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FUTURE OF FREEDOM

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Despotism may govern without faith, but Liberty cannot.

— Alexis de Tocqueville

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Why I Favor Limited Government, Part 5

by Jacob G. Hornberger

Among the most popular examples of anarchy cited by anarchy proponents is what is known as the "law merchant," a body of law and custom that developed during the Middle Ages. Anarchists point to the widespread commercial transactions that took place between traders, both domestic and international, often without governmental involvement, as evidence that anarchy really can work. They point out, for example, that people would voluntarily honor their contracts, often out of fear of social ostracism and so that people would continue to do business with them. Therefore, anarchists say, the development of the law merchant in medieval times shows that government is unnecessary when it comes to commercial transactions.

Anarchists, however, gloss over an important factor in the development of the law merchant — that it took place within the structure of government. They speak as though that factor is simply irrelevant or immaterial and just assume that the law merchant would have developed in the same manner without the structure of government.

But the fact is that it was the institution of government that provided the necessary framework for the development of the law merchant and, for that matter, the development of the common law, another area of interest to which anarchists sometimes point in support of the anarchy paradigm.

The reader will recall that in part 1 of this essay, I pointed out that in most instances people are peaceful, harmonious, and law-abiding. One can walk into any shopping mall in the country on any given day and see thousands of people engaging in commercial transactions with each other. When people purchase things, they pay for them rather than grabbing them and running away with them. Disagreements between buyers and sellers and between employers and employees, are almost always resolved amicably.

One could easily see all those peaceful and harmonious transac-

tions in a shopping mall and ask, "What do we need government for? Everybody gets along fine without it."

Except for one thing: Not everybody does. Recall that in part 1 I pointed out that while most people in life are peaceful and respectful of the rights of others, there are inevitably going to be those who are violent or aggressive — i.e., the murderers, rapists, thieves, robbers, and the like. I hypothesized in part 1 that the violent group consists of 2 percent of the people in society. That's why we need government — to go after the 2 percent who aggress against the 98 percent.

Each judicial opinion represents an actual court case in which the litigants did not "work things out" before trial.

The same principle applies in the civil law. Most commercial transactions are fulfilled without any problems at all. That is especially true in face-to-face transactions such as those that take place in shopping malls and which also took place at fairs during the Middle Ages. It's also true in most long-distance transactions, such as those involving the Internet, credit cards, bills of exchange, or letters of credit. Anarchists are right when they say that most people traditionally do honor their contracts, partly because they feel it's the right thing to do and partly out of concern for their reputation and their wish that others will continue to do business with them.

The problem isn't with people who honor and fulfill their contractual obligations in the marketplace. The problem instead is with people who don't. Anarchists gloss over that fact, implying that it's nothing to be concerned about because, they say, "In an anarchist society, people will work things out."

Go to the following entry in Wikipedia: "National Reporter System." There you will see a list of "state reporters" and "federal reporters." The state reporters are a compilation of all the published judicial opinions that have been issued by the courts of appeals and supreme courts of every state in the union. The federal reporters are a compilation of judicial opinions that have been issued by U.S. District Courts, the various federal Courts of Appeals, and the U.S. Supreme Court.

You will find millions of judicial opinions since the founding of the United States. What is the significance of those judicial opinions? Each one represents an actual court case in which the litigants did not

"work things out" before trial. And by not settling their differences before trial, they ended up rolling the dice and letting a judge or jury decide the winner and the loser.

Law-merchant custom

As Emily Kadens, the Baker and Botts Professor of Law at the University of Texas School of Law, stated in an article published in the *Texas Law Review* entitled "The Myth of the Customary Law Merchant" (vol. 90, page 1153), that is precisely what happened during the era of the law merchant. Kadens's article, which is a highly critical analysis of *The Enterprise of Law,* by Bruce Benson, *Law and Revolution,* by Harold J. Berman, and other works that are often cited by libertarian anarchists, argues that traders didn't always operate in the harmonious, cooperative manner that anarchists claim. Differences over customs and practices often arose that were not amicably resolved between the parties, and when they did, the litigants resorted to the government's judicial system to resolve the issues. Thus, as Kadens documents in detail in her article, the law, as established by judicial decisions involving traders who were litigating against each other within a governmental framework, became an integral part of establishing what law-merchant custom actually was and what parts of it would be enforced.

Traders didn't always operate in the harmonious, cooperative manner that anarchists claim.

Kadens points out that in 1278 a buyer sued a seller in an English court for fraudulently selling him wool of substandard quality. In ruling on the case, the judge had to decide contested issues relating to custom.

Kadens also refers to a 16th-century case heard by the English Court of Admiralty in which "one set of insurers — trying to wriggle out of paying on a claim — asserted that an insurance policy good for one year should use the common law method of determining the length of a month as twenty-eight days despite the fact that the chiefest merchants in London, Englishmen, Italians, Frenchmen, Dutchmen, Spaniards [and others] testified that according to custom twelve months meant a calendar year." The court ruled in favor of the twelve months, thereby integrating the law with the custom.

Another case over custom arose in a court in Bruges, Belgium, in

1439. The parties disagreed over how to apportion damages arising from the shipment of goods. The court's ruling in the case necessarily became an integral part of the custom in those types of cases.

In 1628, a suit was brought in Paris over whether a "grace period" in a bill of exchange constituted 10 days or 8 days. The court heard testimony from various witnesses regarding the local custom and ultimately ruled in favor of 10 days, another example of where the judicial system worked to establish and fortify what custom actually was.

Needless to say, there were countless other such cases. The judicial systems that existed within a governmental framework provided the means by which businessmen could peacefully — that is, without war and bloodshed — litigate their differences in those instances where they were unable to arrive at a mutually beneficial agreement.

There is something else that is important to note: The judgments entered by those courts were not simply advisory opinions. They were enforceable through the power of the state. If a litigant prevailed, for example, in a claim for damages and the losing side still refused to pay, the winning side could employ the assistance of the state to collect the money, much as the bank that I talked about in part 4 used sheriff's deputies to collect a $10,000 judgment against a jewelry-store owner who had refused to comply with a money judgement that had been entered against him by a court of law.

The judgments entered by those courts were not simply advisory opinions.

Even when the litigants during the era of the law merchant used private resolution methods, such as arbitration, the losing side would sometimes refuse to comply with the arbitration decision. In such cases, the winner would file suit in the government court to secure enforcement of the arbitration ruling. Kadens emphasized the importance of government courts in the development of the law merchant in "The Medieval Law Merchant: The Tyranny of a Construct," published in the *Journal of Legal Analysis:* "In addition, public courts played an important role in arbitration. Once the arbitral decision had been rendered, the parties proceeded to have it enrolled and confirmed by the local court and read into its record in order to obtain the court's power of enforcement."

That's precisely what happens in the United States today. As I pointed out in part 2 of this essay, parties are free to use private, competing means of dispute resolution, including arbitration, but must file suit in a government court to enforce the privately issued judgment. In fact, as I have also previously pointed out, most of the judicial systems, both criminal and civil and state and federal, that Americans have here in the United States are the evolutionary and developmental outgrowth of the judicial system of England, including competing private judicial systems and the development of the law merchant and the common law.

The English people had developed a sophisticated judicial system.

There was another important factor in the widespread economic activity that developed during the Middle Ages, especially at fairs: The king's forces were committed to keeping the peaceful and law-abiding populace safe and secure from marauders, thieves, robbers, murderers, and the like. Naturally, the greater the protection of the 98 percent from the 2 percent, the greater the extent of peaceful and harmonious economic activity, including trade and the accumulation of capital, which are key to a rising standard of living.

Of course, the prosecution of the 2 percent gradually gave rise to the procedural protections that ultimately made their way into the U.S. Constitution and the Bill of Rights, including due process of law (a phrase that stretches back to Magna Carta in 1215), right to counsel, habeas corpus, trial by jury, and many others.

By the time the 1700s arrived, the English people had developed a very sophisticated judicial system in both criminal and civil law, one that involved countless judicial opinions that provided precedence and guidance. All of this was setting the stage for the Declaration of Independence, the U.S. Constitution, the Bill of Rights, a free-enterprise economic system, the Industrial Revolution, and the most advanced and sophisticated judicial system in history.

Existing anarchist systems

Now, compare English society in 1700 with the anarchist society that developed in North America under Native American tribes. In North America, where there was no government and where there was only a rudimentary system of pri-

vate property, society was pretty much where it was centuries earlier. That is, there was no established judicial system, no concept of rights, no trial by jury, habeas corpus, due process, or trial by jury, no law merchant and common law, and a very low standard of living. While England had progressed from trial by combat and trial by ordeal to trial by jury in criminal matters, the Native American tribes had not progressed beyond the former. Moreover, while people in England had become accustomed to resolving their differences in court, the Native American tribes were still going to war against each other to resolve their disputes.

Without the benefit of government in the Wild West, justice was carried out in a very unjust way.

Anarchists sometimes point to the "Wild West" as an example of an anarchist society, but the judicial system that arose in the Wild West was not the type of society that anarchists describe when they talk about their system. That is, there were never any competing courts and police systems that arose in the Wild West. When someone was accused of cattle-rustling or horse thievery, no one ever asked what defense agency he belonged to because there weren't any competing defense agencies. Instead, the 98 percent would appoint a posse to pursue the suspected criminal and bring him to justice. In other words, under anarchy in the Wild West, people chose to operate in a quasi-governmental manner.

Often, however, without the benefit of government in the Wild West, justice was carried out in a very unjust way — that is, without the procedural protections that were incorporated into the federal Constitution and the state constitutions. Rather than bring the suspected malefactor in for trial, the posse would sometimes try him on the spot, convict him, and hang him from a tree until dead. This is what became known as "vigilante justice," a term that one can Google to explore the many instances where this type of unjust conduct took place. (Or see "Frontier Justice" at Wikipedia.)

When anarchists imagine what a genuinely anarchistic society would look like, they inevitably imagine the type of civil society and judicial systems under which we live here in the United States — minus all governmental structures. In reality, a true anarchist system

would inevitably devolve into one of gangs or tribes whose success would turn on how powerful they are. People would naturally gravitate toward the tribes or groups that would be most apt to protect their lives and interests. That's because violent fights would inevitably break out in matters where the tribes or groups could not peacefully resolve their differences.

Drugs and zombies

A good real-life example of this phenomenon is the drug trade that has arisen in the context of the drug war. When drug gangs have differences over turf or over the murder of a competing gang member, the aggrieved party obviously can't sue in a government court. While sometimes the gangs are able to peacefully resolve their differences, inevitably there are cases where they are simply unable to arrive at a meeting of the minds. At that point, the gang that has been aggrieved has a decision to make — whether it's worth it to go to war over the matter or just let bygones be bygones. Other times, however, as we have especially seen in Latin America, the gangs do go to war against each other, which brings about considerable death, injury, and destruction. The same principles, of course, apply in other criminal activities, such as those of organized crime both now and in the past.

Thus, what ends up happening under anarchy is not a peaceful, civilized, sophisticated system of competing courts and police systems but rather a system of gangs or tribes who are competing in the provision of force. The more powerful gangs and tribes are the ones that are going to be successful and they're the ones who are going to have the most "customers."

A true anarchist system would inevitably devolve into one of gangs or tribes.

The film industry has captured this phenomenon in the popular television series *The Walking Dead.* In that series, government has disappeared. America is a purely anarchist society, one in which people are besieged by zombies. Does a peaceful, harmonious society come into existence where people are working together to protect themselves from the zombies and, in the process, develop the sophisticated system of competing courts and police forces that anarchists envision?

On the contrary, in *The Walking Dead,* society quickly devolves into a collection of competing gangs or

tribes, with no one trusting anyone else and with groups warring against each other. The more powerful the gang or tribe, the greater the chance it's going to survive the mayhem.

Anarchists sometimes lament that we don't have a real-life example of an anarchist society today so that people could see how it really would turn out. But we do. We have, for example, Libya, where Muammar Qaddafi was, for all practical purposes, the Libyan government. When he was killed in a U.S. regime-change operation, the Libyan government ceased to exist. The result has not been a sophisticated system of competing courts and police but rather an all-out war between competing gangs, each one, not surprisingly, trying to restore and grasp the reins of government power.

Another recent example of an anarchic society is Somalia, where there was an absence of government for several years. While much of the society carried on in a peaceful and harmonious society, Somalia was also besieged by violent gang warfare. In the absence of government to prosecute criminals, some of the gangs made kidnapping of people on the high seas a lucrative business. Moreover, Somalia continued to be a nation with an extremely low standard of living, in large part because of the difficulty in accumulating large amounts of capital owing to the violence and instability arising from the gang warfare. Even though many U.S. proponents of anarchy praised Somalia as a great example of an anarchist society, to my knowledge not one of them ever moved there, no doubt because of the violence and instability that wracked the country. As it turns out, anarchy didn't last very long in Somalia either. The country now has a government.

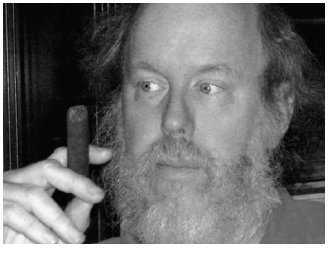
The natural question arises: "Jacob, if limited government is so good, then why did it last for only 150 years?" We will address that question in the final segment of this series.

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

NEXT MONTH:
"Why I Favor Limited Government, Part 6"
by Jacob G. Hornberger

Boy Scouts and the Love of Freedom

by James Bovard



Some of my anarcho-libertarian tendencies arose thanks to the years I spent as a Boy Scout. Joining the Scouts was an easy decision, since my father was a Scoutmaster. Even without the family obligation, I might have signed up because Troop 52, based in Front Royal, Virginia, took many exhilarating excursions. My father had a knack for convincing boys that they were having fun even in the bitter cold or driving rain.

Troop 52 often hiked along the nearby Appalachian Trail. On one jaunt, we camped overnight on a mountain ridge about 20 miles south of Front Royal. Along with two other boys, I was roaming after dinner when we spotted a big black bear foraging the outskirts of the campground. I have forgotten who threw the first rock at the bear, but strong circumstantial evidence suggests it was I. The one certainty was that, once that bear charged at us, I was the fastest runner. Back then, it was rare for Virginia black bears to maul people. In this case, the bear reacted like a horse swishing its tail to brush away flies. After putting us to flight, it resumed scavenging.

Along with other Scouts, I sometimes hiked five miles cross-country from the first crest in the Shenandoah National Park to the Beef Cattle Research Station, where I lived. We did not realize that the ruins of old cabins we encountered were vestiges of a brutal public-works project that entailed the forcible eviction of people from their homes. In the 1930s, politicians confiscated 176,000 acres of private land to create a huge park intended to serve as a playground for presidents. Mountaineer families were paid as little as one-tenth the value of their land and falsely vilified as lazy, good-for-nothing parasites. When some owners refused to budge, they were forcibly dragged from their cabins and their homes were burnt down to ensure they never returned. The sordid details of the park's creation vanished from local memories, and I did not learn of the plundering until long after I left my hometown.

Jamboree

My most formative Scouting experience involved a trek to the Northwest for the 1969 National Jamboree. Each of the nation's 300 Boy Scout Councils sent one troop selected from members of all the troops in that council. I applied to join the troop from the Shenandoah Area Council, which comprised the northern Shenandoah Valley and a chunk of West Virginia. When I was interviewed in December 1968 at Council headquarters in Winchester, Virginia, the most memorable question was, "What do you think of the Vietnam situation?" Even 12-year-olds had to be screened for dissident tendencies.

The 45 members of the Shenandoah Area Council Jamboree troop met at Camp Rock Enon, on the Virginia–West Virginia border, for two weekend training sessions before heading west. I was dumbfounded when we spent three hours marching back and forth on a drill field. That time could have been far better spent climbing trees or setting brush fires. There was far more regimentation in this select group than I had experienced in my hometown troop.

Some of the kids in the Shenandoah Area Council Jamboree troop were natural-born bootlickers who probably went on to become personal-injury lawyers, zoning commissioners, or maybe USDA meat inspectors. On the trip to and from Idaho, we often stayed at military bases. I was thrilled at 17-cent breakfasts with unlimited servings. I did not realize that the vittles were so cheap in part because the guys serving us were conscripts whose labor cost the government almost nothing.

Even 12-year-olds had to be screened for dissident tendencies.

In South Dakota, I was far more impressed by the Badlands than by Mount Rushmore. Like most Scouts, I subscribed to the Patriotic Version of American History. After visiting the Little Big Horn Battlefield National Monument, I jotted that the Seventh Cavalry's "heroic defense made the nation yearn for details that no white man lived to tell." Many years later, I learned that Custer's men were wiped out in part because the Army quartermaster refused to permit them to carry repeating rifles — which supposedly wasted ammunition. The Indians didn't have a quartermaster, so they had repeating rifles, and the rest is history.

The Jamboree was held at a state park near Coeur d'Alene in the rugged mountains of northern Idaho.

Even in mid July, the ground seemed frozen when I hammered in tent pegs. The biggest surprise was that the water for showers was piped in directly from the Arctic Ocean — or so it felt. But those were minor aggravations quickly forgotten in the thrill of swapping stories and patches with guys from around the nation.

On the Jamboree's first evening, all the attendees marched into a massive arena for opening ceremonies. I found myself immersed in the biggest herd I ever encountered — 35,000 people, all dutifully striding in the same direction. Being pulled into that vortex literally made me gasp for breath.

Scouts listened to Up with People, a singing group created as an antidote to "student unrest and complaining about America."

Each troop at the Jamboree presented historical or cultural skits from their area. My troop relied on hillbilly humor and ballads — offerings which left me cold. The troop's musical presentation had nothing of the robust bluegrass spirit of Bill Monroe or Flatt and Scruggs.

The Idaho Jamboree occurred one month before the Woodstock music festival. Instead of tens of thousands of people chanting anti-war slogans, the Scouts roared when they heard Richard Nixon's message hailing their idealism. Instead of acres of half-naked hippies, the Scouts were protected by "uniform police" who ensured that every boy wore a proper neckerchief at all times. Instead of Joan Baez belting out "We Shall Overcome," the Scouts listened to Up with People, a 125-member singing group created as an antidote to "student unrest and complaining about America."

When the time for the final night's grandiose assembly arrived, I could not tolerate another mass march. I forged a press pass and entered the amphitheater early to get near the main stage to take pictures. The photos came out lame but it was small price to avoid re-immolation in a multitude.

That final ceremony included a presentation by the camp chief on the seven-point statement of commitment to help attendees carry the lessons learned into their lives after they returned home. One of the points warned against the "weakening of youth's self-respect by the increasing use of drugs, tobacco, and alcohol." Perhaps inspired by that admonition, I did not start smoking cigars until I turned 15.

Lessons

The Shenandoah Area Council troop remained at the site one day after the Jamboree formally ended. On my final evening in Idaho, I took off alone rambling over the vast, nearly-empty tract — cherishing the lush mountains, the sky-high pine trees, and a few precious uncrowded hours. That trip definitely taught me to better appreciate solitude.

While the Jamboree celebrated authority and obedience, a different theme emerged some miles to the north 23 years later. "Ruby Ridge" became notorious after U.S. marshals killed 14-year-old Sammy Weaver and an FBI sniper slew Vicki Weaver as she stood in her cabin door holding her baby. Federal prosecutors insisted that Randy Weaver's family's move from Iowa to Ruby Ridge proved they were conspiring to have an armed confrontation with the government. Actually, moving to northern Idaho was more akin to relocating to Mars. The wrongful killings and lies that permeated that case convinced millions of Americans that Washington was profoundly untrustworthy. My writings on the case were denounced by FBI Director Louis Freeh: "Mr. Bovard insults the courageous men and women agents of the FBI when he suggests that they would 'wantonly shoot private citizens based on mere suspicion.'"

> Every Boy Scout meeting opened with a pledge to "do my duty to God and country."

After the Idaho trip, I lingered in the Scouts long enough to finish the requirements for Eagle rank. The official Eagle Scout pocket card included Nixon's signature as "honorary president" of the Boy Scouts of America. I should have kept that card with me to display during frequent encounters with the police in the following years. The Scouts presented Nixon with their highest civilian award — the Silver Buffalo — at the same time his aides commenced clandestine operations that would soon make "Watergate" a household word.

The Scouts were in favor of freedom as a traditional American value — just as long as no one stirred up any trouble. Every Boy Scout meeting opened with a pledge to "do my duty to God and country." But the more obedience I vowed, the more dubious I became.

The motto for the 1969 Jamboree, for instance, was "Building to Serve." But I later wondered: Building to Serve whom? The Jamboree

put one government official after another on a pedestal, starting with Secretary of Health, Education, and Welfare Peter Finch and extending to anyone with a 3+ word title. Letting politicians define the goals and terms converted service into a recipe for servitude.

I became leery of the Scouts' endless paeans to leadership. Supposedly, if we all rallied around the leader, everything would always work out fine. "Leadership" often meant simply a knack for herding other people in the direction authorities approved. The prouder of being leaders Scouts were, the more willingly they sacrificed themselves for their superiors. How many boys who attended the Jamboree later pointlessly died in Vietnam? They perished as martyrs to political garbage — in part because of the Scout doctrines they imbibed.

Scouting also made me wary of tub-thumping benevolence. The more good deeds people supposedly performed, the more deluded they sometimes become. And the resulting "moral body count" often was as dubious as the government-program success statistics that I began debunking as a journalist a dozen years later.

On the cheerier side, Scouting made me more of an outdoorsman and accustomed me to ignoring paltry pains — i.e., aches that were not completely debilitating. When I spent a summer hitchhiking around Europe in 1977, I used the same plastic tarp and sleeping bag that served me well with the Scouts on the Appalachian Trail. The European jaunt required constant juggling and jerry-rigging, from sleeping by the side of the road and waking up raring to go, to limping away from an 18-wheel truck crash that obliterated the mini-car I was riding in. Thanks to Scouting, I learned to see minor hardships simply as transaction costs for great adventures. And that Idaho trip vivified that the playing field of life was far bigger than Front Royal — or even Virginia.

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

NEXT MONTH:
"The Fraudulent Obama War on Corruption"
by James Bovard

The Right to Hire and Fire

by Laurence M. Vance

Do businesses have the right to hire whomever they want for a particular job? Most Americans would agree that they certainly do. But when you ask the same people whether businesses have the right to not hire whomever they don't want for a particular job, most of them will say that it depends on the reason someone is not hired. And the same thing is true if you ask the typical American whether businesses have the right to fire whomever they want from a particular job. Most of them will say that it depends on the reason someone is fired.

If you really want to complicate matters when it comes to hiring and firing, just introduce the subject of religion. What role, if any, can or should religion have in the hiring and firing process? Obviously, if someone is interviewing for a position as a minister of some sort, then everyone expects, and everyone accepts, that a Catholic church will hire only a Catholic, a Unitarian church will hire only a Unitarian, a Jewish synagogue will hire only a Jew, an Islamic mosque will hire only a Muslim, and an evangelical church will hire only an evangelical. But other than that, most Americans would say that a person's religious beliefs and practices should never have anything to do with whether someone is hired or fired, while some Americans would continue to say that a person's religious beliefs and practices might have something to do with whether someone is hired or fired.

In a free society, is it possible to be illegally not hired? Is it possible to be unjustly not hired? The first question must always and everywhere be answered in the negative. And of the second question it can only be said, Perhaps in certain situations. However, in a free society, things are not the same when it comes to firing. Is it possible to be illegally fired? Is it possible to be unjustly fired? This time, of both questions it can only be said, Perhaps in certain situations. The other question to be considered is how

religion affects the legality and justness of hiring and firing. The short answer is, in a free society, it doesn't.

Much of this runs contrary to the thinking of most Americans, and especially those focused on anti-discrimination laws and religious exemptions instead of freedom and property rights. But first, let's look at some recent firings that did take place and some hirings that didn't.

Firings

A number of high-profile firings have taken place over the past year — many related to religion in some way.

ESPN baseball analyst Curt Schilling was fired in April of this year after commenting in a Facebook post in support of a North Carolina law that bars transgender people from using bathrooms and locker rooms that do not correspond to their birth sex. "ESPN is an inclusive company," said the network in a statement. "Curt Schilling has been advised that his conduct was unacceptable and his employment with ESPN has been terminated."

Also in April of this year, the presiding bishop of the Episcopal Church, Michael Curry, fired two top executives for failing "to live up to the church's standards of personal conduct in their relationships with employees." The deputy chief operating officer and the director of public engagement and mission communications were accused of misconduct and put on administrative leave late last year. The exact complaints against the two men have not been made public.

"Curt Schilling has been advised that his conduct was unacceptable and his employment with ESPN has been terminated."

In February of this year, the University of Missouri board of curators voted 4-2 to fire communications professor Melissa Click for failing to meet the standards expected of faculty members after she was captured on video in a confrontation with a police officer and a student journalist during a campus protest last year over racial issues. She was charged with misdemeanor assault after the skirmish, and had been suspended with pay from the school since January 27. In a statement, Click said she apologized for her behavior but would not apologize for her "support of black students who experience racism at the University of Missouri." Click claims that she was fired without due process when the university's

board of curators "overstepped their authority." She has appealed her firing and is now getting support from the American Association for University Professors.

Late last year, Wheaton College, an evangelical liberal arts college of about 3,000 students about an hour west of Chicago, placed on leave one of its political-science professors. Associate Professor Larycia Hawkins was put on paid administrative leave "in order to give more time to explore theological implications of her recent public statements concerning Christianity and Islam." Hawkins had posted on Facebook a statement to the effect that Christians and Muslims worship the same God. She first came to her employer's attention after she wore a hijab (a Muslim veil) as an act of solidarity with Muslims, although the college maintains that her suspension "resulted from theological statements that seemed inconsistent with Wheaton College's doctrinal convictions, and is in no way related to her race, gender, or commitment to wear a hijab during Advent." Following an impasse between the professor and the administration, a "Notice of Recommendation to Initiate Termination-for-Cause Proceedings" was given to Hawkins in January. In February, the college and the professor "found a mutual place of resolution and reconciliation" and "reached a confidential agreement under which they will part ways."

About 150 Muslim workers were fired from their jobs at a Colorado meat-packing plant after staging a walkout.

Also late last year, about 150 Muslim workers were fired from their jobs at a Colorado meat-packing plant after staging a walkout after a dispute over the accommodation of prayer in the workplace. Cargill Meat Solutions says it "makes every reasonable attempt to provide religious accommodation to all employees based on our ability to do so without disruption to our beef-processing business." Since 2009, the company has had two "reflection rooms" for prayer at its Fort Morgan plant. The plant employs about 2,000 people, including more than 400 immigrants from Somalia. During a shift on a Friday, eleven employees requested to go to prayer together. After being told that they needed to go in smaller groups, all of the employees went to prayer together, but ten resigned at the end of the shift. On the following Monday, approximately 200

employees refused to show up for work, apparently fearing that the company wasn't allowing some workers to take prayer breaks. Cargill said it fired the workers, after "multiple attempts were made to discuss the situation with local Somali employees and union representatives" without a successful resolution. According to company policy, "Employees that do not show up for work, or call in, for three consecutive days were at risk of termination of their employment."

Hirings

But it's not just firings that have made national news over the past year. Late last year, the Massachusetts Superior Court ruled against a Roman Catholic school in the state that had withdrawn an offer of employment to a man when he identified another man as his husband.

Fontbonne Academy is an all-girls' preparatory high school in Milton, Massachusetts, sponsored by the Congregation of the Sisters of Saint Joseph of Boston. The school's stated mission is "the education of young women rooted in gospel values and the teachings of the Catholic Church." After Matthew Barrett was hired as the food-service director at the school, he listed his "husband" as an emergency contact person on a "new employee" form. But because hiring someone in a same-sex relationship was deemed to be inconsistent with both the teachings of the Catholic Church and the school's policy that all employees be role models for the students, his employment offer was rescinded. With the help of Boston-based GLBTQ Legal Advocates & Defenders (GLAD), Barrett filed a complaint with the Massachusetts Commission Against Discrimination. The case ended up in Massachusetts Superior Court in May 2014. There, Justice Douglas Wilkins ruled in *Barrett v. Fontbonne Academy* that the school had illegally discriminated against Barrett on the basis of his sexual orientation and gender.

> The Massachusetts Superior Court ruled against a Roman Catholic school that had withdrawn an offer of employment.

After the decision, Barrett's attorney issued a press release stating, "Religiously affiliated organizations do not get a free pass to discriminate against gay and lesbian people. When Fontbonne fired Matt from a job that has nothing to do with religion, and simply because he is mar-

ried, they came down on the wrong side of the law." However, the executive director of the Catholic Action League, C.J. Doyle, remarked that "religious freedom consists not merely of the right of worship, but of the right of religious institutions to govern their internal affairs free of state interference." He also commented that the judge's ruling "would compel Catholic institutions to hire those who reject and despise Catholic teaching, fatally impairing the constitutionally protected right of those institutions to carry on their mission. This is precisely the sort of 'excessive entanglement' of government with religion decried and prohibited by the U.S. Supreme Court."

> In a free society, no one could illegally not be hired, ever.

Earlier, there was the case of the Muslim girl who claimed that she wasn't hired for a job at an Abercrombie & Fitch store because she wore a hijab to her job interview. She complained to the Equal Employment Opportunity Commission (EEOC), which filed a lawsuit against Abercrombie. After winning her case at the federal district court level and then losing at the U.S. Court of Appeals, she won an 8-1 U.S. Supreme Court decision against Abercrombie & Fitch in 2015 — seven years after she initially applied for the job.

Hiring

As it stands now in contemporary society, if someone from the ever-growing list of protected classes (women, minorities, veterans, handicapped, ex cons, pregnant, elderly, LGBT, et cetera) is not selected for a particular job, ultimately denied employment at some point in the hiring process, or is not interviewed for a job that he has applied for in the first place, he can allege that he was illegally discriminated against and file a complaint against his potential employer with a state or federal "equal-opportunity" agency or commission.

But in a free society, no one could illegally not be hired, ever. That is because no one has the right to any particular job no matter how qualified he is. It doesn't matter how much experience someone has, how much talent he has, how much education he has, how much seniority he has, how much skill he has, how many recommendations he has, or how much knowledge he has — he still doesn't have the right to be offered a particular job. It doesn't matter how healthy he is,

how little pay he is willing to work for, how honest he is, how hard a worker he is, how punctual he is, or how much of an asset he would be in some position — he still doesn't have the right to work for a particular company.

That means that, in a free society, business owners, and their agents, have the absolute right of discrimination in hiring. In a free society, employment discrimination must be permissible for any reason: race, creed, color, religion, national origin, ancestry, sexual identity, health, disability, height, weight, sex, age, pregnancy, marital status, sexual orientation, political ideology, ability, experience, education, socio-economic status, criminal record, hair color, facial hair, et cetera. And in a free society, discrimination must be permissible on any basis — including stereotypes, prejudice, hate, "sexism," xenophobia, "homophobism," bigotry, or racism — no matter how insensitive, unfair, erroneous, illogical, irrational, nonsensical, or unreasonable the basis is, or is perceived to be.

And as it relates to religion, in a free society, religious institutions would not need to be granted certain exemptions to allow them to practice discrimination in hiring for positions in which religion is an integral part of the position — like a church minister or a seminary professor. Just as any other business or organization, they would be permitted to discriminate on the basis of religion or anything else for any position — from president on down to janitor — on any basis and for any reason. At least in a free society they would.

But discrimination can work both ways.

In a free society, business owners, and their agents, have the absolute right of discrimination in hiring.

While government agencies and public institutions have no business hiring on the basis of some Affirmative Action guidelines — that is, giving preferential treatment to someone on the basis of his race, color, national origin, or ethnic group — it doesn't follow that preferential treatment in hiring on the basis of those or any other criteria couldn't be practiced in a free society by the private sector. If a private entity — from a large corporation on down to a small family business — wanted to hire only people of a particular race, religion, age, or sexual orientation — and discriminate against all others — in a free society it would be perfectly free to do so.

The case of Matthew Barrett, the man in a same-sex relationship who was denied employment by a religious institution, is a simple one. In a free society, the school that interviewed him and offered him a position could ultimately not hire him for any reason or no particular reason. The religious orientation of the school and the sexual orientation of the applicant are irrelevant.

There is no right to stay employed in a particular job.

How, then, could someone be unjustly not hired? The only possible way is for some agent of a business owner to disregard any hiring guidelines he is given to follow. Suppose, for example, that a business owner wants an ethnically diverse work force because he reasons that it might be better for business, believes that there is strength in diversity, or thinks it makes a great public-relations statement. But suppose also that the business owner's personnel manager whom he has entrusted to actually do the hiring for the business is a closet racist and disregards the business owner's instructions and hires only applicants who look and sound just like him. Then it might be said that an otherwise qualified applicant was unjustly not hired. But, since no one is entitled to any particular job, in a free society there would be no legal recourse available to the applicant. The disconnect between a business owner's wishes and a personnel manager's practices is an internal company matter. It would be entirely up to the business owner to make sure his wishes are carried out. A personnel manager who does not follow company hiring guidelines could simply be fired. Or could he?

Firing

Just as there is no right to become employed in a particular job, so there is no right to stay employed in a particular job. Yet, the question of firing is somewhat different from that of hiring.

No one objects to someone's being fired "for cause": theft, embezzlement, financial mismanagement, serious violation of some company policy, et cetera. And it is also reasonable that any position at a private company — from a large corporation on down to a small family business — held by any employee — from president on down to janitor — could be protected in some way by a union or employment contract, a tenure or seniority system, certain policies and proce-

dures, or simply an agreement of some kind. Such things are true now, and would be equally true in a free society. But barring any of those situations, the right of an employer to fire an employee is absolute, even without "cause." At least in a free society it would be.

Schilling was sacrificed to appease the gods of political correctness; in a free society, businesses have the right to make such sacrifices.

That means that, in a free society, employers would have the right to discriminate against current employees just as they do against potential employees. Employment discrimination would be permissible on any basis and for any reason. Only those whose job is protected in some way would have any legal recourse if they were fired. Only they could be illegally fired.

Now, once someone is employed, it is much less likely that he would be fired because of his race, sex, age, or some other physical characteristic. If an employer had some objection to the way an applicant looked, he would simply not hire him in the first place. But as ridiculous as it sounds, and as uncomfortable to employees as it might be, in a free society, a business owner could conceivably fire one of his employees after waking up one day and deciding to rid his work force of those with red hair or green eyes or tattoos. (It sounds no more ridiculous than that a business might have to enact a quota system and hire personnel on the basis of race or sex to avoid harassment by federal and state anti-discrimination bureaucrats and regulators.) The issues of religion, sexual orientation, health, and other matters that may not be outwardly apparent, would be more likely to cause an employee to lose his job at some point after the hiring process. So again, in a free society, a business owner could conceivably fire one of his employees after waking up one day and deciding to rid his work force of smokers or homosexuals or Presbyterians.

The case of the recent high-profile firing of ESPN baseball analyst Curt Schilling, who some people thought offended transgender persons, is likewise a simple one. Even though Schilling was sacrificed to appease the gods of political correctness, in a free society, businesses have the right to make such sacrifices.

How, then, could someone be unjustly fired? Again, the only pos-

sible way is for some agent of a business owner to disregard any firing guidelines he is given to follow. And again, since no one is entitled to any particular job, in a free society there would be no legal recourse available to the employee. It is entirely an internal company matter. All illegal firings are unjust, but not all unjust firings are illegal.

In conclusion, because no one has the right to any particular job, a free society must include the right of employers to hire and fire employees at will, without any interference from the government.

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NEXT MONTH:
"Government Licensing or Private Certification?"
by Laurence M. Vance

Do not train boys to learn by force and harshness, but lead them by what amuses them, so that they may better discover the bent of their minds.

— Plato

The *Legal Tender Cases*

by David S. D'Amato

In the December term of 1870, the Supreme Court considered the constitutionality of a statute authorizing the issuance of U.S. notes (or "greenbacks") and making those notes "legal tender in payment of all debts, public and private." That statute, the Legal Tender Act of 1862, was signed into law less than a year after the introduction of the nation's first federal income tax, a time of transformation during which the government of the United States seized an alarming host of new powers. As historian Jeffrey Rogers Hummel contends, the Civil War was "the great watershed in American history," the point at which the trend of "long-term, secular erosion of power at all levels of government" reverses. The Court's opinion in the *Legal Tender Cases* foreshadows a willingness to yield to the accretion of power in the federal government; in the years to follow and throughout the next century, ever fewer fundamental rights, particularly economic rights, would rate serious judicial review, the judiciary increasingly acquiescing to government abuses of power.

But the *Legal Tender Cases* were not the first time that the Supreme Court would consider the constitutionality of the Act. In 1869, the Court heard arguments in *Hepburn v. Griswold,* a suit involving the Act's impact on a promissory note executed prior to its passage. In 1860, Susan Hepburn had promised to pay Harry Griswold the sum of 11,250 dollars on February 20, 1862, "dollars" having always signified denominations of gold or silver. Passed just five days after the note fell due, the Legal Tender Act was a response to the enormous fiscal stresses of the on-going Civil War, an unprecedented catastrophe rapidly depleting the federal coffers. The law authorized the secretary of the Treasury to print $150 million in greenbacks, the equivalent of almost $3.6 billion today; and that number would be tripled before the war had reached its conclusion, with subsequent authorizations in June 1862 and March 1863.

When Griswold sued in early 1864, Mrs. Hepburn tendered payment in greenbacks. The Supreme Court was called upon to decide, in essence, whether the Legal Tender Act could retroactively alter the terms of the parties' debt instrument.

In a most improbable twist of fate, the man who wrote the opinion of the Court, Chief Justice Salmon P. Chase, had been Lincoln's secretary of the Treasury from 1861 to 1864, during which period the Act under challenge was passed. For Chase, the federal government's issuance of paper money was not so very troubling or minacious, at least not on its own. The government had possessed this power even under the Articles of Confederation. Chase instead worried about the Act's investing of this paper money with legal-tender status, a quality empowering it to alter the terms of existing private contracts by requiring acceptance of the government's notes "as settlement of debts even by those who stipulated in their contracts for payment in specie." Whether such an expansive power was "necessary and proper," appropriately connected to the execution of a power explicitly granted in the Constitution, was not at all clear. Noting that the Court "approaches the consideration of questions of this nature reluctantly," Chase's majority opinion stresses that any benefits associated with the statute were far outweighed by "the long train of evils which flow from the use of irredeemable paper money." Among them is the deprivation of property that attends the interference with contracts, which, Chase holds, are a protected property interest just like any other. As Randy Barnett observes, the *Hepburn* opinion thus embraced a rather libertarian substantive due-process theory, concluding that the Due Process Clause safeguarded the economic rights at issue in the case regardless of the validity of the procedural steps.

Chase worried about the Act's investing of this paper money with legal-tender status.

That gives the lie to the claim — to which both conservatives and progressives cling — that substantive due process was simply invented out of whole cloth much later to serve political or ideological agendas. Whether or not the doctrine belongs in constitutional jurisprudence, it seems to be of much older vintage than many of its detractors would have us believe. Thus did the man who oversaw the issue of hun-

dreds of millions of U.S. notes during a pivotal moment in the nation's history now declare it unconstitutional to call them legal tender. Had his views changed? Chase readily admitted that the exigencies and apprehensions of the war yielded conditions "not favorable to considerate reflection upon the constitutional limits of legislative or executive authority."

Nevertheless, the *Hepburn* decision's vindication of liberty was not only remarkably short-lived but apparently was little trusted or relied upon. Indeed, as legal scholar Joseph M. Cormack wrote in 1929, "the public [so] expected that the legal tenders would yet be held constitutional" that the price premiums on precious metals did not react at all to the announcement of the decision in *Hepburn.*

The reversal

Decided in 1871, the *Legal Tender Cases* were actually two actions in which the Legal Tender Act affected the existing financial arrangements of the parties. The facts of the first case, *Knox v. Lee,* are similar in one important respect to those of *Hepburn.* In both cases, parties relied on the argument that the Legal Tender Act — by either permitting accounting in or forcing the acceptance of greenbacks — would deprive them of the difference between the value of those notes and that of specie money.

The *Hepburn* decision's vindication of liberty was remarkably short-lived.

In the first case, the plaintiff, Mrs. Lee, sued Knox for "taking and converting [her] sheep," which he had purchased from the Confederate government in Texas during the Civil War; the Confederates had confiscated the flock in 1863, considering the sheep the "property of an 'alien enemy,'" because Mrs. Lee was a resident of Pennsylvania.

In the second of the two cases, *Parker v. Davis,* Davis brought suit on an agreement for the purchase and sale of real property, asking for specific performance of the contract, for a court order instructing Parker to convey the land. The parties' contract was properly executed before the Legal Tender Act became law, but an order of the supreme court of Massachusetts following the passage of the law instructed Davis to "pay into court a certain sum of money," with Parker "thereupon execut[ing] a deed to him of the land in question." Davis tendered payment in greenbacks, and

Parker argued that he was entitled to payment in "coin," by which he meant gold or silver dollars. After another hearing, the supreme court of Massachusetts disagreed with Parker and ordered him to accept payment of a "specific sum in notes of the United States."

Political expediency drives monetary policy far more than does high theory.

Writing for a 5-4 majority, Justice William Strong wrote that "Congress [can] constitutionally give to treasury notes the character and qualities of money," and, reasoning further, that therefore the notes must retain that character even as applied to agreements made before the Act became the law of the land. Signaling his deferential understanding of the Court's role, Strong says that "[a] decent respect for a co-ordinate branch of the government" demands a presumption that Congress has not transgressed its power. Strong's opinion considers the meaning of the Necessary and Proper Clause and employs the idea, borrowed from Justice Joseph Story's *Commentaries on the Constitution,* of "resulting powers" — those deriving from the "aggregate powers" of government.

In light of this theory, the portion of the Constitution's text that grants to Congress the power to coin money and regulate its value should not be taken to limit the legislature to only those tasks, to prevent it from making U.S. notes legal tender. Rather, Strong insists, Congress has "very wide discretion," sanctioned by the Supreme Court in the past if it has even been questioned at all. As Richard Epstein notes, "The broad construction of the Necessary and Proper Clause in the *Legal Tender Cases* was instrumental in allowing Congress to create the Federal Reserve System of 1913." The Supreme Court's divergent opinions in *Hepburn* and the *Legal Tender Cases* remind us that, though they seem to be the impenetrable province of academics and experts, questions of monetary policy are always bound to practical legal and political considerations. Political expediency drives monetary policy far more than does high theory.

Fatal conceit

The policy questions surrounding money and banking have always been of special import to libertarians. Our fascination, radiating from a deep desire to go to the root, to answer the fundamental ques-

tions about government's relationship with the economy, has split us into various groups — champions of the gold standard, monetarists of various kinds, mutualists, and modern free bankers such as Lawrence H. White and George Selgin, among many other camps. Despite our theoretical disagreements, we tend to unite around the argument that the coercive, centralized power of government monopolies in the banking system ought to be dramatically reduced or abolished altogether. One's decisions regarding the means and terms of payment that will be acceptable to him ought to be left to his judgment — and likewise for all others.

Free markets mean not only the unobstructed exchange of goods and services themselves, but also the right of all persons to *contract* freely, that is, to choose the terms upon which exchange takes place, from payment to insurance and shipment. Certainly some contracts and terms are unconscionable, unacceptable to a free and civilized society; contracts for an illegal purpose, such as contracts for murder, are among them. But for an individual person to be fully and truly sovereign, free from arbitrary encroachments upon his legitimate sphere of action, he must retain the right to decline monies not agreeable to him, even those bearing the imprimatur of political authority. By outlawing this important right, legal tender laws privilege the state's currency, arbitrarily granting it a monopoly status that necessarily yields systemic risk. As Murray Rothbard explains, legal tender laws "arbitrarily [designate] what is meant by 'money' even when the creditors and debtors themselves would be willing to settle on something else." Where competition among currencies would mean a constant reassessment of the relative merits and liabilities of each, legal tender monopolies cut off the exit, thereby damning all economic actors to participate in a great fraud.

Free markets mean the right of all persons to *contract* freely.

Pay no attention to the fact that Federal Reserve notes may be printed ad infinitum, that a small group of bureaucrats is empowered to tweak the dials of the money supply as if they were omniscient demigods with access to secret knowledge. They are not, of course, and their extraordinary powers are another example of the conceit that a small group of special experts can successfully plan an economy.

In fact, there is no economy, no discrete thing to which we might address our complaints about, for instance, the rates of unemployment or inflation. The economy, so called, is billions of people, trillions of dollars, an endless ocean of products, parts, contingencies, and contracts, all in unceasing, perpetual motion. No one could hope to fully understand the complexity of even one of its sectors, much less correctly allocate resources from on high. It is a mistake to regard libertarians as starry-eyed free-market fundamentalists who have too much *trust* in the invisible hand, credulous to the point of being devout. It is our appreciation of how very little we can know about the economic phenomena surrounding us that leads us to question centralization and planning. The libertarian is, economically speaking, a doubting Thomas. He has trouble believing that anyone (or any group, agency, or bureau) could possess the knowledge and genius necessary to bring so many moving parts into concert. The best we can do, which turns out to be really very good indeed, is to leave each individual free to order his own affairs according to his own interests as he perceives them — insofar as he leaves everyone else equally free.

Today, a constitutional challenge to the legal tender status of Federal Reserve notes is almost unimaginable. Indeed, most people can't even imagine a system in which any entity *but* government would be empowered to issue money. Fortunately, thanks to new technologies, it may be that now neither a constitutional revolution nor a legislative one will be necessary to effect something more like a libertarian system of free money and banking. The liberating power of experimentation and innovation is changing our conceptions of money and opening new outlets for free and voluntary exchange. In his opinion in *Hepburn,* Justice Chase offered a word of caution about "power ... assumed from patriotic motives." In a world in constant economic flux, policymakers would do well to heed Chase's words, to leave the free sphere of society to do what it does best.

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Immigration Controls Are Socialist

by Jake Desyllas

In the classical-liberal age of 19th-century Europe, there were no immigration controls. Here is how Gustav Stolper — a German economist, classical liberal, and an immigrant — described the world he had known:

> This economic and social system of Europe [before 1914] was predicated on a few axiomatic principles. These principles were considered safe and unshakable…. They were freedom of movement for men, for goods, and for money. Everyone could leave his country when he wanted and travel or migrate wherever he pleased without a passport. The only European country that demanded passports (not even visas!) was Russia, looked at askance for her backwardness with an almost contemptuous smile. Who wanted to travel to Russia, anyway?

The liberal thinkers of the 19th century got a few things wrong, but they were steadfast in their defense of a free market in labor. They upheld freedom of migration as an axiomatic principle, as Stolper put it. They won the argument. And they lived in a time of unprecedented peace and economic growth.

New generations of libertarian thinkers have corrected some inconsistencies in the theories left to us by the classical liberals. However, when it comes to the free market in labor, libertarians are now divided and confused in a way that would have baffled the classical liberals.

We now have closed-border libertarians, who argue that democratic welfare states have immigration controls that are *too lax*. They charge politicians with allowing *too much* immigration, compared with the highly restricted level that they believe would be allowed in a private-property society.

Closed-border libertarians consider it just for the state to heavily restrict immigration across arbitrary international borders because, they argue, this would be the kind

of action that a private community landowner would take.

Since we don't live in a truly private-property society, how do closed-border libertarians know what a private community would do regarding immigration? They suggest that we can look at monarchies as a proxy for the behavior of true private-property landowners. The argument is that since monarchs "own" their countries, they behave more similarly to private-property landowners than democratic states do.

Well, if you believe that the state should act like a private landowner with regard to immigration, look at what the monarchs of the 19th century did. They did zip. They didn't even ask to see your passport.

The monarchs who ran Europe in the 19th century allowed completely free migration. And they did so in a time of far higher violent crime levels, when there was objectively more to fear from strangers. The monarchies were far more open to migration than the welfare-state democracies that followed them.

The liberal economic system of the 19th century collapsed with the First World War, which was the beginning of the new era of democratic welfare states, and all the interventionism that came with it. The wars and protectionism of the interventionist states in the 20th century destroyed much of the economic integration and progress of the 19th-century liberal age.

Immigration controls are an integral component of the interventionist state.

Immigration controls were just one aspect of this wider regression — from economic freedom into socialist protectionism. The damage was huge. World trade as a share of world output did not recover to its pre–1913 level until the 1970s.

So closed-border libertarians have got it backwards. Interventionist states do not promote immigration; in fact the opposite is true. It was the rise of the democratic welfare states, with all their controls and permits, that created immigration controls in the first place. The European monarchs who reigned before them maintained open borders.

Immigration controls are an integral component of the interventionist state — it cannot survive without them. As Harry Browne said, "Libertarians know that a free country has nothing to fear from anyone coming in or going out, while a welfare state is scared to

death of poor people coming in and rich people getting out."

In the early stages of interventionism, the emphasis is on keeping immigrants out. When state interventionism gets more intense, the emphasis switches to preventing citizens from leaving — as was the case in the USSR and all the Eastern European socialist countries.

It is true that socialist policies cannot survive free migration. Welfare states are inherently unsustainable — the problem is not the immigration; the problem is the socialist economic policies of the state. Do you advocate dismantling socialist controls? Or do you advocate propping up an unsustainable welfare state with the protectionism of immigration controls?

Ludwig von Mises, the classical-liberal economist (and immigrant) never sank to ad hoc endorsement of statist migration controls. He knew that they are antithetical to a free society. As he put it, "Without the reestablishment of freedom of migration throughout the world, there can be no lasting peace." If libertarians today do not take a principled stance on such issues, there is little hope of our convincing anyone else to work towards a free society.

Merely because you live in a welfare state, you do not have to adopt a welfare-statist mentality and argue that people should be prevented from changing their home because they might take benefits from the state. Endorsing the state's aggressive intervention in labor markets is unprincipled.

If you are against welfare, make the argument against the welfare system, not against immigrants on the basis that they might someday take welfare. If you are worried that immigrants might vote for politicians you dislike, be consistent and argue against the legitimacy of anyone's voting to take your money, not just someone who recently moved.

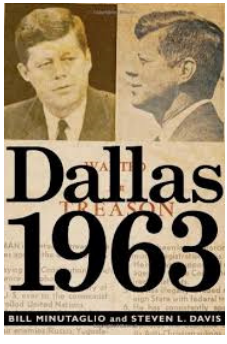
We have a common enemy — the interventionist state. People moving from one home to another across an artificial line are not initiating aggression. They are not the enemy. Nineteenth-century classical liberals knew that. It's a shame that so many modern libertarians have forgotten it.

Jake Desyllas writes about entrepreneurship, financial independence, and freedom. You can find his books at jakedesyllas.com and his podcast, The Voluntary Life, *at thevoluntarylife.com.*

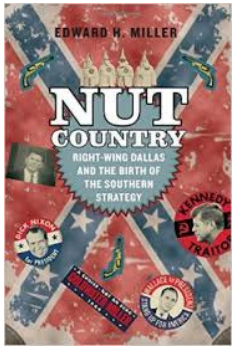
Dallas, Texas: Nut Country, 1963

by Michael Swanson

Dallas 1963, by Bill Minuteaglio and Steven Davis (Twelve, 2013), 384 pages.



Nut Country: Right-Wing Dallas and the Birth of the Southern Strategy, by Edward H. Miller (University of Chicago Press, 2015), 256 pages.



History doesn't repeat, but sometimes it seems to rhyme and with the sudden and surprising rise of Donald Trump in the Republican primaries this year that may seem to be truer than ever before to students of American conservatism. Every dozen years or so, a group of books are written that study the radical fringes of the conservative movement to diagnose it and label it as a danger to freedom.

Although some commentators on the Internet and the press have been doing that with Donald Trump and his supporters, such books have not been written yet about this election cycle. Although I expect they will be, you do not have to look too far back in time to see books with titles such as *The Party of Fear* with the subtitle "The American Far Right from Nativism to the Militia Movement," written during the Clinton administration. Among academic historians, influential works such as *The Politics of Rage: George Wallace*, *The Origins of the New Conservatism,* and *The Transformation of American Politics* traced the rise of what they called a "Southern strategy" to win elections by the Republican Party that appealed to the racial views of white voters. Democratic Gov. George

Wallace of Alabama infused opposition to the black civil-rights movement with states' rights to win elections in the 1960s, while Barry Goldwater was the first Republican presidential candidate to sweep the deep South states of Georgia, Alabama, Mississippi, and Arkansas in the 1964 election with his opposition to the Civil Rights Bill of 1964.

In the 1960s there was a brand of radical conservativism that has disappeared down the memory hole.

Barry Goldwater lost the 1964 presidential election, but Richard Nixon in 1968 won by campaigning on "law and order." Republican Party operatives Harry Dent, Pat Buchanan, and Kevin Phillips helped Nixon alter the "Southern strategy" to make the election indirectly about race. Phillips even laid out the entire game plan in a book titled *The Emerging Republican Majority,* which said that Republicans would have to make appeals to Southern white voters to win presidential campaigns from then on.

It has been common over the years to see commentators that support the Democratic Party label the entire conservative movement as based simply on racial fears or even see it as potentially dangerous. And now that Donald Trump has done better than anyone expected in the Republican presidential race, even establishment Republicans are portraying the Trump campaign as one that plays on people's irrational fears. And libertarian thinkers such as Jeffrey Tucker see Trumpism as a form of the fascist movements of the 1920s and 1930s.

We can better understand the present by looking at the past. In the 1960s there was a brand of radical conservativism that has disappeared down the memory hole. It was a conservatism that was in opposition to the civil-rights movement, because it saw it as a communist-controlled movement bent on destroying the nation. It also saw communist agents at work inside the federal government who were bent on bringing a Cold War defeat to the country. It focused on traitors inside the country and sought to expose them and root them out. Joseph McCarthy and the John Birch Society remain the most famous representatives of that type of thinking. Even though McCarthy faded away in the 1950s, the movement continued into the administration of John F. Kennedy during the tensest hours of the Cold War. Books were written during the

Goldwater campaign with titles such as *Danger on the Right,* by Arnold Foster, that sought to expose the movement and label Goldwater a danger to democracy, because members of this movement supported him.

The book *Dallas 1963* tells the story of right-wing radicalism in Dallas.

And it did seem dangerous at the time. On the day that Kennedy was assassinated in Dallas, Texas, leaflets were distributed in the streets of that city proclaiming him to be "Wanted for Treason" for selling out the country to communism. Just weeks before, U.S. Ambassador to the UN Aldai Stevenson visited Dallas and was accosted by right-wing protestors who hit him with a sign. He warned Kennedy not to visit the city and so did Dallas retail businessman Stanley Marcus.

Dallas 1963

The book *Dallas 1963* tells the story of right-wing radicalism in Dallas during those years. Written by two journalists living in Texas today, this lively and very readable book shows how Dallas was indeed the capital of the American far Right during the early 1960s and gives you a window into the thinking prevalent among leaders and activists of the right wing there. And it was indeed a real movement that included a few billionaires, a couple dozen politicians, and several thousand housewives holding regular meetings in their homes across the country.

Dallas oil billionaire H.L. Hunt gave millions of dollars to right-wing causes and operated his own radio network called "Life-Line." He hired a preacher to host the show who proclaimed that "constructives" were devout conservatives, while the "mistaken" were those guiding the United States to communism. One program called the United Nations "a total victory for the international mistaken conspiracy against free men." Ten million people listened to the show every day. They were told that when Kennedy signed a nuclear test-ban treaty with the Soviet Union, he was a communist appeaser. Hunt also sold 20,000 books and had 60,000 newsletter subscribers to his *Facts-Forum News.*

Dallas 1963 uses a month-by-month timeline approach that ends with the assassination of Kennedy to let the reader experience the spirit of this city as it moves towards that date. It is a portrait of right-

wing thinking that borders on crazy. The *Dallas Morning News* called the test-ban treaty the "Moscow Treaty" that was a result of "the much exaggerated fear of atomic fallout." At a White House press dinner with the president, the owner of that newspaper told Kennedy to his face "that we can annihilate Russia and should make that clear to the Soviet government. This means undoubtedly that they can simultaneously destroy us. But it is better to die than submit to communism and slavery."

Gen. Edwin Walker also became a Dallas leader of the far Right. He was serving as head of the 24th Infantry Division in Europe until he got in trouble there for forcing his soldiers to consume a "Pro-Blue" propaganda program based on John Birch Society literature. The information claimed that officials in the White House and the State Department were traitors working for communism. Walker wrote a "Commander's Column" in the division paper telling people whom to vote for and banned the army tabloid *Overseas Weekly* from his base for criticizing him.

Walker, under fire for those activities, resigned from the Army and moved to Dallas. He ran unsuccessfully for governor of Texas and went on a far-right speaking tour with Billy James Hargis's Christian Crusade, which taught that the civil-rights movement and rock-and-roll were communist plots. Hargis had a radio show carried by 500 stations and a newsletter that had 55,000 subscribers.

Billy James Hargis's Christian Crusade taught that the civil-rights movement and rock-and-roll were communist plots.

The far Right of the 1960s was a mass movement and this book attempts to show "how fear and unease can take root, how suspicions can emerge in a seemingly orderly universe. How, as Flannery O'Connor wrote, everything that rises must converge." It shows "how no one — including a doomed president — could have understood the full measure of the swirling forces at work in a place called Dallas." By ending the book with the assassination of Kennedy, it places the blame for his murder on the environment of political unrest.

Nut Country

Nut Country, by Robert Miller, takes a more academic than journalistic approach to understanding this right-wing movement Dallas.

It also claims that it created the "Southern strategy" later adopted by the Republican Party and Richard Nixon. Miller gives a detailed view of the Republican Party in Dallas, explaining that more-moderate people in the party did not like the far-right position that was taking it over at the time. He also accurately shows how the far Right of Dallas were organized around opposition to the black civil-rights movement, anti-communism, and religious fundamentalism. But they infused all of those issues with an end-of-the-world apocalyptic-style rhetoric that really made anti-communism the true glue that linked everything together for them.

But who were those people really? Where did they really come from? It's easy to demonize people who use crazed rhetoric. But in reality apocalyptic language was something that was a part of American culture at the time. Those were the years at the height of the Cold War and a "crisis" presidency, with confrontations with the Soviet Union over Berlin and Cuba that involved dangerous nuclear bluffs on both sides. It was a time in which Americans were told that advisors needed to be sent to Vietnam to stop communist dominoes from falling in Southeast Asia and the Pacific. Even popular science fiction shows of the 1960s such as *The Twilight Zone* aired multiple episodes about the end of the world and nuclear war.

Miller gives a detailed view of the Republican Party in Dallas.

The nuclear confrontation of the Cold War meant constant fear in the air. So it should not be a shock that there was a real mass movement of political passion in the United States during those years. The city of Dallas was itself a product of the Cold War. In 1940 there were 26,700 manufacturing jobs in Dallas. By 1953 there were 75,750 jobs, thanks to a boom in the defense industry. The city grew to 275,000 people by the 1950s, three times faster than the national average. Almost all of that growth came as a result of defense work or contracts with the federal government. Many of the defense jobs were in aircraft plants. In 1942 the Dallas Chamber of Commerce called the city the "War Capital of the Southwest." I would not doubt that the employees fully shared in the values of the Cold War and believed that they were playing a key role in a life-or-death struggle for the world. The far-right rhetoric

was linked to a worship of the state, while at the same time it was suspicious of it.

> The Midwest was a stronghold of Republican opposition to both the New Deal and foreign interventionism.

Thirty percent of the city's employees had upper-middle-class incomes as managers in the oil industry and associated banking institutions. They were in the top tax bracket, paying up to 90 percent of their income to taxes. So they became receptive to Republicans promising to lower taxes. In fact, the far-right movement in Dallas can also be seen as a prototype of the neoconservative movement that operates as today's Republican Party establishment, because it called for lower taxes and limited government at home while supporting aggressive militarism abroad.

Midwestern roots

Miller makes note that many of the people who moved to Dallas actually came from the Midwest. Most of the people who came to Dallas moved there in the 1940s and 1950s from Ohio, Indiana, Missouri, and Kansas. What is interesting to me is that this area of the country was a stronghold of Republican opposition to both the New Deal and foreign interventionism during the Roosevelt years. It is where Republican Sens. Robert Taft and John Bricker were from. They were a totally different brand of Republican from what appeared years later in Dallas with Goldwater and Nixon. The earlier Republican Party leaders were not apostles of Cold War militarism, but of limited government. In fact they were against American intervention in World War II until Pearl Harbor and were against the Marshall Plan and the Cold War arms race started by Harry Truman. They were viewed as isolationists and their strongest geographic area of support was in the Midwest.

Robert Taft wrote a book warning against the dangers of imperial Cold War overreach and was defeated for the Republican nomination for president by Dwight Eisenhower. With his defeat and sudden death a year later from cancer, his strand of Republicanism and conservatism virtually disappeared from electoral politics. During Eisenhower's presidential nomination, activists who supported Robert Taft were purged from the Republican Party. With nowhere to go, some of them went into libertarian think tanks while

others gravitated into far-right groups in opposition to Eisenhower and the moderate Republicans.

I think Edward Miller's book is a good one, but this is not a story he tells in his book. I believe, though, that by looking at events a few years earlier, you can see that the conservative movement in the United States has been a fluid movement and is not simply a result of excess or "Southern strategy." In fact, Nixon's talk of "law and order" and a "silent majority" were just as much about attacking war protestors and making appeals to militarism as they were about making indirect appeals to Southern whites, if not more so. Conservatism has had its twists and turns and changes and I think more can be learned about it by going a little further back in time than by drawing a straight line from today to one of its most radical iterations in 1963 in Dallas.

And that holds a lesson for us today. The Republican Party and conservatism are in flux right now and it is not clear where they are going. As for Donald Trump, unlike the right-wing movement of the 1960s in Dallas, whatever Trumpism is, it is not an organized mass movement. Donald Trump is a master at television, but has no real mass political organization of his own. In Dallas in 1963 there were dozens of groups working together and at times at odds with one another. I personally do not think their beliefs provide much for inspiration, but they had their own media outlets and publications with tens of thousands of subscribers, and that is how they made a real impact. It is something for everyone to learn from, no matter what political views he may have, because in the end the future political direction of both the Republican party and the Democratic party will be decided by a diverse civil society of activists and many groups with different views seeking to influence things when the parties themselves are displaying signs of serious weakness.

The Republican Party and conservatism are in flux right now and it is not clear where they are going.

These two books are well worth reading. As for the right-wing movement of Dallas it was never the same once the entire city got a bad reputation after the assassination of Kennedy and the shooting of Lee Harvey Oswald in the city jail. The FBI even told H.L. Hunt to flee the city in the weeks after for his

own safety. Local business people came to see the city's reputation as bad for its economy. Gen. Edwin Walker and Billy James Hargis discredited themselves in sex scandals. Hunt's sons became big financial supporters of the Republican Party and the neoconservative movement after his death. In fact, his son Ray Hunt even served on George W. Bush's Foreign Intelligence Advisory Board. Today there are similarities between the apocalyptic rhetoric and militarism of the 1960s far Right of Dallas and the neoconservative movement today. Indeed with the "war on terror" it became mainstream, pounded into people every night on FOX News and other media outlets. It is their true legacy for today.

Mike Swanson has an MA in history and is an expert on financial and monetary history. He is the editor and publisher of WallStreetWindow.com and the author of The War State.

In the nineteenth century, private property enjoyed greater protection than ever before.... [Property] rights received far-reaching protection through legislation, adjudication, and juridical science.

— Gottfried Dietze

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