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FUTURE OF FREEDOM

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Time makes more converts than reason.

— Thomas Paine

FUTURE OF FREEDOM

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The Future of Freedom Foundation is a nonprofit educational foundation whose mission is to advance liberty and the libertarian philosophy by providing an uncompromising moral, philosophical, and economic case for individual liberty, free markets, private property, and limited government.

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What Does It Mean to Be Free?

by Jacob G. Hornberger



Johann von Goethe once wrote, “None are more hopelessly enslaved than those who falsely believe they are free.” Goethe’s statement perfectly captures the plight of the American people in our time. That’s one of the principal challenges that we libertarians face, for if people are convinced they’re free, they have no incentive to break free of their servitude. Even worse, they express gratitude for it, for example, by praising the troops for “defending our freedom” and being proud that “I’m an American because at least I know I’m free.”

How do Americans acquire such a mindset? The primary vehicle is public (i.e., government) schooling, a system where most children are educated by the state from the time they are 6 years old

through graduation at 18. Every day for 12 years, students are inculcated with the mindset that they live in a free country, beginning with the morning Pledge of Allegiance, which few of them realize was crafted by a socialist and that reminds them that America is one nation with liberty for all.

That’s not to say, of course, that students at private schools don’t receive the same type of training. Given that many administrators and schoolteachers in private schools are as convinced of how free they are as their counterparts in the government’s schools, they inevitably inculcate that mindset into their students. Moreover, don’t forget that in this land of “freedom,” private schools must receive a license from the state to operate. They know that if they don’t please the state with what they’re teaching their students, the license can be yanked at any time.

By the time they graduate from high school, students’ minds have been duly molded. They “know” they live in a free country, and they “know” that America has a free-enterprise economic system. They carry that mindset into adulthood and later inculcate their children with it.

That is one of the major factors that distinguish us libertarians from

nonlibertarians. We have broken through the indoctrination. We know we're not free.

That's one of the reasons that people find libertarians so befuddling. We libertarians talk about how we want to be free. Imagine how strange that sounds to someone who "knows" that he already is free.

Thus, one of the critical questions of our time is: What does it mean to be free?

If one is inculcated with the notion that he is free from the time he's a young child, then as he grows into adulthood he naturally is going to assume that the way of life in which he has been born and raised is freedom.

Americans go to work every day and return home to their families. They go on vacations. They attend sporting events. They go to church, or not. They vote in elections. They send letters to their congressmen. They read whatever they want. They protest and demonstrate. They surf the Internet.

So, there you have it — freedom!

But for us libertarians, that's not enough. For us, freedom also requires three more vitally important things, things that separate us from statists. Those three things involve America's economic system, the

government's control over peaceful behavior (e.g., the war on drugs), and the national-security state that has been grafted onto our constitutional order.

**Freedom requires
three vitally important things
that separate libertarians
from statists.**

While nonlibertarians are convinced that they're living in a free-enterprise country, libertarians know differently. The reality is that we are living in what is commonly called a welfare state, a regulated or controlled economy, and a corporatist system.

The welfare state

What does all that mean? It means that the government wields control over everyone's income. For all practical purposes, the government owns everyone's income and decides how much each person is going to be permitted to keep. That's what the power to set income-tax rates is all about. The government might be kind and permit people to keep more of their money or it might be not so kind and let them keep less. But make no mistake about it: the government has the power to make the decision.

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Under the welfare state, the government takes money from those who produce it and distributes it to those who the government feels need it more. The recipients of welfare include poor people, seniors, doctors, farmers, students, foreign dictators, and countless others.

Inevitably the recipients also include big businesses and big corporations. That's what corporatism is all about — a system in which the money of people in the private sector is taken from them by the IRS so that it can be given to big corporations and businesses, including those on Wall Street.

In fact the whole system has essentially evolved into a gigantic racket in which those who are politically privileged and powerful are the biggest recipients of welfare-state largess.

The welfare state is justified as a way to force Americans to be good, caring, and compassionate. Americans would never donate their money to others if they weren't forced to, the argument goes, and so the federal government must coerce them into sharing their money with the needy.

And right there is the rub. We libertarians ask: If a person is being coerced into being good, caring, and compassionate, how is that rec-

oncileable with freedom? Doesn't freedom entail the right to say no when people ask for money?

Moreover, unlike nonlibertarians, we know that freedom does in fact work. We know that a free-market way of life generates ever-growing prosperity that raises the standard of living for everyone in that society.

If a person is being coerced into being good, how is that reconcilable with freedom?

Equally important, we know that when people are free, most of them will exercise that freedom by helping others when others need help. Again, however, we would never force them to do so, even if they all turned their backs on their fellow man. For libertarians, freedom cannot be destroyed just because people choose to exercise their freedom in ways of which everyone else disapproves.

What about the regulated or controlled economy? Libertarians believe that freedom necessarily entails engaging in any economic enterprise without governmental interference. That's what the term "free enterprise" actually means — enterprise that is free from government control or regulation.

That shocks nonlibertarians. For them, “free enterprise” means government control and regulation. That’s the way of life in which they have been born and raised. That’s what they have been taught is the freedom that they enjoy as Americans.

Thus, nonlibertarians not only embrace such things as occupational licensure, minimum-wage laws, embargoes, sanctions, tariffs, and economic regulations, they honestly believe that all those governmental restrictions and prohibitions constitute “freedom” and “free enterprise.”

Libertarians know better. We would get rid of them all, not only because they are infringements on freedom, but also because they are so highly destructive to prosperity, especially for those at the bottom of the economic ladder.

Control over peaceful behavior

The second major area of infringement on liberty is control over peaceful behavior. Obviously, that encompasses economic activity, but it also covers a large portion of our lives that isn’t commonly considered strictly economic. I’m referring to such things as illegal drug use, gambling, prostitution, and other peaceful conduct that many people

find sinful, irresponsible, or destructive and which is illegal.

Libertarians believe that freedom entails the right to make what others consider to be the wrong decision in those peaceful, voluntary, and consensual parts of our lives. If a person isn’t free to choose wrongly, then he cannot truly be considered free.

Nonlibertarians believe otherwise. For them, freedom entails being put in jail if you make the wrong or irresponsible decision.

The second major area of infringement on liberty is control over peaceful behavior.

Consider the drug war, a government program that libertarians believe constitutes a perfect example of the violation of the principles of freedom. For us it is shocking that the government wields the legal authority to arrest, prosecute, and punish a person for engaging in conduct that does not involve the initiation of force against another person (e.g., murder, rape, theft).

For libertarians, what a person ingests is none of the government’s business. Sure, drug use might be extremely harmful to a person, especially when it crosses the line into addiction and abuse. But, again,

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why should that be the business of the police, prosecutors, judges, and jailers?

Omnipotent legal authority is inherent in dictatorial regimes, not free societies.

Indeed, we don't put people into jail for alcoholism or for tobacco addiction or even for selling liquor and tobacco. We recognize that as bad as those things are, freedom entails the right to use them. Libertarians understand that that principle applies across the board to all other drugs. Nonlibertarians say otherwise.

National security

Every one of us has been born and raised under the national-security-state way of life. It consists largely of the NSA, the CIA, and a vast military empire, one whose web of military contractors extends throughout society and whose bases extend throughout the world. Since we've all experienced this way of life, most Americans, naturally enough, are absolutely convinced that it is a necessary and essential part of a free society.

Nothing could be further from the truth. In fact, the warfare state, which is another way we can refer

to this governmental apparatus, is a much greater threat to our freedom and a much greater infringement on our freedom than the welfare state, the controlled economy, and the drug war.

Consider the fact that we now live in a country in which the president, the military, and the CIA wield the omnipotent legal authority to take any American they want into custody as a suspected "terrorist," cart him away to a military dungeon or concentration camp, torture him, and even execute him after some sort of kangaroo military tribunal. If they don't want to go to all that trouble, they can now simply assassinate the American, without due process of law or trial by jury.

That's as far from a free society as one can get. That sort of authority is inherent in dictatorial regimes, not free societies. That's why the Framers refused to authorize such powers in the Constitution. That's why our American ancestors gave us the Bill of Rights, which expressly prohibits such misuses of power. That's why Americans lived without that type of governmental apparatus for more than 150 years.

So how did the national-security state come into existence? It was grafted onto our constitutional order after the Second World War,

without a constitutional amendment, when U.S. officials proclaimed it was necessary to protect America from its World War II ally, the Soviet Union. The notion was that without that apparatus, America would fall to the communists.

Americans should have been opposing communism with freedom, not with a government apparatus.

It was all nonsense. The notion that America needed to adopt totalitarian methods to protect itself from communism was a repudiation of the principles of freedom that America was supposed to be standing for. Americans should have been opposing communism with freedom, not with a government apparatus that mirrored the governmental apparatuses in communist countries.

As we all know, the Cold War is over. But the national-security state has remained in existence, this time to protect us not from communists but from “terrorists.” The problem, however, is that it’s the national-security state’s own policies that have produced the very terrorist threat that U.S. officials say justifies the continuation of the national-security state apparatus.

Through their invasions, occupations, foreign aid, coups, support of dictatorships, regime-change operations, sanctions, embargoes, bombings, assassinations, kidnappings, rendition, torture, indefinite incarceration, and involvement in foreign disputes, U.S. officials have succeeded in generating the anger and hatred that produce the threat of anti-America terrorism.

The terrorist threat has then enabled the national-security state to impose ever-growing totalitarian-like powers on the American citizenry, all with the supposed aim of “keeping us safe” from what it has itself produced.

Oh, did I forget to mention the vast super-secret surveillance scheme by which the NSA spies on us, monitors us, reads our email, collects data on our telephone conversations, and who knows what else? It’s all to keep us “safe,” notwithstanding that it’s the type of thing that is inherent in totalitarian and communist regimes.

We don’t need it. That’s what nonlibertarians just don’t get. They are so convinced that their freedom depends on the national-security state, which the Founding Fathers rejected, that they quiver and quake at the thought of dismantling it.

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But dismantling it is necessary if Americans are going to live in a free society.

There is no possibility — none — that any nation state is going to invade and conquer the United States any time soon. No nation has the money, resources, manpower, or even the interest in mounting the necessary military forces to cross the ocean or borders and successfully invade and occupy the United States. That includes Canada and Latin America.

We also must not fail to point out the disasters that statism has brought our nation. Out-of-control federal spending and debt, inflation, governmental dependency, strife, conflict, and violence — it's all part and parcel of living in a statist society, one that so many Americans are convinced is "free."

Will enough nonlibertarians ever join up with us libertarians to achieve a genuinely free society? They are already starting to do it.

The ranks of libertarians are growing every day, especially among young people, who are breaking free of the indoctrination at an ever-increasing rate.

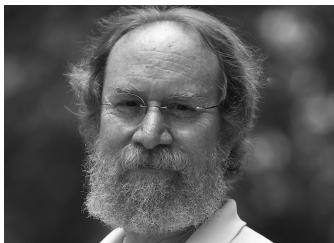
Once a person realizes he's not free, there is no guarantee, of course, that he'll choose freedom. But recognition of one's servitude is obviously an essential prerequisite to achieving one's freedom. Otherwise, as Goethe suggested, people who falsely believe they are free are doomed to remain in servitude.

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

NEXT MONTH:
“Wage War on Poverty with
Libertarianism”
by Jacob G. Hornberger

One Moral Standard for All

by Sheldon Richman



Libertarians make a self-defeating mistake in assuming that their fundamental principles differ radically from most other people's principles. Think how much easier it would be to bring others to the libertarian position if we realized that they already agree with us in substantial ways.

What am I talking about? It's quite simple. Libertarians believe that the initiation of force is wrong. So do the overwhelming majority of nonlibertarians. They, too, think it is wrong to commit offenses against person and property. I don't believe they abstain merely because they fear the personal consequences (retaliation, prosecution, fines, jail, lack of economic growth). They abstain because they sense deep down that it is wrong, unjust, im-

proper. In other words, even if they never articulate it, they believe that other persons are ends in themselves and not merely means to other people's ends. They believe in the dignity of persons. As a result, they perceive and respect the moral space around others. (That doesn't mean they are consistent, but when they are not, at least they feel compelled to rationalize.)

That's the starting point of the libertarian philosophy, at least as I see it. I am not a calculating consequentialist, or utilitarian, but neither am I a rule-worshiping deontologist. Rather, I am most comfortable with the Greek approach to morality, eudaimonism, which, as Roderick Long writes, "means that virtues like prudence and benevolence play a role in determining the content of justice, but also — via a process of mutual adjustment — that justice plays a role in determining the content of virtues like prudence and benevolence." In this view, justice, or respect for rights, like the other virtues, is a *constitutive*, or internal, means (rather than an instrumental means) to the ultimate end of all action, flourishing, or the good life.

Libertarians differ from others in that they apply the *same* moral standard to all people's conduct. Others have a double standard, the

live-and-let-live standard for “private” individuals and another, conflicting one for government personnel. All we have to do is get people to see this and all will be well.

Okay, I’m oversimplifying a bit. But if I’m close to right, you’ll have to admit that the libertarian’s job now looks much more manageable. Socrates would walk through the agora in Athens pointing out to people that they unwittingly held contradictory moral positions. By asking them probing questions, he nudged them into adjusting their views until they were brought into harmony, with the nobler of their views holding sway. (Does that mean that agoraphobia began as a fear of being accosted by a Greek philosopher in a public place?) This harmonization is known as reflective equilibrium, though Long emphasizes the *activity*, reflective equilibration, rather than the end state.

So it remains only for libertarians to engage in a series of thought experiments to win others over to their position. For example, if I would properly be recognized as an armed robber were I to threaten my neighbors into giving me a percentage of their incomes so that I might feed the hungry, house the homeless, and provide pensions for the retired, why aren’t government of-

ficials similarly recognized? If I can’t legally impose mandates on people, as the Affordable Care Act does, why can Barack Obama and members of Congress do so? If I can’t forcibly forbid you to use marijuana or heroin or cocaine, why can DEA agents do it?

Those officials are human beings. You are a human being. I am a human being. So we must have the same basic rights. Therefore, what you and I may not do, *they* may not do. The burden of rebuttal is now on those who reject the libertarian position.

If you and I have no right to tax and regulate others, how could we delegate a nonexistent right to someone else?

Undoubtedly the nonlibertarian will respond that government officials were duly elected by the people according to the Constitution, or hired by those so elected. Thus they may do what is prohibited to you and me. This reply is inadequate. If you and I admittedly have no right to tax and regulate others, how could we delegate a nonexistent right to someone else through an election? Obviously, we can’t. (Frédéric Bastiat pointed this out in *The Law*.)

That's the nub of the libertarian philosophy right there. No one has the right to treat people merely as means — no matter how noble the end. *No one.* The implication is that if you want someone's cooperation, you must use persuasion (such as offering to engage in a mutually beneficial exchange), not force. That principle must be applicable to all human beings on pain of contradiction.

This argument should have particular appeal for advocates of equality — for what better embodies their ideal than the libertarian principle, which establishes the most fundamental equality of all persons? I don't mean equality of outcome, equality of income, equality of opportunity, equality under the law, or equality of freedom. I mean something more basic: what Long calls equality of *authority*. You can find it in John Locke (*Second Treatise of Government*, chapter 2, section 6):

[Being] all equal and independent, no one ought to harm another in his life, health, liberty or possessions.... And, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that

may authorise us to destroy one another, as if we were made for one another's uses....

"Unless it be to do justice on an offender," Locke continued, no one may "take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another."

One moral standard for all, no exceptions, no privileges.

Long traces out a key implication of this idea: "Lockean equality involves not merely equality *before* legislators, judges, and police, but, far more crucially, equality *with* legislators, judges, and police."

One moral standard for all, no exceptions, no privileges. That's a fitting summation of the libertarian philosophy. The good news is that most people are more than halfway there.

Circularity?

When the material above was posted on FFF's website, it drew a curious response from Matt Bruenig, a contributor to the Demos blog, *Policy Shop*: "Libertarians Are Huge Fans of Initiating Force."

Bruenig's article charges libertarians with failing to understand

that the concept “initiation of force” must be defined in terms of a theory of entitlement. It is that theory which reveals who, in any particular violent interaction, is the aggressor and who is the defender. Thus, he says, an act that a libertarian would call aggression would look different to someone working from a different theory of entitlement. (Strangely, he believes he can validate taxation by this reasoning.)

Bruenig goes further and accuses libertarians of circular reasoning in defining entitlement and the initiation of force.

That Bruenig thinks this is news to libertarians indicates how much research he did before writing his article. I know of no libertarian who would be surprised by his statement. But Bruenig goes further and accuses libertarians of circular reasoning in defining entitlement and the initiation of force, or aggression. Is he right? Let's see.

To be fair, I will quote him at length.

Suppose I walk on to some piece of ground that a libertarian claims ownership over. Suppose I contend that people cannot own pieces of ground

because nobody makes them. In my walking on the ground, I do not touch the libertarian or threaten to touch him in any way. Nonetheless, the libertarian proceeds to initiate force against me or calls the police to get them to initiate force against me. Libertarians are fine doing this and therefore libertarians are huge fans of initiating force. The initiation of force or the threat to initiate force is the mechanism that underlies all private property claims.

Now a libertarian will see this and object. They will say that, in fact, violently attacking me for wandering on to some piece of ground is not the *initiation* of force. It is *defensive* force. Aimlessly wandering on to ground is actually the initiation of force. I am the force initiator because, despite touching and threatening nobody, I set foot on some piece of the world that the libertarian believes belongs to him.

I must stop here. As I understand libertarianism, a property owner has no right to violently attack someone merely for aimlessly wandering on his land. The means

of defending oneself and one's property must be morally *proportionate* to the rights violation. *Aggression* and its synonyms are terms of art that apply to a large range of actions, from the trivial to the lethal, and those terms do not imply that violence or deadly force may be used in response to any and all violations. Any uninvited crossing into another person's moral sphere counts as an invasion, no matter how slight or nonviolent. But since the sole permissible objective of defense is to terminate the invasion and obtain compensation for damages (if any occur), one may use only the minimum force required to accomplish those goals. Any greater use constitutes aggression in itself.

**A property owner has
no right to violently attack
someone merely for aimlessly
wandering on his land.**

Bruenig shamefully tries to inflame his readers with images of libertarians beating up or shooting — with impunity — free spirits who harmlessly stroll onto private property.

He continues,

But at this point, it's clear that when the libertarians talk

about not initiating force, they are using the word "initiation" in a very idiosyncratic way. They have packed into the word "initiation" their entire theory of who is entitled to what. What they actually mean by "initiation of force" is not some neutral notion of hauling off and physically attacking someone. Instead, the phrase "initiation of force" simply means "acting in a way that is *inconsistent* with the libertarian theory of entitlement, whether using force or not." And then "defensive force" simply means "violently attacking people in a way that is *consistent* with the libertarian theory of entitlement."

This definitional move is transparently silly and ultimately reveals a blatant and undeniable *circularity in libertarian procedural reasoning*. Libertarians like Richman claim that they think we can determine who is entitled to what by looking towards the principle of non-aggression (i.e., the principle of non-initiation of force). But then they define "non-aggression" by referring to their theory of who is entitled to what. [Emphasis added.]

So in the case of the libertarian in the hypothetical who attacks me, here is how the libertarian line goes. *The reason the libertarian is entitled to that piece of land is because they are being non-aggressive. The reason the libertarian's attack on me is non-aggressive is because he is entitled to that piece of land.* So their claims of entitlement are justified by appealing to non-aggression and their claims of non-aggression are justified by appealing to their claims of entitlement. It is truly and seriously as vacuously circular as that. [Emphasis added.]

Freedom from restraint

We stand charged with circular reasoning. How do we plead? Not guilty.

What's idiosyncratic about the libertarian idea? It's the way most people think about these issues, which was the point of my article. To use an old example from Murray Rothbard, if you see a person seizing a watch from someone, in judging who is the aggressor and who the victim, it makes a world of difference *who owns the watch*. Likewise if someone peacefully walks onto private property or into

a home uninvited. Most people would agree with the libertarian view.

As for the charge of circularity, I (and the libertarians I know) do *not* justify entitlement in terms of the noninitiation of force. We justify entitlement in terms of the conditions under which human beings, in light of their nature, may flourish in a social setting. Justice and rights theory are aspects of morality.

It is a marker of entitlement that no initiation of force occurred in the acquisition of goods.

To be sure, it is a marker of entitlement that no initiation of force occurred in the acquisition of goods, but that simply means that no one else had previously satisfied the conditions bestowing entitlement and hence the acquisition violated no other person's rights. Fundamentally, one is entitled to a parcel of land as the initial appropriator, not because force was not used in its acquisition, but because the land was unowned when one mixed one's labor with (transformed) it and brought it into one's sphere.

Where's the circularity, Mr. Bruening? There is indeed a close relationship between the concepts *enti-*

tlement and aggression, but as Roderick Long wrote in private correspondence, “Master and slave are interdefined; so are parent and child. It’s not circular because we can define the whole relationship.”

The lives and property of each person represent restraints on the physical freedom of everyone else.

Let’s go at Bruenig’s argument in another way. In a follow-up post, “The Libertarian Bizarro World,” he writes,

If you are a libertarian who believes justice requires the following of a certain liberty-respecting process, you have to explain how anything can come to be owned in the first place. That initial move is, by any coherent account, the most violent extinction of personal liberty that there ever can be.

On a fairly traditional account (e.g., Hobbes’s account), liberty and freedom are defined as: being free of bodily restraint. Being able to walk about the world freely and without people stopping you and saying you can’t go here or

there is a fairly appealing notion of liberty. This is what things are like (analytically speaking) prior to ownership. Prior to anyone owning things, you should presumably be free to move about the world however you see fit. And if someone were to come up to you and physically restrain you from moving about the world, you would rightly understand that as a restriction on your liberty.

But physically restraining you from moving about the world is exactly what property ownership does. Whereas before ownership you have full liberty to walk about the earth as you’d like, after ownership, you don’t. Should you try, someone (the person claiming ownership of, for instance, a piece of land) will physically restrain your body.

It is true that in the libertarian (and in most people’s) view, the lives and property of each person represent restraints on the physical freedom of everyone else. That’s what it means to respect other people, to treat them as ends and not merely as means. But Bruenig’s conception of freedom entails the

freedom to disregard the lives and interests of others.

Of course, libertarians don't define freedom in merely physical terms, as Bruenig does. Libertarians don't talk about freedom in a vacuum, focusing on one isolated person's ability to move any way he chooses. Rather, they advocate the freedom of *all* persons in society. If everyone is to be free, freedoms cannot conflict; they must be compossible. Smith's freedom cannot *morally* include the freedom to enter Jones's house uninvited, or the freedom to thrust his fist against Jones's head. It doesn't much matter if you call those prohibitions limitations on freedom or exclusions from the concept *freedom*. In the end, Bruenig is making a trivial point.

If everyone is to be free,
freedoms cannot conflict; they
must be compossible.

Even when pressed, Bruenig stuck to his physical, amoral, and relativist notion of freedom. When he wrote that a supposed trespasser is an aggressor only if you think the "victim" owns the property, I commented, "And a rapist is aggressive only if you think the woman owns her body." I received no reply.

Why should persons be free of bodily restraint, able to walk about the world freely? The likely answer is that each owns himself or herself, body and mind, and thus has a right to autonomy. But if that is so, they may not ignore the equal freedom of others — otherwise all are not free — and they *should* not do so because a fully human life consists in a life of reason, not force.

Just property

But how do we get from the right to one's body to the right to one's (justly acquired) possessions, including land? A person's possessions are extensions of his life and labor. (Bruenig says no one made the land, but labor can make it productive.) Flourishing requires the use of physical objects, including shelter and other uses of land, in an environment of respect for and from others. Thus to violate a person's property is to violate that person. (Again, violations can be *de minimis*, and the response must be proportionate.) Nothing in libertarian theory, however, rules out nonstate public property or common-law easements. (Elinor Ostrom's work on nonstate management of common-pool resources is relevant here.)

The details of a property system will surely be determined by cus-

tom and could well differ from place to place. But the centrality of property in a proper human community cannot be denied. In *A Treatise on Human Nature* (Book III, part II, section VI), David Hume referred to “the three fundamental laws of nature, *that of the stability of possession, of its transference by consent, and of the performance of promises,*” noting,

It is on the strict observance of those three laws, that the peace and security of human society entirely depend; nor is there any possibility of establishing a good correspondence among men, where these are neglected. Society is absolutely necessary for the well-being of men; and these are as necessary to the support of society.

Finally, I must point out that defending property rights in theory does not obligate libertarians to defend all particular property hold-

ings in a given society. Land and other forms of wealth are often obtained through government privilege, that is, through theft from their rightful owners. A sound libertarian theory of property does not regard such property as justly held. As Karl Hess wrote, “The truth, of course, is that libertarianism wants to advance *principles* of property but that it in no way wishes to *defend*, willy nilly, all property which now is called private.”

Sheldon Richman is vice president of The Future of Freedom Foundation, editor of Future of Freedom, and author of Tethered Citizens: Time to Repeal the Welfare State and two other books published by FFF. Visit his blog, “Free Association,” at www.sheldonrichman.com.

NEXT MONTH:
“**The Pope Dabbles in
Economics**”
by Sheldon Richman



How I Learned Not to Shovel

by James Bovard



The Obama administration has touted government jobs and training programs as one of the solutions to America's high unemployment rate. Such programs can teach young people invaluable lessons — especially about the unreliability of political promises to provide kids with valuable skills. I learned a lot about the nature of government work during the summer I spent on the payroll of the Virginia Highway Department, digging postholes, cutting brush, and, best of all, wielding a chainsaw — an experience that proved invaluable for my future work as a journalist.

As a 16-year-old flagman, I held up traffic while highway employees idled away the hours. On hot days in the back part of the county, driv-

ers sometimes tossed me a cold beer as they passed by. Nowadays, such acts of mercy might spark an indictment.

I did "roadkill ridealongs" with Bud, an amiable, jelly-bellied truck driver who was always chewing the cheapest, nastiest ceegar ever made — Swisher Sweets. The cigars I smoked cost a nickel more than Bud's, but I tried not to put on airs around him.

We were supposed to dig a hole to bury any dead animal along the road. It could take half an hour or longer. Bud's approach was more efficient. We would get our shovels firmly under the animal — wait until no cars were passing by — and then heave the carcass into the bushes. It was important not to let the job crowd the time available for smoking.

For some reason I was usually assigned to the crew renowned as the biggest slackers south of the Potomac and east of the Alleghenies. Working slowly to slipshod standards was their code of honor. Anyone who worked harder was viewed as a nuisance, if not a menace.

The crew's foreman looked like he had just stepped out of a Popeye cartoon to announce, "I'd gladly pay you Tuesday for a hamburger today." His face and even some of his

mannerisms were dead-ringers for Wimpy. He was lackadaisical about everything except quitting time.

His No. 2 guy was John — a stocky, boisterous fellow with dancing eyes who was happiest when he was tearing up a road with a bulldozer, especially if the road didn't need ravaging.

Pretend work

The most important thing I learned from Wimpy's crew was how not to shovel. Any Yuk-a-Puk can grunt and heave material from Spot A to Spot B. It takes practice and savvy to turn a mule-like activity into an art.

To not shovel right, the shovel handle should rest above the belt buckle while one leans slightly forward. It's important not to have both hands in your pockets while leaning, since that could prevent onlookers from recognizing "Work in Progress." The key is to appear to be studiously calculating where your next burst of effort will provide maximum returns for the task. One should exude the same keen-eyed concentration a falcon shows before swooping down on its prey.

One of this crew's tasks that summer was to build a new road. John was indignant: "Why does the

state government have us do this? Private businesses could build the road much more efficiently, and cheaper, too." I was puzzled by his comment, but by the end of the summer I heartily agreed. The Highway Department could not competently organize anything more complex than painting stripes in the middle of a road. Even the placement of highway direction signs was routinely botched. The more highway officials became involved in a decision, the more certain the final result would be imbecilic. The bureaucracy seemingly conspired against the intelligence of each of its members.

"Private businesses could build the road much more efficiently, and cheaper, too."

That highway department job also helped me recognize the folly of the war on drugs. A couple times a week, a bright orange dump truck toting a cage full of convicts from a nearby state prison pulled up to our work sites. A glowering prison guard with a shaved head and a pump-action shotgun propped against his beer belly waddled out behind the truck as his assistant unlocked the cage. Prisoners filed out to pick up a shovel or pick as the

How I Learned Not to Shovel

guard readied to blast anyone who took off running.

There were no restrictions on contact with the convicts as long as we didn't help them escape. The highway crew worked languidly, so there was plenty of time to hear the jailbirds' life stories. Some of them were behind bars for savage rampages — like the sullen, Hulk-sized white dude who beat the hell out of his girlfriend's husband. I never aspired to test the boundaries of that guy's sense of humor.

A few black convicts on the road gang had been busted for drug dealing. Two years earlier, Richard Nixon had proclaimed that drugs were "public enemy number one" and that drug use was a "national emergency." Prosecutors around the nation took the cue and started bagging more narcotics offenders.

Convicts bragged to me that summer long ago about having access to the best illicit drugs.

I often shot the bull with an amiable mid-20s black guy from Richmond, Va. The colorful bandana stretched across his head trumpeted his disdain for drab prison garb. He admitted to me that he had been a dealer but swore he'd never met the key trial witness who

claimed to have bought heroin from him. He didn't seem particularly bitter about doing time but was convinced the justice system was full of malarkey.

He was already halfway through his prison sentence and was counting on getting out early for good behavior. Unfortunately, thanks largely to mandatory-minimum laws, the number of drug offenders in prisons rose tenfold between 1980 and 2005, spawning a vast prison-industrial complex. More people were locked up for drug offenses than for violent crimes, and possessing trace amounts of cocaine was often punished with longer sentences than rape, murder, or child molesting.

Real work

Prior to slacking with the highway department, I worked two summers in an orchard. The convict road gang didn't seem that different from some of the down-and-out guys who sweated for \$1.40 an hour to fill metal buckets around their necks with cursedly fuzzy peaches. At least convicts never showed up drunk at the start of the workday. But the judicial system increasingly treated narcotics violators as demons who needed to be scourged, not as human beings who

transgressed an arbitrary line between licit and illicit conduct.

Politicians have proliferated job and training programs despite the evidence of the harm they inflict.

Several convicts bragged to me that summer long ago about having access to the best illicit drugs. Government could not even control its own prisons, much less all the street corners in the land. In the following decades, one campaign after another was launched to banish drugs from prisons. In 1999 Bill Clinton proudly announced an initiative for “zero tolerance for drugs in prison,” plowing more millions into K-9 teams and new drug-detection technologies. That effort was a dismal failure — highlighted spectacularly in the recent indictments spurred by the takeover of a Baltimore prison by the Black Guerilla Gang.

There was one exception to the highway job’s languid cadence. From 4:30 onwards each work day, teams returned to headquarters and commenced The Big Fret. Employees congregated in a sitting room to await silently, almost breathlessly. There was no clock on the wall, but — at some moment — one of the veterans decided it was

5 p.m. and they all jumped up like they were fleeing a ship that had just struck an iceberg. They sweated more in the last 15 minutes than all the rest of the day.

That was a dream job for me in some ways — it paid 40 percent more than picking peaches and required far less effort. While I easily acclimated to the Highway Department’s lethargy, I was pure hustle at the Heckman Bindery, where I worked Friday nights unloading trucks full of boxes of old books. That gig paid a flat rate, cash on the barrelhead, which often worked out to double or triple the Highway Department wage.

The goal with the Highway Department was to conserve energy, while the goal at the bindery was to conserve time — to finish as quickly as possible and move on to better things. With government work, time routinely acquired a negative value — something to be “killed.” And I sensed that killing time was a crime against life itself.

Politicians have proliferated job and training programs despite the evidence of the harm they inflict. The Government Accountability Office (previously the General Accounting Office) warned that many teens in federal summer jobs programs “regressed in their concep-

tion of what should reasonably be required in return for wages paid.” A decade later, GAO reported that most urban teens “were exposed to a worksite where good work habits were not learned or reinforced.” In 1985, a National Academy of Science study found that government jobs and training programs isolated disadvantaged youth, thus making it harder for them to fit into the real job market.

Things have not gotten any better in recent times. The Obama administration bankrolled a profusion of summer jobs as part of its stimulus package. In Boston teens on the federal payroll donned puppets to greet aquarium visitors, while in D.C., the members of the Green Summer Jobs Corps maintained schoolyard butterfly habitats. In Florida the summer job enrollees “practiced firm handshakes to ensure that employers quickly understand their serious intent to work,” the *Orlando Sentinel* report-

ed. Such “skills” are no substitute for what young people would learn from real private jobs.

The government has always been radically incompetent at imparting bona fide skills or good work habits. Unfortunately, as long as politicians can profit from handing out jobs and paychecks, the waste and character damage will continue.

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NEXT MONTH:
“Freedom versus
Medals of Freedom
by James Bovard



It is only from a special point of view that “education” is a failure. As to its own purposes, it is an unqualified success. One of its purposes is to serve as a massive tax-supported jobs program for legions of not especially able or talented people. As social programs go, it’s a good one. The pay isn’t high, but the risk is low, the standards are lenient, entry is easy, and job security is still pretty good.... In fact, the system is perfect, except for one little detail. We must find a way to get the children out of it.

— Richard Mitchell



Corporatism as Theory and Practice

by Joseph R. Stromberg



When I first discovered *corporatism*, about 1966, it was not exactly a household word. The term was known only to specialists, who mostly looked for it in the recent (pre-1945) past. Between about 1960 and the early 1970s, a few New Left and libertarian scholars stirred up greater (but still quite small) interest in this arcane term. My original source was Michael Derrick's book *The Portugal of Salazar*, arguing as of 1939 that Dr. António de Oliveira Salazar (effectively dictator of Portugal from 1928 to 1968) was working to realize an ideal form of corporatism. Whatever Salazar's merits, Derrick's book did sketch out corporatism as a concept.

These days *corporatism* gets more attention — for example, on certain

left-wing blogs that rose in wrath a while back to smite George W. Bush, as well as in libertarian circles. Attention, yes; *precision, no*, since many current writers fling the word about wildly as meaning little more than “political-economic outcomes I don’t like.” Conceptual sharpness falls by the wayside and people mistake etymological relations between “corporate,” “corporation,” and “corporatism” for explanation. But corporatism and corporations *as such* are not yet the same subject matter, and we must review the ground.

Ideal corporatism

Ideal corporatism arose when 19th-century conservatives and Romantics, reacting against capitalism and industrialization, raised “medieval” banners of organic social theory, paternal kings, and craftsmen’s guilds. These corporatist thinkers saw society as an organic whole morally bound to direct its divergent classes toward the common good through corporative economic bodies mediated by the state. The state would foster the *unity* of professions and industries organized into parallel federations of workers and employers (and managers) ultimately combined as national “corporations” merging in organic, na-

tional totality. Corporatist society would thus avoid the ills of laissez-faire capitalism, with its accidental (“atomistic”) agglomerations of unconnected individuals. Corporatism recognized private initiative and private property (within limits) and defended religion, all gravely threatened by communism. By the late 19th and early 20th centuries, corporatism had a definite Catholic coloration and counted Popes Leo XIII and Pius XI among its theorists. Among early 20th-century secular corporatists, the Romanian economist Mihail Manoilescu was perhaps the most important.

Syndicalism

Similar organizational concepts came from the Left. Connecting Pierre-Joseph Proudhon’s federalism with socialism and industrial and trade unionism, syndicalism proposed to organize society through local and partly autonomous workers’ collectives federated into national associations realizing the unity of each industry or occupation. Having sidelined the capitalists, those units would eventually replace the state.

Guild socialism

A kind of middle-ground ideology arose in Britain, associated with

John Ruskin, A.J. Penty, A.R. Orage, R.H. Tawney, and partly overlapping with G.K. Chesterton’s and Hilaire Belloc’s Distributism. Here renovated guilds would unite labor with capital goods outside the logic of capitalism. “Pluralism,” an Anglo-American social theory related to Guild Socialism, flourished between the world wars and centered on group autonomy while downplaying the state.

Corporatism as practical cartel-building

In more practical nations things were sometimes simpler. In Germany big businesses (usually allied with National Liberal politicians) worked closely with the state and left the manufacture of ideologies to intellectual enthusiasts. German industry was well subsidized and thoroughly cartelized very early. No one denied the compulsory, coercive, and political nature of those arrangements. If that was corporatism, it was not a very idealistic variety.

Left/Right fusionism in Italy

The great social disaster of 1914–1918 — World War I — destabilized European societies and unleashed the furies. Parliamentary politics gave way to politicized art

movements, “myth” (in Georges Sorel’s sense), slogans, street theater, and murderous home-front violence. In Italy many syndicalists, aflame with nationalism and militarism, abandoned their prewar anarchism for “national syndicalism” (prefigured by Sorel) and flocked into the Fascist movement. In 1919 Gabriele D’Annunzio — radical artist, Futurist poet, and war veteran — proclaimed a “corporative state” at Fiume in Croatia. Coming to power in Italy in 1922 and establishing outright dictatorship in 1925, Benito Mussolini’s Fascist Party had a fully corporative state in place by the mid 1930s.

Pope Pius XI, a corporative idealist, distanced himself from the Fascists, noting fears “that the state ... is substituting itself for free activity.”

Wedded to high theory, a few Fascists continued to espouse a kind of *anarcho-corporatism*, in which the state would “wither away” into the new economic order. C.M. Ady and A.J. Whyte write,

Giuseppe Bottai, Minister of Education in the 1930’s and one of the purer theorists of Fascism, was continually re-

minding Mussolini of the original “corporative philosophy” of the regime. The Duce listened to him with the amused tolerance usually given to small children....

(Oddly, Bottai’s position resembled somewhat the views of Garet Garrett and Herbert Hoover in the 1920s.) Despite the famous “Charter of Labor” (1927), Italian corporatism amounted in practice to suppression of independent labor unions, protected profits for selected big businessmen and landowners, and the rise of business cartels within the official corporative structures.

Pope Pius XI, a corporative idealist, distanced himself from the Fascists, noting fears “that the state ... is substituting itself for free activity; that the new syndical and corporative order savors too much of an involved and political system of administration....” Italian “corporatism” — top-down and authoritarian — directly denied subsidiarity (local initiative), which the Church held essential to a functioning society.

Other interwar corporatist regimes

Salazar’s Portugal, Francisco Franco’s Spain, and Austria (under

Engelbert Dollfuss) — and later Vichy France — were overtly corporatist in rhetoric and practice. Co-operation of business and state in Japan followed a similar pattern. A cynic might think that all officially corporate states were something of a sham. (National Socialist Germany strictly subordinated productive organization to the state, party, and allied corporations. Any vestigial corporative structures were quite meaningless.) Officially or not, corporatism characterized Sweden and the Netherlands, among other nations, and Robert A. Brady (*Business as a System of Power*, 1943) added Britain and the United States to the list.

Interwar Europe

Political scientists Philippe C. Schmitter and Howard J. Wiarda distinguish between “societal corporatism” and “state corporatism” (Michael Derrick’s *corporatisme d’association* and *corporatisme d’état*) — the former “socially” derived (= interest-based) and the latter entirely dominated by state priorities. Corporatism was widespread — and survived World War II — but the balance of forces in a given country determined which type prevailed there. In any case, ideal-corporatist rhetoric served mainly

to give ideological cover to straightforward projects of political-economic domination. Thenceforward the future rode more with corporatism as a structure or system involving compulsory cooperation, entry restrictions, and other coercions, than with corporatism as an ethical project. Brady’s evidence alone would force the discussion to take that turn.

Corporatism sighted in North America

We now visit the great nation of practicality. Early advocates of corporatism in the United States were a mixed lot: big businessmen; their lawyers and spokesmen, including George W. Perkins, Edward Hurley, John D. Rockefeller Jr.; and rising politicians such as Theodore Roosevelt. On airier ground were *New Republic* editors Herbert Croly (who promised “Jeffersonian” ends achieved through “Hamiltonian” means), Walter Lippmann, and Walter Weyl. Those Progressive or New Liberal intellectuals (terms vary) differed from big-business corporatists in hoping for popular input and a bit of welfare; while business “liberals” focused on practical machinery to iron out labor-management differences, raise prices, and create stability through

cartelization. World War I permitted American corporatists to undertake wide-ranging experiments involving industrywide tripartite corporative coordination and decision making. Corporatists of Left, Right, and Center took wartime innovations as precedents for future action.

The New Era: 1921–1929

The New Era's slogan of "self-government in industry" called for national product standards and prices set by rapidly multiplying trade associations, encouraged by "laissez-faire" Republican administrations. Pleading "overproduction" and other problems in the market, New Era activists hoped to put legal sanctions behind their cartelizing efforts. New Era theorists included Bruno Burn (a German), Benjamin A. Javits, Herbert Hoover, and most spokesmen for big business. (Here indeed were Albert Jay Nock's "Rotarian socialists"!) Mussolini's corporatism was in fashion, and the *New Republic*'s Herbert Croly praised the Italian system.

The New Deal

The Great Depression gave the New Deal room to try full-scale, formal corporatism. The National Recovery Act (NRA) (1933) recog-

nized existing trade associations as corporative bodies legally empowered to enforce restrictive practices. Business spokesmen Owen D. Young (G.E., RCA) and Gerard Swope (G.E.) had already endorsed the general idea in a collection of essays (*America Faces the Future*, 1932) edited by historian Charles A. Beard (a left-corporatist). After the Supreme Court undid the NRA, political initiative shifted to corporatism by other means: an informal patchwork of regulatory corporatism and "virtual cartels." Congress established agency after agency, soon "captured" by the (regulated) industry; some were probably meant to be captured. The war economy of 1941–1945 and the Cold War, including the military-industrial complex, locked this somewhat unsystematic new order into place. The Wagner Act (1935), modified by Taft-Hartley (1947), established a sector of tripartite corporatist bargaining (involving management, labor leaders, and government) in key industries.

Pluralistic (?) American corporatism

The corporative advance had many opponents. Socialists such as William Ghent, Robert A. Brady, and C. Wright Mills often agreed on details with "Old Rightists" such as

Nock, John Chamberlain, ex-Progressive John T. Flynn, and ex-New Dealer Willis J. Ballinger. Dismissing idealist corporatism, those critics stressed interest-based motives, price-raising, and cartelization. Given the ad hoc, opportunist character and institutional lightness of American corporatism, it was easy for post-1945 American liberals to see nothing but democratic pluralism in the U.S. economy.

For political scientist Theodore Lowi, the “creative federalism” of the 1960s was thoroughly corporatist.

In fact, what prevailed was a rather “pluralistic” *corporatism*. In a huge geographical domain disguised as a federation, apparent decentralization helped to obscure corporatist practices. (Local interest groups had so much control — “self-administration” — over corporatist farm programs, that they hardly seemed *federal*.) For political scientist Theodore Lowi, the “creative federalism” of the 1960s, which used state governments and local interest groups to administer federal programs, was thoroughly corporatist. Starting in 1920, legislation increasingly ordered regulatory agencies to fix abstract prob-

lems (“competition”) by imposing abstract standards (“just and reasonable”). That left bureaucrats to sort things out through “case-by-case bargaining,” and the resulting “unregulated regulation” was a forcing-house for “interest-group liberalism,” or corporatism. American corporatism existed in differing degrees in different sectors: real tripartite corporatism in key industries (steel, automobiles), societal (interest-based) corporatism in agriculture and elsewhere, and heavily statist corporatism in defense and atomic energy.

New Left historians

From the late 1950s well into the 1970s, New Left historians, including William Appleman Williams, Gabriel Kolko, James Weinstein, Martin Sklar, Thomas J. McCormick, and Walter LaFeber, brought corporatism into the main narrative of 20th-century American history. A number of libertarian scholars — Murray Rothbard, Leonard Liggio, Walter Grinder, John Hagel III, Roy Childs, Roger Alexander, and I — adopted and used some of the insights of the New Left historians. By the late 1970s political scientists such as Lowi, Schmitter, Wiarda, and J.T. Winkler (in Britain) were investigating corporatism. In

Paris, “Regulation School” Marxists contributed another viewpoint.

Neoliberal upsets

The Thatcher-Reagan program of “free markets” and *strong state* falsified J.T. Winkler’s 1976 prediction of increasingly state-dominated, formal corporatism for Britain. Dutch scholar Henk Overbeek sees in Thatcherism the triumph of export-oriented financial interests. In any case, the Tories’ new order cut labor unions out of the corporatist bargaining circle as much as possible.

Can a *bipartite* (business and state) system be properly corporatist?

The neoliberal blitzkrieg from the 1980s onward leaves Left Corporatism (and *not* “socialism”) as a fading alternative. (Derided as “socialist” by right-wingers, the current U.S. administration offers very *centrist* corporatism along with moralizing imperialism abroad.) The elimination of labor’s role in corporatism raises an interesting question: Can a *bipartite* (business and state) system be properly corporatist? Scholars working on European and Latin American corporatism tend to say no. Here we must differ.

The most liberal of American liberal-corporatist business magnates (e.g., John D. Rockefeller Jr.) submitted to union participation only in the interest of stability and order. It is hardly surprising that similarly placed men would, under new conditions and pressures, remove their junior partner and simplify corporative relations among themselves and with the state. (The Democratic Party’s decision to write off the white working class may be a factor here.) American corporatism was not as much about tripartite arrangements made with labor as it was about sustaining a particular economic order in the face of recurrent competition. (The economy undergoing rescue was built on “Hamiltonian” and “mercantilist” foundations by a Republican developmental coalition from the 1860s forward.) This project required compulsory relations between political and economic actors organized in particular ways that are the heart of corporatism.

American corporatism abroad

As of 1945, American policymakers wished to rebuild world trade under U.S. domination. Their “embedded liberalism” (embedded corporatism) deployed top-down international institutions — the

World Bank, the Bretton Woods monetary regime, and other institutions — as substitutes for (literal) free trade, the gold standard, et cetera. The program aimed at protecting America's domestic corporatist arrangements from foreign competition, while pursuing the old dream of an Open Door into everyone else's markets for American trade and investment. It would grudgingly tolerate allied nations' domestic corporatism in the short run. There was no shortage of state involvement in capitalist projects overseas; if anything, the relationship was more blatant than at home.

Corporations and corporatism reunited

Corporatism and corporations are not yet the same subject. The key word is "yet." If there is a relationship, it is historical. Very briefly, corporations — legally privileged from birth, pampered by courts, subsidized by Congress, with a social "in" with the most important state personnel — were likely, as ideal engines for accumulating capital, to produce unbalanced economic outcomes, mass discontent, and political unrest. Combine those engines with inherited dysfunctional institutions such as fractional-reserve banking, eminent

domain, primitive military accumulation (e.g., the Indian wars), governmental distribution of resources, a venal party system, and a mighty executive, and you have a recipe for crisis. American elites recognized the danger fairly early. By trial and error they put together "corporate syndicalism" (Williams), "political capitalism" (Kolko), corporatism (*varii*), or "interest-group liberalism" (Lowi). It remained to be seen who (business or state?) would dominate the partnership. Hoover himself reflected in 1922 on the danger of "a syndicalist nation on a gigantic scale."

There was no shortage of state involvement in capitalist projects overseas; the relationship was more blatant than at home.

Since roughly 1938 the military-industrial sector has done much to frame American corporatism, as C. Wright Mills, Seymour Melman, Kolko, Gregory Hooks, and Robert Higgs have taught us. Lucky us: a corporative order intimately connected to armed violence. Add rampant *securitarianism*, total surveillance, dronology, secret arrests and secret "courts," et cetera, and Oswald Spengler's descent into formless power — pure will unme-

diated through formal structures — becomes something to contemplate. American corporatism — never a finished system — may give way to more direct and arbitrary relations of power. Descent into ni-

hilistic decisionism looks a lot worse than positive law (bad enough in its day) ever was.

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The percentage of correct decisions which individuals make is very high when they are risking their own money and their own future. The percentage of correct decisions is very low when made by politicians, so-called intellectuals, and others, regardless of their intelligence, who are not faced with the discipline of having to pay for their own mistakes with their own earnings.

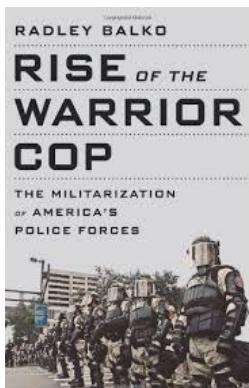
— A.W. Stewart



How the Castle Crumbled

by Matthew Harwood

Rise of the Warrior Cop: The Militarization of America's Police Forces
by Radley Balko (Public Affairs 2013), 400 pages.



"A man's home is his castle," the old English saying goes.

Since the American Revolution, Americans' homes have been considered sanctified space. Under the Castle Doctrine, first expressed in English common law, a person's home — whether it's a shack or a McMansion — is a protected space that no one can breach without the consent of the owner or, when it comes to the state, a lawful reason backed up by a judicial warrant. The tradition also says the agents

must knock and announce their presence to let the homeowner know why there are strangers at his door. The rationale behind this was clear: avoiding unnecessary violence. When those conditions are not met, the homeowner has the right to use force to defend his property. Belief in the Castle Doctrine was so strong that it was enshrined in the Fourth Amendment, which prohibits government agents from conducting unreasonable searches and seizures against anyone's "persons, houses, papers, and effects."

Fast forward a little more than 200 years. The Castle Doctrine has been under sustained assault by police and politicians for decades. Consider this: "Today in America SWAT teams violently smash into private homes more than one hundred times per day," writes Radley Balko in his deeply unsettling *Rise of the Warrior Cop*. "The vast majority of these raids are to enforce laws against consensual crimes."

Since the 1960s, argues Balko, police forces inside the United States have increasingly taken on the appearance and mentality of an occupying force in direct violation of their popular oath "to protect and serve." Arising in a time of domestic instability, and spurred on by rising crime rates and drug use,

the militarization of the nation's police forces by federal, state, and local governments has led to police officers with the mentality of a soldier who increasingly sees breaking down doors as a first, not a last, resort.

Special weapons attack teams

For Balko, the story of America's plunge into military-style policing begins in the 1960s with Daryl Gates, an inspector with the Los Angeles Police Department. Watching Watts burn in the riots of the summer of 1965; Charles Whitman's clock-tower rampage the next year in Austin, Texas; and other wide-scale domestic disturbances that marked the turbulent 1960s, Gates conceived of a special team of highly trained police officers to respond to riots, protests, and visits from dignitaries. (However, many credit the Philadelphia Police Department with creating the first SWAT team.)

The idea behind the concept was decidedly military and overtly aggressive from the start. Unimpressed with the name D-Platoon for this specialized group of officers, Gates had a eureka moment. He would call it "Special Weapons Attack Teams." His superior officer told him "no" — too aggressive —

and Gates left his office. A few moments later, he reappeared. "Special Weapons and Tactics," Gates said. His superior nodded in agreement. SWAT would soon become a phenomenon, with police departments stockpiling military-style gear to carry out their civilian policing duties.

"Indirect militarization happens when police agencies and officers take on more and more characteristics of an army."

Police militarization can occur two ways, notes Balko: direct or indirect. "Direct militarization is the use of the standing military for domestic policing," he explains. "Indirect militarization happens when police agencies and officers take on more and more characteristics of an army." Gates's legacy is the latter, and an extraordinarily successful one at that. Eighty percent of towns with a population between 25,000 and 50,000 had SWAT teams in 2005, according to Balko.

But Gates's concept wouldn't have spread so quickly if it didn't get a boost by successive White Houses and federal programs. The result has been the "militarization of Mayberry," as even small-town police departments acquire weapons

and learn tactics reserved for the battlefield that are primarily used to serve warrants against low-level drug dealers.

The war on the home front

If anything normalized SWAT teams into an accepted, even celebrated, institution of no-nonsense American law enforcement, it was the war on drugs. Conceived of by the Nixon White House, this crusade against some illicit substances allowed Richard Nixon to target those he considered undesirable: poor blacks, hippies, and the anti-war movement. “Drug use,” the Nixon administration thought, “was the common denominator among the groups,” writes Balko.

**The effect was to treat consensual
“crimes” as a higher priority
than violent crime and theft.**

Nixon would use the federal Law Enforcement Assistance Administration (LEAA) to wage the war on drug dealers and drug users by tying cash, equipment, and technology for the localities to his law-enforcement priorities. The effect was to treat consensual “crimes” as a higher priority than violent crime and theft, and to perceive nonviolent criminals as existential threats

— people who deserved to have their doors kicked in during the middle of the night if police could confiscate even the smallest amount of drugs.

It would be a model other White Houses and Congresses would follow over the next 40 years, creating perverse incentives that valued drug busts over other law-enforcement priorities. In 1984 Congress passed a crime bill that shared the proceeds of any property confiscated during a federal drug investigation with the state and local police agencies that lent a hand. The law created a revenue stream for state and local law-enforcement agencies that they couldn’t ignore. Corruption and malpractice followed.

Because of the new forfeiture law, police agencies now had a strong incentive to “find” a connection between valuable property and drug activity, even if there was none. They now had an incentive to conduct drug busts inside homes when the suspects could just as easily — and more safely — have been apprehended outside the house. They now had a strong financial incentive to make drug policing a higher

How the Castle Crumbled

priority and to devote more personnel to drug investigations than to investigating other crimes. Closing a rape or murder case didn't come with a potential kickback to the police department. Knocking off a mid- or low-level drug dealer did.

Four years later Congress created the "Byrne grants," which have provided billions in federal dollars over the last 25 years to police departments across the country to fight the drug war. Balko calls it "a larger, better-funded, more ingeniously planned [program], and thus [a] more successful attempt at what Nixon tried to do with the LEAA." Billions more were funneled to police departments under the Community Oriented Policing Services (COPS) program, started by the Clinton administration. Many departments used the funds to further militarize. What's particularly distressing about the COPS program is that it was supposed to fund community policing, which is ostensibly about infusing a democratic sensibility into police departments by making officers invested members of the neighborhoods they serve. Cultivating trust and understanding between police and

citizens is the theoretical goal of community policing, not buying military hardware that further entrenches the soldier mentality.

Finally, there's the dangerous 1033 program, which takes war materiel — M16 rifles, helicopters, tanks, bayonet knives — from America's many battlefields and gives it away to civilian police departments. The program experienced its most successful year under Barack Obama. In 2011 it "re-utilized more than \$500M, that is million with an M, worth of property [surplus military gear]," program manager Craig Barrett announced.

There's the dangerous 1033 program, which takes war materiel and gives it away to civilian police departments.

With such bipartisan federal largess, it's unsurprising that SWAT tactics once reserved for riots, hostage situations, and bank robberies became acceptable to break down the doors of suspected non-violent criminals. In a democratic society, the use of force to catch low-level criminals should be a scandal even when such tactics are used against the "right" people. But as Balko documents, police rou-

tinely make mistakes that lead to raiding the wrong places, which results in terrorizing innocent people in their own homes and, sometimes, killing them.

You would think the courts would hold police accountable, especially when they raid the wrong home with deadly consequences. But they don't, as Balko shows over and over again. One culprit has been the unnecessary exceptions to the Fourth Amendment — known as "exigent circumstances" — approved by the Supreme Court in the 1963 *Ker v. California* decision, which gave police officers the legal authority to force entry into a private space unannounced if they believe the suspect could destroy evidence. As Justice William Brennan wrote in his dissent in *Ker*, the exigent circumstances exception does "obvious violence to the presumption of innocence."

The courts have often been complicit, regularly rubber-stamping search warrants carried out by SWAT teams

The courts have often been complicit, regularly rubber-stamping search warrants — even for no-knock raids — carried out by SWAT teams when less aggressive ways of

conducting a search are available. And even when it's clear police officers acted irresponsibly or unlawfully, judges have been less likely to hold them accountable by applying the exclusionary rule, which suppresses illegally obtained evidence at a defendant's trial.

Thus, before there was the counterterrorism exception to the Fourth Amendment, there was the drug-war exception.

The Others

One of the most consequential results of the war on drugs was its dehumanization of drug users and drug dealers, regardless of whether either were violent. Nixon loved martial rhetoric. In speeches he would call for waging "a new, all-out offensive" against drug abuse. George H.W. Bush's drug czar Bill Bennett told CNN's Larry King that drug dealers should be beheaded.

When a nation's leaders talk about a certain group of people as subhuman, no one should be surprised when police treat them as the Other — worthy recipients of contempt and violence who do not deserve respect or compassion. Or if that sentiment seeps into the public's consciousness in disturbing ways.

Take the Drug Abuse Resistance Education (DARE) program, which

sent cops into schools to frighten students about drug use. Conceived by Gates in Los Angeles in 1983, the program quickly spread across the nation. Indoctrinating kids in the belief that drug use was evil, it had the creepy effect of having kids “narcing” on their parents for recreational drug use. DARE and police officials would deny that was the program’s intent but would applaud children for “doing the right thing” nonetheless.

What’s a broken home compared to a parent who every once and a while smokes a joint to unwind?

The question about what police are accomplishing is the right one.

An instructive story about the damage done by militarized drug raids comes from police officer Betty Taylor. In November 2000 she went on a SWAT raid to bust a small-time drug dealer at his home about an hour outside of St. Louis. Inside were his two stepchildren. When Taylor entered the room in full black body armor, the 8-year-old elder sister put herself between her little brother and Taylor. “What are you going to do to us?” the little girl asked afraid and angry.

Taylor, according to Balko, was heartbroken. She told him,

Here I come in with all my SWAT gear on, dressed in armor from head to toe, and this little girl looks up at me, and her only thought is to defend her little brother. I thought, How can we be the good guys when we come into the house looking like this, screaming and pointing at the people they love? How can we be the good guys when a little girl looks up at me and *wants to fight me*? And for what? What were we accomplishing with all of this? Absolutely nothing. [Emphasis in original.]

The question about what police are accomplishing is the right one. As Balko makes plain, the drug war is a failure. Anyone who wants drugs can get them. But for every police officer who gets that nagging feeling that the SWAT mentality is corrosive to the idea of law enforcement in a democracy — and there are many that Balko highlights throughout his book — there are those police officers and officials who outnumber them and who want to double down, no matter how egregious their mistakes are.

Maybe the best example of that was the 2004 violent drug raid of a home in Berwyn Heights, Maryland, by the Prince George's County Sheriff's Office and Police Department. The only thing that made this SWAT raid unique was who the target turned out to be: the town's mayor, Cheye Calvo. Unbelievably, the SWAT team had no idea they were raiding the mayor's home. They hadn't done their homework. The raid was so violent, according to Calvo, that he'd be dead if he had a gun in his home. "The worst thing I could have done was defend my home," he told Balko. When the officers raided the mayor's home, they shot both his dogs, merely on the suspicion that the residents were somehow mixed up with drugs. "Puppycide," as Balko dramatically dubs it, is a regular occurrence when SWAT teams ply their trade.

The raid was so violent, according to Calvo, that he'd be dead if he had a gun in his home.

Despite being totally innocent, Calvo never received an apology from the Prince George's County Sheriff's Office and Police Department for terrorizing him and his family and killing his dogs. Six years later, Sheriff Michael Jackson

was asked whether he had any regrets about the raid. His response: "Quite frankly, we'd do it again. Tonight."

Marching toward a police state?

Inevitably, the mission of militarized policing expanded beyond the drug war.

Police departments confronted with mass protests would see their militarized police forces as an easy and effective way to intimidate demonstrators. Whether it was the 1999 World Trade Organization protests in Seattle, 2009's G-20 Summit in Pittsburgh, or the Occupy protests of 2011, police departments actively tried to crush dissent, rather than do their jobs — which is to protect the constitutional rights of protesters while maintaining the peace. Militarized policing doesn't only violate the spirit of the Fourth Amendment, it injures the First Amendment as well.

The SWAT teams' mission creep has been so complete, reports Balko, that they now regularly raid low-stakes poker games, unlicensed barbershops, and bars. Even those grossly irresponsible uses of SWAT teams don't provoke the broad-based anger necessary to spur reform. It clearly eats at Balko that so much abuse can be so easily ignored.

How the Castle Crumbled

"[It's] still rather remarkable that domestic police officers are driving tanks and armored personnel carriers on American streets, breaking into homes and killing dogs over pot," he writes. "They're subjecting homes and businesses to commando raids for white-collar and even regulatory offenses, and there's been barely any opposition or concern from anyone in Congress, any governor, or any mayor of a sizable city. That, more than anything, is what needs to change."

Balko ends his book with a question: "Are today's police forces consistent with the principles of a free society?" While he believes they are not, Balko is not ready to say the United States has become a police state. "Far from it," he writes. But there's no doubt he believes that that threat exists: "In short, police today embody all of the threats the Founders feared were posed by standing armies, plus a few additional ones they couldn't have anticipated."

And here's something else to think about.

It's no secret that police departments across this nation recruit heavily among people transitioning out of the military. That's a scary proposition, considering that troops coming home from Afghanistan and Iraq have been indoctrinated in counterinsurgency tactics, which train them to police occupied territory and identify and neutralize insurgents. And unlike most street cops, those men and women have actually experienced the fear and violence of urban warfare. There is no telling what havoc that mindset could unleash on America's main streets and boulevards when the counterinsurgents come home and exchange their green uniforms for blue, particularly when police already see themselves at war.

One thing, however, is certain: Balko will be there to document it.

Matthew Harwood is a freelance writer living in Alexandria, Virginia. His work has appeared in The American Conservative, The Guardian, Reason, Salon, and Truthout.

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