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*The World is my country, all mankind are my brethren, and to do good is my religion.*

*— Thomas Paine*

# FUTURE OF FREEDOM

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# The U.S. Executions of Charles Horman and Frank Teruggi, Part 2

*by Jacob G. Hornberger*

To understand the full context of the U.S. executions of Charles Horman and Frank Teruggi Jr. (see part 1), it is necessary to first do a broad survey of American history.

We begin with the Constitution, the document that brought the federal government into existence. That document set forth the powers that the federal government would be permitted to exercise. If a power wasn't enumerated, the federal government wasn't authorized to exercise it.

Why did the Framers deem it necessary to limit the powers of federal officials to those enumerated in the Constitution? It was because the American people didn't trust governmental officials with unlimited power. They believed that the biggest threat to people's freedom and well-being lay with their own government. If the Constitution had purported to bring into existence a federal government of unlimited powers, it would never have been approved by our American ancestors and, presumably, we would still be operating under the Articles of Confederation, which provided for a federal government of very weak powers.

To ensure that federal officials got the point, the American people enacted the Bill of Rights, which expressly and specifically restricted the powers of federal officials to infringe on fundamental rights and which protected long-established procedural rights and guarantees. The First Amendment, for example, protected freedom of speech from federal infringement. The Second Amendment protected the right of the people to keep and bear arms, mainly to ensure that people retained the means by which to resist tyranny at the hands of the federal government. The Fifth Amendment prohibited federal officials from depriving people of life, liberty, or property without due process of law.

Notwithstanding the nation's acceptance of slavery, it is impossible to overstate the exceptional na-

ture of America's governmental system from the inception of the republic continuing through the 1800s, especially compared to the United States of the 20th and 21st centuries. Suffice it to say that for more than a century, the federal government had no Social Security, Medicare, Medicaid, welfare, drug laws, immigration controls, foreign aid, central bank, fiat money, or income taxation, and few governmental controls over economic activity.

## Early sentiments

That wasn't the only exceptional aspect of American society. Bearing a deep antipathy toward standing armies, our American ancestors ardently opposed the idea that the United States should have an enormous permanent military force and overseas empire of military bases as part of its governmental structure. Looking back through history and through their own experience as English subjects, our ancestors understood that the primary means by which governments deprive their own citizens of life, liberty, and property was the military forces at their disposal.

Consider the following sentiments of early Americans:

James Madison: "A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence [against] foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending have enslaved the people."

**Our American ancestors ardently opposed the idea that the United States should have an enormous permanent military force.**

Patrick Henry: "A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment?"

Henry St. George Tucker on Blackstone's 1768 *Commentaries on the Laws of England:* "Whenever standing armies are kept up, and when the right of the people to keep and bear arms is, under any color of pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."

Virginia Convention in 1788: "[That] standing armies, in times of peace, are dangerous to liberty, and

therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to and governed by the civil power."

Pennsylvania Convention: "[As] standing armies in times of peace are dangerous to liberty, they ought not to be kept up."

**Our American ancestors also opposed involvement in foreign wars, specifically those in Europe and Asia.**

U.S. State Department website: "Wrenching memories of the Old World lingered in the 13 original colonies along the eastern seaboard of North America, giving rise to deep opposition to the maintenance of a standing army in time of peace. All too often the standing armies of Europe were regarded as, at best, a rationale for imposing high taxes, and, at worst, a means to control the civilian population and extort its wealth."

Opposition to a welfare-warfare state wasn't the only thing that distinguished our American ancestors. They also opposed involvement in foreign wars, specifically those in Europe and Asia. The best statement of the noninterventionist philosophy that characterized our American ancestors is found in the address that John Quincy Adams delivered to Congress on the Fourth of July, 1821, in which he stated in part,

> Wherever the standard of freedom and Independence has been or shall be unfurled, there will [America's] heart, her benedictions and her prayers be.
>
> But she goes not abroad, in search of monsters to destroy.
>
> She is the well-wisher to the freedom and independence of all.
>
> She is the champion and vindicator only of her own.

In his speech, Adams also observed that if America were ever to abandon her noninterventionist and anti-imperialist philosophy, the "fundamental maxims of her policy would insensibly change from liberty to force…. She might become the dictatress of the world; she would be no longer the ruler of her spirit."

Thus, notwithstanding the cataclysm of the Civil War, the ongoing expansion of the United States westward toward the Pacific Ocean under "Manifest Destiny," and the war against Mexico in 1846, overall

the American republic from the inception of the nation in the late 1700s through the end of the 1800s, was guided by antipathy toward standing armies, militarism, empire, and foreign interventionism.

### The change

That all changed in 1898, when the United States went to war against Spain in the Spanish-American War, a war that is generally recognized as America's fateful turn toward empire and imperialism. See, for example, William Graham Sumner's great essay, "The Conquest of the United States by Spain" (http://oll.libertyfund.org/titles/2485) and "American Foreign Policy — The Turning Point, 1898–1919" by Ralph Raico (http://bit.ly/1mHH81P).

The supposed aim of America's war against Spain was to liberate Cuba, Puerto Rico, Guam, and the Philippines from the Spanish Empire. What it did instead was subject those countries to direct control of the U.S. government rather than giving them their independence.

Thus began what can only be described as a never-ending political obsession among federal officials with U.S. control over Cuba, a phenomenon that would ultimately play an indirect role in the executions of Charles Horman and Frank Teruggi in Chile in 1973.

When Filipinos came to the realization that the U.S. government intended to use its victory over Spain to substitute its control over the Philippines, they initiated a violent revolt against the United States. In the process of brutally suppressing the revolt, which took the lives of hundreds of thousands of Filipinos, U.S. forces engaged in the form of torture that today we call waterboarding.

What the war instead did was subject those countries to direct control of the U.S. government.

America's insistence on imperialist control of the Philippines after the Spanish-American War led to the death or capture some 40 years later of more than 70,000 American troops there soon after the Japanese attack on Pearl Harbor in December 1941.

The dark aftermath of the Spanish-American War was an ominous confirmation of the warning that John Quincy Adams had issued almost 80 years before about what would happen to America if she were ever to abandon her noninterventionist and anti-imperialist philosophy.

The full turn toward militarism and interventionism occurred with America's entry into World War I, a war that was supposed to end all war and to make the world "safe for democracy." Instead, America's intervention into that war converted the U.S. government into a brutal dictatress here at home, one that jailed people who questioned America's entry into the war, spied on Americans, engendered extreme prejudice against Americans of German descent, infringed on free speech and freedom of assembly, violated civil liberties, and forced American men, through conscription, to fight in a foreign war thousands of miles away against a nation that had never attacked the United States or even threatened to do so. America's entry into World War I was a classic case of foreign interventionism, a type of foreign policy that our American ancestors had ardently opposed for the United States.

America's entry into World War I accomplished nothing constructive, and more than 100,000 American men died for nothing. Needless to say, the war did not end war or make the world safe for democracy — World War II broke out only 20 years later.

Even worse, U.S. intervention into World War I, which brought about the defeat of Germany, actually gave rise to the conditions that brought Adolf Hitler and the Nazi Party to power. In the absence of the U.S. intervention, the warring parties, all of whom were worn out after years of deadly and destructive warfare, would have probably been forced to reach a negotiated peace. Instead, Germany's defeat, brought about by the U.S. intervention, led to the vindictive provisions of the Treaty of Versailles, including a war-guilt clause that pinned the full responsibility for World War I on Germany, imposed heavy reparations on Germany, and created the Danzig Corridor, which cut Germany in two. Hitler later seized on those terms to garner support among German voters for his rise to power.

U.S. intervention into World War I actually gave rise to the conditions that brought Hitler and the Nazi Party to power.

Thus, it should come as no surprise that when the war clouds began forming once again in Europe in the 1930s, the American people wanted no part of another European conflict. Until the attack on Pearl Harbor, Americans were overwhelmingly opposed to entry into

World War II. That's what the America First Committee was all about. Even Franklin Roosevelt acted as if he felt the same way, as reflected by the promise he made to the American people during his 1940 presidential campaign — "I have said this before, but I shall say it again and again and again: Your boys are not going to be sent into any foreign wars."

Roosevelt embarked on a secret campaign to provoke the Germans into attacking the United States.

Roosevelt, however, was lying. In fact, he was doing everything he could to secure America's entry into the war. Knowing that he could never secure a congressional declaration of war, as Wilson did to enter World War I and which the Constitution requires before the president can wage war, Roosevelt embarked on a secret campaign to provoke the Germans into attacking the United States, so that he could ask Congress for a declaration of war under principles of self-defense. When that didn't work, Roosevelt turned his attention to the Pacific with the aim of employing the same strategy against the Japanese. That's what the oil embargo against Japan, the freezing of Japanese bank accounts, and the humiliating demands that Roosevelt made on Japanese officials were all about — to provoke Japan into "firing the first shot," which would then provide him with a "back door" to the European war.

On December 7, 1941, Roosevelt's scheme succeeded. The United States was, once again, embroiled in a foreign war, one that would prove even more deadly and destructive than World War I. With the Japanese attack on Pearl Harbor, virtually all opposition to America's entry into World War II disintegrated.

One of the fascinating aspects of World War II was the U.S. government's partnership with the Soviet Union, which had been ruled by a communist regime since World War I. Interventionists have long maintained that the U.S. partnership with the Soviet communists was necessary to defeat Nazi Germany.

Actually, however, it wasn't. It would have been entirely possible for the United States and Britain to fight Germany on the western front independently of the war that was taking place between Germany and the Soviet Union on the eastern front.

In fact, after the Soviets turned back Germany's invasion of Russia,

the United States could have attempted to negotiate a separate peace with Germany, one that, say, permitted Hitler and his henchmen to live out their lives in South America, while permitting Germany to have a Western-style democracy and Eastern European countries to have free and independent regimes.

Roosevelt would have nothing to do with that idea and instead demanded unconditional surrender of the German regime. He didn't want to be perceived as double-crossing America's communist ally by entering into a separate peace with Germany. So, at the Yalta Conference held in August 1945, he effectively relinquished control over Eastern Europe to America's communist partner, the Soviet Union. It was a decision that would have momentous consequences, consequences that would fundamentally alter America's way of life in the postwar era and set forces into motion that would ultimately lead to the U.S. executions of Charles Horman and Frank Teruggi in Chile.

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

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NEXT MONTH:
**"The U.S. Executions of Charles Horman and Frank Teruggi, Part 3"**
***by Jacob G. Hornberger***

*I am for doing good to the poor, but I differ in opinion of the means. I think the best way of doing good to the poor, is not making them easy in poverty, but leading or driving them out of it.*

*— Benjamin Franklin*

# Jane Cobden: Carrying On Her Father's Good Work

*by Sheldon Richman*

Among libertarians and classical liberals, the name *Richard Cobden* (1804–1865) evokes admiration and applause. His activities — and successes — on behalf of freedom, free markets, and government retrenchment are legendary. Most famously, he co-founded — with John Bright — the Anti–Corn Law League, which successfully campaigned for repeal of the import tariffs on grain. Those trade restrictions had made food expensive for England's working class while enriching the landed aristocracy.

But Cobden did not see free trade in a vacuum. He and Bright linked that cause with their campaign against war and empire, arguing that trade among the people of the world was not just beneficial economically but also conducive to world peace. Unlike other liberals of his time (and since), Cobden understood that free trade means trade free of government even when it pursues what are alleged to be pro-trade policies. As he said (in one of my favorite Cobden quotations),

> They who propose to influence by force the traffic of the world, forget that affairs of trade, like matters of conscience, change their very nature if touched by the hand of violence; for as faith, if forced, would no longer be religion, but hypocrisy, so commerce becomes robbery if coerced by warlike armaments.

Unfortunately, this brilliant insight has eluded most advocates of international trade, especially in the United States going back to its founding, who have looked to government to open foreign markets — by force if necessary.

Cobden's legacy is much appreciated by libertarians, but one aspect of it is largely unknown. (I only just learned of it, thanks to my alert friend Gary Chartier.) Cobden's third daughter and fourth child,

Emma Jane Catherine Cobden (later Unwin after she married publisher Thomas Fisher Unwin), carried on his work. Born in 1851, she was a liberal activist worthy of her distinguished father.

The *Wikipedia* article on Jane Cobden, which I draw on here, relies heavily on two sources: Anthony Howe's entry in *The Oxford Dictionary of National Biography,* and Sarah Richardson's "'You Know Your Father's Heart': The Cobden Sisterhood and the Legacy of Richard Cobden" in *Re-thinking Nineteenth-century Liberalism,* edited by Howe and Simon Morgan (2006).

"From her youth Jane Cobden, together with her sisters, sought to protect and develop the legacy of her father," according to *Wikipedia.* "She remained committed throughout her life to the 'Cobdenite' issues of land reform, peace, and social justice, and was a consistent advocate for Irish independence from Britain."

The triplet *land reform, peace, and social justice* has a left-wing sound today, but that's because the modern classical liberal/libertarian movement from the 1930s onward got sidetracked by an alliance of convenience with the conservative and nationalist American Right, which, like the liberals, also opposed the New Deal and (in those days, but alas no more) militarism. That alliance, which was fortified in the 1950s owing to the common opposition to Soviet communism, had the unfortunate effect of cutting libertarians off from their true heritage.

Born in 1851, Cobden was a liberal activist worthy of her distinguished father.

That heritage included a focus on the class conflict and rights violations inherent in mercantilism (protectionism, corporatism), government control of land distribution, and many other state activities. The libertarian abandonment of some of those concerns in the second half of the 20th century in effect bequeathed them to the anti-market Left. Today a growing number of libertarians have reclaimed them.

Jane Cobden was also a prominent voice for extending the vote to women. *Wikipedia* says, "The battle for women's suffrage on equal terms with men, to which she made her first commitment in 1875, was her most enduring cause." Cobden was a member of the Liberal Party" (which was hardly a libertarian party) and she "stayed in the Liberal

Party, despite her profound disagreement with its stance on the suffrage issue." (The Liberals tended to favor the vote for women but had higher priorities.) The libertarians of her day, both in England and the United States, also made women's legal and social equality a major part of their agenda.

In 1888 Jane Cobden and other Liberal women ran for seats on the new London County Council.

In 1888 Jane Cobden and other Liberal women ran for seats on the new London County Council. It was a controversial move because up till then women could not hold office and not everyone interpreted the Local Government Act of 1888 as permitting it. She and Margaret Sandhurst won seats in 1889. Sandhurst was disqualified under the act after a challenge from her defeated rival, but Cobden was not challenged.

> Even so, her position on the council remained precarious, particularly after an attempt in parliament to legalise women's rights to serve as county councillors gained little support. A provision of the prevailing election law provided that anyone elected, even improperly, could not be challenged after twelve months, so on legal advice Cobden refrained from attending council or committee meetings until February 1890. When the statutory twelve months elapsed without challenge, she resumed her full range of duties.

But her problems were not over.

> A Conservative member took her to court, arguing she had been illegally elected, that her council votes were therefore illegal, and thus that she should be severely fined. The court agreed, but an appeal cut the fine to a nominal amount. Her allies hoped she would go to jail instead of paying the fine, but she did not take their advice.
>
> After a further parliamentary attempt to resolve the situation failed, she sat out the remaining months of her term as a councillor in silence, neither speaking nor voting, and did not seek re-election in the 1892 county elections.

## Irish home rule

In 1892 Cobden married Unwin (whose company published Henrik

Ibsen, Friedrich Nietzsche, H.G. Wells, and Somerset Maugham), at which point, *Wikipedia* says,

> Jane Cobden extended her range of interests into the international field, in particular advancing the rights of the indigenous populations within colonial territories. As a convinced anti-imperialist she opposed the Boer War of 1899–1902, and after the establishment of the Union of South Africa in 1910 she attacked its introduction of segregationist policies. In the years prior to the First World War she opposed Joseph Chamberlain's tariff reform crusade on the grounds of her father's free trade principles, and was prominent in the Liberal Party's revival of the land reform issue.

Again, she was carrying on her father's antiwar, anti-imperialist, and free-trade campaign and his concern with social-legal equality. *Wikipedia* quotes Richard Cobden from 1848:

> Almost every crime and outrage in Ireland is connected with the occupation or ownership of land.… If I had the power, I would always make the proprietors of the soil resident, by breaking up the large properties. In other words, I would give Ireland to the Irish.

He also wrote,

> Hitherto in Ireland the sole reliance has been on bayonets and patching. The feudal system presses upon that country in a way which, as a rule, only foreigners can understand, for we have an ingrained feudal spirit in our English character. I never spoke to a French or Italian economist who did not at once put his finger on the fact that great masses of landed property were held by the descendants of a conquering race, who were living abroad, and thus in a double manner perpetuating the remembrance of conquest and oppression, while the natives were at the same time precluded from possessing themselves of landed property, and thus becoming interested in the peace of the country.

Here Cobden asserted an idea from John Locke: that the criterion for ownership of a parcel of land is

not conquest but homesteading through labor.

Jane Cobden thus "embraced the cause of Irish home rule — on which she lectured regularly." She also "was a strong supporter of the Land League," which strove to "enable tenant farmers to own the land they worked on."

"After visiting Ireland with the Women's Mission to Ireland in 1887," the *Wikipedia* article continues, "she subsequently used the pages of the English press to expose the mistreatment of evicted tenants."

Reflecting her interest in land reform, Jane Cobden published *The Land Hunger: Life under Monopoly* in 1913.

Cobden also "was a strong supporter of the Land League."

Along with these causes she maintained a keen interest in her father's passion, free trade.

> In 1904, Richard Cobden's centenary year, she published [and wrote an introduction to] *The Hungry Forties* [subtitle: *Life under the Bread Tax, Descriptive Letters and Other Testimonies from Contemporary Witnesses*], described by Anthony Howe in a biographical article as "an evocative and brilliantly successful tract." It was one of several free trade books and pamphlets issued by the Fisher Unwin press which, together with celebratory centenary events, helped to define free trade as a major progressive cause of the Edwardian era.

With the coming of World War I in 1914

> Cobden became increasingly involved in South African affairs. She supported Solomon Plaatje's campaign against the segregationist Natives' Land Act of 1913, a stance that led, in 1917, to her removal from the committee of the Anti-Slavery Society. The Society's line was to support the Botha government's land reform policy.… Cobden maintained her commitment to the cause of Irish freedom, and offered personal help to victims of the Black and Tans during the Irish War of Independence, 1919–21.

She spent the late 1920s and 1930s organizing her father's papers and otherwise carrying on his work.

One final — and telling — story:

In 1920 Cobden gave Dunford House [the Cobden family home in Sussex] to the London School of Economics (LSE), of which she had become a governor. According to Beatrice Webb, co-founder of the School, she soon regretted the gift; Webb wrote in her diary on 2 May 1923, "The poor lady … makes fretful complaints if a single bush is cut down or a stone shifted, whilst she vehemently resents the high spirits of the students … *not to mention the opinions of some of the lecturers.*" Later in 1923 LSE returned the house to Cobden; in 1928 she donated it to the Cobden Memorial Association. With the help of the writer and journalist Francis Wrigley Hirst and others, the house became a conference and education centre for pursuing the traditional Cobdenite causes of free trade, peace and goodwill. [Emphasis added.]

Beatrice Webb co-founded the LSE with her husband Sidney. Both were leading advocates of state socialism and the reformist welfare-state strategy known as Fabianism. (They were also among the many prominent welfare statists who favored *eugenics*.) We can imagine which opinions Cobden resented.

Jane Cobden, who died at age 96 in 1947, still has a place in modern culture. She was made a character in the BBC television series *Ripper Street,* and her portrait hangs in Britain's National Portrait Gallery.

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NEXT MONTH:

**"Bastiat on the Socialization of Wealth"**

***by Sheldon Richman***

# Eric Holder: Patron Saint of Trigger-Happy Cops

*by James Bovard*

Attorney General Eric Holder received a tidal wave of laudatory media coverage for his visit to Ferguson, Missouri, in the aftermath of a local white policeman's killing an 18-year-old black man. Holder assured the people of Missouri, "Our investigation into this matter will be full, it will be fair, and it will be independent."

But Holder's own record belies his lofty promise. As the U.S. attorney for the District of Columbia from 1993 to 1997, Holder was in charge of policing the local police. When police violence spiraled out of control, he did little or nothing to protect D.C. residents from rampaging lawmen.

The number of killings by D.C. police quadrupled between 1989 and 1995, when 16 civilians died owing to police gunfire. D.C. police shot and killed people at a higher rate than any other major city police department, as a Pulitzer Prize-winning *Washington Post* investigation revealed in late 1998. But Holder had no problem with D.C.'s quick-trigger force: "I can't honestly say I saw anything that was excessive." He never noticed that the D.C. police department failed to count almost half the people killed by its officers between 1994 and 1997.

Even when police-review boards ruled that shootings were unjustified or found contradictions in officers' testimony, police were not prosecuted. In one case an officer shot a suspect four times in the back when he was unarmed and lying on the ground. But Holder's office never bothered interviewing the shooter.

Holder is now being portrayed as a champion of minorities victimized by police, but this attribute was undetectable in the 1990s. The *Post* noted that "none of the police shootings of civilians has occurred in the more affluent areas west of Rock Creek Park." Because most victims of the police were from the lower-income parts of the city, their plight went largely unnoticed.

Holder is now trumpeting the need for openness, but in the 1990s he acceded to pervasive secrecy on lawmen's killings. The *Post* noted, "The extent and pattern of police shootings have been obscured from public view. Police officials investigate incidents in secret, producing reports that become public only when a judge intercedes."

Shortly after Holder became U.S. attorney, a local judge slammed the D.C. government for its "deliberate indifference" to police-brutality complaints. In 1995 the Civilian Complaint Review Board, which supposedly investigated alleged police abuses, was shut down because it was overwhelmed by a backlog of accusations from aggrieved citizens. Despite the collapse of the system's safeguards, Holder's office remained asleep at the switch. Even D.C.'s assistant police chief Terrance Gainer admitted, "We shoot too often, and we shoot too much when we do shoot."

Some of the most abusive cases involved police shooting unarmed drivers — a practice that is severely discouraged because of the high risk of collateral damage. Holder told the *Post,* "I do kind of remember more than a few in cars. I don't know if that's typical of what you find in police shootings outside D.C." Actually, D.C. police were more than 20 times as likely to shoot at cars as were New York City police and "more than 50 officers over five years had shot at unarmed drivers in cars," the *Post* noted.

Even assistant D.C. police chief Terrance Gainer admitted, "We shoot too often."

When he visited Missouri, Holder made a heavily trumpeted visit to the parents of Michael Brown, the 18-year-old killed by a Ferguson policeman. But did Holder ever bother visiting the families of young people unjustifiably slain by the D.C. police? I called the Justice Department press office asking that question but never heard back. Press clips from the 1990s do not include any reports of Holder's meeting with parents of children unjustifiably slain by the D.C. police.

At 9 a.m. on May 15, 1995, a D.C. policeman pursued a car that he claimed he had seen moving recklessly on Florida Avenue NW. The policeman walked up to the vehicle and shot 16-year-old Kedemah Dorsey in the chest. The car began pulling away, and the policeman hopped alongside and shot the boy again in the back, killing him. Lawyer Doug Sparks, sitting in a nearby

car, told the *Post,* "It was basically at point-blank range. I thought it was some kind of drug shooting." The policeman claimed that he fired because Dorsey, who was scheduled to start his shift at Burger King later that morning, was trying to run him down. Attorney Michael Morganstern, who sued the District government and collected $150,000 for the family, commented, "It's somewhat difficult to use the car as a weapon when it is wedged in rush-hour traffic and the officer is standing to the side of it, not in front of it." A police department investigation concluded that the shooting was unjustified, but Holder's office refused to file charges against the policeman.

## Banning guns, ignoring shooters

Holder was feckless even when a policeman confessed to lying about killing an unarmed teenager. After Roosevelt Askew killed a 19-year-old motorist during a 1994 traffic stop, he claimed he fired because the driver was trying to run over another policeman. But that story soon collapsed. In early 1995, Askew admitted to Holder's office that he had lied and then claimed he shot the teenager accidentally. No charges were filed against Askew until a year and a half after his confession. The case lingered on the back burner until after Holder moved on to become deputy attorney general under Janet Reno. The U.S. attorney's office eventually signed off on a deal that let Askew plead guilty merely to filing a false police report; he received two years probation and a $5,000 fine. Federal judge Harold Greene was appalled at the wrist slap: "This is a bizarre situation. Everybody, including the government and the probation office, suggests that probation is the appropriate remedy. Although I am not entirely satisfied we have the full story, I'm going to go along."

Holder was feckless even when a policeman confessed to lying about killing an unarmed teenager.

The *Post* series sparked an uproar that resulted in the Justice Department Civil Rights Division's investigating D.C. police shootings from the prior five years. And whom did Attorney General Janet Reno put in charge of that effort? Eric Holder. His office denied that any conflict of interest existed, instead insisting that Holder's "oversight of the review signifies the importance of this endeavor to the Department of Justice." But a 1999 *Post* article observed, "A closer look

at the role of Holder and the U.S. attorney's office shows the difficulty that arises when law enforcement investigates itself." Holder's review of D.C. police shootings was careful not to uncover anything that might impede Holder's political career.

Perhaps Holder did not notice the 1990s' surge in police killings because he was fixated on banning private guns. He lobbied the D.C. City Council to impose mandatory prison sentences for anyone convicted of possessing a gun and spurred D.C. police to carry out "the most comprehensive gun seizure program in the country" (bankrolled by the Justice Department). In a speech on Martin Luther King Day in 1995, Holder declared that schools should preach an anti-gun message every single day. He also proclaimed that "we" need to "really brainwash people into thinking about guns in a vastly different way."

But Holder has devoted much of his career to brainwashing people to believe that it is safe to trust government at all levels with vast power. In the Clinton administration he worked to expand asset forfeiture and to whitewash an FBI assault that left 80 people dead at Waco. Moreover, Holder championed Barack Obama's prerogative to kill individuals on his own authority — the ultimate in absolute power.

Holder resigned in September, a month after his Ferguson publicity tour. The controversy around the Ferguson shooting spurred hope for reforms that might curtail perennial police abuses. But it would be naive to expect any new law to make federal, state, or local agencies honest and transparent on their use of deadly force. Nor is there any reason to expect the Justice Department to recognize that the Bill of Rights should trump politicians' powerlust.

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**NEXT MONTH:**
**"The Food-Security Charade"**
***by James Bovard***

# Politicians Ignore the Looming Debt Iceberg

*by George Leef*

We libertarians are often accused of "worshiping" the Constitution, but that charge is false. Although we don't care one bit for the "living Constitution" theory that leads only to the expansion of state power, it does not follow that we think every idea in the written Constitution is ideal. The document is flawed, as many Americans, the Anti-Federalists, argued during the debates over ratification.

I would like to focus on the first of the enumerated powers of Congress found in Article I, Section 8: To borrow money on the credit of the United States.

No doubt it seemed like a good idea to many at the time. The drafters worried that in a time of emergency, tax revenues might be insufficient for the government's perceived needs and therefore Congress should be able to borrow money to cover the shortfall.

The power to borrow, however, was seen to be fraught with danger by far-seeing Anti-Federalists. Consider this passage written by "Brutus" (most likely Judge Robert Yates of New York) in January of 1788:

> Under this authority, the Congress may mortgage any or all the revenues of the union, as a fund to loan money upon, and it is probably, in this way, they may borrow of foreign nations, a principal sum, the interest of which will be equal to the annual revenues of the country. — By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befal this country, than to be loaded with a debt exceeding their ability ever to discharge.

Brutus was certainly prescient in saying that it was "unwise and improvident" to give the government unrestricted borrowing power.

Naturally, federal politicians soon decided to use their borrow-

ing power, mainly to finance wars they chose to undertake: the War of 1812, the Mexican War, the Civil War, the Spanish-American War, World War I.

It is impossible to know, but perhaps the war enthusiasts would not have prevailed if Congress could not have borrowed to cover the war expenditures. The opponents of those wars might have caused the "hawks" to back down if they had been able to say, "So if you want your war, vote for the necessary increase in taxes or cut out other federal spending."

Having to live within your means is a strong brake on reckless behavior, both personal and governmental.

Up through World War I, at least, after the end of hostilities, politicians would begin to retire the accumulated debt. Calvin Coolidge was the last president to do so. During his term in office, the national debt was reduced from $22.3 billion to $16.9 billion.

Since Coolidge, unfortunately, the national debt has steadily increased. The government borrows for its ongoing war costs, but also for everything else it does. Beginning with Herbert Hoover, the federal government has borrowed incessantly to help pay for the vast array of programs politicians want to spend money on. Their spending exceeds the government's tax haul every year. In fact, it exceeds it *every second*, as evidenced by the National Debt Clock at Sixth Avenue and 44th Street in New York City. If you stop and look, you see that the amount of debt goes up constantly, and currently approaches $18 trillion.

Since Coolidge, unfortunately, the national debt has steadily increased.

So, from the Coolidge low in 1929, the national debt has increased more than a thousandfold.

That figure, however, is just the tip of the debt iceberg that looms ahead. Among the many people who have made that point is Cato Institute scholar Jagadeesh Gokhale in his book *The Government Debt Iceberg* (published by the Institute of Economic Affairs). By his calculations, the federal government has unfunded spending commitments to older people and future generations that's at least *seven times* the amount of official public debt. Social Security, Medicare, and other entitlement programs that past politicians enacted dwarf the amount "we" have already bor-

rowed and will necessitate much further borrowing.

Sen. Rob Portman, writing in the July 21, 2014, *Wall Street Journal* conveys a sense of just how much more. "The Congressional Budget Office's more realistic 'alternative baseline,' which assumes Congress continues current policies, projects new debt at $10 trillion over the next decade, followed by $100 trillion over the subsequent two decades." At some point short of that, it is likely that "the credit of the United States" will be exhausted and people here and abroad will give Treasury debt offerings the cold shoulder.

Hardly any politician correctly understands the magnitude of the problem.

Sad to say, most politicians react to our gargantuan debt the way an alcoholic reacts to being told he has a drinking problem: "No, I don't. I'm in control. I can stop whenever I want to." Hardly any politician correctly understands the magnitude of the problem, and most are in utter denial.

## No escape

A typical evasion from "liberal" politicians is to say that the national debt is really not a problem at all because "we only owe it to ourselves." That facile retort ignores the consequences of diverting real, scarce resources away from market-determined uses and into politically determined spending. Borrowing for the cost of boondoggles (wars, welfare, needless infrastructure, etc.) makes us poorer, no matter who lent the government the money for them. Such government borrowing enables some people to consume more for the present, but at a cost to others. Gokhale explains,

> Current social insurance policy paths … that involve resource transfers from future generations to those alive today are likely to stimulate private consumption spending, reduce private saving, and make current national consumption higher than could be financed had current generations been compelled to spend out of their own resources. Today's boost in consumption will be reversed when future generations enter economic life and must pay higher taxes or tolerate reduced social insurance benefits to pay for the excess benefits to today's (and past) retirees.

Government borrowing to finance its mostly wasteful and counterproductive spending thus has severe but hidden economic consequences. It causes people to save and invest less in the private sector, which is the source of productivity and innovation. At the same time, it encourages a mindset among many people that undermines their drive to work because they believe that the state can and will take care of their needs: retirement income, medical expenses, food, and so on. The "let's borrow to live it up today" mentality is just as damaging at the national level as at the individual level.

On the other hand, most "conservative" politicians, such as Senator Portman, pay lip service to the need to do something about the debt before it crashes down. The problem with them is that they are not willing to do more than talk about the debt and merely suggest minor palliatives such as "reform of Social Security and health entitlements." Any such reforms would at best reduce the size of the iceberg marginally and future politicians would always be tempted to buy votes by proposing to restore the promised benefits to their "rightful" 2014 levels.

Furthermore, most conservatives won't even support elimination of egregious instances of corporate welfare, such as the Export-Import Bank, much less take an ax to far-larger spending on the military.

In short, our political culture seems to prevent us from escaping from a collision with the debt iceberg.

Most conservatives won't even support elimination of egregious instances of corporate welfare.

That may seem like a merely theoretical problem to most Americans, who seem to believe that part of our supposed "exceptionalism" is the ability to avoid economic reality. They should think about recent bloody riots in Greece, another country that kept on promising more and more to people without having the ability to pay. The Greeks borrowed to the limit. When they could borrow no more, the state could not pay people all it had promised and riots broke out.

Gokhale calculates that in order to stabilize our fiscal situation, either taxes would have to be doubled, or Social Security and Medicare benefits cut to only 10 percent of the promised levels. Either course would lead to upheavals, so politicians will keep kicking the can down the road.

Bad things will happen in the United States when the government finally runs out of credit.

Giving Congress the power to borrow was a mistake in 1789. It told the politicians, "You can spend more than you collect and make irresponsible promises for future handouts, and make up the difference by putting the citizenry in debt." Americans have been paying for that mistake ever since.

I don't think it would do any good to suggest amending the Constitution now to remove that power. Even if, miraculously, such an amendment were ratified, federal politicians would ignore it. Nothing would be done about that because the mass of the population is hooked on federal spending of one kind or another. The politicians cannot raise taxes sufficiently to pay for it all, and trying to do so would only make matters worse.

The collision with the iceberg is inevitable.

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*It must be obvious that liberty necessarily means freedom to choose foolishly as well as wisely; freedom to choose evil as well as good; freedom to enjoy the rewards of good judgment, and freedom to suffer the penalties of bad judgment.*

*— Ben Moreell*

# Uniting Constitutional Protection for Economic and Social Liberties, Part 1: Substantive Due Process and Unenumerated Rights

*by Steven Horwitz*

We libertarians like to distinguish ourselves from our friends on the Right and Left by the fact that we care equally about both economic liberties and social/civil liberties. For libertarians the right to engage in contract and exchange with other consenting adults is just as important as the right to engage in speech and sex with other consenting adults. Other civil liberties, such as the right to bear arms or to buy, sell, and ingest various chemical substances are outgrowths of the rights to contract and the right to engage in "anything that's peaceful" (i.e., that does not cause harm to innocent others). Libertarians see economic and civil liberties as inextricably entwined in just that freedom to engage in anything that's peaceful.

Yet these two types of liberties are not only separated in the political philosophies of contemporary liberals and conservatives, they are deeply bifurcated in the way that the Supreme Court has come to think about the constitutional status of those rights. The short version is that rights of contract and exchange had some decent level of constitutional protection for a brief period early in the 20th century, but the New Deal ended that. Meanwhile, the right to marry, the rights of parents, rights of free speech, the right to engage in consensual sexual behavior and others like it have been staunchly defended by the Court and often more strongly than in decades past.

Of particular interest are the ones other than free speech, such as parental rights and those surrounding sexual behavior often subsumed under "the right to privacy." The privacy-rights cases (including those surrounding contraception and abortion) are especially

controversial. One reason, of course, is that there is no actual "right to privacy" in the text of the Constitution, and it's that point that often troubles those on the Right most deeply. However, it's equally true that the rights of parents, the right to marry, and all of the rights to contract and exchange are *also nowhere to be found in the text of the Constitution.* That does not seem to bother the Right as much. But more important: the rights of parents and the right to marry are largely considered uncontroversial despite the lack of textual referent, while the privacy rights and the economic rights certainly are. Is there a way to untangle this and a way, perhaps, to reconcile them?

The key to this puzzle is how the doctrine of "substantive due process" got split early in the 20th century. The 19th century saw a series of decisions that found in the Fourteenth Amendment protection for a whole variety of rights not specifically enumerated in the Constitution. In the late 19th century, those rights were largely grounded in the "Privileges or Immunities" clause of the Fourteenth Amendment. As libertarian constitutional scholar Randy Barnett argues in his *Restoring the Lost Constitution,* the accepted meaning of that phrase at the time of the Amendment's adoption referred to "both natural and inherent rights as well as those particular 'positive' rights created by the Bill of Rights." However, not long after the Amendment's adoption, the phrase was gutted of this meaning and its expansive protection of liberty. In the *Slaughterhouse* cases of 1873, the Court adopted a very narrow conception of the Privileges or Immunities Clause that tied it to the rights of "national citizenship" rather than to the more general civil rights that Barnett argues were intended by its authors.

**In 1873, the Court adopted a very narrow conception of the Privileges or Immunities Clause.**

However, the notion that the Fourteenth Amendment still somehow protected those unenumerated rights persisted, and the emphasis shifted to the Due Process Clause instead. The clause was originally understood to refer to the process by which laws were adopted, but in a sleight of hand perhaps necessitated by the *Slaughterhouse* decisions, later courts took to viewing the clause as referring not just to process but to the content of the laws in question.

More specifically, the Due Process Clause was interpreted as protecting rights of contract, particularly in labor markets. The most famous (or infamous) of the cases from that era was *Lochner v. New York* (1905), in which the Court overturned a New York law establishing maximum hours for bakers on the grounds that it unconstitutionally interfered with the right of contract of the bakery and its employees. (See David Bernstein's book *Rehabilitating Lochner* for much more on this case and its consequences.)

**The Due Process Clause was interpreted as protecting rights of contract, particularly in labor markets.**

*Lochner*'s fame now is as the representative case of the whole class of decisions that were to be subsequently rejected during the New Deal as the post–1935 Court sought to find constitutional justification for the greater willingness of Roosevelt and the Congress to intervene in a variety of private economic arrangements. "*Lochner*-era thinking" is now a pejorative among most constitutional experts, reflecting their belief that using the Due Process Clause to defend substantive *unenumerated economic rights* stood in the way of the greater economic role for government necessitated by the Great Depression and New Deal.

There were other important cases where the Court used that strategy to defend unenumerated rights in the wake of *Lochner,* and two of the key ones for our purposes are *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925). In *Meyer,* a Nebraska law prohibited schools from teaching a foreign language to students before eighth grade. In *Pierce,* Oregon passed a law requiring all students to attend public schools. In both cases, the Court found the laws unconstitutional because they infringed on certain basic liberties all citizens were thought to have. Justice James Clark McReynolds wrote for the majority in *Meyer,*

> The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. "No State shall … deprive any person of life, liberty, or property, without due process of law." While this Court has not attempted to

> define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

He made that argument even more strongly, and with a clearer libertarian twist, in *Pierce:*

> Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.... The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

McReynolds found in the Fifth and Fourteenth Amendments a set of unenumerated rights that were based on a "fundamental theory of liberty." Those rights included both economic rights and personal liberties.

So what happened to that line of reasoning that seems so congenial to libertarian thinking? The answer is "the Great Depression," and we'll see why in part 2.

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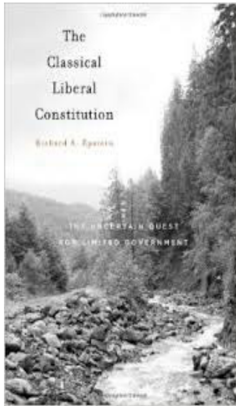
# Reining In Out-of-Control Government

*by David D'Amato*

*The Classical Liberal Constitution* by Richard A. Epstein (Harvard University Press 2014), 701 pages.




In Book II of his *Two Treatises of Government,* John Locke says "that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions." A towering figure in the Enlightenment, Locke is often called the father of classical liberalism, his *Two Treatises* standing fast as a key stanchion in the overall philosophical edifice of liberalism.

We contemporary libertarians, the ideological defenders of private property and individual rights, regard this classical-liberal tradition as a central, even predominant, element of influence, the ancestor of the set of beliefs we still advocate. But despite the clear link between present-day libertarianism and classical liberalism, the two are not perfectly coextensive, presenting important and irreconcilable differences. Moreover, liberalism and libertarianism themselves are not rigid, indivisible objects of inquiry; depending on how we define them, either could be the more general or specific conceptual category, enfolding any number of subcategories or offshoots.

In *The Classical Liberal Constitution,* law professor Richard A. Epstein argues for a return to "the original classical liberal constitutional order" as opposed to "the progressive order" that has dominated political life since the turn of the 20th century. In so arguing, Epstein sets forth an ambitious four-part journey that examines the shape of the U.S. Constitution within contexts provided by political, economic, and legal theory. Even for one trained as a lawyer, Epstein's study intimidates in the vast ambit of its concerns. Part Two alone

dives deep into the jurisprudential theory and practice surrounding all three branches of the U.S. government. The goal of such a sweeping survey of the legal topography is, Epstein says, to vindicate a "third approach to constitutional law," one that implements the Founders' "middle road," "maintain[ing] order without destroying liberty." A government with too much power poses the risk of tyranny and oppression, while a government that is too weak, Epstein contends, leaves itself vulnerable to "internal upheavals or external attacks." Thus is the stage set for the presentation of a case with which today's libertarians will surely find much to cheer.

It is in such confrontations with the dominant social-democratic model of progressive thought that Epstein is at his strongest.

Given the enormous amount of daylight between where we find ourselves today and any libertarian vision of society, a theory "start[ing] from the twin pillars of private property and limited government" must represent a move in the right direction. The approach articulated so thoroughly in *The Classical Liberal Constitution* would see the abatement of much of the power that the American state has seized since the Progressive Era. Epstein argues that contrary to both the interpretive methods of "conservative originalism" and progressivism, jurists should actively seek to decipher the Constitution using the "general guiding theory" of classical-liberal thought. Showing how Supreme Court jurisprudence has enabled the federal government's many usurpations of power, Epstein carefully reveals the ways in which positive (as opposed to negative) rights create conflicts of interest and impair the foundations of economic health.

Pointing to recent research from his University of Chicago Law School colleague William Baude, Epstein calls into question current law on the federal government's power to take land through eminent domain, arguing that this power "is not on the list of distinct enumerated powers that the Constitution gives to the federal government over the states." Arguments like this one submit a potent challenge to what has become the orthodoxy in constitutional analysis, and to a political philosophy that regards the state as a "benevolent force," "exercised by dedicated and impartial administrative experts." It is in such confrontations

with the dominant social-democratic model of progressive thought that Epstein is at his strongest.

## Balancing acts

For all that, Epstein's approval of political authority is more than a weak endorsement of a necessary evil and will undoubtedly cause many libertarian readers to recoil. The book makes clear from the outset that its thesis is decidedly not that of "the magic paean of radical individualism with which [classical liberalism] has often been conflated." Epstein takes special care to distinguish his brand of liberalism from libertarianism throughout *The Classical Liberal Constitution.*

For example, discussing the Espionage Act of 1917, which, among other things, made it illegal to "obstruct the recruiting or enlistment service of the United States," Epstein writes, "No one can credibly claim that the statutory ends are illegitimate." For Epstein, questions that implicate the individual's right to free speech simply "boil down to ... the extent and degree of the government prohibition." Under Epstein's ideal classical-liberal constitution, all legal questions are reduced not to fundamental principles about individuals' inviolable rights, but to computational balances of interests that introduce all of the unintended consequences libertarians are so familiar with. Thus even while critiquing the low bar of the rational-basis test for whether a given legislative enactment is constitutional, Epstein leaves its fundamental problem unscathed. Ultimately, if a legal system starts by accepting arbitrary, coercive power as legitimate, as Epstein's does, that power will soon aggrandize itself and excuse all kinds of tyranny under deferential tests such as the rational-basis standard.

> Epstein takes special care to distinguish his brand of liberalism from libertarianism.

Part and parcel of classical liberalism are the apparent justifications of governmental authority we find in the Enlightenment works of philosophers such as Locke and Jean Jacques Rousseau. Enlightenment liberalism, particularly Locke's, concerned itself with understanding why the state exists, with what it is that makes the state unique, and how it comes to possess the consent of individuals. For classical liberals such as Epstein, the social-contract theorists successfully answered the challenges to political authority, providing an account that shows

the coercive apparatuses of the state can be squared with the inalienable rights of the individual. If we grant the claim that coercive political authority is justified, then naturally only considerations about practical expediency ought to guide us to our conclusions about what the state should do through its instrument, the law. But it's that underlying question — whether state coercion can be justified — that is indeed so problematic from a philosophical standpoint that, if not dealt with, undoes the careful, "distinctive synthesis of constitutional law" that Epstein fashions in his book.

Certainly some of the Founders shared Epstein's understanding of classical liberalism.

Epstein contends that "hard-line libertarian views" break down in their failure to successfully tell a story about "how states rightly gain the legitimacy and the resources needed to prevent violence, enforce contractual promises, and supply needed social infrastructure." But he does exactly what he accuses "hard-line libertarians" of doing, asserting that, in attempting to shape the best possible polity, we ought to look to some external philosophy, independent of, for example, precedent or the text of the Constitution. Pressed to decide, therefore, between two systems in abstraction, both now strictly hypothetical, it is not at all clear why we shouldn't choose the more consistent, the political philosophy that fully and unswervingly conforms to the demands of individual rights and private property.

The error of *The Classical Liberal Constitution* is in seeing something in the extraction of the Constitution that just wasn't there. Certainly some of the Founders shared Epstein's understanding of classical liberalism, his attitudes about, for example, the role of private property and the need for free trade. But it is not the case that the Founders held a "common political philosophy," or that "they operated behind a veil of ignorance" regarding their interests and how best they would be served. Even if we grant that all of the Founders were liberals in the broad sense, liberalism has manifested itself in countless forms. Furthermore, to assert that the Founders shared a common political philosophy merely because of their "agreement over ends, with disagreement on means," is to assert far too much. Indeed, "disagreement on means" is, as the Founders well understood, no small

thing, with political philosophy itself largely, if not mostly, worried about means.

For all of the book's talk about limiting the functions of government, Epstein ultimately believes that taxes and regulations can properly and effectively be used for "overcoming coordination problems for public goods — e.g., infrastructure — that generate across-the-board benefits." However clear Epstein's "third approach" may seem to him, unless we hold to the principle that aggression against innocents is always wrong, it is not at all clear how we are to know where to draw the line that separates what government can do from what it can't do. Epstein writes better than he knows when he says that "the Constitution is not a libertarian document." Still, *The Classical Liberal Constitution* stands as a forceful strike at the legal philosophy that has allowed the federal government to grow out of control, a constant threat to life, liberty, and the pursuit of happiness.

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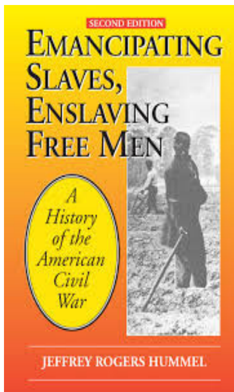
*The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written.*

*— John Marshall*

# A Libertarian Historian's Masterpiece on the Civil War

*by Anthony Gregory*

*Emancipating Slaves, Enslaving Free Men: A History of the American Civil War,* 2nd ed. by Jeffrey Rogers Hummel (Open Court 2013), 421 pages.




Not many volumes advance a radically revisionist thesis while maintaining proper respect for the mainstream historical literature. To do so with a topic as exhaustively explored as the American Civil War warrants special recognition. Jeff Hummel's survey treatment of the central event in U.S. history succeeds on both counts, which explains the praise it has drawn from Lincoln skeptics as well as from a range of more-conventional historians, including the late and venerable Kenneth Stampp, who praised Hummel's "impressive command of the relevant contemporary literature" and his interpretations as "well worth considering."

Hummel's *Emancipating Slaves, Enslaving Free Men* was originally published in 1996 and has just come out in a second edition, complete with a beautiful new introduction by the author, touching on some of the recent scholarship and replying to some of his critics, and a foreword by UC Santa Barbara Civil War historian John Majewski.

## A groundbreaking work of scholarship

*Emancipating Slaves* exists well within the serious conversation of dedicated academics, while pushing a subversive thesis: that the bloodiest war in U.S. history, claiming the lives of 650,000 to 850,000 soldiers and tens of thousands of civilians, represented both the fulfillment and the repudiation of the American Revolution, by simultaneously affirming the most fundamental liberties of black Americans while overthrowing the revolution-

ary right of political secession embodied in the Declaration of Independence.

Hummel pays proper attention to the enormity and significance of chattel slavery. Following famed historian Eric Foner, Hummel writes, "We can simplify our understanding of the Civil War's causes [by asking] two separate questions. Why did the southern states want to leave the Union? And why did the northern states refuse to let them go?" For Hummel, the "answer to at least the first of these questions necessarily revolves around what Southerners called their 'peculiar institution': black slavery." Thus does *Emancipating Slaves* avoid the mischaracterization of the Southern cause as one motivated mainly by tariffs or liberty, while leaving room for the insight that Lincoln waged the war primarily to secure the Union. In his new introduction, Hummel reemphasizes the distance between his ideas and those that downplay slavery as a Southern motivation or pretend that abolishing slavery was the principal or only relevant Northern goal.

That nuance seems sensible enough, but as Hummel explains in the bibliographical essay following his prologue, the common alternative perspectives "tend to approach the war's causes as a single issue" rather than distinguishing "sufficiently between the two distinct questions" concerning Northern and Southern motivations. Hummel admits his identification of "six alternative perspectives" is "inherently imprecise and arbitrary," and yet he very usefully gives examples of characteristic texts in these six schools: "nationalist, revisionist, economic, cultural, neo-Confederate, and neo-abolitionist."

Hummel reemphasizes the distance between his ideas and those that downplay slavery.

That is but one example of the book's unusual potency. His account of the Civil War era, from antebellum sectional politics and the political economy of the Union and Confederacy, to the horrors of battle and a short discussion of Reconstruction, comes in 13 chapters, each followed by a bibliographical essay teeming with secondary-source citations and incisive historiographical discussion. In these essays, whose aggregate word count rivals or exceeds that of the main text, we see Hummel's full command of the literature, each page raising historical questions for scholars to ponder. And yet non-

scholars can skim over or skip the bibliographical essays and learn an immense amount from the readily accessible main text.

Hummel's most novel contribution in *Emancipating Slaves* comes in chapter 2, where he addresses the profitability of slavery, a major theme since Robert Fogel and Stanley Engerman's *Time on the Cross* (1974) argued that slavery was economically profitable for the South and thus would not have withered away naturally. Hummel seeks to distinguish slavery's profitability from its economic efficiency, showing that slavery, like the tariff, "while profitable to protected interests," was bad for the South's economy as a whole. In particular, Hummel homes in on the socialization of slavery's enforcement costs. Because "[enforcing] the slave system required the use of labor and capital ... the entire southern economy, including both whites and blacks," suffered. Runaways and resistance made enforcement expensive, but because of compulsory slave patrols, which Hummel was among the first historians to emphasize, and the federal capture of runaways, slaveholders did not have to pay the full costs of enforcement. "[Just] as the compulsory patrol imposed slavery's enforcement costs on non-slaveholders in the South, the fugitive slave clause imposed these costs on Northerners."

Hummel homes in on the socialization of slavery's enforcement costs.

Hummel concludes that government subsidies made all the difference, a finding that offers economic analysis to bolster abolitionist William Lloyd Garrison's idea of Northern secession from the South as a possible anti-slavery measure. "If Northerners had been interested in ending slavery *rather than* preserving the Union," Hummel writes in his new introduction, "there is a set of alternative policies they could have adopted that would have brought down slavery within an independent Confederacy possibly within four years and certainly by the turn of the century": full emancipation in the Union and "*northern* secession from the South." Chapter 2 offers an extensive defense of this thesis, and Hummel has elsewhere expanded on his argument, sharing his archival research on the political economy of slavery in a lengthy working manuscript, "Deadweight Loss and the American Civil War," available online at the Social Sci-

ence Research Network (http://bit.ly/1oXj0I2).

### The North, South, and rise of statism

Hummel well describes the political developments preceding the war — the polarization of North and South, the fracturing of the Whig Party and rise of the Republicans, the violence erupting over Kansas's status as free or slave state, and the infamous *Dred Scott* decision, in which Supreme Court Chief Justice Roger Taney declared that blacks had no rights that whites were bound to respect. Along the way, he offers some uncommon points. Today's proponents of both civil rights and federal power often argue as though a natural consistency ran through the anti-slavery and pro-government beliefs of Lincoln's Republican Party. But Hummel explains that before the war, "[slavery] was erasing the old ideological lines that had divided political parties." Hummel in fact calls it "ironic" that the Democrats

> should become the northern bastion for the peculiar institution. This party had traditionally been the home of the South's non-slaveholding whites. The slaveowning oligarchy, accustomed to using government to shore up the plantation system, had more naturally gravitated toward the Whig ideology of economic intervention. Large planters had tended to support state subsidies for railroads and banks.

The evolution of the two parties' dominant ideologies has caused much confusion among mainstream political thinkers, but also among libertarians. Hummel's history of the shifts in popular political philosophy carries immense value.

Although most of its narrative will sit well with conventional historians, *Emancipating Slaves* is thoroughly libertarian.

Although most of its narrative will sit well with conventional historians, *Emancipating Slaves* is thoroughly libertarian, as Hummel discloses in his new introduction, featuring "a definite normative dimension" and an "undeviating opposition to all forms of State coercion — conscription, taxation, economic regulation, and violations of civil liberties," whether in the North or South. This orientation is especially compelling in chapter 9, a gem of a chapter, exploring the wartime political economies of both

governments. Posing "Republican neo-mercantilism" against "Confederate war socialism," Hummel presents the most balanced and cogent libertarian analysis of the vast interventionism in both systems. In looking at the Union, Hummel describes just how radically the war transformed the economic relationship between the individual and the national government. "The highest that annual outlays had reached was $74.2 million in 1858.... Adjusting for population, the government in Washington was spending approximately $2.50 per person in 1858, or the equivalent of $44 per person today" (1995), given inflation.

"The cost of waging the Civil War, however, would ultimately average $175 million per day," writes Hummel, and so by "the war's close the United States could boast higher taxation per capita than any other nation." In addition, the Lincoln administration oversaw massive monetary inflation, which Hummel describes while gracefully critiquing mainstream historians' interpretations of 19th-century banking. Later, he describes the corporatist relationship between the Union and favored industries, defined by an "illusion of general prosperity" that did not in fact "extend to all sectors of the northern economy. Adjusting for inflation, workers' wages actually fell by one-third."

"The cost of waging the Civil War, however, would ultimately average $175 million per day," writes Hummel.

The Confederacy had even more problems taxing and borrowing than the Union did, and resorted to even worse inflation. "The skyrocketing inflation," Hummel writes,

> worked a great hardship on the southern people. As this hidden tax diverted resources to the Confederate war effort, prices climbed faster than incomes. Real wages fell by almost two-thirds. Food riots swept through Richmond and other southern cities in the war's third year, with wives and mothers at the forefront of the rioters.

As for central planning, the South outdid the North on that score as well: "While the Civil War saw the triumph in the North of Republican neo-mercantilism, it saw the emergence in the South of full-blown State socialism." That meant a huge government that ultimately

compromised the southern cause: "Managing the ubiquitous system of war socialism was a central government bureaucracy that had grown from nothing to 70,000 civilians in 1863." This "[rebel] central planning ... misallocated resources and fostered inefficiencies," hindering the war effort.

**Both the Union and Confederacy cracked down on political opponents.**

Just as both North and South underwent significant transformations toward statism in political economy, both saw major violations of civil liberties too. The Confederacy imposed "the first centrally administered conscription in American history," which "furnished somewhere between one-fifth and one-third of southern military manpower" and drew more public resentment than any other Southern war measure. In the North, "conscription directly provided only about 6 percent of the men who served in the Union armies," although it provoked a bloody draft riot in New York and became an important precedent for later U.S. wars.

Both the Union and Confederacy cracked down on political opponents, as well. In the Union, more than 300 newspapers, "including the *Chicago Times,* the *New York World,* and the *Philadelphia Evening Journal,* had to cease publication for varying periods." The South saw limited bans on alcohol and firearms. The two governments enforced martial law and suspended habeas corpus for dissidents and others.

Of course, the war's worst features were the killing and destruction. Hummel offers a compelling discussion of how new military technology led to new military tactics and far more bloodshed: "The bayonet became almost useless, as the rifle's enhanced range inflicted terrible casualties long before the opposing lines physically met. Out of about 245,000 wounds treated by surgeons in Federal hospitals, fewer than 1,000 were from bayonets or sabers." But even more than bullets, "disease ... was the primary killer. While 140,000 Union soldiers perished as a result of battle, more than 220,000 died from disease." His discussion of military strategy and the horrors of combat, culminating in his chapter on "the ravages of total war," including a description of Union Gen. William T. Sherman's March to the Sea, add harrowing color and humanity to the volume.

## The consequences of war

In chapter 13 and the epilogue, Hummel gives his concluding thoughts on the war's significance for America, insights that libertarians should especially value. "The war had dramatically altered American society and institutions.... The national government that emerged victorious from the conflict dwarfed in power and size the minimal Jacksonian State that had commenced the war." By 1865, federal spending had risen to 20 percent of the economy's total output. Nationalism, militarism, high taxes, and federal banking laws would maintain their stranglehold on American society for most of its remaining history.

**Hummel argues that disunion between North and South would have doomed slavery.**

With the abolition of slavery and the violent suppression of decentralism, the Civil War represented "the simultaneous culmination and repudiation of the American Revolution." The "radical abolitionists and the South's fire-eaters boldly championed different applications of the [American Revolution's] purest principles," and Hummel argues that a counterfactual history would have been possible, one that would have served both radical secessionism and the anti-slavery cause. Although "American nationalists, then and now, automatically assume that the Union's break up would have been catastrophic," Hummel argues that the precise boundaries of the United States today are a historical accident, considering the uncertain contours of America's border with Canada throughout much of the 19th century.

The only defensible justification for the war, Hummel contends, would have been the abolition of slavery, which was not the Union's principal goal, but rather a consequence. That rationale works only if war was necessary for abolition, however. But as noted, Hummel reminds us that the institution of chattel slavery relied on a tangle of governmental supports: "restrictions on manumission, disabilities against free blacks, compulsory slave patrols, and above all fugitive slave laws." Given the shift in political attitudes toward slavery and slavery's reliance on federal support, Hummel argues that disunion between North and South would have doomed the institution, as anti-slavery forces would work to abolish slavery in the border states and radically reduce the costs of escape. Some northerners had even

argued that this would lead to slavery's becoming less and less viable farther and farther south until it collapsed everywhere. The history of slavery's demise in Brazil unfolded in just that way, as one free region led to the whole country's abolition of slavery in four years, Hummel explains.

*Emancipating Slaves* stands out for its impressive historiographical reach, its accessibility to readers, and its radical rethinking of old assumptions while holding its own within the serious discussion of Civil War experts.

On a personal note, *Emancipating Slaves* became for me the model of scholarly yet controversial historical writing more than a decade ago. It had such a permanent impact on me in showing what was possible in a history text and what was possible for a libertarian to do to garner the respect of mainstream experts while pushing the debate our way and reaching an intelligent lay audience. The bibliographical essays are works of scholarly art, and I hope one day to master a field well enough to write something comparable. The book also had a major effect on my radicalism, realizing there was never reason to compromise on the issues of individual liberty, war, and government power — that it was possible to be a dedicated humanitarian, individualist, and serious thinker at the same time.

Hummel's is my favorite book on the Civil War, one of my favorite works on history, and certainly one of the very best history books written by a libertarian. If you haven't read it yet, you're missing out, and you are almost certain to learn something by picking it up today.

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