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# FUTURE OF FREEDOM

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*Liberty is not a means to a higher political end. It is itself the highest political end.*

— Lord Acton

# FUTURE OF FREEDOM

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<i>Understanding the JFK Assassination, Part 1</i>	2
Jacob G. Hornberger	
<i>Karl Marx and the Great Socialist Revival</i>	10
James Bovard	
<i>Canons of Libertarianism</i>	16
Laurence M. Vance	
<i>The IRA and Defensive Violence</i>	26
Scott McPherson	
<i>Civil Asset Forfeiture Suffers a Crushing Defeat</i>	36
George Leef	

# Understanding the JFK Assassination, Part 1

by *Jacob G. Hornberger*



A common refrain about the assassination of President John F. Kennedy is, “I guess we will never know what really happened on November 22, 1963.” The reason people express that sentiment is that they have in mind what is called “direct evidence.” Given that there is no videotaped confession by someone who participated in the assassination or eyewitness testimony of plotters meeting and planning the assassination, for example, the mindset is that we just have to resign ourselves to never really knowing what happened that fateful day.

Actually though, that’s not true. If we analyze events in the context of circumstantial evidence, we can understand what happened in Dal-

las more than 50 years ago and why it happened.

What is circumstantial evidence? It is indirect evidence that is used to establish certain facts.

The best way to explain circumstantial evidence is by an example. Suppose that John, Bill, and Mary are in a room. John pulls out a gun and shoots Bill. Mary witnesses the shooting.

The prosecutor would call Mary to the stand to testify that she saw John shoot Bill. That eyewitness testimony would constitute direct evidence.

Now suppose that only John and Bill are inside the room, with the door closed, and that Mary is sitting outside the room. Mary overhears John and Bill having a heated argument. Suddenly Mary hears a gunshot and then sees John running out the door. The police find Bill’s dead body with bullet wounds. They also determine that John’s fingerprints are on the gun.

The prosecutor would call Mary to the stand to testify what she heard and saw. He would also call a fingerprint expert to testify that the fingerprints found on the gun belong to John. All this would constitute circumstantial evidence. The prosecutor would use it to establish that John killed Bill.

The law treats circumstantial evidence as being just as valid and credible as direct evidence. In fact, in cases involving circumstantial evidence, the judge will instruct the jury to treat circumstantial evidence in the same way that they treat direct evidence.

In this article, we are going to use circumstantial evidence to understand what happened on that fateful day in November. But we are going to do something different. We are not going to start with the assassination itself. We are going to start with what happened after the assassination, specifically what happened at the autopsy that was conducted on the body of President Kennedy.

Why are we going to do it that way? Because by understanding what happened in the autopsy, we will be able to look back at the assassination and understand what happened on November 22, 1963, and why it happened.

Look at the situation this way. Suppose you have a giant jigsaw puzzle consisting of 5,000 small pieces. Let's say that you lost the cover of the puzzle and have no idea what it depicts. You put together a small section of the puzzle that extends from the middle bottom of the puzzle upward. But you still have no idea what the puzzle shows.

One day you succeed in building the frame of the puzzle. You overlay the frame on top of the first section you constructed and, lo and behold, the pieces fit together.

You end up building the puzzle, only to discover that you're missing 1,000 pieces. At that point, however, even though you're missing Idaho, Connecticut, and other states, you're able to see that the puzzle depicts the United States.

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**The law treats circumstantial evidence as being just as valid and credible as direct evidence.**

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That's how we are going to view the Kennedy assassination in this article. We are going to see that only one theory of the assassination fits the facts that we establish with respect to what happened after the assassination. Once we do that, we will be able to see what happened and why it happened even if we are still missing many of the pieces to the overall puzzle.

As everyone knows, there are several theories as to who killed Kennedy. One theory is that a lone nut named Lee Harvey Oswald did it. Another is that Oswald, in a conspiracy with others, did it. Cuba's president Fidel Castro is another suspect. So is the Soviet Union. The

Israeli Mossad has also been mentioned. So have extreme right-wing elements in Dallas. Finally, there is the U.S. national-security establishment, specifically the Pentagon and the CIA.

Which one of those theories is correct? We won't start with that question but we will end with answering it.

### The autopsy that didn't happen

We begin the analytical process by starting with an undisputed fact of an event that occurred several hours after the assassination. That undisputed fact is this: The U.S. military was the entity that conducted the autopsy on Kennedy's body.

In other words, there are no competing theories as to who conducted the autopsy. No one asserts that the Mossad, the Mafia, Oswald, the communists, or anyone other than the U.S. military conducted the autopsy.

Beginning with that undisputed fact, we will examine the circumstantial evidence surrounding the autopsy with one aim in mind: to see whether the evidence inexorably leads to but one conclusion: that the U.S. military conducted a fraudulent autopsy on the president's body. If the circumstantial evidence

does establish that fact, we will then apply that insight to the assassination itself to determine what happened and why it happened.

Therefore, as we proceed with this analysis, keep the following question foremost in your mind: Is the circumstantial evidence establishing a fraudulent autopsy?

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### The autopsy in a homicide case is critically important.

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After Kennedy was declared dead at around 1 p.m. at Parkland Hospital in Dallas, the Dallas County medical examiner, a pathologist named Dr. Earl Rose, began making preparations to conduct an autopsy on the president's body, which was required under Texas law for any homicide.

What is an autopsy? It's a medical procedure by which a pathologist determines the cause of death. In a homicide, he carefully examines the body, studies the entry and exit wounds of bullets, retrieves bullet fragments from the body, and draws a conclusion as to what exactly caused the victim's death.

The autopsy in a homicide case is critically important, especially because it is often used in the criminal prosecution of the person who is being accused of committing the

crime. The prosecutor will call the pathologist to the stand to help prove his case against the accused. In fact, since the autopsy deals with scientific tests and techniques, it is often called the “best evidence” in a criminal case. That’s assuming, of course, that the autopsy is honest and genuine.

As Rose was getting ready to perform the autopsy, a team of Secret Service agents informed him that they were not going to permit him to conduct an autopsy on the president’s body. Rose stood his ground, reminding the agents that state law required him to conduct the autopsy. Rose absolutely refused to permit the deceased president’s body to be taken out of the hospital.

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**Normally, law-enforcement agents work together to investigate a crime.**

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Informing Rose that they were acting under orders, the Secret Service team pulled back their coats to reveal that they were armed, implicitly letting Rose and everyone else in the vicinity know that they were prepared to shoot and kill anyone who got in their way. Having placed the president’s body in a large, heavy, ornate, bronze casket that had been

ordered from a Dallas funeral home, they forced their way out of Parkland Hospital amidst screaming, yelling, and a stream of profanities.

That is not how we ordinarily think that law-enforcement agents operate. Normally, they work together to investigate a crime and bring people to justice. When Rose declared his intention to conduct the autopsy, the expected, normal course of action would have been for the Secret Service team to say, “We understand, Dr. Rose. We will stand by and as soon as you are finished with the autopsy, we will take the body.”

Don’t forget that the autopsy is often critical evidence in the criminal prosecution of the person or persons whom the state is accusing of a crime. By preventing Rose from conducting the autopsy, the Secret Service team was jeopardizing the prosecution of anyone who was later brought to trial for assassinating the president.

### **Lyndon Johnson’s behavior**

Who issued the order to that team of Secret Service agents? It is a virtual certainty that it was Lyndon Johnson, who had left Parkland Hospital immediately after Kennedy was declared dead. Proceeding to Dallas Love Field, it is clear that Johnson was well aware of what the

Secret Service team was doing because he immediately had people removing seats from the back of Air Force One to accommodate the large casket that contained the president's body.

After the shooting, Kennedy's car proceeded directly to Parkland Hospital. Johnson, who was riding in another car, also went to the hospital and stayed there until Kennedy was declared dead, at which point Johnson was transported in a car to Dallas's Love Field, where both Air Force One and Air Force Two were parked.

While waiting to receive word of Kennedy's fate at the hospital, Johnson expressed his concern that the assassination could be the first step in a surprise nuclear attack by the Soviet Union on the United States. That concern would ordinarily have been a legitimate one. The Cold War was still going on. Only the year before, the Soviet Union and the United States had almost come to blows with nuclear war during the Cuban Missile Crisis. Moreover, both sides knew that the side that initiated a surprise nuclear attack would have an advantage over the other side, which would be responding to the attack. In fact, the U.S. military itself had previously proposed such a plan to

Kennedy, arguing that if the United States initiated a surprise nuclear attack on the Soviet Union, our side would "win" because "only" 37 million or so Americans would be killed, while most of the people in the Soviet Union would be killed.

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**Johnson expressed his concern that the assassination could be the first step in a nuclear attack.**

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The problem, however, is that Johnson's actions belied his concern. For example, given the possibility that the assassination was the first step in a surprise nuclear attack by the Soviets, the worst thing that Johnson could have done was follow Kennedy to Parkland Hospital and wait there for almost half an hour until he was declared dead. The best thing would have been to head directly to Dallas Love Field and get into the air immediately to manage America's defense to the possible nuclear war.

When Johnson finally did leave the hospital and head to Love Field, he again expressed concern about the possibility that the assassination might be the start of a Soviet nuclear attack. Scrunching down in the car, he said that it was entirely possible that the communists could be positioned to ambush him.



Yet when he arrived at Love Field, his actions again belied any such concern. Rather than immediately get into the air, he had his personnel start removing the seats out of Air Force One to make room for the casket that the team of Secret Service agents were bringing over from Parkland Hospital. He then called U.S. Attorney General Robert Kennedy, the deceased president's brother, to ask him whether it was necessary to be sworn in. Kennedy said it was not necessary and that Johnson automatically became president upon Kennedy's death. Nonetheless, Johnson took the time to find and summon a U.S. federal judge to come onto Air Force One and swear him in as president.

Johnson later claimed that the reason he waited for the casket was that he didn't want to leave Mrs. Kennedy alone in Dallas and wanted to escort her back to Washington. Yet, it's difficult to see that such chivalry would have been considered more important and urgent than immediately getting into the air and directing America's defense against a possible nuclear attack.

As previously noted, both Air Force One and Air Force Two were parked at Love Field. The two planes were duplicates of each other. There was absolutely no reason

why Johnson couldn't have used Air Force Two, the plane that he had been using as vice president.

He didn't do that. He shifted to Air Force One. Even more interesting, he had his personnel take the time to shift his luggage from Air Force Two to Air Force One, even though both planes were returning to Washington.

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**Johnson took the time to find and summon a U.S. federal judge to swear him in as president.**

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When Mrs. Kennedy arrived at Love Field with the team of Secret Service agents, no one told her that Johnson had taken over the plane that she and her deceased husband had been using for the past three years. Her husband had just been shot and killed in her presence a short time before, and she still even had his blood on her clothes. Undoubtedly traumatized, shocked, and depressed, she proceeded to board the plane and head toward her bedroom.

Guess what she found. She found the chivalrous Lyndon Johnson sprawled out on her bed. After all, as far as he was concerned, Air Force One now belonged to him. He, not her deceased husband, was now the president. In any event,

Johnson decided it would be prudent to vacate the bedroom and let Mrs. Kennedy have it. A few minutes later, however, he insisted that she attend his swearing in on the plane, even though the law did not require her presence.

Before the plane took off, Johnson once again fearfully expressed concern of a surprise nuclear attack by the Soviet Union.

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### Why didn't Johnson immediately get into the air to direct America's defenses?

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Why is that important?

If Johnson had stated from the beginning that he seriously doubted that the assassination might be the first step in a surprise nuclear attack, then the rest of his actions would have made sense. The fact that he lollygagged at the hospital and at the airport instead of immediately getting up into the air would indicate that he felt that there was no reasonable possibility that the assassination was the first step in a surprise nuclear attack. The problem is that Johnson did express such a concern but his actions belied that concern.

Thus, a question arises: How could Johnson, notwithstanding his words of concern, be so certain that

the assassination was not the first step in a surprise nuclear attack on the United States? Why did he feel sufficiently secure to take the time to go to the hospital and wait for Kennedy to be declared dead and then wait at the airport for the casket to be delivered to him? Why didn't he immediately get into the air to direct America's defenses in the event that the assassination really was the first step in a surprise nuclear attack by the Soviets?

Keep in mind that this concern about nuclear war expressed by Johnson, which begins at Parkland Hospital, occurs again when Johnson is on the way to Love Field, and then again just before Air Force One takes off. Johnson's "concern" about nuclear war with the Soviet Union will become a central and critically important element in our analysis of the post-assassination sequence of events.

### The military takes over

Air Force One landed at Andrews Air Force Base in Maryland, which is located just outside Washington, D.C. Upon arrival, Johnson did not summon the local medical examiner in Maryland to conduct an autopsy on Kennedy's body. Instead, he delivered the body into the hands of the U.S. military.

Yet the United States is supposed to be a civilian country, not a military one. While Kennedy was commander in chief of the military, he was president of the United States. The country was not at war and the president had not been killed on the field of battle. This was a straightforward murder case.

Johnson, however, was determined to deliver the body into the hands of the U.S. military. Why? After all, in 1963, killing a president was not a federal offense and, therefore, the federal government had no jurisdiction whatsoever over the crime. The assassination was strictly a state murder case, one in which the Dallas County District Attorney would be prosecuting whoever was accused of having committed the crime. In understanding why Johnson took Kennedy's autopsy out of the hands of the Dallas County medical examiner and put it into the hands of the U.S. military in Maryland, it is important to understand two characteristics that distinguish military culture from civilian culture: secrecy and deference to authority.

In the military, secrecy is of the utmost importance. The military and, in fact, the entire national-

security establishment, has a concept called "classified information." If a soldier or even a civilian contractor for the military acquires classified information, he is required to keep such information secret for the rest of his life, on pain of severe punishment if he unlawfully reveals the information to anyone.

We will see later how secrecy played a critically important role in the autopsy that the U.S. military conducted on Kennedy's body.

Deference to authority is another distinguishing characteristic in the military. There is a hierarchical structure in the army — generals, colonels, majors, captains, lieutenants, sergeants, privates. Everyone is expected to follow orders issued by people of higher rank. It is a mindset that is inculcated in soldiers from the first day of boot camp and Officer Candidate School.

We will see later how deference to authority also played a critically important role in the autopsy that the U.S. military conducted on John Kennedy's body.

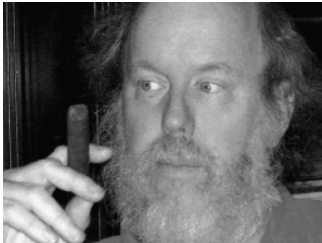
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*Jacob Hornberger is founder and president of The Future of Freedom Foundation.*

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# Karl Marx and the Great Socialist Revival

by James Bovard



Socialism's popularity is reviving in America. A self-proclaimed socialist won the Democratic nomination for a congressional seat in the Bronx, and Democratic Socialist candidates are thriving in many areas of the nation. The *Washington Post* reported in July that it's "been a good summer for the Democratic Socialists of America," who have "never had more adherents or more clout." The Democratic Socialists of America openly calls for the abolition of capitalism.

It would be gratifying to Karl Marx, born 200 years ago in Trier, Germany. In a *New York Times* tribute headlined, "Happy Birthday, Karl Marx. You Were Right!" philosophy professor Jason Barker de-

clared that "educated liberal opinion is today more or less unanimous in its agreement with Marx's basic thesis" that capitalism is fatally flawed. But that presumption is true only if "educated liberal opinion" simply does not care about tyranny.

Trier, Germany, held a huge birthday celebration highlighted by the unveiling of a 5,000-pound bronze statue of Marx donated by the communist Chinese government. Jean-Claude Juncker, the president of the European Commission, gave a speech lauding the communist theoretician, declaring that

Karl Marx was a philosopher, who thought into the future, had creative aspirations, and today he stands for things which is he not responsible for and which he didn't cause.... One has to understand Karl Marx from the context of his time and not have prejudices....

Juncker hyped Marx's doctrines to claim that European governments need to give more handouts to fulfill citizens' "social rights." Daniel Kawczynski, a British member of parliament whose family had fled communist Poland, denounced the celebration: "I think it's in very poor taste. We have to remember

that Marxism was all about ripping power and individual means away from people and giving to the State. Marxism ... allowed a small band of fanatics to suppress the people.”

Unfortunately, as decades have passed since the fall of the Soviet Union, romanticism is deep-sixing the bitter facts of the lives people in communist regimes were forced to live. British *Guardian* columnist Paul Mason hailed the Soviet takeover of Russia for providing “a beacon to the rest of humanity.” But Marxism in practice didn’t work out so well. Communist regimes produced the greatest ideological carnage in human history, killing more than a hundred million people in the last century. Many zealots believe that it is unfair to Marx’s legacy to hold him culpable for the perennial savagery by regimes that invoked his name. But the seeds of tyranny were there from the start.

### The “Divine Idea”

Marx’s salvation scheme was built on a mystical foundation supplied by German philosopher G.W.F. Hegel. Though the *New York Times* eulogy for Marx touted Hegel as an advocate of a “rational liberal state,” Hegel was derided in his lifetime as the “Royal Prussian Court Philosopher” and for promoting

the notion that the State is “inherently rational.” Hegel deified government, asserting that “the State is the Divine Idea as it exists on earth” and “all the worth which the human being possesses — all spiritual reality, he possesses only through the State.” Hegel scorned any limits on government power: “The State is the self-certain absolute mind which recognizes no authority but its own, which acknowledges no abstract rules of good and bad, shameful and mean, cunning and deceit.”

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Romanticism is deep-sixing the bitter facts of the lives people in communist regimes were forced to live.

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Marx, perhaps blinded by Hegel, never recognized the inherent danger of Leviathan. Nor did Marx explain how communism would actually arise after the demolition of capitalism. Equally important, he never even attempted to reveal how the State would “wither away” after the “dictatorship of the proletariat” commenced. Marx’s humanitarian piffle did nothing to deter Lenin from decreeing that “liberty is so precious that it must be rationed.”

Marxists assumed that vastly increasing government power was the

key to liberating humanity. But all-powerful regimes quickly become ends in themselves. In 1932, Soviet dictator Joseph Stalin decreed the death penalty for any theft of state property. In Ukraine, where millions were starving because of the brutal collectivization of farms, even children poaching a few ears of corn could be shot.

The history of communism proves there will never be a shortage of intellectual apologists to sanctify any and every atrocity. In 1936, Sidney and Beatrice Webb, two prominent British socialists, justified Soviet repression because “any public expression of doubt ... is an act of disloyalty and even treachery” to central economic planning. Thus, to liberate people with food and clothing, government was entitled to execute anyone who criticized the Five Year Plan for agriculture and textiles. The Webbs glorified Soviet ethical doctrines: “Paramount is the injunction to abstain from and to resist ‘exploitation,’ meaning any employment of others at wages for the purpose of making a profit out of their labor.” The Webbs observed that “abstention from exploitation is the ethical duty that is ... most forcibly and frequently impressed on the youthful mind.” They presumed that all pri-

vate contracts are exploitative and that politicians would never abuse their power by exploiting those under their thumb.

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**The Webbs presumed that all private contracts are exploitative and that politicians would never abuse their power.**

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Economist John Maynard Keynes hailed the Soviet Union in 1936 as “engaged in a vast administrative task of making a completely new set of social and economic institutions work smoothly and successfully.” American churchman Sherwood Eddy wrote in 1934, “All life [in Russia] is ... directed to a single high end and energized by such powerful and glowing motivation.... It releases a flood of joyous and strenuous activity.” American philosopher John Dewey visited the Soviet Union and proclaimed upon his return, “The people go about as if some mighty, oppressive load had been removed, as if they were newly awakened to the consciousness of released energies.” Jean-Paul Sartre, France’s most respected postwar philosopher, declared, “Soviet citizens criticize their government much more and more effectively than we do. There is total freedom of criticism in the USSR.” After contro-

versy erupted in France in 1997 over a book that claims communist regimes had killed nearly 100 million of their own citizens, a French Communist Party spokesman sought to differentiate Stalin and other communist leaders from Hitler: “Agreed, both Nazis and communists killed. But while the Nazis killed from hatred of humanity, the communists killed from love.”

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**Socialist regimes despise property because it limits the power of the State to regiment the lives of the people.**

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While many Western intellectuals painted the Soviet Union as a utopia, some communists had fewer illusions. In 1928 Grigori Pyatakov, one of six Soviet leaders personally named in Lenin’s last testament, proudly declared, “According to Lenin the Communist Party is based on the principle of coercion which doesn’t recognize any limitations or inhibitions. And the central idea of this principle of boundless coercion is not coercion by itself but the absence of any limitation whatsoever — moral, political, and even physical. Such a Party is capable of achieving miracles.” Pyatakov was one of the stars of the 1937 Moscow show trials, confess-

ing to ludicrous charges of sabotaging mines in Siberia, and was executed shortly thereafter.

### Boundless tyranny

Marx’s hostility to private property guaranteed boundless tyranny. Property rights are the border guards around an individual’s life that deter political invasions. Socialist regimes despise property because it limits the power of the State to regiment the lives of the people. A 1975 study, *The Soviet Image of Utopia*, observed, “The closely knit communities of communism will be able to locate the anti-social individual without difficulty because he will not be able to ‘shut the door of his apartment’ and retreat to an area of his life that is ‘strictly private.’” Hungarian economist János Kornai observed, “The further elimination of private ownership is taken, the more consistently can full subjection be imposed.”

Marxist regimes felt entitled to inflict unlimited delusions on their victims — for the good of the people, or at least proletariats. East Germans were told the Berlin Wall existed to keep fascists out — even though all the killings by border guards involved East Germans who were heading West. Marxism promised a utopia, and that unse-

cured pledge sufficed to treat subjects like serfs bound to endlessly submit and obey. Anyone who tried to escape was treated as if he were stealing government property.

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**“In a country where the sole employer is the State, opposition means death by slow starvation.”**

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Communism is still often portrayed as morally superior to capitalism because it banishes greedy corporations poisoning people for profit. According to Marxist theory, environmental problems cannot arise in socialist countries because man and nature are by definition in harmony. But Eastern Bloc regimes became a vast graveyard for Mother Nature. Pollution was pervasive largely because of the deification of economic plans. As long as the factories roared and industrial output rose, it didn't matter that people and everything else were dying.

I traveled behind the Iron Curtain many times in the mid to late 1980s to study first-hand the results of Marx's philosophy. I saw pervasive fear in the faces of emaciated people on the streets of Bucharest, Romania, and I saw the terror in the eyes of young Czechs when anyone touched on the subject of politics. I encountered border guards who

flew into a tizzy at any piece of paper that might contain subversive ideas. And I witnessed legions of Western apologists who always insisted on giving communist regimes more time and more Western handouts to redeem themselves.

Marx continues to appeal to social justice warriors, thanks to axioms such as “from each according to his ability, to each according to his need.” And who determines “need”? The presumably omniscient, benevolent State. Marxism promised to end the “class struggle,” but it did so by subjugating almost everyone to officialdom. As Yugoslavian dissident Milovan Djilas observed in 1957, communism begot a new class of supreme bureaucrats with their own vested interest to perpetuate their power. Abolishing private property left people hostage to petty government officials who kept their jobs by punishing anyone who failed to kowtow to the latest dictates. As Leon Trotsky explained, “In a country where the sole employer is the State, opposition means death by slow starvation ... who does not obey shall not eat.”

Regardless of Marx's intentions, his doctrines spurred perpetual dread in hundreds of millions of victims. But it was criminally naive to expect happy results from any



system that bestowed boundless power on politicians. Two hundred years after Marx's birth, never forget that a philosophy that begins by idealizing government will end by idealizing subjugation.

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*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, Public Policy Hooligan, Attention*

*Deficit Democracy, and eight other books.*

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**NEXT MONTH:**

**“Understanding the JFK Assassination, Part 2”**  
*by Jacob Hornberger*

**“The TSA’s Secret Watchlist for Travelers Who Don’t Kowtow”**  
*by James Bovard*

*Over the years, the real purpose of many of these overseas military bases has changed from tactical and strategic locations of military value to elaborate American housing and logistic installations away from home. They provide locations and facilities for some units that would have no reason for existence if based in the United States, and they furnish justification for interesting and attractive overseas travel and adventure for the troops and their families.*

— James A. Donovan

## Canons of Libertarianism

by *Laurence M. Vance*



The grandfather, godfather, and icon of conservatism, Russell Kirk (1918–1994), although he wrote lengthy philosophical treatises on “the six canons of conservative thought” and “ten conservative principles,” has largely been forgotten and is rarely invoked by mainstream conservatives today.

Kirk was born on October 19, 1918 — a month before the armistice that ended World War I. That makes this month the 100th anniversary of his birth. Some conservatives, and especially those traditionalist individuals and organizations Kirk was involved with during his glory years that are still around, will no doubt this month be celebrating the centennial of his birth and revisiting his canons of conservatism. Although Kirk was

no friend of libertarians, I think it would be fitting at this time to contrast his conservatism and misconceptions about libertarianism with real libertarianism and the canons of libertarianism.

### Russell Kirk

Based at Kirk’s ancestral home of Mecosta, Michigan, the Russell Kirk Center for Cultural Renewal “aims to recover, conserve, and enliven those enduring norms and principles that Russell Kirk called the Permanent Things.” It is the work of the Kirk Center “to strengthen the Permanent Things, especially as they relate to America’s tradition of order, justice, and freedom.” According to the Kirk Center,

Russell Kirk authored thirty-two books on political theory, the history of ideas, education, cultural criticism, and supernatural tales. Both *Time* and *Newsweek* have described him as one of America’s leading thinkers, and the *New York Times* acknowledged the scale of his influence when it wrote that Kirk’s 1953 landmark book *The Conservative Mind* “gave American conservatives an identity and a gene-

alogy and catalyzed the post-war movement.”

After receiving his bachelor’s degree from Michigan State College (now University), Kirk studied the politics of John Randolph of Roanoke for his master’s degree at Duke University. Kirk’s research on Randolph’s politics led him to discover the far more powerful thinker, Edmund Burke, whose principles would strongly influence his subsequent thought.

Following service in the army during World War II, Kirk became an instructor in the history of civilization at Michigan State. He took a leave of absence from teaching to research the history of the principal thinkers of England and America at the University of St. Andrews in Scotland. The resulting manuscript earned Kirk the highest arts degree, the doctor of letters, from the University of St. Andrews.

Henry Regnery published this lengthy work as *The Conservative Mind* in 1953. The book became one of the most widely reviewed and discussed studies of political ideas in America and cata-

pulted Kirk to national prominence.

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“Kirk’s research on Randolph’s politics led him to discover the far more powerful thinker, Edmund Burke.”

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Because of the success of his book, Kirk was able to resign his teaching position to pursue a career as an independent writer and lecturer. In addition to his books, he contributed essays and reviews to “more than a hundred serious periodicals.” Kirk wrote a bi-monthly page on education, “From the Academy,” for *National Review* for twenty-five years, and a newspaper column, “To the Point,” through the *Los Angeles Times* Syndicate for thirteen years. He was the founding editor of the journals *The University Bookman* and *Modern Age*. When not in his library, “Kirk lectured at colleges and conferences around the country on political thought and practice, modern culture, educational theory, literary criticism and social themes.” He also debated some notable figures, became a distinguished scholar of the Heritage Foundation, and served as a “visiting professor at several universities in the disciplines of history, political thought, humane letters, and

journalism.” Ronald Reagan conferred on Dr. Kirk the Presidential Citizens Medal in 1989.

### Kirk’s conservatism

In the first edition of *The Conservative Mind*, Kirk listed and described “six canons of conservative thought” that he considered to be a summary of themes common to conservative thinkers:

1. Belief that a divine intent rules society as well as conscience, forging an eternal chain of right and duty which links great and obscure, living and dead.
2. Affection for the proliferating variety and mystery of traditional life.
3. Conviction that civilized society requires orders and classes.
4. Persuasion that property and freedom are inexorably connected.
5. Faith in prescription and distrust of “sophisters and calculators.”
6. Recognition that change and reform are not identical.

Those canons were revised and expanded in subsequent editions (the 7th edition was published in

1986). In *The Conservative Mind*, Kirk stated about conservatism,

Conservatism is not a fixed and immutable body of dogma, and conservatives inherit from Burke a talent for re-expressing their convictions to fit the time.

The twentieth-century conservative is concerned, first of all, for the regeneration of the spirit and character — with the perennial problem of the inner order of the soul, the restoration of the ethical understanding, and the religious sanction upon which any life worth living is founded. This is conservatism at its highest.

In 1957, Kirk wrote *The Intelligent Woman’s Guide to Conservatism*. In the first chapter, “The Essence of Conservatism,” he listed ten of “the chief principles which have characterized American conservative thought.”

In the introduction to his anthology *The Portable Conservative Reader* (Penguin, 1982), which includes essays, poetry, and fiction from writers that he identified as conservatives, Kirk offered a variation on his six canons, which he termed “first principles.” He con-

cluded after explaining each one that his purpose “has been broad description, not fixed definition.” If one requires a single sentence, “Let it be said that for the conservative, politics is the art of the possible, not the art of the ideal.” He noted that his six principles must be understood as nothing more than “a rough catalog of the general assumptions of conservatives, and not as a tidy system of doctrines for governing a state.” He also stated about conservatism,

Although certain general principles held by most conservatives may be described, there exists wide variety in application of these ideas from age to age and country to country.

Conservatism offers no universal pattern of politics for adoption everywhere.

Conservatism amounts to the consensus of the leading conservative thinkers and actors over the past two centuries.

In a chapter in his 1993 book, *The Politics of Prudence*, Kirk returned again to ten principles, presenting “a summary of conservative assumptions differing somewhat” from the canons in his earlier books. In introducing his new “ten

articles of belief,” he said that they “reflect the emphases of conservatives in America nowadays.”

In the opinion of Bradley J. Birzer, author of *Russell Kirk: American Conservative*, “In every speech and written work, Kirk left these canons or principles deliberately vague.”

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**“In every speech and written work, Kirk left these canons or principles deliberately vague.”**

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Indeed, one of the problems with conservatism — especially Kirkian conservatism — is that it has no coherent or consistent definition or description. In “Ten Conservative Principles,” Kirk remarked, “The diversity of ways in which conservative views may find expression is itself proof that conservatism is no fixed ideology. What particular principles conservatives emphasize during any given time will vary with the circumstances and necessities of that era.”

### **Kirk and libertarianism**

Although Kirk wasn’t too sure exactly what conservatism was, he was certain of “the inadequacies and extravagances of the various libertarian factions,” that libertarians should be “rejected because

they are metaphysically mad,” and that libertarianism’s “failings” are “many and grave.” Kirk specifically addressed the subject of libertarianism first in a 1981 article in *Modern Age* titled, “Libertarians: The Chirping Sectaries.” It was followed by a speech at the Heritage Foundation in April 1988, “A Dispassionate Assessment of Libertarians,” which was reprinted in Kirk’s book *The Politics of Prudence* (1993).

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**Kirk specifically addressed the subject of libertarianism first in a 1981 article.**

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According to Kirk,

The ruinous failing of the ideologues who call themselves libertarians is their fanatic attachment to a simple solitary principle — that is, to the notion of personal freedom as the whole end of the civil social order, and indeed of human existence. The libertarians are oldfangled folk, in the sense that they live by certain abstractions of the nineteenth century. They carry to absurdity the doctrines of John Stuart Mill.

Since Mill, the libertarians have forgotten nothing and

learned nothing. Mill dreaded, and they dread today, obedience to the dictates of custom.

The perennial libertarian, like Satan, can bear no authority temporal or spiritual. He desires to be different, in morals as in politics. In a highly tolerant society like that of America today, such defiance of authority on principle may lead to perversity on principle, for lack of anything more startling to do; there is no great gulf fixed between libertarianism and libertinism.

The typical libertarian of our day delights in eccentricity including, often, sexual eccentricity.

The representative libertarian of this decade is humorless, intolerant, self-righteous, badly schooled, and dull.

Don’t I know self-proclaimed libertarians who are kindly old gentlemen, God-fearing, patriotic, chaste, well endowed with the goods of fortune? Yes, I do know such. They are the people who through misapprehension put up the cash for the fantastics. Such gentlemen call themselves “libertarians” merely because they believe in per-

sonal freedom, and do not understand to what extravagance they lend their names by subsidizing doctrinaire “libertarian” causes and publications.

The libertarian pursues his illusory way to Utopia.

Libertarians (like anarchists and Marxists) generally believe that human nature is good, though damaged by certain social institutions.

The libertarian thinks that this world is chiefly a stage for the swaggering ego.

Kirk’s grotesque caricature of libertarianism abounds in fallacies, mischaracterizations, generalizations, and falsehoods. He distorts the simplicity, consistency, and morality of libertarianism beyond measure.

### Libertarianism

Libertarianism is simply the philosophy that says that people should be free from individual, societal, or government interference to live their lives any way they desire, pursue their own happiness, accumulate wealth, assess their own risks, make their own choices, participate in any economic activity for their profit, engage in commerce with anyone who is willing to recip-

rocate, and spend the fruits of their labor as they see fit — all without license, permission, regulation, or interference from the state as long as their actions are peaceful, their associations are voluntary, their interactions are consensual, and they don’t violate the personal or property rights of others.

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**Kirk’s grotesque caricature of libertarianism abounds in fallacies, mischaracterizations, generalizations, and falsehoods.**

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The creed of libertarianism is nonaggression: freedom from aggression and violence against person and property as long as one respects the person and property of others. The nonconsensual initiation of aggression against the person or property of others is always wrong, even when done by government. The nonaggression principle is designed to prohibit each one from infringing upon the liberty of any other. It is the core premise of the philosophy of libertarianism. Aggression is theft, fraud, the initiation of nonconsensual violence, or the threat of nonconsensual violence. Violence is justified only against violence. No violence may be used against a nonaggressor. Force is justified only in defense or

retaliation. Force must be proportional, but is neither essential nor required. Violence is justified only in defense of one's person or property or in retaliation in response to aggression against them.

Libertarianism has nothing to do with one's lifestyle, tastes, vices, sexual practices, traditions, religion, social attitudes, or cultural norms. Libertarianism is not "rugged individualism," "unrestrained freedom of speech," "survival of the fittest," "unfettered capitalism," "every man for himself," or "dog eat dog." Libertarianism should not be identified with libertinism, greed, selfishness, hedonism, licentiousness, nihilism, relativism, pragmatism, egalitarianism, antinomianism, anarchy, materialism, pacifism, or utopianism. Libertarianism is neither naive about human nature nor inimical to organized religion; it neither disdains tradition nor rejects moral absolutes.

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**Libertarianism respects privacy,  
free thought, freedom of  
conscience, free exchange, free  
markets, and private property.**

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Libertarianism respects personal and financial privacy, free thought, freedom of conscience, free exchange, free markets, and

private property. Libertarianism celebrates individual liberty, personal freedom, peaceful activity, voluntary interaction, laissez faire, free enterprise, free assembly, free association, free speech, and free expression — as long as they don't violate the personal or property rights of others.

### Libertarian canons

It's not just conservatism that has its canons. In honor of the centennial of Kirk's birth, here are six canons of libertarian thought that summarize themes central to libertarianism.

1. Taxation is theft. It doesn't matter whether the government calls it an excise tax, a tariff, an estate tax, a gift tax, a payroll tax, a sales tax, or an income tax. It all amounts to a seizure of one's assets by the government. As the libertarian theorist Murray Rothbard explained,

All other persons and groups in society (except for acknowledged and sporadic criminals such as thieves and bank robbers) obtain their income voluntarily: either by selling goods and services to the consuming public, or by voluntary gift (e.g., membership in



a club or association, bequest, or inheritance). Only the State obtains its revenue by coercion, by threatening dire penalties should the income not be forthcoming.

It would be an instructive exercise for the skeptical reader to try to frame a definition of taxation which does not also include theft. Like the robber, the State demands money at the equivalent of gunpoint; if the taxpayer refuses to pay, his assets are seized by force, and if he should resist such depredation, he will be arrested or shot if he should continue to resist.

Acquiring someone's property by force is wrong, whether done by individuals or governments.

2. Every crime needs a victim. Every crime needs a tangible and identifiable victim, not a potential or possible victim. Every crime must have measurable damages. Libertarianism recognizes no such thing as nebulous crimes against nature, society, the greater good, the public interest, or the state. Having bad habits, exercising poor judgment, engaging in risky behavior, participating in dangerous ac-

tivities, and committing vices are not crimes. It is on this latter point that 19th-century political philosopher Lysander Spooner so eloquently expounded: "Vices are those acts by which a man harms himself or his property. Crimes are those acts by which one man harms the person or property of another. Vices are simply the errors which a man makes in his search after his own happiness. Unlike crimes, they imply no malice toward others, and no interference with their persons or property." This means that doing business on Sunday, charging usurious interest rates, discriminating against someone, price-gouging, gambling, and ticket-scalping should never be crimes. Only violent criminals who initiate violence or aggression against someone should ever be incarcerated, and no one should ever be arrested or fined for committing a victimless crime.

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**Libertarianism recognizes no such thing as nebulous crimes.**

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3. People should be allowed to do anything that's peaceful as long as they don't aggress against the person or property of others. People should be able to do whatever they please, so long as they don't invade the right and freedom of

other persons to do the same. Viewing, selling, or making pornography; manufacturing, selling, or using illegal drugs; exchanging sex for money; unauthorized gambling; making and selling unlicensed beer, wine, or distilled spirits; and selling one's bodily organs should never be prohibited, since anyone should be able to do what he wants with his own body as long as his activities are peaceful, his interactions are consensual, and he doesn't violate the personal or property rights of anyone else.

4. Government is the greatest violator of the nonaggression principle, personal liberty, and property rights. As former Foundation for Economic Education president Richard Ebeling has well said, "There has been no greater threat to life, liberty, and property throughout the ages than government. Even the most violent and brutal private individuals have been able to inflict only a mere fraction of the harm and destruction that have been caused by the use of power by political authorities." Government should be limited to the protection of rights. All government actions — at any level of government — beyond reasonable defense, judicial, and policing activities are illegitimate. Government should be prohibited from

intervening in, regulating, and controlling peaceful activity. Government should never punish individuals or businesses for engaging in entirely peaceful, voluntary, and consensual actions that do not aggress against the person or property of others. As long as people don't infringe upon the liberty of others by committing, or threatening to commit, acts of fraud, theft, aggression, or violence against their person or property, the government should just leave them alone.

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**Government is the greatest violator of the nonaggression principle, personal liberty, and property rights.**

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5. Markets should be free of government interference. The United States has only a relatively free market. In a truly free market there are no minimum-wage laws, no overtime-pay laws, no government family-leave mandates, no government licensing, no government unemployment compensation, no government insurance mandates, no government regulation, no government price controls, no government-favored unions, no government job-training programs, no government research grants, no central bank, no government subsidi-

dies, no government vouchers, no government loans, no usury laws, no price-gouging laws, and no government involvement in medicine and education.

6. He who owns the property or the business makes the rules — all the rules, including dress codes, entry requirements, speech restrictions, rental requirements, hiring and firing, membership requirements, pay, benefits, and service requirements. If someone doesn't like the rules of a particular business, he doesn't have to work or do business there. No one has the right to any particular job, membership, residence, product, or service. If a property owner cannot restrict whom he employs, whom he engages in commerce with, whom he rents or sells to, whom he admits, or whom he associates with, then he has no property rights. Businesses should be able to discriminate against customers just as customers now discriminate against businesses. In a free society where property rights are respected, there would be no "public accommodations" laws that force private businesses to accommodate all members of the public. Business owners have the right to discriminate against or refuse service to anyone for any reason and on any basis.

Kirk couldn't have been more wrong about libertarianism. But he was right about one thing. Although conservatives and libertarians "share a detestation of collectivism" and "set their faces against the totalist state and the heavy hand of bureaucracy," they profess "nothing" else "in common," "nor will they ever have." But rather than being because of libertarianism's "many and grave failings," it is because conservatism is ultimately an authoritarian philosophy that seeks to enlist the state to order society.

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**NEXT MONTH:**  
**"O Cananda, and the  
Drug War"**  
*by Laurence M. Vance*

# The IRA and Defensive Violence

by Scott McPherson



*Lo, we shall rise up. And then we'll make the bugger's eyes water.*

— Pink Floyd, “Sheep”

In the 1960s, inspired in part by the Civil Rights Movement in the United States, Catholics in Northern Ireland began agitating for radical changes to a system they believed had been oppressing them for nearly half a century. Six counties in Ulster, in the northeast corner of Ireland, were still part of the United Kingdom, a Loyalist state partitioned from the rest of the island in 1920 in an act of political chicanery designed to protect a Protestant and pro-British majority. Fr. Michael Brown, a Belfast priest, told an English interviewer in the early 1990s that “to me and most Irishmen, history is the story of

how your people for hundreds of years have oppressed mine.” This history continued uninterrupted with the creation of the new British state.

## The Northern Ireland Civil Rights Association

Northern Ireland in the 1960s was a segregated, highly sectarian society, its government in Stormont, outside Belfast, a “Protestant parliament” serving a “Protestant people.” The Catholic minority was not just inferior — it was disloyal, to be feared as well as hated. The state and its Loyalist subjects used terror and political repression to keep Catholics in line: through pogroms and random attacks against individuals in times of economic distress or political unrest (sometimes with the approval or even the assistance of the police), institutional discrimination, diminution of the Catholic vote, and vast authority in the hands of the executive, including internment without trial. Not until 1969 would London be moved to recognize Northern Ireland’s Catholics as equal under the law.

Eager for change, a group of Republican radicals, trade unionists, communists, and “moderate reformers” founded the Northern Ireland Civil Rights Association on

January 29, 1967. The group's demands were reasonable: one man-one vote in local elections; an end to gerrymandering and discrimination in local government; repeal of the repressive Special Powers Act, in place since 1922; and disbandment of the Royal Ulster Constabulary's brutal paramilitary reserve force, the B Specials. A historian of the era called these demands "what any decent Englishman would support."

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**The RUC refused to provide safe passage for a civil-rights march from Belfast to Derry in January 1969.**

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It proved far more than the Stormont government could tolerate. Police brutality against peaceful marchers in Londonderry, in October 1968, was filmed by Irish TV, providing shocking images of RUC constables running riot, "smashing heads and chasing demonstrators. The marchers were hunted down, batoned, scattered, chased through the lanes and alleys." Even Gerry Fitt, a Westminster MP from Belfast, was viciously attacked. A hundred people went to the hospital. The next day, William Craig, Northern Ireland's minister for home affairs, praised the police, calling

protesters "silly, bloody fools." It did not portend better days.

The RUC refused to provide safe passage for a civil-rights march from Belfast to Derry in January 1969, yielding to crowds of angry Protestants armed with sticks blocking march routes, beating drums and shouting insults, and hurling rocks. The RUC's hostility to the marchers, and its willingness to allow the situation to descend into confusion, only strengthened the hand of the mobs, and contributed to the chaos. Two hundred Loyalist thugs, "many of them off-duty RUC B Specials," armed with sticks, nails driven through the ends, set upon the marchers outside Derry, sending eighty-seven to the hospital — while eighty RUC officers looked on. At two o'clock the next morning a group of drunken policemen went into a Catholic neighborhood, pounding on doors and breaking windows, and attacking anyone caught out and about. "After an hour they left. Behind was the last remnant of the RUC's cover as a normal police force." The next day private citizens stood guard with sticks and iron bars behind barricades, establishing a no-go zone they named Free Derry — free of the police, free of the mobs, free of Stormont's writ.

Another threat was the Ulster Volunteer Force, a private Loyalist militia, which began random terror attacks against Catholics in Belfast in May 1966, stabbing and killing John Scullion, and opening fire on four men walking home one evening in June, killing 18-year-old Peter Ward and injuring two others. A Protestant woman was also killed by the UVF in May when a firebomb thrown at a Catholic pub missed and landed on her porch next door.

And so it went. Across the province marches ended in violent clashes, between Protestants and Catholics, and between Catholics and the police. “In April 1969 the *Sunday Times* Insight team made the stark observation that the ‘monster of sectarian violence was well out of its cage.’” The British home secretary sent 500 soldiers to reinforce the garrison of 2,000 stationed in Lisburn, fifteen miles southwest of Belfast, but Stormont assured London the RUC could manage. “Northern Ireland society was moving inexorably towards a major conflict,” writes Martin Dillon.

But only one side had any guns. Hounded north and south of the border for decades, the Irish Republican Army was irrelevant, a historic gesture of defiance for the

Catholic population in Northern Ireland, and a boogeyman for Protestants. It had only a handful of weapons available to defend 600,000 Catholics, and the “army” was just a few radicals and middle-aged diehards, “a force that could parade in a pub,” “blackened, almost unarmed, and certainly very largely discredited.” Gerry Adams writes, “By the mid-sixties, the movement had shed most of its militaristic leanings and a small, politically conscious organization was developing.” What remained of the IRA was actually more interested in supporting the civil-rights crowd.

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**Across the province marches ended in violent clashes, between Protestants and Catholics, and between Catholics and the police.**

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Stormont’s response swung the momentum away from those advocating civil disobedience and constitutional politics, and toward the “physical force” men — those who believed that the only safety for Catholics lay in fighting the British state in Northern Ireland. “It is hardly an oversimplification to say that the Catholics were forced off the streets into the arms of the IRA.” When paramilitary police forces

soon began rampaging through Catholic neighborhoods in Belfast, Protestant mobs followed, looting and burning houses. The British army would be on the streets, and the province racked by civil war. Republicans would regret the absence of arms for defense, and determine “that such a thing would never happen again.”

### The IRA: A Rebirth

The powder keg exploded on August 12, when 15,000 Protestants came to Londonderry to join in the Apprentice Boys march, the route taking them along the city walls and the Catholic Bogside. All morning both sides exchanged insults, rocks, and bottles. By afternoon mobs of Loyalists and RUC squads were attacking Catholic barricades, trying to force their way into the Catholic district. The battle ran into the night, the RUC calling in reinforcements and armored vehicles. The situation was quickly spinning out control; the police were overwhelmed, completely unable to maintain order as buildings burned and CS gas filled the air. There was no let-up to the violence, and on the 13th, Northern Ireland’s prime minister, James Chichester-Clark, ordered the mobilization of 8,500 B Specials — the RUC’s paramilitary

branch, hated and feared by the Catholic population.

To take pressure off Derry, Catholics in Belfast erected barricades and began throwing rocks and gasoline bombs at the police, further stretching the RUC’s capabilities. Behind the police, Protestant mobs grew. The 14th brought an admission from the RUC inspector-general that “his men could not hold the line and they were in danger of being overrun in Derry.” Chichester-Clark radioed the British home minister, asking for the army to intervene. The troops arrived in Derry just as the B Specials began to appear, “the Bogsideers show[ing] every evidence of delight in the arrival of the British army.” To them, the Battle of the Bogside was a successful defense of the Catholic community — and so a victory.

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**Northern Ireland’s prime minister ordered the mobilization of the RUC’s paramilitary branch, hated and feared by the Catholic population.**

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In other parts of the province, “matters did not go so smoothly.” B Specials fired into a crowd in Armagh, killing a Catholic. More shots were fired in Dungannon, without injury.

In Belfast, Catholics rioted, throwing gasoline bombs and rocks at advancing lines of B Specials, as Protestant mobs advanced behind the police, forcing their way into Catholic areas. By night's end four policemen had been wounded by IRA gunfire, and several people were dead, including one Protestant man shot by the IRA, and a 9-year-old Catholic boy killed while lying in his bed when the RUC fired wildly at houses with a .30 caliber Browning machine gun. Many were injured in the street fighting, as Protestant mobs became more aggressive, "pushing into Catholic streets, burning down each captured house. Refugees staggered out of burning streets, trying to reach safe Catholic districts."

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Defending the Divis Street area, "a small IRA group," poorly armed with only a Thompson submachine gun, a .303 Lee Enfield rifle, and four handguns, took up positions at Saint Comgall's School, where they fired on an advancing Protestant mob for more than ninety minutes. "[They] kept the Loyalists back,

wounding as many as eight." Brendan Hughes, future leader of the IRA's highly aggressive D Company in Belfast, was there:

[When] the Loyalist mobs came down ... they were attacking St. Comgall's school with petrol bombs, stones, and everything. I mean, they just wrecked the whole front of the school. I knew the school, I had gone there as a child and I showed [name redacted], the IRA guy who had the Thompson, how to go through the school, through the classrooms, [and] up onto the roof ... I was on top of the roof ... [and the Protestants] were firing petrol bombs, a massive mob of people.... I was trying to encourage [name redacted] to shoot into the crowd [but] he was under orders from Jimmy Sullivan, the O/C [Officer Commanding] of the IRA at that time in the Falls area, not to shoot into the crowd, [but] to fire over their heads. So, he emptied a magazine over their heads which did break the crowd up. They retreated back into the Shankill [a Protestant area of Belfast] and we retreated off the roof.



Many years later, Hughes would recount that those actions were purely defensive. “[Most] of us at that time did not have a great deal of political ideology... We were motivated by the fact that Catholic homes and streets had been burned down, [that] Catholics had been forced out of their homes.” In the Ardoyne neighborhood to the north, another obstinate few, IRA men all, “held the line” against a Loyalist mob and the RUC. The latter’s return fire killed two Catholic bystanders and wounded eight others.

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**This was a reborn IRA,  
“conceived in the angry, charred  
back streets of Catholic Belfast.”**

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By mid morning on August 15, it was war in Belfast. “[With] a great pall of smoke hanging over the city, with thousands of refugees in transit, with the mobs still on the street and the crack of bullets audible most places in the west of the city, there was no hope left that the RUC could impose order.” Belfast was on fire. More barricades went up. At 4:30 that afternoon, British soldiers moved into the city, providing a brief reprieve from the violence. All of Catholic Bombay Street and Brookfield Street had been burned out; a Catholic boy, 15-year-old

Gerald McAluley, was killed in a gun battle with Loyalists shortly before the soldiers arrived, as he aided stricken families on Bombay Street. Hundreds of families were forced from their homes. Refugees were arriving at Red Cross camps, set up south of the border with help from the Irish army.

Nationalists in the north, particularly Belfast, were livid. Once again Catholics had been helpless victims of mob violence — with no assistance from, and in some cases at the hands of the RUC. Republicans were incensed — with Loyalists and Stormont, naturally, but also the IRA leadership in Dublin. Lack of weapons to defend “their” areas was a significant bone of contention, and arms would remain a prickly issue for the movement even into the next century. London and Stormont issued a joint communiqué, the Downing Street Declaration, on August 19, 1969, declaring the need for reforms in the province. It was too little too late. “In Catholic areas there was real doubt that the RUC could keep the loyalists and B Specials away from the Catholics, or that they wanted to.” The radicals smelled burning houses, and the IRA was “flooded with recruits.” As they saw it, the problem was Stormont, and behind

it the British government. This was a reborn IRA, “conceived in the angry, charred back streets of Catholic Belfast.”

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**In October a shipment  
of weapons passed through  
Dublin Airport and made its way  
to the IRA.**

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Efforts began in earnest to procure more, and better, weapons; even members of the Irish government became involved, including Charles Haughey, the minister for finance, whose brother secreted £3,000 to Cathal Goulding, the IRA’s “chief of staff.” In October a shipment of weapons passed through Dublin Airport and made its way to the IRA. More were sought, from Belgium, Germany, Austria, and the United States. North and south of the border committees were set up to raise funds for relief efforts, but soon it was weapons that everyone wanted. On trial a year later, Belfast IRA member John Kelley said frankly of the time, “We did not ask for blankets or feeding bottles. We asked for guns.”

A Loyalist mob burned down Coates Street in Belfast in September 1969, with no intervention from the army or the RUC. That helped Catholics to learn an “important

lesson,” writes Adams. Easter celebrations in March 1970 turned ugly, the Royal Scots Regiment using CS gas liberally against Catholic demonstrators. More people were warming up to the IRA. There was heavy rioting in Belfast and Londonderry in June, the army using a heavy hand to restore order. After soldiers forced a Protestant march through the Ardoyne neighborhood, there was “fierce rioting,” and the IRA shot three rioters, all Protestants. The unrest soon spread east, to a Catholic enclave called the Short Strand. On June 27 a Loyalist mob, backed up by gunmen, advanced toward St. Mathew’s Church, intending to burn it down, in a neighborhood of 6,000 defenseless Catholics, and with “no sign of the British army.” IRA commander Bobby McKee and a small unit held back the mob, their heroics now part of Republican folklore.

The IRA fought on through the night: darkened streets, howls and flickering lights from fires, the crack and whine of bullets, confusion and fear and no sign of authority. Three Protestants and an IRA volunteer, Henry McIlhone from the Third Battalion, were killed and Billy

McKee slightly wounded. The mobs were driven back and there was little doubt that the [IRA] had won.

In Catholic West Belfast, the army brutally imposed a curfew in early July, searching for weapons. Adams says that it “made popular opposition to the British army absolute....”

Three thousand British troops invaded the Falls Road and, from helicopters, voices over PA systems announced that the area was under curfew and that anyone on the streets was liable to be shot. Five civilians were killed, more were injured, and 300 were arrested. The invasion and curfew lasted for two days, during which 1,600 canisters of CS gas were fired. Troops smashed down the doors of houses, pulled up floors, wrecked people’s homes.

Three weeks later, a 19-year-old Catholic man was shot and killed by soldiers during a riot in north Belfast. In some parts of Belfast, the rioting would continue for six months straight. Before, it was always the RUC and B Specials beat-

ing protesters and firing CS gas and shooting Catholics, but now it seemed the army was on hand to do the Loyalists’ bidding. Catholics increasingly saw the army as a tool of Stormont and the Protestant police state. Interestingly, the first British soldier would not be killed by the IRA until February 1971. That same month Prime Minister Chichester-Clark said, “Northern Ireland is at war with the Irish Republican Army.”

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However, “It was a daunting thought at the time ... that we were going to take on the might of the British Army with the antiquated weapons that we had,” Brendan Hughes told an interviewer before his death in 2008. The IRA, particularly in Belfast, wanted Armalites — forerunner of the M-16/AR-15 rifle. “We all fell in love with this weapon,” he said. “The Armalite was much superior for street fighting.... [They] made all the difference ... and I loved them. I loved the Armalite.” More of these rifles were smuggled in from the United States, along with other weapons and ex-

plosives, helping the IRA to escalate its attacks on British soldiers and police officers. A popular slogan read, “God made the Catholics; the Armalite made them equal.”

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**The genie of violence was out of the bottle, and the IRA quickly transformed into an offensive organization.**

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Hughes claims that during this period “there wasn’t a [British] regiment that came into the Falls area that didn’t go out with casualties.” Across Northern Ireland, IRA units were taking the fight to the army and police on the streets of Derry and Belfast, in the small towns and villages, and along the back lanes of rural Ulster. In 1971, 48 soldiers and 11 policemen were killed, with another 700 injured. The next year, 129 soldiers and 17 police were killed, and the number of “shooting incidents” would rise to 10,628. Injuries to members of the “security forces” — police, soldiers, and reservists — almost doubled. In June and July 1971 alone, the IRA carried out 125 bombings — more than two per day — and a total of more than a thousand by year’s end. Northern Ireland would be rocked by almost 1400 bombings in 1972. The tiny province was battered into

chaos, with many innocent lives lost or wrecked in the bloodletting.

**The IRA transformed into an offensive organization.**

In March 1972 the Stormont government collapsed, the province returning to direct rule from London. Catholics were ecstatic. This hated symbol of repression, partition, and discrimination was no more, and the IRA had played a major role in rendering Northern Ireland ungovernable. Sadly, the genie of violence was out of the bottle, and the IRA quickly transformed into an offensive organization, committing vicious and unforgivable acts of terror against innocent civilians. The conflict would continue until 1998, when Loyalist and Republican paramilitary forces declared ceasefire, followed by multi-party negotiations that produced a compromise agreement including proportional representation in a new assembly for all parties, a power-sharing executive, a new police force, and better communication between the Irish and British governments on matters concerning the people of Northern Ireland. Republicans resisted disarmament until the bitter end, many still remembering what it was like to be one of “history’s victims.”

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

and Bear Arms. This article is a reprint of chapter seven. October 2018 marks the 50th anniversary of the start of *The Troubles of Northern Ireland*.

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*There is no warrant in logic or morals for trying to place the authority of religion behind measures of social and economic collectivism. Indeed, there is a much stronger case for arguing that the sense of individual responsibility — which is a key indispensable factor in making it possible for the individual to distinguish between right and wrong — is best assured under a system in which the human being is mainly committed to his own care and required to make his own decisions.*

— William Henry Chamberlin

# Civil Asset Forfeiture Suffers a Crushing Defeat

by George Leef



There are a few issues where Americans on both sides of our political divide are in agreement and one of them is the wrongfulness of civil asset-forfeiture laws. Under those laws (which exist at federal, state, and local levels), a person can be deprived of his property merely because a law-enforcement official suspects that it might have somehow been involved in a crime. For example, if a person is stopped while carrying a lot of cash and the police suspect that the cash might have come from illegal drug transactions, the police can seize the money. Or, if a police officer thinks that a car was used for an illegal liaison with a prostitute, he can seize the vehicle.

Cash, vehicles, jewelry, even real estate have been taken from their owners under civil asset forfeiture.

In such cases, the property itself is deemed “guilty” of the supposed infraction and once the government has gone through the necessary paperwork, it is forfeited to the government. At that point, it is up to the owner to battle through bureaucratic and legal thickets if he wants to recover the property. In that battle, the presumption of innocence does not apply — it is incumbent on the individual to prove that the police were wrong, reversing the way our criminal law system is supposed to work.

Unless the owner can win that costly, uphill battle to recover his property, the government gets to sell it. Many people can’t afford to fight and just give up, which is exactly what the government wants. The proceeds usually go into the police budget, creating perverse incentives for the police to search for lucrative forfeiture targets.

Civil asset forfeiture amounts to deprivation of property without due process of law and that is why it is widely opposed by Americans. Unfortunately, the last time civil asset forfeiture was challenged in the Supreme Court, a 5-4 majority upheld its legality on the weak ground

that civil asset forfeiture had existed at the time the Constitution was ratified and therefore couldn't be unconstitutional. (If you want to read the case, it is *Bennis v. Michigan*, 516 U.S. 442.)

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Since *Bennis*, a vigorous movement has grown to reform or repeal civil asset-forfeiture laws at the federal and state levels. The state where the most progress has been made is New Mexico, where in 2015 the state legislature passed a bill that defanged the viper. The efforts in New Mexico were given a huge boost by the video of a conference where a consultant told law-enforcement officials how to maximize their take under civil asset forfeiture. When the video went viral, most citizens were aghast at the brazen legal plunder scheme being perpetrated by their officials.

Both chambers of the legislature unanimously passed a bill providing that only criminal forfeitures would be allowed in the state — no longer would a person who had not been convicted of a crime have to forfeit his property. Furthermore, to eliminate the profit motive from

law enforcement, any future funds from forfeitures would go into the general fund. Gov. Suzanna Martinez promptly signed the bill into law, giving New Mexico the nation's best grade on civil asset forfeiture, according to the analysis of the Institute for Justice (IJ), the libertarian group that has spearheaded the battle against not only civil asset forfeiture, but many other governmental assaults on freedom and property rights. You can read IJ's report on civil asset forfeiture, "Policing for Profit," at <https://ij.org/report/policing-for-profit/>.

But passage of that bill, called the New Mexico Forfeiture Act (NMFA), did not stop civil asset-forfeiture abuse. Albuquerque, the state's largest city, had a thriving civil asset-forfeiture operation going and it decided to ignore the new law on the specious grounds that it did not apply to the city's actions. The city kept right on with its lucrative vehicle-forfeiture racket.

### **The Harjo forfeiture**

On April 23, 2016, New Mexico resident Arlene Harjo's son asked whether he could borrow her car to go to the gym. She agreed to his request and expected him to return within a few hours. But he did not return that night. The next morn-

ing, Arlene found out that he had been arrested for driving while intoxicated after a rendezvous with his girlfriend. At the point of arrest, Albuquerque police seized her car for forfeiture.

Of course, Arlene had not been convicted of drunken driving and under the NMFA her property should not have been confiscated — but Albuquerque was ignoring the law.

In an effort at preventing the forfeiture of her vehicle, she paid \$50 to have a hearing with a city attorney. He offered her this settlement: the city would not keep her car if she paid \$4,000 and agreed to boot it (render it inoperable) for 18 months. How generous! Arlene could not, however, afford either the monetary cost or the loss of transportation, so she declined the offer. An important fact that would later come to light is that the city attorney's salary was paid entirely out of vehicle-forfeiture revenues.

Having declined the settlement offer, Arlene next had to meet with the city's Chief Hearing Officer. In that meeting, she argued that her car should be returned to her because the city ordinance excepted "innocent owners" from forfeiture. But the Chief Hearing Officer ruled that she had not carried her burden

of proving that she was in fact an "innocent owner" under the law. Therefore, at his direction, the city proceeded to file to have her car forfeited to it.

Luckily for Arlene, the case had come to the attention of the crack legal team at the Institute for Justice, which filed suit against Albuquerque in 2016.

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During case discovery, a crucial fact emerged, namely that the driving incident and arrest had occurred outside of city limits and therefore the seizure and forfeiture of Arlene's car was illegal. Albuquerque officials had access to the police report showing that the arrest took place outside city limits, but somehow they managed to overlook the car's location. Discovery also showed that the employees who conduct the background checks prior to forfeiture actions also had a financial stake in the cases, since they too were paid out of forfeiture proceeds.

Once the embarrassing fact that the whole case was a "mistake" was revealed, Albuquerque dropped its forfeiture action against Arlene. But



she was not about to drop her suit against the city, because she had suffered considerable damage as a result of its wrongful action.

### Due process

At this point in 2016, two legal battles were being fought over civil asset forfeiture. First, was Albuquerque really excused from having to abide by the NMFA? Second, had the city violated Arlene's constitutional rights and was it therefore liable for damages?

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#### Albuquerque's desperate attempt at evading the obvious intent of the law was rebuked.

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The first case was decided in March of this year when federal Judge James Browning ruled that the NMFA did apply to Albuquerque. The key language in his opinion reads, "A municipality wishing to enact a civil forfeiture law could avoid the New Mexico Forfeiture Act by simply not mentioning the NMFA, thus allowing noncriminal forfeiture to continue in New Mexico despite the Legislature's expressly stated purpose that it meant to 'ensure that only criminal forfeiture is allowed in this state.' Thus, reading the NMFA as the City of Albuquerque argues would render the

amended purpose superfluous and the Court will not read the statute that way."

In short, Albuquerque's desperate attempt at evading the obvious intent of the law was rebuked.

The second case was also heard by Judge Browning and he issued his decision on July 28. In it, he ruled in favor of Arlene's claim for damages and, more important, held that the civil asset-forfeiture system the Albuquerque had run for many years violated the Fourteenth Amendment Due Process Rights of individuals whose vehicles were forfeited.

The crucial language in that decision reads, "The Court concludes that the City of Albuquerque's forfeiture officials have an unconstitutional incentive to prosecute forfeiture cases, because forfeiture revenues are set in a special fund and the forfeiture program can spend, without meaningful oversight, all of the excess funds it raises from previous years." That incentive violates the right to due process protected by the Fourteenth Amendment because government officials must not be biased in making their decisions.

Furthermore, Judge Browning wrote, "The Forfeiture Ordinance independently violates due process by depriving car owners of their property unless they prove their in-

nocence.” Bravo, Judge: You have stood up for the essential tenet of our legal system, that the burden of proof is on the government, not the accused.

Judge Browning’s reasoning on the ways civil-forfeiture laws violate citizens’ rights under the Fourteenth Amendment will undoubtedly be used in future cases against civil forfeiture in other states. There is a long, hard campaign ahead against those laws. If you read “Policing for Profit,” you will see that in most states, civil asset-forfeiture laws range from poor to terrible.

Law-enforcement officials always defend the laws, saying that they’re necessary to fight the war on

drugs. But even if you believe in the war on drugs (I regard it as sheer folly), it’s plainly unjust to victimize innocent people in fighting it. Law enforcement should always have to prove someone guilty in a court of law before taking his property or otherwise subjecting him to punishment.

Civil asset forfeiture victimizes innocent people and corrupts government officials. It must be eliminated.

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*The more a person dislikes the strange and thinks his own ways superior, the more he regards it as his mission to civilize others.*

— *Friedrich A. Hayek*

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