



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

The Critical Dilemma Facing Pro-War Libertarians

by Jacob G. Hornberger

The 9/11 attacks exposed a major fault line in the libertarian movement.

On one side of the divide were those libertarians who contended that the 9/11 attacks were a direct consequence of U.S. foreign policy — specifically the bad things that the federal government had done to people overseas, especially in the Middle East. Therefore, those libertarians argued, the only real long-term solution to terrorism against the United States lay in reining in the federal government's actions overseas, by such actions as bringing home U.S. troops stationed overseas, dismantling the military-industrial complex, abolishing the CIA, discontinuing foreign aid, ending U.S. invasions and occupations, and prohibiting federal meddling in the affairs of other nations.

On the other side of the divide were those libertarians who immediately after the 9/11 attacks aligned themselves with conservatives. Viewing the attacks as an act of war, they favored giving the president full authority to wage the “global war on terror.” This was no time to analyze or discuss U.S. foreign policy, these libertarians said. This was the time to hike military spending, take off the gloves, and unleash the CIA and the U.S. military to fight an enemy — terrorism — that arguably was more dangerous than the communist threat that America faced during the Cold War.

Today, pro-war libertarians are faced with what is possibly the greatest moral and philosophical dilemma of their lives.

No one can deny that we now live in a country in which the president, on his own initiative, has the omnipotent power to send the nation into war against any country on earth, especially given that the war on terror extends all over the globe. The president, the CIA, and the military have the power to take any suspected terrorist — foreigner or American — into custody and torture, abuse, and execute him without due process of law and trial by jury. The president and the NSA have the power to wiretap telephones and monitor emails without a judicially issued warrant. The president, the CIA, and the military have the power to send missiles into cars and drop bombs into buildings anywhere in the world, including right here in the United States,

in their attempt to win the war on terror. Indeed, the president wields the power to ignore any constitutional or legislative restraints on his power as a “wartime” commander in chief.

The critical importance of civil liberties has traditionally been a blind spot for conservatives. Focusing their attention almost exclusively on economic liberties — such as the minimum-wage law, economic regulations, and excessive taxation — they have traditionally denigrated the importance of civil liberties. Their long, brutal war on drugs, for example, has always been accompanied by their mocking of constitutional safeguards pertaining to search and seizure, protection from self-incrimination, and right to counsel. For conservatives, the protections of the Fourth, Fifth, Sixth, and Eight Amendments are nothing more than “constitutional technicalities.”

Thus, when the president and the Pentagon established their detention facility in Cuba for the precise purpose of avoiding the constraints of the Constitution and the Bill of Rights, conservatives applauded. The last thing the government needed, conservatives felt, was a bunch of fierce criminal-defense attorneys fighting to defend “the terrorists.” The post-9/11 conservative mindset was that the only good terrorist was a tortured or dead terrorist. Never mind that the president, the CIA, and the Pentagon, rather than a federal jury before an independent federal judge, now wielded the omnipotent power to decide who was a terrorist and, therefore, subject to being arbitrarily tortured, abused, and killed. And never mind that countless innocent people were being caught up in the sweep.

The reason that conservatives have long bashed such liberal groups as the ACLU, Human Rights Watch, and Amnesty International is not simply because as liberals they hold socialist economic views or because such groups were viewed by conservatives as subversive organizations. (After all, conservatives also hold socialist economic views.) Conservative antipathy toward such groups has also been based on the latter’s ardent support of civil liberties. It’s not a coincidence that, ever since 9/11, it has mostly been liberal groups, not conservative ones, that have been fighting against the torture and murder of prisoners and detainees at Bagram, Abu Ghraib, Guantanamo, and the secret overseas prison camps operated by the CIA.

Conservatives have long been known for using libertarian rhetoric in economics, while, at the same time, embracing statism in practice (just as liberals have been famous for their civil-liberties rhetoric while embracing statism in economic rights and gun rights). Everyone is familiar with the standard conservative mantra of “free enterprise, private property, and limited government” that conservative organizations have on their stationery, websites, and promotional brochures. But we’re also familiar with their support of public (i.e., government) schooling, Social Security, Medicare, Medicaid, income taxation, the drug war, regulations, and many other governmental programs that violate the principles of “free enterprise, private property, and limited government.”

The fact is that long ago conservatives threw in the towel with respect to achieving a society based on truly free-market, limited-government principles. For decades, they have committed their lives to big government and to figuring out how to take control of big government. Thus, today their “free-market” proposals and policy prescriptions are limited to reform — Social Security reform, health-care reform, drug-war reform, and so forth. Reform, reform, reform. That is what passes for “freedom” in the conservative movement.

While that contradiction within conservatism has never bothered conservatives, it has never escaped the attention of libertarians, especially those libertarians who were conservatives before they became libertarians. Libertarians have long understood that conservatives have been holding contradictory philosophies within themselves — the philosophy of libertarianism, as reflected in their rhetoric, and the philosophy of statism, as reflected in their support of socialist and interventionist programs.

Over the years, conservatives have often mocked libertarians over the fact that the general public hasn’t embraced the libertarian philosophy. What conservatives could not deny, however, was that at least libertarians hewed to a consistent philosophy — one that did not cause the libertarian to war against himself through a commitment to contradictory principles. Genuinely believing in a free society — a society based on free markets, private property, and limited government — libertarians have always favored the repeal, not the reform, of such socialist and interventionist programs as public (i.e., government) schooling, Medicare, Medicaid, income taxation, the drug war, and economic regulations.

Equally important, despite the fact that the libertarian philosophy has still not captured the support of the American people, libertarians have never abandoned their commitment to the free-market, limited-government paradigm for the sake of “credibility” or “respectability” or to achieve political power, as conservatives have. For libertarians, what has always mattered most are principle and integrity.

Yet libertarians who hold conservative views on foreign policy are now faced with what may well be the greatest moral and philosophical dilemma of their lives. By hewing to a conservative foreign policy and a libertarian domestic policy, they themselves are now holding contradictory philosophies. Even worse, these two contradictory ideas cannot coexist in the long run because a conservative foreign policy is a growing cancer that is destroying freedom at home.

How can any of the powers now wielded by the president, the CIA, and the military be reconciled with the principles of a free society, especially from a libertarian standpoint?

If a government has the power to arbitrarily take anyone into custody and torture and kill him, how can the citizenry in that society truly be considered free? Even if there is freedom of religion, freedom of the press, freedom of assembly, the freedom to vote, and even the freedom to own guns, all such freedoms are meaningless if the government has the power to arrest, torture, and execute anyone it wants.

Recall the movie *Braveheart*, which depicted the period in English history when the English king and his minions possessed and exercised the right to rape a newlywed bride on her wedding night. Can anyone imagine the woman's husband exclaiming, as his wife was carted away, "At least we can peacefully protest the king's actions without being thrown into jail"? (In fact, even the right of habeas corpus would be ineffective in such a case because the judge at the habeas corpus hearing would hold that under the law the government has the "right" to rape the bride and, therefore, he would deny habeas corpus relief. Thus, the core problem would remain — that government officials would possess the power to rape.)

Or imagine a suspected terrorist being stretched on the rack or subjected to waterboarding, screaming, "I have the right to criticize the government" under principles of freedom of speech (or even "I have the right to call my lawyer!"). His torturers would respond, "Well of course you do. But we have 'rights' too — including the right to arrest, torture, abuse, and kill you without judicial interference." Thus, again, the problem lies in the fact that government possesses the power to arbitrarily arrest and torture people.

That's what 9/11 accomplished. It exposed the horrible reality of what an imperial, interventionist foreign policy has brought to our nation and the American people. We not only live in a nation whose government has troops in more than 100 foreign countries, that is occupying Afghanistan and Iraq, that is threatening new wars against Iran and North Korea, and that claims the authority to drop bombs on any country on earth. We also live in a country in which omnipotent power over the citizenry by the president, the CIA, and the military is part and parcel of that foreign policy.

After all, despite the manifest evidence of kidnapping, torture, and murder of prisoners and detainees at the hands of CIA agents, how many CIA agents have been brought to account by either the Justice Department or the Congress? (None.) How many have been arrested and charged for such crimes? (None.) How many have been indicted? (None.) The only potential criminal prosecution of CIA agents is coming from foreign countries, such as Italy and Germany, where prosecutors are seeking criminal indictments against CIA agents for kidnapping and conspiring to torture in those countries. When it comes to the CIA, unfortunately all too many people get scared, turn away, and remain silent. That's what omnipotent government tends to do to people.

How can a nation whose government has an untold number of secret agents, operating with secret budgets, following secret orders, and wielding the authority to kidnap, torture, and murder with impunity even remotely be reconciled with the principles of a free society, especially from a libertarian standpoint?

Some may think that there really isn't any cause for concern because most of the suspected terrorists that U.S. officials are incarcerating, torturing, and killing are foreigners, not Americans. After all, they've arrested, incarcerated, and denied right to counsel, due process, and jury trials to only two Americans — Yaser Hamdi and Jose Padilla. What's the big deal?

For one thing, freedom is not defined by the extent to which a wrongful power is being exercised by government but rather by whether the wrongful power is possessed and able to be exercised.

Second, U.S. officials reserve the power to subject all Americans to the same treatment to which all other suspected terrorists have been subjected.

Third, to think that the exercise of such power will be limited to “only” one or two Americans reflects naiveté in the extreme. The fact is that the feds could have easily treated Hamdi and Padilla to the same abuse and torture accorded to suspects at Guantanamo, Abu Ghraib, Bagram, or the CIA’s secret torture facilities. Or they could have transported them to Syria, Egypt, Jordan, or any other friendly brutal regime for torture, as they did to an innocent Canadian citizen falsely accused of being a terrorist. It was only political considerations that inhibited U.S. officials from subjecting American terror suspects to the full panoply of mistreatment to which they have subjected foreign terror suspects. But let there be one or two more major terrorist attacks in the United States, and all bets are off: Americans will inevitably witness the full power of Leviathan unleashed. And if that day comes, all too many Americans will realize that the time for protest was long before it became too dangerous to protest.

Some libertarians may be harking back to what may seem to them to have been the halcyon days of pre-9/11, when it seemed possible to favor a conservative foreign policy (euphemistically described as a “strong national defense”) while favoring libertarianism (i.e., limited government) in domestic policy. That wasn’t reality — that was just fanciful thinking in a make-believe world. It was like saying, “I favor lightning but I’m firmly against thunder.”

The 9/11 attacks simply exposed what has been going on for many decades and continues to occur at an ever-increasing pace — the movement of our nation away from its founding principles of a republic and in the direction of empire, militarism, and intervention. Equally important, the reality is that such federal programs as the “war on terror,” the invasion and occupation of Afghanistan and Iraq, and the impending attack on Iran, along with the omnipotent powers that the president, the CIA, the NSA, and the Pentagon now wield against the American people, are inherent, integral, inescapable parts of that foreign policy. If one embraces the policy, he embraces the consequences of the policy.

Let’s also not forget another essential part of an imperial, militarist, interventionist foreign policy: out-of-control federal spending, which in turn brings rising inflation and taxation. How can those things be reconciled with libertarian economic principles?

Finally, as U.S. officials often remind us, the war on terror is perpetual, especially because an interventionist foreign policy guarantees an infinite supply of terrorists. That means that libertarians who favor such a foreign policy are, at the same time, surrendering any hope of ever achieving libertarianism. The only way to achieve the free society in our lifetime is through a consistent commitment to libertarianism, not only in domestic affairs but also in foreign affairs.

Thus, libertarians who embrace the conservative view on foreign policy have one of the most important decisions of their lives confronting them. By hewing to two contradictory philosophies, circumstances have now placed them in a moral and philosophical quandary. Will they continue hewing to a conservative foreign policy, thereby giving up all hope of a free society at home? Or will they choose to maintain their commitment to libertarianism here in America, which means rejecting a conservative foreign policy? Or will they simply act as if no choice at all now confronts them?

The stakes are obviously enormous. As Ludwig von Mises put it,

No one can find a safe way out for himself if society is sweeping towards destruction. Therefore everyone, in his own interests, must thrust himself vigorously into the intellectual battle. None can stand aside with unconcern; the interests of everyone hang on the result.

Jacob Hornberger is founder and president of The Future of Freedom Foundation.

This article was originally published in February 2007.