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The laws are silent in the midst of arms.

— Cicero

FUTURE OF FREEDOM

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Dysfunctionality, Violence, and Race in American Society

by *Jacob G. Hornberger*



The following are five libertarian proposals that would help to resolve the conflict and violence between blacks and the police across America and, to a large extent, alleviate much of the dysfunctionality that afflicts American society:

1. End the drug war.

A free society necessarily entails the fundamental right to ingest anything an adult wants, no matter how destructive or dangerous. For decades, the federal government has violated that fundamental right by punishing people for possessing or distributing drugs that it doesn't approve of.

Moreover, it has fallen disproportionately on blacks. Drug laws have enabled bigoted cops to arbitrarily stop blacks, legally harass and abuse them, and even be thanked and praised for establishing "law and order" in communities across America.

The drug war was born in racial bigotry, given that the first drug laws were enacted to harass Chinese and Mexican immigrants in America. As the years passed, such laws served as a perfect replacement for segregation laws, in that they provided public officials with the legal authority to remove blacks entirely from communities, sometimes for decades, and rehouse them in penitentiaries. Felony drug convictions have also served as a perfect device to deny large segments of blacks of the right to vote. The noted black author Michelle Alexander put it well: Drug laws are the new Jim Crow.

By repealing drug laws, the police would be deprived of what is arguably their best excuse for arbitrarily stopping blacks and subjecting them to humiliating and abusive searches and mistreatment, not to mention their forced removal from society through criminal convictions and incarceration. Repeal would also bring an end to the

death, destruction, violence, and ruination of lives that the drug war has produced and the official corruption it has engendered within the government. Most important, repeal would constitute a giant step in the restoration of American liberty.

Two repeals

2. Abolish vehicle-safety citations.

In an ideal libertarian world, streets and highways would be privately owned and managed, which would mean there would be no government traffic cops and state highway patrols. Absent that, states and localities should at least abolish nonmoving violations such as broken taillights, which are often used by cops as an excuse to stop black drivers and subject them to abuse. The offense is sometimes referred to as “driving while black.”

3. Repeal the minimum wage and occupational-licensure laws.

Minimum-wage laws fall heavily on blacks, especially those in the inner cities. It’s not a coincidence that black teenagers suffer a chronic unemployment rate of 30-40 percent. That’s because of minimum-wage laws.

No employer is going to hire someone whose labor he subjec-

tively values at less than the government-mandated wage. He’s in business to make a profit. It makes no sense to hire a black teenager whose labor he values at, say, \$8 an hour and pay him \$10 an hour. If a business owner does that, he suffers a loss of \$2 every hour.

Minimum-wage laws protect high-valued workers from wage competition.

Suppose the black teenager says to an employer, “I’ll do the same job as that white guy and I’ll do it better at \$5 an hour. Now the employer has a choice. Should he keep the white guy at \$10 an hour when he can have the black kid at \$5 an hour? Even a bigoted employer would be likely to go with the black kid because it means more money for the employer to take home to his spouse and family.

And that’s what minimum-wage laws do — they protect high-valued workers from wage competition from the less-valued workers.

Why would a black teenager be willing to work for \$5 an hour? For the same reason that college students accept internships that pay them no money at all. They want to get their foot on the bottom rung of the economic ladder. They want to

learn work skills, how to deal with customers, how to deal with a boss, and how a business operates. They want to be part of society.

Minimum-wage laws prevent black teenagers from doing the same thing. Such laws consign them to permanent unemployment in their most formative years. Indeed, such laws inevitably induce many of them to enter the drug trade with the aim of making big, quick money. Some of them get away with it but many of them get caught, get convicted, and get removed to penitentiaries for long periods of their lives.

It's no different with occupational-licensure laws. Such laws are nothing more than a protection racket to limit the supply of labor in certain occupations so as to artificially increase the income stream of those who have the license. Given the enormously high costs associated with securing a government license, such laws prevent poorer blacks (and others) from freely entering those occupations and competing for customers.

The right to discriminate

4. Repeal anti-discrimination laws.

Among the Jim Crow laws that states enacted after the Civil War

were segregation laws, which required the separation of the races. It goes without saying that segregation laws constituted a grave violation of the principles of freedom. The state had no business forcing people to discriminate against others on the basis of race.

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There was an obvious libertarian solution: Repeal segregation laws, which is what should have been done. But that's not what the federal government, under Lyndon Johnson, was willing to accept. He saw the civil rights crisis as an opportunity to expand the power of the federal government through the enactment of integration laws, which not only ended segregation but also required integration. In other words, the state screw of segregation was replaced by the federal screw of integration, a screw that has been progressively tightened over the decades.

Why did states deem it necessary to keep segregation laws intact? The reason was that they knew that in the absence of such laws, American society would orient in a direction that was not to the liking of

racial bigots. After all, if a free society in, say, Mississippi would naturally result in a bigoted, segregated society, then why would it have been necessary to enact segregation laws? The fact is that a free society — that is, one in which private people are free to discriminate on the basis of race — would bring about a peaceful, harmonious, largely integrated society, which is precisely why the bigots needed to enact segregation laws.

Suppose segregation laws had been repealed and no integration laws had been enacted by the feds. Yes, there would be some commercial establishments that would discriminate against blacks (or Jews, Catholics, and others). But that's partly what freedom is all about — the right to discriminate. The right to discriminate is another way of expressing the right of freedom of association, the fundamental right which Americans ostensibly support. Freedom of association necessarily entails the right to associate with whomever you want, regardless of the reason.

The right to discriminate shocks some Americans. They cannot imagine that a society in which people are free to exercise such a right can be a peaceful and harmonious society. Actually though,

Americans are free to exercise this fundamental right in their private affairs and do so every day.

That is, when it comes to inviting people into your home, you are free to discriminate against anyone you want on any basis you choose. Suppose you decide to throw a dinner party. You don't have to invite a single black person. You can even announce publicly that you would never allow a black (or a Jew or a Catholic or a Mexican) into your home for any purpose, and there is nothing the government can do about it. That's because you have the fundamental right to associate with whomever you want. The federal government does not infringe on freedom of association when it comes to your home.

The right to discriminate is another way of expressing the right of freedom of association.

Notice that American society handles this situation without any consternation or angst. Society continues to function without too many people getting bent out of shape because people are discriminating against others on the basis of race (or color, creed, gender, or national origin) with respect to who they invite into their homes.

Consider private clubs. They are free to discriminate. People pretty much leave them alone but periodically there is a protest and a boycott. That's all part of a free society — the right to discriminate and the right to boycott and avoid.

The problem arises in the commercial sector, which the federal government early on treated as something different from the non-commercial sector. That was an enormous mistake. A privately owned business establishment is no different, in principle, from a person's privately owned home. Sure, with a business he's opening his doors to strangers, unlike a dinner party at his home. But the principle of freedom of association applies here in the same way it applies to a home. The owner has the right to associate with anyone he wants in his business because it's his business, as much as he has the right to do so in his home. If he wishes to sell his products or services only to whites (or Jews or Catholics or homosexuals), that is his fundamental right as a free person.

If segregation laws had been repealed and no integration laws had been enacted, America would have ended up with the same type of situation we have in the noncommercial arena, one in which some peo-

ple would be operating stores that discriminated against blacks (or others) and others that didn't. It would have gradually evolved into a society where people would be making their own choices and in which there would have been the same degree of tolerance and even indifference that exists in the non-commercial arena.

The free market is a much better way to deal with bigotry than governmental force is.

In fact, the free market is a much better way to deal with bigotry than governmental force is. In a free market, when a business owner discriminates, he often lowers his market share and increases his costs, maybe even to the point of threatening the viability of his business. The beauty of a free-market system is that the bigot is put into the position of bearing responsibility for his own choices. If he chooses to continue discriminating, it means less money to take home to his family. That's the best way to reduce bigotry — by letting the bigot bear responsibility for his own bigotry. The free market nudges people toward moral behavior but doesn't compel it, as integration laws do. Economic boycotts come into play here as well.

Under principles of freedom, a bigot has a right to be a bigot. A genuinely free society entails not just the right to make the right choice but also the right to make the wrong choice — the irresponsible choice — the immoral choice — so long as the person's conduct is peaceful. That is, no murder, rape, theft, burglary, trespass, fraud, and the like but otherwise anything that's peaceful.

Government force will never eliminate racial bigotry from a person's heart and mind.

The ostensible purpose of integration laws was to wipe racial bigotry out of the hearts and minds of the American people through the use of government force, at least in the commercial arena. A natural question should be directed to proponents of integration laws: How's that working out for you? The obviously honest answer is: Not well at all.

Government force will never eliminate racial bigotry from a person's heart and mind. Instead, what integration laws did by legally prohibiting bigots from discriminating in the commercial arena was create a pressure-cooker situation within bigots. For whatever reason, some

bigots feel a strong psychological need to exercise their bigotry, which they would be free to do in a free society. Federal integration laws prohibited them from doing so in the commercial arena.

Thus, what job do you think a bigot would naturally gravitate to in order to exercise his bigotry? There is only one job in America where a bigot can exercise his bigotry to his heart's content and even be thanked and praised for it. He can become a cop, a job that enables bigots to arbitrarily stop blacks whenever the bigot wants, and humiliate, abuse, and even kill them with impunity. And in the process get praised and thanked for helping win the war on drugs or establishing law and order in the community.

Obviously, I'm not saying that all cops are bigots. Clearly they're not. What I'm saying is that given the fact that cops can legally discriminate against blacks, especially with the drug war, police departments are magnets for bigots, especially since integration laws preclude them from exercising their bigotry in commercial activities.

National security

5. Dismantle the national-security establishment and end foreign interventionism.

The conversion of the U.S. government into a national-security state after World War II is the most monumental mistake in American history. This Cold War-era, totalitarian-like establishment has fundamentally changed our nation, for the worse.

For 25 years, the national-security state has been killing people in the Middle East. For the past 15 years, it has been killing people in Afghanistan. Americans naively thought that all those deaths would have no effect here at home. That was a pipe dream. The constant, ongoing killing of people ultimately seeped into the subconscious of the citizenry, no matter how successful the mainstream media were in keeping photos of the dead out of the press. The large number of dead and the indifference to such deaths have worked their way into the minds of people who wish to retaliate for the U.S. killing of people in foreign lands and even into the minds of mass murderers who, with gun massacres, show the same indifference to human life that the U.S. government demonstrates abroad.

Americans also now live under the threat of constant terrorist “blowback” from the death and destruction the national-security state continues to wreak in the Middle

East, Afghanistan, and other parts of the world.

To protect us from the enemies its policies abroad produce, the U.S. national-security state has adopted a broad array of totalitarian-like powers that it can now legally employ against both foreigners and American citizens, including assassination, indefinite detention, and torture.

At the same time, we have witnessed the militarization of American society and the glorification of the military. We see this phenomenon at sports events, where people are exhorted to praise the troops and thank them for their service, even if their service abroad is destroying us here at home. Many of the police are military veterans who still retain their deeply ingrained mindsets of war rather than mindsets of criminal justice. At the same time, the U.S. national-security establishment has long been furnishing police departments with weapons of war to employ against the citizenry. It’s all reminiscent of how things operated in the Soviet Union, another regime characterized by a national-security state apparatus.

And now we are seeing the spectacle of well-trained black military veterans employing their skills in what they perceive to be a war

against cops, many of whom are convinced they're in a war against blacks. Reflecting the "we are at war" mindset, Dallas cops recently used a military-style bomb to kill the man who was suspected of having killed Dallas cops, notwithstanding the fact that the suspect was trapped, surrounded, and posed no immediate threat to anyone.

One thing is undeniable: the welfare-warfare state way of life that Americans adopted in the 20th century has produced a massively dysfunctional society in America. The time has come to dismantle it, not

reform it, and restore a peaceful, prosperous, healthy, harmonious, and free way of life to our land. These five steps would be a good way to start.

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

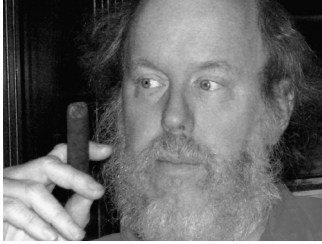
NEXT MONTH:
**"A Military Regime
Change in America?"**
by Jacob G. Hornberger

Smaller objections [I have to the new Constitution] are [the omission of] the Appeal in fact as well as law, and the binding of all persons, Legislative, Executive, and Judiciary, by oath to maintain that constitution.

— *Thomas Jefferson*

My Blowup at the Enviro Checkpoint

by James Bovard



As I sat in a seemingly endless line of cars at the Maryland vehicle-emissions checkpoint, the engine in my 1999 Ford suddenly growled, shuddered, and conked out cold. Maybe it was karma for my decades of scoffing at harebrained government regulations?

As I waited 90 minutes for a tow truck, I watched a stream of vehicles tarry up to half an hour to proceed through the Vehicle Emissions Inspection Program (VEIP) gauntlet. All my best profanity — and three kind offers of jump starts from passing Mexican drivers — did nothing to revive my engine.

Vehicle owners in 31 states must comply with similar tests, thanks to the Clean Air Act. States that displease the EPA, which dictates the

compliance regulations, risk losing federal highway funds. The tests have been in the news lately thanks to Volkswagen's software switcheroo that sent misleading signals when its diesel engines took government emission tests. But regardless of Volkswagen's perfidy, do the tests, which began before revolutions in auto-engine designs, make any sense?

An EPA air-compliance inspector in Alaska admitted in 2012, "You're just not finding a lot of dirty cars anymore." A Colorado government audit recently concluded that the "public need" for its emission-testing regime was "uncertain" and recommended exempting all vehicles from model year 2001 onwards. (Maryland exempts only the two most recent model years.)

Improved technology by auto manufacturers has probably done a hundred times more to reduce environmental harm than government emission tests. According to University of Denver research engineer Gary Bishop, an emission inspection "costs lots of money" but "does absolutely nothing to clean up the air." Bishop, who has pioneered new methods of roadside sensor tests, found that auto emissions in Tulsa, Oklahoma, which has no emission testing, were no

worse than in locales with strict testing regimes. But bureaucrats enjoy testing regimes that accustom citizens to submitting to their commands — regardless of whether the commands are justified.

Failing tests

I have been jaded on these tests since 2008, when a VEIP employee briefly hooked up a gizmo to my car dashboard and then announced that my Contour failed. After receiving that verdict, I was directed to a “waiting room” where I had to listen to an inane tape blaring a recorded message: “Join the Revolution against Air Pollution!” That was supplemented by a garbled message about mixing benzene and other stuff: “You wouldn’t drink that if somebody gave it to you in a glass. So why are you breathing it?” I did not fully appreciate the government’s promotional efforts because my mind could not get past the question, “Why am I listening to this crap?” I looked around but could discover no evidence of a brain trust at the center of this regulatory regime.

I was notified by a low-watt government contractor that I had four months to get my Ford fixed or I would be banned from driving it — unless I spent at least \$450 on re-

pairs. I took my car to a mechanic at a nearby Shell station. He thoroughly examined it and then announced that he was mystified because the engine and everything else was running smooth and clean. Then he suggested that the check-engine light was the reason it failed. He made no repairs and charged me less than the usual fee for a VEIP failure exam because they found nothing. When I got re-tested, the attendant hooked up an apparatus to the tail pipe to measure actual emissions. My car passed with flying colors. If they had done the tailpipe test when I first took the exam, I would not have had a regulatory sword of Damocles hanging over my car for that summer.

Auto emissions in Tulsa, Oklahoma, which has no emission testing, were no worse than in locales with strict testing regimes.

Maryland, like many other states, has a massive, mandatory emission-testing regime that relies on the on-board diagnostic (OBD) system in car dashboards. Regulators presume an illuminated check-engine light proves that there is an emission violation. But there are plenty of reasons why the check-engine light would go on aside from

excessive emissions — such as a loose wire, a faulty sensor, a computer glitch, or sheer cussedness. Relying on the check-engine light is akin to the Transportation Security Agency's condemning any traveler who has a container with more than four ounces of liquid in his carry-on baggage. Actually, the check-engine light is more akin to TSA's banning people from flying because they are not wearing matching socks. The OBD tests are notorious for generating false alarms. When Ontario switched in 2013 from measuring tailpipe emissions to checking OBD readings, the percentage of vehicles that failed the tests soared by 60 percent.

The on-board diagnostic tests are notorious for generating false alarms.

VEIP is my biannual regulatory dodgeball game. When I received my VEIP summons in April, my check-engine light was on — as it has been for much of the past decade. I delayed getting tested, hoping the light would switch off — as it does periodically. Then Maryland warned that it would cancel my vehicle registration unless I got VEIPed within 30 days. I took my car onto the Interstate and drove it

harder, faster, and further than usual to get the check-engine light to switch off. It worked — at least until my fuel pump gave up the ghost in the testing line. After spending \$837 for a new fuel pump and for the \$29 inspection fee (including a \$15 late charge), my Ford received another two-year reprieve from bureaucratic damnation.

Some folks who heard of my experience tutted that it proves that I should buy a newer car. But I usually drive fewer than 5,000 miles a year; I work at home, live near a subway stop, and enjoy biking more than driving. For long road trips, I rent cars. Some people may presume that manufacturing new cars is environmentally neutral as long as the check-engine light does not go on. But unnecessarily squandering resources and money is a nitwit response to bogus dashboard alerts. Regardless, Maryland bureaucrats would be happier with someone's unnecessarily buying a new car than with driving a vehicle with an illuminated check-engine light.

Making things worse

Emissions tests are also irksome because federal, state, and local policies cause far more air pollution than VEIP deters. Driving to the VEIP site, I had ample opportunity

to cuss the pointless delays on the county's main six-lane business corridor. Red lights are one of the biggest sources of air pollution around. But Montgomery County is raking in \$4 million a year in fines from red-light cameras, a strong deterrent to synchronizing the lights.

Maryland drivers are compelled to rely on fuel with 10 percent ethanol. Maryland has some of the worst smog problems in the nation and ethanol is notorious for increasing smog — especially in the summer. The Wisconsin Department of Natural Resources estimated that adding ethanol to gasoline does twice as much harm to air quality as auto-emission testing prevents. But the farm lobby is sufficiently powerful that politicians take drivers hostage every time they fill up their gas tank. Ethanol is also renowned for damaging car engines. But that has not deterred Barack Obama from seeking to force Americans to use more of it — raising the fuel blend from 10 percent to 15 percent ethanol.

Maryland whoops up the VEIP tests as if they are a silver bullet for the state's air quality. Maybe my skepticism was unjustified — maybe the government actually had great data to prove that it is all worthwhile. So I sent an email to

the press office of the Maryland Department of Environment asking whether they had an “estimate of exactly how much MD VEIP tests have reduced pollution in the state.” I also asked, “Is there an estimate on the reduction from repairs etc. from vehicles that initially failed VEIP tests?” Jay Apperson, the deputy director of the MDE Office of Communications, promptly replied: “Just wanted to let you know that I got your email, will check. Thanks.”

Adding ethanol to gasoline does twice as much harm to air quality as auto-emission testing prevents.

Then I heard nothing for ten days. So I sent another email to the same office with two more questions: “Does the MD Dept of Env. have an estimate of the total amount of pollutants discharged by vehicles participating in the VEIP process? I assume this would be calculated by an estimate of the average # of miles driven to VEIP stations and the # of minutes awaiting the test. Has the MD Dept of Env. done any studies or estimates of the impact of ethanol in gasoline on MD air quality — especially as far as smog in the summer?” Apperson replied: “I am still tracking down answers to your

questions. We will also look into your additional questions.”

Alas, though I sat on the edge of my chair for the following weeks, I heard nary a word from the Maryland Department of the Environment. But, considering the half-hour wait that many drivers have for the emission tests, the tests themselves could be a net negative for Maryland air quality.

Anyone who scorns a VEIP summons runs into another government buzzsaw. Maryland leads the nation in surveillance of its citizens — or at least its drivers. Under Gov. Martin O’Malley, the state snared federal Homeland Security grants to equip hundreds of police cars with license-plate scanners that create almost 100 million records per year detailing exactly where and when each vehicle travels. The massive databank, which mortifies the ACLU, has been almost a total failure at nailing violent criminals or car thieves or terrorists. Instead, almost all the license-plate alerts involve VEIP scofflaws. Maryland police have a tawdry record of ille-

gal surveillance on anti-war protesters.

Unfortunately, Maryland’s license-plate scanners are unable to detect regulatory boondoggles. Will EPA or the state’s politicians admit the futility of emission testing before my old Ford receives another VEIP summons in 2018? Regardless of how much pollution government policies cause, bureaucrats are still entitled to unlimited power over drivers who might — or might not — inflict environmental harm.

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

NEXT MONTH:
**“The Great Goober Train
Wreck of 2016”**
by James Bovard

Does the Second Amendment Even Exist?

by Laurence M. Vance



Gun control was going to be a campaign issue even before the Orlando Pulse nightclub shooting back on June 12.

Donald Trump was endorsed by the National Rifle Association (NRA) after he spoke at the group's convention in May and remarked that "the Second Amendment is under threat like never before" and that "crooked Hillary Clinton is the most anti-gun, anti-Second Amendment candidate ever to run for office." (This is a change from Trump's previous position, as articulated in his book *The America We Deserve* [2000] — support for the "assault weapons" ban then in force and in favor of a "slightly longer waiting period to purchase a gun.") While speaking the next day at a confer-

ence on gun violence hosted by the Trayvon Martin Foundation, Clinton responded that Trump's position on the issue was "dangerous," "way out there," and "no way to keep us safe," and would lead to "more hatred and violence in our streets."

Since the mass shooting in California late last year, Democrats in Congress have been pushing "no-fly no-buy" legislation sponsored by Sen. Dianne Feinstein (D-Calif.) that would prohibit anyone on the federal "no-fly list" from purchasing firearms. But the ACLU — which is usually in lockstep with the Democrats — opposed the legislation because of "deep concerns" "about legislative efforts to regulate the use of guns by relying on our nation's error-prone and unfair watchlisting system."

Two days before the Orlando shooting, a new gun-control initiative by veterans was announced. Veterans Coalition for Common Sense is led by Navy combat veteran and former astronaut Capt. Mark Kelly and his wife, former U.S. House member Gabrielle Giffords, who was shot and seriously wounded during a mass shooting in Arizona in 2011. The advisory committee includes retired three- and four-star generals and admirals, including David Petraeus, Michael

Hayden, and Stanley McChrystal. The coalition urges “our elected leaders to close the loopholes in our background check laws that let felons, domestic abusers and the dangerously mentally ill buy guns without a criminal background check.”

After the Orlando shooting, Democrats, immediately and predictably, called for more federal gun-control measures. Barack Obama said he wants to reinstate a national ban on “assault weapons” instituted under Bill Clinton that expired in 2004. House Democrats even staged a “sit-in” over the failure of Republicans in the House to vote on gun-control measures.

The Second Amendment

Does the Second Amendment even exist? Politicians, the news media, and Americans persuaded by them are clamoring for the federal government to “do something” about gun violence. Organizations are urging Congress to pass more gun-control legislation. But everyone is not just ignoring the Second Amendment; they are acting as though it doesn’t even exist.

The Constitution as it was ratified by the states in 1787 and 1788 contained neither the Second Amendment nor any language about guns. The Second Amend-

ment was added to the Constitution as part of the Bill of Rights (the first ten amendments to the Constitution), which the requisite number of states approved on December 15, 1791. The twenty-seven words of the Second Amendment read: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.” The Second Amendment has no exceptions. It doesn’t say that the right of the people to keep and bear arms shall not be infringed — except when it comes to “military” weapons, unusual weapons, future weapons, powerful weapons, national security, emergencies, “reasonable” regulations, or extenuating circumstances.

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Second Amendment;
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Still, the Second Amendment has engendered more controversy than any other amendment to the Constitution except perhaps for the Fourteenth. Liberals and Progressives generally try to define the Second Amendment in terms of the right of the states to maintain militias. They don’t believe that it pro-

protects an individual right of “the people” to keep and bear arms. The phrase “the people” also appears in the First, Fourth, Ninth, and Tenth Amendments that were added to the Constitution, as mentioned above, at the same time as the Second Amendment. The First Amendment states that Congress shall make no law abridging “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The Fourth Amendment states that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” The Ninth Amendment states that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The Tenth Amendment states that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” It is impossible that “the people” in the Second Amendment does not refer to the same group termed “the people” in the First, Fourth, Ninth, and Tenth Amendments. The state militias were made up of a portion of “the people,” who had the natural right to keep and bear arms.

But even if the Second Amendment applied only to the states’ ability to maintain militias, as many liberals and progressives say, or as subject to some other interpretation that limits its language to militias, that would still not affect Americans’ right to keep and bear arms. It would just be an amendment related to state militias.

The state militias were made up of a portion of “the people,” who had the natural right to keep and bear arms.

The Second Amendment is actually irrelevant anyway. After the shooting in Orlando, Drexel University law professor David Cohen proposed in an article on the *Rolling Stone* website that the Second Amendment be repealed (“Why It’s Time to Repeal the Second Amendment,” June 13, 2016). According to Cohen, the Constitution and the Second Amendment are “wrong.” Therefore,

The Second Amendment needs to be repealed because it is outdated, a threat to liberty and a suicide pact. When the Second Amendment was adopted in 1791, there were no weapons remotely like the

AR-15 assault rifle and many of the advances of modern weaponry were long from being invented or popularized.

The liberty of some to own guns cannot take precedence over the liberty of everyone to live their lives free from the risk of being easily murdered. It has for too long, and we must now say no more.

The second amendment must be repealed, and it is the essence of American democracy to say so.

Okay, suppose the Second Amendment were repealed, as the good professor proposes. It could happen. There was a time in American history when a constitutional amendment was actually repealed. The Eighteenth Amendment that instituted Prohibition in 1920 was judged to be “wrong” and repealed by the Twenty-First Amendment that was ratified in 1933. Cohen even brings that up in his piece. But even if there were no Second Amendment, the federal government would still have no authority to ban, regulate, or otherwise infringe upon the right of the people to keep and bear arms.

The Second Amendment confers no positive right. It recognizes a

pre-existing right. People have a natural right to keep and bear arms for hunting, sport, recreation, self-defense, or any other reason. The Second Amendment doesn't read, “The people shall have the right to keep and bear arms.” It is part of the Bill of Rights that protects the natural rights of the people from government overreach. The Second Amendment is merely an additional limitation on federal power to infringe upon gun rights aside from the fact that there is no authority granted to the federal government by the Constitution to infringe upon them in the first place. If the Second Amendment didn't exist, Americans would still have the natural right to keep and bear arms.

If the Second Amendment didn't exist, Americans would still have the natural right to keep and bear arms.

The federal government has no authority whatsoever under the Constitution — with or without the Second Amendment — to ban or regulate handguns, shotguns, sawed-off shotguns, rifles, assault rifles, extended-capacity magazines, high-caliber guns and ammunition, automatic weapons, machine guns, grenades, or bazookas.

And neither does the federal government have the constitutional authority to establish or mandate gun bans, gun-free zones, background checks, waiting periods, trigger locks, limits on gun purchases, age restrictions on gun purchases, gun-barrel lengths, licensing of gun dealers, gun-owner databases, gun licensing, or gun registration.

Without amending the Constitution, there is nothing the federal government can constitutionally do about gun violence. There is no legislation it can pass. There are no mandates it can issue. Gun-control groups, Democrats, liberals, and Progressives — including also some conservatives and Republicans — can scream and shout all they want about the federal government’s doing something by enacting new and stricter gun-control laws, but, constitutionally, there is nothing the federal government can do. Uncle Sam’s hands are tied. As well they should be. If an exception can be made for guns, then an exception can be made for anything else.

The problem

There is just one problem: current federal gun-control laws. Even if the Orlando shooting never took place and not a single new federal

gun-control law, rule, or regulation was ever instituted, there still exist a myriad of federal gun-control laws, rules, and regulations. The main ones are the following:

- The National Firearms Act of 1934
- The Gun Control Act of 1968
- The Law Enforcement Officers Protection Act of 1986
- The Armed Career Criminal Act of 1986
- The Crime Control Act of 1990
- The Gun-Free School Zones Act of 1990
- The Brady Handgun Violence Prevention Act of 1993
- The Violent Crime Control and Law Enforcement Act of 1994

There is nothing the federal government can constitutionally do about gun violence.

The National Instant Criminal Background Check System (NICS) was instituted in 1998.

And then there is the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). According to the latest ATF Staffing and Budget “Fact Sheet,”

The ATF is a world-class law enforcement organization committed to safeguarding lives by protecting the public from violent crime. ATF protects the public from crimes involving firearms, explosives, arson, and the diversion of tobacco products; regulates lawful commerce in firearms and explosives; and provides worldwide support to law enforcement, public safety, and industry partners.

For fiscal year 2015, the ATF reports that it had “5,026 employees, including 2,618 special agents and 811 industry operations investigators” — all at a cost to taxpayers of \$1.201 billion. The ATF says it is “committed to safeguarding lives by protecting the public from violent crime.” Well, according to the non-profit Gun Violence Archive (GVA), there were “more than 50,000 incidents of gun violence in 2015” with “more than 12,000 people” being killed. And according to the *Washington Post*, “the number of homicides in the country’s 50 largest cities rose nearly 17 percent last year, the greatest increase in lethal violence in a quarter century.” Sounds like the ATF has failed to do anything but enforce federal gun

laws that take away American’s gun rights. The main point, however, is that the ATF has no constitutional authority to regulate, restrict, or ban alcohol, tobacco, or firearms.

The ATF has no constitutional authority to regulate, restrict, or ban alcohol, tobacco, or firearms.

The Second Amendment has, unfortunately, not prevented the myriad of federal gun-control laws, rules, and regulations that have been put in place during the 20th century. Not because there is anything wrong with it, but because the federal government refuses to follow its own Constitution.

Yes, we need gun control. But it is the guns owned by the federal government that need to be controlled. There are now fewer U.S. Marines than there are officers working at federal agencies with the authority to carry weapons and make arrests. According to a report issued in June by American Transparency, a nonpartisan watchdog group that compiles data on public expenditures, there is a growing trend of the militarization of federal agencies, most of which have no military responsibilities. As reported by the *Boston Globe*, “Between 2006 and 2014, the report shows,

67 federal bureaus, departments, offices, and services spent at least \$1.48 billion on ammunition and materiel one might expect to find in the hands of SWAT teams, Special Forces soldiers — or terrorists.” That includes \$11 million by the IRS for its 2,300+ special agents, \$3.1 million by the EPA, and \$4.8 million by the Animal and Plant Health Inspection Service, an agency of the U.S. Department of Agriculture. Advocates of gun control are focused on the wrong people.

The *Heller* and *McDonald* cases

But what about the *Heller* and *McDonald* Supreme Court cases? Did not the Court rule in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that “the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home” and then reaffirm this opinion in *McDonald v. City of Chicago* 561 U.S. 3025 (2010), and further rule that the Second Amendment applies also to the states?

Yes, but there are two problems. One, as I have pointed out above, the government follows neither the Second Amendment nor the Constitution. And two, although the *Heller*

and *McDonald* cases clearly affirmed that the Second Amendment protects an individual right, they also made it perfectly clear that the federal government can still infringe upon that right. In the majority opinion in the *Heller* case, the late Justice Antonin Scalia wrote that there are “undoubtedly” limits to the right to bear arms under the Second Amendment. The Amendment “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” And in the majority opinion in the *McDonald* case, Justice Samuel Alito wrote,

It is important to keep in mind that *Heller*, while striking down a law that prohibits the possession of handguns in the home, recognized that the right to keep and bear arms is not a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as “prohibitions on the possession of firearms by felons and the mentally ill,” “laws forbidding the carrying of firearms in sensitive places such as

schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” We repeat those assurances here.

Neither the *Heller* nor the *McDonald* case invalidated a single federal gun-control law or regulation. No wonder some advocates of gun control expressed support for the outcome of these cases. The decisions in the *Heller* and *McDonald* cases don’t change our need for vigilance when it comes to gun liberty.

The solution

The solution is a simple one. On the federal level, all laws of any kind concerning guns, ammunition, magazines, background checks, gun shows, gun manufacturing, gun sales, and licensing of gun dealers should be repealed.

It doesn’t matter how many shootings there are at schools, movie theaters, and nightclubs; it doesn’t matter how many murders occur every week, month, year; it doesn’t matter how many armed robberies take place; it doesn’t matter how many drive-by shootings occur; it doesn’t matter how many people commit suicide using a gun; it doesn’t matter how many children are caught bringing guns to school; it

doesn’t matter how many people are killed or wounded while cleaning a gun; it doesn’t matter how many hunting accidents there are; it doesn’t matter what the murder rate is.

It is on the state level that any gun-control legislation should be enacted.

Although those are all terrible things, even if federal gun-control measures actually worked (a very dubious proposition), it is still not the job of the federal government to do anything about gun violence. And the federal government has no authority under the Constitution to do anything about it. This is why all unconstitutional federal gun laws (which means all federal gun laws) should be repealed, the ATF should be eliminated, and the National Instant Criminal Background Check System (NICS) should be abolished. Every congressman who introduces a gun-control bill should be laughed at, ruled out of order for blatantly seeking to violate the Constitution, and sent to his office to read the Constitution until he can come up with some constitutional authority for the federal government to have any laws that concern guns.

If we are to have gun-control laws, it is on the state level that any

gun-control legislation should be enacted. It is on the state level where the whole issue must be debated and decided. Now, that doesn't mean that the states should enact gun-control measures. Libertarians would make the same arguments against state gun-control laws that they make against federal gun-control laws (Every argument except the constitutional one. That would depend on what the state constitutions said about guns and gun control.) On the state level, libertarians would argue for the protection of individual liberty and property rights. They would point out that since every crime needs a victim, just buying a gun or ammunition should never be a crime. They would point out that murder can be committed with a knife, a hammer, poison, almost any blunt object, one's bare hands, or even a well-placed pillow. They would point out that people intent on committing murder and facing life imprisonment, the death penalty, or getting killed during or after their shooting spree don't care a whit about violating any laws concerning gun-free zones, gun-show regulations, bans on certain types of guns and ammunition, concealed weapons, waiting periods, or background checks. They would point out that it

is those who use guns responsibly — for recreation or self-defense — who overwhelmingly bear the brunt of the inconvenience, expense, and loss of liberty that results from the myriad of federal gun rules and regulations.

Anyone who supports any gun-control measure on the federal level is not only acting as though the Second Amendment doesn't exist, he is also mocking the Constitution and America's federal system of government. The real issue here — as are so many of the issues debated in America — is about the limited powers of the federal government under the Constitution.

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NEXT MONTH:
“The Change America Needs
Is Libertarianism”
by Laurence M. Vance

Lessons of the Orlando Massacre

by *Benedict D. LaRosa*



In the early morning hours of June 12, 2016, a 29-year-old, American-born Muslim of Afghan descent, Omar Mateen, with allegiance to the Islamic State of Iraq and Syria (ISIS), entered a nightclub in Orlando, Florida, armed with a semi-automatic, high-capacity rifle and handgun, and began shooting and taking hostages. Although an Orlando police officer serving as an armed guard outside the club engaged Mateen, the attacker was able to force his way into the nightclub. Within three hours, he had had killed 49 patrons and employees, and wounded another 53. Predictably, gun-control advocates Barack Obama, Democratic presidential candidate Hillary Clinton, Senate Minority Leader Harry Reid, et cetera, berated Congress

for not having passed more-stringent gun-control laws. Homeland Security Secretary Jeh Johnson declared gun control “a matter of national security.” The *New York Daily News* went so far as to blame the National Rifle Association (NRA) for the massacre by running a front-page headline the next day saying, “THANKS, NRA.”

What lessons can we learn from this incident? The first lesson begins with a question: why didn’t anyone inside the club shoot back? There were approximately 320 patrons and employees inside at the time. That’s 320 against 1. Mateen should have been outgunned within minutes, if not seconds, never mind three hours. According to witnesses and the police investigation that followed, he reloaded several times, made at least 16 telephone calls, and checked and even posted to his Facebook page numerous times! He was vulnerable each time he reloaded, made the telephone calls, checked Facebook, or turned his back to some to shoot others. I suspect the reason is that he was the only one armed inside the club. The club was apparently a Gun Free Zone, otherwise known to would-be attackers as a Free Fire Zone. Vladimir Lenin once observed, “One man with a gun can

control 100 without one.” In this case, one man with a gun controlled 320 unarmed souls. As police firearms instructor Clint Smith warns his students, “An armed man will kill an unarmed man with monotonous regularity.”

The presence of armed people improves the chances of surviving an armed encounter, discourages assailants, and possibly limits the damage.

The presence of armed people does not guarantee safety. It does, however, improve the chances of surviving an armed encounter, discourages assailants, and possibly limits the damage. Isn't it interesting that mass shootings are stopped by people — either police or others — with guns? Why then discourage people from having the means to protect themselves where it counts — at the time and place where the crime is being committed?

Failure after failure

The second lesson is the failure of gun-control laws to work as advertised. Every gun-control law passed in this country promised to reduce crime and gun violence, and enhance safety, from the National Firearms Act of 1934, to the Fed-

eral Firearms Act of 1938, the Omnibus Crime Control and Safe Streets Act of 1968, the Gun Control Act of 1968, the Firearm Owners Protection Act of 1986, the Undetectable Firearms Act of 1988, the Gun-Free School Zones Act of 1990, the Brady Handgun Violence Prevention Act of 1993, and the Federal Assault Weapons Ban of 1994–2004, and Bill Clinton's executive order prohibiting military personnel from carrying self-defense weapons on military posts and recruiting offices.

Each failed to deliver as promised, to be succeeded by another, which also failed, and so on, which is why there is such a plethora of laws, none of which prevented any of the mass shootings in the news to date. Mateen had no criminal record, passed a background check, and complied with every other law to obtain the firearms he used in the massacre. He even worked as a security guard for a company whose client was the Department of Homeland Security, which required him to undergo an additional background check.

What each of the laws did succeed in doing was to add new restrictions on the right to keep and bear arms for the law-abiding, making it more difficult and expen-

sive for good people to arm and train themselves. Those are only the federal laws. When you add state and local gun-control laws, the total is somewhere near 20,000! What has worked to reduce crime and gun violence is intelligent police work, taking habitual dangerous criminals off the streets, and increasing the number of armed and trained citizens.

What has worked to reduce crime and gun violence is increasing the number of armed and trained citizens.

Despite evidence to the contrary, gun-control advocates insist that the average citizen does not need firearms for protection because we have the military, police, and now Homeland Security to protect us. A third lesson, therefore, is the failure of those agencies to do just that. In fact, they are under no legal obligation to do so, as expressed in *Bowers v. Devito*, 686 F.2d 616 (7th Cir. 1982) and many other court cases:

There is no constitutional right to be protected by the state against being murdered by criminals or madmen. It is monstrous if the state fails to

protect its residents against such predators but it does not violate the due process clause of the Fourteenth Amendment, or, we suppose, any other provision of the Constitution. The Constitution is a charter of negative liberties; it tells the state to let the people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order... The duty to provide public services is owed to the public at large, and, absent a special relationship between police and an individual, no specific legal duty exists.

Even under the best of circumstances, with the best of intentions, those agencies cannot prevent every criminal or terrorist act. Nevertheless, it puts a lie to those who advocate exclusive reliance on them for protection. Point defense is better than area defense. After all, the first people at a crime scene are the perpetrators and the victims. As syndicated columnist and senior editor at *Reason* magazine Jacob Sullum writes, "In the face of self-directed terrorists who are invisible until they strike, the last thing we

should do is prevent law-abiding Americans from carrying guns. Autonomous terrorism calls for autonomous defense.” Amen to that!

Rather than admit the failure of their policies, gun-control advocates blame gun-rights supporters for resisting further infringements on their right to keep and bear arms, and insist on adding more

and more ineffective laws. At some point, reasonable people might suspect another motive.

Benedict LaRosa is a historian and writer with undergraduate and graduate degrees in history from the U.S. Air Force Academy and Duke University, respectively.

It is a mistake for the government to consider the problems of the sick apart from those of society as a whole.... [The] broader problem is, in a moral sense, one of promoting respect for the individual and the furtherance of initiative and self-providence; in an economic sense, one of increasing production for the benefit of all citizens; and in a political sense, one of removing government as a battlefield for special favor and substituting cohesion and solidarity for division and disintegration.

— Darryl W. Johnson Jr.

Adam Smith's Moral Path through Quagmire

by Wendy McElroy



Adam Smith's book *The Theory of Moral Sentiments* offers a path through a dangerous social quagmire. Namely, the law increasingly demands that peaceful acts conform to a specific state-approved morality. The process turns morality into a matter of state and law rather than one of individual conscience.

The politically correct justify mandatory morality in the name of social justice or a paternalism by which the elite know what is better for people than the people do themselves. For example, in signing the recent minimum-wage law in California, Gov. Jerry Brown stated, "Economically, minimum wages may not make sense" but "[morally]

and socially and politically, they make every sense." By this, Brown meant the law made moral sense to him and to his ideological associates, who were willing to impose it upon anyone who disagreed.

The religious Right justify mandatory morality in the name of God or decency, especially in matters of sex. For example, an April 2016 article in *Mother Jones* attacked Ted Cruz's record as a Texas solicitor general (2003–2008). There, his legal team crusaded to criminalize the sale of dildos. A brief filed on behalf of Cruz argued that Texas had "police-power interests" to protect "public morals" by "discouraging prurient ... sexual gratification" and "discouraging ... autonomous sex." By this, Cruz meant that autonomous sex was prurient to him and he was willing to impose his sexual standards upon others.

Some say "pick your poison." But a third alternative is to push the poison away in recognition of the fact that law and morality are separate realms. Or should be. Law should prohibit violence and enforce contracts in order to promote peace and justice. Morality should address the proper way for peaceful people to interact.

Smith drew this distinction when he asked whether a man de-

served praise for not aggressing against a neighbor. The answer was “no.” Nonaggression was a duty every human being owed to all others and a person should not be applauded for fulfilling a responsibility. Praise came into play when a person went beyond duty to assist others through acts inspired by sentiments such as kindness, compassion, and fellowship.

Law is geared toward controlling behavior, not beliefs.

Smith’s theory of morality as sentiments is a large step toward clarifying and maintaining the separation between law and morality. For one thing, law is geared toward controlling behavior, not beliefs. In other words, the only way law controls beliefs is through controlling the acts that express them. The beliefs themselves remain intact. The same is true of morality.

What is the theory of moral sentiments?

Despite his impact on economics, Smith was not primarily an economist. He held a professorship in moral philosophy at the University of Glasgow, and preferred ethics to politics or economics. The *Wealth of Nations* is certainly his

best-known work but his first major book, and the one he regarded with most pride, was *The Theory of Moral Sentiments* (TMS). (Note: Each was originally issued in volumes rather than in one book.) Indeed, since passages in *The Wealth of Nations* are difficult to understand without having read TMS, the two books can be viewed as a set.

In TMS, Smith focused on ethics and the psychology that underpinned ethical behavior such as charity, which is often pitted against self-interest. Smith tried to resolve the perceived conflict by asking why self-interested men make moral judgments at all. Why do they have a conscience? Smith grounded the answer in human nature so that morality itself sprang from man’s self-interest — that is, from acting according to his nature.

He wrote,

How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortunes of others, and render their happiness necessary to him, though he derives nothing from it, except the pleasure of seeing it. Of this kind is pity or compassion, the emotion we feel for the misery

of others.... That we often derive sorrow from the sorrow of others, is a matter of fact too obvious to require any instances to prove it; for this sentiment, like all the other original passions of human nature, is by no means confined to the virtuous and humane.... The greatest ruffian, the most hardened violator of the laws of society, is not altogether without it.

But why would anyone increase his own sorrow by sympathizing with another person? One reason: the ability to empathize also increases the joy of life because it allows people to share in the pleasure of others. Another reason: empathy is simply in the nature of man. Humans are profoundly social beings with a natural need to belong and to interact.

The desire of being believed, the desire of persuading, of leading and directing other people, seems to be one of the strongest of all our natural desires. It is, perhaps, the instinct upon which is founded the faculty of speech, the characteristic faculty of human nature. No other animal pos-

sesses this faculty, and we cannot discover in any other animal any desire to lead and direct the judgment and conduct of his fellows.

Smith rooted social interaction in self-interest that was not economic but in a natural instinct to interact; it fulfilled a deep psychological need. “The desire of being believed” or understood meant extending empathy to others was in a person’s self-interest because he craved the same empathy in return. The “exchange” was not a calculation, however, but an instinctual response. Otherwise stated, morality results from man’s social nature; there is no conflict with his self-interest because morality is an expression of it. (Note: some other philosophers ground morality in man’s nature but view reason as its source. By contrast, Smith grounds morality in man’s psychology.)

Morality results from man’s social nature; there is no conflict with his self-interest because morality is an expression of it.

Many salutary results spring from self-interest. For example, justice emerges from the social instinct because human beings need to live

together without constantly harming each other. In this manner, self-interest is the basic building block of social harmony.

Law and moral sentiments

Collapsing the perceived conflict between self-interest and society has profound implications for the current legal system. It eliminates the need to impose “morality” upon selfish people for the good of society. For example, thousands of laws preemptively rein in the greed of people, especially business people, who are predefined as predatory. Such regulations should be removed immediately ... and for the good of society.

But Smith’s theory does more than that. Laws imposing morality by prohibiting specific peaceful acts or by mandating them become absurdities. If morality lies in sentiments, such as compassion, then there is no right or wrong expression of it.

Consider a scenario. A school-teacher’s husband dies and the community rallies to support her. One person pays her rent for the

next month while another stocks her fridge with food. A third spends hours with his arm around her shoulders, allowing her to cry into his. A child leaves flowers on her doorstep and walks her dog every day, twice a day. Her next-door neighbor decides to forgive an on-going feud and leaves the school-teacher in peace. Every person in the town might express the moral sentiment of kindness differently but no expression is right or wrong, because morality resides in the sentiment itself.

If no such act is right or wrong, then the law cannot logically mandate any act as “the” moral response. Nor can the law create a moral sentiment, such as generosity, where none exists. The law is effectively shut out of playing the morality game. Instead, it is relegated to the appropriate sphere of prohibiting violence and enforcing contracts.

Wendy McElroy is a fellow of the Independent Institute and the author of The Art of Being Free.

Some feel [the] idea of justice is a cold, heartless concept. They want the state to produce social and economic justice as well. They want justice to include a more equal distribution of the goods of this world. They want charity and sympathy to be effected by the power of the law. In the process of broadening the meaning of justice to include these political activities, real justice is destroyed. The use of force to take from some to give to others is the very opposite of justice. Economic equality or economic redistribution cannot be effected by force apart from an unequal, and thus unjust, treatment of individual citizens. When this becomes the policy of the state, justice no longer prevails.

— Francis E. Mahaffy

The Inequality of Wealth and Income

by *Ludwig von Mises*



What is most criticized in our social order is the inequality in the distribution of wealth and income. There are rich and poor; there are very rich and very poor. The way out is not far to seek: the equal distribution of all wealth.

The first objection to this proposal is that it will not help the situation much because those of moderate means far outnumber the rich, so that each individual could expect from such a distribution only a quite insignificant increment in his standard of living. This is certainly correct, but the argument is not complete. Those who advocate equality of income distribution overlook the most important point, namely, that the total available for distribution, the annual product of

social labor, is not independent of the manner in which it is divided. The fact that that product today is as great as it is, is not a natural or technological phenomenon independent of all social conditions, but entirely the result of our social institutions. Only because inequality of wealth is possible in our social order, only because it stimulates everyone to produce as much as he can and at the lowest cost, does mankind today have at its disposal the total annual wealth now available for consumption. Were this incentive to be destroyed, productivity would be so greatly reduced that the portion that an equal distribution would allot to each individual would be far less than what even the poorest receives today.

The inequality of income distribution has, however, still a second function quite as important as the one already mentioned: it makes possible the luxury of the rich.

Many foolish things have been said and written about luxury. Against luxury consumption it has been objected that it is unjust that some should enjoy great abundance while others are in want. This argument seems to have some merit. But it only seems so. For if it can be shown that luxury consumption performs a useful function in the

system of social cooperation, then the argument will be proved invalid. This, however, is what we shall seek to demonstrate.

Our defense of luxury consumption is not, of course, the argument that one occasionally hears, that is, that it spreads money among the people. If the rich did not indulge themselves in luxuries, it is said, the poor would have no income. This is simply nonsense. For if there were no luxury consumption, the capital and labor that would otherwise have been applied to the production of luxury goods would produce other goods: articles of mass consumption, necessary articles, instead of “superfluous” ones.

Luxury consumption provides industry with the stimulus to discover and introduce new things.

To form a correct conception of the social significance of luxury consumption, one must first of all realize that the concept of luxury is an altogether relative one. Luxury consists in a way of living that stands in sharp contrast to that of the great mass of one’s contemporaries. The conception of luxury is, therefore, essentially historical. Many things that seem to us neces-

sities today were once considered as luxuries. When, in the Middle Ages, an aristocratic Byzantine lady who had married a Venetian doge made use of a golden implement, which could be called the forerunner of the fork as we know it today, instead of her fingers, in eating her meals, the Venetians looked on this as a godless luxury, and they thought it only just when the lady was stricken with a dreadful disease; this must be, they supposed, the well-merited punishment of God for such unnatural extravagance. Two or three generations ago even in England an indoor bathroom was considered a luxury; today the home of every English worker of the better type contains one. Thirty-five years ago there were no automobiles; twenty years ago the possession of such a vehicle was the sign of a particularly luxurious mode of living; today in the United States even the worker has his Ford. This is the course of economic history. The luxury of today is the necessity of tomorrow. Every advance first comes into being as the luxury of a few rich people, only to become, after a time, the indispensable necessity taken for granted by everyone. Luxury consumption provides industry with the stimulus to discover and introduce new things. It is one of the dy-

dynamic factors in our economy. To it we owe the progressive innovations by which the standard of living of all strata of the population has been gradually raised.

Most of us have no sympathy with the rich idler who spends his life in pleasure without ever doing any work. But even he fulfills a function in the life of the social organism. He sets an example of luxury that awakens in the multitude a consciousness of new needs and gives industry the incentive to fulfill them. There was a time when only the rich could afford the luxury of visiting foreign countries. Schiller never saw the Swiss mountains, which he celebrated in *Wilhelm*

Tell, although they bordered on his Swabian homeland. Goethe saw neither Paris nor Vienna nor London. Today, however, hundreds of thousands travel, and soon millions will do so.

Ludwig von Mises (1881–1973) was one of the world's foremost economists and the author of Human Action, Socialism; Liberalism, The Theory of Money and Credit, and other works. This article (found at <https://mises.org/blog/mises-inequality-wealth-and-income>) is excerpted from Liberalism: In the Classical Tradition.

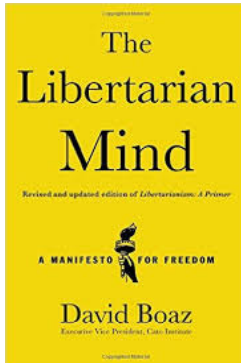
To think we are able is almost to be so; to determine upon attainment is frequently attainment itself; earnest resolution has often seemed to have about it almost a savor of omnipotence.

— Samuel Smiles

The Libertarian Mind

by George C. Leef

The Libertarian Mind: A Manifesto for Freedom by David Boaz (Simon & Schuster, 2015); 417 pages.



Since the beginning of the so-called Progressive Era, advocates of big government have been on the offensive. They promised Americans more prosperity, better education, increased security, a cleaner environment, a society that's more fair, and so on — provided they would allow government officials to wield much more power.

A great many fell for it. After all, wasn't it desirable to move toward an improved country at what seemed to be little or no cost? Certainly our leaders would do only

things that were in “the public interest.”

As those ideas gained ground, interest groups figured out that the expanding state could be very lucrative. They added their voices to the clamor for government to do more.

The Progressives, however, tremendously exaggerated the benefits of big government — an “activist” government rather than the small, defensive one envisioned by the Founders. The visionary laws and programs that were supposed to produce a better society have made matters worse. At the same time, the costs of big government have proven to be gigantic, both in monetary terms and in terms of lost freedom.

As a result, an intellectual counterattack has been building. Many books have been written on particular aspects of the case for restoring liberty and limited government, but in *The Libertarian Mind*, David Boaz gives readers a wide-ranging manifesto that covers the waterfront. Just about every major problem caused by big government is exposed and the need for America to embrace voluntary solutions is made crystal clear.

Boaz, executive vice-president at Cato Institute, gives us a compre-

hensive, readable, and highly persuasive book rooted in the principles of libertarian thinking: peaceful cooperation, private property, capitalism, and individual rights. On page after page, he shows why the statism of the Progressives failed to deliver on its promises and why the nation should return to its limited-government roots.

In this perilous election year, it is especially important to remind Americans that freedom works for the benefit of all, whereas big government enriches a few at the expense of the rest of society.

Conceived in plunder

Boaz builds his case by starting with the basic need for and benefits of freedom. He points out, “Freedom leads to social harmony. We have less conflict when we have fewer specific commands and prohibitions about how we should live — in terms of class or caste, religion, dress, lifestyle or schools.”

We wouldn’t have the nasty disputes we do over issues such as the best school curriculum or who may marry whom if government would just leave such matters to individual choice and private contract. The proper role of government, Boaz shows, is to enforce rules that protect everyone’s rights and property,

but never to control people with a host of mandates and prohibitions, taxes, and subsidies.

As for government itself, Boaz offers readers an eye-opening (and, Progressives would say, dangerous) view of its origins and nature.

Freedom works for the benefit of all, whereas big government enriches a few at the expense of the rest of society.

Governments didn’t arise out of social contracts, but instead developed as methods for rulers to extract wealth from the people without the constant need to employ force. Here, we are introduced to German sociologist Franz Oppenheimer’s thesis that governments did not originate in some mystical “social contract,” but rather through conquest and plunder. Conquering rulers wanted to make their exploitation of productive people smooth and easy (repeated use of violence being costly) so they made the people an offer they couldn’t refuse: pay your taxes and we will protect you from marauders who want to take even more; don’t pay and we will use force against you.

Most of what government does becomes comprehensible once you think of it as an instrument of con-

trol — physical and mental — meant to enable the rulers and their allies to exploit the productive segment of society.

Boaz drives home the point that government stands apart from the people. “This basic understanding of the distinction between society and the state, between the people and the rulers, has deep roots in Western civilization, going back to Samuel’s warning to the people of Israel that a king would ‘take your sons, and your daughters, and your fields’ and to the Christian concept that the state is conceived in sin.”

Taxes, say advocates of big government, are “the price of civilization,” but that’s simply false. Taxes are not necessary for civilization, but are necessary for ruling elites (whether monarchs or people elected) to maintain power and live well. The book is full of historical references and Boaz notes that the finance minister for King Louis XIV laid out the essentials for maximizing the haul of taxes with the least resistance centuries ago and invites you to compare it with the way we are taxed today.

Libertarian thinking also clashes with other philosophies over the question of rights. Almost everyone claims to favor rights, but Progressives, socialists, communitarians,

and others make a terrible mistake by calling many desires and interests “rights.” That’s why we hear politicians clamoring for welfare rights, housing rights, food rights, and so on. Boaz explains that true rights involve the use of our liberty and property, but that all those so-called rights can be given effect only through coercion. Trying to do that starts the unraveling of society.

Welfare and trade

One of the strongest, most memorable parts of the book is the way Boaz contrasts the way people used to form voluntary societies and associations to deal with social problems and the way we now look first to government coercion to help every person or organization in need. Prior to the New Deal, Americans had set up an astonishing array of organizations to help people in need and provide members with services they wanted, including medical care and insurance.

Progressives, socialists, and others make a terrible mistake by calling many desires and interests “rights.”

The key thing about them was that they operated on consent and contract and therefore could — and

had to — refuse benefits to individuals who were shirking or trying to defraud the system. Those organizations thus helped people to build character. Boaz points out that members in good standing of many lodges could use that very fact to establish good credit if they moved to another city.

If we care about freedom, all that matters is that individual people are allowed to trade as they think best, with anyone they choose.

Once the welfare state was established, however, people began looking for ways to get unearned, undeserved benefits; the incentives were completely turned around so that the unscrupulous were the winners, the virtuous mulcted to pay for their gains. Once people started expecting government to solve every social need, the voluntary associations began to wither.

At the same time big government enabled the poor to use government to get what they wanted, it also enabled many non-poor people and groups to do the same. Washington, D.C., and the state capitals are overrun with lobbyists who want subsidies, beneficial regulations, and other goodies that come at other people's expense. The

big reason that America has suffered an economic slowdown in recent decades is the growth of what Boaz calls “the parasite economy.”

Americans have lately been hearing a lot of heated rhetoric from candidates about the supposed damage that international trade does “to us.” They would benefit from reading Boaz's explanation that the idea that international trade must be “in balance” is foolish. If we care about freedom, he notes, all that matters is that individual people are allowed to trade as they think best, with anyone they choose. “A national balance of trade,” he writes, “is just a composite of all the trades made by individuals in the nation; if each of those trades makes economic sense, the aggregate cannot be a problem.”

There, Boaz illustrates one of the hallmarks of the libertarian mind — focusing on peaceful individual action rather than getting mired in misleading aggregates.

Another hot current issue is the minimum wage. The Democratic candidates insist that it must be raised considerably (somehow they claim to know that the correct minimum is \$12 or \$15 per hour), while the Republicans are content to leave it where it is (\$7.25 per hour). Boaz counters with the radically different

libertarian concept that contracts for labor ought to be left up to workers and employers, not dictated by the government at all.

Knowing that many readers will be drawn more to arguments relating to justice than to arguments relating to economics, Boaz also shows how libertarianism would eliminate most if not all of their concerns. For example, consider the well-known statistic that the United States has the world's highest percentage of its population in prison. The main reason that that's the case, he observes, is America's war on drugs that has led to the jailing of great numbers of people who wouldn't be criminals at all in a libertarian society, since what a person chooses to put into his own body is no business of the government.

Nor is the drug war the only reason that there are so many people behind bars. Boaz makes the key point that the vast U.S. administrative apparatus often ensnares people who never intended to do anything wrong, but unwittingly

violated some obscure, barely comprehensible prohibition buried deep in thick volumes of regulation. In that vein, he recounts some horrible cases, among them that of an elderly man who sold some orchids that, according to federal officials, had not been correctly labeled. For that "crime," he was sent to prison and once there he was actually put in solitary confinement by the warden because his lawyer filed a motion seeking his release.

Such injustices would not occur in a libertarian polity.

Only readers who insist on keeping their socialistic blinders on could fail to get the big point of *The Libertarian Mind* — the government must be and can be cut back to its proper functions. If you desire peace, freedom, and prosperity, libertarian thinking offers the only path.

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