
FUTURE OF FREEDOM

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*A life spent worthily should be measured by
deeds, not years.*

— *Richard Sheridan*

FUTURE OF FREEDOM

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Understanding the JFK Assassination, Part 3

by Jacob G. Hornberger



Soon after President Kennedy was declared dead in Dallas, longtime White House photographer Robert Knudsen was summoned to Andrews Air Force Base to meet Air Force One, which was due to arrive at around 6 p.m. carrying President Lyndon Johnson and the body of the slain president. Knudsen ended up staying away from his family for the next three days.

Knudsen served as the official social photographer for the White House for five presidencies, extending back to the Truman administration and ending with the Nixon administration. He was very close to the Kennedy family. Whenever you see photographs of President Ken-

nedey's young children, John-John and Caroline, there is a good chance that the photographs were taken by Knudsen.

When Knudsen returned to his family after three days, he told them that he had been the photographer for the president's autopsy but that he was not permitted to talk about it. He said that the entire operation was "classified," which he understood meant that he could never reveal what he had seen or learned to anyone. His wife later told the Assassination Records Review Board in the 1990s that her husband treated "classified information" the way military personnel do, meaning that he would go to his grave without ever revealing it to anyone.

In 1977, Knudsen was interviewed by the national photography magazine *Popular Photography*. During the interview, he said that he had been the official photographer for the Kennedy autopsy. He told the magazine that it was the hardest thing he had ever done. Again, however, he did not reveal any details of what he had seen or learned during the autopsy.

In January 1989, Knudsen passed away. Both the *New York Times* and the *Washington Post* published obituaries stating that he had photographed the Kennedy autopsy.

There is one big problem with Knudsen's story. He wasn't the photographer for the Kennedy autopsy. The autopsy photographer was a man named John Stringer, who taught classes at the Bethesda Navy Medical School and who had photographed numerous autopsies at the Bethesda Navy morgue. Notwithstanding Knudsen's claim and the *Post's* and *Times's* obituaries, the testimonies of autopsy participants and other evidence surrounding the autopsy established conclusively that Stringer, not Knudsen, was the autopsy photographer. It is also an established fact that Knudsen wasn't even at the autopsy.

Yet, it is a virtual certainty that Knudsen photographed a procedure that he was made to believe was the Kennedy autopsy. That's because he wasn't the type of person to make up a story like that. Moreover, the fact that he told a national photography magazine that he was the autopsy photographer lends credibility to his claim.

During the mid 1970s, the House Select Committee on Assassinations opened an investigation into Kennedy's assassination. Knudsen was summoned to testify in that proceeding. One of the fascinating aspects of his testimony is that the lawyer who was questioning him

scrupulously avoided asking him about photographing the autopsy. Instead, the questions were limited to asking him about his participation in the development of autopsy photographs.

Knudsen later told his wife that there was fraud and deception in the official autopsy photographs.

Knudsen testified that he had, in fact, helped to develop the autopsy photographs. He said that some of the autopsy photographs showed metal rods or probes that were inserted into Kennedy's wounds to help ascertain the trajectories of the bullets.

Knudsen later told his wife that there was fraud and deception in the official autopsy photographs. He said he couldn't go into details but that if the fraud were ever to be exposed, he wanted his family to know that he had played no part in the deception, at least not knowingly.

Unfortunately, by the time the Assassination Records Review Board learned about Knudsen's story in the 1990s, he had already passed away and had taken what he knew to the grave with him.

Perjury

In November 1966, a meeting relating to the Kennedy autopsy was held at the National Archives in Washington, D.C. The meeting had been called by the U.S. Justice Department. Attending the meeting were Navy commanders James Humes and J. Thornton Boswell, two of the three military pathologists who had conducted the Kennedy autopsy; Navy Captain John Ebersole, who had served as the radiologist for the autopsy; and John Stringer, the autopsy photographer.

Stringer acknowledged under oath that he had signed the false inventory affidavit at that November 1966 meeting.

At that meeting, a Justice Department lawyer handed the four participants an inventory that listed all of the official photographs and X-rays that purported to have been taken at the official autopsy. At the bottom of the inventory, the Justice Department had included a written certification indicating that the four participants had reviewed all of the photographs and X-rays in the official record and were certifying that the inventory was true and correct and that nothing was missing from it.

As they were examining the photographs and X-rays and comparing them to the inventory, Stringer advised the group that some of his photographs were definitely missing from the inventory. Humes agreed with him. Nonetheless, at the end of the session, all four of them signed the certification, without conditions, reservations, or qualifications. By knowingly signing a false affidavit in an official government report, all of them had committed a felony.

Some 30 years later, Stringer was summoned to testify before the ARRB, where he acknowledged under oath that he had signed the false inventory affidavit at that November 1966 meeting at the National Archives. The general counsel for the ARRB, a lawyer named Jeremy Gunn, pointed out to Stringer that there are some people who object to that sort of thing. Stringer's answer was revealing. He acknowledged that Gunn's statement was true but then pointed out that that type of person didn't last very long.

One thing is certain: the photographs in the official record did not and do not include the autopsy photographs that Sandra Spencer saw when she developed the autopsy photographs on the weekend of the assassination. The photographs

she developed showed a massive exit-sized wound in the back of Kennedy's head. The official autopsy photographs show the back of Kennedy's head to be fully intact, with one exception: what the three military pathologists claimed was a small bullet-sized entry wound at the base of the hairline on the back of Kennedy's head.

Something else is certain: the photographs in the official record did not and do not include any of the photographs that Knudsen had helped to develop that showed probes in Kennedy's wounds.

A second meeting

In January 1967, just after the November 1966 meeting, a second meeting was held at the National Archives, this one again being called at the request of the Justice Department. This meeting was attended by the three military pathologists who had conducted the autopsy on Kennedy's body, Navy commanders Humes and Boswell and Army Lt. Col. Pierre Finck.

The reason that Finck wasn't at the November 1966 meeting at the National Archives, the one where the false inventory was attested to, was that he was serving in Vietnam.

By January 1967, Finck had been transferred to South Vietnam.

But his presence at the second meeting of the National Archives was evidently considered so important that he was ordered to return to Washington, D.C., for the meeting.

The photographs in the official record did not and do not include any of the photographs that Knudsen had helped to develop.

The purpose of this second meeting was to have the three autopsy physicians review the official autopsy photographs and X-rays and certify that they did in fact confirm the official autopsy findings that had been made three years before.

It shouldn't surprise anyone that after reviewing the photographs and X-rays in the official record, the three autopsy pathologists concluded that they did confirm the accuracy of the original autopsy findings.

About a year later, in February 1968, the Justice Department called a third meeting at the National Archives. Actually, the meeting was technically requested by Commander Boswell, who sent a letter to the Justice Department, requesting the Department to organize a panel of nationally known, prominent, and competent pathologists

whose job it would be to review the official autopsy photographs and X-rays and determine whether they could put their “seal of approval” on the official autopsy findings.

Some 30 years later, however, Boswell would tell the ARRB that the idea for the panel actually came from the Justice Department, which had asked him to send a letter proposing the idea, apparently so that people would not know that the idea was coming from the Justice Department.

The panel came to be known as the Clark Panel, named after Ram-

sey Clark, a lawyer from President Johnson’s home state of Texas who was a close friend and confidant of Johnson and whom Johnson had named as U.S. Attorney General.

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

NEXT MONTH:
“Understanding the JFK
Assassination, Part 4”
by Jacob G. Hornberger

And what of the old-fashioned idea of Christian charity? Once, it was a function of the church to minister to the needs of the genuinely poor and sick. One of the worst by-products of state welfarism has been the paralysis of our impulse toward charity. For not only has the state usurped this function of the church, and seized our means to be charitable, it has stolen our will to be charitable, too.

— Anna Dillenberg

John McCain's Disastrous Militaristic Legacy

by James Bovard



When Sen. John McCain passed away in August, he was lauded far and wide for his long career of public service. Rep. John Lewis, the famous civil-rights activist, hailed McCain as a “warrior for peace.” In reality, McCain embodied a toxic mix of moralism and militarism that worked out disastrously for America and the world.

In his funeral eulogies, McCain was portrayed as a hero and a visionary. But early in his congressional career, he barely avoided indictment as part of the Keating Five Savings and Loan bribery scandal that cost taxpayers billions of dollars. McCain repaired his image by becoming a champion of campaign-finance reform and new restrictions

on political contributions. In 2002, Congress enacted the McCain-Feingold Bipartisan Campaign Reform Act, which proved more effective at suppressing criticism than at reforming political life. The McCain-Feingold Act authorized harsh penalties for private citizens who accused their rulers of abusing their power. It prohibited most issue ads by private groups on television or radio in the months before a presidential or congressional election. In 2003, the Supreme Court (by a 5-4 margin) upheld the new law in response to activities with “a significant risk of actual and apparent corruption.” Justice Antonin Scalia noted in a dissent to the decision upholding the law, that the McCain-Feingold act “cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government.” But that was fine with McCain, since he declared that if he had the power, he would outlaw all negative political ads. He declared, “I detest the negative advertising. I think it is one of the worst things that has ever happened in American politics.” Banning negative ads but not political lies was McCain’s notion of a level playing field.

When he was awarded the Liberty Medal in October 2017 at the National Constitution Center in

Philadelphia, Senator McCain declared, “We live in a land made of ideals.... We are the custodians of those ideals at home, and their champion abroad. We have done great good in the world.” He warned that it would be “unpatriotic” to “abandon the ideals we have advanced around the globe.” But idealism has fared better in political speeches than in the lives of American soldiers or supposed foreign beneficiaries.

McCain served as the chairman of a federally funded entity that intervenes in foreign elections to promote pro-American candidates.

McCain served 25 years as the chairman of the International Republican Institute, a federally funded entity that intervenes in foreign elections to promote pro-American candidates. McCain often spoke as if the institute was the incarnation of America at its best. In 1997, McCain declared, “When we provide the democratic opposition in Albania with 12 Jeep Cherokees and they win an election, I’m incredibly proud.” However, the Institute was involved in violent attempts to overthrow governments in Venezuela and Haiti and was condemned for meddling in many other places. As

long as pro-American candidates snared the most votes by hook or by crook, McCain had no complaints.

During the 1990s, McCain “slowly moved toward the idealist camp and became one of his party’s foremost advocates for the use of force abroad,” the *Boston Globe* noted. In his 2000 presidential campaign, he pledged a “rogue state rollback,” which sounded like “fill-in-the-blank” declarations of war against any regime of which the United States disapproved. He was defeated in the Republican primaries by George W. Bush, who sounded reasonable and moderate in comparison. However, after 9/11 Bush adopted McCain’s bellicose vision and promised to “rid the world of evil.”

Iraq

McCain was one of the foremost advocates for attacking Iraq and served as honorary co-chairman of the Committee for the Liberation of Iraq. In 2002, he declared that invading that nation would be “fairly easy” and that “we can win an overwhelming victory in a very short period of time.” Two months after the fall of Baghdad, McCain proclaimed that the war was “fully vindicated.” After the war became a debacle, he declared in 2008 that it

was “fine with me” to keep U.S. troops in Iraq for “a hundred years.”

McCain believed Americans should idealize military interventions regardless of the political machinations that preceded them. When Bush created a pseudo-independent commission in 2004 to exonerate him for the missing weapons of mass destruction in Iraq, he selected McCain as one of the nine members. On the day his appointment was announced, McCain publicly declared, “The president of the United States, I believe, would not manipulate any kind of information for political gain or otherwise.” McCain’s boundless endorsement of the current president ignored the legendary presidential deceits that trademarked the Mexican-American War, the Spanish-American War of 1898, the First World War, and the Vietnam War.

McCain sanctified a commission (which had no subpoena power) that was a crock from the get-go. As Sen. Robert Byrd scoffed, “This commission is 100 percent under the thumb of the White House. Who created the panel’s charter? The president. Who chooses the panel members? The president. To whom does the panel report? The president. Whom shall the panel advise and assist? The president.

Who is in charge of determining what classified reports the panel may see? The president. Who gets to decide whether the Congress may see the panel’s report? The president.” Predictably, the commission concluded that Bush was not to blame for starting the Iraq War on false pretenses.

McCain believed Americans should idealize military interventions regardless of the political machinations that preceded them.

McCain loved to strut on foreign trips where American reporters were sure to hail him as a visiting savior. He was ridiculed as “the new Baghdad Bob” who took a “magic carpet ride” after he visited a Baghdad market in 2007 and claimed, “Never have I been able to go out into the city as I was today.” McCain touted his visit: “We stopped at a local market, where we spent well over an hour, shopping and talking with the local people, getting their views and ideas about different issues of the day.” Rep. (now Vice President) Mike Pence, who accompanied McCain, ludicrously asserted that the scene was “just like any open-air market in Indiana in the summertime.” At the time of his market visit, McCain was

wearing a flak jacket, accompanied by 100 U.S. troops, and protected overhead by attack helicopters. Prior to McCain's arrival, U.S. troops cleared almost everyone else at the scene. After he departed, Iraqi merchants bitterly scoffed at his claims that the market was safe. One shop owner growled, "They paralyzed the market when they came. This was only for the media. This will not change anything."

After McCain departed, Iraqi merchants bitterly scoffed at his claims that the market was safe.

But the American media lapped it up and the charade did nothing to prevent McCain from securing the Republican presidential nomination the following year. The shining moment of his campaign was his proclamation, "We are all Georgians now!" in response to a border clash that the Republic of Georgia commenced against the Russian Federation. McCain's bellicosity against Russia never died. He also proclaimed during that campaign, "I know how to win wars. And if I'm elected president, I will turn around the war in Afghanistan, just as we have turned around the war in Iraq, with a comprehensive strategy for victory." McCain never ex-

plained how he learned how to win wars (not a lesson taught in North Vietnamese prisons) or why he advocated bombing more than a dozen nations throughout his congressional career.

Syria and Libya

Perhaps the only lesson McCain learned from the Iraq War was that the American media would unquestioningly glorify him for demanding foreign intervention. In 2011, he was outspoken demanding U.S. bombing of Libya — widely considered the biggest foreign-policy blunder of the Obama administration. In April 2011, he visited rebels in Benghazi and labeled them heroes. Yet, as a Wikileaks disclosure revealed, he had sung a different tune two years earlier when he visited Tripoli. Meeting with officials of Muammar Qaddafi's regime, McCain "pledged to see what he could do to move things forward in Congress" regarding a Libyan request for U.S. military equipment, according to a confidential U.S. embassy cable. After the United States helped topple the Qaddafi regime, chaos erupted and four Americans, including the U.S. ambassador, were killed in Benghazi. A few years later, slave markets were operating in the nation

that McCain and Obama had so proudly liberated.

McCain returned to the Middle East for an encore visit with Syrian rebels in 2013, whom he then ceaselessly championed as a moderate alternative to the regime of Bashar Assad. Under pressure from McCain and others, the Obama administration provided massive military aid to anti-Assad forces, but much of the weaponry ended up in the hands of terrorist groups. The absurdity of U.S. policy became undeniable when Pentagon-backed Syrian rebels openly battled CIA-backed rebels. That did not deter McCain from endless pious preening, such as his early 2017 tweet: “On 6th anniversary of Syrian civil war, Assad & Russia cont. to commit genocide — when will the world wake up to the slaughter in Syria?” Since McCain had used the word “genocide,” that meant the U.S. government was morally obliged to topple the Assad regime — even though Libya showed the catastrophic results of intervention. A year later, McCain wailed, “For seven long years, the United States has sat idly by in the face of genocide. We seem to have become immune to images of devastation and brutality coming out of Syria every day. Two successive U.S. administrations have failed to do

anything meaningful to stop the slaughter and enabled Assad’s reign of terror to thrive.” Actually, the U.S. government had dropped tens of thousands of bombs and missiles on Syria, despite not having a dog in that fight. Donald Trump twice sent cruise missile barrages against the Assad government after unproven allegations were made that the government had used chemical weapons. (The al-Qaeda-linked terrorist groups fighting Assad were also frequently accused of using chemical weapons.)

Most of the media ignored McCain’s role in making the Syrian conflict longer than it otherwise would have been.

Most of the media ignored McCain’s role in making the Syrian conflict longer and bloodier than it otherwise would have been. That is no surprise, since American politicians across the board are perennially absolved by the ideals they invoke when championing foreign wars. But the moral bonus points are void beyond the national borders. Idealistic pretenses can spur vast resentment because “the American judges himself by the way he feels, whereas the foreigner judges him by what he does,” as

Irving Babbitt explained after World War One.

There are plenty of nasty dictators in the world but U.S. government efforts have dismally failed to spread democracy this century. John McCain was in the forefront of prominent Americans who had “learned nothing and forgotten nothing” from recent U.S. pratfalls. Instead, he continued talking as if foreign interventions could be a deft blend of Jesus and General Sherman, righteously burning a swath through Georgia.

America cannot afford an idealism that consists of little more than combining bombing and wishful thinking. We should not forget the Americans, Iraqis, Syrians, and Libyans who died in part because of

policies McCain championed. The most valuable lesson from McCain's career is to reject the folly of militarized idealism.

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

NEXT MONTH:
“Truth Is an Outlaw in Washington”
by James Bovard

By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion.

— Lord Acton

Businesses That Should Not Exist

by *Laurence M. Vance*



Among other things, libertarians — and even most conservatives — are known for extolling the virtues of capitalism, the free market, commerce, trade, free enterprise, and entrepreneurship. They are generally defenders of business as long as there is an absence of protectionism, crony capitalism, and corporate welfare. Even so, from a libertarian perspective, there are still some businesses that should not exist.

According to the U.S. Small Business Administration (SBA), there are in the United States about 28 million small businesses (defined as having fewer than 500 employees) and about 18,500 firms with 500 employees or more. Although most large firms are corporations, small businesses can be organized as

sole proprietorships, partnerships, S corporations, or C corporations. But whether a business is large or small is not the question to be addressed. The question is simply this: Are there some of these businesses that should not exist?

The SBA also reports that one-third of small businesses will fail within their first two years of being started, 55 to 60 percent will survive to four years, and the five-year survival rate has historically hovered around the 50 percent mark. Of the half of businesses that close their doors within five years, approximately one-third do so because they fail financially or are shut down through legal action. About 10-12 percent of firms with employees open and close each year. But why a business survives or doesn't survive past the five-year mark is not the question to be addressed. The question is simply this: Are there some businesses that should not open in the first place?

Pan Am was a popular airline for many years. After declining during the energy crisis of the 1970s, a hijacking and a terrorist bombing over Scotland in the 1980s hastened the demise of the company. Pan Am went out of business in 1991. Circuit City sold televisions, electronic devices, and appliances

through its chain of retail stores. At its peak, the company had 1,520 stores. However, Circuit City declared bankruptcy in 2008 when its stock was being traded for well below \$1 per share.

Some businesses should not exist because they do so only in response to some government action.

In 2011, the last typewriter factory in the world shut its doors after the computer hastened the demise of the typewriter. The Godrej and Boyce company in India had produced 10,000 to 12,000 typewriters a year until 2009. In the 1990s, Compaq Computers was the number-one seller of IBM-compatible personal computers. After the rise of Dell Computers, Compaq was purchased for \$25 million by Hewlett-Packard in 2001. Hewlett-Packard discontinued the Compaq line in 2013. At one time, Blockbuster dominated the video rental market. However, the company was slow to move into online distribution, and was trounced by Netflix. Blockbuster closed its last 300 stores in 2013. But why a business that is so successful can go out of business is not the question to be addressed. The question is simply this: Are

there some businesses that should go out of business?

Many people would reply in the affirmative to these questions, albeit for the wrong reasons. Some would say that a particular business should not exist because it serves no useful purpose — such as manufacturing video games, vitamin water, or diet doughnuts. Others would say that a particular business should not open in the first place because it is an inherently immoral business — such as a gentlemen's club, a massage parlor, or a pornographic magazine. More still would say that a particular business should go out of business because of something the business did — such as providing poor customer service, raising prices, or selling goods made in sweatshops. Although those claims (no useful purpose, inherently immoral, bad action) may all be true, they are all very subjective.

Yet, there are some businesses that really should not exist. They should not exist because they do so only in response to some government action. Now, there is a sense in which many of these businesses that should not exist are valuable because they help people to circumvent some government prohibition. But in a free society, there would be no such government prohibitions.

Americans in the “land of the free” should not have to settle for work-arounds, fixes, and alternatives to their freedoms.

Two examples

They call them cruises to nowhere. And sometimes they never leave the dock. Yet these ships are full of paying passengers. Here are two examples that I know about personally because of where I currently live and formerly lived.

“Vegas with an Ocean View,” say many billboards throughout central Florida. Victory Casino Cruises bills itself as “America’s biggest and best casino cruise ship” that offers “the most authentic Las Vegas-style casino experience in Florida.” Victory Casino Cruises is “the most authentic, affordable and fun casino experience in Florida!” It features five- and six-hour cruises twice daily, including Sundays, along the east coast of Florida that depart from Port Canaveral. The cruise ship has “4 decks and 40,000 square feet casino fun and excitement.” It showcases more than 600 slot machines and the best selection of 27 live casino games, including roulette and craps tables. At the Sportsbook Lounge, you can bet on basketball, football, baseball, soccer, boxing, MMA, hockey, and other sports.

You can enjoy “superb food, buffet dining and drinks on all four decks.” There are five bars onboard. For spectacular entertainment, “Big Norm’s Club V offers free shows and a beat-filled dance floor for parties of all sizes.” Don’t forget that no casino competitor in Florida has what Victory Casino Cruises offers:

- Free alcoholic drinks while gaming
- Earn points for free play
- LIVE roulette and LIVE craps
- The only Sportsbook in Florida
- Lower minimum bets on casino games, including blackjack tables
- Earn points faster than any casino in the state
- All entertainment included in the cruise
- Group discounts for 10 or more
- Personal service second to none!

And of course, “Just for playing slots and casino games, you can earn Reward Points for perks like free drinks, free food, free gifts and even dollars taken off your final bill.”

Other than the requirement that those who sail on casino cruises must have a valid government I.D. to prove that they are at least 18 years old, there is one very important stipulation that must be strictly adhered to: No one can gamble until the ship is at least three miles offshore. Casino gambling is illegal in Florida, except at eight Florida Indian casinos. Casino cruise ships get around the gambling prohibition by opening their casinos only after they get beyond Florida's three-mile territorial boundary.

Gambling in the United States is technically legal under federal law.

The Indian Gaming Regulatory Act of 1988 (PL 100-497, 25 U.S.C., §2701) established the National Indian Gaming Commission and has led to the approximately 360 Indian gaming establishments in the United States operated by more than 200 federally recognized tribes. After seeing the Indian gaming industry take in \$100 million in revenues in its first year, some states realized the revenue that could be generated by legalizing gambling. Like Mississippi, which already had a long history of gambling along its Gulf Coast. In 1990, the Mississippi Leg-

islature passed the Mississippi Gaming Control Act. It legalized casino gambling in counties along the Mississippi River and the Gulf Coast as long as voters in those areas approved it.

There was one major caveat, however. Casinos were not allowed to be built on land. Gambling riverboats were required to be permanently moored at the dock. That allowed them to offer 24-hour dockside gambling. Regular casinos were built on barges with the appearance of a land-based building instead of a riverboat. Hotels and parking lots could still be built on land. This casino-barge regulation was changed after Hurricane Katrina devastated the Mississippi Gulf Coast in 2005. Casinos could be rebuilt on land, but only if they were located within 800 feet of the water.

Casino cruise boats and casinos built on barges or near the water are businesses that should not exist. They exist only because of government gambling laws that infringe on individual liberty and private property.

Gambling laws

Gambling in the United States is technically legal under federal law. However, each state can prohibit or

regulate various forms of gambling within its borders. This is a perfect example of federalism in action. Nevertheless, the federal government does have a number of gambling laws:

- The Transportation of Gambling Devices Act of 1951
- The Wire Act of 1961
- The Travel Act of 1961
- The Interstate Transportation of Wagering Paraphernalia Act of 1961
- The Gambling Devices Act of 1962
- The Illegal Gambling Business Act of 1970
- The Racketeer Influenced and Corrupt Organizations Act of 1970
- The Interstate Horseracing Act of 1978
- The Professional and Amateur Sports Protection Act of 1992
- The Illegal Money Transmitting Business Act of 1992
- The Interstate Wagering Amendment of 1994
- The Gambling Ship Act of 1994
- The Indian Gaming Regulatory Act of 1998
- The Unlawful Internet Gambling Enforcement Act of 2006

On the state level, only Nevada and Louisiana permit casino-style gambling statewide. Other states that allow commercial casinos in some form (California, Colorado, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Washington, and West Virginia) generally restrict it to certain geographic areas. They also require state licensing and heavily restrict and regulate the gambling industry. Local governments may further impose zoning restrictions. Private gambling not done under the regulatory eye of the state is generally illegal in any form. No one can rent a storefront and advertise a blackjack or poker tournament. And in some states, hosting poker games with your friends in your home on a Saturday night can get you arrested if you break the state's rules and regulations concerning "social" poker games.

Gambling rights

Most Americans would say that gambling is neither a necessary nor a wholesome activity. Supporters of gambling laws argue that gambling is psychologically addictive, that it is

financially ruinous, that it results in increased political corruption, that it leads to criminal activity to support gambling habits, that it increases crime in areas where gambling venues are located, that it harms families and children, that it results in money laundering and tax evasion, that it augments organized crime, that it is a regressive tax on the poor, or that it is immoral, a vice, or a sin.

**In a free society,
consenting adults are free to
engage in any voluntary activities
that are peaceful.**

But even supposing that all of those claims are true all of the time (a very dubious proposition), it doesn't follow that people don't have the natural right to gamble — as long as they gamble peacefully and consensually and don't violate the personal or property rights of others. In a free society, consenting adults are free to engage in any voluntary activities that are peaceful without government supervision, licensing, or regulation as long as they don't infringe on the freedom of anyone else. A free society can't have it any other way.

First of all, supporters of anti-gambling laws must overcome an insurmountable obstacle: the U.S.

Constitution. As much as anti-gambling zealots might wish the contrary, the Constitution gives the federal government no authority whatsoever to pass laws and make regulations that have anything to do with gambling. If any such laws and regulations are to be made, they must be made only on the state level. This principle of federalism that is enshrined in the Constitution was pithily explained by James Madison — the father of the Constitution — in Federalist No. 45:

The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.

This is why (to take Florida as an example) Title XLVI, CRIMES, Chapter 849, GAMBLING of the Florida statutes reads,

849.46 Exercise of police power. — It is deemed by the Legislature that this chapter is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting lotteries and gambling, and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this chapter shall be liberally construed for the accomplishment of these purposes.

The federal government has no authority to prohibit, license, regulate, control, or discourage any form of gambling, online or otherwise. The states have the sole authority to prohibit, license, regulate, control, or discourage any form of gambling, online or otherwise. Whether the states should do so, and to what extent, is, of course, another matter. When the federal government enacts legislation concerning gambling, it unconstitutionally usurps powers never intended to be exer-

cised by the national government and makes the states mere appendages of it. Those who contend for gambling laws at the federal level are contending in vain. Their contention is really with the Founding Fathers, the Framers of the Constitution, federalism, and the Constitution itself.

It is not the job of government to legislate morality, and especially not to selectively legislate morality.

And second, although state governments have the power to prohibit or regulate gambling, it does not follow that they should prohibit, license, regulate, control, or discourage any form of gambling, online or otherwise, for any reason. It is simply not the proper role of government to do so. The purpose of government is supposed to be the protection of life, liberty, and property from the violence or fraud of others. It is not the job of government to legislate morality, and especially not to selectively legislate morality. The government should not be concerned with any activity that takes place on private property between consenting adults. The government should not have a say in how people choose to spend their

money. The government should not convert vices into crimes. The government should not commit violence against people for engaging in peaceful, voluntary activity. The government should not be concerned with what people do in the privacy of their homes. The government should not prohibit or regulate any activity that takes place between a willing business and a willing customer. It is not the business of government to mind people's business. And of course, this is all predicated on the fact that the gambling is occurring peacefully and doesn't violate anyone's personal or property rights.

Government hypocrisy

As usual, the government is woefully inconsistent and hypocritical when it comes to making and enforcing its laws. Here are a few examples.

First of all, if gambling is bad, addictive, immoral, crime-fostering, family-destroying, wasteful, and financially ruinous, then it is bad, addictive, immoral, crime-fostering, family-destroying, wasteful, and financially ruinous whether it is done in a state-approved and state-regulated gambling facility or in secret in the privacy of one's home. If gambling is all of those

negative things, then shouldn't state governments prohibit all gambling activity? The conclusion is inescapable: State governments often allow gambling to take place only when they can get a cut of the action with licensing, taxes, and fees.

State governments are very inconsistent when it comes to other vices.

Second, state governments are very inconsistent when it comes to other vices. Americans can purchase alcohol and tobacco in any quantity and drink until they are so drunk that they pass out and smoke until they die prematurely from lung cancer. They can even invite their neighbors to join them and do likewise — as long as they don't gamble while they are drinking and smoking.

And third, although the states try to discourage their residents from gambling, they at the same time encourage those within their borders to gamble. Only Alabama, Alaska, Hawaii, Nevada, and Utah have no state lotteries. Just this year the governor of Mississippi signed legislation authorizing a state lottery. Some states dedicate the revenue raised from lotteries to education or transportation, some to general gov-

ernment expenditures, and others to other things. But regardless of whether the states spend the revenue they raise from lotteries on “good” causes, it doesn’t change the nature of the lottery: It is gambling — with even worse odds of winning than found at casino table games.

Conclusion

Would casinos be built on barges or would gambling riverboats be permanently moored at docks if all gambling were legal? Would there be casino boat cruises to nowhere in the absence of anti-gambling laws? Those businesses would not exist in a free society.

The decision to gamble or not to gamble should be an individual decision. Just like any other decision to take a financial risk, violate a moral code, engage in a bad habit, perform an immoral action, be a bad example to one’s children, commit a sin, practice a vice, or spend money.

In a free society, people have the freedom to do what they will with their own money: spend it, save it, waste it, donate it to charity, give it away to strangers, invest it, burn it, throw it out the window, bequeath it, squander it, bury it in the backyard, put it under the mattress, and yes, even gamble it away. A free society can’t have it any other way.

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NEXT MONTH:
“Your Tax Dollars at Work”
by Laurence M. Vance

Liberal Internationalism: True and False, Part I

by *Richard M. Ebeling*



For more than the seventy years of the post-World War II era, the prevailing global order in the West was and has been called “liberal internationalism.” It has had two components, a political one and an economic one: “democracy” and “capitalism.”

Both are being challenged at the present time in various parts of the world, and have led to the idea of a “crisis of democracy” and a “crisis of the liberal economic order.” In their place have been proposed or implemented alternative authoritarian systems of government control and direction over both political and economic life.

For instance, with the rise of the new, post-Mao China, the nationalist and socialist regime in Beijing

declared its offering of an alternative to American or European-style political democracy. The Chinese model is framed on the notion of centralized political power under which the government, and in China’s case the Communist Party, narrows the range of permitted political discourse and debate.

Harmony and solidarity equals collectivist tyranny.

Harmony and solidarity are said to take precedence over individual or small group interests in relation to the directions and needs of the greater State to which all citizens belong. “Harmony” in practice means the State’s defining and confining the terms and content of any and all political debate. In other words, a censorship of all ideological and policy views considered inconsistent with or contradictory to what has been laid down by the ruling political establishment. Many of those considered to be critics of the nature and policies of the Chinese government face arrest, imprisonment and, sometimes, permanent “disappearance,” with family and friends having no idea what has happened to the person presumptuous enough to question the wisdom of the Communist authorities.

“Solidarity” means no attempt by religious or ethnic groups to have a belief system or sense of identity other than the one promulgated by the political authorities. For instance, Christian and other faith-based groups that practice doctrines considered outside the “party line” in China have been declared illegal and prohibited; they are harassed and shut down, with some of their proselytizers arrested and sent off to labor camps.

If recent accounts in the media are to be believed, one of the most repressive of these methods of assuring social and national solidarity has been imposed in China’s western “autonomous” region of Xinjiang. The historical population of the area is the Uighurs, a people of Turkic origin who practice the Muslim faith. A few decades ago they made up nearly 90 percent of the people in the region. Over the last forty years, the Chinese government has brought about a (sometimes) conscripted population transfer of ethnic Chinese into Xinjiang, with the result that the Uighur portion of the population has been reduced to about 40 percent.

Resentful of what they view as a centrally planned attempt to undermine if not wipe out their ethnic and religious identity, segments of

the Uighur population have protested and demonstrated against Chinese government policy. The authorities in Beijing have responded with various police crackdowns, to which a small number of Uighurs have replied with violent acts against Chinese persons and property.

The Chinese government’s reaction has been to set up a network of “re-education” or “vocational” camps that have been filled with thousands of Uighurs (even possibly as many as one million! according to some China watchers). And the numbers in these camps, according to the reports out of the region, continue to grow. Foreign correspondents find it hard to get Chinese government permission to travel there, and Internet and telephone communications with the outside world are restricted and sometimes cut.

If the reports are true, with some of them being based on satellite photographs showing the location and structures of a large number of re-education facilities, then the political model the Chinese government is offering the world is a society of concentration camps as the answer to dissent and disagreement with what is imposed by whoever holds the political reins within a country. Here is the new “democratic” ideal, as offered by the au-

thorities busily making China “great again.”

If the Chinese government ever undertakes its publicly declared threat to invade and annex Taiwan, which it considers a renegade province of China, the entire island is likely to become one giant, terrifying “re-education camp,” as the people there will be brought to their proper nationalist and socialist senses that they are part of the greater Chinese State, whether they want to be or not.

China’s managed economy a likely house of cards

The economic component of the Chinese system in place of a liberal order is the planned and centrally managed economy. The new Chinese economic system is a blend of traditional socialism and introduced fascism. There are large segments of the Chinese economy that remain in government hands, a carryover from the Maoist years guided by the Marxist vision of a world without private ownership of the means of production. But to jumpstart the Chinese economy, degrees of privatization and private enterprise were reintroduced into the society beginning in the late 1970s.

But the direction of domestic investment, production, and em-

ployment; the fostering of an “export-driven” economy; and the facilitating of foreign direct investment and the integration of portions of Chinese manufacturing into global supply-chains of manufacturing, have all been guided by the central planners in Beijing or their political minions at the provincial and municipal levels.

As a result, virtually the entire Chinese economic “miracle” has been the product of government-business “partnerships,” in which domestic Chinese private entrepreneurs are the “junior partners” whose profits and freedom from arrest are always dependent on toeing visible and invisible lines of control emanating from the center of all power in Beijing.

The new Chinese economic system is a blend of traditional socialism and introduced fascism.

The Chinese economic-success story, which has raised tens of millions of ordinary people out of an ages-long poverty in a matter of a few decades, which is due to the degree to which any private initiative and profit-making has been permitted, is significantly built on China’s greatly irrational foundation of

continuing centrally planned and regulated production and employment.

Major industries and, indeed, entire mega-cities have been built where the central planners have wanted them to be; but, no doubt, many are not where fully competitive market-driven profitability would have placed them for the production of various and sundry goods and services meant for domestic and foreign demand. There is a manufacturing, housing, and financial house of cards in the new China due to its being based on the mix of socialism and economic fascism, which at some time is likely to be facing a great fall. All the central planners and all the Communist Party men will not easily put this wobbly government-managed Humpty-Dumpty economy back together again.

Yet, this is the political and economic alternative China is offering the world in place of the existing liberal international order. But what is liberal internationalism? The

problem in answering this question is that it is possible to distinguish two such “liberal” orders, the one that prevailed prior to the First World War that began in 1914 and the one that has existed for most of the period since 1945, following the end of the Second World War. They have noticeably different sets of ideas behind them.

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NEXT MONTH:
**“Liberal Internationalism:
True and False, Part 2”**
by Richard M. Ebeling

The Roots of Voluntary Exchange Lie in the Middle East

by Nima Sanandaji



It is today commonly believed that free markets and free-market ideology are new Western inventions. In my book *The Birthplace of Capitalism: The Middle East*, I challenge that notion by pointing out that enterprises, financial institutions, market-based economies, and the intellectual support for economic freedom evolved millennia ago in the Middle East. The book (which is awaiting its international launch) has been received with much enthusiasm, but also some skepticism. I would like to answer this skepticism, to explain that the practices and ideals of voluntary exchange are truly much older than what we commonly today believe.

Did enterprise and sophisticated market practices really evolve in the Middle East 4,000 years ago?

Yes. For long, our knowledge about how the economies of ancient cultures were organized has been limited. More recently, however, historians have found and translated a large number of clay tablets and papyrus rolls from ancient Middle Eastern civilizations. It turns out that writing developed primarily to record economic matters, and much of the writing is reports of various economic transactions. The documents show that private ownership played an important role in early civilization. Yale Law School Professor Robert Ellickson and attorney Charles Thorland explain that in all historic periods studied, individual private land ownership existed at least to some extent in Mesopotamia as well as in Egypt and Israel.

Tablets that have survived from the Assyrian and Babylonian civilizations which document economic affairs often refer to the *tamkârum*. Klaas Veenhof and Jesper Eidem, who have written about the history of the Old Assyrian Period, explain that the concept of *tamkârum* seems to have somewhat different meanings in different tablets. Broadly, however, the word referred

to early capitalist entrepreneurs. The tablets show that the markets in which the tamkārūm were involved included quite advanced concepts, such as commercial partnerships and even joint stock ventures.

Assyria and Babylon

Gojko Barjamovic writes about ancient texts from Assyria, dating some 4,000 years ago, which describe the merchant entrepreneurs of the time. The texts confirm the existence of widely developed financial institutions, specialized agents of trade, complex partnerships, and a juridical foundation for this trade network. They are, in essence, evidence of a relatively complex market model.

In his book *The Invention of Enterprise*, the American economist Michael Hudson gives some examples of the early Middle Eastern entrepreneurs when he describes “the Egibi and Murashu families of Babylonia in the seventh through fifth centuries BC, who created novel commercial strategies to manage estates and provision the palace and its armed forces.”

It turns out that it was not by chance that Babylonia and Assyria were vibrant economic centers, where much technological achievement happened. It was made possi-

ble by the fact that the first enterprises, financial investors, and other building blocks of market economy evolved.

Capitalism, or a free-market model, is an economic system based on private ownership of the means of production.

Is it really fair to say that ancient Middle East was a capitalist model?

Capitalism, or a free-market model, is an economic system based on private ownership of the means of production, and also their operation in search of profit. Private property, capital accumulation, wage labor, voluntary exchange, competitive markets, and a price system are the building blocks of capitalism. Although certainly the early model in Mesopotamia was limited compared with contemporary capitalism, it did include key elements such as private property, investments in specialized manufacturing aimed at domestic consumption, as well as exports, market prices, financial speculations, financial partnerships, and private-public contracts. As Dutch historians Robartus Johannes van der Spek and Kees Mandamakers wrote in 2003, “That market mechanisms played their part in the Babylonian

economy seems now to be unquestionable.”

Even more astonishing, the astronomical diaries kept by Babylonian astronomers not only contained daily observations on the position of the moon and the planets, but also information about market prices of commodities such as barley, dates, mustard, sesame, and wool. The prices were recorded monthly, and the records even said what the prices had been at the beginning, middle, and end of each month, as well as how the prices had changed during the weeks.

So, yes, the concepts of enterprise and market economy evolved many millennia ago in the Middle East. Later, we also know that the same concepts developed (probably independently) in China and India. Over time, the economic practices of these ancient civilizations fluctuated between free markets with limited government interference and statist, feudal, and tribal control. Part of the economic model was undeniably free markets. And it continued until the early modern age.

In the 16th century, Portuguese explorer Pedro Teixeira, for example, wrote that “mighty Caravans usually report from all parts of Persia, to Hormuz” in order to trade with the outside world, which

would have been the Portuguese, other Christians, Muslims, and people of other religions. The Portuguese explorer explained that Hormuz, the market which he called Gerun, was a free-market city where traders and goods from all parts of the world met. The account even includes “free Mart and Fair,” the contemporary word for a free market. The English translation of the original manuscript reads, “To conclude, Gerun is a free Mart and Fair, for all the World, where there is continually a Trade for all Commodities that can be defir’d, convey’d thither from several Parts, with a mighty Concourse of Merchants of several Nations.”

A market economy is based on a legal code that protects private property and voluntary exchange.

A market economy is based on a legal code that protects private property and voluntary exchange. Did it really exist in the ancient Middle East?

The earliest known law code is the Code of Ur-Nammu. It was found on a tablet, written in Sumerian, which dates back to around 2100–2050 B.C. At its core, the code protects the private property of farmers. More specifically, it details

the punishment prescribed to those who violate the rights of others by growing crops on their land without permission.

Early market economies were of course less developed than modern capitalism.

Around 1754 B.C. we also have the development of the well-known Code of Hammurabi. Its laws were created to suit the needs of a society in which individual farmers, merchants, and artisans owned property, made contractual agreements with each other, handed out receipts, and invested in enterprises. Individuals were responsible for their actions in the marketplace, while the state was responsible for protecting private property and the right of contract. The punishments dealt out to thieves were severe, even including the death penalty. The Code of Hammurabi regulated the conduct of those persons who engaged in the private marketplace. This early code of law, which played a key role in the development of human civilization, evolved in a market-based economy.

The Middle East and China have a history of vibrant market activity, but is that the same as “free markets”?

One can always enter into a long conversation about what is really a free market. In one sense, there are no free markets, since the state always has some interference in the economy. Also, early market economies were of course less developed than modern capitalism. But it is still the same basic concept that has evolved over time. The big change is that Europe, a part of the world that was hostile to economic freedom for many hundreds of years, began around the time of the Renaissance to evolve a more complex market model — and with time Europe gave rise to modern capitalism, which includes corporations, intellectual property rights, stock markets, modern accounting, and other refinements. Yet, all this progress, as I show in *The Birthplace of Capitalism: The Middle East*, was building on the earlier market practices of the East.

Reading Xenophon

Here is a simple way of illustrating my point: today Adam Smith is believed to be the modern father of economic and of free-market thinking. Why? In part because he was the first in the world to describe the concept of specialization in the marketplace and also the invisible hand of the free market. According

to modern Western thinking, Adam Smith could do so because he was observing the first true free-market models of the world. The truth, however, is that none of his observations was new.

The mercenary-general and historian Xenophon is famous for his writings' having inspired Alexander the Great to invade Persia. He also wrote about the economic practices of ancient Persia — and his is in fact the first known account of specialization on the marketplace.

Xenophon wrote about the economic practices of ancient Persia.

In *The Foundation of the Market Price System*, Milton Shapiro notes that Smith was indeed “twenty centuries after Xenophon” in explaining the phenomena of specialization in the marketplace. Perhaps the fact that two intellectuals, separated by two millennia, reached similar conclusions was a mere coincidence. Another explanation is that Adam Smith copied the ideas of Xenophon, but without giving credit. In his chapter in the book *A Companion to the History of Economic Thought*, Todd Lowry refers to unpublished notes from Adam Smith to claim that Smith had read

the work of Xenophon and developed his ideas from that reading, without crediting the Greek historian:

Adam Smith's discussion of the pin factory is frequently credited with characterizing modern economic theory, since it was in this context that he elaborated the point that specialization is limited by the extent of the market. Meek and Skinner's publication of a new set of dated notes of Smith's lectures identifies his development of this point in 1763, and his lecture reads like a paraphrase of Xenophon's discussion of the role of the carpenter in small and large cities. Marx quoted the passage from Xenophon in full and attributed to it the formulation of division of labor as correlated with the extent of the market while emphasizing quality, not quantity, in production.

We can also turn to ancient China. It is well known that advanced economic practices existed in ancient China, and that for-profit merchants were responsible for organizing economic exchange. This is, for

example, evident in *Guanzi*, an important 7th-century B.C. political and philosophical text. *Guanzi* explains how merchants analyzed the markets to understand supply and demand throughout ancient China. The merchants traveled far to secure the most profitable exchange. According to the text, their activity resulted in timely and efficient markets that distributed rare goods throughout the land. It also tells of how the merchants instructed their children in the “language of profit.”

The first accounts of free-market ideology are found in the Middle East.

So what we find in the Middle East, as well as in China, are enterprises based on strong protection of private property in the legal code, profit-seeking activity, manufacturing for export markets, early factor markets, financial speculation, and the first written accounts of the invisible hand of the free market. But the story doesn't stop here: also, the first accounts of free-market ideology are found in the East.

The free-market and fundamental rights worked to reinforce each other in the West. Is there any concept of fundamental, natural rights in the Middle East?

Increasingly, Western academics are pointing to the Middle East as being the first place in which basic human rights (which are natural rights, and therefore arguably pre-date civilization) were documented. Here, for example, is a text available on the site Humanrights.com:

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for Man. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other decrees were recorded on a baked-clay cylinder in the Akkadian language with cuneiform script.

Known today as the Cyrus Cylinder, this ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four Articles of the Universal Declaration of Human Rights.

In Xenophon's retelling of a Persian story about the very same

Cyrus the Great, the world's first known defense of voluntary market exchange takes form. While a young prince, Cyrus is asked by his teacher to judge a case. The case is about a tall boy who forces a smaller boy to exchange coats. Typically, when the stronger (tall boy) forces the weaker (smaller boy) to certain economic transactions, we will see the strong benefiting and the weak losing out. If such a case had been presented to the young prince, it would be obvious that it was unjust. But the story of the coat adds a complexity: the tall boy exchanges a shorter coat to the smaller boy, and takes from him a longer coat, and so the transaction favors both parties. The young Cyrus mistakenly believes that the rule of law should be based on whether the economic exchange favored both parties or not, and thus rules it just. He is flogged for this wrong verdict by his teacher, who explains that the rule of law should uphold private property rights and an exchange should be judged only by whether or not it is voluntary.

China and Islam

That is the very basis of free-market ideology, captured in a short story. While the story is the first known account of free-market ide-

ology, it is far from alone. Around 500 B.C., Lao-tzu founded Taoism in China. This Chinese intellectual, who advocated personal and economic freedom, is known as the first libertarian. Around 300 B.C., Mencius, the second-most influential Confucian philosopher, had advanced theories on why market price-setting should be free and property rights protected. Mencius believed that it was wrong for the state to tax market transactions and advocated the rights of the individual.

During the Islamic golden age, intellectuals explained that government intervention in the marketplace was wrong.

During the Islamic golden age, numerous intellectuals in the Middle East and North Africa wrote extensive texts defending wealth accumulation and rational self-interest; they explained that government intervention in the marketplace was wrong and vividly argued against high taxes. Around A.D. 1380, for example, Tunisian Islamic scholar Ibn Khaldun, one of the fathers of modern economics and social sciences, wrote extensively on how high taxes destroy societies. Arthur Laffer, the con-

temporary economist known for the same theory, himself gives credit to Ibn Khaldun.

The intellectual tradition of free markets, much like the practice of market economy, evolved in the East many centuries and even millennia before it reached the West. That may be a controversial claim, but it is supported by the facts at hand. The West has given rise to the modern market economy, and the modern intellectual tradition in support of voluntary exchange, wealth accumulation, and limited government. But all of it is a continuation of the same traditions from the East. The ideals of liberty are, in my view, the best example of how the East and the West have co-operated in creating a better world. After all, modern capitalism and the Renaissance evolved in Italian city states such as Venice, Florence,

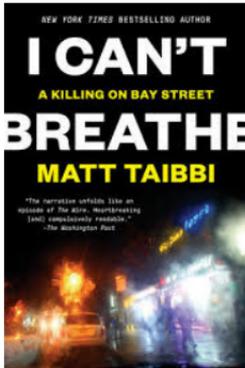
and Genoa — in a time when they were engaging in extensive trade with Muslims and Jews. Before colonial powers such as the Portuguese and the British started sinking Middle Eastern trade ships and sought to monopolize the world trade, Italian merchants were linking Europe to the free-market system of the Silk Road. Keeping with the Middle Eastern tradition of ending stories with a cliff-hanger I will say that this fascinating cross-cultural exchange, which gave birth to modern market economy, is a story to be told another time.

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Deadly Policing in New York City

by Matthew Harwood

I Can't Breathe: A Killing on Bay Street by Matt Taibbi (New York: Spiegel & Grau, 2017); 336 pages.



On the first day of law school, Yale Professor Stephen L. Carter walks into his contracts class with a message: “Every law is violent.” He then proceeds to tell his students that they should be willing to invoke the law only if they’re comfortable with the transgressor’s dying for breaking it. The students, he says, think he’s being a crank, but Carter reminds them that even a breach of contract is eventually enforced at the end of a gun. “[If] the breacher will not pay damages, the sheriff will sequester his house and goods,” Carter writes,

“and if he resists the forced sale of his property, the sheriff might have to shoot him.”

Case in point: On July 17, 2014, 43-year-old Eric Garner, a father of six, died due to the unjustified actions of a police officer near the tip of New York City’s Staten Island. After breaking up a fight in a park across the street from where he sold “loosies,” or individual untaxed cigarettes, Garner was confronted by two police officers, Daniel Pantaleo and Justin Damico, who were there to arrest him for his illegal trade. There is one problem, though: No evidence has emerged that the officers saw him sell a cigarette. The officers didn’t care. They were arresting him. He was a nuisance and an eyesore in the gentrifying neighborhood.

“Every time you see me, you mess with me,” Garner said. “It stops today.” And it did. Pantaleo pounced on Garner and grabbed his right arm with both hands while Damico tried to grab his left arm. Garner resisted. During the scuffle, Pantaleo put Garner in a chokehold. “I can’t breathe,” Garner, clearly terrified, pleaded over and over again, in the infamous video shot by Ramsey Orta. He finally lost consciousness, the small officer’s arms around his neck. A store owner looked down at Garner, uncon-

scious and handcuffed face down on the sidewalk outside his store, and asked another officer on the scene, “How come you’re not giving him CPR?” The cop replied, “He’s fine. He’s breathing.” Approximately an hour later, Eric Garner was pronounced dead.

Eric Garner

In a riveting, fast-paced piece of literary journalism, muckraking *Rolling Stone* journalist Matt Taibbi tells the story of how that fateful encounter on Bay Street unfolded through 13 characters, including Garner, who provide an intimate portrait not only of the larger-than-life man but of New York City’s Kafkaesque criminal justice system. Taibbi, however, isn’t content to just tell Garner’s story. He uses the case as a jumping-off point to examine New York City’s criminal justice system and the corruption that permeates it. What he describes is a libertarian’s nightmare of overzealous and unconstitutional policing pushed by city halls that want to appear tough on crime, even if that means harassing people — mostly black and brown — for victimless crimes. It is a deeply depressing and demoralizing piece of work.

To Taibbi’s credit, he doesn’t write around the flaws of Eric Gar-

ner, descending into a mawkish hagiography, but confronts them head on. This is wise, because the man leaps off the pages, a tragic figure, noble but weak, like most of us. It’s also the only way to understand how Garner found himself in a chokehold that day in July 2014.

Eric Garner was a convicted crack dealer who also did a spell in prison for assault. But after he got out of prison the second time, his children gave him an ultimatum: Give up drug dealing or we’re out of your life. Weeping, he promised. Garner got a job with the Parks Department. He earned a paltry \$68 every two weeks, which couldn’t feed himself, much less his kids.

Taibbi uses the case as a jumping off point to examine New York City’s criminal justice system.

Garner quickly fell back into drug dealing and got pinched again in September 2007. What is alleged to have happened to him during that arrest provides context to why he resisted arrest that fateful day in 2014. The arresting officer placed him in handcuffs and then humiliated him by “digging his fingers in my rectum in the middle of the street,” Garner wrote in a civil-rights complaint. That was com-

mon, Taibbi finds. One officer recounts that another officer told him that the cops of the 52nd precinct would often strip-search people on the street. They even had a term for it: “socially raping.”

After Garner got out of jail, he started selling cartons of cigarettes and loosies on the streets, courtesy of Mayor Michael Bloomberg. 9/11 had caused a massive budget deficit, and Bloomberg had a nanny-state solution to get back in the black: jack up the cigarette tax from 8¢ to \$1.50. Always the entrepreneur, Garner started bootlegging cigarettes, making hundreds of dollars a day in profit. Another upside to selling untaxed cigarettes was that getting caught meant being charged only with a misdemeanor and paying a fine.

Garner saw the arrests as the cost of doing business.

Garner saw the arrests as the cost of doing business and the only way an ex-con like him could provide for his family. But things quickly turned. The sight of the obese disheveled black man standing on Bay Street for hours and hours on end every day constantly attracted police attention because of the latest craze in policing: “Broken Windows.”

Broken-windows policing

The policing tactic was the brainchild of George Kelling, a child-care counselor and probation officer turned criminologist. Working in juvenile detention settings during the early 1960s, the young man observed that visible disorder led the kids to act out. “Kelling believed,” Taibbi writes, “that kids could not get the help they needed while they were surrounded by chaos — they needed to experience at least a minimal level of violence-free order before they could benefit from any treatment.”

As the years passed, Kelling would apply his observations to the streets. In 1982, *The Atlantic Monthly* published the article “Broken Windows,” which clearly articulated Kelling’s theory and revolutionized urban policing in the decades after, especially in New York City. Kelling and his co-author, James Wilson, a Harvard professor of government, believed that visible disorder on city streets — loitering in front of stores, panhandling, vagrancy — sends a message to criminals and delinquents: Have at it; no one cares.

But if police could proactively enter bad neighborhoods and clean them up by cracking down on public drinking, vandalism, and other

low-level crimes, police and law-abiding citizens would send another message to more serious criminals: Don't try it here, or you'll be sorry. By aggressively policing petty offenses, officers would deter more serious crimes from occurring. As Taibbi describes it, the essence of broken-windows policing is the belief that "police might have to be given expanded leeway to enforce the nebulous and unwritten concept of order."

When the theory was put into practice, it quickly degenerated into police harassment of communities of color in a city divided by race. Kelling and Wilson, Taibbi notes, always understood that their theory could mutate into bigoted policing. In the *Atlantic Monthly* article they said as much, asking, "How do we ensure ... that the police do not become the agents of neighborhood bigotry?" The answer was less than sufficient. "We can offer no wholly satisfactory answer to this important question," they admitted. "We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority."

As police flooded black and brown neighborhoods across the

city, another revolution in policing occurred. In 1994, newly elected mayor Rudy Giuliani hired Bill Bratton as New York City's top cop. Bratton was a believer in broken-windows policing, which he would meld with his own innovation, CompStat. Using the crime statistics the department collected, Bratton deployed his officers to high-crime locations to make stops. They called it "Stop, Question, Frisk." Rather than waiting for crime to occur and responding, Bratton's officers would take the fight to criminals.

Kelling and Wilson always understood that their theory could mutate into bigotted policing.

In New York City, that meant that it was usually white cops who policed black and brown neighborhoods, stopping people for subjective reasons such as "inappropriate attire" and "furtive movement," and tracking their stops on form UF-250. The forms were proof that the officers were doing their jobs, and their superiors pushed them to make as many 250 stops as possible, creating a positive feedback loop of unconstitutional policing. When experts analyzed the forms, something stood out. The essentially meaningless "furtive movement" was the

reason for nearly 50 percent of the stops, and nearly 90 percent of people stopped were black or Hispanic.

During Ray Kelly's tenure as police commissioner during the Bloomberg years, a black state senator testified that Kelly told him, writes Taibbi, that the NYPD's goal "was to change the psyche of young black and Latino men by 'instill[ing] fear in them that every time that they left their homes they could be targeted by police.'" The goal, according to police, was to get guns and drugs off the streets. It failed. According to an analysis of stop-and-frisk data by the New York Civil Liberties Union, guns were found less than 0.2 percent of the time, while nine out of ten New Yorkers stopped were released without being charged.

The NYPD's practices plunged black and Hispanic residents into a police state.

But the NYPD's practices plunged black and Hispanic residents into a police state where they could be stopped and harassed on the whim of an officer's suspicion or prejudice. This was the daily grind for Eric Garner and others like him, and it was done by design. One of the reasons the stop-and-frisk poli-

cy was found unconstitutional in 2013 was a police officer's surreptitious recording of his superior. "This is about stopping the right people, the right place, the right location," the deputy inspector, Christopher McCormack, said. The right people, according to McCormack, were "male blacks, fourteen to twenty, twenty-one."

An unusual grand jury

Zero-tolerance policing naturally generated intense hatred and hostility toward police. Police responded likewise, almost always protected from punishment when they got violent. When police cross the line and rough up someone, Taibbi reports, the city automatically goes on offense to deter the victim from filing a civil-rights lawsuit.

Prosecutors pile on charges, hoping the victim will cop to a lesser charge, which will decrease the chances the civil-rights lawsuit will ever be filed. As Taibbi notes, civil lawyers generally wait until the charges are beaten to file suit against the city. Even if they do file suit, the plea deal makes it unlikely the victim of police abuse will win in court. The victim, after all, is a "criminal."

Generally, prosecutors can go before a grand jury and get an indictment within an hour. In the

Garner case, however, the adage about a prosecutor's being able to convince a grand jury to indict a ham sandwich didn't hold up. One reason might have been that this particular grand jury proceeding appeared more like a full-fledged trial, which determines whether or not a person is guilty of a crime, than a simple grand-jury proceeding, which determines whether there is sufficient evidence to warrant a formal accusation that a person has committed a crime.

In the Garner case, the grand jury convened by Dan Donovan, Staten Island's Republican district attorney, sat for nine weeks and heard from 50 witnesses, 22 civilians, and a mix of 28 cops, emergency personnel, and doctors. All this was atypical, Taibbi stresses. "If you think a crime was committed (and by taking the case to a grand jury, Donovan was formally signaling that he believed one had taken place)," asks Taibbi, "why not just walk into any normal grand jury with Ramsey Orta's video, call a few witnesses, and walk out with an indictment or two later?" In any event, by the end of this lengthy proceeding, the grand jury failed to return an indictment against Pantaleo.

Not only did the Garner family have to accept that there was no in-

dictment, they would learn two and a half years after the grand jury decision, when Officer Pantaleo's disciplinary record was leaked to the website ThinkProgress, that of 14 abuse allegations, four were substantiated, including a strip-search Pantaleo conducted in public. The city's Civilian Complaint Review Board recommended that the NYPD punish all four substantiated complaints harshly. The department ignored the recommendation and decided Pantaleo only needed more training.

The department acted negligently and Garner paid the ultimate price.

In other words, the department acted negligently and Garner paid the ultimate price. "ThinkProgress characterized Pantaleo's record as a 'chronic history' of abuse cases that would put him 'among the worst on the force,'" Taibbi writes. "The stats backed up their analysis. Only about 5 percent of police received eight or more complaints. Pantaleo had fourteen. And only about 2 percent had as many as two substantiated complaints, while Pantaleo had four." Officer Daniel Pantaleo is currently still on the payroll of the NYPD, while Eric Garner is six feet below ground.

In the end, Taibbi's *I Can't Breathe* is a searing indictment of New York City's criminal justice system and how it works like an "industrial production scheme," where black and Latino males are the "raw materials." Taibbi's narrative is necessary reading for anyone who remains skeptical of this fact: Certain communities in America live under a police state that enforces the law, often unnecessary laws, harshly with little to no guilt about the consequences for individuals and community relations with the police. As

Professor Carter tells his students: Every law is pregnant with violence. If the average citizen understood that, maybe Garner, and countless others, would be alive today.

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When a private individual meditates an undertaking, however directly connected it may be with the welfare of society, he never thinks of soliciting the cooperation of the government, but he publishes his plan, offers to execute it himself, courts the assistance of other individuals, and struggles manfully against all obstacles. Undoubtedly he is often less successful than the State might have been in his position; but in the end the sum of these private undertakings far exceeds all that the government could have done.

— Alexis de Tocqueville

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