



Written by [James Heiser](#) on May 9, 2016

Published in the May 9, 2016 issue of [the New American](#) magazine. Vol. 32, No. 09

When Politicians Won't Act

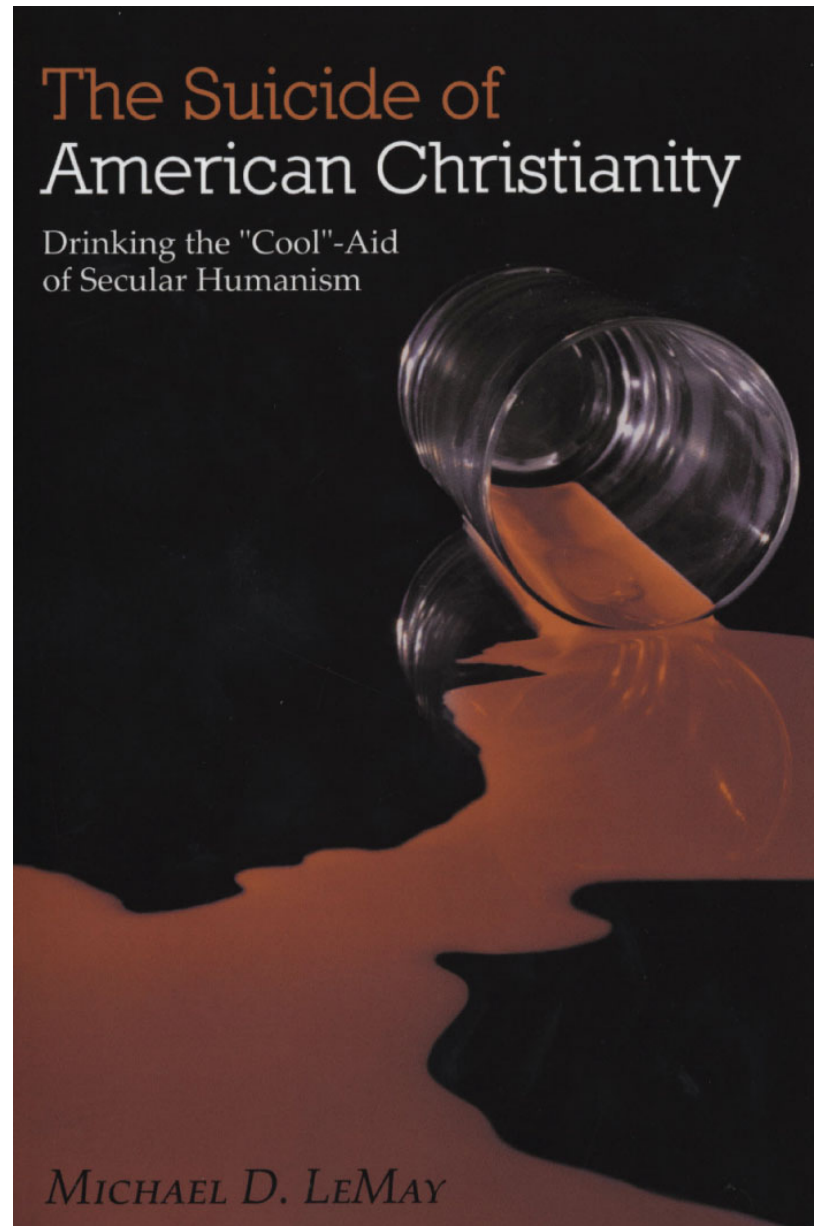
By the People: Rebuilding Liberty

Without Permission, by Charles Murray, New York: Crown Forum, 2015, 319 pages, hardcover.

Is it already too late to save the American Republic? This is one of the central questions confronting readers in Charles Murray's new book, *By the People: Rebuilding Liberty Without Permission*. The author begins with the declaration: "The twin propositions of this book are that we are at the end of the American project as the founders intended it, but that opportunities are open for preserving the best qualities of the American project in a new incarnation." Murray dedicates the first third of the book to attempting to substantiate the first of these propositions, and the evidence that he presents to readers is a well-documented record of institutional corruption, perversion of the Constitution, and the establishment of a seemingly irresistible bureaucratic leviathan that is at war not only with the liberties of the American people, but is even at war with the most basic principles of common sense. *By the People* is often a painful book to read, but for traditional conservatives, it is a book that needs to be read for its summary of the distance the regulatory regime has moved day-to-day American life away from that envisioned by the founding fathers and established in the federal Constitution.

Murray documents the rise of a Progressive ideology bent on reshaping the Republic by means of regulation, and he sets forth one approach to countering that Progressive agenda, and possibly overthrowing many of the victories that have already been won by opponents of the Constitution.

By the People is a book that will inevitably be the focus of controversy, but Murray is no stranger to controversy. When Murray co-authored *Bell Curve: Intelligence and Class Structure in American Life* with Richard Herrnstein in 1994, the authors were pilloried as "racists" and "elitists" for having the audacity to bring scientific analysis of data to the field of sociology. Later books, including *Coming*





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Apart: The State of White America (2012), have only continued to draw the ire of the political Left. *By the People* will continue to infuriate the Left, but Murray hopes that his argument will be persuasive to a broad audience that he describes as “Madisonians”: “people who are devoted to limited government. In today’s terminology, that includes classical liberals, libertarians, and many conservatives.”

Murray has divided his book into three sections: (1) “Coming to Terms With Where We Stand,” (2) “Opening a New Front,” and (3) “A Propitious Moment.”

Hello, Regulation

The first of these three sections is, arguably, the bitterest pill for traditional conservatives to swallow, because in its five chapters the author presents his case for the impossibility of reforming the Republic and returning it to its proper constitutional framework by working within the normal interaction of citizens with the three branches of government. Basing his argument in existing case law from 20th-century rulings by the Supreme Court, and examining the failure of elected politicians to enact many (even most) of the reforms that they have promised since the days of the Reagan administration, Murray presents an image of the invasive powers of an alphabet soup of regulatory agencies (OSHA, EPA, EEOC, etc.), the “blank check” of authority that the courts have given those agencies, and the systemic corruption of the legislative process to build the case for his argument. The almost-uncontrolled growth of regulations is now so expansive that it is almost beyond human comprehension. Existing case law and recent decisions by the Supreme Court make it clear, in Murray’s assessment, that no relief will be coming from the courts:

Let’s face it: if the Supreme Court can rationalize President Obama’s executive order on immigration as merely an exercise of prosecutorial discretion, it can rationalize just about anything. To me, the uncertainty about whether the Court will stand in his way is evidence that President Obama is less a cause of lawlessness in the White House than an illustration of how far lawlessness had already progressed when he took office.

And although Congress has broad powers under the Constitution to reverse the damage that has been done, Murray maintains that no such reform will be taken by the representatives of the people:

Congress has the power to abolish any program, agency, or even cabinet department. Congress could pass amended legislation that contains “intelligible principles” that prevent regulatory agencies from implementing their own agendas. Congress could expand the exemptions of small businesses from regulation. Congress could substitute a consumption tax for the income tax, thereby effectively removing the IRS from Americans’ lives.

All this is possible — theoretically. In reality, we live in a world in which none of these things will happen. There will be only tweaks at the margins. The political process in Washington is systematically corrupt in ways that make fundamental reforms impossible. Not improbable but impossible.

Conservative Civil Disobedience

If the first portion of *By the People* presents the author’s case for the inability of the system to correct the current fatal flaws, the second portion presents Murray’s proposal for confronting the regulatory regime from outside the system by means of civil disobedience, a course of action that he clearly understands may leave many readers queasy: “The rule of law is the foundation of civilization.



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Deliberately choosing to ignore portions of the law is a momentous political choice.” Why, then, does Murray believe that civil disobedience is justified? In his words, “The short answer is that the American government does not command our blind allegiance to the law. It is part of our national catechism that government is instituted to protect our unalienable rights, and that when it becomes destructive of those rights, the reason for our allegiance is gone. At that point, revolution is not treason, but the people’s right.” However, Murray is quick to add: “I am not proposing revolution, but I am proposing a declaration of limited resistance to the existing government.”

Murray’s defense of “civil disobedience” is far removed from the argumentation of the counter-culture “activists” of the 1960s. Murray builds a careful case for what he calls the federal government’s “lost legitimacy,” based in the understanding that the federal government has fundamentally broken the compact that exists between the people and their representatives. Furthermore, while making his case for civil disobedience, Murray limits the proposed area of such disobedience, restricting it to those areas of government regulation that do not pertain to acts that are bad in themselves (e.g., laws regarding murder, rape, burglary, arson, kidnapping, etc.), those that involve the tax code, or those that generally pertain to the “public good” (with the author admitting the nebulousness of the last category). Instead, Murray’s primary targets for civil disobedience are those regulatory agencies identified in the first portion of the book — OSHA, the EPA, the EEOC, the FDA, etc. — which often carry out the most readily visible encroachments on the rights of the American people.

Murray’s argument is that such regulatory agencies largely depend on voluntary compliance for their power over the lives and fortunes of the American people by means of regulations that are arbitrary and absolute. For “Madisonians” convinced by Murray’s line of reasoning in the first portion of the book, the second section offers a “Madison Fund” as the means by which an effective resistance to the regulatory regime may be offered. Murray’s “Madison Fund” would defend businesses and individuals who are suffering selective prosecution: The fund would balance the scales by providing legal defense and the promise to pay any fines that are ultimately imposed on the business or individual. Ideally, in Murray’s assessment, many such funds would be established as the equivalent of “guilds” that would share the burden of fighting such onerous regulation among all those who are engaged in a particular form of business. The result, Murray argues, would be that the federal agencies would find their actions were drawing unwanted attention, while the access to expert legal assistance would counter the assets available to the various agencies — as Murray observes, OSHA has only 205 “investigative personnel” to monitor every company in the United States, and the EPA has 337 personnel tasked with environmental enforcement nationwide. The threat posed by the regulatory agencies would thus be reduced to the level of an “insurable hazard,” with much of the coercive, intimidating force previously available to the agencies impotently dissipated. And the ultimate goal of such protracted efforts would be not only protection from the indefensible regulations imposed by the agencies, but a rehearing of the constitutional arguments pertaining to such regulation that permitted such federal overreach in the first place.

Way to Win

The third portion of *By the People* looks to the future, weighing the ramifications of undertaking the widespread civil disobedience Murray proposes. As envisioned, the battle against the unconstitutional encroachments will be a protracted struggle: “But most of the open-ended possibilities for rebuilding liberty will not involve landmark cases that the federal government can focus on — there need be no



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Gettysburgs or Yorktowns, just hundreds of hit-and-run guerrilla actions. The situation facing the defense funds will be an instructive model for subsequent steps to roll back the reach of government.” In this struggle, Murray argues that the “Madison Fund” and similar defense funds would actually have the advantage:

The contest between the defense funds and the government is going to be a mismatch between people who typically feel strongly that they are being arbitrarily and capriciously harassed by the government, represented by attorneys who believe strongly in the justice of their cause, fighting against government bureaucrats of middling talent and little motivation to work extra unpaid hours, for whom contesting a case against an aggressive defendant looks like a lot of hard work for no reward. They will know that a defendant won’t even have to pay the fine if the government wins the case.

However, while Murray clearly feels that his path of “civil disobedience” is the one most likely to succeed in overturning the tyranny of federal regulation, he still acknowledges that conservatives may disagree with his despair of reforming the government by constitutional means. In fact, he acknowledges that constitutionalists “have successfully used the political process to win important policy victories.” Thus, one might reasonably ask, “Why stop now?” Murray has demonstrated how far, and how fast, the Republic has been betrayed, and a vital first step in undoing the damage inflicted by such a betrayal is a widespread awareness of what has taken place in the past few generations. The first third of *By the People* could as easily serve as a rallying cry for renewing the effort to elect constitutional conservatives to the House of Representatives — men and women who are prepared to use the “power of the purse” to force a restoration of constitutional limits on the powers of the executive branch.

Furthermore, Murray almost completely ignores the possibility of the states asserting their 10th Amendment prerogatives to reverse the encroachments of the federal regulatory agencies. The significant migration of businesses between states, away from heavily regulated and taxed states, such as Illinois and California, to states that place less onerous burdens on free enterprise, represents a significant force within the country that would support a stronger stand on the part of the states to roll back the intrusive, coercive power of the federal government.

This does not mean that Murray’s proposed “Madison Fund” approach is fruitless — but it remains unproven, and potentially open to legal challenges that might stop it dead in its tracks. A more prudent course might be a “both/and” approach: Restore the Republic through a principled assertion of the 10th Amendment rights of the states, increase the number of constitutionalists within the House of Representatives, *and* challenge the regulatory agencies every step of the way. Our goal should never be to simply limit the abuses inflicted by the unconstitutional acts of agencies that have no right to exist under the U.S. Constitution; the only acceptable outcome is the full restoration of constitutional rule of law in these United States.

It is hard for a brief review to do justice to a plan of the breadth and depth of that which Charles Murray proposes in *By the People*. Conservatives would do well to weigh carefully the fresh approach that Murray offers to confronting a plague that has afflicted the American Republic for generations.



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