

# Cato's Letter

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## Rebuilding Liberty without Permission

CHARLES MURRAY

**M**y new book, *By the People*, calls for such an adversarial stance toward the federal government that, as the Declaration of Independence instructs, I should declare the causes that impel me to this position. Those causes are most assuredly not "light and transient." America's political system has been transmuted into something bearing only a structural resemblance to the one that the Founders created. The substance is nearly gone.

I should begin by noting that the rule of law is the foundation of civilization. It is especially essential to a free society, and so the decision to engage in civil disobedience is *not* to be taken lightly. I argue, however, that we have reached the point in our history at which that decision is justified.



CHARLES MURRAY IS THE W. H. BRADY SCHOLAR AT THE AMERICAN ENTERPRISE INSTITUTE AND THE AUTHOR, MOST RECENTLY, OF *BY THE PEOPLE*. HE SPOKE AT THE CATO BENEFACTOR SUMMIT IN FEBRUARY.

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**T**he Constitution has been discarded and cannot be restored, for reasons that are inextricably embedded in constitutional jurisprudence. Aspects of America's legal system have become lawless, for reasons that are inextricably embedded in the use of law for social agendas. Congress and the administrative state have become systematically corrupt, for reasons that are inextricably embedded in the market for government favors. And the federal government is in a state of advanced sclerosis, for reasons that are inextricably embedded in the nature of advanced democracies. I believe that solutions

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are now beyond the reach of the electoral and legislative processes. The citizenry must therefore create new counterweights.

This is a very different kind of book for me. It's a lot more overtly hostile toward the government—toward what's been done to the American project—than I have ever been in print before. By the “American project,” I mean the notion that people ought to be left free to live

their lives as they see fit, as long as they accord the same freedom to everyone else. That was the essence of what the Founders were trying to do. Liberty and the pursuit of happiness were no longer to be a privilege for the few but the unalienable right of all.

This book is also different in that I present a solution that's truly practical. It has a chance of actually being implemented because it doesn't require a single law passed by Congress, it doesn't require the right president, and it doesn't require five sympathetic justices on the Supreme Court. To put it bluntly: what I want to do is to make large chunks of the *Federal Code of Regulations* unenforceable. I want to make government into an insurable hazard, not unlike the insurance against flood, fire, or swarms of locusts. The way I want to do that is through massive civil disobedience underwritten by private legal-aid foundations.

Let me begin by illustrating this with a true story. I have to omit the details lest the protagonist be identified, but let's call him Bob. Bob operates one of the many kinds of businesses that use Latino immigrants, legal or illegal. What makes him different is that all of his workers are documented. He goes to considerable trouble and expense—\$20,000 to \$30,000 a year—for the excruciatingly complicated visa process, which never gets simpler even though he brings back the same workers year after year. He pays good wages, pays for his workers' air-

fares, and is a model employer and member of his community.

Yet Bob has come under relentless harassment by the government. Why pick on him? Because by doing the right thing and documenting his workers, he opened himself up to easy inspection by government enforcers. He made himself a soft target.

The harassment has been continual, and so has the string of fines and needless expenses that have followed in their wake. But the incident that focused my thinking on the regulatory state ended with Bob becoming so frustrated that he told the official enforcing a particularly idiotic regulation that he would fight it in court—at which point the bureaucrat said to him, “You do that, and we’ll put you out of business.” Bob knew that is exactly what would happen.

My friend’s story made me want to see a mystery man with a briefcase appear from nowhere, tap the bureaucrat on the shoulder, and say, “We are taking over this man’s case. We will litigate it as long as it takes. We will publicize that litigation in ways that will embarrass you and your superiors. None of this will cost our client a penny, and we will reimburse him for any fine you are able to impose. If you come back and bother him again, we will go through the whole process again.”

That’s the immediate point of what I call the Madison Fund: a private foundation that provides legal assistance to ordinary Americans who are being victimized by the regulatory state. We all live under a sys-

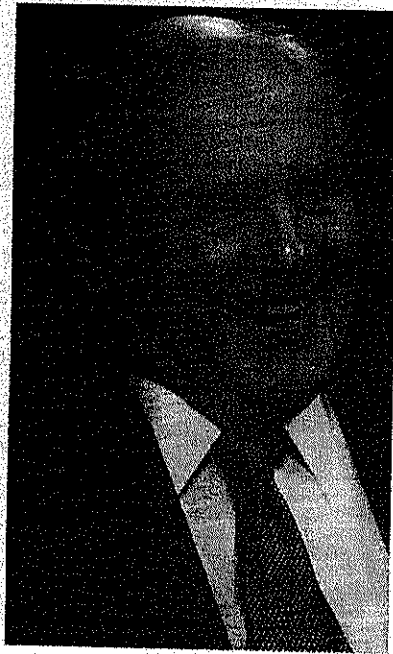
“To put it another way: I want to pour sugar into the regulatory state’s gas tank.”

tem with thousands of rules that we’re supposed to obey. I came to realize that in dealing with individuals, the government is a fearsome Goliath that can force submission. But when it comes to micromanaging the lives of more than 300 million people, government is the Wizard of Oz. It’s only fearsome when its booming voice is directed against a single target. When the curtain is pulled aside, it’s revealed as impotent to impose its will. The government cannot enforce its mountain of laws and regulations without voluntary compliance. Let’s have a private-sector counterweight that pulls back the curtain and exposes the Wizard’s weakness.

The Madison Fund would have three goals. First, it would defend people who are innocent of the regulatory charges against them. Second, it would defend people who are technically guilty of violating regulations that should not exist, drawing out that litigation as long as possible, making enforcement of the regulations more expensive to the regulatory agency than they’re worth, and reimbursing fines that are levied. Third, it would generate as much publicity as possible, both to raise the public’s awareness of the government’s harassment of people like them, and to bring the pressure of public opinion to bear on elected

politicians and agency staffs. To put it another way, suggested to me by Chip Mellor of the Institute for Justice: I want to pour sugar into the regulatory state's gas tank.

In the middle of the second decade of the 21st century, the stars are aligning for a much broader rebuilding of liberty than we could have imagined even a decade ago. I believe the openings created by these



conditions have the potential to break today's political logjam, clearing the way for reforms that are otherwise impossible. The forces leading to that potential outcome are fairly easy to describe.

First, the country is undergoing a cultural rediversification that is making local liberty increasingly attractive to liberals as well as conservatives. It is once again a patchwork of cultures, with a complex array of new ways in which American communities differ from one another. The mood is favor-

able for returning to a system that accommodates this diversity. In one way or another, the members of most of these new cultural pockets want to be left alone in ways that the laws of the nation, strictly observed, will no longer let them. And they need to be left alone if they are to live their lives as they see fit.

Second, technology has made liberty practical as never before. In 1900 you could make a pretty good case that you needed the federal government to stand up to local tyrannies or oversee meat inspection. Not anymore. Over the course of the 20th century, technology turned out to be an extraordinarily powerful way of countering these problems. And during the past decade, services made possible by information technology have moved into traditional businesses and found ways to beat the system. Companies like Airbnb and Uber are crashing through the combination of regulation and collusive capitalism that stifles innovation. They are providing services that were unimaginable just 20 years ago. And this is just the beginning.

Third, there is a broadly shared perception, driven by what's happening in state capitals and city halls, that government has become visibly incompetent. Over the decades, as the private sector discovered it could not afford unionization, defined-benefit pensions, and absolute job security, the public sector made these ever more generous personnel policies routine. Government has been the only sector of the economy shielded from creative destruction. More recently, cities with budgets that have

ballooned no longer provide essential government services and fiscal crises at the state level have shown how unsustainable this model is. Simply put, the failure to fix pot-holes is not a partisan complaint.

There are a number of other important trends—from the alienation of those who pay the government tab to the vulnerability of corporations to criminal prosecution—all of which are problems that cross party lines. The point here is that there are plenty of reasons to think that the kind of civil disobedience I am encouraging will occur in the context of a society that is ready for broad-ranging changes. We are at the end of the American project as the Founders intended it, but opportunities are open for preserving the best qualities of the American project in a new incarnation.

No other country throughout the history of the world began its existence with a charter focused on limiting the power of government and maximizing the freedom of its individual citizens. Even after we set the example, no other new country subsequently has followed it. Neither has any old country modified its charter to become more like ours. The United States from 1789 to the 1930s is the sole example of minimal government anywhere, at any time.

Under that aegis, we also happened to go from a few million colonists along the East Coast of North America to the richest and most powerful nation on Earth, but

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that’s ancillary to another achievement: we became a magnet for those around the world who wanted to share in the opportunities afforded by American freedom.

America’s unique culture—its civic religion, as I have called it—made for a unique people. Some of our characteristics—our openness, our passion to get ahead, our egalitarianism, our over-the-top patriotism, our neighborliness—are not to everyone’s taste. But I love them all.

And yet, those qualities are fading, once-bright colors left too long under an alien sun. Systematic civil disobedience offers a chance to revive those colors—perhaps not to the primary intensity they once had, but enough that we are once again different from everyone else. America can cease to be the wealthiest nation on Earth and remain America. It can cease to be the most powerful nation on Earth and remain America. It cannot cease to be the land of the free and remain America. I am not frightened by the prospective loss of America’s grandeur or power. I am frightened by how close we are to losing America’s soul. ■