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Be bold — and mighty forces will come to your aid.

— Basil King

FUTURE OF FREEDOM

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<i>Gun Control and the Right to Resist Tyranny</i>	2
Jacob G. Hornberger	
<i>Supreme Fashion Reject</i>	11
James Bovard	
<i>The Libertarian Solution</i>	16
Laurence M. Vance	
<i>Closed-Border Libertarians: It's Time to End the War on Immigration</i>	25
Will Tippens	
<i>Welcome Back to Freedom</i>	29
Matthew Harwood	
<i>The Tyranny of Eminent Domain</i>	35
David D'Amato	

Gun Control and the Right to Resist Tyranny

by Jacob G. Hornberger



If Jews in Nazi Germany had been free to own guns, would that have diminished the impact of the Holocaust? GOP presidential candidate Ben Carson candidate set off a political firestorm by proclaiming that it would have.

Gun-rights critics went on the attack, saying that the right to bear arms would have had no effect on the number of Jews killed in the Holocaust, given the overwhelming might of the Nazi regime. Thus, if German Jews couldn't stand against the might of their government, gun control advocates say, then what chance would Americans have in resisting a tyrannical regime that took control of the U.S. government, given its overwhelming mili-

tary power? Americans might as well permit themselves to be disarmed, the argument goes, because there is nothing that they could do anyway if ever faced with a tyrannical regime in Washington. Moreover, gun-control advocates argue, the possibility that the U.S. government would ever be headed by a tyrannical regime is virtually nonexistent, owing to America's exceptional nature. Tyranny happens in other countries. It could never happen here, they say.

If the American people accept those arguments and permit themselves to be disarmed, it will be the biggest mistake they will ever make. In fact, as federal appellate Judge Alex Kozinski pointed out in a dissenting opinion in the case of *Silveira v. Lockyer*, it is a mistake that a free people make only once. That's because once the error becomes manifest, there is no way to correct it. Consider Kozinski's words:

All too many of the other great tragedies of history — Stalin's atrocities, the killing fields of Cambodia, the Holocaust, to name but a few — were perpetrated by armed troops against unarmed populations. Many could well have been avoided or mitigated, had the pepe-

trators known their intended victims were equipped with a rifle and twenty bullets apiece.... If a few hundred Jewish fighters in the Warsaw Ghetto could hold off the Wehrmacht for almost a month with only a handful of weapons, six million Jews armed with rifles could not so easily have been herded into cattle cars.

My excellent colleagues have forgotten these bitter lessons of history. The prospect of tyranny may not grab the headlines the way vivid stories of gun crime routinely do. But few saw the Third Reich coming until it was too late. The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed — where the government refuses to stand for reelection and silences those who protest; where courts have lost the courage to oppose, or can find no one to enforce their decrees. However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.

Many Americans believe that gun rights are only about people's right to hunt wild game or to protect themselves from violent criminals. But the right to keep and bear arms, which the Second Amendment to the Constitution guarantees from federal infringement, is not only about hunting or self-defense against private criminals. It is primarily about having the right and the ability to defend oneself, one's family, and one's country from the tyranny of the federal government.

The greatest threat to liberty

When the Constitution was proposed to the American people, most Americans were not enthusiastic about it. That's because they were concerned that the federal government that the Constitution proposed to bring into existence would end up being as powerful and as tyrannical as the government under which they had lived until July 4, 1776. Keep in mind that after the Revolution, Americans lived for more than 10 years under the Articles of Confederation, which provided a central government whose powers were very weak. In fact, under the Articles the federal government didn't even have the power to tax.

Our American ancestors understood a truth that all too many

Americans fail to understand today: that the greatest threat to the freedom and well-being of a citizenry lies with their own government. That's why Americans weren't enthusiastic about the Constitution. They didn't trust the idea of a strong central government. They were convinced that the new government would end up doing the types of things that tyrannical regimes do, including disarming citizens and rounding them up and torturing and killing them for such actions as criticizing governmental policies.

The greatest threat to the freedom and well-being of a citizenry lies with their own government.

The proponents of the Constitution had a response to that concern. They said that the Constitution, by its own terms, would be calling into existence a federal government with expressly limited powers, all of which would be enumerated within the document itself. If a power wasn't enumerated, it could not be exercised. Since the Constitution did not delegate the power to take people into custody and torture and kill them, for example, there was no need for people to be concerned.

Our American ancestors went along with the deal but only on one condition: that immediately after the Constitution was ratified, it would be amended in such a way as to make certain that the federal government lacked the legal authority to do such things to the American people. That's what the First and the Second Amendments are all about. Those two amendments reflect the belief of our American ancestors that the federal government would deprive people of such fundamental rights as freedom of speech, press, and religion. Read those two amendments carefully. They're not addressed to foreign regimes or persons who might threaten the United States. They address threats to liberty at the hands of U.S. officials.

The same goes for the Fourth, Fifth, Sixth, and Eighth Amendments, which guarantee trial by jury, the right to effective assistance of counsel, the right to confront witnesses, the right of due process of law, and the right to be free from cruel and unusual punishments. Like the First and the Second, those amendments are addressed to U.S. officials. By enacting those amendments, our American ancestors were effectively saying to federal officials: Don't even think about it.

Our American ancestors understood something else about tyranny. They knew that there is only one way for tyrannical regimes to do bad things to the citizenry — through a powerful national police force or army. After all, rarely are the rulers of a tyrannical regime the ones actually doing the round-ups, torture, rapes, incarcerations, executions, or assassinations. Those things are usually done by the government's well-armed police forces and military forces.

Another thing that our American ancestors understood about tyranny is that it's much easier for the police and the military to do those things to a disarmed citizenry. When people are disarmed, their only real choice is to comply with the orders of the police and the military. When people are armed, they have another option — resistance by force.

That's why our American ancestors demanded the enactment of the Second Amendment — to ensure that the American people would always have the right to resist tyranny by force.

That is what gun-control advocates just don't get — that even when faced with the overwhelming might of the police and army of a tyrannical government, people

nonetheless have the right to resist tyranny with force. They might well lose but they have the right to go down fighting and to take out as many agents of the tyrannical regime as they can. In the process of resisting tyranny with force, they make the tyrannical regime pay a price for enforcing its tyranny.

The Second Amendment ensures that the American people would always have the right to resist tyranny by force.

In an article in the *Washington Post* last fall entitled “Unarmed Jews Defeat Mass Murder: Revolts at the Extermination Camps,” David Koppel pointed out that violent revolts by Jews in some of Nazi Germany's extermination camps “brought an end to the operations of two extermination camps.” Moreover,

every revolt delayed and impeded for at least some time the machinery of extermination. Every extra guard that was assigned to a camp because [of] Nazi fear of revolts was one less soldier on the front lines against the Allies... There is a reason why governments which intend to send people to death camps always

disarm them first. Once the genocide targets are armed, genocide becomes much more difficult. Killing armed victims is much more difficult than killing unarmed ones.

The thing to keep in mind about national-security states is that they are inherent to tyrannical regimes.

Since a government's military and national police are the means by which a tyrannical regime imposes its tyranny on a citizenry, our American ancestors devised another way to protect themselves from potential tyranny. They made certain that the federal government lacked an enormous, permanent standing army, an intelligence force like the CIA, a surveillance agency like the NSA, and a national police force like the FBI. That was owing to their deep antipathy toward standing armies and the knowledge that standing armies are the means by which tyrants impose their tyranny on the populace.

That was the situation in the United States for more than a century of our nation's existence. While enormous armies were called into existence during America's major wars, they were always dismantled

at the end of the wars, pursuant to the long-standing tradition of the American people against standing armies. That all changed after World War II, when the U.S. government was modified in a fundamental way by becoming what is known as a "national-security state," a government that is characterized by such institutions as a vast standing army, a secretive intelligence force, and a super-secret surveillance agency. The thing to keep in mind about national-security states is that they are inherent to tyrannical regimes, in that they are the means by which such regimes impose and enforce their tyranny. China, for example, is a national-security state. So is Russia. So is North Korea.

So why did American abandon 150 years of heritage against standing armies at the end of World War II? The proponents of a national-security state said that it was necessary for the American people to temporarily modify America's governmental system in order to confront the supposed threat of the communist Soviet Union, which itself was a national-security state. In order to defeat totalitarian tyranny, Americans were told, it would be necessary to graft a totalitarian-like apparatus to America's government-

tal system. As soon as the Cold War was over, presumably the federal government would be returned to its original form, that is, as a limited-government, constitutional republic.

The troops are not told that they are part of a tyrannical regime and that their actions are evil or immoral.

Twenty-five years after the end of the Cold War, however, the national-security state is still here. Proponents tell us that there is no need to be concerned because here in the United States, unlike the situation in totalitarian regimes, the national-security establishment is a friend of liberty and an enemy of tyranny. They say that while our American ancestors might have had reason to fear a standing army and an all-powerful government, there is no reason for modern-day Americans to have any such concerns. After all, aren't Americans always praising the troops and thanking them for their service? How could the troops ever do anything bad to Americans?

Obeying orders

There are several problems with that reasoning, however.

One is that when tyrannical regimes come into power, the troops inevitably follow orders. In those rare instances where a soldier refuses to obey orders, he is shot or otherwise removed from his position and replaced by someone else. That usually causes all the other troops to quickly fall into line. Recall, for example, that when U.S. troops were ordered to round up American citizens of Japanese descent during World War II and put them into concentration camps, the troops loyally obeyed orders. No one protested or refused to serve. Or consider when the troops were ordered to invade Iraq in 2003 without the constitutional declaration of war. They all loyally followed orders, notwithstanding the fact that the president was acting illegally under our form of government, notwithstanding the fact that they had all taken an oath to support and defend the Constitution, and notwithstanding the fact that they were attacking and killing people who had never attacked the United States.

Second, the troops are always indoctrinated with the notion that what they are doing is right and good. They're not told that they are part of a tyrannical regime and that their actions are evil or immoral. They're told that they are protecting

“national security,” that they’re defending the rights and freedoms of the citizenry, or that they’re providing “order and stability” to the country. They’re told that the people against whom they are proceeding are “bad guys” — communists, terrorists, drug dealers, Muslim radicals, traitors, or dissidents. And the troops believe what they are told. It never occurs to them that they’re carrying out the orders of a tyrannical regime and engaging in evil or immoral actions. They are convinced that what they are doing is good.

In fact, that’s what the tyrants at the top believe too! Consider Nazi Germany. I doubt very seriously whether Hitler, Goering, Goebbels, or any other top Nazi official ever thought to himself, “I am a very evil person who is engaged in terribly evil acts.” Instead, many Nazi officials very likely believed that what they were doing was for the sake of the nation. It’s also why most Germans were willing to serve as soldiers in the German army and why most Germans believed in supporting the troops during wartime.

Or consider the brutal tyranny of the Chilean military general Augusto Pinochet, who headed a dictatorial regime that was also a national-security state. Upon ousting

the democratically elected president of the country, Salvador Allende, from power, Pinochet’s military, intelligence, and surveillance forces initiated a reign of terror on the Chilean people, rounding up some 30,000 of them, putting them into military dungeons and concentration camps, torturing and raping them, and killing some 3,000 of them. Their “crime”? They were supporters of communism, socialism, and Allende. The fact that the Chilean people were unarmed owing to Chile’s gun-control laws made such actions easier to accomplish.

**Tyranny most often comes
from people who mean well and
who are convinced they
are doing good.**

Through it all, Pinochet and his goons were convinced that they were doing the right thing. In fact, many Pinochet apologists today, including some right here in the United States, still maintain that Pinochet was a hero for trying to cleanse Chile of communists and communism. Pinochet’s troops, police, and intelligence forces felt the same way — that they were the “good guys” and those whom they were arresting, incarcerating, torturing, raping, and executing were the “bad guys.”

The point is that tyranny often comes from people who are convinced that what they are doing is good or necessary. As U.S. Supreme Court justice Louis Brandeis put it, “The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

Today, owing to the “war on terrorism” Americans live under a constant, never-ending state of emergency.

What is disturbing about Pinochet’s tyranny, insofar as it relates to the American people, is that the U.S. national-security establishment — i.e., the Pentagon and the CIA — believed the same thing that their counterparts in Chile believed — that Pinochet and his troops and police were doing the right thing. In fact, it was the U.S. government that initiated the steps and orchestrated the process that ultimately brought Pinochet to power, knowing full well what he was going to do and supporting his doing it. In fact, while Pinochet was wreaking terror across Chile, the U.S. government was flooding his regime with U.S. taxpayer-provided foreign aid.

That was during the 1970s; are things any different today? Consid-

er the U.S. government’s ardent support of the brutal military dictatorship in Egypt, which is no different in principle from Pinochet’s brutal military dictatorship. No elections. No independent legislature or judiciary. Arbitrary arrests and incarcerations. Torture. Censorship. Executions without trial. Kangaroo courts. Yet, the U.S. government continues to flood the Egyptian regime with U.S.-taxpayer-provided weaponry so that it can better enforce its grip on power. Moreover, officials in the Pentagon and CIA continue working with their counterparts within the Egyptian regime to ensure that the regime is never violently overthrown by the Egyptian people. In fact, as noted New York attorney Lynn Stewart learned the hard way, any American who exhorts Egyptians to take up arms against the Egypt’s tyrannical regime will be prosecuted by U.S. officials as a supporter of terrorism, notwithstanding the U.S. Declaration of Independence, which expressly states that people have the fundamental, God-given right to overthrow tyrannical regimes.

Today, owing to the “war on terrorism” — a “war” brought about by the national-security state’s foreign policy in the Middle East — Americans live under a constant,

never-ending state of emergency, one in which the national-security establishment wields the legal power to arrest Americans as suspected terrorists, incarcerate them indefinitely without trial, torture them, and assassinate them. Obviously, those types of actions have been taken against only a handful of Americans. But just watch what happens when the right crisis or war comes along, which might well happen sooner rather than later, given ongoing provocations by the military and the CIA in Ukraine, the South China Sea, Korea, and the Middle East. As our ancestors understood, a free society is not one in which the government is exercising tyrannical powers prudently but rather one in which the government lacks such powers.

One of the good things about widespread gun ownership among the American people is that such would-be tyrants are likely to think

more carefully about whether to proceed in that manner than they would be if the American people were disarmed. Another good thing is that if that day were ever to come to pass, at least Americans would have an option that German Jews, Chilean citizens, and others in history did not — an option that most people in the world today do not have — the option to resist tyranny with force.

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

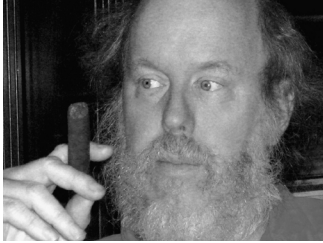
NEXT MONTH:

“Dalton Trumbo and the Hollywood Blacklist”
by Jacob G. Hornberger

“The Census Bureau’s Latest Peril to Freedom”
by James Bovard

Supreme Fashion Reject

by James Bovard



“You should never wear your best trousers when you go out to fight for freedom and truth,” the Norwegian playwright Henrik Ibsen declared in his famous play *An Enemy of the People*. Unfortunately, the justices on the Supreme Court of the United States — the sacred burial ground of Americans’ rights and liberties — are not members of Ibsen’s fan club.

I learned this bitter truth in March 1995, when I was in the press box at the Supreme Court watching lawyers wrangle over a case of great principle and tawdry details. Sharlene Wilson was a repeat offender and former government snitch who had been nailed for two sales of marijuana totaling \$105. The state of Arkansas — which could not afford to pave

many of its own roads — planned to spend hundreds of thousands of dollars incarcerating Wilson for the next 30 years. I was covering the Court’s oral arguments for *Playboy* magazine.

This case bounded up to the Supreme Court because Arkansas police carried out a no-knock raid on Wilson’s home, during which they discovered marijuana and drug paraphernalia. John Wesley Hall, an Arkansas attorney and author of a treatise on the Fourth Amendment, asserted that the no-knock raid was unconstitutional and petitioned the court to overturn Wilson’s convictions for marijuana possession and paraphernalia. (He did not challenge Wilson’s drug-dealing conviction.)

No-knock raids are routinely carried out by SWAT teams wearing masks and black ninja outfits and toting submachine guns. The right to violently batter down a front door necessarily included the right to shoot any citizen who tried to stop the police from invading his home.

And what did it take to justify government’s effectively declaring war on its own citizens?

Flush toilets. Law enforcement agencies were convinced that the slightest delay in barging in could allow residents to flush away small

amounts of drugs. The Clinton administration told the Supreme Court that “if the officers knew that ... the premises contain no plumbing facilities ... then invocation of the destruction-of-evidence justification for an unannounced entry would be unreasonable.” That was typical of the mindless authoritarian approach that the Clinton administration often took in law-enforcement cases before the Supreme Court.

Ill-fated guffaw

Americans are raised to believe that judicial processes favor truth and fairness, but cravenness is the coin of the realm at the Supreme Court. I watched lawyers grovel before the justices like slaves trying to avoid a whipping. Some justices were martinetts, interrupting and browbeating disputants to their hearts' content. When Chief Justice William Rehnquist mocked one lawyer's assertion, everyone in the house responded with a polite chuckle.

Hall told the justices that the “knock and announce” rule for police searches goes back to 1603 in English common law — before the Mayflower reached these shores. He included in his brief to the Court a *Playboy* piece I wrote — “Oops — You're Dead” — chroni-

cling cases of innocent people killed in no-knock raids.

One of the justices asked Michael Dreeben, the zealous beanpole representing the Justice Department, whether the Clinton administration thought that no-knock entries were always justified. Dreeben magnanimously granted two exceptions: “if, based on confidential informants, the police know that all the drugs in question are stored in relatively indestructible crates,” and second, if cops were searching for stolen televisions, there “would be no reason to believe that the occupants would have any means of being able to destroy the televisions.”

Cravenness is the coin of the realm at the Supreme Court.

Hall retorted that, according to Dreeben's logic, “the more drugs you've got, the more right you have to an announcement” prior to a police search.

I thought that was hilarious. Alas — my boisterous laugh proved to be a solo performance. All the justices — and dang near everybody else in the courtroom — turned and stared in my direction.

I had not realized that there were different standards for laugh-

ter, depending on whether the jokester was wearing a Batsuit. Admittedly, my laugh has often spooked people and it did spark complaints from children when I worked as a Santa Claus at a Boston Filene's Department store. I've also heard that people use tape recordings of my laugh from radio interviews to frighten off flocks of crows.

Here is how the *Washington Post's* Al Kamen described what happened next in his "In the Loop" column:

Once in Court, His Shirt Lost Its Appeal

There was freelancer James Bovard yesterday in the front row of the press section at the Supreme Court minding his own business: on assignment from *Playboy* magazine to cover oral arguments in a case about whether police officers with warrants must knock before entering a home.

About 15 minutes into the argument, a court police officer approached Bovard and told him to move to a rear alcove.

Seems Bovard had violated a Supreme Court rule — one that veteran reporters had never seen enforced — that asks the press sitting in the first

two rows of the reserved section to follow the same dress code as those in the section reserved for the bar: coats and ties, general business attire.

It could not be learned whether the court police acted on their own or were prompted by a displeased justice.

A miffed Bovard says it's not like he had on a T-shirt or anything. It was a light blue, striped, "fancy business shirt" that was from "Lord & Taylor."

Maybe he should try Brooks Brothers.

After the hearing concluded, I briefly returned to the press room. Several reporters who regularly cover the Court asked what I'd been told when I got the heave-ho. A *Washington Post* reporter mentioned the episode to Kamen, who gave me a ring. I explained that my laugh had drawn the attention that sparked the ejection. However, my response to his attire question provided a better story and was also the official storyline.

After reading about the incident in the *Post*, a journalist colleague asked whether I felt terribly embarrassed about the episode.

"Hell no — I wasn't responsible for that stupid rule," I replied. If

people feel guilty about violating arcane, secret edicts, government agents can always subdue them by pulling out a rule book and proclaiming them “guilty.” The real problem was that I wasn’t permitted to summon police to haul away any justice who voted to uphold some tyrannical federal policy.

Tyrannical seizure

And the Supreme Court in the following years did little to temper my disdain. This was especially stark in an asset-forfeiture case they decided the following year.

The Supreme Court reached a new low in constitutional depravity the following year when it practically defined “innocent owner” out of existence. The Court upheld the city of Detroit’s confiscation of a Pontiac jointly owned by a married couple after police caught the husband, John Bennis, getting tooted by a prostitute on the front seat. It was business as usual in Detroit, where nearly 3,000 cars were confiscated in 1995 in an effort to crack down on men who patronize hookers.

There was never any evidence that the wife had consented to the use of their vehicle for a dalliance. During preliminary arguments at the Supreme Court, the Justice Department blamed Tina Bennis for

her husband’s illicit use of their auto. Its brief declared that Tina Bennis “did not allege or prove that she took all reasonable steps to prevent illegal use of the car.... [Bennis] claimed only that she lacked actual knowledge that her husband would use the car illegally.” Since she had not hired a detective to stalk her husband, she had no right to complain about losing the family car she co-owned. (This was two years before Mr. Clinton had some difficulties with an intern. I don’t recall that the impeachment articles blamed First Lady Hillary Clinton for her husband’s behavior).

Chief Justice Rehnquist basically granted the government unlimited power to steal.

Chief Justice Rehnquist based his decision on an 1827 case involving the seizure of a Spanish pirate ship that had attacked U.S. ships. Regrettably, Rehnquist did not deign to explain the legal equivalence of piracy in the 1820s and contemporary fellatio. The forfeiture was justified as a way to curb prostitution; but since police interrupted before the prostitute finished and was paid, Bennis was actually convicted only for “gross indecency.” That is a charge that any overheated

teenage couple parking on Lovers' Lane could face. The court's ruling was so broad that even a married couple who stopped on some desolate dead-end street for a quickie (solely for the purposes of procreation) could lose their car.

Rehnquist ruled that since the property had been involved in breaking the law, there was no violation of due process in its seizure. "The government," Rehnquist decreed, "may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain." By asserting that the government had already "lawfully acquired" the Ben-nises' car simply because it had a law authorizing seizure of the car, Justice Rehnquist basically granted the government unlimited power to steal: if it wants to "lawfully acquire" private property without compensation, all it needs to do is write more confiscatory laws. I lampooned the decision in a *Playboy* piece titled "Blown Away."

Later that year, the Clinton administration proposed a law that would entitle the feds to confiscate property involved in violating arcane environmental regulations that were often difficult, if not im-

possible, to strictly obey. I walloped that proposal in the *Wall Street Journal*: "The kind of asset-forfeiture law Mr. Clinton is proposing allows confiscation via accusation: A federal agent need only accuse a person of an illegal act for that person's house, land, or car effectively to become the property of the federal government." The feds were seizing property on the basis of mere rumors and gossip — hearsay evidence — and then requiring their victims to provide iron-clad proof of ownership to reclaim their goods. This epitomized how the government slants the playing field against citizens' rights.

Unfortunately, despite the occasional outrage spurred by seizures from innocent owners, the federal forfeiture juggernaut continues to roll on and ravage more lives. But at least the reporters who chronicled the Supreme Court's rubber-stamped approval of the destruction of property rights were wearing coats and ties.

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

The Libertarian Solution

by *Laurence M. Vance*



The United States of America is facing some major issues in the twenty-first century. The national debt is \$18.5 trillion. The budget deficit is \$500 billion. Homelessness is widespread in most major cities. Student-loan debt is more than a trillion dollars. Social Security and Medicare are insolvent. Government spending continues to skyrocket. There are more than 45 million Americans receiving food stamps. Millions of Americans have stopped looking for work even as the number of government employees continues to grow. Real wages are stagnant. The United States is engaged in unending and expensive overseas military interventions. The nation's infrastructure is in need of massive repairs even as the American mili-

tary destroys infrastructure in other countries. Racial tension is on the rise. More than 20 percent of the American population receives some kind of means-tested public assistance every month. Even families with two incomes are struggling to make ends meet. The United States has the world's largest prison population per capita. Tens of thousands of Americans are incarcerated for nonviolent crimes. Students are graduating from high school who are functionally illiterate. Americans are polarized politically as never before. The government increasingly regulates almost every area of commerce and life.

Liberals, Democrats, conservatives, and Republicans all agree with each other and with libertarians that the country has issues that need solutions. The trouble is that that is the only thing they agree on. Those on the Left have their solutions and those on the Right have their solutions. Sometimes their solutions are somewhat similar; sometimes their solutions are completely different, but they are all united in their opposition to the solutions put forth by libertarians.

Libertarianism

Libertarianism is a political philosophy that says that people should

be free from government interference to live their lives any way they desire and engage in any economic activity they choose as long as their actions are peaceful, their associations are voluntary, their interactions are consensual, and they don't violate the personal or property rights of others.

Libertarianism celebrates individual liberty, free speech, property rights, free expression, peaceful activity, free markets, voluntary interaction, free thought, personal freedom, free assembly, individual responsibility, and a free society.

Libertarians hold that all government actions beyond judicial and policing functions are illegitimate.

The essence of libertarianism is its nonaggression principle. Aggression is theft, fraud, the initiation of nonconsensual violence, or the threat of nonconsensual violence. The initiation or threat of aggression against the person or property of others is always wrong. Aggression is justified only in defense of person or property or retaliation against the same, but is not required. Unlike liberalism and conservatism, libertarianism strictly and consistently applies the non-

aggression principle to actions of government. After all, governments are the greatest violators of liberty, property, and the nonaggression principle.

Libertarians maintain that as long as people don't infringe upon the liberty of others by committing, or threatening to commit, acts of fraud, theft, aggression, or violence against their person or property, the government should leave them alone and not interfere with their pursuit of happiness, commerce, personal decisions, economic enterprises, or what they do on or with their property.

Libertarians hold that in a free society, the functions of government — in whatever form it exists — should be limited to prosecuting and exacting restitution from those who initiate violence against, commit fraud against, or violate the property rights of others. All government actions beyond judicial and policing functions are illegitimate. That is true at every level of government. And on the national level, it means that war and violence can only be strictly defensive in nature.

But in spite of the simplicity, consistency, and morality of libertarianism, liberals and conservatives have a problem with libertarians. When they are not smearing

them as irreligious, uncompassionate, ignorant of human nature, moral relativists, and materialistic, or accusing them of being naive, utopian, impractical, individualistic, and idealistic, liberals and conservatives castigate libertarians for offering nothing but complaints, criticisms, and condemnations of government, while never offering any real solutions. That, of course, is simply not true. Libertarians have put forth as many solutions as there are issues. The problem is that liberals and conservatives just don't like the no-nonsense solutions offered by libertarians.

Wrong solutions

Liberals and Democrats believe that they have the solutions to all of the issues facing the country. The minimum wage should be increased. Taxes should be raised on "the rich" to make them pay their "fair share." Fighting climate change should be one of the top priorities of government. The use of coal and other fossil fuels should be phased out. The government should take steps to reduce income inequality. Companies should have to increase the family and medical leave they offer their employees. All companies should be required to offer sick leave. Federal job-training pro-

grams should be expanded. College education should be free so that no student has to take out student loans. Welfare should be expanded to protect the most vulnerable of America's children. Refundable tax credits should be expanded. Every American should have health insurance. "The poor" should have better access to free medical care, including contraception and abortions. Unemployment benefits should be extended. The *Citizens United* Supreme Court decision should be overturned. There should be more government intervention in the economy and more regulation of business. And of course, more Democrats should be elected to office.

Libertarians have put forth as many solutions as there are issues.

Conservatives and Republicans likewise believe that they have the solutions to all of the issues facing the country. Americans need to elect Republican presidents so that they can appoint conservative Supreme Court justices. There should be a balanced-budget amendment to the Constitution. Stipulations should be put on a country receiving U.S. foreign aid. The states need to call a constitutional convention to insti-

tute necessary reforms to the federal government. The president should be given line-item veto power. The tax code should be simplified. The income tax should be changed to a flat income tax or a national sales tax such as the Fair Tax. Tax loopholes should be closed. Social Security and certain other government programs should be privatized with government oversight. Obamacare should be repealed and replaced with something else. Defense spending should be increased. The size of the military should be larger. The Navy needs more ships. The Air Force needs more planes. Congressmen should be subject to term limits. Welfare programs should have more work requirements. Vouchers should be given to parents so they can get their children out of failing public schools and send them to the school of their choice. Businesses employing illegals should be heavily fined. Congress should implement the suggestions in policy papers written by conservative think tanks. And of course, more Republicans should be elected to office.

Libertarian solutions can be adopted immediately

Both Left and Right, Democrat and Republican, liberal and conser-

vative believe that the solutions to all the issues facing the country are to be found in new legislation, reform measures, a fairer tax system, more government accountability, increasing government efficiency, eliminating waste, and rooting out fraud. Oh, and, Social Security and Medicare should be “saved” for future generations.

Libertarian solutions

It is libertarians who indeed have the solutions to all the issues facing the country. And not only that, their solutions are clear, simple, consistent, logical, and reasonable. Their solutions aren’t found in some think tank’s policy paper. Their solutions aren’t found in some 500-page bill that members of Congress won’t even read before voting on. Their solutions don’t concern reform, gradualism, privatization, or making the government more efficient. Their solutions can be adopted immediately — no ridiculous ten-year plans to balance the budget. Their solutions won’t cost anything to implement. Their solutions are permanent — they don’t have to be renewed, revisited, or reevaluated every year. Their solutions are based on principle, not politics.

So, what are the libertarian solutions that both liberals and conser-

vatives are so opposed to? In what follows, I will list fifteen wide-ranging issues of varying degrees of importance, along with typical questions asked about the issue by liberals and conservatives, followed by the no-nonsense libertarian solution.

1. *Issue:* unemployment benefits. Should unemployment benefits be extended? For how long should they be extended? Should payments be increased? By how much should payments be increased? Should any extension or increase be temporary or permanent? *Solution:* Since the government has no authority to take money from those who work and give it to those who don't, unemployment benefits should be ended as well as the taxes on employers that partially fund the program. Unemployment insurance should be purchased on the free market just like fire, car, homeowners', and life insurance.

2. *Issue:* the drug war. Should marijuana be legal for medical purposes? Should marijuana be legalized and taxed and regulated like tobacco? Should the possession of small amounts of drugs be criminalized? Should the sentences of those imprisoned for nonviolent drug crimes be reduced? Should the government focus more on prevention and treatment than probation

and prison? Should sentencing disparities for crack and powder cocaine be reduced? *Solution:* Since the government has no authority to prohibit the manufacture, sale, possession, or use of any drug, the drug war should be ended immediately, the DEA should be shut down and all of its employees laid off, and all Americans imprisoned for non-violent drug crimes should be pardoned and released. Drugs should be a commodity on the free market just like cigarettes, beer, wine, whiskey, and bananas.

The government has no authority to take money from some Americans and give it to other Americans.

3. *Issue:* food stamps. Should food stamps be made available to more low-income families? Should benefits be reduced? Should there be a work requirement to receive benefits? Should only wholesome foodstuffs be legal for purchase with food stamps? *Solution:* Since the government has no authority to take money from some Americans and give it to other Americans in the form of food assistance, the food-stamp program should be abolished. All food assistance to the poor should be provided by fami-

lies, neighborhoods, civic clubs, restaurants, farms, charitable organizations, food drives, religious institutions, and concerned individuals, but all without funding of any kind from the government.

The government has no authority to take money from Americans and give it to foreigners.

4. *Issue:* foreign aid. Should countries receiving U.S. foreign aid be expected to vote with the United States at the United Nations? Should aid be tied to a country's human rights record? Should allies of the United States receive more aid? Should aid be limited to disaster relief? Should the military be used to provide disaster relief? *Solution:* Since the government has no authority to take money from Americans and give it to foreigners or their governments, all foreign aid in any form it is given should be eliminated immediately. Any American who wants to help the underprivileged or disaster-stricken in another country can do so at any time on his own or through any number of private organizations.

5. *Issue:* AMTRAK. Should AMTRAK increase its fares in an attempt to be profitable? Should more routes be added? Should

speeds be lowered in some areas? Should more attention be devoted to safety? *Solution:* Since the government has authority to neither own nor operate a rail service, all of AMTRAK's assets should be sold to the highest bidder and all of its employees laid off. All passenger rail traffic in the United States — like freight traffic — should be privately owned and operated.

6. *Issue:* job training. Should job-training programs be expanded? Should existing programs be reformed? Should some be eliminated? Should some be consolidated? *Solution:* Since the government has authority to neither institute nor operate job-training programs, they should all be eliminated. All job-training programs should be private programs run by companies seeking skilled workers, charities wanting to help the unskilled and economically disadvantaged, or for-profit companies willing to offer a service that meets a need, but all without funding of any kind from the government.

7. *Issue:* Obamacare. Should Obamacare be replaced with some other program? Should insurance companies have to cover those with pre-existing conditions? Should insurance companies be required to eliminate annual and lifetime

spending caps? Should the government subsidize the health-insurance premiums of low-income Americans? *Solution:* Since the government has no authority to dictate anything to insurance companies, subsidize anyone's health-insurance premiums, or mandate that employers provide a service to their employees or that individuals purchase a service, Obamacare should be abolished in its entirety and not be replaced with anything.

8. *Issue:* minimum wage. Should the government raise the minimum wage? How much should it be raised? Should future increases be tied to inflation? Should a lower minimum wage be instituted for students and teenagers? *Solution:* Since the government has no authority to institute a price floor for labor, there should be no federal minimum wage. All wages should be freely negotiated between employers and employees.

9. *Issue:* Medicare and Medicaid. Should doctors be paid more for seeing Medicare and Medicaid patients? Should the federal government provide more money to the states for Medicaid? Should the Medicare payroll tax be increased? Should the age to begin receiving Medicare be increased? Should more low-income Americans be

made eligible for Medicaid? Should more attempts be made to reduce the rampant fraud in these programs? *Solution:* Since the government has no authority to subsidize any American's health insurance or health care, pay for anyone's prescription drugs, or operate health-care programs, Medicare and Medicaid should be abolished. All health care and health insurance should be handled by the free market with no government regulation, mandates, or interference.

All health care and health insurance should be handled by the free market.

10. *Issue:* farm programs. Should farm subsidies be increased? Should farmers be guaranteed a price for their commodities at least equal to the cost of growing or raising that commodity? *Solution:* Since the government has no authority to take money from some Americans and give it to other Americans who work as farmers, all farm subsidies should be ended immediately. Farming should be treated just like any other business. If a farmer can't make a profit without government assistance, then he should sell his farm and find another line of work.

11. *Issue:* space exploration. Should NASA's budget be increased? By how much? Should astronauts go back to the moon? Should NASA undertake a mission to Mars? How much of the cost of the international space station should NASA pay for? *Solution:* Since the government has no authority to explore space or study space, NASA should be abolished and all of its assets sold to the highest bidder. All space exploration, study, and travel should be handled by the free market with no government direction, oversight, or funding.

12. *Issue:* the TSA. Should TSA agents be held more accountable for their thefts from travelers? Should pat-downs be less intrusive? Should all travelers have to remove their shoes? Should the size limit of allowable containers with liquids be increased? *Solution:* Since the government has no authority to provide security for private businesses, the TSA should be abolished. Airports and airlines should handle their own security just like banks, hospitals, and stores.

13. *Issue:* welfare. Should cash payments under the TANF program be reduced? Should the WIC program be expanded to more low-income women? Should the amount of housing vouchers be in-

creased in high-rent cities? Should welfare benefits have a time limit for one to receive them? Should welfare recipients be required to take a drug test? Should welfare be reformed? *Solution:* Since the government has no authority to take money from some Americans and give it in any form to other Americans, all welfare programs should be eliminated. All charity and assistance should be provided voluntarily.

The government has no authority to provide security for private businesses.

14. *Issue:* Social Security. What should be done to save Social Security? Should taxes be increased? Should COLAs be eliminated? Should benefits be reduced? Should it be means-tested like the government's regular welfare programs? Should it be privatized? *Solution:* Since the government has no authority to manage a retirement or disability program, the Social Security program should be ended along with the taxes on employers and employees that partially fund the program. All retirement planning should be done by means of the free market.

15. *Issue:* grants. Should government grants for scientific or

medical research be limited to important things that could benefit a large number of Americans? Should government cultural grants be withheld if some Americans deem what is funded to be blasphemous or pornographic? *Solution:* Since the government has no authority to take money from some Americans to subsidize the research or cultural activities of individuals or organizations, all grants should be canceled and all grant-making agencies abolished. It is on the free market that all grants should be sought.

These libertarian solutions have been available in books and articles, and on the Internet for years. They are exactly what is to be expected from libertarians because of their principled consistency. But these solutions have also been right under the noses of liberals and conservatives. Not only is the government instituting, operating, funding, mandating, and carrying out all of these illegitimate purposes of government, none of these government actions is authorized by the Constitution. That is why I continually pointed out that the government has no authority to do any of them.

The fact that liberals and conservatives accept those government actions as legitimate — merely disagreeing on some details of the actions — when the Constitution they profess to follow doesn't authorize any of them, shows just how utterly devoid of any principles they are.

The libertarian solution is not just simple, consistent, and moral, it is also constitutional, and should therefore be embraced, wholeheartedly and immediately, by Americans of all political persuasions.

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NEXT MONTH:
**“The Fatal Flaw
in Income Taxation”**
by Laurence M. Vance

Closed-Border Libertarians: It's Time to End the War on Immigration

by Will Tippens



Warrantless searches and seizures on a massive scale, bureaucratic log-jams, arbitrary edicts that squelch freedom of association, unchecked waste and corruption — it is difficult to reconcile any of these symptoms of big government with liberty. And yet, many who strongly value freedom still support all of them in the name of border control.

For these “closed-border libertarians”, the argument against open borders usually rests on the popular claim that more immigrants (read: Hispanics) will come to the United States seeking its rich welfare benefits and using public property the taxpayer has financed. Hence, according

to the closed-border advocate, we need to further militarize the border, build a massive 2,000 mile wall, or even forcefully expel millions of people from America.

Despite the evidence disputing the real-world validity of that claim, it deserves underscoring that even if it were unequivocally proven that the majority of immigrants were coming to the United States solely to leech from the productive (and, again, it hasn't), it still should not change a libertarian's stance on immigration: open borders is the only viable solution to the immigration problem.

When libertarians advocate the state regulation of borders they are invariably divorcing themselves from principle in favor of political strategy. Strategy, when enacted through the clumsy hammer of government action, inevitably and predictably results in the destruction of resources, injustice, and unintended consequences. Libertarians have long known of this glaring and insurmountable problem present in all state action, arising from the economic-calculation problem. Because border control is government action, it is insulated from the signals and feedback that guide the voluntary market, falling victim to the same irreconcilable flaws in all

central planning. As economist Walter Block writes, “Because of the socialist economic calculation problem, there is no way for government immigration controls to keep out the ‘uninvited,’ let in the ‘invited,’ or even determine who would fall into each category.”

For a libertarian to concede that the state can and should be entrusted to regulate the border, allowing in only those who receive government approval to work and live belies the entire economic theory of the market. We know goods, investments, ideas, and labor across international boundaries benefit everyone. If central planning can work for immigration, an especially complex economic phenomenon, why not elsewhere?

There are, without a doubt, immigrants who come to the United States to pick the low-hanging fruit of public programs. But there are tens of millions more native-born Americans who do the exact same! Treating immigrants as if they are the ones who deserve to be put on trial for using the unsustainable and corrupting welfare state is not only intellectually dishonest, but it distracts from meaningful discussion of welfare reform or total abolition. Like the war on drugs or the war on terror, the problem is not that the

U.S. government is not doing enough (on the contrary, Obama has deported more illegals than any other president), but rather that it has already done far too much.

There is no way to wage a war on immigration without further empowering the state.

Instead of asking the state to do more — to tax, spend, plan, regulate, spy, patrol, interrogate, arrest, jail, and deport more — anyone concerned with liberty and freedom should focus his ire solely on the root culprit: the welfare state. Libertarians are well aware of the atrocious effects of massive welfare programs, taking from the most productive while ensnaring millions of others in hopeless poverty traps. Nobody, regardless of his place of birth has a just right to live at other people’s coerced expense, regardless of how many votes say so. That is the underlying problem — the continually expanding welfare state and the democratic system that props it up — not the people who enter America with the hope for a vastly better life. And yet so much of the anti-immigration rhetoric scorns and demonizes the immigrants themselves, as if they were the legislators, judges, or vot-

ing blocs responsible for what the United States and its constituents themselves created!

We certainly do not live in an ideal libertarian world. But for a libertarian to say that we should not advocate individual liberty until all other state injustices are removed is nothing but fuel for the interventionist status quo. If one accepts the premise that borders cannot be liberalized until the welfare state is abolished, then many other fundamental libertarian issues should not only be ignored but completely dropped altogether. Studies have found links between marijuana use and welfare dependence. One could easily make a colorful argument that marijuana legalization would contribute to future welfare enrollment. Are closed-border libertarians also prepared to advocate drug prohibition until the welfare state is abolished?

Indeed, if one subscribes to the reactionary belief that state policy should attempt to prevent “future dangers” such as speculative welfare increases, any host of patently anti-liberty policies can and have been advocated, from foreign interventionism, to all kinds of prohibitions

and mandates. Once a libertarian advocates state violence against a class of people who have committed no identifiable or individualized aggression, they have abandoned the very ethic that sets them apart from the rest of the political quagmire — a refusal to sacrifice individual liberty for the supposed safety of the collective.

Regardless of the supposed justification, it is clear that there is no way to wage a war on immigration without further empowering the state and violating individual liberties. If one advocates present aggression to prevent a speculative future aggression wholly divorced from individualized damages, anything and everything can be fallaciously justified — just as George W. Bush famously said in 2008, “I’ve abandoned free-market principles to save a free-market system.” Libertarians, don’t do the same thing by defending closed borders. Let’s endorse something that actually adheres to our principles: let’s end the war on immigration.

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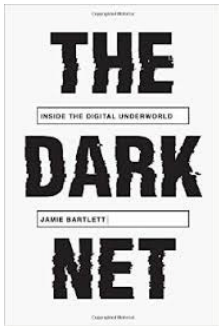
Private property is a natural fruit of labor, a product of intense activity of man, acquired through his energetic determination to ensure and develop with his own strength his own existence and that of his family, and to create for himself and his own an existence of just freedom, not only economic, but also political, cultural, and religious.

— Pope Pius XII

Welcome Back to Freedom

by Matthew Harwood

The Dark Net: Inside the Digital Underworld by Jamie Bartlett (Brooklyn: Melville House Publishing, 2015), 320 pages.



Do you really want someone to die? If you could help bring about someone's demise by anonymously and securely placing a bet on when that particular someone might take a dirtnap, would you? That's the premise of the Assassination Market, an online betting site not accessible by a Google or Bing search or your Firefox or Safari browser. The instructions are simple:

- Add a name to the list
- Add money to the pot in

the person's name

- Predict when that person will die
- Correct predictions get the pot.

When researcher Jamie Bartlett set out to write a book about the dark alcoves of the Internet, he believed he would write an exposé of all the hideous things he discovered and demand that the proper authorities protect people from the predators, as well as themselves. What he ended up doing was something altogether different. Ignore the ominous title: *The Dark Net* is an incredible journey into the lives of real people and how they use the Internet as a means to find community, to follow their ideals, and, yes, get their kicks and do very bad things too.

“The dark net, for me, describes an idea more than a particular place,” Bartlett, the director of the Center for the Analysis of Social Media at the London-based think tank Demos, explains. “Internet underworlds set apart yet connected to the internet we inhabit, worlds of freedom and anonymity, where users say and do what they like, often uncensored, unregulated, and outside of society's norms.”

The Internet, Bartlett reminds us, was the brainchild of research-

ers at the Advanced Research Projects Agency — now known as DARPA, the Pentagon’s incubator for its imperial toys. The point of the project was to create a network of linked computers, which would become Arpanet, so that scientists could easily exchange information. From its very beginning in the late 1960s, the Net was to be “open, decentralized, accessible, and censorship-free.” Freedom was baked into its very design, even if it has been largely reverse-engineered for corporate and state surveillance ever since.

From its very beginning in the late 1960s, the Net was to be “open, decentralized, accessible, and censorship-free.”

Access to the Internet swelled within a few decades as primitive chat rooms and forums, known as Bulletin Board Systems and Usenet, were created, but it was the rise of the World Wide Web and email in the 1990s that changed the way people accessed and exchanged information. Immediately the entrepreneurs and misfits and weirdos grasped the potential of the Web, spawning infinite ways for like-minded people — from the extreme to the boring — to connect and

make a living. There subcultures thrived, and people played freely — oftentimes viciously — in a world without authority or easily enforceable rules. While that Net still exists in an age of Google, Facebook, and Twitter, its new home is hidden in the Dark Web, an obscure portion of the Net where people don’t want to be identified and jealously guard their privacy.

Offline he was a nobody

A strong current running through Bartlett’s narrative is how everyday people find empowerment online, even if their offline lives and identities are a mess. A case in point is Paul, a friendly white-power advocate in England who has a committed following online. Bartlett sums up Paul’s fractured existence this way:

He lives in a one-dimensional world of friends and enemies, right and wrong — and one where he has been spending increasing amounts of time. The digital Paul is a dynamic, aggressive, and prominent advocate of the White Pride movement. The real Paul is an unemployed thirty-something who lives alone in a small house.

While governments continue to stoke the fear of lone wolves radicalized online who commit atrocities against flesh-and-blood people, it's critical to remember that the Pauls out there vastly outnumber real threats, like Anders Behring Breivik, the tech-savvy white nationalist who single-handedly murdered 77 people in Norway in July 2011. Violent, ideologically motivated individuals are a rare and rather impotent terrorist threat.

While that fact may push people to believe the Internet should be another overregulated space to tackle racial epithets or pornography or fill-in-the-blank pathology, Paul's story should give pause. Left-wingers aggressively pushed back against Paul's online activities and tried to connect his online identity to his real identity. Bartlett ends Paul's story by noting he has taken a break from his online activities, telling Bartlett, "I was becoming too hate-filled, too paranoid, it was seeping into my blood, my bones." As this experience demonstrates, there are other ways to fight back against threats online than NSA-style dragnet surveillance.

On the bright side, the Internet and the World Wide Web have created the possibility of a true marketplace of ideas where the sacred

and the profane battle for supremacy, as they're meant to. But there's another silver lining to such extreme free expression: It provides a relatively safe space for people to express their beliefs and feelings without the consequences, sometimes violent, associated with the flesh-and-blood world. And if that doesn't convince you of its merit, maybe Bartlett's optimistic appraisal will: "Whatever their beliefs, the internet and social media have made politics accessible and appealing to countless people, and that has to be a good thing."

Dark markets

It's always been the dream of libertarians, whether of the Left or Right, to create free spaces outside of state surveillance, control, and violence. The Internet has enabled such experiments, which Bartlett documents vividly through a free-market anarchist Bitcoin programmer and the flourishing online drug markets of Silk Road.

The Internet and the World Wide Web have created the possibility of a true marketplace of ideas.

In the Calafou cooperative outside of Barcelona, Bartlett joins computer coder and cypherpunk

Amir Taaki, who is working on a Bitcoin-related project called “Dark Wallet.” The gist of the project is easy to understand, even if the technology powering it is anything but. Dark Wallet will allow its users to buy whatever they want with the crypto-currency on the black market without being traced, taxed, or thrown in the slammer. “The government is just one big bunch of gangsters!” exclaims Taaki during a talk in London, vulgarly summarizing his philosophy. He tells Bartlett that he hopes people will use Dark Wallet to buy drugs without fear of getting pinched. He means it.

While maybe it is easy to dismiss Taaki as some crazed loon who craves chaos, you shouldn’t. He is an idealist with a cause: “I am for the human spirit, and against power,” he says. Bartlett believes him, writing, “And it’s true that Amir is deeply committed to sharing rather than profiting from the technology he produces. This is difficult not to admire.” For Taaki, Bitcoin is just the beginning. He wants to build a social-media platform, think Facebook, that’s free of corporate control, where censorship is nonexistent and the individual can be whoever he wants to be.

But Bartlett isn’t content with merely hearing about anonymous

transactions in the digital underground from Taaki. He wants to experience them, so he does what any self-respecting writer would do: he buys drugs on the Silk Road. The Silk Road is one of the largest unregulated online market places. One user describes it as “kind of like an anonymous Amazon.com.”

The Silk Road is one of the largest unregulated online market places.”

This isn’t all that avant-garde. A 2014 survey of approximately 80,000 drug users from 43 countries found that about 14 percent of respondents bought their fix on the Net. As Bartlett notes, one of the first things sold using Arpanet was a small amount of marijuana between students at Stanford and MIT. Today, illegal-drug sellers have flocked to Tor’s encrypted Hidden Services to sell their goods.

Let’s be clear. Silk Road isn’t just about satisfying natural human urges or making money, it’s a movement, observes Bartlett. “We are NOT beasts of burden to be taxed and controlled and regulated,” wrote the Dread Pirate Roberts, the site’s anonymous administrator named after the character in the novel *The Princess Bride*. “The future can be a

time where the human spirit flourishes, unbridled, wild and free!” What the people behind Silk Road wanted to create was a true self-regulating free market outside of state interference where anonymous buyers and sellers securely exchanged what they desired without shame or significant fear of punishment. They succeeded, according to Bartlett, for a while. In 2013, the FBI arrested 29-year-old Ross Ulbricht on various felony charges, accusing him of being the Dread Pirate Roberts. A stash of Bitcoins worth approximately \$150 million was seized from his computer. In February, he was convicted and controversially sentenced to life in prison.

But as in the novel, the Dread Pirate Roberts was just a symbol. While the Silk Road could be knocked offline, it couldn't be shut down for good. When Silk Road 2.0 launched just a month after take-down, a new Dread Pirate Roberts had this message for its netizens, “Silk Road has risen from the ashes and is now ready and waiting for you all to return home. Welcome back to freedom.”

And whereas it may well be impossible to find a true free market outside of state protection offline historically, Bartlett finds them throughout the Dark Net. Sellers

truly compete for customers. Customers rate their sellers, creating reputations that thrive off of good customer service. Scammers are outed fast in what he describes as “an impressive amount of self-policing here, a genuine drive to identify and remove scammers.” Payment methods are increasingly becoming more decentralized and secure. It's important to remember that the markets Bartlett's describing here are drug markets, which in the fleshy world are corrupt and violent.

The people behind Silk Road wanted to create a true self-regulating free market outside of state interference.

The ideal is totally free markets. In the meantime, people might have to settle for the Dark Web.

Encrypting freedom

A refreshing aspect to Bartlett's book is that it's not excessively focused on the United States. Because Bartlett is British, most of his characters are European. It's a good reminder that the Internet, though technically a U.S. government invention, is used by billions of people for a never-ending variety of reasons, most mundane, some liberating, some destructive. For every

person using the web and encryption to peddle child porn — the most disturbing chapter in the book — there are dissidents using encryption, such as Tor, to protect their communications from state interception and write and collaborate on code to maintain and expand freedom on the net.

To destroy encryption for the pedophiles and terrorists is to destroy encryption for everyone else — a self-destructive trade-off that will leave everyone worse off. Remember this the next time you hear the FBI or the NSA fearmongering over strong encryption and their desperate need for backdoor access to our communications to save civilization from the digital hordes.

Bartlett came to understand that intimately. “The same anonymity that allows the Assassination Market to operate also keeps whistleblowers, human-rights campaigners, and activists alive,” he writes. “For every destructive subculture I examined there are just as

many that are positive, helpful, and constructive.” In other words, it’s just like our world — because it is our world.

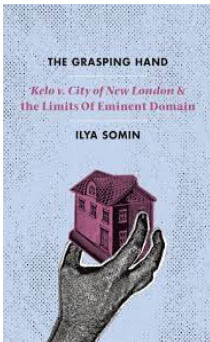
Governments have poisoned the Surface Web for us all — a sphere where everything we do is subject to government surveillance. The Dark Web offers a certain amount of freedom that we can only hope will never be completely destroyed. Jamie Bartlett, whether intentional or not, has done a service with his wise, restrained, and humane book on where people can go for a little liberation. Just remember that when you’re there, you’re responsible for yourself and your security. That’s freedom’s opportunity cost. Don’t do anything too stupid.

Matthew Harwood is a writer living in New Jersey. He is senior writer/editor of the American Civil Liberties Union.

The Tyranny of Eminent Domain

by David D'Amato

The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain by Ilya Somin (University of Chicago Press, 2015), 336 pages.



The Supreme Court's 2005 decision in *Kelo v. City of New London* has become infamous, singled out by defenders of liberty and property for special opprobrium. The Court's opinion was a sobering reminder that, as libertarians are wont to point out, our individual rights don't come from government — that, in fact, they exist in spite of the state rather than because of it.

As Ilya Somin observes in the introduction to his book *The Grasp-*

ing Hand: Kelo v. City of New London and the Limits of Eminent Domain, for decades the courts have subjected private-property rights to the whims of “the very government officials that they are supposed to protect us against,” a trend that “was usually tolerated and sometimes actively supported by politicians in both parties and by influential business interests.”

Somin's comprehensive study of the disastrous and much-criticized opinion is destined to become the definitive treatment of *Kelo* and the destructive principles it represents. The book deserves a place among the best, most exhaustive treatments of the subject of eminent domain in general, which Somin skillfully removes from the dusty confines of legal and public policy minutiae.

He notes early on that the reaction to the *Kelo* case united elements across the political spectrum. Populists on the political Left, rightly troubled by Pfizer's influence on the condemnation process, “believed it was wrong to force out people for the benefit of politically connected business interests.” As defenders of private property and individual rights in principle, libertarians naturally led the fight to stop New London from taking away

the property of Susette Kelo and her neighbors.

The *Kelo* case once again gives the lie to the constantly repeated fallacy that a larger, more powerful government means increased protection for “the little guy” against the treachery and avarice of major corporations. In the real world, more-powerful government means more backroom collusion with special interests, more perquisites to parcel out to the politically connected, and widespread disregard for private property and free-market principles. Somin, a George Mason University law professor, handily combines legal, historical, and political analyses in a thorough argument for an end to extreme judicial deference and the resultant “neglect of property rights.”

In the real world, more-powerful government means more backroom collusion with special interests.

Chapter one tells the now-well-known story of New London, Connecticut’s, Fort Trumbull neighborhood, the location of Susette Kelo’s home and the proposed site for a new, ninety-acre Pfizer complex that would feature everything from upscale housing to a five-star hotel

and a conference center. The development plan was the cronyist work product of the New London Development Corporation, a nominally private nonprofit entity revived largely “at the behest of Republican Connecticut Governor John Rowland.”

Though Pfizer always claimed that it was not behind the Fort Trumbull condemnations, the company’s agreement to establish its headquarters on the site included \$118 million in subsidies from the Connecticut government, and documents have since shown that Pfizer conditioned its move on the condemnations.

“Public use”

After outlining the facts and the litigation that ensued, leading all the way to the Supreme Court, Somin takes us on a historical tour of the legal idea of “public use.” In 1868, the Fourteenth Amendment, perhaps the most famous of the so-called Reconstruction Amendments, rendered the actions of the several state governments (not just the federal government) subject to the Bill of Rights, and therefore to the Fifth Amendment’s limitations on eminent-domain takings. Somin offers an enlightening survey of the legal environment surrounding

takings in the nineteenth century both before and after the passage of the Fourteenth Amendment.

Kelo offered a high-profile example of the incredibly low bar used by the courts to judge takings through eminent domain.

He shows that the deferential judicial approach we know today did not fully triumph until the twentieth century, when the courts increasingly refused to enforce “a narrow interpretation of public use.” That interpretation, more closely aligned with classical liberal ideas, was succumbing to the “Progressive critique of judicial protection of property rights and economic liberties,” which saw traditional constitutional protections as obsolete impediments to comprehensive government plans.

Somin describes how Supreme Court precedent during the twentieth century steadily eroded the Fifth Amendment’s Public Use Clause, ostensibly a constraint on government takings of private property. The politics of the Progressive Era and the New Deal had fundamentally reshaped the thinking of public officials and judges, leading the courts to adopt a new position of deference to takings that

once would have raised eyebrows, particularly those that potentially implicated a “private purpose.”

As established by Supreme Court precedent, constitutional law has traditionally protected individuals against takings of their property that are “merely intended to benefit a private interest.” Governments are thus forbidden, at least on paper, from simply transferring property from one private party to another without the demonstration of a genuine “public purpose,” defined increasingly broadly in the lead-up to *Kelo*. Far from constituting a break from previous Supreme Court decisions, *Kelo* merely offered a particularly high-profile example of the incredibly low bar used by the courts to judge takings through eminent domain.

This more recently developed and far less rigorous standard, which asks only whether a given taking is “rationally related to a conceivable public purpose,” practically eviscerates the Constitution’s protection of private property and legitimates almost any imaginable taking. The Institute for Justice’s Clark Neily correctly calls this kind of rational-basis test “a junk drawer for disfavored constitutional rights,” a way for courts to abdicate their responsibilities and give govern-

ment bodies a blank check to disregard the rights of individuals.

Somin highlights the Supreme Court's opinion in the 1954 case of *Berman v. Parker* as touching off this period of unhealthy judicial deference to legislative determinations of public purpose, establishing a precedent that treats a legislature's position on the constitutionality of its own acts as "well-nigh conclusive." The Court in *Kelo* reaffirmed that attitude and stressed that the courts should resist the urge to "second-guess the wisdom" of plans to use the eminent domain power in the promotion of economic development.

The excessively deferential posture of the courts amounts to a failure to fulfill the obligations of genuine judicial review.

Somin and other libertarian lawyers, both in public-interest practice and the academy, have long argued that the excessively deferential posture of the courts amounts to a failure to fulfill the obligations of genuine judicial review. Those legal scholars champion judicial engagement, encouraging judges to more actively enforce the Constitution's limits on government power, to insist that the government dem-

onstrate the necessity of actions that infringe individual rights.

Too often, courts have accepted any and all reasons that governments have offered, even those that are clearly pretextual, conjured up after the fact in order to justify a heavy-handed law. Notwithstanding conservative disquiet about judicial activism, what we witness far more often in the courts is judicial passivism, judges acquiescing in all sorts of overbearing government overreach. Libertarian legal scholars such as Somin maintain that several originalist interpretations of "public use" — even dating from the Fourteenth Amendment rather than the ratification of the Constitution — support more-active judicial protection of private property rights and thus much less deference to governments.

Backlash?

The fifth and sixth chapters of the book, which provide an account of the often disappointing political backlash that followed *Kelo*, are especially interesting, beginning with the observation that the decision in the case gave rise to "more new state legislation than ... any other Supreme Court decision in history." Somin notes that the reaction to *Kelo* has "yielded far less effective

reform than many expected,” with no shortage of empty rhetoric and stalled legislative efforts at more robust and meaningful reform.

George W. Bush, for example, marked the one-year anniversary of the decision by issuing an executive order — carefully worded so as to be practically toothless — that paid lip service to “the rights of Americans to their private property,” yet could not have a real impact on “virtually any economic development condemnation that the federal government might want to pursue.” Perhaps the most promising effort at federal-level reform, the Private Property Rights Protection Act, passed the House of Representatives three times between 2005 and 2014, only to stall and fail in the Senate.

The arbitrary power of eminent domain reminds us that the state possesses nothing that it has not stolen.

Continuing in the development and application of the thesis presented in his previous book, *Democracy and Political Ignorance*, Somin suggests that his “political ignorance hypothesis” can help explain the apparent disconnect between the widespread outrage that followed *Kelo* and the largely impo-

tent legislative “reforms” that followed. Somin explains that, despite their expressions of anger at the Supreme Court’s decision, few citizens actually knew about the proposed eminent-domain reforms or their substantive terms.

Further, popular indignation after *Kelo* seems itself to demonstrate the political-ignorance hypothesis insofar as the decision “made little change in existing Supreme Court takings doctrine.” Legislatures were thus able to pass weak or completely meaningless reform measures for show, ensuring no real disruption of the status quo.

Somin considers the power of special interests as another possible explanation of the lack of effective reform laws. Rather than completely discounting this explanation or treating these accounts as mutually exclusive, Somin sees the powerful lobbies that favor broad eminent-domain powers as exploiting the extensive public ignorance at play post-*Kelo*. After all, legislators would be unlikely to risk upsetting such large majorities unless they were sufficiently convinced that voters lacked awareness of the public-policy situation. “Political ignorance,” Somin writes, “is the handmaiden of interest group power in the political process.”

The arbitrary power of eminent domain reminds us that the state possesses nothing that it has not stolen; its history is a predatory one of theft, plunder, and economic subjugation, the great lords of yore being no more than descendants of the most successful killers and brigands. As Thomas Paine famously wrote in *Common Sense*, the first king must have been “nothing better than the principal ruffian of some restless gang, whose savage manners or pre-eminence in subtily obtained him the title of chief plunderers.”

The state is the great enemy of people such as Susette Kelo and her

neighbors, the protector of privilege for an elite group of courtiers. Ilya Somin’s *Grasping Hand* is an absorbing study not only of the *Kelo* case, but of the legal and historical context in which it arose; it reveals the fragility of our individual rights against the seemingly boundless power of the modern state and reminds us that we must continue to challenge this kind of arbitrary power in the courts and in the political forum.

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Generally speaking, only simple conceptions can grip the mind of a nation. An idea that is clear and precise even though false will always have greater power in the world than an idea that is true but complex.

— Alexis de Tocqueville

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