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FUTURE OF FREEDOM

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A man who dares to waste one hour of time has not discovered the value of life.

— Charles Darwin

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Why I Favor Limited Government, Part 1

by Jacob G. Hornberger

Ever since I became a libertarian in the late 1970s, there has been an ongoing debate within the libertarian movement between libertarians who advocate limited government and those who advocate anarchy, meaning a society based on the absence of government. Famous libertarian advocates of limited government include Ludwig von Mises, Friedrich Hayek, Milton Friedman, and Ayn Rand. The most famous libertarian proponent of anarchy is Murray Rothbard, who authored the 1973 pro-anarchy book *For a New Liberty: The Libertarian Manifesto* and who is generally recognized as the father of what has become known within the libertarian movement as "anarcho-capitalism."

Over the years, I have periodically engaged in informal debates on this issue and even organized a "limited-government versus anarchy" debate at a summer seminar at The Foundation for Economic Education, where I served as program director from 1987 to 1989. However, I have never written an article on the subject, thinking that it was more important to focus my attention primarily on the federal government's infringements on liberty than to engage in this intra-libertarian debate.

Since the issue is still the subject of vibrant discussion within the libertarian movement, both in academic and nonacademic arenas, I have decided to weigh in on it with this multipart essay, which will analyze the limited-government paradigm and explain the reasons I favor it. It will also show how and why limited government has both succeeded and failed in major ways and will show what needs to be done to bring limited government to our land. The essay will also analyze the anarchy paradigm and explain the reasons I oppose it. It will also show the fatal fallacies of anarchy and explain why I believe that the adoption of the anarchy paradigm would be a monumental mistake.

Let's begin with the Declaration of Independence and the book on which it is based, John Locke's *Second Treatise on Government.* Locke and Thomas Jefferson, the author of the Declaration, pointed out that people have been endowed with certain fundamental, natural, God-given rights. They include life, liberty, property, and the pursuit of happiness, which encompass freedom of speech, freedom of the press, religious liberty, the right to own property, economic liberty, and many others.

Such rights can be summarized in the following way: People have the right to do anything that's peaceful. That is, so long as people don't murder, rape, steal, burglarize, trespass, defraud, or otherwise forcibly interfere with the lives of other people, who themselves are pursuing happiness in their own way, they are free to make whatever choices they want in life, no matter how irresponsible, immoral, or dangerous others consider such choices to be.

There is no doubt that most people in life are peaceful. Walk into a busy shopping mall on any weekend. You will see thousands of people, nearly all of whom are peacefully going about their lives without killing, robbing, or otherwise violating the rights of others. If disputes arise, most often they are settled without violence.

If everyone in the world behaved in a peaceful manner toward others and if everyone amicably settled his disputes with others, there would be no need for government.

> In every society, there are those who choose to violate the rights of others with violence.

But we all know that life doesn't work that way. In every society, there are those who choose to violate the rights of others with violence. There are murderers, rapists, thieves, defrauders, robbers, and the like.

We also know that well-meaning people are often unable to arrive at an amicable settlement of disputes with each other.

And we know that throughout history there have been brutal regimes around the world that have invaded and conquered other countries and subjugated their citizenry.

That's why we need government — to protect people's right to live their lives as they want, so long as their conduct is peaceful. As Jefferson put it in the Declaration, "to secure these rights, Governments are instituted among Men, deriving

their just powers from the consent of the governed."

Thus, as limited-government proponents have long pointed out, there are three primary and legitimate functions of government: (1) to punish murderers, rapists, robbers, and the like; (2) to provide a court system in which people can peacefully resolve their disputes; and (3) to defend the nation from foreign invasion.

The government of one law

Imagine that you're living in a society in which there is a government that has enacted only one law — a criminal law prohibiting people from murdering others. As long as you don't murder, you can do whatever you want. Would you feel that you were unfree in that society? Sure, the murderer might say that he's not free because he's being prohibited from murdering others. But genuine freedom doesn't entail the right to violate the rights of others — it entails only the right to engage in peaceful activity.

How and why would such a law come into existence? As previously pointed out, most people in life are peaceful but there is always going to be a small minority of murderers and other violent malefactors. I don't know what the exact percentages are and I'm sure they vary from society to society and from year to year. But let's just say, for argument's sake, that 98 percent of people are peaceful and that 2 percent are murderers, robbers, rapists, and other violent violators of people's rights.

> "Governments are instituted among Men, deriving their just powers from the consent of the governed."

While there certainly are pacifists in society, most people hold that peaceful people have a right to defend themselves from those who violate their rights. In the case of murderers, for example, most people hold that peaceful people have the right of self-defense — that is, the right to shoot back at someone who is shooting at them with the intent to kill them.

If the murderer succeeds in killing his victim, the 98 percent have an interest in making him pay for his crime. Otherwise, if he's permitted to get away with it, he might well continue doing it and also induce others to do the same. So, the 98 percent have an interest in bringing the murderer to justice and making him pay for his crime, usually through incarceration and some-

times through restitution ordered to be paid to the victim's family.

Over time, the 98 percent find that it's cumbersome for each of them to have to apprehend the murderer, incarcerate him, or otherwise punish him, especially since the murderer might fight back. Many people simply lack the competence to engage in law enforcement.

So, the 98 percent decide to delegate their individual right of self-defense, which encompasses finding the malefactor, arresting him, and punishing him, to a competent third party — i.e., a sheriff.

The 98 percent came up with what I believe is the greatest judicial system that has ever been developed.

Notice something important about a society that has a government with only this one law: It does not violate what is known as the libertarian nonaggression principle — the principle that holds that it is morally wrong for anyone to initiate force against another person. That's because self-defense is defensive force, not initiatory force.

The same principle applies as we add other criminal laws to the books, such as robbery, theft, burglary, rape, and fraud. Commit them and the official designated representatives of the 98 percent will come and get you, charge you, try you, and, if convicted, punish you. Otherwise, you're free to live your life any way you want without interference by the state.

There is still another factor to consider, however: How do we know that a person really has committed a crime that he is accused of committing? What if the person who is being accused of the crime denies that he's guilty? Should the 98 percent nonetheless simply accept the validity of the accusation and inflict punishment on the accused? That's certainly the way things sometimes worked in the old Wild West, where "vigilante justice" sometimes prevailed. After a posse caught up with an accused cattle rustler, he was sometimes given a quick "trial" by the posse, strung up on a tree, and hanged by the neck until dead.

In medieval times, guilt was determined in another way — through "trial by ordeal." If the accused walked barefooted over red-hot plowshares without injury, for example, he was declared not guilty. Or he was forced to place his hand in boiling water and if God had not healed his wounds after three days, he was declared guilty.

Over centuries of the development of English and American common law, however, the 98 percent came up with what I believe is the greatest judicial system that has ever been developed for ferreting out the guilty and imposing punishment on them — one that entails judicial principles stretching back centuries into American and British jurisprudence.

Procedural guarantees

In the United States, before someone can be punished for a crime, he must first be formally notified of what he's been charged with, and it has to be a criminal law that was on the books when the crime was alleged to have been committed — i.e., no "ex post facto" laws. The accused is guaranteed a trial in which he is presumed innocent. The state has the burden of proving his guilt beyond a reasonable doubt, which is the heaviest burden of proof that the law has. He can confront witnesses against him and cross-examine them, sometimes with the aim of showing that they aren't telling the truth. He can summon witnesses to establish an alibi and introduce other evidence consistent with innocence. If he wants to, he can remain silent, or he is free to testify in his own behalf. He has the right to a speedy and public trial. He has the right to bail. He has the right to have an attorney appearing in court on his behalf.

Many of these procedural protections are subsumed under the term "due process of law."

Many of these procedural protections are subsumed under the term "due process of law," a term that is found in both the Fifth and Fourteenth Amendments. The term stretches back to the year 1215, when the great barons of England forced their king to promise that the government would not go against people in violation of "the law of the land."

Under American law the accused has the right of trial by jury, which is perhaps the most profound procedural right in the history of criminal jurisprudence, one that is not found in the judicial systems of most other countries. The famous 18th-century legal commentator William Blackstone called it "the principal bulwark of our liberties." Rather than have a tribunal or a judge determine his guilt, the accused can elect to have a group of ordinary citizens randomly selected from the community come into the courtroom, hear the evidence, and

decide whether to find him guilty or not guilty.

Why is that so important? Over time, officials who serve on judicial tribunals and judges who preside in courts often become cynical and jaded and sometimes even implicitly operate as agents for the state. They see a person brought before them on charges and, within their own minds, they presume that he's guilty. Moreover, it rarely occurs to tribunal officials and judges to question the morality or conscionability of the specific law with which the person is charged.

Jurors take their responsibilities, their oath, and their instructions very seriously.

Juries are different. My experience in twelve years as a litigating attorney is that jurors take their responsibilities, their oath, and their instructions very seriously. When they are told to presume a person innocent, they really do that. When they are instructed to acquit a person if they find that the evidence fails to convince them of guilt beyond a reasonable doubt, they do that, even if in their hearts they believe that the person really did commit the crime. Most amazing of all is that jurors in U.S. criminal cases at both the state and federal level actually wield the power to acquit someone for any reason they want, including a belief that the law that he's being charged with is immoral or unconscionable.

Are people who have actually committed crimes acquitted by juries or otherwise released owing to procedural protections that stretch back centuries in American and British jurisprudence? Of course, but the reason that those procedural protections arose and ultimately became an established part of the law was to protect the innocent. Since punishing a person for committing an act that he didn't commit is considered so abhorrent, long-established procedural protections represent the will of most people within the 98 percent to err on the side of caution, even if that means letting lots of guilty people go free. As Blackstone put it in 1765, "Better that ten guilty persons escape, than that one innocent suffer."

Does all that mean that America's judicial system is perfect? Of course not. No system devised by men is ever going to be perfect. Everyone agrees that America's judicial system needs improvement and will always need improvement.

Thus, the issue isn't whether the U.S. judicial system needs to be im-

proved. Instead, the issue is whether the American people are going to ditch a legal system that is based on at least eight centuries of development and evolution and ditch a governmental system that has stood for more than 200 years, both of which have, for much of that time, provided the greatest ambit of liberty and prosperity in history for multitudes of people, in favor of a system in which every single person is free to compete in the providing of private judicial services, law enforcement, and military defense.

Anarchists respond, "Not so fast, Jacob! Your ideal concept of limited government violates the libertarian nonaggression principle and the principles of a free society in two major ways: first, through taxation and, second, by prohibiting people from establishing private, competitive police forces, defense forces, and judicial systems."

We will examine those two objections in part 2 of this essay.

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

NEXT MONTH:

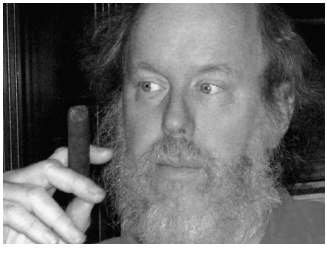
"Why I Favor Limited Government, Part 2"
by Jacob G. Hornberger

From the east to the west blow the trumpet to arms,
Through the land let the sound of it flee;
Let the far and the near all unite, with a cheer,
In defense of our Liberty Tree.

— Thomas Paine

Presidential Fear-Mongering versus Freedom

by James Bovard



After the San Bernardino massacre late last year, Barrack Obama made a rare speech from the Oval Office. His most memorable line was his declaration that "freedom is more powerful than fear." That epigram might have made John F. Kennedy's speechwriters beam. But it is ludicrous to hear such a comment from a president who has spent almost seven years fear-mongering to promote one federal power grab after another.

Obama has done more than any other president to sway Americans to perceive all guns owners as dire threats to public safety. He declared last December that "Congress should act to make sure no one on the No Fly list is able to buy a gun." That is a subtle gesture to equate gun owners with terrorists. His proposal is especially perilous to freedom because his administration is placing innocent Americans on the No Fly list solely on the basis of a hunch that they might some day commit violence. If Congress enacts Obama's proposal, then the absurd judgments of one government agency would provide a license to ravage victims' other constitutional rights.

The White House dragged its feet on admitting that the San Bernardino massacre was a terrorist attack, preferring instead to exploit it to promote anti-gun legislation. Obama sounded the bugle from the Oval Office for restrictions (if not bans) on so-called assault weapons — which many liberals define to include any semi-automatic weapon. Americans own more than 35 million semi-automatic firearms. Even though it would be impossible to confiscate all those firearms, maligning tens of millions of gun owners wins Obama brownie points from the media.

Obama perennially invokes the threat of terrorism to cloak illegal government surveillance. When former government contractor Edward Snowden exposed how the National Security Agency was ravaging Americans' privacy, Obama responded by portraying any threat

to the federal data vacuum cleaners as preemptive surrender to terrorist cabals. This past May, when Congress dallied before renewing the USA PATRIOT Act, Obama issued an apocalyptic warning:

"Heaven forbid we've got a problem where we could have prevented a terrorist attack ... but we didn't do so simply because of inaction in the Senate." But even Obama's own personally selected panel of experts found no evidence that the NSA's illicit wiretaps had stopped any domestic terrorist attacks.

In the same speech, Obama signaled that he believes that new threats justify government restrictions on the use of private encryption of email: "I will urge high-tech and law-enforcement leaders to make it harder for terrorists to use technology to escape from justice." He apparently believes that permitting any American to use software that federal agents cannot surveil will doom us all. But the Founding Fathers would be aghast at the suggestion that politicians have a right to read every citizen's mail.

Any American who flies domestically can suffer abuse thanks to Obama's perennial fear-mongering on terrorist threats to airlines. After federal officials failed to detect a plot by the so-called underwear bomber in late 2009, Obama authorized the Transportation Security Administration to become far more aggressive and intrusive. He declared in 2010 that he had asked TSA for assurances that "what we're doing is the only way to assure the American people's safety." He made his comment shortly after the TSA began pressuring Americans to go through Whole Body Scanners that radiated them while taking birthday-suit photos that could end up who-knows-where. TSA screeners also began groping people far more vigorously, as if any unsqueezed family jewel might be a plastic explosive. But Obama was utterly deferential to the agency regardless of the howls of protest across the land.

Obama has continued providing a red carpet for any abuse that the TSA wants to foist upon Americans.

Obama has continued providing a red carpet for any abuse that the TSA wants to foist upon Americans. Commenting last November on the downing of a Russian airliner over the Sinai peninsula, he declared, "I think there is a possibility that there was a bomb on board, and we're taking that very seriously." But if someone is looking for

protection from bombs, the TSA is the last bunch of wizards to consult. The TSA's bomb detectors are routinely triggered by hand sanitizers, soap, and other commonly used items. When the inspector general tested the TSA's Whole Body Scanners and TSA screeners, the TSA failed to detect 96% of the guns and mock explosives that IG agents smuggled past them. But as long as Obama administration officials can invoke vague threats, Americans' Fourth Amendment right to be free of warrantless, unreasonable searches while traveling is null and void.

Government abuses

Obama has played the fear card to justify dropping an "iron curtain" of secrecy around government abuses. Early in his administration, he justified suppressing thousands of photos of U.S. forces abusing detainees in Iraq because "releasing these photos would inflame anti-American opinion and allow our enemies to paint U.S. troops with a broad, damning, and inaccurate brush, thereby endangering them in theaters of war." But in the same speech, he declared that "individuals who violated standards of behavior in these photos have been investigated and they have been held accountable.... Nothing has been concealed to absolve perpetrators of crimes." But the White House and the Pentagon covered up a massive cache of evidence of wrongdoing, much of it involving torture. Obama's action helped pave the way for the cover-up of his drone attacks abroad — since disclosing the evidence that innocent civilians have been killed would have done nothing but stir up hostility to the U.S. government and Americans.

Obama has played the fear card to justify dropping an "iron curtain" of secrecy around government abuses.

More recently, the White House invoked similar apprehensions to successfully squelch the publication of the vast majority of the Senate Intelligence Committee's report on CIA torture, including masses of evidence of CIA deceit and criminality. (Obama's Justice Department previously effectively absolved all of the Bush administration torture policymakers.) At this point, the only people in the world who are unaware of U.S. torture practices are American citizens. "Willful blindness" was not one of the traits the Founding Fathers recommended for the success of representative government in America.

The Obama team has also played the fear card to drag the nation much deeper into foreign quagmires. After ISIL began circulating videotapes of beheadings of captives, the Obama administration exploited the resulting revulsion and fear to vastly expand U.S. intervention in Syria. Obama boasted last December that "we will continue to provide training and equipment to tens of thousands of Iraqi and Syrian forces fighting ISIL on the ground." But the Pentagon recently conceded that, after spending $41 million on training, fewer than half a dozen U.S.-prepared Syrian rebels were on the battlefront. Obama promised 16 times that he would never put "boots on the ground" in Syria. But when he recently decided to send U.S. troops there, administration officials sought to exonerate him by whooping up the threat of ISIS. The White House apparently believed that new fears absolved the commander in chief for double-crossing the American people.

Producing servitude

Fear has been a staple of Obama's efforts to expand federal control over Americans' daily lives.

When Congress was considering the Affordable Care Act, Obama and his officials repeatedly vastly exaggerated the number of Americans without access to health care. They sought to sway Americans to believe that the only alternative to the president's plan was to permit millions of Americans to suffer horribly, perhaps dying in the street. In his 2010 State of the Union message, Obama invoked "families — even those with insurance — who are just one illness away from financial ruin." His fretting was complemented by his administration's exploiting gullible viewers. Jonathan Gruber, one of the architects of Obamacare, explained that one provision of the law was included because "the American people are too stupid to understand the difference."

> The only people in the world who are unaware of U.S. torture practices are American citizens.

Obama promised that his health-care program could expand coverage and curtail spending. There was no way to simultaneously increase demand and slash costs except by destroying freedom. Millions of Americans' health-insurance policies have been canceled as a result of Obamacare. Americans without federally approved health insurance policies are being hit with hundreds of dollars of penalties.

Obama's rhetoric on climate change is fear-mongering at its best. In a September speech in Alaska, he warned that without radical economic and environmental policy changes, "we will condemn our children to a planet beyond their capacity to repair: Submerged countries. Abandoned cities. Fields no longer growing." Obama has perennially thrown out alarmist numbers of the potential economic impact of global warming. But while he talks as if climate change is a self-evident truth and his iron-fisted cure is the only possible solution, his administration is refusing to disclose key data from its top climate-research agency to House Republicans who suspect the administration is fudging numbers to promote his agenda. Regardless of whether one believes that climate change poses a threat to our future, Obama's alarmism is the worst way to craft an effective response.

Presidential panic buttons corrode American democracy. The routine fanning and exploitation of vague fears is no way to run a polity. Unfortunately, recent administrations have merely confirmed H.L. Mencken's adage: "The whole aim of practical politics is to keep the populace alarmed and hence, clamorous to be led to safety — by menacing it with an endless series of hobgoblins."

Bogus fears can produce real servitude. The more fears government fans, the fewer people will recall the danger of government itself. And as long as enough people can be frightened, then all people can be ruled.

Obama is correct that freedom is potentially more potent than fear. But that has not stopped the president from pushing the fear button any time he found it politically profitable. And it remains to be seen whether freedom is more powerful than presidential fear-mongering.

James Bovard serves as policy advisor to The Future of Freedom Foundation and is the author of a new ebook memoir, Public Policy Hooligan, *as well as* Attention Deficit Democracy *and eight other books.*

NEXT MONTH:
"Obama's Forgotten Victims"
by James Bovard

The Libertarian Sticking Point

by Laurence M. Vance

Why aren't more Americans libertarians? Why aren't more liberals becoming libertarians? They generally share the libertarian commitment to freedom of speech, civil liberties, personal freedom, privacy, and the Fourth Amendment, or at least they claim to do so. Why aren't more conservatives becoming libertarians? They generally share the libertarian commitment to the free market, limited government, free trade, property rights, and the Second Amendment, or at least they claim to do so.

Libertarianism

Libertarianism is the philosophy of nonaggression. Aggression is theft, fraud, the initiation of nonconsensual violence, or the threat of nonconsensual violence. The initiation or threat of aggression against the person or property of others is always wrong. Aggression is justified only in defense of one's person or property or in retaliation against aggression toward those things, but is neither essential nor required. Violence is justified only against violence. No violence may be used against a non-aggressor. Nonaggression is the essence of libertarianism and the sole libertarian creed. One's lifestyle has nothing to do with it.

Libertarians believe that people should be free to live their life any way they desire, accumulate wealth, and engage in any economic activity they choose as long as their actions are peaceful, their associations are voluntary, their interactions are consensual, and they don't violate the personal or property rights of others. In a libertarian society, the only actions prohibited involve the initiation of violence against person (murder, rape, assault, et cetera) or property (robbery, embezzlement, arson, et cetera). Libertarianism respects personal privacy, financial privacy, free thought, individual responsibility, freedom of conscience, free exchange, free markets, and private property. Libertarianism celebrates individual

liberty, personal freedom, peaceful activity, voluntary interaction, laissez faire, free enterprise, free assembly, free association, free speech, and free expression as long as they don't violate the personal or property rights of others.

Although many, if not most, Americans might say that they basically agree with such a philosophy, they still hesitate to fully embrace libertarianism. Why is that? It turns out that once you narrow the conversation or focus on a specific issue, you find that these Americans are very selective about what they actually accept from the libertarian philosophy. Many of their claims to share certain libertarian commitments are hollow. And among liberals and conservatives — including even those who do share many libertarian commitments — there is universally a great sticking point to their full embrace of libertarianism.

The sticking point

The libertarian sticking point is the war on drugs. Now, this is not the only thing that liberals and conservatives find problematic about libertarianism. They sometimes falsely charge libertarians with being pacifists, idealists, isolationists, too individualistic, materialistic, libertines, hedonists, or irreligious. They sometimes mischaracterize libertarianism as being utopian, immoral, or impractical and reducing everything to economics, always supporting big business, having no compassion for the poor, rejecting tradition, celebrating alternative life-styles, and being unconcerned about social justice. But when it comes to specific issues, the drug war is universally the sticking point.

The libertarian sticking point is the war on drugs.

What is it that libertarians believe about drugs and the drug war that bothers liberals and conservatives so much about libertarianism? It can be summarized in two words: drug freedom. They mean that —

- The war on drugs should be ended immediately and completely.
- There should be no laws at any level of government for any reason regarding the buying, selling, growing, processing, transporting, manufacturing, advertising, using, or possessing of any drug for any reason.
- All government agencies devoted to fighting the war on drugs should be eliminated.

- All government bureaucrats who work for those agencies, from the drug czar on down to the janitors, should be permanently laid off.
- All government efforts to study and classify drugs and conduct surveys and issue reports on drug use should be ended.
- All government programs and advertising that seek to prevent drug abuse or warn about the dangers of drugs should be ended.
- All incarcerated nonviolent drug offenders should be pardoned and released from prison.
- There should be a free market in drugs without any government interference in the form of regulation, oversight, restrictions, taxing, rules, or licensing.

Why do libertarians say what seems to liberals and conservatives to be such radical things? Libertarians reason that —

> Everyone should be free to live his live in any manner he chooses as long as his activities are nonviolent, nondisorderly, nondisruptive, nonthreatening, and noncoercive. Everyone should be free to pursue happiness in his own way even if his choices are deemed by others to be harmful, unhealthy, unsafe, immoral, unwise, stupid, destructive, or irresponsible.

Everyone should be free to engage in any economic enterprise or activity of his choosing without license.

Individuals, not government bureaucrats, should be free to decide what risks they are willing to take and what behaviors are in their own best interests.

Private organizations and individuals, not government programs and bureaucrats, are the solution to any problems resulting from drug abuse.

Buyers and sellers should be free to exchange with each other for mutual gain any product of their choosing.

Everyone should be free to engage in any economic enterprise or activity of his choosing without license, permission, restriction, interference, or regulation from government as long as he doesn't

commit violence against others, violate their property rights, or defraud them in some way.

Once the government claims control over what a man can lawfully put into his mouth, nose, and bloodstream, there is no limit to its power.

Government attempts to protect people from bad habits, harmful substances, or vice lead to greater evils.

Every crime needs a tangible and identifiable victim, not a potential or possible victim. Drug use is the quintessential victimless crime.

A free society has to include the right of people to take risks, practice bad habits, partake of addictive conduct, engage in self-destructive behavior, exercise poor judgment, live an unhealthy lifestyle, participate in immoral activities, commit vice, and undertake dangerous actions — including the use and abuse of drugs.

Republican presidential candidate Ben Carson speaks for many Americans — liberal and conservative — when he says that he opposes the legalization of marijuana and wants to intensify the war on drugs. He is okay with a police state as long as it combats what he considers to be "hedonistic activity." Other Americans feel differently about marijuana — but just marijuana. Some Americans favor the decriminalization of marijuana with civil fines or mandatory drug treatment for possessors instead of arrest and jail. Some Americans favor the legalization of marijuana just for medical use. Some Americans also favor the legalization of marijuana for recreational use.

A free society has to include the right of people to take risks, practice bad habits, and undertake dangerous actions.

Americans who hold those three differing positions on the relaxing of marijuana prohibition laws nevertheless have three things in common. One, they support heavy government regulation of and restrictions on marijuana possession. Two, they don't extend their liberality to the so-called drug trafficking of marijuana. And three, they aren't interested in relaxing prohibition laws relating to other drugs such as LSD, crystal meth, cocaine, or heroin. In all three cases,

those Americans still want a Drug Enforcement Agency, still want a Controlled Substances Act, still want a drug war, and still want a nanny state. Why? Because using drugs is addictive, unhealthy, dangerous, or self-destructive. Because using drugs is immoral, sinful, a vice, or evil. Because using drugs may have societal costs, have unintended consequences, lead to crime to support one's drug habit, lead to financial ruin, lead to neglect of one's children, or lead to premature death.

The solution

There is a four-pronged solution to breaching the libertarian sticking point: the utilitarian, the practical, the constitutional, and the philosophical.

The war on drugs has financial and human costs that far exceed any of its supposed benefits.

The first part of the solution to the libertarian sticking point is the utilitarian one. The war on drugs is a complete and total failure. It has utterly failed to prevent drug use; reduce drug abuse; end drug overdoses; reduce the demand for drugs; keep drugs out of the hands of addicts, prisoners, teenagers, and children; help drug addicts get treatment who want it; stop the violence associated with drug trafficking; and have any impact on the availability of most drugs in the United States.

Instead, the war on drugs has destroyed personal and financial privacy, negated personal responsibility and accountability, hindered legitimate pain management, hampered the treatment of debilitating diseases, turned doctors into criminals, unreasonably inconvenienced retail shopping, fostered violence, corrupted law enforcement, militarized the police, clogged the judicial system with non-crimes, turned America's inner cities into war zones, swelled prison populations with nonviolent offenders, made criminals out of hundreds of thousands of otherwise law-abiding Americans, eroded civil liberties, violated property rights, and weakened the Fourth Amendment.

The war on drugs has financial and human costs that far exceed any of its supposed benefits. It has wasted billions of taxpayer dollars even as it has ruined more lives than drugs themselves.

The second part of the solution to the libertarian sticking point is the practical one. There are plenty of other activities aside from drug use that Americans consider to be

dangerous, but they don't want laws to prohibit them or federal agencies to enforce such laws. Things such as mountain climbing, cliff diving, skydiving, bungee jumping, boxing, pro wrestling, MMA fighting, auto racing, and using a chainsaw. There are plenty of other activities aside from drug use that Americans consider to be immoral but don't want laws to prohibit them or federal agencies to enforce such laws. Things such as adultery, fornication, topless dancing, living in a nudist colony, gambling, and viewing pornography. There are plenty of other activities aside from drug use that Americans consider to be unhealthy but don't want laws to prohibit them or federal agencies to enforce such laws. Things such as drinking energy drinks, eating junk food, drinking large sugar-laden soft drinks, consuming high-fructose corn syrup, eating food containing trans fats, smoking cigarettes, and drinking alcohol.

And regarding cigarettes and alcohol, everything bad that could be said regarding drug use could equally be said of tobacco and alcohol use. Tobacco use not only costs the U.S. economy billions of dollars every year in medical costs and lost productivity, but is the cause of hundreds of thousands of premature deaths every year from heart disease, stroke, cancer, and smoking-related diseases. Alcohol is also one of the leading causes of premature deaths in the United States. It is a regular factor in drownings, home accidents, suicides, pedestrian accidents, fires, violent crimes, divorces, boating accidents, child-abuse cases, sex crimes, and auto accidents. It is a contributing factor in many cases of cancer, mental illness, anemia, cardiovascular disease, dementia, cirrhosis, high blood pressure, and suppression of the immune system.

Tobacco, alcohol, and prescription drugs kill far more people every year.

And then there is the fact that legal drugs — prescribed and administered by physicians — kill thousands every year by means of overdose or reactions with other drugs. Even over-the-counter drugs such as aspirin and Tylenol kill hundreds of Americans every year.

It certainly makes no sense for the government to wage war on "illegal" drugs when tobacco, alcohol, and prescription drugs kill far more people every year.

The third part of the solution to the libertarian sticking point is the

constitutional one. That is because the Constitution nowhere authorizes the federal government to have a war on drugs. The Constitution nowhere authorizes the federal government to intrude itself into the personal eating, drinking, or smoking habits of Americans. The Constitution nowhere authorizes the federal government to have a drug czar, an Office of National Drug Control Policy, or a Drug Enforcement Administration. The Constitution nowhere authorizes the federal government to have a Controlled Substances Act, a Comprehensive Drug Abuse Prevention and Control Act, or a Combat Methamphetamine Epidemic Act. The Constitution nowhere authorizes the federal government to have a National Drug Control Strategy, a National Survey on Drug Use and Health, or a Domestic Cannabis Eradication/Suppression Program. The Constitution nowhere authorizes the federal government to restrict or oversee any harmful, unhealthy, or mood-altering substances that any American wants to consume. The Constitution nowhere authorizes the federal government to prohibit the buying, selling, growing, processing, transporting, manufacturing, advertising, bartering, trading, using, possessing, or "trafficking" of any drug for any reason. The Constitution nowhere authorizes the federal government to ban any substance.

The Constitution nowhere authorizes the federal government to have a war on drugs.

When progressives in and out of the national government sought to institute alcohol prohibition after World War I, they knew they could do it on the national level only by amending the Constitution. That is why the Eighteenth Amendment to the Constitution was adopted in 1919. The Volstead Act to prohibit the "manufacture, sale, or transportation of intoxicating liquors" could not be passed by Congress until after the adoption of the Eighteenth Amendment.

The fourth part of the solution to the libertarian sticking point is the philosophical one. It is just simply not a legitimate purpose of government to wage war on drugs. It is not the purpose of government to study drugs, classify drugs, restrict drugs, prohibit drugs, or seek to prevent drug use. It is not the purpose of government to punish people for engaging in entirely peaceful, voluntary, and consensual actions that do not aggress against the per-

son or property of others. It is not the purpose of government to prohibit, regulate, restrict, or otherwise control what a man desires to smoke, drink, inject, snort, sniff, inhale, swallow, or otherwise ingest into his mouth, nose, veins, or lungs. It is not the purpose of government to prevent people from practicing bad habits, partaking in risky behavior, performing addictive actions, or engaging in immoral activities. It is not the purpose of government to protect people from harmful substances, unhealthy practices, dangerous activities, or vice. It is not the purpose of government to control what people buy, sell, trade, manufacture, or distribute.

In a free society, the only possible legitimate functions of government are defense, judicial, and policing activities. Because libertarians consistently extend the nonaggression principle to acts of government, they believe there is no justification for any government action beyond keeping the peace; prosecuting, punishing, and exacting restitution from those who initiate violence against the person or property of others; and constraining those who would attempt to interfere with the peaceful actions of others. In a free society, government neither legislates morality nor prohibits actions that do not involve the initiation of violence against person or property. In a free society, government leaves alone those who don't initiate violence against the person or property of others so that they might pursue their own happiness, engage in commerce of their own choosing, and do what they want with their body and their property.

The war on drugs is incompatible with a free society. It is an assault on individual liberty, private property, limited government, and the free market. A philosophy of freedom and nonaggression has no sticking points.

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NEXT MONTH:
"Can a Business Overcharge Its Customers?"
by Laurence M. Vance

The Landmark Case That Destroyed Economic Liberty

by David S. D'Amato

If the Supreme Court's 1905 holding in *Lochner v. New York* is the widely reviled embodiment of the constitutional right to freedom of contract, then *West Coast Hotel Co. v. Parrish* is its celebrated antithesis. The New Deal era case has been identified with the beginning of a "Constitutional Revolution" that freed progressive social policy to march triumphantly onward. But the official, approved story of *West Coast Hotel,* a case almost uniformly lauded by legal scholars, has it quite wrong. Far from heralding an enlightened era of reform, *West Coast Hotel* signals a break from traditional liberal values of freedom and individualism, a move in the direction of social engineering and control by political elites.

The facts before the Court were quite simple. The plaintiff, Elsie Parrish, was employed as a maid at a hotel owned and operated by the defendant, West Coast Hotel Company, which compensated Parrish at a rate impermissible under a State of Washington law. The statute established "Minimum Wages for Women" in accordance with the recommendations of an Industrial Welfare Commission (later abolished and reincarnated as the Industrial Welfare Committee). Parrish sued the West Coast Hotel Company, asking for the difference between the wage demanded by the Washington law and the amount that she was paid. The West Coast Hotel Company based its argument on the Fourteenth Amendment's due process clause, contending that Washington's law deprived it of a fundamental right, the freedom of contract, without due process of law.

Delivering the opinion of the Court, Chief Justice Charles Evans Hughes wrote that the requirements of constitutional due process were fulfilled where a "regulation ... is reasonable in relation to its subject and is adopted in the interests of the community." The Court held, affirming the Supreme Court of

Washington, that the law was a constitutionally permissible exercise of Washington's police power.

A humble, wage-earning maid earning less than $14 per week, Parrish was, no doubt, a sympathetic plaintiff. Presented with such an apparently harrowing life of thankless drudgery, it is perhaps natural to root for the underdog, to look for intervention of some kind to level the bargaining power of the parties. And minimum-wage laws are in fact a form of redistribution, though not necessarily in the way we might think. In the real world, where economic realities cannot be magically legislated away, the minimum wage redistributes wealth not just away from the employer — indeed, it may not even do this — but from the employees who lose their jobs as a result of the compelled wage hike.

It never occurs to lawmakers to remove existing barriers to market participation and economic advancement.

Were economic and natural laws so easily subdued or supplanted, we should have only to announce Utopia by legislative act. It never occurs to lawmakers, of course, to remove existing barriers to market participation and economic advancement, the burdens of which often fall most heavily on less-skilled workers and the poor — barriers such as occupational licensure and other rules that prevent people from using skills and implements they already have to earn a living. Remarking on this, the shortsightedness of "the so-called 'practical' politician," Herbert Spencer wrote, "He contemplates intently the things his act will achieve, but thinks little of the remoter issues of the movement his act sets up, and still less its collateral issues." Elsewhere, Spencer speaks of the ways in which "uninstructed legislators have ... continually increased human suffering in their endeavours to mitigate it."

It is probably true that several kinds of intervention, barring, in Lysander Spooner's words, "commerce that is intrinsically just and lawful," tend to consolidate economic power in large, hierarchical firms. Even if true, though, that is not an argument in favor of minimum-wage laws, but against all economic intervention. As Justice George Sutherland noted in his dissenting opinion in *West Coast Hotel*, even if an employer pays a wage that is not adequate to provide the employee with all that she needs, the employer has nevertheless "nei-

ther caused nor contributed to her poverty."

Justice Sutherland's dissent in *West Coast Hotel* remains relevant to contemporary constitutional debates. As law professor David Bernstein observes in his study of the regrettably tarnished freedom of contract case, *Lochner v. New York,* we find hints of today's "new originalism" in that dissent. Sutherland contended that the Constitution's words meant in his day just what they meant when the document was adopted as the supreme law of the land, that "freedom of contract was the general rule, and restraint the exception."

Maintaining that the 1923 case *Adkins v. Children's Hospital* was correctly decided, Sutherland argued that "while there was no such thing as absolute freedom of contract," the law at issue constituted an unconstitutional limitation on that freedom and "create[d] an arbitrary discrimination" in its different treatment of men and women. If men and women were truly equal legally and politically, Sutherland argued, then the law could not rightly place them in different classes. Women, no less than men, were able "to make a fair bargain" for themselves, without the intervention of the state. In *Adkins v. Children's Hospital,* for which Sutherland had authored the majority opinion, the Court considered and struck down a law very much like the one at issue in *West Coast Hotel,* requiring "the fixing of minimum wages for women and children in the District of Columbia."

> "Freedom of contract was the general rule, and restraint the exception."

At first, it seems striking that in a span of less than fifteen years, Sutherland's view — on essentially analogous facts — went from embodying the opinion of the Court to representing the dissenters. But the *West Coast Hotel* decision was a close one, dividing the Court 5 to 4. Justice Owen Roberts's famed vote in the case has come to be known as the "switch in time that saved nine," a reference to the fact that Roberts's apparent shift came shortly after Franklin Roosevelt introduced a plan that would allow him to install an additional Supreme Court justice for each one over 70 years of age, his infamous "court-packing" scheme. And while scholars have questioned whether there was in fact any connection between Roberts's vote and Roosevelt's court-packing plan (the vote was

taken before Roosevelt's announcement), the case nonetheless begins a period of reorientation in constitutional jurisprudence. Prior to *West Coast Hotel,* in succeeding cases testing New Deal policies, Roberts frequently joined the conservatives (really anti-progressive classical liberals), the "Four Horsemen," in invalidating those policies. From West Coast Hotel on, when confronted with cases implicating economic liberties, the Court has been extreme in its deference to government action, effectively devastating the fundamental individual rights that make a true free market possible.

Substantive due process

It is perhaps surprising that we find the debate about substantive due process at its most contentious within the group of jurists and legal scholars who identify as originalists, whose preferred method of constitutional interpretation is to (attempt to) heed the original public meaning of its words. Libertarian originalists, often called "new originalists," argue that the concept of substantive due process is well within the original public meaning of the text and thus that the Constitution demands robust protection for the liberty interests of individuals. Indeed, they argue further that the distinction between substantive and procedural aspects of constitutional due process is itself spurious and incoherent.

From *West Coast Hotel* on, the Court has been extreme in its deference to government action.

Explaining this view, the Pacific Legal Foundation's Timothy Sandefur writes that the law cannot be mere "arbitrary command," that it must embrace normative aspects of justice, that is, it must take on a certain view of morality. For originalists such as Sandefur and (to name another notable example) Georgetown law professor Randy Barnett, there can be no clear separation between the procedural requirements of constitutional due process and the *substance* — "certain standards of fairness" — that shapes the procedure. Sandefur asks, for example, if we would regard "a coin toss, or a consultation of the zodiac, or the drawing of lots" as a fair trial. Certainly we would not and thus, Sandefur argues, attempts to define a proper judicatory process must fail without the incorporation of substantive ideas on individual rights.

Their projects apparently identical — to give force to the original

public meaning of the words — how can originalists disagree so fundamentally about such an important question? What these disagreements show, perhaps, is that even those jurists who, like Justice Antonin Scalia, sincerely believe that they are not *interpreting* at all will and in fact must bring many of their own prior philosophical ideas into their work.

The intra-originalist debate on substantive due process further demonstrates the important fact that jurisprudential divides often don't align with political or partisan attachments. Conservative jurists have frequently offered some of the strongest repudiations of substantive-due-process protections for the important economic liberties that libertarians defend. Justice Scalia, for instance, has repeatedly asserted that the notion of substantive due process is "a contradiction in terms." The Constitution protects a particular procedural process and that alone. For Scalia, then, the Constitution makes Congress the "900-pound gorilla in Washington," questions about rights and liberties being reserved in our system for the political process, for the votes of our elected officials. He is steadfast in his insistence that if citizens want a law to protect (or proscribe, as the case may be) a particular liberty interest, then they ought to persuade their fellow citizens. Libertarians, of course, disagree, seeing the rights of the individual as absolute, not subject to the vagaries of the political process, not something that can simply be voted away.

Libertarians see the rights of the individual as absolute, not subject to the vagaries of the political process.

As it happens, some libertarians (the author is one of them) suspect that originalists of the Scalia variety are probably right that the Constitution grants the legislative branch almost boundless power to violate our rights. Notwithstanding the dictates of America's constitutional system, however, individual rights preexist *all* political systems and are the fundamental, natural law that binds those systems. In short, one need not accept the historical and philosophical claims of new originalism to decry results such as the one in *West Coast Hotel*. The Constitution is a product of its time and place; to the extent that it conflicts with the libertarian law of equal liberty, we are no more bound by its dead hand than we are bound by laws today that define what we may ingest or say.

Our freedom of contract is no different. When the state supplies additional or different terms and makes those terms mandatory, punishing those who don't comply, we no longer have the full freedom of contract — an important right without which there can be no economic liberty. Wage-fixing is ultimately just a discrete example of price-fixing, which proves disastrous and counterproductive to its own stated goals wherever we find it. *West Coast Hotel* should be condemned as an example of illiberal, paternalistic socio-economic intervention, not praised as a fair and reasonable limitation on the employment contract. As principled liberty-lovers, though, we should also emphasize the ways in which the state hobbles working Americans through expensive licensure rules and other economic regulations. If we are ever to see a genuine free market in the United States, cases such as *West Coast Hotel* must be revisited, reconsidered in the light of the law of equal liberty.

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The two most frightening words in Washington are "bipartisan consensus." Bipartisan consensus is when my doctor and my lawyer agree with my wife that I need help.

— P.J. O'Rourke

Abolish the Department of Education

by Wendy McElroy

The Department of Education (DOE) is one of the most destructive federal agencies because it attempts to control the flow of ideas and information by controlling public schools, including higher education. If a school does not comply, then it gets no federal money. Educators who rebel outright, such as home-schooling parents, are reined in by an ever-tightening net of regulations

Defining people's thoughts and beliefs is the ultimate form of social control. In the foreword to his dystopian novel, *Brave New World* (1946 edition), Aldous Huxley commented, "A really efficient totalitarian state would be one in which the all-powerful executive of political bosses and their army of managers control a population of slaves who do not have to be coerced, because they love their servitude." Public schools are both expressions of and a training ground for that army.

Happily, the DOE may be one of the easiest federal agencies to abolish because political arguments for abolition have the advantage of being backed by facilitating circumstances. That makes the DOE an agency to target by those who wish to roll back government wherever possible.

One circumstance that favors the abolition or severe reduction of the DOE is historical precedent. The Cabinet-level department is a comparatively new creation, which was signed into law in 1980 by Jimmy Carter. A Cabinet-level DOE had been established in the 1860s but it was quickly demoted to an Office and stripped of presidential prestige. Responsibility for education was then scattered across various government departments and agencies. Eventually, the Office of Education fell under the auspices of the Department of Health, Education, and Welfare.

When Carter proposed reinstating the agency's Cabinet status, the proposal met stiff political resistance from Republicans and other vested interests. The bill narrowly

passed the House of Representatives by a vote of 210 to 206. Even then, it was not clear whether the widely disparate House and Senate versions of the bill could be reconciled.

The *Spokesman-Review* newspaper (July 12, 1979) explained, "As it emerged from the House, the bill had been amended to permit voluntary prayer in public schools, to ban busing of students to achieve racial desegregation, to prohibit use of racial or sexual quotas for admission to colleges and to bar abortions [sic] in the proposed new department's medical facilities for employees."

The newspaper continued, "Opposing creation of the department was a coalition that seldom before had ever joined forces. These included a majority of House Republicans, who feared the bill would lead to federal control of local education, as well as creation of another giant bureaucracy; and a large number of liberal Democrats who feared creation of the single-issue department would crumble the education-labor-health-civil-rights block that has wielded power over social legislation."

The constitutionality of the DOE was hotly questioned. Opponents of creating the Department argued that the federal government had no constitutional authority to do so because the word "education" did not appear in the U.S. Constitution. Federal intrusion into education would be an executive overreach.

Supporters pointed to the Commerce Clause as justification in establishing the DOE. The relevant passage reads, "To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes." This was interpreted as assigning authority to the federal government over any matter that influenced national commerce. An educated populace was of national concern, advocates claimed.

Federal intrusion into education would be an executive overreach.

Republicans countered with the Tenth Amendment to the Bill of Rights: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Education was a states' rights matter and no business of the federal government. That argument also facilitates the abolition of the DOE, since states' rights is an increasingly popular position in the mainstream.

Opposition to a DOE was not restricted to Congress, however.

The *Spokesman-Review* commented on the unions and general labor movement, which wielded immense political influence. "Strong backing came from the National Education Association (NEA) with its 1.8 million membership of teachers and educators. Opposing the new department were the American Federation of Teachers (AFT) and a number of other educational groups and individuals." The organizations were rivals. In her book *Jimmy Carter as Educational Policymaker: Equal Opportunity and Efficiency,* Deanna L. Michael observed, "Albert Shanker, President of the American Federation of Teachers, opposed the creation of the department of education and lived in New York.... [His] opposition may have influenced the *New York Times*" (p. 162).

Reagan pledged to eliminate the DOE from his Cabinet.

Maurice R. Berube's book, *American Presidents and Education,* noted, "A strong critic of the proposed Department of Education was teacher [and NEA] union rival, Albert Shanker ... [He] lambasted the idea as adding another bureaucratic layer to education mainly for the reason of 'prestige', which he felt was 'not a good reason'. Others perceived Shanker's opposition [as being] on the grounds that he feared the NEA would dominate a new education department" (p. 51). History generally views the DOE's creation as Carter's quid pro quo for the NEA's endorsement of his 1976 presidential campaign. Thus, Shanker's concerns seem legitimate, although they do not preclude self-interest. (Note: some sources claim the AFL also supported the creation of the DOE but that appears to be inaccurate.)

Backlash

Controversy over the DOE's existence continued to boil over for decades. In the 1980 presidential election campaign, for example, Ronald Reagan prominently pledged to eliminate the DOE from his Cabinet and to reduce federal spending on education. During his presidency (1981–89), however, the DOE remained a Cabinet post, and the federal spending expanded. Nevertheless, candidate Reagan clearly believed that weakening federal authority over education would appeal to the voting public.

The DOE reemerged as an election issue in 1996. Sitting President Bill Clinton promised to strengthen education across the board, making it his top priority. Republican nom-

inee Bob Dole pledged to "cut out" the DOE. At that time, the official GOP platform itself called for the abolition of the DOE on constitutional grounds.

In the last few years, constitutional arguments against the DOE have revived and become more frequent. A 2011 Cato Institute article, "Yes, the Department of Education Is Unconstitutional," is an example. Adjunct scholar Adam B. Schaeffer quoted then-Congresswoman Michele Bachmann as stating, "[The] Constitution does not specifically enumerate nor does it give to the federal government the role and duty to superintend over education that historically has been held by the parents and by local communities and by state governments."

That same year, Neal McCluskey commented in the *Washington Times* on Obama's proposed budget for the DOE. In "End Fed Ed," he wrote, "[Except] for granting jurisdiction over the District of Columbia and empowering the feds to prohibit schooling discrimination by states, the Constitution gives Washington zero authority to meddle in education. That means every federal education program, and the department itself, is unconstitutional.... The Founders gave the feds no education power for good reason. They knew that a national government couldn't effectively govern education or anything else that works best when tailored to the unique needs of individual people and communities.... History has borne their wisdom out."

The surging backlash against public schools is yet another circumstance that favors the chance of abolition. Perhaps the most visible manifestation of discontent is the rise in home-schooling. According to both the DOE's National Center for Education Statistics and the Home School Legal Defense Association, the total number of home-schooled students rose 17 percent in the five years from 2007 to 2013. Widespread discontent with the poor quality of education imposed by the Common Core program is likely to hike those numbers.

Libertarians are often asked where their drastic reduction of the state would begin. The DOE is enormously destructive of liberty; it is also unconstitutional, unpopular, and a recent invention. A good answer to the question is, "Abolish the DOE."

Wendy McElroy is a fellow of the Independent Institute and the author of The Art of Being Free.

The Economist Who Saw the Future

by James Cook

Hans Sennholz (1922–2007) was a professor of economics and a student of Ludwig von Mises while at NYU. He was an intrepid critic of government deficits:

> If we cannot return to fiscal integrity because the public prefers prodigality over balanced budgets, we cannot escape paying the price, which is ever lower incomes and standards of living for all. The pains of economic stagnation and decline which are plaguing us today are likely to intensify and multiply in the coming years. The social and racial conflict, which springs from the redistribution ideology, may deepen as economic output is shrinking and transfer "entitlements" cause budget deficits to soar. The U.S. dollar, which has become a mere corollary of government finance, is unlikely to survive the soaring deficits.

He explained how government deficits grow:

> When the public demand for government services and benefits grows beyond the ability of business and wealthy taxpayers to pay, budgetary deficits become unavoidable. The popularity of redistribution by political force tends to grow with every dollar of "free" service rendered. The clamor finally becomes so intense that, in order to be heard, every new call is presented as an "emergency" that must be met immediately before all others. Redistributive government then rushes from one emergency to another, trying to meet the most noisy and politically potent demands.

On the subject of debt he wrote,

> [The] man who lives above his present circumstances is in great danger of soon living much beneath them. The same is true with a group of people called "society." To live beyond its means is to invite poverty and deprivation. Deficit spending consumes wealth, engages in mass deceit about

> economic reality, sets a poor example to others, makes people dependent and subservient, causes uncertainty and instability, and breeds social conflict and strife. It may even weaken the political institutions of a free society.

He argued that the capital consumed by government would have been better spent in private hands:

> It is difficult to estimate the number of factories and stores that were not built, the tools and dies that were not cast, the jobs not created, the wages not paid, the food, clothing, and shelter not produced on account of this massive consumption of capital. The coming generation of Americans and countless others to come will be poorer by far as a result of our deficit spending.
>
> Of course, the beneficiaries of the redistribution process enjoy every moment of it. With present-oriented people, today's enjoyment is always more pleasurable than saving for tomorrow. In their ignorance, they may applaud the very favors and handouts that are destroying their jobs and the wages they could have earned.

Mr. Sennholz explained the danger of bubbles:

> Many failed to recognize the gradual development of financial bubbles especially in equity markets and real estate. Bubbles, which ultimately must deflate and come to naught, are difficult to spot because they closely resemble real economic expansion. Actually, they are visible symptoms of maladjustments caused by wanton money and credit creation and false interest rates. They enjoy the loud support and confirmation by the monetary authorities blowing the bubbles and by politicians who love the booms.

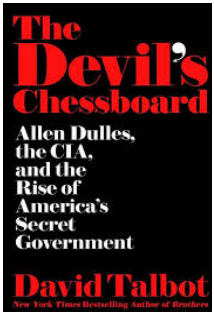
Sennholz made no bones about the final outcome: "The ultimate destination of the present road of political fiat is hyperinflation with all its ominous economic, social, and political consequences."

James Cook is the founder of Investment Rarities Incorporated.

Allen Dulles: Architect Of America's Secret Government

by Michael Swanson

The Devil's Chessboard: Allen Dulles, the CIA, and the Rise of America's Secret Government by David Talbot (HarpersCollins, 2015), 686 pages.



David Talbot has written an important book that is destined to become a classic, because it helps us confront the darker aspects of our nation's history. As American citizens we vote in elections and our television news keeps us up to speed with what is happening in politics. But much of what is decided for us is done so in private and deep inside what is best described as a national-security state. The recent book *National Security and Double Government,* by Michael Glennon, describes this as a network of "several hundred managers of the military, intelligence, diplomatic, and law enforcement agencies who are responsible for protecting the nation and who have come to operate largely immune from constitutional and electoral restraints."

In recent years the revelations of Edward Snowden exposed secret surveillance activities that fit with what Glennon describes. Decisions made to monitor, record, and track all electronic communications of all American citizens without any public debate and without much of the knowledge of many of the members of Congress of the extent of these activities are the most visible example of acts made in secret by the national-security state outside of the public eye and even outside constitutional processes. Today we have secret courts with secret rulings and secret budgets.

The national-security state came into being after World War II during the time of the Truman administration, years that saw the creation of the Central Intelligence Agency and the Joint Chiefs of Staff and the passage of the National Security Act of 1947. In the years that followed, the CIA engaged in secret operations that resulted in the overthrow

of governments in Iran, Guatemala, Laos, and elsewhere. In the 1960s Army Intelligence, the FBI, and the CIA also surveilled members of the anti-war and civil-rights movements, who were viewed as disloyal to American foreign policy. It also engaged in assassination plots against foreign leaders. All of that was secret and kept hidden from the American people until Congress launched a series of investigations into the activities of the American intelligence community in the 1970s.

Allen Dulles and his brother became public figures when they served together as director of the CIA and secretary of state.

What David Talbot has done in his newest book, *The Devil's Chessboard: Allen Dulles, the CIA, and the Rise of America's Secret Government,* is trace the origins of this system of "secret government" through a biography of one of its architects. *The Devil's Chessboard* seeks to shine a torch down the well of "deep politics" as Peter Dale Scott — an important scholar of American power — has termed this underworld of unaccountable authority. "Until we have a full reckoning of the Dulles era and its high crimes, the country cannot find its way forward," writes Talbot.

No ordinary boy

Allen Dulles was a strange and unusual child. One summer as a teenager he, along with his older sister, was given the job of looking after his five-year-old sister Nataline. They were playing near a lake when Nataline fell into it. She got carried away by the water and then suddenly went underwater with only her pink dress remaining above it. The older sister screamed for help, but young Allen Dulles just sat there and watched. Only after a few moments, which seemed like an eternity, did he start to yell for help. Finally their mother came and jumped in the water to save the little girl. What was odd was that Allen was a good swimmer. But he simply seemed too fascinated to bother to act. He was no ordinary boy.

Allen Dulles and his brother, John Foster Dulles, became public figures when they served together as director of the CIA and secretary of state during the Eisenhower administration. But they played key roles behind the scenes before that. During World War I their uncle was Secretary of State Robert Lansing and both of them served as aides during the peace negotiations in Paris after

the war. Then they both worked at the powerhouse Wall Street law firm of Sullivan and Cromwell, which had as its clients many of the largest corporations in the United States. In the 1920s, it had huge dealings with American corporations that had investments in Germany during the rise of Hitler.

During World War II, Allen Dulles went to Geneva, Switzerland, as an agent of the American Office of Secret Services (OSS), ostensibly to be one of the top American spies in Europe. He protected the interests of Sullivan and Cromwell clients and engaged in conversations with people on all sides of the conflict, including members of the Nazi SS. Towards the end of the war he negotiated with Karl Wolff, an assistant to SS chief Heinrich Himmler, for German forces to surrender in Italy before the Nazis' total surrender. That policy, though, went against Roosevelt's demand for unconditional surrender and later became a bone of contention with Joseph Stalin. Dulles, though, would do what he thought was best in his own mind.

During the war Dulles received information about the Nazi concentration camps, but passed almost none of it on to his superiors. He sent 300 memos back to his bosses and not a single one of them had any sense of urgency about the Final Solution. When he referred to those camps, he blandly referred to them as "conscription" of the populace.

During the war Allen Dulles received information about the Nazi concentration camps, but passed almost none of it on.

Most of his interest was taken up in psychological warfare tricks and planning out grand postwar strategies for Europe. As the war came to an end, he and other OSS men close to him, such as James Jesus Angleton, helped some Nazi intelligence officials and war criminals escape capture. They worked with Gen. Reinhard Gehlen, who had been Hitler's head of intelligence against the Soviet Union, to build a new Cold War spy agency for the new West German government.

Allen Dulles formally retired from the government, but played a critical role in creating the postwar intelligence community in the early months of the Cold War. The OSS was disbanded, but a group of OSS men, including Dulles, and men who would later become key figures in the CIA, such as Richard Helms, Tracy Barnes, and Frank Wisner, met and plotted out a new intelli-

gence agency. Dulles placed himself at the center of this issue and helped to write and lobby for the creation of something called the Office of Policy Coordination. It operated officially as a part of the State Department, but under the leadership of Frank Wisner it engaged in covert action against the Soviet Union, including the funding of political parties in Italy and Greece. Its operations eventually got rolled up into the CIA in 1948. So Allen Dulles was a central figure in creating the structures that grew into the national-security state.

Confrontations

Meanwhile his brother, John Foster Dulles, became a key foreign-policy advisor to presidential candidate Thomas Dewey. Both Dulles brothers hitched themselves to Dewey and the Republican Party. Dewey lost, but when Dwight Eisenhower became president he gave them key positions in his administration.

John Foster Dulles was famous for a policy of nuclear brinksmanship. Eisenhower threatened to use nuclear weapons to deter enemies and allowed Allen Dulles to unleash the CIA on Third World nations that he labeled as enemies of the United States as a way to wage war on the cheap and in secret. Without public knowledge or congressional debate, Allen Dulles and his CIA overthrew the governments of Iran and Guatemala and waged a secret war that failed to do the same in Indonesia. The CIA also created an assassination program called ZR/RIFLE that targeted Patrice Lumumba, prime minister of the Congo. The team then focused its efforts on trying to kill Fidel Castro with the assistance of the Mafia.

"Eisenhower once said that he feared his own 'boys' in the military more than he did a sneak attack from the Soviets."

The brandishing of nuclear weapons by Eisenhower, though, created an atmosphere of anxiety and constant crisis. It "empowered the most militant voices in his administration, including the Dulles brothers and Pentagon hard-liners such as Admiral Arthur Radford and Air Force general Curtis Lemay, who, taking their commander in chief at his word, continually agitated for a cataclysmic confrontation with the Soviet Union." "Eisenhower once said that he feared his own 'boys' in the military more than he did a sneak attack from the Soviets," writes Talbot, because he

"knew that the constant Pentagon pressure for bigger doomsday arsenals produced equally strong temptation to use the weapons — particularly while the United States still enjoyed a clear margin of nuclear superiority over the Soviet Union."

Eisenhower famously issued a warning in his Farewell Address against the "military-industrial complex" that profited from the high tensions of the Cold War. When John Kennedy came into office those tensions took the world to the brink with the Cuban Missile Crisis. The crisis passed, but during those years another confrontation also played out that was hidden from the American people.

Kennedy inherited the CIA's secret war against Cuba.

This was a disagreement inside the government between the elected president and the national-security state. Kennedy inherited the CIA's secret war against Cuba. He approved its invasion of Cuba, which turned into a disaster at the Bay of Pigs. He then fired Allen Dulles, but continued secret operations to destabilize Cuba's government and eliminate its leader. After the Cuban Missile Crisis, though, Kennedy moved towards a détente in the Cold War. He signed a test-ban treaty with the Soviet Union and in the final months of his life looked forward to making more deals with it. He also sent feelers out to Fidel Castro to move towards a more normal relationship with Cuba. Those moves angered members of the national-security state who had helped to create the crisis atmosphere of the past few years and saw such policies as "appeasement," in the words of General Lemay. The retired Allen Dulles denounced Kennedy's policies.

Assassination

New details about that history have been revealed thanks to a public outcry following the Oliver Stone movie *JFK* for the declassification of records relating to Kennedy's assassination. Talbot's book uses new materials and interviews with family members of Allen Dulles and other CIA personnel. He also makes the charge that Allen Dulles played a key role in the assassination of Kennedy.

This is a touchy subject. A few years ago political science professor Larry Sabato wrote a Kennedy book that was heavily promoted in the mainstream media and in multiple television appearances. He wrote in his book that the "establishment

view, even today, in the halls of government and many media organizations" is "that it is irresponsible to question the 'carefully considered' conclusions of the Warren Commission report," because "the widespread accusations that senior political, governmental, and military figures participated in the planning, execution, or cover-up of the assassination of President Kennedy have damaged the image of the United States around the globe, fueling anti-American sentiments by undermining the very basis of our democratic system."

So even though Talbot's book has hit the *New York Times* best-seller list, it has received backlash from some. One writer for the website *Washington Decoded* essentially called the book an act of treason against the state in a review he titled "Who Needs Soviet Propaganda?"

Polls show that few Americans believe that Lee Harvey Oswald killed Kennedy by himself, and if you spend much time looking at the topic yourself it becomes difficult to believe that he even fired a shot at Kennedy. Some staff investigators for the House Select Committee on Assassinations in the 1970s, which probed the Kennedy assassination, suspected that several CIA officials were involved with either the assassination or the activities of Lee Harvey Oswald. Lyndon Johnson said in an interview in 1973 with a journalist, "I never believed that [Lee Harvey] Oswald acted alone, although I can accept that he pulled the trigger." We "had been operating a damned Murder Inc. in the Caribbean," he said (http://www.theatlantic.com/magazine/archive/1973/07/the-last-days-of-the-president/ 376281/).

Does Talbot prove that Allen Dulles was a key figure in the Kennedy assassination?

Does Talbot prove that Allen Dulles was a key figure in the Kennedy assassination? His book shows that Allen Dulles did not simply go quietly into retirement. Instead he kept in contact with many of his old CIA deputies and figures in the military and the national-security state. He even met with some of the CIA officials who were overseeing the kill team that was targeting Castro, then some of the same people came under the suspicion of some of the House investigators in the 1970s. Records for those people still remain classified.

Of course this is all circumstantial evidence. There is no smoking gun and you will need to read Tal-

bot's book and judge for yourself, but it is a powerful effort to probe into what is hidden and must be explored in order to have a full understanding of our nation's history and the ramifications of the national-security state that came into being after World War II. The state of crisis created by Cold Warriors such as the Dulles brothers continues today in the war on terror. Some defenders of the national-security state, such as those who disapprove of the Talbot book, treat attempts to explore its hidden history as an act of disloyalty. But that makes no sense unless being loyal means denying reality and upholding myths.

The national-security state justified a rule of secrecy in the name of plausible deniability to protect the president and its own officials from the rule of law and public opinion. Allen Dulles claimed he needed to do that to wage the Cold War. But when you create exceptions to the rule of law, you create an opening for corruption, violence, and political instability.

Talbot writes that after the Bay of Pigs invasion, former President Truman wrote that he regretted ever creating the CIA. "I think it was a mistake," he told a friend, "and if I'd known what was going to happen, I never would have done it…. [Eisenhower] never paid any attention to it, and it got out of hand…. It's become a government all of its own and all secret…. That's a very dangerous thing in a democratic society."

It seems that it took strange men like Allen Dulles to create and run the CIA. One of his deputies, James Angleton, told a reporter while on his deathbed that looking back on the early leaders of the CIA, "if you were in a room with them, you were in a room full of people that you had to believe would deservedly end up in hell. I guess I will see them there soon." Perhaps.

The United States of America is not in hell, but the growth of the national security-state that Allen Dulles and his friends helped create, has caused an erosion of its constitutional processes of government. David Talbot's book is a challenge to us to grapple with this reality and turn away from fear and endless war and back towards liberty.

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