



## Sand in the Gears

WORDS THAT GET STUCK IN INOPPORTUNE PLACES

### *Hunting dogs*

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"When the law is against you," goes the adage, "argue the facts. When the facts are against you, argue the law. When both the facts and law are against you..."

Here we may turn for instruction to **Jerry Taylor**, ringleader of Cato Institute officials in the unenviable position of needing to convince people who embrace contracts and the rule of law that Cato is governed by a Higher Law.

Thus we are instructed by Cato Vice President Gene Healy that the Shareholder's Agreement relevant to this dispute between Cato and the Kochs is "long-moribund." Proverb One of the Higher Law: Contracts signed before 1978 are irrelevant.

**David Weigel** notes, meanwhile, that neither Koch brother gave Cato money in 2011. "They have no special claim on us," Jerry Taylor insists, "as donors."

That might be contorted into a devastating admission about what guides Cato's research, if one were the sort of low-minded person who sees an advantage in taking sentences out of context. All the same, these comments reveal the second proverb of the Higher Law: We can ignore your rights if you haven't given us money lately.

Taylor insists further that two of the three living Cato founders don't like what they've heard about this kerfuffle, yielding Proverb Three: Takebacks.

(I don't let my kids get away with this when they trade Legos. That puts me in mind of a new game show idea: "Are you more libertarian than a fifth grader?")

As for the facts available to most of us, one may find the governing documents **here**, and the court filing **here**. A transparent admission **here** indicates that Cato's position is that the original agreement is outdated and should be replaced with something reflecting more contemporary views about non-profit governance.

Let's sum up, then, what we have from the spokesmen of an organization dedicated to the rational elucidation of libertarian principles:

1. This contract is old.

2. The signers of this contract didn't give us money last year.
3. Some of the people who signed the contract regret it.
4. Changing circumstances dictate renegotiation of previous agreements.

How these differ from the Obama Administration's justifications for bullying Chrysler creditors into foregoing their contractual rights (a thuggish move **decried by Ed Crane** only months ago) escapes me. Is the difference that they were on the side of the devil, and Cato on the side of the angels? Is it that Ed Crane's bacon is now what's in the fire, rather than that of some UAW worker?

Perhaps the reasons can be divined in the sacred texts of libertarianism, which brings us back to poor Jerry Taylor, thrust into the courtroom with neither facts nor law to bolster his case. Having neither, Taylor must play the magician, whose chief art is misdirection.

Now, I didn't have a dog in this hunt. I only learned that a shareholder nominated me to the Cato Institute board after Healy, Taylor, and others publicly branded me a heretic. I am, Taylor writes, "a Republican blogger," who complains about libertarians toking up at political meetings. Healy and others dutifully repeat Taylor's charges. Following their lead, Weigel gets marginally original by asserting that I sneer at libertarians. Accepting their claims, **Andrew Sullivan** calls me a "strident anti-libertarian" and a "culture warrior."

Now, I understand that Taylor is in a tough spot. He needs a conspiracy. Heaven forbid it be a simple contract dispute. Angels prevent that anyone who believes in liberty question why a \$23 million organization doesn't have more impact on public opinion. This has to be about bad people doing secretive things in the dead of night to rob earnest and freedom-loving people of their standard-bearer.

But the thing is, when you start lifting sentences from what someone writes, intellectual honesty — not to mention plain decency — dictates that you provide context. Maybe that's old-school thinking, way back in the day when we believed in contracts and the rule of law. Maybe libertarianism is all post-modern and stuff now.

Either way, now I do have a dog in this hunt, because I'm one of the people Taylor decided to attack in his fit of self-preservation.

Keep in mind that we're talking about things I wrote ten years ago. My views have changed a bit, and any fair reading of my work will indicate as much, just as it will quickly reveal that I am neither a Republican nor a libertarian-hater. But let's stick to the essays Taylor samples.

He observes that I "blogged about 'the rotten heart of libertarianism,'" a quote intended to suggest that I despise the whole lot of it. In the **2002 essay in question**, however, I write (quite obviously with a light heart), that I "originally intended to title this series" as such, but thought better of it. Maybe joking about thinking about something counts as a thought crime, in Taylor's variant of libertarianism.

I also call libertarianism, as Taylor notes, “a flawed and failed religion posing as a philosophy of governance.” (Religion? What could I have been thinking? That would imply sects and unquestionable beliefs and bitter squabbles over abstruse distinctions...)

But immediately after, I write: “The reason I will address this topic — and the reason you should care — is because libertarianism represents perhaps the best set of potential political solutions to America’s problems...”

The exceedingly clear point, grasped by a wide array of libertarians and conservatives who joined the debate in the comments section of my blog, is that we have to overcome significant hurdles in order to make libertarianism a competitive alternative in the minds of voters. Now, you may disagree with that, but the fact that I believe it does not make me — unless libertarianism has been transmogrified into a church — an “anti-libertarian.”

Next is the accusation that I complain about libertarians smoking pot at political gatherings, a charge repeated by Healy and others. Here’s what I **actually wrote**, at the tail-end of arguing that too many libertarians focus on the policies that matter to them personally, rather than policies with greater potential leverage to effect widespread social change:

“If libertarians were serious about taking and maintaining power — truly serious — then they would drop the caterwauling over drug criminalization and focus every drop of energy on building schools. The latter is hard work, however, and forces consideration of messy things like moral instruction, and self-discipline, and what makes for good parenting. It’s far easier to toke up in the discounted hotel room at the Libertarian Party Convention and rail against the DEA. Thus libertarianism remains less a force for change than a tool for self-expression.”

The impression Taylor wanted to convey is that I believe libertarians are a bunch of potheads. Any reasonable reader can see, however, that this is not a meditation on the recreational habits of the Libertarian Nation, but a rhetorical contrast set forth to make the point carried in the last sentence of that paragraph.

Wiegel unsurprisingly adopts Taylor’s tactic, implying that I applied the label “sanctimonious” in blanket fashion to libertarians (I **was referring** to a specific post, now removed, at the libertarian site Samizdata). He also lifts **another quote** (in a nutshell, that libertarians are too often homogeneous and content to criticize the rest of America for not agreeing with them) and seeks to disqualify it by divining for his readers that I “sneered” it.

If the truth must be told, I most likely sneezed it, because I had a wicked cold that day. And I don’t appreciate Wiegel guffawing such a thing. Or maybe he chortled it. Whatever.

I respect many thinkers associated with Cato. Hearing talks by Tom Palmer and David Boaz brought me into libertarianism as a college student. Bob Levy’s work on the gradual erosion of liberty by the courts is essential, and helped me recognize how completely property rights have been stripped from the Constitution. Radley Balko has waged an almost single-handed battle to highlight police abuse, causing

me to rethink my decade-old critique that libertarians are overly focused on drug legalization.

I don't know if I could mutter whatever catechism one must repeat to be accepted into the libertarian fold, but I'm certainly no enemy. The pity of it is that Jerry Taylor and other Cato leaders have no qualms about deliberately misleading people to believe otherwise. What's more, I know some of the other people they accuse of being operatives and conspirators, and these accusations ring just as false.

I assume intellectual integrity is essential to the libertarian philosophy, and if so, I wonder who is doing it more harm — someone like me, who has questioned in good faith some of its tenets, or Messrs. Taylor, Healy, and Crane, who appear for all the world like Washington, D.C. bureaucrats trying desperately to keep hold of their tenure.