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HANG TOGETHER

*"We must indeed all hang together, or most assuredly we shall all
hang separately." – Benjamin Franklin*

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YOU AND YOUR SILLY RIGHTS

Posted on November 20, 2012 by Daniel Kelly



*You want your rights? You can't handle
your rights!*

Rights have existed from time immemorial, and they'll continue into the indefinite future. Real rights, that is: Those fundamental incidents of simply being human – the right to life, liberty, and the pursuit of happiness (according to some dead white European guys at least).

Comprehensive and systematic protection of those rights? Mmmm . . . that's a relatively recent development in human history. And just because we enjoy that protection now does not mean it will necessarily always be so. We should recall, from time to time, that we live in a historical anomaly and that no one can vouchsafe to us the future protection of our rights.

We rely on our constitutions (federal and state) as the bulwarks against governmental usurpation. But those are, ultimately, just papers. They have no force of their own. They depend entirely on our will to read them faithfully and apply them justly. What happens when the people we select to put the constitutions' promises into action have, shall we say, something less than a complete commitment to protecting our rights?

Last week I attended a dinner at which Justice Samuel Alito was the featured speaker. Recounting a handful of arguments presented to the Supreme Court

over the last year (and one from a few terms back), he described what the current administration thinks of your rights. The individual arguments were surprising enough, but taking a few steps back to look at them as a whole created a pointillist effect that was truly disturbing. Here are a few of the arguments he noted.

The Obama administration told the Supreme Court that books that mention political candidates enjoy no constitutional protection. (*Citizens United v. FEC*) Book banning, Justice Alito drily noted, would seem to be incompatible with the First Amendment. The whole purpose of the First Amendment, of course, is to prevent the government from telling us what we may say or write about the government or politicians.

The *Citizens United* case was a rich source of suspect arguments. The administration also said that corporations may not say anything about politics – forgetting, apparently, that CBS, NBC, CNN, the New York Times, the Washington Post, and the rest of the establishment media are all . . . corporations. Well, perhaps the administration would be willing to waive the ban on First Amendment activity so at least some corporations could report on our government and representatives' doings.

In *United States v. Jones*, the administration told the Supreme Court justices that it could put a GPS tracking device on any American's car and track their every movement for as long as it wished. It said it did not even need permission from a court to do so. If it seems useful to keep constant surveillance on you, or federal agents are just curious about what you're doing, the administration says it may snoop to its heart's content.

The administration has been trying to dispense with your property rights, too. The EPA is of the opinion that it may prevent you from building a house on your property if it decides it gets wet too frequently. They've been asserting that power for quite some time – what's new is the administration's argument that you may not go to court to challenge the EPA's decision (*see Sacket v. EPA*). Nice. A federal bureaucracy entirely unanswerable to the courts with the power to destroy the largest investments most Americans will ever make.

The administration has also been taking a dim view of your freedom of religion. In *Hosanna-Tabor v. EEOC*, it argued the federal government can control a religious institution's decisions on who may serve as religious leaders. It already tells churches they may not engage in political speech, so perhaps the administration just saw this as a natural extension of its control over what churches do.

And finally, there is the question of whether the government should trust you to spend your money appropriately. In *NFIB v. Sebelius*, the administration said the federal government has the power not just to regulate commerce, but to decide for you what you must purchase. Too many of you weren't buying health insurance, so the administration said the legislature could force you to buy it against your will.

Stepping back to allow these points to resolve into a picture, this is what we get: The current administration says it may ban politically-oriented books, pick and choose which corporations will be allowed to talk politics, follow you wherever you go for any or no reason at all, prevent you from building a house on your own property with no opportunity to challenge its decision, tell you whom you may have as your religious leader, and decide for you how you spend your own money.

Justice Alito, in his typically understated way, said these arguments suggest a vision of society “in which the federal government towers over people.”

Fortunately, these arguments met with no success in the Supreme Court – this year at least. But the same people making these arguments will be responsible for choosing who will sit on that court when future vacancies arise (and a few will likely come up pretty soon).

Constitutions are useful tools in protecting our rights, but they can't wield themselves. They are animated and applied by people who are products of our culture. If we do not value life, liberty, and the pursuit of happiness enough to develop and maintain a culture that respects those rights, the government will be only too happy to relieve us of them.

We'd best get to work on that renewed moral consensus.

Leave your thought

OF SOCIALISM'S MORALITY: LIBERTY

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THERE ARE TWO WAYS YOU MIGHT ACCIDENTALLY FIND YOURSELF IN A socialist economic system. One, you might live through a revolution,