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Economic Liberty and the Constitution, Part 8

by Jacob G. Hornberger

The tremendous legal battle between the advocates of economic liberty and free markets and the advocates of socialism and statism that took place in the U.S. Supreme Court in the 1930s should be placed within a historical context.

Our American ancestors subscribed to a philosophy of government that is totally different from that to which most Americans subscribe today. That difference in philosophy produced a society very different from the one in which we currently live.

For example, Americans in 1890 lived without income taxation, Social Security, food stamps, welfare, Medicare, Medicaid, public housing, gun control, drug laws, immigration controls, and a Federal Reserve System.

Moreover, there were virtually no public (i.e., government) schools, economic regulations, or occupational-licensure laws. There was no U.S. involvement in foreign wars.

The reason for this was, again, philosophical. Americans once believed that the role of government should not include taking care of people. They believed that people should be free to keep their own money and decide for themselves what to do with it. They believed that economic enterprise should be free from government control.

They also believed that the U.S. government should refrain from interfering in the affairs of other nations or involving itself in foreign wars. The basic idea was that instead of spending time, resources, and lives trying to fix the problems of other nations, Americans (and the rest of the world) would be better off if the United States would produce a model society with respect to freedom, peace, and prosperity and then let anyone in the world who left their own country come here to live, if they wished to do so.

No matter how much a person might disagree with the wisdom of our Founding Fathers and ancestors, no one can deny one basic truth: Although it lasted for only 150 years, they did create the most unusual society in history — and the freest one.

The socialist tide

Keep in mind that when the Constitution brought the federal government into existence in 1787, the Founders did not have a tremendous resource of information with respect to free-market economics. There was, of course, Adam Smith's *Wealth of Nations* but, as most people know, Smith's views were not exactly pure free-market.

Through the 1800s, people were able to read and study the free-market views of the classical economists, such as John Stuart Mill and David Ricardo. But one of the major theoretical problems with classical economics was its erroneous view of the concept of value, a perspective that was rooted in Smith's *Wealth of Nations*. It was commonly believed that the value of any item was based on how much labor went into producing it; that economic error ultimately contributed to one of the most momentous events in history — the embrace of socialism worldwide, including here in the United States.

When Karl Marx wrote in the 1800s that capitalism was bad because it involved the theft of worker's labor, his argument was quite logical in the context of the labor theory of value. If the value of an item is based on how much labor goes into producing it, then for the capitalist or owner to withhold any money is to withhold something that rightfully belongs to the laborer. Since theft is wrong, Marx argued, so were capital and capitalism.

While the simultaneous formulation of the subjective theory of value by Carl Menger, William Stanley, and Eugene Walrus in the late 1800s showed the errors and fallacies of the labor theory of value, the discovery failed to significantly slow the socialist tide all over the world. The influence of Marxism and socialism began slowly but they ultimately took control over the hearts and minds of people all over the world.

Not surprisingly, however, the fight for socialism was much more difficult in the United States, given its well-entrenched free-market system and its heritage of economic liberty. The early stages of the fight were reflected in social legislation in the late 1800s to protect the workers from "capitalist exploitation," but the courts were declaring much of it unconstitutional.

What the socialists ignored, of course, was that compared with living standards in other countries, both current and in the past, American workers were infinitely better off, which is why the United States continued to attract penniless immigrants from all over the world. As difficult as life was in the early days of the United States, people and their families at least had a chance to survive.

Moreover, Americans were discovering that as a society progressed in the saving of money from one generation to another, the rising level of capital accumulation was raising standards of living for everyone, especially for those whose fathers and grandfathers had struggled in poverty. It wasn't legislation that took the American children out of the factories but instead ever-increasing levels of capital.

Thus, in the late 1800s, the battle in the United States was between the growing tide of socialists and collectivists and the advocates of economic liberty and free markets.

In 1913, the socialists scored a big double victory. They achieved the passage of the Sixteenth Amendment to the U.S. Constitution, enabling the passage of the graduated income tax, which had been one of the ten planks of the *Communist Manifesto*. That same year saw the creation of a government central bank, the Federal Reserve System, which would ultimately lead to the demise and destruction of America's gold standard. It too had been one of the planks of the *Communist Manifesto*.

In 1917, the United States abandoned its noninterventionist heritage and entered into World War I, with the objective of finally and forever straightening out Europe's endless conflicts. Thousands of American men were sacrificed in "the war to end all wars" and "the war to make the world safe for democracy."

America's intervention into World War I, as acknowledged by nearly everyone then and now, was a colossal and destructive failure, not least because it contributed to the circumstances that ultimately gave rise to Adolf Hitler and Soviet communism.

But the upside was that the failure of World War I convinced most Americans to return to the original vision of their nation's Founders: Devote your efforts to building the model free, peaceful, and prosperous society and don't send your boys to die in foreign wars.

The Great Depression

During the 1920s, the Federal Reserve System continued the cranking of its printing presses, flooding the American economy with paper money, creating the false aura of economic prosperity that inflation always produces. It's not a coincidence that the decade was called "the roaring '20s."

As the decade was approaching its end, however, the monetary chickens were coming home to roost. People began going to their banks and demanding gold in exchange for their paper money, as they were entitled to do under the gold standard. In fact, that was the primary reason our Founders had made gold and silver coin the official medium of exchange — to protect people's assets from the threat of government inflationary confiscation.

In the late 1920s, realizing that they had overprinted paper money, Federal Reserve officials became frightened at the gold demands and began tightening up the money supply by withdrawing paper money from circulation. The problem is that they overdid it. They tightened up too much. The result of their financial manipulation was the famous stock-market crash in 1929, which led to the Great Depression.

Given the tremendous suffering that took place in the 1930s, including suicides, U.S. officials felt that they had no choice but to lie to the American people about the real cause of the Great Depression. If the American people had learned that the federal government had caused the crisis, the potential for violence, even revolution, was too great.

So the official explanation became: "America's free enterprise system has failed [as Marx had predicted] and government regulation is needed to save free enterprise." The lie was so effective that even today there are many Americans who believe it.

Franklin Roosevelt assumed the presidency in 1933. It is impossible to overstate the significance of his New Deal for America because, while there had been movement in a socialist economic direction prior to his presidency, FDR made the famous Marxian principle "From each according to ability, to each according to need" the official economic doctrine of the United States, under the false notion, of course, of "saving America's free-enterprise system."

During the New Deal, for the first time in the history of our nation the primary purpose of government became taking money from a person who owned it (primarily through the income tax) and giving it to a person who the government felt needed it more (through various welfare programs). Its most famous manifestation, of course, was Social Security, a socialist program that had originated in Germany in the late 1800s.

But that was just one of a host of socialist programs that FDR and his Congress enacted. There were also farm subsidies, welfare for the poor, public housing, debt-relief acts, bank-deposit insurance, and many, many more. To paraphrase Frédéric Bastiat, the 19th-century free-market advocate, FDR converted the U.S. government into a fiction by which one group of people could live at the expense of another group.

That wasn't all. There were also massive regulatory programs, such as the National Industrial Recovery Act, which called for the cartelization of American business, and the Securities and Exchange Commission (SEC).

Under the NIRA, each industry was directed to organize into cartels, with the power to set prices, wages, output, and other conditions for operating and producing. No business was permitted to opt out. Everyone was expected, out of a patriotic fervor, to prominently display his "Blue Eagle" in his store to signify his full support of the president's program. Most businessmen were too scared to resist FDR and the federal government. Meanwhile, the SEC was supposed to protect Americans from stock-market crashes and fraudulent stock manipulators.

But there was at least one big problem with the whole mess: Not only did it fly in the face of 150 years of the American heritage of economic liberty and free enterprise, FDR's New Deal was quite similar in principle to what was going on in Nazi Germany and fascist Italy in the 1930s, as the leaders of those nations were doing their best to pull their countries out of their own economic crisis.

What Americans have never been taught in their public schools is that during the early and mid 1930s, the German chancellor, Adolf Hitler, was both admired and respected by Western political leaders. Why? Because of how he supposedly pulled Germany out of the Depression with the same types of economic policies that Western leaders were using: massive government spending; government programs to help the needy, such as Social Security and national health care; government-business partnerships; cartels; government regulation of business; and extremely large amounts of military spending.

Do you notice any similarities between Hitler's economic policies and those of Roosevelt? Here's how John Toland puts it in his biography *Adolf Hitler*:

"Hitler had genuine admiration for the decisive manner in which the President had taken over the reins of government. 'I have sympathy for Mr. Roosevelt,' he told a correspondent for the New York *Times* two months later, 'because he marches straight toward his objectives over Congress,

lobbies and bureaucracy.’ Hitler went on to note that he was the sole leader in Europe who expressed ‘understanding of the methods and motives of President Roosevelt.’”

In turn, Winston Churchill, in his 1937 book *Great Contemporaries*, expressed his “admiration for the courage, the perseverance, and the vital force, which enabled [Hitler] to challenge, defy, conciliate, or overcome all the authorities or resistances which barred his path.”

There were two big obstacles, however, that Roosevelt faced that Hitler did not have to face, much to FDR’s chagrin: (1) the U.S. Constitution, specifically the Due Process Clause of the Fifth Amendment; and (2) the U.S. Supreme Court, specifically four justices — George Sutherland, Willis Van Devanter, James McReynolds, and Pierce Butler — who have gone down in Supreme Court history as the “Four Horsemen.”

In the midst of the greatest economic crisis this nation had ever seen, a crisis that had been produced by the executive branch of the U.S. government, the “Four Horsemen,” along with a fifth justice named Owen J. Roberts, were the only force standing between America’s long heritage of economic liberty and a free-enterprise, capitalist system and the triumph of socialism, collectivism, and statism in America.

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This article was originally published in the January 2003 edition of *Freedom Daily*.