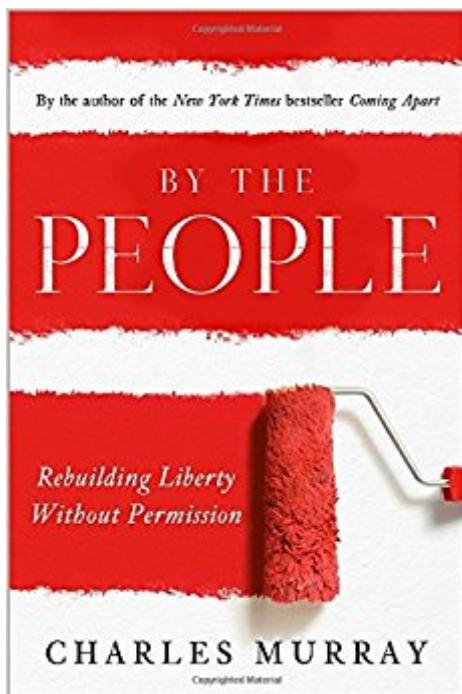


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# By The People: Rebuilding Liberty Without Permission



## Synopsis

The American way of life, built on individual liberty and limited government, is on life support. American freedom is being gutted. Whether we are trying to run a business, practice a vocation, raise our families, cooperate with our neighbors, or follow our religious beliefs, we run afoul of the government "not because we are doing anything wrong but because the government has decided it knows better. When we object, that government can and does tell us, "Try to fight this, and we'll ruin you." In this provocative book, acclaimed social scientist and bestselling author Charles Murray shows us why we can no longer hope to roll back the power of the federal government through the normal political process. The Constitution is broken in ways that cannot be fixed even by a sympathetic Supreme Court. Our legal system is increasingly lawless, unmoored from traditional ideas of "the rule of law." The legislative process has become systemically corrupt no matter which party is in control. But there's good news beyond the Beltway.

Technology is siphoning power from sclerotic government agencies and putting it in the hands of individuals and communities. The rediversification of American culture is making local freedom attractive to liberals as well as conservatives. People across the political spectrum are increasingly alienated from a regulatory state that nakedly serves its own interests rather than those of ordinary Americans. The even better news is that federal government has a fatal weakness: It can get away with its thousands of laws and regulations only if the overwhelming majority of Americans voluntarily comply with them. Murray describes how civil disobedience backstopped by legal defense funds can make large portions of the 180,000-page Federal Code of Regulations unenforceable, through a targeted program that identifies regulations that arbitrarily and capriciously tell us what to do. Americans have it within their power to make the federal government an insurable hazard like hurricanes and floods, leaving us once again free to live our lives as we see fit. By the People's hopeful message is that rebuilding our traditional freedoms does not require electing a right-thinking Congress or president, nor does it require five right-thinking justices on the Supreme Court. It can be done by we the people, using America's unique civil society to put government back in its proper box. From the Hardcover edition.

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## Customer Reviews

"By the People is a study in contradictions. It is simultaneously depressing and inspiring, technical and profound, infuriating and charming, but always compelling. Charles Murray plays the role of a liberty-loving Lenin asking the question, 'What is to be done?' To this end, he offers a practical guide to repairing our broken constitutional order. It is that rarest of books: a populist manifesto grounded in fact and logic." --Jonah Goldberg" A road map to recapture true American exceptionalism. With passion, brilliance, and a keen sense of the radical essence of what America means, Murray dismisses what passes for political debate today and offers an audacious plan to restore the liberty our founders bequeathed to us." -- Edward Crane, president emeritus, Cato Institute"Liberty without permission? Selective civil disobedience? I'm in! At first I balked, but Murray makes a convincing case that a Madison Fund might scrape away the sclerosis of the suffocating state. As usual, his original arguments expand the way I think. When law is so complex that it's indistinguishable from lawlessness, when the tax code is 4 million words long, something like systematic disobedience is badly needed." --John StosselFrom the Hardcover edition.

Charles Murray is the W. H. Brady Scholar at the American Enterprise Institute. He came to national attention first in 1984 with *Losing Ground* and most recently in 2012 with *Coming Apart*. He lives with his wife in Burkittsville, Maryland.

By the People is Charles Murray's answer to what to do about a regulatory state metastasized and gone mad (if you disagree about that it's probably best to start elsewhere). And what he recommends is not to act through the traditional democratic channels, but to instead engage in what he calls "systematic civil disobedience." It meets the

dictionary definition, but it is not civil disobedience as we generally think of it, nor is it necessarily that different than some of the pushback against the State already going on, albeit on a larger scale. We'll get to that. Murray divides *By the People* into three parts. Part I covers how we got to where we are at the end of the American project as the founders intended it and why the normal political process will not rescue us. Part II outlines the particular sort of civil disobedience that Murray recommends. Part III takes a look at the various reasons, e.g., demographic, cultural, why Murray thinks now is an especially apt time for change. He sees a broad market for what he's selling and uses the term "Madisonian" throughout to refer to classical liberals, libertarians, and conservatives (and presumably conservatarians) who generally agree that government should be limited. And he is preaching to the choir; this is a call to action, not a call for conversion. Part I breaks down the problem into discrete areas, first describing what went wrong and then making the case as to why it can't be fixed through the normal democratic process. For example, the chapter titled "A Broken Constitution" starts with a short history of the New Deal Court's abandonment of a federal government limited to its enumerated powers. It ends by arguing that reversing the key decisions just discussed will never happen. For example, reversing Helvering would require the federal government to end Social Security, Medicaid, Medicare, all welfare programs, all spending on K-12 education and more. If it were enforced it would throw the country into chaos and the Supreme Court would never do it. Murray also covers lawlessness of the legal system as a whole (due to the huge cost of civil litigation, the abandonment of the requirement of a guilty mind in criminal law, etc.), the extralegal regulatory state, a systematically corrupt legislature (the sort of corruption requiring campaign contributions to get anywhere with legislation), and institutional sclerosis. Part II addresses what to do about it, assuming that Murray is correct that the normal democratic processes will be inadequate. It advocates systematic civil disobedience. That civil disobedience, though, mostly means people continuing to do what they did before, invariably running afoul of one regulation or another from time to time, only now with a privately funded legal resistance. That legal resistance would take two forms. The first is a legal defense fund that he calls the Madison Fund, much like a Pacific Legal Foundation or Institute for Justice but on a much larger scale and specifically focused on protecting against government overreach of a certain sort. The second is insurance against government funded by industry groups (this idea doesn't get as much attention). These would first and foremost defend ordinary individuals against government overreach, even if it accomplishes nothing else. But Murray also wants to make large portions of the Code of Federal Regulations de facto unenforceable. Murray goes on to

spend quite a bit of time on the nuts and bolts, laying out categories of regulations that should not be candidates for civil disobedience and giving principled and practical decision rules for choosing regulations to ignore. Defense against a regulatory action would be both legal and in the public square. Part III is when things fall apart a bit. Which is funny, because Part III is where Murray finally returns to his wheelhouse—“social science. He runs through several findings that I take it are to provide support of Murray’s argument that the time is now, but it doesn’t come through forcefully. It’s still wonderful stuff, though. Murray points out that we’ve always been a pluralistic society with at least as much of a cultural gulf among the original four groups that settled America (he owes a lot to and explicitly discusses Albion’s Seed here) as among the various groups in America today. It was the period from the 1950s to the 1970s that was anomalous. He points out that a significant portion of Americans still live in small towns or small cities where local government remains relatively personal, effective, and light (only 28% of Americans live in urban areas of more than 500,000 people). Technology offers new opportunities to evade burdensome, protectionist regulations (Uber is a case study). He adds an argument at the end that the Left should give up on public sector unions, the Right should give up on eliminating transfer payments, and both sides should reject their cultural absolutists (progressives and (some) social conservatives, respectively). In doing so he makes a perceptive, and overlooked, distinction between progressives and left-liberals. There is also a one paragraph description of our “civic religion” that rivals W.J. Cash’s summation of the South in *The Mind of the South* for nailing the mores of a people in just a few words. I’m not entirely sold, though. Murray very early on asserts that the answer is not electing the right politicians or getting the right judges appointed. But his plan looks less like traditional civil disobedience than it looks like conservative legal activism over the past few decades. His Madison Fund admittedly looks a lot like existing groups like the Pacific Legal Foundation and the Institute for Justice, only on a much larger scale. As in several hundred million dollars a year versus \$25 million a year for the existing groups combined. When groups like that are already doing such great work, what is the basis for funding on a much larger scale for a new group? And despite Murray’s dismissal of seeking change through the courts, his plan for the Defense Fund assumes just that. First, a major change in the level of scrutiny courts give enforcement actions is a bigger deal than fighting enforcement actions on an individual level. That kind of change requires first and foremost the sort of intellectual credibility conservative and libertarian attorneys and academics have been building on a number of issues over the past few decades. Murray really seems to be relying on a change in law and not what the term civil disobedience suggests to me, which is to leave the regulations and enforcement

options intact but effectively useless because of the scale of violation. Rather than spend time on how things play out if there is no sea change in the law, Murray relies on such a change. That isn't crazy. Legal positions that were considered crazy by most of the academy, such as the Second Amendment as an individual right and the Commerce Clause having any constraining principle, were resurrected because judges have to show their work and in the law reasoning and principles really do matter. *Sackett v. EPA* was huge, important win. But it's a daunting road. The Supreme Court's most vocal proponent of Chevron deference, after all, is Justice Scalia. Changing the law would require principled argument, but it would also require principled judges. Murray is wrong to dismiss the importance of who is elected president for that reason alone. But perhaps more importantly, the president can have enormous influence over the regulatory state through his veto pen and as head of the executive branch. The institutional sclerosis Murray so vividly paints a picture of is real. But who would argue, when it comes to wrangling the regulatory state, that Reagan was not preferable to both Bush the elder and Bush the younger? Or even that Clinton was preferable to Obama? Public choice principles might suggest any president will be loath to devolve any power from the executive branch, but I think it is feasible because so little of the power of the regulatory state is really at the hands of the president (in stark contrast to our military and foreign policy apparatus). Congress is a lost cause, but the presidency has the potential to counterweight Congress's inherent foibles in this area as it so often has on trade. Further, I don't think Murray spends enough time considering the threats of blowback and a regulatory state that proves more entrenched than expected. For example, look at the prohibition of drugs, especially marijuana. The American people have practiced a sort of civil disobedience in that large numbers of Americans ignore drug laws and continue to use drugs. But for decades the federal government's response was to double down again and again on drug prohibition and to encroach on its citizens' civil liberties in more and greater ways. The courts facilitated, rather than impeded, this response. Prosecutors and criminal courts found a way to handle huge case loads. States even began to retreat from harsh enforcement of drug laws (again, especially marijuana) without the federal government beating a similar retreat, although this may be beginning to happen (on a related note, Murray commits an egregious error of law in discussing state marijuana decriminalization by suggesting that because the federal government prohibits marijuana, states MUST also prohibit it; this is plainly wrong under current and correct federalism jurisprudence). Murray does mention briefly in his conclusion that the efforts he recommends may further erode the legitimacy of the federal government. Murray is also more optimistic about our cultural readiness. He points to our pluralism, noting that cultural pluralism has been the

rule in America, not the exception, and he points to the decline of network television. He's right about that, but I still have my doubts. The rise of the progressive faction on the Left has led to a rather shocking attempt to enforce cultural hegemony. The rise of the Long Tail may actually make things worse, not better, leaving a few dominant media properties without an effective counterweight. I see this seemingly every morning as the morning shows have found something new about which people are outraged. How can we be ready for limited government when parents might get arrested if they let their kids walk home from the park alone? Finally, Murray doesn't consider the threat of another source of sclerosis. Our enormous wealth. Our government is largely a parasite, but it's a parasite with a host unmatched in human history—the American economy. When we remain so much richer today than yesterday, how will the problem of a kudzu-like regulatory state ever be sufficiently acute to take real action? Good, after all, is often the enemy of great. But in many ways the above critiques are more a feature than a bug, because the book spurred me to think deeply about the issue. It spurred me to rethink a lot of stuff that I had written off as inevitable. And it spurred me to come back to the basic problem I've always wrestled with as a libertarian—how do we get from where we are today to a basically free future? Murray doesn't have all the answers. But I think he has part of the answer. Disclosure: I received a copy of *By the People* through NetGalley.

I'd rate Murray's new book at the very top of all political science books I have read in the past ten years! Excellently organized, argued, and written, documenting the tactics and the motivation of the runaway Administrative State while setting forth a premise for responding to it that can actually be implemented, could actually work, and should find the economic support needed from individuals and industries being targeted by the IRS, EPA, F&W, BLM, Interior, and the rest of the usual suspects. While this goal was also superbly achieved by Silverman's wonderful *Three Fellonies a Day*, Murray's book starts from that point and proposes workable tactics to fight back. Up to this point, too many of us have been willing to pay the equivalent of "protection money" to keep the regulators off our backs since it's obvious that few possess the resources to persist through the rigged Administrative Court system run by the agencies, staffed by the agencies, and applying penalties set by the agencies in the absence of any Congressional direction or authority beyond sloppily worded legislation to achieve vague ideals and wishes for things like clean water and breathable air while totally abdicating to Federal agencies when it comes to how Congressional intent is implemented. Since the U.S. vs Chevron decision the Judiciary has also totally ignored regulatory overreach triggered by such shoddy legislation that sets no limiting principles and fails to

protect freedoms--and especially property rights. Until our courts are forced to look into the actual fairness or Constitutionality of actual Federal agency decisions that punish people but achieve nothing, little will change. Currently, the courts wrongly presume unelected but very political agency bureaucrats had some "rational basis" for making decisions when, in fact, far too many are totally arbitrary and capricious and intended to punish specific individuals, groups, or industries who refuse to respond to agency desires with sufficient obsequiousness to the wisdom or agenda of the Federal agencies. What have the courts done about IRS targeting of specific conservative groups? Nothing. What has Congress done to punish the agency involved or to curb such abuses in the future? Nothing. By the People; Rebuilding Liberty Without Permission™'s time has come. While Mark Levin's Liberty Amendments laid out specific Constitutional Amendments that would, indeed, roll back government excesses and reclaim much of the liberty that the Congress and the Judiciary have ceded to the Executive Branch, our government ignores the Constitution already and the chances of any of those Amendments being ratified by three-quarters of the States in my lifetime seem slight, especially given the distortion the media will undoubtedly add to reporting of any such initiative. But Murray's concept could start being implemented in a relatively short time. The People could claw back some of the freedoms lost simply by refusing to be compliant when it comes to arbitrary and capricious regulations that should not exist but the courts"up to now" have refused to strike down and the agencies implementing them have not been held accountable!

It is obvious to me that our government does a great deal of damage to individuals and businesses in our country by unjust rules applied to legislation not very well defined. This practice needs to be stopped and the only sensible solution I have ever come upon is contained in Charles Murray's book " By the People". I believe it would be an excellent solution to curb our government's mistakes by exposing them to the general public and legislatures. If you do not know or understand what is going on, you can't fix it. Let those of us that understand the problem and have a desire to implement the solution outlined in the book come together via this site, to put an organization together to make this happen. We need investors, people with technical communication skills, knowledgeable insurance people to begin the organization process, and as many enthusiastic freedom loving citizens as possible.

Charles Murray has pointed the way to get the government off our backs, peacefully, and by using the weight of all that ridiculous regulation to do it! Brilliant and hopeful without being Pollyannish.

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