diligence to secure the safety of persons and property in Orbis, including, among other things, the following:<sup>6</sup>

1. To diligently promote research into and public dissemination of information concerning:

- a. Health and Safety.
- b. Available insurance coverage of all kinds.
- c. Technologies for the abatement of measurable nuisance effects such as noise, smoke and other particulate matter, vibration, noxious gases, odors, glare and heat, fire and explosive hazards, traffic, and waste effluent.
- d. Private, market mechanism for dispute resolution.

2. Through rent remissions or otherwise, to reimburse uninsured losses resulting from fire, theft, or bodily injury suffered in the public areas of Orbis, or in the private areas when said fire, theft, or attack originated outside the leased premises and was not caused by negligence of "J" or by his tenants, guests or invitees. Provided, however, in the case of property loss, that "J" has apprised "O" beforehand of any unusual amounts of property in his possession and has exercised reasonable precautions for its safety.<sup>7</sup>

C. To promote the systematic collection and public dissemination of marketing statistics and related data and in other ways to encourage and assist residents to make informed and rational land-use decisions.<sup>8</sup>

D. If in the judgment of "O" its interests and those of the residents of Orbis generally would best be served by "O" resuming possession of all or any portion of the leased site and disposing it to a different category of use—such as industrial to residential or commercial—and if "O" for these reasons elects to make such a land-use change, then "O" promises to:<sup>9</sup>

1. Give "J" not less than three years notice in writing.
2. Offer "J," at the same rent for the balance of the unexpired rental period, space in Orbis equally situated and otherwise suited for the purpose for which "J" was using the space originally allocated.
3. Reimburse the full appraised value of "J's" fixed improvements on the site, constructed prior to the time of

receiving notice, or, at the election of "J," to reproduce the same or comparable improvements on the new site.

4. Assume the cost of moving "J" and his belongings to the new site or elsewhere in Orbis.

5. Compensate "J" for any business losses due to closure or disruption during moving, except such as might be caused by carelessness or neglect on the part of "J."

E. To conduct its business and formulate policy always in a manner calculated to maximize the total value, as income property, of its basic productive capital consisting of the site of Orbis.<sup>10</sup>

### III. "J" COVENANTS AND PROMISES to "O" as follows:

A. To pay "O" or its successors or assigns, in equal amounts on the first days of January and July of each year, the annual ground rent of the leasehold, exclusive of "J's" improvements thereon.

B. To exercise every reasonable care and precaution to avoid endangering the health, safety, and property of others, this and the following covenants C, D, F, G, and H, to run to the benefit of the present and future tenants of Orbis, their tenants, guests, and invitees.<sup>11</sup>

C. To carry reasonable amounts of liability insurance or otherwise to be financially responsible for any loss or injury that he or his tenants, guests, or invitees might cause to others.<sup>12</sup>

D. To insure against loss of life, property or earning capacity due to fire, sickness, accidental injury, or acts of God, including natural disasters or the effects of war.

E. To purchase said insurance from a firm or firms selected by "J" from a list of insurance companies approved by "O," said list to be prepared and reviewed annually by "O" and to contain the names of not less than three firms, and in any and all such policies to name "O" as a co-insured.

F. To observe reasonable performance standards in processing materials, disposing of wastes, or in any other undertaking, so as to avoid creating a nuisance to others.

G. To exercise every reasonable care to avoid committing violence upon or threatening violence to any persons, for whatever reasons, in Orbis, nor to permit any tenant, guest, or invitee to commit violence or threaten violence upon any person therein.<sup>13</sup>

H. To be responsible at all times for the actions of his tenants, guests, or invitees as if those actions were his own.

### IV. "O" AND "J" DO FURTHER MUTUALLY AGREE and promise:

A. That the starting rent to be paid for the site herein leased shall be \$[ ] per annum, and that this rent shall be revised each five years from the date of this agreement to an amount estimated to be equal to the then market value of said site, less a ten-percent reduction to "J" as a preferred tenant. The market values shall be appraised by three disinterested parties to be selected as follows: "O" and "J" each choosing one of three persons named by the other and the third to be selected by these two. "O" and "J" shall then each submit to these their independent appraisals of the value of the site together with supporting evidence, and it shall be the duty of the panel of three appraisers to study the appraisals submitted and choose one or the other, as it stands, without modification.<sup>14</sup> Should "J" fail to select an appraiser within thirty days after "O" has submitted three names to him, then "O" may name an appraiser for him from among the names submitted. Should either party fail to submit an appraisal, then that of the other shall obtain.

B. That if rent payments fall into arrears for ten days, "J" will incur a late penalty of ten percent of the balance due, and that after twenty-one days of arrears, "O" may, upon twenty-four hours written notice, terminate this lease and resume possession.<sup>15</sup>

C. That this leasehold shall be "J's" property to sell, lease or encumber or otherwise deal with as he sees fit, subject only to the terms and conditions of this agreement and to "O's" approval, which shall not be unreasonably withheld or delayed. If this leasehold is to be transferred to a third party or parties, then this original agreement must be returned to "O" with any proposed transfer endorsed thereon and, if approved, a new agreement will be issued to the transferee. In the event "J" rents or sublets any or all of his space, his agreement(s) with his guests or tenants must agree with and in no way be inconsistent with any of the provisions in this agreement.

D. That this agreement may be terminated or modified at any time by mutual consent of the parties or by appropriate notification by either party as follows:

1. "J" may at his discretion terminate this agreement and vacate the leasehold without any further liability for rent, in the following circumstances:

a. Upon six months notice in writing to "O," in which case the removal or sale of any improvements shall be the responsibility of "J."

b. Upon twenty days notice in writing after

violation or neglect by "O" of any of the terms of this agreement, and especially the commission of any act or threat of violence upon "J," his tenants, guests, or invitees, by "O" or his appointed agents or their entry on the premises without expressed permission by "J," or the imposition of any tax upon the person or property of "J," his tenants, guests, or invitees. In the event of such termination, "O" shall return any rents paid ahead, pro-rated to the date of the complaint. Compensation for "J's" fixed improvements on the site shall be established in the manner set out in Section A, above.

2. "O" may at his discretion resume possession of the leased premises in the following circumstances:

a. Upon twenty-four hours notice in writing upon "J's" failure to pay rent in full for a period of twenty-one days after the same has become due and payable. In that event, the level of compensation for "J's" fixed improvements on the site shall be established in the manner set out in Section A, above, and shall be paid by "O" or by "J's" successor, if such there be within a year.

b. Upon fulfillment of all the conditions set out in Part II, Section D, above, when in the judgment of "O" its interests and those of the residents of Orbis generally would best be served by resuming possession of the leased site and disposing it to a different category of land use.

c. At the end of any negotiated rental period following prior written notice of not less than one year, in the event of repeated complaints by other residents of disturbances of the peace. Provided, however, that if in that one-year period no further complaints are received, the notice shall have no effect.

d. Upon sixty-days notice in writing following determination by "O" that "J" has violated any one of the terms or conditions of this agreement.

E. That any dispute arising out of the terms of this lease shall be settled by a neutral arbitrator in accordance with the rules and regula-

tions of the XYZ Arbitration Association. The parties agree to be bound by the decisions of the neutral arbitrator.<sup>16</sup>

#### Footnotes

<sup>1</sup>An earlier version of this was delivered as a lecture at the Twenty-third Annual Meeting of the American Astronautical Society, Airport Hilton Hotel, San Francisco, Calif., October 20, 1977.

<sup>2</sup>In a more technical paper on this subject elsewhere, I define *community* as "the occupation by two or more persons of a place divided into private and common areas according to system of relations which defines and allocates responsibility for its continuity" (1971:4).

<sup>3</sup>This is not to say that brokerage is without value. It is a service of fundamental importance to society. While not immediately germane to our discussion, this important point is sometimes obscured by controversy. Clarification will also help grasp the rationale we are developing.

The institution of property is the convention that enables a distribution of any scarce and desirable thing. Without it, allocation would have to be by political means rather than economic. To be the subject of ownership, it is only necessary that a thing be scarce and desirable. Some confusion on this point stems from the labor theory of ownership, whose proponents hold that, to be owned, something must have one's labor "mixed" in it. That view arose historically at a time when it seemed more important to morally justify the institution of property than to describe it accurately or to understand how it functions. The idea ran into trouble when applied to the raw sites and resources of the earth, to which no labor has been applied, and hence the Georgists, who are the leading proponents of the labor theory of ownership, would exclude those things from private ownership.

The Georgists hold that to sell something in which one has invested no labor, or in which no labor has been invested by someone in the chain of ownership, is immoral. It should be freely available to all without cost. Therefore, they reason, the government must allocate its use, acting as trustee on behalf of the people. They hold that to receive value for something in which no labor has been invested is to defraud the buyer, because no service has been performed.

More careful analysis of market transactions shows that a service is always performed, and it is a service that can only be performed by a present owner—not by anyone earlier in the chain of ownership. However, it is not a service involving physical effort, as the Georgists would suppose. While any expenditure of physical effort might enter into negotiations as a talking point, what commands value is the owner's service of transferring his ownership—his title, or social jurisdiction—to the other party. This is a purely psychological and social act. It is the basic distributive function performed in society, a function performed exclusively by owners, without which all things would be allocated politically and there would be little or no security of title or tenure. Economist Murray N. Rothbard discusses this in his *Man, Economy and State* (Los Angeles; Nash, 1970. pp. 77-80).

Thus it is that market value arises at the point of exchange and not before. It is the value, on either side, of the act of transferring title. The convention of ownership provides a peaceful, secure and impersonal method of allocating jurisdiction over anything that is scarce and desirable, either now or potentially so. What that thing is, whether tangible, intangible, natural or artificial, is beside the point.

By this analysis, land, or location, is like any other kind of property. It is not to be excluded from ownership because it was not man-made. To qualify as potential property, it need fulfill only the twin requirements of scarcity and desirability.

The virtue of the Georgist philosophy is not its moralistic stance against private property in land, but its underlying premise that land rents are the natural revenue for financing community services. Georgists err, in my opinion, in the means by which they propose to appropriate rents for public purposes, which is to have the government nationalize the land. As the institution of property in land continues to evolve, it will become increasingly apparent that it is in the interest of land owners to use their influence to untax the use of land and themselves assume the full cost of administering public services, for the higher land values this will create.

"The absence of a fixed date of termination is for several reasons. With a safeguard clause that permits the landlord to move the resident to another site under certain conditions, the community need not lose planning flexibility. At the same time, the individual gains the security of permanent membership in the community, provided only that he continue to observe the terms of that membership. Such tenure without specified term is a functional equivalent of citizenship, which is likewise without term, in the established nations on earth. Although no longer recognized under Anglo-American law, "perpetual" leaseholds such as this are traditional and customary in many parts of the world.

Thomas O. Mahon, Jr., of San Raphael, Calif., suggests that leasehold may not necessarily be the only means of achieving the twin goals of planning integrity and the dynamic of the profit motive behind the administration of community services. An alternative might be subdivision with both buyer and seller retaining options, respectively, to sell back or to buy back on agreed terms.

"Quiet possession" is a technical term of law; here the landlord is promising to defend the tenant's title against any and all who might dispute his right to occupy the site.

"This agreement will not forbid specific kinds of behavior that might constitute a danger or a nuisance to others, since this would call for policing—inspection and enforcement—by the landlord. (He is such a big fish in this pond anyhow, that we want to avoid or minimize situations that would lead to confrontations with residents.) Instead, it enjoins the resident to use every reasonable care to avoid such behavior. Now, if a dispute arises between residents, it will not be the landlord but an arbitrator who will decide whether one or the other acted unreasonably. If a private arbitrator concludes that a tenant has acted otherwise than reasonably, then the landlord will be free to act on that information, which will by then be a matter of public knowledge.

Instead, it enjoins the resident to use every reasonable care to avoid such behavior. Now, if a dispute arises between residents, it will not be the landlord but an arbitrator who will decide whether one or the other acted unreasonably. If a private arbitrator concludes that a tenant has acted otherwise, then the landlord will be free to act on that information, which will at that point be a matter of public knowledge.

The issue of reasonable behavior turns partly on the question of whether the defendant was sufficiently informed to have known how to behave in the situation, or whether he acted in ignorance and could not reasonably have had access to such information. Consequently, a fundamental role of the landlord—a basic public service—is to see to it that up-to-date technical information about the "how" of community living is readily and easily available to everyone in the community.

"In Common Law, an innkeeper is insurer for the safety of persons and property of his tenants or guests. This provision therefore has long precedent. I learned of this dramatically as a teen-ager working for a summer in Virginia Beach. Staying at a rooming house with dormitory accommodations, I left five dollars under my mattress, and it disappeared. I happened to mention it to the landlady, who upbraided me for leaving money in the dormitory, then reimbursed the loss. I protested that she need not make good my stupidity, but she insisted vigorously and would not be dissuaded from doing what in her mind was right and proper. I never forgot that lesson in old-fashioned propriety.

"Instead of land-use restrictions, even if such were agreed to at the time of entering into the lease, this clause seeks to achieve the same end by an extension of the public information services of the landlord already noted above. The assumption is that inappropriate land-use decisions usually result from inadequate information, and that if such information is readily available, the non-conforming land uses will be small enough in number and in kind that the community will be able to live with them. They will be a small price for avoiding the inspection/enforcement syndrome of duties under the conventional restrictive approach.

"This right of the landlord may never have to be exercised for a variety of reasons. Individuals in Western culture tend to think that non-conforming uses cannot be tolerated, when actually they seldom hurt an over-all plan; the classic hold-outs, such as the brownstone tobacconist at Rockefeller Center, do little more harm than offend our sense of symmetry. Nor do such non-conforming uses very often last beyond an individual's lifetime, if that long, personal circumstances being as changeable as they are. Moreover, where people have all the facts they need to make a rational decision, they will generally do so. In Orbis, therefore, where information will be more available than elsewhere, hold-outs will be even more exceptional than elsewhere. In Orbis, also, the market will be more responsive to changing conditions, lacking the tax and regulatory factors that elsewhere tend to "freeze" existing land uses (e.g., not selling because of capital gains tax liability). Nevertheless, I consider it fundamental that "O" reserve the right to move a tenant from one site to another of equivalent character and value. The conditions it would have to meet, however, assure that such a right, if exercised at all, would not be exercised lightly.



<sup>10</sup>The ultimate protection of the residents is that Orbis is to be operated as a *business* and therefore rationally. If it were to be promoted and operated for any other reason—ideological, charitable or whatnot—there would not be this protection. The impersonal, rational pricing mechanism of the market is the ultimate safeguard of justice in a civilized community.

<sup>11</sup>This would include actions not only within Orbis, but also while traveling abroad—actions that might compromise the security of Orbis or be considered provocative by one or more nations on Earth, leading to the possibility of retaliation against Orbis. In other words, residents must observe the strict political neutrality of Orbis. "Reasonable behavior" again would be the criterion or test.

Erik Don Franzen, of Los Angeles, suggested that this and certain other covenants "run to the benefit of" the other residents, the effect of this wording being to create a contractual obligation on "J's" part running not only to "O" but also to each and every one of the other residents. By this provision, such an act as, say, driving recklessly on the streets, would be an actionable breach of agreement not only with "O," but with each and every other resident.

<sup>12</sup>John Yench, of Anaheim, Calif., suggested this and the following insurance clauses which further reduce the policing function required of the landlord. They obviate any need for the following 'promising' clauses from "J," which were incorporated in earlier drafts of this lease:

To grant "O" or his duly appointed agent entry at reasonable times for the purpose of such inspections as "O" might reasonably deem necessary to the health and safety of the community

Neither to engage in nor aid or abet military activities of any kind, including traffic, trade or trans-shipment of military weapons or supplies.

Neither to engage in nor aid or abet the export or trans-shipment of any goods to nations where they are expressly prohibited by the laws of those nations

An insurance company insuring residents against disasters of war would not only forbid them to traffic in munitions or narcotics, but it would carry out necessary inspections from time to time to assure that this condition was being met. Such necessity of inspection and enforcement would thus be removed one step from the landlord, who would need only look for evidence that the resident was insurable. Because the insuring company and its competitors would be in business to make profits, abuses of this policing function would be minimal; moreover, the landlord, directly concerned for the overall success and attractiveness of Orbis as a place to live, would monitor the insurance companies. The reason for the latter having to be approved by the landlord would be to prevent some underworld elements from forming their own captive insurance companies to technically comply with the lease while in fact ignoring it.

<sup>13</sup>The test again is reasonable behavior. This explicit rule confers a psychological and cultural benefit. By removing any and all violent action from the category of "right and justifiable" behavior, the individual is challenged in every case to look for the peaceful resolution of differences. The assumption is that there is always a

peaceful solution to any difference—if one is clever, skillful or wise enough to find it. Such an assumption cannot be proved, but like the scientist's assumption that the universe is predictable and rational, it is productive of discovery. Physical harm inflicted on any person in any situation whatsoever is here considered a tragedy. The person who could not avoid inflicting it is not to be condemned, however, anymore than the unsuccessful seeker after scientific truths. But since a tragedy has resulted to a human being, he is to be pitied for his failure. By this clause being incorporated into the lease, it is hoped that this view will gradually become a part of the culture of the new community.

<sup>14</sup>This form of arbitration, which is best suited to cases where the facts of the dispute are not in question, was suggested by the late Dr. F. A. Harper, of Atherton, Calif. It has the virtue of bringing the parties to the dispute closer together in their respective claims rather than farther apart, as in the adversary system where each takes an extreme and opposite position in the hope that eventual compromise will favor them. Under this arrangement, each party will make his position as reasonable and as close to the other party's position as possible, in the hope that his solution will become the decision in the case.

<sup>15</sup>Experience in property management dictates that rent collections be handled promptly and strictly. It is not a favor to the tenant to let him get in arrears and only creates an unmanageable situation. In some cases advance arrangements might be made for later payment, or the leasehold might be financeable in the mortgage market. In any case, rent schedules must be strictly regarded.

<sup>16</sup>We can assume, because of the need, that there would be arbitration companies structured to provide a complete dispute resolution mechanism entirely outside of any political system, and that there would be competition among arbitration associations to provide the fairest possible adjudication of disputes. Much of what we call *due process*—the right to confront witnesses and cross-examine them, questions about the admissibility of evidence, processes of appeals, and the like, which on Earth are handled within the political court system—might be transferred in space habitats to an arbitration system. A number of people are presently thinking and writing on the possibilities of competing private companies offering services of justice outside of any political system. See, for a single example, Murray N. Rothbard, *For a New Liberty* (New York; Macmillan, 1973) pp. 219-252. For an early treatment of the question, see Francis D. Tandy, *Voluntary Socialism* (Denver, Colorado; Tandy, 1896) pp. 62-78. See also the following relevant discussions: A. S. Diamond, *The Evolution of Law and Order* (Westport, Connecticut; Greenwood Press, 1975); Bruno Leoni, *Freedom and the Law* (Princeton, New Jersey; Van Nostrand, 1961); and William C. Wooldridge, *Uncle Sam, The Monopoly Man* (New Rochelle, New York; Arlington House, 1970), Chapter 5, "Voluntary Justice," pp. 94-110.

**SELECTED BIBLIOGRAPHY  
ON THE PROPRIETARY COMMUNITY\***

Heath, Spencer

- 1936 *Politics Versus Proprietorship*. New York, published by the author.  
 1952 *Progress and Poverty Reviewed*. New York, The Freeman.  
 1956 "Solution for the Suez." Baltimore, published by the author.  
 1957 *Citadel, Market and Altar: Emerging Society*. Baltimore, The Science of Society Foundation.  
 N.D. "Society and Its Services: Why the Henry George Idea Does not Prevail." New York, published by the author.

Holden, Arthur Cort

- 1936 "Group Action," *Land Usage* (Publication of the Land Utilization Committee of the New York Building Congress), April-May.  
 1944 "Combination and Large-Scale Initiative in Real Estate," *Journal of Land and Public Utility Economics*, August.

Howard, Ebenezer

- 1898 *Tomorrow: A Peaceful Path to Real Reform*. London, Swan Sonnenschein.

Levy, David

- 1975 "Learning Economics from Walt Disney World," *Reason*, October.

MacCallum, Spencer H.

- 1964 "The Social Nature of Ownership," *Modern Age* 9:1.  
 1964 "Anthropology of Real Estate," *Journal of Property Management*, Nov.-Dec.  
 1970 *The Art of Community*. Menlo Park, Calif., Institute for Humane Studies.  
 1971 "Jural Behavior in American Shopping Centers," *Human Organization* 30:1.  
 1972 "Associated Individualism: A Victorian Dream of Freedom," *Reason*, April.

\*Most of these titles may be ordered from the Heather Foundation, Box 48, San Pedro, Calif. 90733.

**ABSTRACT**

The author doubts that conventional, tax-supported public agencies could perform to the exacting standards required to maintain life-supporting environment in space, or that it would be desirable to have them do so if they could. Analyzing the economics of location value, he hypothesizes the feasibility of an entrepreneurial, profit-oriented administration of general community services for space habitats.

For supporting data, the author refers to multiple-tenant income properties in real estate, e.g., shopping centers, hotels, mobile-home parks, et. He presents the modern hotel as a small but complex community, and analyzes it as a model for the proprietary administration of community services. In this model, the interests of lessor and lessees are aligned, inasmuch as the success of the lessor consists in his ability to create and maintain such desirable environment as will command value in exchange for rights of access and occupancy.

The author believes that in space communities, the institution of property and contract will serve in lieu of government as we know it. He believes that the alignment of interests inherent in the lessor-lessee relationship make space habitats a potentially profitable field for investment as well as socially attractive.

In the second half of the paper, the author discusses reducing principles to practice in a hypothetical space habitat called Orbis. In the absence of conventional (political) government, creative innovation would be required with respect both to external security and internal organization. For the first, he suggests a freeport-like status that would be to the advantage of the leading nations on Earth to jointly guarantee. For the second, he observes that the entire written law or constitution of such a community would be no more or less than the sum of all of the lease provisions in effect at any given time. Hence the lease agreements would have to provide for all contingencies. He concludes with the detailed analysis of an hypothetical master lease that might serve as a model constitution for Orbis.