IDEAS ON LIBERTY
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Tall Grass, Parked Cars, and Other So-Called Offenses

by Scott McPherson

"The system of private property is the most important guaranty of freedom."
—F.A. HAYEK, *The Road to Serfdom*

Proponents of overactive government never challenge the principle that government exists to protect individual rights. Rather, they have simply expanded the definition of rights to include anything they want the government to do for them. In recent times, such thinking has brought into existence abusive legislation like the Americans With Disabilities Act, calls for universal health care, and the "living wage" movement. Today, it is the alleged "right" to something only vaguely defined as "community standards" that has prompted city governments into campaigns against code violations.

Whoever said local government is best because it is "closest to the people"—and therefore more responsive to their will—must have invented the concept of city codes; because nothing better represents the capricious, arbitrary, and dominating nature of majority power than local ordinances passed to give one group of people the ability to harass their neighbors into conforming to a specific esthetic standard. Protecting us from such evils as "J-parking" (parking faced in the wrong direction), tall grass, and (for shame) even people parking their own cars on their own lawns, city government is not the local guardian, but the local bully.

Typically, however, city ordinances meet with much favor; few people ever challenge them, and fewer complain that they are in any way unfair. This is simply because most people today share the collectivist mindset that motivated these laws in the first place. The idea behind local codes—or zoning laws, or anything that obstructs an individual from peacefully using his property as he sees fit—is that rights like property are somehow a shared phenomenon to be managed by the "community" for the "greater good." This means, in essence, that if you allow your grass to grow too long, or commit some other sin, you are inadvertently "violating" the "right" of nearby residents to live in an area that meets with their subjective approval. But like so many other invented rights, using local government to enforce a "right" to a tidy neighborhood is a perversion of the very idea of rights.

Rights Are for Individuals

Rights belong to individuals, not groups or "society"; it is only individuals who can

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logically have rights. In a free society it is the job of government to make sure that no one violates the rights of another individual through force or fraud. For someone's rights to be transgressed, some person or group must physically (or coercively) interfere with both his enjoyment *and* his use of his own property. Though this may come as a bit of a surprise to local supporters of micromanaging government, it is they, not an incorrigible homeowner with a mattress on his lawn, who meet this damning criterion.

This isn't to say that people should be able to do whatever they wish with their homes and property—only that they should be left alone as long as their actions do not violate anyone else's rights. If someone is concerned that his neighbor's excessively tall grass is becoming a haven for disease-infested rodents, for example, then the job of local government is to provide a forum (preferably a courtroom) where such concerns can be addressed. But the onus is on the complainant to prove not only the existence of a menace, but also that the menace is directly affecting the use and enjoyment of his property. Of course, such a standard would relegate all but the most extreme cases to the dustbin—and that is precisely why little government busybodies wouldn't stand for it. Still, there is no reason why those of us who know better shouldn't remind them of what it is we pay them to do.

It is sad when government becomes the vehicle by which the latest group in power pushes its views of order on the rest of us. When it becomes morally acceptable to use the policeman's gun (or the threat of it) to tell your neighbor he can't park his car on his lawn, or hang a screen door without a permit (no kidding—until last March, there was such a law in Adamsville, Alabama), then we have lost all sense of good government. It will only be a matter of time before certain colors are forbidden when painting your house (see Bath, England).

A typical argument in favor of such regulation is that "none of us lives in a vacuum"—what we do affects those around us. Indeed it does. Does this mean that the majority should set house prices as well, so that my neighbor's "right" to a "fair price" for his home is not violated by my asking less for mine?

We live in a highly complex society, where specialization and division of labor have produced a standard of living unparalleled in the history of the world. The wealth we enjoy today is due to the constant interaction of millions of different people pursuing vastly different goals in an inestimable number of ways. To suggest that we can reap the benefits of such a society while employing force to eradicate any suspected risks is naïve and utopian. Let's grow up. □

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The Obstacle Course of the Takings Clause

by Timothy Sandefur

The Fifth Amendment holds that government may not take "private property . . . for public use without just compensation." The Framers knew that seizing a person's property always violates his rights, but providing for government payment would at least protect citizens from the worst sorts of abuses. To the uninitiated, therefore, it might seem that the Fifth Amendment protects Americans' liberty. But the reality is a bit darker. The power of eminent domain has been expanded far beyond its original meaning, and is now hedged with so many procedural pitfalls, that the Takings Clause is now mentioned far more often in the breach than the observance.

The most infamous Supreme Court takings decision is probably *Hawaii Housing v. Midkiff*, a 1984 case in which the Court essentially eradicated one of the two constitutional limitations on eminent domain. Originally, that power could only be exercised to take property "for public use"—to build bridges or make roads; things the public at large uses. It was not intended to let government transfer property from one private party to another whenever it becomes politically expedient. In the 1798 case of *Calder v. Bull*, the Supreme Court held that "a law that takes *property* from A. and gives it to B" is "against all reason and justice" because "[t]he *genius*, the *nature*, and the *spirit*, of our State Governments, amount to a prohibition of *such acts of legislation*; and *the general principles of law and reason* forbid them."

More emphatic was a 1795 case, *Vanhorne's Lessee v. Dorrance*, in which Circuit Justice Patterson wrote that

> The despotic power, as it is aptly called by some writers, of taking private property, when state necessity requires, exists in every government. . . . The presumption is, that [government] will not call it into exercise except in urgent cases, or cases of the first necessity. . . . It is, however, difficult to form a case, in which the necessity of a state can be of such a nature, as to authorise or excuse the seizing of landed property belonging to one citizen, and giving it to another citizen. It is immaterial to the state, in which of its citizens the land is vested; but it is of primary importance, that, when vested, it should be secured, and the proprietor protected in the enjoyment of it. . . . Where is the security, where the inviolability of property, if the legislature, by a private act, affecting particular persons only, can take land from one citizen, who acquired it legally, and vest it in another?. . . It is infinitely wiser and safer to risk some possible mischiefs, than to vest in the legislature so unnecessary, dangerous, and enormous a power.

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