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FUTURE OF FREEDOM

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Our defense is not in armaments, nor in science, nor in going underground. Our defense is in law and order.

— Albert Einstein

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- Our website, fff.org, contains all the articles and videos we have published since our inception in 1989.

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The Future of Freedom Foundation
11350 Random Hills Road
Suite 800
Fairfax, VA 22030

. . . .

www.fff.org . fff @fff.org

. . . .

tel: 703-934-6101 . fax: 703-352-8678

Understanding the JFK Assassination, Part 2

by Jacob G. Hornberger

At 8 p.m. on November 22, 1963, U.S. Navy Commander James Humes telephoned Army Lt. Col. Pierre Finck to request his assistance with the autopsy that the U.S. military was preparing to conduct on President John Kennedy's body. During that telephone conversation, Humes informed Finck that they already had X-rays of Kennedy's head.

Humes and Navy Commander J. Thornton Boswell were the pathologists selected to conduct the autopsy. Neither of them was a forensics pathologist — that is, one who specializes in examining bodies of people who have died from gunshot wounds and other acts of violence. Finck, on the other hand, was a forensics pathologist, although it had been at least two years since he had personally performed an autopsy.

At the same time that Humes was talking to Finck, an honor guard consisting of members of the various branches of the U.S. Armed Services was carrying the heavy, ornate casket into which the president's body had been placed at Parkland Hospital into the front of the building that housed the morgue where the autopsy was going to be conducted.

Do you see the problem?

Since Kennedy's body was being brought into the morgue at 8 p.m., how was it possible for Humes to already have X-rays of the president's head?

Is it possible that the X-rays were performed at Dallas Parkland hospital as part of the emergency treatment accorded Kennedy before he passed away? No. It is undisputed that there were no X-rays taken in Dallas.

After departing from Dallas, Air Force One, which contained the Dallas casket and Mrs. Kennedy, had landed at Andrews Air Force Base at around 6 p.m. By that time, it was dark. People who were awaiting the plane, including the press, were situated on the left (or port)

side of the plane. Robert Kennedy boarded the plane from the left front and immediately proceeded to Mrs. Kennedy, refusing to even acknowledge Lyndon Johnson. The heavy, ornate casket from Dallas was taken off the back of the plane on the left side and placed in the back of a Navy vehicle. Mrs. Kennedy and Robert Kennedy got into that vehicle, which then slowly proceeded in a caravan to the facility at Bethesda National Naval Medical Center that housed the morgue.

Everyone who participated in the autopsy was sworn to secrecy.

That caravan arrived at the front of the Naval facility at around 6:55 p.m. Mrs. Kennedy and Robert Kennedy got out of the car and went into the building to wait for the autopsy to be completed. As they entered the building, the Navy vehicle that contained the heavy, ornate Dallas casket was still in front of the facility.

An X-ray technician named Jerrol Custer saw Mrs. Kennedy and Robert Kennedy entering the front of the building. Custer later stated that at the time he saw them, he was carrying X-rays that had been carried out on President Kennedy's body in the morgue, which was located on the lower level of the building. Custer, therefore, corroborated what Humes had said to Finck about already having X-rays of Kennedy's head.

After the U.S. military completed its autopsy on Kennedy's body, everyone who participated in the autopsy was sworn to secrecy. The participants were told that everything they had witnessed was "classified." Participants were presented with "letters of secrecy," which they were required to sign. Military officials threatened them with court martial or criminal prosecution if they ever told anyone what they had seen. As one participant put it, they put "the fear of God" in them.

In the mid 1970s, the House Select Committee on Assassinations opened an investigation into the Kennedy assassination. By that time, many Americans had come to doubt the validity of the official conclusions that had been reached in 1964 by the Warren Commission, the commission that newly elevated President Johnson had created to investigate the assassination.

During the House investigation, the Select Committee released autopsy participants from their vow of secrecy. The result was an astounding revelation, one that would explain how it was that Humes was

able to inform Finck that they already had X-rays of the deceased president's head at the same time that the president's body was being carried into the building at 8 p.m. in order to begin the autopsy.

A second casket

Several enlisted men came forward and stated that they had secretly carried the president's body into the back entrance to the morgue. The body, they said, was brought there in a hearse that contained several men in suits. The body, they said, was in a cheap, gray shipping casket, similar to the caskets that were used to ship home the bodies of soldiers killed in the Vietnam War. The body, they said, was in a "body bag" inside the shipping casket.

Several enlisted men stated that they had secretly carried the president's body into the back entrance to the morgue.

Was it possible that the president's body had been placed in a body bag inside a shipping casket at Parkland Hospital in Dallas? No. The director of the Dallas funeral home that provided the casket into which Kennedy's body was placed at Parkland Hospital confirmed that the president's body was not placed in a body bag in Texas but instead wrapped in sheets and then placed in the expensive, heavy, ornate casket, not a cheap, gray shipping casket.

In 1991, Oliver Stone came out with his movie *JFK,* which posited that the Kennedy assassination was a highly sophisticated regime-change operation carried out by the U.S. national-security establishment. At the end of the movie, there was a blurb appearing on screen that informed people that records relating to the assassination were still being kept secret by federal agencies despite the passage of almost 30 years since the assassination.

That blurb produced outrage among the American people, many of whom still had serious doubts about the validity of the Warren Commission's official findings of almost three decades before. The outrage forced Congress to enact what is known today as the JFK Records Act, which mandated the release by all federal agencies of records relating to the Kennedy assassination. After presidential candidate Bill Clinton came out in favor of the bill, his opponent, incumbent President George H.W. Bush, who had previously served as director of the CIA, signed it into law.

To enforce the Act, Congress created a commission known as the Assassination Records Review Board, or ARRB. It is worth noting that for some reason the JFK Records Act expressly prohibited the ARRB from reinvestigating any aspect of the Kennedy assassination. Its mission was limited to securing the release of records relating to the assassination, and that limitation was strictly enforced by the governing board of the ARRB.

The funeral home that conducted the embalming of President Kennedy's body after the autopsy and then carried out the funeral was Gawler's Funeral Home, the most prestigious funeral home in Washington, D.C.

During the ARRB's term of operation in the 1990s, the ARRB uncovered an official report that had been prepared by Gawler's at around the time of the assassination. The report had remained undisclosed to the public for 30 years. The report stated: "Body removed from metal shipping casket at NSNH at Bethesda."

The ARRB also discovered the existence of a U.S. Marine sergeant named Roger Boyajian, who told the ARRB that it was his team that had carried the gray shipping casket that contained the president's body into the morgue. Boyajian told the ARRB that he had submitted a contemporaneous written report detailing what his team had done. To the commission's surprise, he had retained a copy of the report, which he delivered to the ARRB.

The Boyajian report stated that Boyajian's team had brought Kennedy's body into the morgue at 6:35 p.m.

The Boyajian report stated that Boyajian's team had brought Kennedy's body into the morgue at 6:35 p.m. Keep in mind that the official time that Kennedy's body was brought into the building by the military honor guard was 8 p.m., almost an hour and a half later.

Thus, (1) the Boyajian report, (2) the Gawler's Funeral Home report, (3) Jerrol Custer's testimony about carrying X-rays of the president's body when he saw Mrs. Kennedy and Robert Kennedy enter the building, and (4) the statements of the enlisted men who carried the shipping casket into the morgue, explain why Humes was able to inform Finck that they already had X-rays of the president's head at 8 p.m., the time that the military honor guard was supposedly bringing the body into the facility, inside the expensive,

ornate, heavy casket into which it had been placed in Dallas, in order to conduct the autopsy on it.

The exit wound

What was the purpose of sneaking the president's body into the morgue early? What was done during that hour and a half? Why was it done secretly? Why was everyone who participated in the autopsy sworn to secrecy, on pain of court martial or criminal prosecution?

To answer those questions, it is necessary to return to Parkland Hospital in Dallas.

When President Kennedy was taken into Trauma Room One at Parkland, the team of physicians handling his case immediately began assessing his situation to determine how and where he needed the most urgent treatment. While they were doing that, one of the physicians told the others that they needed to stop what they were doing and come and see something. The president's head was lifted slightly and the physicians saw a hole in the lower back of Kennedy's head, in what is known as the occipital region of skull. The wound measured about 2 inches in diameter. Out of the hole was leaking cerebellum, which is the lower, back part of the brain.

Dr. Robert McClelland was one of the treating physicians. To get a good sense of what Kennedy's head wound looked like and where it was located, Google his name and "JFK" and you'll find a number of videos and articles in which he describes the wound. You will also get a good sense of McClelland's integrity and competence. Another treating physician was Dr. Charles Crenshaw, who describes the president's head wound in his book *Trauma Room One.*

Parkland Hospital was one of the best hospitals in the country for treatment of trauma wounds.

Once they saw that big hole in the back of Kennedy's head, the physicians knew that the president's life was over. There was no way that anyone could survive that type of wound. There was nothing anyone could do to save his life. And sure enough, the president passed away about 40 minutes later.

There is something important to know about Parkland Hospital. It was one of the best hospitals in the country for treatment of trauma wounds. In fact, that was what Parkland specialized in — the treatment of gunshot wounds and other trauma cases. Moreover, the hospi-

tal was a training hospital, one where the best, most experienced physicians trained young physicians who were specializing in the treatment of trauma cases.

The large 2-inch hole in the back of President Kennedy's head also implied that a shot had been fired from the front.

About an hour after the president was declared dead, two of the treating physicians, Dr. Kemp Clark, the hospital's chief of neurosurgery, and surgeon Dr. Malcom Perry, held a press conference. They stated that the president had received a bullet-sized entry wound in his throat, which implied that a shot had been fired from the president's front. They also described the much larger wound in the back of Kennedy's head.

The reason that the sizes of the wounds matter is that they help to determine entry points and exit points for bullets. When a bullet enters a person's body, the wound is going to be very small, essentially the size of the bullet. As it proceeds through the body, however, it is pushing mass in front of it. In the case of a head shot, it is pushing brain mass in front of it. Thus, when the bullet exits on the other side of the skull, it does so with a "blowout," or a much larger wound.

Thus, the large 2-inch hole in the back of Kennedy's head also implied that a shot had been fired from the front.

On the day of the assassination, Dallas businessman Abraham Zapruder was in Dealey Plaza, where the assassination took place, to see the presidential motorcade. He took with him his new movie camera, which he used to record the assassination. In the film, President Kennedy's wife, Jacqueline, is seen crawling out on the trunk of the car immediately after the president is shot in the head. Obviously in shock, she was apparently going to the back of the car to retrieve parts of her husband's skull and brain that had been blown out of the back of his head.

The Zapruder film shows that at that same time, a Secret Service agent named Clint Hill was coming from a follow-up car and grabbing onto the back of the presidential limousine. Hill pushed Mrs. Kennedy back into her seat and placed his body over President Kennedy's body to protect him from any more shots. Hill later stated that during the 7 or 8 minutes that it took to get to Parkland Hospital, he saw the large-sized hole in the back of Kennedy's head.

At the time the gunshot hit Kennedy in the head, there was a bystander named Charles Brehm standing to the left rear of the presidential limousine. He stated that he saw exit debris (for lack of a better term) being blown out of the back of Kennedy's head and landing in the grass near him.

Diane Bowron stated that she saw the small, bullet-sized entry wound in Kennedy's throat.

Another bystander named Marilyn Willis, who was also situated behind the vehicle, stated that she too saw exit debris being propelled out of the back of the president's head. Her daughter said that she saw the back of Kennedy's head being blown out.

Two motorcycle policemen, Jimmy Hargis and B.J. Martin, were riding side by side to the left rear of the limousine. Both of them were splattered by exit debris.

When the vehicle reached Parkland Hospital, hospital personnel immediately began removing the president from the vehicle into the hospital. One of them was a nurse named Diane Bowron. She stated that she saw the small, bullet-sized entry wound in Kennedy's throat. When she put her hand on the back side of Kennedy's head to help him out of the vehicle, she felt the large-sized wound in the back of his head.

Another nurse, Audrey Bell, assisted the treating physicians in Trauma Room One. She later stated that she too had seen the large wound in the back of Kennedy's head.

On the day after the assassination, a medical student named Billy Harper was walking in Dealey Plaza, where he found a bone fragment. He took the bone to his uncle, who happened to be a pathologist at Methodist Hospital in Dallas. His uncle had the hospital medical photographer take a picture of the fragment. He also pulled together a small team of pathologists to analyze it. They concluded that it was occipital bone, which made sense, given that the wound was located in the occipital region of the skull. That bone fragment, which ultimately disappeared after it was sent to federal officials in Washington, D.C., became known as the Harper Fragment.

In the 1990s, a woman named Saundra Spencer was summoned to testify before the ARRB. In November 1963, she was a U.S. Navy petty officer at the Navy's Photography Lab in Washington. She had a top-secret security clearance and

worked closely with the White House on classified photographs that she had developed. It would be virtually impossible to find a more credible and competent witness than Saundra Spencer. In fact, no one has ever questioned her competence, integrity, or veracity.

Spencer told the ARRB that on the weekend of the assassination, she had been asked to develop, on a top-secret basis, the photographs that had been taken of the military's autopsy of Kennedy. Pursuant to the long-established military custom of keeping classified information secret, Spencer had never before disclosed this information.

The general counsel for the ARRB showed Spencer the official autopsy photographs of President Kennedy, which she carefully examined. She unequivocally and firmly told the ARRB's general counsel that those official autopsy photographs were not the ones she developed on the weekend of the assassination. The ones she developed, she stated, showed a large wound in the back of Kennedy's head. The official photographs that were being shown to her showed the back of Kennedy's head to be intact, that is, without a large wound in the back of his head.

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

NEXT MONTH:

"Understanding the JFK Assassination, Part 3"
by Jacob G. Hornberger

"John McCain's Disastrous Militaristic Legacy"
by James Bovard

The TSA's Secret Watchlist for Travelers Who Don't Kowtow

by James Bovard

"I need a witness!" exclaimed the worried Transportation Security Administration screener at Reagan Washington National Airport a few months ago. Because I had forgotten to remove my belt before going through a TSA scanner, he explained that I must undergo an "enhanced patdown." I told him that if he jammed my groin, I'd file a formal complaint against him. So he summoned his supervisor to keep an eye on the proceedings. After his white-suited boss arrived on the scene, I announced that I too, needed a witness. The boss bureaucrat assured me there was a video camera recording the scene. "But does it have audio?" I demanded to know. "That's confidential security information," he replied. "Ha! More like security theater," I retorted.

I thought of this exchange when the *New York Times* revealed that the TSA has created a new secret watchlist for troublesome passengers. The TSA justifies the new list because TSA screeners were said to have been assaulted 34 times last year. "We were seeing an alarming increase in the number of assaults against our officers," fretted Darby LaJoye, one of the TSA's top security officials. TSA spokeswoman Lisa Farbstein declared, "TSA is committed to its people and wants to ensure there are safeguards in place to protect TSA officers and others from any individual who has previously exhibited disruptive or assaultive behavior at a screening checkpoint and is scheduled to fly."

However, the TSA's press office refused to release a list or any details of those assaults, including how many times accused assailants were arrested. The TSA also refused to answer my question: "How does TSA define an 'assault' on a TSA screener?" I was told I would need to file a Freedom of Information Act request for that information, but the TSA scorns federal law and often delays responses for months or years. Such tactics help explain

why some people believe that "TSA" stands for "tactics to suppress accountability."

Naturally, the TSA's new official definition of "troublemaker" for this list goes far beyond people who slug screeners. Have you ever "loitered" near a checkpoint? Bingo. Any woman who ever pushed a screener's hands away from squeezing her breasts could also be guilty — even though the TSA never formally promulgated its territorial claim to that part of the female anatomy.

Intrusive patdowns

Any behavior which is "offensive [to the TSA] and without legal justification" can get a person secretly listed, according to a confidential TSA memo acquired by the *New York Times*. "Challenges to the safe and effective completion of screening" also can be punished. If you complain that a TSA agent is violating your constitutional rights, you could be tagged as a troublemaker in perpetuity.

The TSA would have been more honest if it announced that anyone who fails to instantly and unquestioningly submit to all TSA demands is guilty of insubordination. ACLU attorney Hugh Handeyside warns that the new watchlist "permits TSA officials to blacklist people for conduct that could be wholly innocuous. This is conduct that's so completely subjective, and in many cases likely completely innocent, it just gives officers too much latitude to blacklist people arbitrarily and to essentially punish them for asserting their rights and in doing anything other than complying with officers' demands."

Any behavior which is "offensive [to the TSA]" can get a person secretly listed.

What happens to travelers put on the watchlist? It's a secret — so far. Rep. Bonnie Watson Coleman (D-NJ) declared, "What I don't want ... is an excuse for unfair, secret profiling that doesn't even offer a chance for people to contest their name appearing on such a list." The TSA denies that this is a "No Fly" list. However, the TSA has been caught in so many falsehoods over the years that people are naturally wary.

The TSA's latest effort to vilify resistance would be less perilous if it was not one of most incompetent agencies on earth. Last year, a TSA undercover team succeeded 95 percent of the time in smuggling weapons and mock bombs past airport screeners in Minneapolis. The Department of Homeland Security in-

spector general concluded that TSA screeners and equipment had failed to detect mock threats roughly 80 percent of the time. Recent results parallel earlier findings revealing the TSA's utter inability to detect smuggled items regardless of how badly it abuses travelers. Despite squeezing millions of behinds and breasts, the TSA has never caught a real terrorist.

Despite its debacles, the TSA recently became even more intrusive and punitive in its patdowns:

- Jenna McFarlane, a 56-year old teacher and graphic designer, was traveling out of Charlotte, N.C., when a TSA agent repeatedly told her "to spread my legs wider" and proceeded to "touch my vagina four times with the side of her hand," as she complained to the TSA afterwards. She was selected for a vigorous patdown after an unreliable TSA test gave a false explosive alert for her carry-on baggage.
- Hollywood reporter and author Sharon Waxman complained about an aggressive female TSA agent who "placed both hands around my legs and slowly — very slowly — rubbed up and down. The touching went all the way up to my groin. My private parts were touched by the edge of her hand, twice." The TSA agent rested her hands on Waxman's chest much longer than necessary to check for weapons. Waxman groused, "The TSA screening felt like nothing less than physical assault. If anyone other than a government officer had done anything of the kind, I would have reported it as a crime."
- David Stavropolous complained that a TSA agent doing a search at Chicago O'Hare airport jammed his hand into Stavropolous's groin so hard that it caused bleeding and will require surgery to correct, according to Chicago's NBC station and his lawsuit against the TSA.

Such abuses spurred Flyersrights .org, the nation's largest airline-passenger organization, to complain to the TSA last year about "highly invasive patdowns, especially on children, disabled, elderly, transgender, and sexual assault victims, thereby undermining public confidence and instilling fear and loathing by many passengers for the TSA, and used by no other country."

Americans have filed thousands of complaints that TSA screeners had used excessive force or touched them inappropriately. How many TSA screeners have been fired as a result? Maybe none. What is the ratio of alleged assaults on TSA agents to the actual number of assaults on passen-

gers (based on prevailing local definitions) by TSA agents? Alas, such trivia could never hold a federal bureaucracy's attention. Or perhaps the agency simply presumes that "it's not an assault when federal agents do it."

The TSA also insisted that its screener deserved legal immunity.

We do know that the TSA dismally fails to police its workforce: the number of TSA misconduct allegations (including bribery, smuggling, and voyeurism) is up more than 50 percent since 2010 — including more than 17,000 misconduct allegations against TSA's 55,000 employees in 2015. A House Homeland Security Committee report derided the agency's "Misconduct Industrial Complex" for failing to respond to proliferating problems.

Judicial permission

An ongoing federal court case is showcasing the TSA's accosting prerogatives. Airplane captain James Linlor was traveling through Dulles Airport in 2016 when he suffered a brutal patdown that left him requiring surgery. A TSA video shows that the patdown was proceeding normally — if somewhat aggressively — until the TSA agent with no warning administered what appeared to be a karate chop to Linlor's testicles.

Linlor sued, claiming that the TSA violated his rights with an unconstitutional and unreasonable search. The TSA asked the court to dismiss Linlor's case because, instead of suing, he could have phoned in his complaint to the TSA Contact Center. In a federal court hearing last year, Justice Department lawyer Nicole Murley insisted that "there's no law ... establishing a specific degree of permissible intrusiveness of a [TSA] security screening patdown." And since there's no law, Americans should have no legal recourse no matter how they are abused. The TSA also insisted that its screener deserved legal immunity even if he did pummel Linlor's private parts. Federal judge James Cacheris scoffed at the government's "oratorical calisthenics" and rejected the inference that "a reasonable federal officer would be surprised to learn that gratuitously striking an individual in the groin while searching them violates the Fourth Amendment." The judge quoted an earlier court decision that stressed the illegality of using "unnecessary, gratuitous, and disproportionate force to seize a secured, unarmed citizen." Linlor's case is currently before a federal appeals court.

The TSA has a long history of maximizing intimidation. In 2002, it created a secret system of fines to penalize travelers who had bad attitudes towards TSA screeners. It fined some Americans $1,500 for "nonphysical interference" at a TSA checkpoint — which included any "situation that in any way would interfere with the screener and his or her ability to continue to work or interfere with their ability to do their jobs," according to TSA spokeswoman Ann Davis. The TSA failed to specify precisely how much groveling was necessary at checkpoints. It claimed the right to inflict surprise ex post facto penalties long after flights were completed on the basis of a 2002 Federal Register notice that announced that people could be arrested if they acted in a way that "might distract or inhibit a screener from effectively performing his or her duties…. A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals." Practically any comment or behavior that makes a TSA screener "turn away" from whatever he was doing can thus be a federal offense. The TSA's attitude fines eventually fell into disuse.

So am I on the new TSA Troublesome Traveler watchlist? I have been hammering the TSA in print for 15 years, and TSA chief John Pistole claimed that a 2014 article I wrote was "misleading, inaccurate, and unfairly disparages the dedicated [TSA] workforce." The following year, after I endured a Portland patdown that seemingly sought to turn my family jewels into a pancake, I raised hell in *USA Today* and elsewhere. More recently, a TSA press officer condemned me for an "outrageous" article as well as my previous "TSA hit pieces," but his boss warned him against "picking a fight" (as I learned from a long-delayed Freedom of Information Act disclosure).

If I didn't make the new TSA watchlist, it was not for lack of trying. The TSA's latest anti-privacy charade is one more proof that the agency must be abolished. After pointlessly groping millions of Americans, the TSA has no excuse for groping millions more.

James Bovard is a policy advisor to The Future of Freedom Foundation and is the author of a new ebook, Freedom Frauds: Hard Lessons in American Liberty, *published by FFF, and ten other books.*

O Canada, and the Drug War

by Laurence M. Vance

The maple leaf — the ubiquitous symbol of Canada — may soon give way to the marijuana leaf. Joining the countries of Uruguay and Georgia, Canada has legalized marijuana for recreational use — with restrictions, of course.

In late 2013, Uruguay officially legalized marijuana. It did not, however, leave things up to the free market. The government controls the marijuana market from beginning to end, including price, quality, and production volume. Consumers, sellers, and distributors all have to be licensed by the government. Foreign visitors to Uruguay do not have the right to buy or smoke marijuana. Citizens can grow as many as six marijuana plants at home and produce a maximum of 480 grams (17 oz.) of marijuana per year. Cannabis clubs of 15 to 45 members are legal, and can grow a maximum of 99 marijuana plants annually. Companies can obtain a government license to cultivate marijuana if they meet certain criteria. Individuals 18 and older can purchase as much as 40 grams (1.4 oz.) of marijuana per month at state-licensed pharmacies. Marijuana users are registered in a national database and their marijuana consumption is tracked. The government tracks every gram of marijuana sold.

It's not exactly marijuana freedom, but at least ordinary marijuana users no longer have to worry about being arrested, fined, or imprisoned for possessing a plant.

Late last year, the Georgian Constitutional Court decriminalized the use of marijuana, opting to fine users instead of jailing them. In July of this year, Georgia became the second country to effectively legalize marijuana after the court abolished administrative punishments for its use, effective immediately. The court ruled in favor of leaders of the Girchi political party, who argued in a legal challenge that marijuana prohibition "contradicted the nation's constitution." "This wasn't a fight for cannabis; this was

a fight for freedom," said the head of the Girchi party during a press briefing. Under Georgia's new law, marijuana users can be prosecuted only if they "put a third person at risk" or light up in a school, on a public bus, or in front of children. However, cultivating and selling marijuana will still be illegal.

Again, that is not exactly marijuana freedom, but it is a decisive move toward that end.

The Canadian government

Although Canada is very much like the United States in many respects, there are some major differences in the national governments of the two countries.

Canada is a constitutional monarchy with a parliamentary type of government.

The United States has a federal system of government wherein power is divided between the national and state governments, each of which has legislative, executive, and judicial branches. Americans have a Congress with a 435-member House of Representatives elected by people in state districts and a 100-member Senate elected by people statewide. Representatives serve two years and senators serve six. Legislation must be approved by a majority in both Houses of Congress and signed into law by the president, who is also elected.

According to Canada FAQ,

> Canada is a constitutional monarchy with a parliamentary type of government wherein the Crown is the foundation of the judicial, legislative, and executive branches of government. Canada is also a federation in the sense that the provincial governments and the federal government have separate jurisdictions of political authority.
>
> The role of the monarch is practical and legal but not political. Thus, political authority is shared by multiple institutions, which act under the authority of the sovereign. Elizabeth II, Queen of Canada, is the sovereign and head of state of Canada. The Queen-in-Parliament, the Queen-in-Council, and the Queen-on-the-Bench are the legislature, the executive, and the courts, respectively.
>
> The enactment of orders in council, letters patent, and laws requires royal assent, but the sovereign has a more lim-

ited role in political decision making and any of the areas of government. The Constitution defines the government as the sovereign acting on the advice of the Queen's Privy Council of Canada. The latter consists of elder statesmen, Supreme Court chief justices, and former members of parliament. The Privy Council rarely meets in full and is accountable to the House of Commons. A group of Privy Council members holds seat in parliament and forms the Cabinet. The prime minister is appointed by the Governor General of Canada (on behalf of the sovereign).

Medical marijuana was legalized in Canada in 2001 for use by terminally and chronically ill patients.

The Prime Minister is the head of government, chairman of the Cabinet, and the primary minister of the Crown. The Prime Minister is also charged with advising the viceroy or the monarch on exercising the executive powers that are vested in them by the Canadian Constitution.

The Canadian legislature — the Parliament — consists of 338 members of the House of Commons, each representing an electoral district, who serve until the dissolution of Parliament, and 105 members of the Senate, who are appointed by the governor general on the advice of the prime minister, and may serve until age 75. Bills become law after they have been passed in identical form by the House of Commons and the Senate and formally, although ceremonially, approved by being granted royal assent by the governor general on behalf of the Crown. Most bills originate in the House of Commons by ministers of the Crown, and are not usually opposed by the Senate.

The marijuana bill

Medical marijuana was legalized in Canada in 2001 for use by terminally and chronically ill patients. Efforts at decriminalizing recreational marijuana failed in 2003 and 2004. The current Canadian prime minister, Justin Trudeau, who assumed office on November 4, 2015, made the legalization of recreational marijuana a major campaign promise of the Liberal Party. "We will legalize, regulate, and restrict access to marijuana,"

the Liberal Party proclaimed on its campaign website. "Canada's current system of marijuana prohibition does not work. It does not prevent young people from using marijuana and too many Canadians end up with criminal records for possessing small amounts of the drug." Even before he became prime minister, Trudeau publicly came out in support of legalizing marijuana, telling a crowd in 2013, "I'm actually not in favour of decriminalizing cannabis. I'm in favour of legalizing it. Tax it; regulate. It's one of the only ways to keep it out of the hands of our kids because the current war on drugs, the current model is not working. We have to use evidence and science to make sure we're moving forward on that."

> "The current war on drugs, the current model is not working."

Bill C-45, "An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts," was introduced in the House of Commons on April 13, 2017, and first passed on November 27, 2017, by a vote of 200-82. After consideration of amendments by the House and the Senate, the final version of the bill passed the House on June 18, 2018, by a vote of 205-82, and the Senate on June 20, 2018, by a vote of 52-29. Prime Minister Trudeau said on Senate passage, "It's been too easy for our kids to get marijuana — and for criminals to reap the profits. Today, we change that." Royal assent was given on June 21, 2018. Naturally, opposition came from the Canadian Conservative Party. MP Peter Kent of Ontario referred to the bill as a "wacky campaign promise" and a "misguided crusade." MP Stephanie Kusie of Alberta opposed the bill because "smoking marijuana doubles the risk of developing schizophrenia" and "Canada would be in violation of three United Nations treaties" if it legalized marijuana.

The official summary of the bill states that the Cannabis Act's objectives are:

- to prevent young persons from accessing cannabis,
- to protect public health and public safety by establishing strict product safety and product quality requirements,
- to deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework, and
- to reduce the burden on

the criminal justice system in relation to cannabis.

Among other things, the Cannabis Act

- establishes criminal prohibitions, such as the unlawful sale or distribution of cannabis, including its sale or distribution to young persons, and the unlawful possession, production, importation, or exportation of cannabis;
- prohibits any promotion, packaging, and labelling of cannabis that could be appealing to young persons or encourage its consumption;
- provides for inspection powers, the authority to impose administrative monetary penalties, and the ability to commence proceedings for certain offences by means of a ticket;
- permits the establishment of a cannabis tracking system for the purposes of the enforcement and administration of the Act;
- authorizes the Governor in Council to make regulations respecting such matters as quality, testing, composition, packaging, and labelling of cannabis.

More specifically, Canadians 18 and older will now be able to possess a maximum of 30 grams of legal marijuana in public, to cultivate four plants in their households, and to prepare products such as edibles for personal use. However, there will be strict rules concerning the purchase and use of marijuana. Consumers will have to purchase marijuana from retailers regulated by provinces, territories, or federally licensed producers. Marijuana cannot be sold in the same location as alcohol or tobacco. Provinces can increase the minimum age to purchase and use marijuana, but may not enact their own bans on marijuana. The federal government will oversee criminal sanctions for violating the law and the licensing of producers, while provincial governments will manage sales, distribution, and regulations. The Act largely follows recommendations made by a federal task force on cannabis legalization and regulation that issued its final report in November 2016.

It is important to note what this bill doesn't do. It doesn't allow Canadian individuals to grow or possess as much marijuana as they want to. It doesn't allow Canadian businesses to produce, distribute, or sell marijuana without being inspected, li-

censed, taxed, or regulated. And, like the legislation in Uruguay and Georgia, the bill certainly doesn't institute marijuana freedom. But it is a step in that direction.

The American situation

Since the state of California legalized marijuana for medical use in 1996, 29 other states and the District of Columbia have done likewise, the most recent state being Oklahoma. Recreational marijuana is legal in 9 states and the District of Columbia. The possession of small amounts of marijuana has been decriminalized in 21 states and the District of Columbia. Medical-marijuana initiatives are on the November ballot in Missouri and Utah. Recreational-marijuana initiatives are on the November ballot in Michigan and North Dakota.

Yet the federal government considers the growing, distributing, buying, selling, possessing, or smoking of marijuana to be a violation of federal law. Marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. 801). As a Schedule I drug, marijuana is said to meet the following criteria:

- The drug has a high potential for abuse.
- The drug has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug under medical supervision.

The Trump Department of Justice is committed to the enforcement of the Controlled Substances Act.

The Supreme Court has ruled that the federal government has the authority to prohibit marijuana possession and use for any and all purposes. The Trump Department of Justice is committed to the enforcement of the Controlled Substances Act in the fifty states and has rescinded the Obama-era policy of discouraging federal prosecutors from bringing charges of marijuana-related crimes in states where marijuana sales have been legalized. Federal banking regulations make it difficult for American cannabis-related firms to obtain financial services.

Under federal law, "possession of marijuana is punishable by up to one year in jail and a minimum fine of $1,000 for a first conviction. For a second conviction, the penalties increase to a 15-day mandatory minimum sentence with a maximum of two

years in prison and a fine of up to $2,500. Subsequent convictions carry a 90-day mandatory minimum sentence and a maximum of up to three years in prison and a fine of up to $5,000."

The "distribution of a small amount of marijuana, for no remuneration, is treated as possession." But "the manufacture or distribution of fewer than 50 plants or 50 kilograms of marijuana is punishable by up to five years in prison and a fine of up to $250,000." You can get life in prison for manufacturing or distributing 1,000 plants or kilograms of marijuana and the death penalty for "manufacturing, importing or distributing a controlled substance if the act was committed as part of a continuing criminal enterprise."

Not only does the U.S. government not want Americans to use marijuana, it doesn't want Canadians using it either. According to Canada's CTV News, "Despite legalization, Canadians who admit using cannabis could be banned permanently from entering the U.S." A Canadian immigration lawyer told the news agency, "It's basically black and white — if you admit to a U.S. border officer at a U.S. port of entry that you've smoked marijuana in the past, whether it's in Canada or the U.S., you will be barred entry for life to the United States." He said he believes that "U.S. border agents will begin asking the question more frequently once Canada's new marijuana legislation is implemented." However, although Canadians have the right not to answer the question, the questioned person may be denied entry to the United States for the day if he refuses.

"Canadians who admit using cannabis could be banned permanently from entering the United States."

The legalization of marijuana in Canada will definitely affect U.S. drug policy, since Canada and the United States cooperate extensively on cross-border drug "trafficking." Although, with the exception of marijuana, the two countries have similar lists of illegal drugs, because one of Washington's major concerns is that marijuana is coming into the country from Canada, the change in the law in Canada is certain to negatively affect the U.S. government's war on drugs, since it will be easier for Canadian and American drug smugglers to obtain marijuana in Canada to bring across the border. Because Canada and the United States are culturally

and economically similar countries, proponents of national marijuana legalization in the United States will be closely watching what happens in Canada in the aftermath of its marijuana-legalization experiment.

Marijuana freedom

Clearly, the goal is marijuana freedom — in Uruguay, Georgia, Canada, America, and every other country: the freedom to buy, sell, grow, smoke, possess, and transport marijuana, and medicate with it in any quantity and for any reason without government licensing, regulation, restriction, monitoring, or control. Marijuana decriminalization, medical-marijuana legalization, recreational-marijuana legalization, taxing and regulating marijuana like alcohol, and other hoops that governments make people jump through to get access to marijuana without fear of being arrested, fined, or imprisoned are a means to an end.

Why does all of this matter? After all, many people consider marijuana use to be immoral, sinful, dangerous, stupid, addictive, risky, unhealthy, harmful, destructive, ruinous, deadly, a gateway to other drugs, or medically ineffective. Marijuana may be all of these things (and, of course, it may not be any of them), but that is not the point. Alcohol is certainly many of them.

To the libertarian, using marijuana — for whatever reason — is a personal-freedom issue.

To the libertarian, using marijuana is a personal-freedom issue.

In a libertarian society, that is, in a free society, it is not the proper role of government to prohibit, regulate, restrict, or otherwise control what a man desires to eat, drink, smoke, inject, absorb, snort, sniff, inhale, swallow, or otherwise ingest into his mouth, nose, veins, or lungs. In a free society, it is not the proper role of government to legislate morality. In a free society, it is not the proper role of government to prohibit or restrict behavior that doesn't violate the personal or property rights of others. In a free society, there would be no Drug Enforcement Administration (DEA), no Office of National Drug Control Policy (ONDCP), no drug czar, no drug schedules, no Controlled Substances Act, and no war on drugs. In a free society, there would be no laws at any level of government for any reason regarding the buying, selling, growing, processing, transporting, importing, exporting, manufacturing, advertising, using,

possessing, or trafficking of any drug for any reason. In a free society, there would be a free market in drugs without any government interference, regulation, taxing, or licensing. In a free society, individuals, not government bureaucrats, would decide what risks to take and what behaviors are in their own best interests. In a free society, everyone would be free to live his life in any manner he chooses as long as his activities are nonviolent, nondisorderly, nondisruptive, nonthreatening, and noncoercive.

At the end of each verse of the American National Anthem, reference is made to the star-spangled banner's waving "O'er the land of the free and the home of the brave." Yet, when it comes to marijuana, Americans — depending on the state they live in — have only some, little, or no freedom. It is Canada that now has more freedom when it comes to marijuana.

O Canada!
Our home and native land!
True patriot love in all of us command.
With glowing hearts we see thee rise,
The True North strong and free!

No one — American, Canadian, or anything else — should ever be arrested, fined, or imprisoned for possessing a plant his government doesn't approve of.

Laurence M. Vance is a columnist and policy advisor for The Future of Freedom Foundation, an associated scholar of the Ludwig von Mises Institute, and a columnist, blogger, and book reviewer at LewRockwell.com. Send him email: lmvance@laurencemvance.com. Visit his website at: www.vancepublications.com.

NEXT MONTH:
"Businesses That Should Not Exist"
by Laurence M. Vance

Historically, governments have fostered and encouraged credit expansion to a great degree. They have done so by weakening the limitations that the market places on bank credit expansion. One way of weakening is to anesthetize the bank against the threat of bank runs. In nineteenth-century America, the government permitted banks, when they got into trouble in a business crisis, to suspend specie payment while continuing in operation. They were temporarily freed from their contractual obligation of paying their debts, while they could continue lending and even force their debtors to repay in their own bank notes. This is a powerful way to eradicate limitations on credit expansion, since the banks know that if they overreach themselves, the government will permit them blithely to avoid payment of their contractual obligations.

— Murray Rothbard

Three Jeers for Government Regulation

by Richard M. Ebeling

The appeal of and the rationales for government intervention and regulation of private enterprise never seem to disappear. Time and time again, as soon as some theoretical argument for or historical instance of interventionism has been challenged and demonstrated to be false and a failure, another one soon arises to replace it.

Truly, the price of economic liberty is eternal vigilance. One of the most amazing and frustrating aspects of this never-ending conflict with the philosophy of the interventionist state is that its proponents seem to always fall back on the same types of arguments. The rhetoric may be modified and the content of the rationales may be shifted about, but the underlying premises and presumptions remain the same.

Let us look at one recent example of this. Dr. Diane Coyle is a professor of public policy at the University of Cambridge in the United Kingdom. In a recent article, "Three Cheers for Regulation," she says that it is a serious error to presume that government intervention is always economically wasteful or always serves anti-social business interests wishing to be protected from market competition.

Coyle readily admits that both of those regulatory negatives can and do frequently happen. But she insists that we should not throw out the reasonable and useful regulatory baby with the sometimes-harmful regulatory bathwater.

"Smart regulators" and technological choice

Instead, she wishes to see the appointment of "smart regulators" whose duties and responsibilities will help ensure a more efficient introduction of desirable technologies, to streamline regulatory rules and their reach, and to ensure that consumers are protected from businesses more concerned with profit than human well-being.

Let's take each of her arguments in turn. Coyle says that a problem

with new technologies is that there may be more than one version that is introduced on the market at around the same time. The issue then becomes, which version should become the market standard?

Rather than wait for the market to sort that out, it is better, in Coyle's view, for government regulators to decide.

Until it is sorted out on an unregulated market, she argues, resources will be wastefully applied and used up in duplicating attempts to implement each one, with an overall delay in the economywide settling down on one of them that is, finally, adopted by the market as a whole. Rather than wait for the market to sort it out, it is better, in her view, for government regulators to decide which version at the end of the day is likely to be the best or most efficient one and impose it on all users in the market.

After competition has done its work and determined which form of the new technology is the most useful, efficient, and convenient by a general consensus of market participants, it is easy to look backwards and say, "Well, clearly this version or type was going to 'win,' so wouldn't it have been better, in hindsight, to have just adopted the one which from the start was going to be left standing at the end of the 'shaking out' process?"

We normally call this attitude "Monday-morning quarterbacking." After the sports game has been played on Sunday, it is easy enough to assert what the players on the field should have done to have turned the losing team into the winner or to have widened the point spread earned by the actual winner.

Competition discovers what is possible and profitable.

Whether it be on the sports field or in the arena of market competition, there is no way to know with full certainty, at the beginning, how the competitive process will proceed and what outcome is going to emerge from the actual and unique events as the competitors compete.

Austrian economist Friedrich A. Hayek penned an essay, "Competition as a Discovery Procedure" (1969). It is only through the competitive process itself, he argued, that we can find out what ideas people may come up with, and how they might discern and experiment with the application and use of those ideas as embodied in marketable products. Nor can we know independently of that competition

how consumers might see, evaluate, and judge the usefulness of what the supply-side competitors come up with.

It may be that more than one technological version is found desirable by different segments of the buying public. Think of the competing operating systems in smartphones, two of the leading ones being Apple's OS system and Google's Android system. The market — which means all of us as consumers — has not agreed on which we all prefer to use.

Therefore both exist and compete on the market simultaneously. In Coyle's view, this is wasteful, inefficient, and redundant. How much better for everyone if there was one cell-phone operating system imposed on all by those "smart regulators"!

If that had been done, what would be some of the negative consequences? Precisely because those operating systems are freely purchasable by consumers, and because there is no way for either Apple or Google to permanently tie down existing and future customers to their own system, each must be constantly working to devise ways to improve the system features, qualities, and characteristics of their respective smartphones, while at the same time being as price-competitive as they find it possible to be.

Market discovery or regulatory straitjacketing

Some might ask, why is it necessary for a new version of these smartphones to be marketed every three months or six months or once a year? How different are they, really, from the previous models? Rarely are technological changes dramatic and radical. They usually take the form of incremental improvements that are discovered, experimented with, and offered to consumers to find out what "new and improved" features are most useful and attractive for smartphone customers.

Cumulatively, when looked back over two or five or ten years, the changes in the operating speed, the user-friendly features, and size, weight, and esthetic appearance of these rival smartphones have been dramatic.

If Coyle's proposal had been implemented, one operating system might have been imposed by economywide regulation. No doubt, as competitors, Apple and Google would have had incentives to make improvements in their versions of the common system. But can we really know the extent to which regulation would have brought about

any such improvements? Would it not have forced consumers, who we know, in fact, do not all share the same preference in operating systems, to have been limited in their choice and the value they placed on improvements?

Unless we allow competition to operate we can never know what competition can produce.

Nothing we know about the existing smartphone market in terms of availability and consumer-desired features would have occurred in the way it has. Locking the smartphone market into one mandated operating system would have resulted in our never knowing all the competitive possibilities that only the existence of such competing operating systems have produced.

This is another essential element of Hayek's emphasis on competition as a discovery procedure. Unless we allow competition to operate we can never know what competition can produce. There are no competitive outcomes independent of the competitive processes that bring them about. And, thus, by prohibiting or restricting such competition, we never know what it is we've not had, but could have had.

Just another name for social engineering

Coyle's response might be to say that she has an answer to all of this: the "sandbox" approach to innovation under regulation. Rather than leaving the market to its own innovative devices, firms would be allowed to innovate, experiment, and test marketable possibilities, but in a regulatory institutional framework in which private enterprise is watched, supervised, and "supported."

What is being watched, supervised, and supported? The methods, forms, and directions the innovating private enterprises are pursuing. The regulatory "sandbox," in other words, implicitly confines all such innovative developments to the corridors that the "smart regulators" consider socially most appropriate and useful. The government regulatory supervisors would, basically, make sure that any and all innovations conform to the wider political agenda of government.

The language used is made to sound so, well, business-friendly. Regulators would provide "guidance" (read: restrictions on how, what, and when firms could undertake innovative experimentation); "common testing grounds" (read: heavy government oversight of what

businesses are doing and whether the regulators think they need to be reined in or subsidized in some fashion); and interfacing with "stakeholders" (read: various special-interest groups in society who want to put their busybody noses into the technological decision-making of private enterprises, though they are not shareholders in the company).

Regulators would provide heavy government oversight of what businesses are doing.

The regulatory sandbox is merely the latest rhetorical sleight of hand for what has been known in the past as "industrial policy" and government–business partnerships, with the government picking and giving a helping hand to selected "winners" and shutting down or nudging out those they decide are the "losers."

Regulatory corruption and ideological hubris

The regulatory sandbox, therefore, is a cesspool-in-waiting for corruption and cronyism. Lobbying, campaign contributions, and legal or illegal forms of influencing and bribery are the institutional inevitabilities of placing in the hands of governments and their bureaucratic agents' decision-making power that can determine survival or failure, the profit or the loss of the technological and production choices, and the activities of private enterprises under the regulators' "supervision."

Those not greatly influenced or persuaded by Public Choice theory, which tells us that such conduct is inevitable and virtually inescapable once the state has such power, will very likely assert that the "smart regulators" will be carefully chosen for their integrity and professionalism. Their "calling" will be to use their expertise only for the "common good."

Even if that was true, it, too, is a frightening thought: A handful of appointed regulatory "experts" would be assigned the wide discretionary task and authority to determine the direction and form of technological and other innovations affecting nations or regions such as the European Union.

Any private enterprisers weighing the decision to invest in various technological possibilities, including the financial cost of experimenting and marketing, do so on the basis of their best entrepreneurial judgment concerning their likely profitability if successful; the opportunity costs of pursuing an alterna-

tive line of investment and production, instead; and the "bottom line" that the enterprisers and their partners or shareholders are risking their own resources and money.

In a free market, it is ultimately the consumers who decide what products will be produced.

In a free market, it is ultimately the consumers — that is, each and every one of us as free-choosing buyers — who decide what products will be produced, in what types and forms, and in what quantities; and which business firms will earn profits, giving them the financial means to do more of what we, the buying public, want.

But with the regulatory sandbox, we once again are confronted with the arrogance and pretensions of the social engineer and the central planner. The profits earned or losses suffered do not fall on these taxpayer-funded regulating bureaucrats. A poor decision in terms of the opportunity cost of the use of scarce resources that could have been applied somewhere else by a private enterprise does not affect their interventionist powers and authority. And locking out or nudging away one enterprise's technological choices doesn't lead to their personal bankruptcy or financial viability.

No, they and those who appoint them will have their own "visions" of what the economic future of the country should be like, what form its technologies should take, and in what types of products the technologies should be embedded. The regulatory-sandbox economy replaces the market-based choices of the people with the directing hand of those in political authority and those they have assigned as the government supervisors of the private sector.

Consumer protection means political dictations.

Finally, Coyle calls for a renewed focus on government regulation in the interests of the consumer and the society at large. "Regulation is good for an economy," she says, "precisely in its protections of consumers." And, she goes on, "a society's welfare is not identical with the profitability of its businesses or with the growth rate of GDP."

Virtually all advocates of free markets and open, competitive free enterprise believe that an essential function of limited government is protection against force and fraud. Legal systems in free societies exist

to ensure the proper functioning of the institutional prerequisites against such individual rights-violating conduct by anyone.

What Coyle is really getting at is the paternalistic belief that individuals are often presumed to be incapable of properly and effectively making informed decisions concerning various and sundry goods and services they might buy. Thus, regulatory agencies must codify the rules and prohibitions on what and how private enterprises may produce and market and sell to the buying public, even when nothing being done by those private firms in any way touches on traditional notions of fraud or intentional misrepresentation.

No, once again, the "smart regulators" are the appointed "elite" given the duty and responsibility to determine what we will be sold and how we may use it. However, we live in a world in which it is very easy for anyone who has had positive or negative experiences with a purchased good or service to share his experience and judgment with the entire buying world. It's called the Internet and social networking.

Market-based "regulation"

There is the also the fact that the market itself possesses structures of incentives and feedbacks that create opportunities for producers and suppliers to tell the truth, or for their competitors to certainly do so to gain consumer business. Economists have long distinguished between "search goods" and "experience goods."

Search goods are those products the potential consumer can examine and evaluate before purchasing. Thus, someone can go into a supermarket and examine the fruit and vegetables to determine their freshness and quality before buying them. If the seller has exaggerated or misrepresented the quality of the produce, the potential buyer can walk away without paying a penny. Furthermore, that consumer may decide not to come back, having lost confidence in the seller's advertising. He can also share his "search" experience by word of mouth or by social media and the Internet. That creates an incentive for the seller to practice "truth in advertising" and maintain the promised qualities of his products if he wants both new and repeat business.

With experience goods, the full qualities and characteristics offered and promised in a good may not be knowable until after it has been bought and used for a period of time. Such is the case, for instance,

with a dishwasher, an automobile, or a mattress. Protecting consumers from exaggerated or less-than-fully reliable claims in these cases is the purpose of product warranties. Such warranties were not imposed on producers by government. They emerged as competitive methods to assuage consumer uncertainties and to give to those who offer them an edge over market rivals.

They are among the market's responses to what has become known as "asymmetric information," that is, the fact that the seller may know things about the quality and characteristics of the product he is selling that the buyer does not possess. Are there con men, hucksters, and crooks? Yes, of course. And there have been since there have been human beings walking on this planet.

Competitive markets have evolved and developed "internal" ways to reduce fraud and deception. The legal system is meant to handle instances of real criminal fraud and misrepresentation and violence that the internal ways do not prevent.

Consumer regulation as political paternalism

The consumer-protection regulations about which Coyle is speaking are meant to co-opt the producer decisions and consumer choices that do not represent rights-violating instances. How else are we to interpret her insistence that well-being is not the same as business profitability? Money, no doubt, does not buy happiness and not everything we do or purchase necessarily advances our well-being from some broader philosophical perspective.

> If the seller has misrepresented the quality of the produce, the potential buyer can walk away.

But in an open, competitive market, few consumers intentionally buy what they think will reduce their happiness and well-being. What Coyle implicitly has in mind is the notion that people don't know what is really in their self-interest, so the government through its regulatory agencies must protect them from themselves.

Moreover, there is a "social good" above and more important than the personal interests of actual individuals. That is why, she says, GDP may have to be forgone to bring about the betterment of society. Gross Domestic Product is an attempt to measure the market value of all final finished goods produced within a country during a

year. Now, GDP has many flaws that can be criticized, and with good economic reason. But the idea behind it is that there are many goods that people would like to have produced and for which they would be willing to pay. And the summed dollar value of GDP is meant to express all the finished goods bought and sold, combined.

In Coyle's eyes there are, obviously, things worth sacrificing to achieve "higher" ends not measured or incorporated in GDP. People do that all the time. People trade off money income they might earn (and all the goods that money income could have purchased) to have free time with family and friends. Or a person might not work overtime, so he can do in-kind charity work not included in measured Gross Domestic Product.

But Coyle's trade-offs clearly involve people's being prevented from producing and buying things they would like to, so government can redirect resources through taxes and regulation into avenues those in political power value and consider better for everyone in society. Again, we see the hubris of the social engineer.

How many times have we been told that government knows best? Government can better decide what technologies are the ones to foster and cultivate. Government should use its political power and the public purse in sandboxes of government–business partnerships. And government knows better than you what you should spend your money on, and what you should buy and be allowed to use.

The social engineers and the political paternalists are at it again. And that means we friends of freedom are called upon to understand the economics of what the interventionists want to better defend the open free-market economy and honest and unfettered entrepreneurs.

Richard M. Ebeling is the BB&T Distinguished Professor of Ethics and Free Enterprise Leadership at The Citadel. He was formerly professor of Economics at Northwood University and at Hillsdale College and president of The Foundation for Economic Education, and served as vice president of academic affairs for The Future of Freedom Foundation.

"The Birth-Right of an American"

by Scott McPherson

Their swords, and every other terrible implement of the soldier, are the birth-right of an American.... [The] unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.

— Tench Coxe
Pennsylvania Gazette
February 20, 1788

On July 9, Donald Trump nominated federal judge Brett Kavanaugh to succeed the retiring Supreme Court justice Anthony Kennedy, and leftist heads immediately began exploding. Among his biggest offenses in the eyes of the Left is his strong reverence for the Second Amendment to the Constitution.

It's probably too early to tell, but it seems that with Kavanaugh's ascendency people's right to keep and bear arms has gained a much-needed ally. Reacting to the president's pick, Sen. Chris Murphy (D-Conn.) immediately denounced Kavanaugh as "a true Second Amendment radical" because he "believes assault weapons bans are unconstitutional." This seems to be an accurate assessment, and it is cause for celebration. If military-style rifles are banned, the Second Amendment becomes a dead letter.

In a 2011 dissent, Kavanaugh wrote,

> In [*D.C. v. Heller 2008*], the Supreme Court held that handguns — the vast majority of which today are semi-automatic — are constitutionally protected because they have not traditionally been banned and are in common use by law-abiding citizens. There is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles. Semi-automatic rifles, like semi-automatic handguns, have not traditionally been banned and are in common use by law-abiding citi-

> zens for self-defense in the home, hunting, and other lawful uses. Moreover, semi-automatic handguns are used in connection with violent crimes far more than semi-automatic rifles are. It follows from *Heller*'s protection of semi-automatic handguns that semi-automatic rifles are also constitutionally protected and that D.C.'s ban on them is unconstitutional.

Speaking on MSNBC's program *The Last Word* after Trump's announcement, left-wing Sen. Elizabeth Warren (D-Mass.) claimed that Kavanaugh's views are outside the mainstream. "I want to know something about this judge," she said. "I want to know something about this judge's values. And what he's revealed so far is not something that reflects America's values." Sadly for Warren, and her vipers' pit of anti-gun allies, Kavanaugh's views on semi-automatic weapons have the support of the top court's past and present constitutional stalwarts — and also the American people. For example, Justice Clarence Thomas, backed by Justice Antonin Scalia, wrote in a dissenting opinion that the Court should hear a challenge to Highland Park, Illinois's, assault-weapons ban in 2015. He was quoted in the *New York Times* (December 7) saying,

> Roughly five million Americans own AR-style semi-automatic rifles. The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. Under our precedents, that is all that is needed for citizens to have a right under the Second Amendment to keep such weapons.

Millions of law-abiding Americans own these weapons.

Thomas's and Kavanaugh's statements certainly are not a reflection of a libertarian's perspective on this issue, but they do conform to "America's values." Millions of law-abiding Americans own these weapons, and tens of millions more support the right to keep and bear arms in general. A *Wall Street Journal*/NBC News poll in 2015 found that 52 percent of respondents see the Democratic Party as being "outside the mainstream" when it comes to gun laws. A CNN/ORC poll that same year revealed that 52 percent

of Americans also "oppose stricter gun laws." Most relevant to the present discussion, Gallup found that 51 percent oppose a ban on "assault weapons." It is interesting that 68 percent of people polled by Rasmussen in 2015 said that they prefer to live in an area where they and their neighbors can be armed. Considering that just 30-40 percent of Americans own guns, that reflects a broad consensus. Pew Research reported in 2014 that for the first time in two decades most Americans (52 percent) are more concerned about protecting the Second Amendment than in passing more gun laws.

Assault weapons, crime, and speech

Judge Kavanaugh was correct that so-called assault weapons are rarely used by criminals. The Assault Weapons Ban passed by Congress in 1994 (which was really a ban on the importation of semi-automatic rifles with certain cosmetic features) was in place for ten years, and the Department of Justice concluded that it had no impact on crime. Ninety-one percent of police officers surveyed believe assault-weapons bans are ineffective at combating crime, and even in mass shootings a handgun is far more likely to be used than an assault rifle.

Writing in his 2011 dissent, Kavanaugh used another approach to address the issue. Equating the First Amendment to the Second, he argued that banning certain types of guns is comparable to restrictions on free speech. "A ban on a class of arms is not an incidental regulation," he said. "It is equivalent to a ban on a category of speech." He makes a good point: If our right to speak freely can be eroded by attacks on the more unpopular forms of speech, such as "hate speech," pornography, or political advertising, then a precedent is set that can (and will) be used to justify further restrictions. And if unpopular or "scary-looking" guns can be banned, then the Second Amendment as a whole may suffer the same fate.

> An authoritarian regime will begin disarming the civilian population.

This reasoning is unlikely to persuade left-wing authoritarians, who seem to care as little for free speech as they do for the right to keep and bear arms (see my essay "Trump, Free Speech, and Libertarianism" at https://www.fff.org/explore-freedom/article/trump-free-speech-libertarianism/). An

authoritarian regime is very likely to target sources of dissent (e.g. newspapers, radio stations, and magazines) first; then it will begin disarming the civilian population. Nor do authoritarians seem to care about fighting crime, though a push for more gun laws is invariably championed for that reason. Time and again passage of gun-control laws is followed by a spike in crime, but for leftists that just means greater restrictions on freedom are required. Note the response of London mayor Sadiq Khan to that city's explosion in homicides this year.

The reason for the Second Amendment

Reference to crime rates and the First Amendment provide a line of legal reasoning for judges when overturning gun bans, but Americans should be careful before placing too much trust in either justification or, for that matter, that branch of government. The most effective place to combat civilian disarmament laws is at the ballot box, where anti-gun politicians can be reminded that the spirit of liberty still resides in the people at large. In order to do that voters should be educated about the reason we even have a Second Amendment. That will be far more effective than the defensive apologia offered by Kavanaugh and others. When Americans threw off the shackles of a distant government and wrote a Constitution in 1787, there was considerable fear that a new central government would in time grow powerful enough to overshadow the state governments and threaten the ancient liberties of the people — including the right to keep and bear arms. As an attempt to first derail ratification of the Constitution, and then later to ameliorate its perceived shortcomings, the Anti-Federalists demanded inclusion of a Bill of Rights — amendments that would prohibit the federal government from taking certain actions. The Second Amendment expressly forbade the government from disarming the people.

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The Framers of the Constitution were not concerned about target shooting and hunting, though such pastimes would assuredly have met with their favor. Even crime was not forefront in their minds; from the mother country they had brought over to North America the time-honored tradition of the "hue and cry" — the responsibility of free

citizens to respond to calls from the sheriff or other law officers and assist in the apprehension of criminals. They were expected to turn out with their own weapons, and failure to do so could even have legal consequences.

> Leftists mocked the idea of people's resisting government — at least until Donald Trump was elected.

By placing a right-to-arms provision in the Constitution the Framers were declaring unequivocally that the American people will remain the final repository of legitimate force in society, by ensuring that individual citizens will be the armed equivalent to soldiers and therefore capable of defending their rights and liberties — even against their own government. The "sword" will ever be in the hands of private citizens who can then mount a campaign of resistance and, if necessary, overthrow the state and "institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness."

The Second Amendment states that a "well-regulated Militia" is "necessary" for the "security of a free State." This means individual citizens may be called upon to defend against insurrection, invasion, or even a tyrannical federal government.

Is resistance possible?

Leftists mocked the idea of people's organizing to resist their government — at least until Donald Trump was elected president. Typically, advocates of the Right to Revolt (or Resist) are told they stand no chance against the tanks, jets, and drones of the American military. That raises an interesting specter: Are leftists prepared to admit that the U.S. government could unleash its vast arsenal on the public?

If so, then it is absolutely essential that the American people have access to semi-automatic military-style rifles to defend themselves, their families, and their neighborhoods against any force that might attack. Woe betide a great ruler who underestimates the danger of a citizenry rallied to its own defense, and plenty of examples throughout history confirm the fighting spirit of those so passionately engaged, like Macaulay's "Horatius at the Bridge," who defied the House of Tarquin, asking, "How can man die better than facing fearful odds/For the ashes of his fathers, and the temples of his Gods?"

Facing odds of nearly twenty to one, a handful of Swiss militia defeated the Holy Roman Emperor's army at the Battle of Morgarten in 1315. The powerful Austrians would suffer further humiliation at the hands of the Swiss, at the Battle of Sempach (1386) and the Battle of Näfels (1388). The Burgundian War (1474–1476) saw the armies of Charles the Bold repelled by Swiss infantry in several battles, and Charles himself killed by a Swiss soldier, at Nancy, ending the war. Machiavelli would identify the Swiss as "most free and best armed."

Americans learned during the Vietnam War that a Third World army could inflict heavy casualties.

More recently, our own Revolution was fought largely by armed farmers against the most powerful military in the world. Nor has the advent of the modern industrial state made such outcomes improbable. Americans learned during the Vietnam War that a Third World army could inflict heavy casualties, despite our government's military superiority in every conceivable category. In Northern Ireland urban guerrilla fighters made life hell for the British government for three decades, and among their favorite weapons was the semi-automatic Armalite Rifle — forerunner of the AR-15. During the Second World War, a small group of Jews in the Warsaw Ghetto held the Nazi army at bay for a month, using military rifles, handguns, and machine guns.

Government may have fire superiority, but that does not efface the long history of successful resistance to tyranny, or reduce the importance of an armed citizenry acting as its counterpoise. Military-style weapons in civilian hands make possible an initial underground campaign designed to obtain through ambush and lightning raids the anti-tank and anti-aircraft capabilities necessary for sustained, conventional attacks on government forces when the time is right.

In his essay "Gun Control Measures Hazardous for Citizens," Stephen Halbrook wrote,

> Democratic governments that wish to protect their citizens by depriving them of firearms sometimes accomplish the very opposite — and leave the law-abiding at the mercy of those who will flout any statute, tell any lie, engage in any conspiracy, to gain power over the innocent. Good people,

rendered helpless, are history's victims.

The Second Amendment protects "assault weapons" for precisely that reason. As James Madison's friend Tench Coxe noted, they are "the birth-right of an American."

Scott McPherson is a policy advisor at The Future of Freedom Foundation, and author of Freedom and Security: The Second Amendment and the Right to Keep and Bear Arms. *An advocate of the Free State Project, he lives in Portsmouth, New Hampshire.*

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

— Louis D. Brandeis

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11350 Random Hills Road
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www.fff.org

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Fax: 703-352-8678