

The Sword of Commerce

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The Sword of Commerce By Hari Heath

Very few citizens pay any attention to [the foundations](#) and limitations of governmental authority. Most assume that government can do what it does. Fewer still do anything to turn back the tide of a government that has breached the levy of the Constitution. And what is this tide that has ruptured the foundations of our nation? An exponentially expanding socialism which wields the sword of commerce.

Socialism is that scheme by which our individual rights, secured by a republic, are converted to privileges granted by those who operate a democracy; the [form](#) of governance where the liberty and property of the individual is surrendered under the pretense of the common good. The common good, of course, is defined by the socialists who seek to revoke your rights and grant privileges to you as they see fit. So what does this have to do with commerce? It's as simple as two of our American icons, the car and the gun.

First the car

If you ask almost anyone today whether the law requires a driver to be licensed before they can drive a car on the highway, the [answer](#) will be a resounding yes. How do we know it's true? By constant reinforcement of the idea, we believe it. For generations it has been a "requirement." Turning 16 and getting your drivers license has become the great American rite of passage.

[Policemen](#) everywhere are ready to pull you over for any "violation" and ask the first question, may I see your license? The court calendars are filled with people caught driving without "privileges." TV shows and newspapers reinforce the belief that "it's the law." But is it? How did our right to travel become a privilege? Let's look at the origins of this "law" and see if the believers really have anything to believe in. In the beginning, we rode horses. No one needed a license for that.

Traveling was such a fundamental right, that everyone took it for granted. Then came the contraption known as the automobile. As the technology progressed and availability increased, the freedom of travel became available to anyone who could afford the means to [start](#), stop and steer. The automobile has done much to change the face of American society. It also has been the source of many "problems" in our society.

With any freedom comes responsibility. Those who fail to assume their responsibilities are the food that socialist governments feed upon. [Automotive transport](#) has many benefits, but its negative side has become a great public trough providing the three phases of hegelian opportunity: Find or create the problem; offer the solution; extract the price.

Compelled responsibility is the corner stone of socialist government. There is a problem with such unbridled socialism. Governments were originally formed by constitutions which limit their intrusions and protect the rights of the citizenry. Those pesky rights to life, liberty, property and the pursuit of happiness can get in the way of the free flow of legislation. The constitutions provide and specify the subjects that can be legislated on.

Most constitutions predate the automobile. How would government control the automobile when the constitutions do not grant them any authority to do so? Constitutions can be amended, but using that process would admit to the many limitations of government. Government doesn't want to have to amend the constitution every time it grapples for another increase in power.

The socialists have another solution. Abandon constitutional limitations when it is inconvenient to their goals and lay down new laws under the guise of beneficial and necessary purposes. Few will claim their rights trampled by such laws until well after they are gone.

Slowly this method creeps, like a vine crawling up a brick wall, until its roots have permeated the mortar, its leaves cover the wall, and the weed of socialism is the only part of the wall still visible. The Constitution, like the bricks in the wall, becomes the obscure foundation for the many leaves and tangled vines of the parasitical plant and its new facade. Once in place, it is difficult to remove and almost always grows back.

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Back in the days when government was a public servant, not the public's master, the roadways belonged to the people who had a long-standing right to use them. The control of automotive transport began when the private use of the public highway resulted in profits. Article 7, Section 2 of the Idaho Constitution authorizes a license tax upon persons and corporations doing business in this state. In the early years of automotive history, many local and state jurisdictions around the country used a similar authority to license and tax the commercial use of the public roads. The courts agreed with this constitutionally valid and limited authority to license commercial travel:

"The statutory requirement that licenses be procured for motor vehicles used upon the highways is based on the servitude put on the highways by such use and the advantage which the improved highways may afford the business in which the motor vehicle is employed." *Patterson vs. Southern Ry. Co.*, 198 S.E. 364, 214 N.C. 38.

"The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions." *Black's Law Dictionary*, 6th Ed., p.920.

Under current law, the Congress continues to base its definition of a motor vehicle on commercial use: "'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and USED FOR COMMERCIAL PURPOSES on the highways in the transportation of passengers, passengers and property, or property or cargo;" Title 18, U.S.C. sec. 31.

In the beginning, courts across the country also recognized that government's power to license under commerce was limited to just that -- commerce:

"The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under

his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the existing modes of travel includes the right to drive a horse-drawn carriage or wagon thereon, or to operate an automobile thereon, for the usual and ordinary purposes of life and business. It is not a mere privilege, like the privilege of moving a house in the street, operating a business stand in the street, or transporting persons or property for hire along the street, which a city may permit or prohibit at will." *Thompson vs. Smith*, 154 S.E. 579 at 583.

"No statutory duty lies to apply for, or to possess a driver license for personal travel and transportation as defendant is not within the class of persons for whose benefit or protection the statute was enacted." *Routh v. Quinn*, 20 Cal 2d 488.

Courts also recognized that private travel is fundamental right: "The right to travel on the public highways is a constitutional right." *Teche Lines v. Danforth*, Miss. 12 So 2d 784, 787.

"The right to travel is part of the 'liberty' that a citizen cannot be deprived without due process of law." *Kent v. Dulles* 357 U.S. 116; *U.S. v. Laub* 385 U.S. 475

"The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived." *Chicago Motor Coach vs. Chicago*, 169 NE 22; *Ligare vs. Chicago*, 28 NE 934; *Boon vs. Clark*, 214 SSW 607; 25 Am.Jur. (1st) Highways Sect.163.

"Operation of a motor vehicle upon public streets and highways is not a mere privilege but is a right or liberty protected by the guarantees of Federal and State constitutions." *Adams v. City of Pocatello* 416 P2d 46.

"The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness." *Slusher v. Safety Coach Transit Co.*, 229 Ky 731, 17 S.W.2d 1012.

"The claim and exercise of a constitutional Right cannot be converted into a crime." *Miller vs. U.S.*, 230 F. 486, 489.

"The right to travel is part of the 'liberty' of which a citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles*, 357 U.S. 116 (1958).

"Where activities or enjoyment, natural and often necessary to the well being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them ... to repeat, we deal here with a constitutional right of the citizen," *Edwards v. California*, 314 U.S. 160 (1941).

The socialists tried early on to step beyond their limits of regulating commercial travel. This conversion of the citizen's rights through a compelled licensing scheme was initially stopped by the courts: "Where a private statute exists of which the intent is regulation of commercial common carriers, the particular agency enforcing that private statute, shall not apply it by trickery and deceit, to persons who are not noticed by the statute as persons regulated and taxed, nor should it permit any party to do so in violation of a person's right to stay out of compelled license/contract, when he is not a person subject to the statute, unless clearly within its words." *State v. Ebershart*, 179 P 853,

246 P 2d 1011.

In time, however, the courts would join the socialist cause and ignore their previous rulings like this one.

If courts all the way to the Supreme Court have ruled that "the right of a citizen to travel upon the public highways" is a "constitutional right," "not a mere privilege which may be permitted or prohibited at will," and "no statutory duty lies to apply for, or to possess a driver license for personal travel" and such a right is "protected by the guarantees of the Federal and State constitutions" which "cannot be converted into a crime," then why do you need a license to drive your private car on our public highway?

It's simple. Socialists get elected to the legislature. Car wrecks, school shootings, bombed federal buildings, environmental degradation, the poor, the sick, the tired and hungry, give many a cause to the "there-ought-to-be-a-law" mentality of our socialist saviors. Using the "problem" of the day as the cause for their mission, they unshackle themselves from their constitutional constraints and legislate, piece by piece, the legal strait-jacket which confines the liberties of the formerly free citizenry.

And the media beats the drum while socialists in the legislature pipe the tune.

There are many subjects in the Constitution which the legislature is authorized, and in some cases, even required to legislate on. The subjects they are authorized to legislate on are enumerated in the Constitution to keep the legislature from making laws on any subject it wishes to meddle in. Even though the constitution has been amended more than a hundred times for other purposes, there is no provision in the Idaho Constitution allowing the state to license drivers for operating a private automobile. However, the legislature routinely ignores the Constitution. An ambiguous law was passed compelling the citizenry to "purchase" a license before being permitted to use the public highways.

Our modern day courts act in lockstep with these socialist edicts and ignore constitutional facts and higher court rulings.

How do I know? I attempted to prove I was innocent of driving without "privileges" because the law said I had a right to travel and only commercial travel could be licensed. I was threatened with shackles and jail for mentioning such laws, like the rulings above, to a jury. The same jury that was not allowed to see such laws, then found me "guilty" when I failed "to possess a drivers license for personal travel."

The right of citizens to travel upon the public highways which is "protected by the guarantees of the Federal and State constitutions" have been "converted into a crime." My attempt to defend myself by mentioning the law also became a crime. And it all began with commerce.

Truth and law are denied whenever they threaten the vines of socialism. The drivers license has become a multi-million dollar industry of government and a primary mechanism by which our masters in government control our movement and identify their property -- the citizen. Such vested interests cannot be disturbed with law in this great age of socialism. The faithful believers in this ever burgeoning socialism continue to look only at the vines and leaves of the parasitical facade.

Placated by plentiful possessions, we look no further. Our rights begin to dissolve when we fail to demand them. They recede when our children are taught that only privileges exist. When those children become adults the privileges of socialism become the new law and all rights are gone.

Beginning with the authority to regulate commerce, our "right" to travel has been converted incrementally, over generations, to a "privilege."

The gun

So what's the connection between the car and the gun? Most people believe that everyone needs a license to drive a car. Many would think you're nuts for the preposterous notion that you have a right to travel without being licensed. Show them the law and they will still think you're nuts. They would rather believe in that which feeds them. By providing the faithful with a sense of security and giving comfort to those in need, the socialists have created quite a following.

The control of the automobile began in the early 1900s. Many generations later these unconstitutional license laws have found favor with the converts to the socialist democracy.

Gun control is a much more recent invention. In 1967 a 14-year-old boy could order a rifle and ammunition from the Sears catalog and then pick it up at the Post Office. Then came the Gun Control Act of 1968. An adult citizen could no longer mail a gun. Neither could they cross state lines and purchase a gun without having it shipped to someone in their state who held a "Federal Firearms License."

And how did Congress assume the authority to control guns and license gun dealers? The "Commerce Clause" of the Constitution. "The... power... to regulate commerce... among the several states..." has become the basis for the federal infringement of the right to keep and bear arms. The vine of socialism isn't about to stop here. Having sunk its roots into the Commerce Clause, it will grow to control all aspects of the gun. But only if we fail to rip that weed off the wall that is our Constitution.

In the wake of the 1968 Gun Control Act, many more entanglements have sprouted. Import bans on "assault rifles." Taxes on ammunition. Limitations on magazine capacity. Background checks. Waiting periods. All under the socialists creed, "for the common good." Many more infringements are promised as the vine of socialism grows around the right to keep and bear arms. And it all began with commerce.

Can you spell infringe? Then look it up in the dictionary. Will you allow the belief in the socialists cause to prevail, or demand your rights under the Constitution? For want of actually looking, all most people will ever see is the leaves on the vines of socialism. Seeing is believing, so they say, and the faithful converts to socialism continue to believe in that untended weed which is choking the foundations of our country. Our rights are fading like a sunset turning into darkness.

Look back on the history of how the "right" to travel was converted into a "privilege." Can we prevent that history from repeating itself on our right to keep and bear arms? Will you allow your children to believe they must have permission from the government to own a gun?

Whether or not this generation takes a stand will determine what rights are left for all future generations. Get out your pruning shears and cut back the vines of socialism. With thousands hacking at the roots, the entanglements choking out our liberty can be removed from the wall of our Constitution. Yes, the car and the gun are dangerous contrivances which require competency and responsibility in their operation, but so is the legislature. Pre-emptive laws deprive liberty. Is it government's purpose to control everyone's conduct or to provide a remedy for misconduct? What is more dangerous, the automobile and the gun, or the legislature with the sword of commerce in its

hands?

"The individual may stand upon his constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his door to an investigation, so far as it may tend to incriminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state. ...He owes nothing to the public so long as he does not trespass upon their rights."
Hale v. Henkel, 201 U.S. 43 (1905)

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