
FUTURE OF FREEDOM

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Above all things — liberty!

— John Shelden

FUTURE OF FREEDOM

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The Future of Freedom Foundation is a nonprofit, educational foundation whose mission is to advance liberty and the libertarian philosophy by providing an uncompromising moral, philosophical, and economic case for individual liberty, free markets, private property, and limited government.

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The Evil of the National-Security State

Part 4

by *Jacob G. Hornberger*



The day after Japanese forces attacked Pearl Harbor in December 1941, they invaded the Philippines, where they killed or captured tens of thousands of American soldiers. The obvious question arises: What in the world was such a large contingent of U.S. soldiers doing in a land thousands of miles away from American shores?

The answer lies in the turn towards empire that the United States took during the Spanish-American War in 1898. When Cuba and the Philippines revolted against the rule of the Spanish Empire, the United States intervened in the conflict,

promising to help the revolutionaries to achieve independence.

America's intervention succeeded and the Spanish Empire lost the war. Nonetheless, Cuba and the Philippines failed to secure their independence. The reason? The U.S. government insisted on replacing the rule of the Spanish Empire with the rule of what was to become the U.S. empire.

The result was another brutal war of independence in the Philippines, in which U.S. forces killed, maimed, or tortured hundreds of thousands of Filipinos in their successful quest to quell the rebellion.

Thus, the U.S. soldiers who were killed or captured by Japan at the inception of World War II were on U.S. territory that had been captured almost 50 years before as part of America's turn away from a constitutional republic to a worldwide empire.

The U.S. government also treated Cuba as its colony, just as the Spanish Empire had done, effectively ruling the country for decades through a succession of brutal and corrupt dictators who would do the bidding of the U.S. empire.

Thus, the Spanish-American War was a watershed event for the United States, one that would ultimately lead to an empire with hun-

dreds of military bases all over the world, along with an endless series of invasions, occupations, coups, assassinations, sanctions, embargoes, and regime-change operations, all intended to expand the reach of the U.S. empire around the world.

In fact, the corrupt dictator who ruled Cuba prior to Fidel Castro's revolution, Fulgencio Batista, was one of the U.S. empire's approved rulers, one who brutalized and plundered the Cuban people while doing whatever the U.S. empire requested of him. When the Cuban people revolted against Batista and replaced him with Castro, U.S. officials initially hoped that Castro would continue the tradition and place Cuba and himself under U.S. control. That hope, however, was soon dashed, as Castro made it clear to the U.S. empire and to the Cuban people that Cuba was, for the first time in history, to be a sovereign and independent country.

It is not a surprise that Castro's position did not sit well with U.S. officials. The empire placed him squarely in its sights for a regime-change operation that would ultimately consist of an economic embargo, an invasion, assassination attempts, terrorism, sabotage, and almost nuclear war.

But there was another critically

important factor that guaranteed that Castro would become the target of the U.S. empire. After seizing power, he revealed himself to be a communist, one who quickly began converting Cuba's economic system to communism.

U.S. imperialism and U.S. anti-communism became the twin driving forces of the U.S. government in the second half of the 20th century.

Those two factors — U.S. imperialism and U.S. anti-communism — became the twin driving forces of the U.S. government in the second half of the 20th century. More than anything else, those two forces would corrupt, warp, and pervert the principles and values of the American people.

From the first grade on up, American students are taught that “we” won World War II. Actually, the truth of that statement depends on how one defines the pronoun “we.” When “we” is defined to include the Soviet Union, then it is true that “we” won World War II. But when “we” is defined to mean the United States, Great Britain, France, and other non-Soviet Allied powers, then “we” did not win the war. It was the Soviet Union that

won the war.

Recall, after all, the ostensible reason that Great Britain declared war on Nazi Germany. It was to free the Polish people from Nazi tyranny. What was the situation at the end of the war? Well, the Polish people were indeed freed from Nazi tyranny, only to have to suffer for the next 50 years under Soviet communist tyranny. From the standpoint of the Poles and, for that matter, other Eastern Europeans in the Soviet bloc, that was no victory.

The Polish people were indeed freed from Nazi tyranny, only to have to suffer for the next 50 years under Soviet communist tyranny.

But it was also no victory for the American people because almost immediately U.S. officials converted the Soviet Union from World War II partner and ally (and Hitler's enemy) into a giant new enemy for the United States, a situation that would bring a half-century of crisis, chaos, conflict, and hostility during the Cold War and massive death and destruction in such hot wars as Korea and Vietnam.

Equally important, that new enemy would provide the justification for maintaining and expanding a

massive and permanent military-industrial complex and for initiating a massive national-security state, both of whose policies and practices would end up looking strikingly similar to those of the totalitarian regimes that the United States had opposed during the war and was now opposing in the Cold War.

Anti-communist fervor

It is impossible to overstate the depth of the anti-communist fervor that characterized the Cold War. For those who were born after that era, the best way to describe it is that the fear of communism was about 1,000 times greater than the fear of terrorism is today. What was different, however, was that while terrorism involves a physical act of force, communism involved more than that. Communism also involved an idea, one that absolutely scared U.S. officials and much of the American populace to death.

There were several aspects to the anti-communist fervor.

One aspect was the notion that the Soviet Union intended to initiate a war against the United States in which America would be conquered by the communists. Under that scenario, the American people would end up living their lives

much like the people of Eastern Europe — under the iron boot of the Soviet Union.

A second aspect was the notion that communism would spread beyond Cuba, into other Latin American nations, which would enable them to mobilize military forces that would invade Florida and Texas and sweep up the Eastern seaboard, ultimately defeating U.S. forces and taking over Washington. Under this scenario, the Latin American communist forces would be serving as agents of the Soviet Union and would do its bidding after conquering the United States.

A third aspect was that communists would take control over European countries and Asian countries, causing the “dominoes” to continue falling until the final domino — the United States — would be toppled.

A fourth aspect was communist infiltration in the federal government and the public schools, where politicians, bureaucrats, and teachers would be serving effectively as moles of the Soviet Union, who would be indoctrinating the American people with communist ideas and, even worse, taking control of the reins of power and surrendering America to the communists.

A fifth aspect, which perhaps was the scariest for U.S. officials,

was that communism would operate as a Sirens song, infecting the minds of the American people and seducing them into wanting and desiring a communist way of life, one in which people would eagerly and enthusiastically surrender their freedom in return for being taken care of from the cradle to the grave by the state. Under this scenario, communists would begin winning elections all across the land and gradually begin to seep into the federal bureaucracies, enabling them to bring communism to America in a purely democratic fashion.

It was an era that was so frightening that Americans learned to defer to authority and to trust their government officials.

All five of those aspects of the anti-communism mindset combined to produce a climate of constant preparation for war and a long, dark era of deeply seated fear that pervaded the United States and the American psyche. It was an era that was so frightening that Americans learned to defer to authority, to trust their government officials, and to place unwavering faith in them to protect “national security” and defend them from commu-

nism.

What was this thing that frightened people so much? Communism is an economic doctrine in which the state owns the means of production. In its purest sense, it means that the state owns everything in society. Since the state is the sole employer, everyone works for the state. The state guarantees that everyone will be taken care of with housing, food, employment, health care, education, and other important things. No more worries about losing one's home, starving to death, being fired, or being unable to pay for medical expenses or for an education. Everyone's needs are taken care of, from the day they are born to the day they die.

Needless to say, all that is a very attractive notion to many people.

The rise of socialism

What's the alternative to communism or, to employ a similar term, socialism?

The alternative is a private-property, free-market way of life, one in which the means of production and most everything else are privately owned. People are free to engage in economic enterprise free of government regulation, to engage freely in mutually beneficial economic transactions with others,

to accumulate unlimited amounts of wealth, and to decide what to do with it. In a system based on private property and economic liberty, which some might label as "capitalism," the role of government is simply to protect people from the violence or fraud of others, to defend the nation in the event of an attack, and to provide a judicial forum by which disputes can be resolved peacefully.

America's free-enterprise economic system was one of the major things that distinguished the United States from all other nations in history.

Notwithstanding slavery and other exceptions, the United States had been founded on principles of private property and the free market. Despite the many exceptions, it was, in common parlance, a capitalist country. In fact, America's free-enterprise economic system was one of the major things that distinguished the United States from all other nations in history.

Throughout the late 1800s and into the early 1900s, however, communism was becoming increasingly popular all over the world. Near the end of World War I, the Russian Revolution brought a communist

regime to power in Russia. Moreover, socialistic ideas were percolating throughout Europe and Asia. By the time that World War II broke out, the United States itself had embraced a variation of socialism with its welfare-state way of life, one in which the federal government was expected to take care of people by means of certain important programs, such as Social Security.

Moreover, communist parties were playing active roles in the political process, including the U.S. political process.

All of that was too much for U.S. officials, who were convinced that unless the United States took a leading role battling communism around the world, it would end up being a communist nation.

Thus, at the end of World War II, the Pentagon and a gigantic wartime military establishment became permanent fixtures in American life. Two years later, in 1947, Harry Truman signed into law the National Security Act, which brought the CIA into existence. Together, that permanent military establishment and the CIA would form the core units of America's national-security state, which would, over time, effectively become a fourth branch of government having unbelievable powers of invasion, assassination,

torture, and fomenting coups and regime-change operations. And the legislative and judicial branches and even the executive branch would not and could not touch it because of the overriding principle of "national security."

**At the end of World War II,
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American life.**

What should the United States have done at the end of World War II? It should have come home and dismantled its wartime military machine. The war was over. Nazi Germany and Japan had been defeated. Sure, the Eastern Europeans were now under the iron boot of the Soviet Union but U.S. officials were partly responsible for that, not only in partnering with the Soviet communists during the war and relinquishing control over such countries to them, but also in their "unconditional surrender" demand by which they declined to enter into separate peace negotiations with the Germans that could have kept Eastern Europe free of Soviet control.

The U.S. government instead chose to maintain a massive level of

military force in Germany to protect Western Europe from an attack by its World War II partner and ally, the Soviet Union. That's what NATO was all about. Even worse, the U.S. government promised to defend nations all over the world from communist aggression, an open-ended commitment that would transform America into a militarist, garrison state.

War with the USSR?

What were the chances that the Soviet Union would start a new war against its former World War II allies? Virtually nil. After all, the Soviets had just lost more than 20 million people in the war. The entire nation, including its economy, was devastated. Moreover, the U.S. government had sent a powerful message to the Soviets regarding U.S. military might with the nuclear bombing of Hiroshima and Nagasaki.

What about the continued Soviet occupation of Eastern Europe? The reasoning was no different in principle from that of the U.S. government, which fiercely opposed any communist regimes in Latin America. After two world wars, the Soviets wanted puppet regimes in Eastern Europe to serve as a buffer against future invasions by Germa-

ny. The rationale was no more justifiable than the U.S. rationale for installing pro-U.S. puppet regimes in Latin America, but it certainly did not mean that the Soviet Union was embarking on a worldwide campaign of military conquest.

Even worse, the U.S. government promised to defend nations all over the world from communist aggression.

The national-security state's fear of communism in Latin America went deep. Consider Guatemala. When a socialist named Jacobo Arbenz was democratically elected president in Guatemala in 1950, the Pentagon and the CIA went ballistic. They were convinced that with Arbenz's election, the communists had established a beachhead in the Western hemisphere. Apparently, in the minds of the military and CIA, Guatemalan forces would cross into Mexico, ford the Rio Grande, conquer Houston and Dallas, sweep northeasterly, conquer Georgia and the rest of the South, take Washington, D.C., and then hand the keys to the capital to the Soviet Union. Oh, if they waited until after 1959, Castro's communist army would invade and conquer Florida and then move north,

conquering everything in its path before joining with Arbenz's army outside Washington, D.C., to jointly accept the surrender of U.S. officials in Washington.

It was obviously a ridiculous, inane notion. But nothing was beyond the communist-possessed imagination of officials in the U.S. national-security state. In fact, when Pentagon and CIA officials learned that Arbenz had purchased a shipload of arms from Czechoslovakia, which was under Soviet control, that transaction was positive confirmation that the communists were planning a military takeover of the United States. Never mind that the Czechs had taken the Guatemalans to the cleaners by selling them a bunch of military junk. Some giant, worldwide, monolithic communist threat!

The national-security mindset was the same in Southeast Asia. The communists would take over in Vietnam, which would cause the Southeast Asian dominoes to start falling, ultimately resulting in a communist takeover of the United States.

That mindset turned out to be as ridiculous and inane as the one that related to Latin America. The best proof, of course, is what happened at the end of the Vietnam

War. The dominoes didn't fall and the Vietnamese communists didn't invade and conquer the United States. In fact, soon after the reunification of the country, the Vietnamese communists got into a war with the Chinese communists. Today, Vietnam has friendly relations with the United States.

The fear of communism and communists was inane, overblown, exaggerated, and irrational.

In fact, let's return to Latin America for a moment. Today, Cuba, Venezuela, Bolivia, and Nicaragua have socialist-communist regimes. So what? What American feels threatened by that? Is anyone worrying that communist armies are about to cross the southern border of the United States or invade Florida?

Like I say, the fear of communism and communists was inane, overblown, exaggerated, and irrational.

What about the Communist Party and American communists — that is, people in the United States who were committed to converting its system to a communist economic one?

In a genuinely free society, peo-

ple are free to expound any ideas they want, no matter how despicable or unpopular. The American Communist Party should have been free to participate in the political process to its heart's content, doing everything it wanted to peacefully persuade people to embrace communism and socialism. It was the duty of the government to protect them in the exercise of their rights and freedom. After all, the best way to combat a bad idea like communism or socialism is to promulgate a better idea, such as libertarianism, i.e., a free-market, private-property system.

Unfortunately, that's not the way the Pentagon, the CIA, and the FBI, another important part of the U.S. national-security state, viewed things. In their eyes, people who advocated communism were bad people and, even worse, grave threats to the "national security" of the United States.

Thus, to protect "national security" from communism, the U.S.

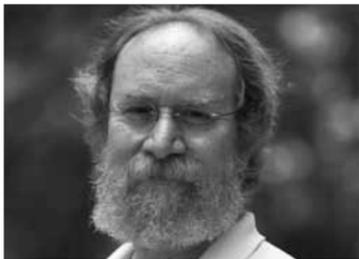
national-security state adopted policies and practices that in some ways mirrored the policies and practices of the very regime they had defeated in World War II — the Nazi regime — and the regime that they had partnered with in World War II and against which they were now waging the Cold War — the Soviet regime. Of course, U.S. officials justified the evil and immoral means they adopted to combat communism under the rubric of protecting "national security."

Jacob Hornberger is founder and president of The Future of Freedom Foundation.

NEXT MONTH:
"The Evil of the National-Security State, Part 5"
by Jacob G. Hornberger

An Echo, Not a Choice

by Sheldon Richman



Last November, Barack Obama stood before an audience and said government needs to be “responsive to the needs of people, not the needs of special interests.” He added, “That is probably the biggest piece of business that remains unfinished.”

He made those remarks, the *New York Times* reports, before a \$17,900-a-plate fundraising dinner at the home of Dwight and Antoinette C. Bush, two heavy contributors to his reelection. But according to the *Times*, that wasn’t Antoinette Bush’s only contact with Obama. Six months earlier, she had visited the White House, bringing with her a “top entertainment industry lobbyist.” That was when a big brouhaha was erupting between that in-

dustry and Internet companies over online piracy.

The visit of a big political contributor and an industry lobbyist to the White House may not normally raise eyebrows, but this is the Obama White House. The *Times* notes,

Although Mr. Obama has made a point of not accepting contributions from registered lobbyists, a review of campaign donations and White House visitor logs shows that special interests have had little trouble making themselves heard. Many of the president’s biggest donors, while not lobbyists, took lobbyists with them to the White House, while others performed essentially the same function on their visits....

[The] regular appearance of big donors inside the White House underscores how political contributions continue to lubricate many of the interactions between officials and their guests, if for no other reason than that donors view the money as useful for getting a foot in the door.

Welcome to Obama’s new world. It looks a lot like the old.

And that is not the only way it resembles politics as usual.

Like his predecessors, Obama has been a good friend to big companies, especially banks. Take Bank of America. BoA is what you'd expect of a financial institution codded by government subsidies and privilege: inefficient, corrupt (unjustly foreclosing on homeowners), and a frequent corporate-welfare recipient.

Rolling Stone contributing editor Matt Taibbi reports that when BoA needs help, Obama is there. Taibbi writes that BoA is

a de facto ward of the state that depends heavily upon public support to stay in business. In fact, without the continued generosity of us taxpayers, and the extraordinary indulgence of our regulators and elected officials, this company long ago would have been swallowed up by scandal, mismanagement, prosecution and litigation, and gone out of business. It would have been liquidated and its component parts sold off, perhaps into a series of smaller regional businesses that would have more respect for the law, and be more responsive to their customers.

But Bank of America hasn't gone out of business, for the simple reason that our government has decided to make it the poster child for the "Too Big to Fail" concept.

Whom can we thank? In part, Barack Obama, who's planning to run a populist reelection campaign pitting the wealthy and well-connected against the rest of us. Hypocrisy lives — even in Obama's supposedly postpolitical world.

According to Taibbi, "Bank of America ... is perhaps the biggest welfare dependent in American history, with the \$45 billion in bailout money and the \$118 billion in state guarantees it's received since 2008 representing just the crest of a veritable mountain of federal bailout support, *most of it doled out by the Obama administration.*" (Emphasis added.)

**Like his predecessors,
Obama has been a good friend
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especially banks.**

In a revealing move, BoA soothed nervous creditors last year by shifting \$73 trillion in derivatives to the part of the bank covered by federal deposit insurance — a/k/a

the taxpayers.

Writes Taibbi, “This move, *encouraged by the Obama administration*, put the American taxpayer on the hook for an entire generation of irresponsible gambles made by another failed investment firm that should have gone out of business, but was instead acquired by Bank of America with \$25 billion in taxpayer help — Merrill Lynch.” (Emphasis added.)

“This move put the American taxpayer on the hook for an entire generation of irresponsible gambles made by another failed investment firm....”

That is just one of the many ways in which Obama reveals himself as a friend of big, well-connected business interests — that is, as an advocate of the corporate state. His occasional criticism of oil companies and big banks masks an essentially corporatist program in which government assists business.

Obama has no shortage of the corporate elite among his advisors, such as Jeffrey Immelt of GE, who chairs his Council on Jobs and Competitiveness, and Jim McNerney of Boeing (and formerly of GE), who chairs the President’s Export Council. Both are recipients of lar-

gess from the Export-Import Bank, a government agency that exists to help American firms sell products abroad.

So on the Democratic side of the upcoming election, we find a staunch corporatist, a friend of big business, and big banks. And what of Obama’s presumptive opponent, Mitt Romney?

The Romney “alternative”

The former Massachusetts governor and private-equity capitalist speaks often about free enterprise and the need for government to let entrepreneurship pull the economy out of its current doldrums. That sort of rhetoric is common for Republicans, who then proceed to violate what libertarians understand as true economic freedom. George W. Bush, in a weird Orwellian manner, took this contradiction to its final stage of absurdity when he said during the 2008 financial debacle, “I’ve abandoned free-market principles to save the free-market system.” (How reminiscent of the way Vietnamese villages were spoken of in the 1960s.) In other words, the free-market system is not constituted by free-market principles. But if that’s the case, what is the system constituted by? Non-free-market principles? To be sure, no one ex-

pects intellectual rigor from politicians, but isn't that ridiculous?

Republicans may not typically speak so bluntly, but in his statement Bush captured something important about his party's "philosophy" — if its collection of opportunistic attitudes deserves that noble label. To (most) Republicans, "the free-market system" isn't a set of principles (obviously); rather it is an emotional slogan to be spoken, especially as an election approaches. It's a way of saying, "Vote for us because the other guys aren't good Americans like we are. Their commitment to free enterprise is suspect. Heck, they may even be Marxists."

That attitude shows up in odd ways with Romney. He says, "We are only inches away from ceasing to be a free-market economy." But that must mean we now have — and have had — a free-market economy. Does he really mean that? If so, would he agree with Bush that free-market principles were "abandoned" with the bank bailouts such as TARP and the GM/Chrysler rescues?

Another implication of his attitude is that the free market was responsible for the housing and financial debacle. We're not likely to hear Romney say that — it would

concede too much to Obama — but it's logically implied by his remarks: If we're within "inches" of losing the free market, then we must have it now, and if we have it now, we presumably had it during the Bush years, 2001–2009, or else Obama would have had to restore it. Hence, the free market created the housing bubble, its collapse, and the accompanying financial troubles.

To (most) Republicans, "the free-market system" isn't a set of principles (obviously); rather it is an emotional slogan.

That position diverges markedly from what free-market advocates think happened. Aside from differences in some details, the essential story is this: Low-interest-rate money from the Federal Reserve, aggressive government policies to increase home ownership — even among people with bad credit histories or low incomes — and additional forms of government intervention combined to create an unsustainable bubble in the housing industry, which in turn helped increase the fragility of the financial sector. (Dubious mortgages became the foundation of widely held securities and derivatives, facilitated by government-sponsored enterprises

— Fannie Mae and Freddie Mac — and a government-licensed rating cartel.) When the artificially induced boom collapsed — as was inevitable — a colossal cluster of investment errors came to light; hence the recession, which is the revelation that government policy led to a gross misalignment of resources (labor and capital) and consumer demand. That is what Ludwig von Mises called “malinvestment.” Given that an economy consists of a time-oriented, interest-rate-sensitive “structure of production” created according to people’s plans and expectations about the future, the misleading signals generated by government (including Fed) policies put the economy out of whack. The quickest way to a sustainable recovery is for the government to radically retrench so that the errors can be corrected and the economy can align itself with consumer preferences, including their saving predilections.

Fundamental agreement

Does Romney give even a hint that he understands that? If he did, he wouldn’t be talking as though the free market exists (even after three years of Obama rule) and that we still have it to lose.

Beyond that, Romney expresses

his orientation toward political economy when he says, “Washington has to become an ally of business, not the opposition of business.”

Government should be neither an ally nor an opponent of business because each alternative implies interference with private property and free exchange.

A free-market advocate would know that doesn’t exhaust the alternatives. Government should be neither an ally nor an opponent of business because each alternative implies interference with private property and free exchange. That may be harder to see in the case of a business-government alliance. One needs to remember only that we live in a world of scarcity. If government helps one industry or firm, it must do so by channeling scarce resources away from other uses. That disables the process by which entrepreneurs attempt to devote resources to purposes most favored by consumers. It’s a form of government privilege, which many businessmen are all too happy to receive — at the expense of others.

Obama himself could honestly say he agrees with Romney’s statement. He too believes government

should be business's ally. Their differences over the precise mix of government and business decision-making power should not fool anyone into thinking that they have a fundamental disagreement.

Unfortunately, we must look forward to an election between two variations on this corporatist theme.

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NEXT MONTH:

"The Market and Uncertainty"
by Sheldon Richman

No nation was ever ruined by trade.

— Benjamin Franklin

The Federal Wetlands War

Part 1

by James Bovard



Since the 1980s, federal wetlands crackdowns have been one of the most brazen violations of American property rights. Federal agents have continually sought to play trump cards that effectively turned owners into serfs of federal bureaucracies. And despite a recent Supreme Court ruling vindicating landowners, the battle will continue.

Wetlands serve a valuable environmental function: providing a habitat for many species of fish and wildlife, storing floodwaters, and acting as a natural filter to improve water quality and help moderate local temperature and precipitation. Wetlands are also an important

breeding ground for waterfowl. Unfortunately, U.S. Army Corps of Engineers projects have destroyed much of the nation's wetlands over the last 90 years, and lavish agricultural subsidies have encouraged farmers to plow under millions of additional acres of wetlands. Although the nation has lost much of its wetlands, there is no evidence that the nation faces an imminent shortage of swampland. In fact, a 1991 survey by the Fish and Wildlife Service estimated that "from the late 1970s until the mid-1980s ... the U.S. actually gained 500,000 acres of wetlands a year."

From the early days of the republic, the U.S. government has claimed jurisdiction over all navigable waters in the nation. In 1972, Congress passed the Clean Water Act to, among other things, restrict the pollution of navigable waters. The Army Corps of Engineers received the power to approve or deny building permits on areas alleged to be wetlands, and Congress gave the EPA the power to veto Army Corps permits. In 1975, a federal judge revealed that the Clean Water Act also applied to wetlands that were adjacent to navigable waters.

In 1988, presidential candidate George H.W. Bush declared that "all

existing wetlands, no matter how small, should be preserved” and promised “no net loss” of wetlands if elected president. His promise was a go-ahead signal for federal regulators to greatly expand the definition of wetlands. On January 21, 1989, the EPA and the Army Corps of Engineers publicly released the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, which contained a new definition of wetlands that repudiated the numerous conflicting preceding definitions of wetlands promulgated by federal agencies. The new manual was written in secret; officials of several federal agencies met behind closed doors and effectively decided among themselves to claim jurisdiction over the property of hundreds of thousands of American landowners. This was a stark violation of the federal Administrative Procedures Act, which requires public notice and comment before a major federal regulation acquires the force of law.

Under the 1989 definition, land that was dry 350 days a year could be classified as a wetland. Even land that had no water on the surface could be classified as a “federal jurisdictional wetland.” Fairness to Land Owners, a Maryland advocacy group, estimated that the new

definition magically increased the amount of wetlands in the U.S. from roughly 100 million acres to 200 million acres. The vast majority of the new “paper wetlands” were owned by private citizens. Robert Pierce, an Army Corps of Engineers official who helped to write the 1989 manual, later observed, “Ecologically speaking, the term ‘wetland’ has no meaning; natural systems exist on a hydrologic gradient from ocean to desert. Somewhere in the middle are what society calls wetlands. For regulatory purposes, a wetland is whatever we decide it is. The type of natural systems that have been defined as wetlands has changed virtually every year for the last decade.”

Under the 1989 definition, land that was dry 350 days a year could be classified as a wetland.

Federal bureaucrats enforced the new definition with a vengeance:

- Ronald Angelocci dumped several truckloads of dirt in the backyard of his Michigan home largely because a family member had acute asthma and allergies that were severely aggravated by the plants

growing in the backyard. The Army Corps of Engineers decided to make an example of Angelocci, launched a full-court offensive, and had him jailed for violating the Clean Water Act.

- Ocie Mills, a Florida builder, and his son were sent to prison for two years for placing clean sand on a quarter-acre lot he owned.
- Rep. James Hayes observed, “In Nevada, [housing] developments in the midst of cactus and parched earth are now being classified as ‘wetlands’ because standing water can occur for seven days in a hole dug for a foundation. The fact that such a rain occurs very rarely no longer seems relevant in what was once considered a desert state, but which is now “The Great Wetlands State.”
- A small Oregon school district was hit by a federal lawsuit for placing clean fill to build a baseball-soccer field for its students, and had to spend thousands of dollars to remove the fill.

“Alice in Wonderland”

Congress specified in the Clean

Water Act that normal farming practices and operations should be exempt from federal controls. But the Army Corps of Engineers evaded that limit on its power by issuing a “clarification” of federal law that announced that, from the Corps’s perspective, cranberries, apples, blueberries, hay, and alfalfa are not agricultural commodities — and thus that those farmers were subject to the Corps’s control.

From the Corps’s perspective, cranberries, apples, blueberries, hay, and alfalfa are not agricultural commodities.

A Louisiana family wanted to use 80 acres of land to build a crawfish pond and spent \$35,000 to get the federal permits. But at the last minute, the EPA denied permission because “[high] quality habitats such as these provide food, shelter, nesting, and spawning areas to a wide variety of game and non-game fish and wildlife species including the red swamp crawfish.” Rep. Billy Tauzin of Louisiana denounced the EPA for “denying a permit to raise crawfish in an area they say should be used to raise crawfish. That is Alice in Wonderland reasoning there.” (EPA officials may have been so accustomed to denying permits that

they did not even read the application.) Federal officials in Arkansas prohibited farmers from constructing levees for rice production — even though it would increase the amount of wetlands.

The U.S. government sent Bill Ellen, a Vietnam veteran and marine engineer, to prison for building duck ponds.

Rep. Bill Brewster of Oklahoma complained of receiving a deluge of protests from Oklahoma residents over “the Army Corps of Engineers’ and the EPA’s intimidation of farmers and ranchers. Many private property owners who make their living off the land, and have for generations, are being told that they can no longer engage in normal ranching or farming activities. They have lost the ability to use their land to support their families.” Former Justice Department attorney William Laffer observed, “Any time the Army Corps or EPA thinks a parcel of land is beneficial to wildlife, they arbitrarily apply the wetlands definition to prohibit the owner from using the land.”

The U.S. government sent Bill Ellen, a Vietnam veteran and marine engineer, to prison for building duck ponds as part of a wildlife

sanctuary on Maryland’s Eastern Shore. Ellen began the construction of the wildlife sanctuary in 1988 after getting 38 government permits and having been advised by Army Corps of Engineers officials that the land was not classified as wetlands. In February 1989, armed with a new definition of wetlands, an Army Corps official reversed his position and arrived on the scene with a cease-and-desist order. Although Ellen ceased construction within 48 hours, the Army Corps still prosecuted him. Though environmental regulators tend to deify ducks, the Army Corps in this case claimed that Ellen was a polluter, in part because the ponds he constructed attracted ducks — which generated waterfowl fecal matter.

Though Ellen had created at least four times as many wetlands as he may have impaired, the U.S. government fought tooth and nail to send him to prison; a federal prosecutor demanded that “those who commit criminal environmental insults [should] come to learn and appreciate the inside of a federal correctional facility.” After the Army Corps had Ellen arrested, they dynamited his duck ponds to create a 400-yard channel connecting the land to a body of salt water — thereby destroying the environ-

mental benefits from his project.

Reasonable birds

The EPA and the Army Corps argue in court that their wetlands authority extends to almost every moist patch of land in the country larger than a few square feet. In April 1992, federal judge Daniel Manion struck down part of the EPA's expansive definition of wetlands. The EPA had imposed a \$50,000 penalty on Hoffman Homes Inc. for placing excavated dirt on "navigable waters" — eight-tenths of an acre in an isolated corner of its development near Chicago. Judge Manion noted, "The EPA claims jurisdiction over the intrastate wetland solely on the ground that migratory birds could, potentially, use the wetland as a place to feed, or nest or as a stopover on the way to the Gulf States for the winter months." (This standard is known as "the glancing geese" test. If passing geese glance down and consider stopping at a water hole, and the geese are on a flight that crosses state lines, then that water hole and the surrounding land become involved in interstate commerce and thus fall under federal jurisdiction.) Manion noted, "In fact, there is not even any evidence that migratory birds, or any other wildlife, actually

used [the area] for any purpose." The government appealed the decision, and the case was remanded to the same panel of Seventh Circuit judges. In the second decision, the judges narrowed the scope of their ruling, finding for Hoffman Homes but allowing the EPA to retain its "glancing geese" test. The court once again admonished the government, "After April showers not every temporary wet spot necessarily becomes subject to government control."

The EPA and the Army Corps argue in court that their wetlands authority extends to almost every moist patch of land in the country larger than a few square feet.

Unfortunately, the court's pretty words had no effect as force of law, so EPA officials continued claiming jurisdiction over areas on the basis of passing ducks. Lawyer Virginia Albrecht noted that the EPA invented its "glancing geese" test (referred to by the agency as the "reasonable bird" rule) in 1985. Although the rule was never officially announced as federal law, EPA officials applied the bird rule in thousands of cases. Because the EPA never formally announced the rule, a federal court in the Fourth Circuit struck it down in

1989. The EPA has repeatedly promised to formally promulgate the regulation, but it has never done so. It is still using the “glancing geese” test to claim jurisdiction over private land in most of the United States.

The 1989 wetlands regulations devastated the construction industry in many areas. In the New England and Seattle regions, the Army Corps of Engineers approved only 8 percent of applications for construction in late 1990 and early 1991 because of concerns of possible wetlands violations. In Chatham County, Georgia, near Savannah, the Army Corps did not issue a single construction permit between early 1989 and early 1991, and EPA officials ordered developers to tear down new houses after the agency decided that the Army Corps had mistakenly classified land as non-wetlands several years earlier. Hampton, Virginia, mayor James Eason said of the Corps’s sweeping findings of wetlands in his area, “It’s conceivable it could halt all development in the city of Hampton.” Bernard Goode, former chief regulatory official of the Army Corps, publicly complained that as a result of the 1989 manual, “the regulated sector was on the verge of anarchy.”

Wetlands classifications have al-

most totally nullified property value. A New Jersey judge ruled that the classification of a 240-acre tract of land near East Rutherford as wetlands officially lowered its assessed value from \$20 million to only \$1 million. The Southeast Planning District of Virginia estimated that the revised definition of wetlands could cut property values by \$50 billion in its area. Former White House environmental analyst Jonathan Tolman estimated, on the basis of one study of the effect of wetlands designations on property values, that wetlands rulings may cost local governments nationwide more than \$6 billion in lost property taxes a year.

James Bovard serves as policy advisor to The Future of Freedom Foundation and is the author of Attention Deficit Democracy (Palgrave, 2006), Lost Rights: The Destruction of American Liberty (St. Martin’s, 1994), and seven other books..

NEXT MONTH:
“The Federal Wetlands War,
Part 2”
by James Bovard

TIM KELLY

"DUE PROCESS"

ACCORDING TO THE OBAMA ADMINISTRATION



JUDGE



JURY



EXECUTIONER

Keynesians, Austrians, and the Continuing Economic Depression

Part 2

by *William L. Anderson*



The existence of business cycles — the boom-and-bust patterns — has puzzled economists. While Marx might have created a theory of why depressions occur, nonetheless there was nothing in Marxism to explain the boom period that preceded the bust. Furthermore, there was nothing in Marxism that could (at least coherently) explain the economic recoveries that came after the busts.

William Stanley Jevons of England, an outstanding economist who developed a theory of marginal utility (using calculus) in 1871,

had surmised that business cycles could come about because of sunspots. Jevons held that sunspots might cause changes in agricultural productivity, which then would lead to boom and bust cycles. While that might seem to be intriguing, given that economies at that time were agrarian in nature (although England and the United States were rapidly industrializing), his theories never gained traction and today are seen as having significance only in their historical context.

The first true systematic theory of boom and bust came from Ludwig von Mises in his book *The Theory of Money and Credit*, published in Vienna, Austria, in 1912. Mises was part of a line of economists from Vienna, beginning with Carl Menger in 1871, who solved the gnawing problem of the source of value and, at the same time, developed a systematic theory of economics that integrated money, consumption, production, and capital.

The classical economists of England held to a “cost of production” theory of value in which value in the short run was determined by supply and demand, but in the long run, the cost of production was the value source. Menger and his followers made short work of that fallacy by pointing out that the factors

of production gain their value from how consumers value the *final products* that the factors create. In his 1871 book, *Principles of Economics*, Menger noted that if demand for all tobacco products were to cease, then the factors that were used to create tobacco goods either would lose their value altogether or would have to be shifted to other uses.

Value, the Austrians argued, was determined by the *marginal utility* of a good, that is, the use for the available good that people might have. For example, Adam Smith was puzzled by the diamond-water paradox in which water, which is essential for life itself, had a low value in the marketplace, while diamonds, which at that time were ornamental at best, had very high values.

The Austrians solved this paradox by pointing out that the values of which Smith spoke were the values of those goods *on the margin*. In other words, the value for an available unit of water tended to be low because such units were available in large amounts. Diamonds, on the other hand, were rare, and therefore the available diamonds tended to be expensive.

Mises extended the theory of marginal utility to money itself

(something left out of most modern monetary theories), which enabled him to gain insights into the intricacies of a non-barter economy where standard money is used as the main medium of exchange. Money, Mises argued, was absolutely essential to modern civilization and the economies they supported, but *manipulation* of the money in circulation would create problems, including the boom-and-bust cycles.

Mises argued that manipulation of the money in circulation would create problems, including the boom-and-bust cycles.

The results of government monetary manipulation, from the great Roman inflations to periodic bouts with inflation in England and Europe, were well known, but Mises was able to derive a much larger picture of what happened during inflations. Economists generally understood that increasing the amount of money in circulation would result in higher money prices for goods. Indeed, when William Jennings Bryan in his 1896 U.S. presidential campaign ran on a platform of massive coinage of silver, he did so in the belief that such actions would raise agricultural

prices and farm income, thus making the American agricultural sector stronger, and a stronger agricultural sector would make the country as a whole more prosperous.

What Mises did in *Money and Credit*, however, was to examine the intricate effects of monetary expansion on the *factors of production*, and noted that increases in the supply of money would change the *relative values* of those factors. That meant that the profitability of certain lines of production would increase during inflation, while others would decrease. That was a breakthrough because the dominant way of thinking was that while inflation might result in higher prices, the results of inflation on production were mostly neutral. In other words, an increase in the supply of money might raise consumer prices but have only minimal effects on the decisions that producers would make.

By claiming that inflation also would drive the economy into different lines of production, Mises was able to develop a comprehensive analysis of how booms and busts came about. Far from the Marxian (and later the Keynesian) view that recessions were the result of systematic underconsumption that is endemic to a market econo-

my, Mises noted that when government monetary authorities, and especially central banks (such as the Federal Reserve System), sought to expand the money supply by pushing down interest rates, a distinct pattern would emerge, a pattern of what Austrians call *malinvestment*.

What Mises did in *Money and Credit*, however, was to examine the intricate effects of monetary expansion on the *factors of production*.

The Austrians define *malinvestments* as capital investments driven by inflation and borrowed money *that cannot be sustained*; the reason they are unsustainable is that consumer preferences point investment in a different direction than the inflation has moved them. At some point, producers find that they have invested in error and the capital investments they have made must either be abandoned or applied to uses that consumer choices can sustain.

For example, the United States experienced a huge boom in the late 1990s, as investors jumped on the dot-com bandwagon, assuming that the new Internet startups were going to take off and be enormously profitable. When that unalloyed op-

timism spread to the stock market, a number of dot-com firms had initial public offerings in which the overall value of their companies was well out of kilter with market fundamentals. In a word, their stocks became overpriced, but during the boom, people made huge amounts of money simply betting that future stock values would be higher.

However, that pattern clearly was unsustainable, as the companies ran out of investor money to spend and consumer preferences had not changed as the investors had anticipated. The dot-com boom turned into the “tech bubble” and ultimately a bust by 2001. The Austrian patterns of boom and bust were clear in this bubble, just as they would be clear in the development of the housing bubble that would dominate the first decade of the 21st century.

Time and again, Austrians in the tradition of Mises, Murray Rothbard, and F.A. Hayek (who won the 1974 Nobel Prize in Economics for his version of the Austrian theory of the business cycle) have identified the patterns of boom and bust, even if that recognition has been ignored by most of the economics profession and certainly modern politicians and jour-

nalists. However, Austrians have not only recognized the cause of those patterns, but have also prescribed the best *cure* for the economy once a crisis has begun.

Austrians believe that once governments have created an economic crisis through intervention, even more intervention will only make things worse.

Indeed, if Austrians are despised for pointing out that government monetary authorities are largely responsible for engineering the boom-and-bust cycle, they are even more hated for their advice on how to make the economy recover. In a recent article in *Slate*, Matthew Yglesias claimed that the Austrian prescription was “despair,” because Austrians say that government actions, such as pumping more money into the economy, are doomed to make things worse.

In fact, Austrians do believe that once governments have created an economic crisis through intervention, even more intervention will only make things worse. However, one can hardly call such realistic assertions episodes of “despair.” Instead, Austrians simply recognize that one does not cure a patient

who is bleeding to death by drawing out even more blood.

Austrians versus Keynesians on economic recovery

When Keynes wrote *The General Theory of Employment, Interest, and Money* in the 1930s, he borrowed heavily from Malthus, even acknowledging him along with other 19th-century underconsumptionists, such as Silvio Gesell. However, instead of calling Gesell a crank, given that he believed the economic solution to “underconsumption” was for government to issue currency with an expiration date, Keynes called him a prophet.

Like his predecessors, Keynes believed that recession was the ultimate end for a market economy, but he added a new term, “liquidity trap.” If an economy fell into a “liquidity trap” in which interest rates were low but there was little borrowing, then the only way the economy would ever find recovery was through massive amounts of direct government spending. To pay for its spending binge, Keynes argued, governments must borrow money and spend it directly until the economy would find its way back to recovery.

It was no surprise that Keynesian theory was a hit both with poli-

ticians (and especially politicians with a “progressive” bent) and academic economists. The popularity of Keynesianism with politicians goes without saying: by doing what they always want to do — spend tax money — they can become heroes. They can “put people back to work” and “create jobs” by the simple authorization of spending. Furthermore, their efforts are magnified by the praise coming from the progressive mainstream media.

The popularity of Keynesianism with politicians goes without saying: by doing what they always want to do — spend tax money — they can become heroes.

The Keynesian conquest of academic economics certainly was not due to its brilliance or even its actual plausibility. Instead, academic economists jumped on the Keynesian bandwagon because it helped raise their own status from simple theorists and analysts of economic activity to the lofty position of advising politicians, especially the president of the United States. Legislation in 1946 created the president’s Council of Economic Advisers, which is highly prestigious..

Furthermore, Keynesian theory gave the academic economists em-

ployed by the Federal Reserve System new status, as they became the people who helped pull the levers of the economy in order to help ensure full employment. Instead of issuing general statements about the economy (such as “Tariff rates are too high”), academic economists advising politicians could trot out mathematical models complete with multipliers and other tools that would demonstrate exactly how new policies would affect the economy (usually by helping it grow).

Over time, leadership of the Federal Reserve System itself fell to academic economists trained in Keynesian thought. For example, Ben Bernanke is a Ph.D. economist who once was the department chair at Princeton University, and Alan Greenspan and a number of previous Fed chairmen have held doctorates in economics. With the exception of Greenspan, who tended to lean with the political winds, all were well-versed in Keynesian economics from their graduate school years.

Over the years, the Austrians have emerged as the most vociferous and principled critics of the Keynesian paradigm. Mises roundly attacked it in *Human Action*, first published in 1949, while Henry

Hazlitt a decade later wrote a detailed line-by-line refutation of Keynes’s *General Theory*, noting acidly that “what is true” in the book “is not original,” and what was original “is not true.” In other words, far from holding that Keynes wrote a groundbreaking treatise which uncovered economic truths, Austrians have contended from the beginning that the emperor has no clothes.

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First, Austrians have pointed out that economies in past depressions, including those in 1837, 1873, 1893, and 1921, *did recover, despite the fact that governments did not ramp up spending or massively intervene.* That is hardly trivial, for Keynes argued that the downward spiral was contagious and self-perpetuating, so that without intervention it was inevitable that a depression would last indefinitely. Yet history did not back up his claims.

Mises, Hayek, and Rothbard noted that during the crisis, the malinvestments ultimately would be liquidated or transferred to profitable uses, and entrepreneurs would then find those areas of pro-

duction that could be sustainable. As the factors of production got back into an economic balance, there would be a recovery, and we see that historically recoveries would be quite strong despite the lack of government participation.

Second, the one downturn that lasted for a decade — the Great Depression of the 1930s — also featured the highest amount of government intervention that ever had occurred in U.S. history. One cannot exaggerate just how wide the interventions became, as the federal government first tried to organize the *entire* U.S. economy into a series of self-governing cartels, complete with administered prices and output, and then switched to vigorously enforcing antitrust laws and attempting to have most of the U.S. workforce unionized.

In fact, it can be said that there was very little economic freedom in the United States during the Great Depression and World War II. Governments at all levels ramped up spending and regulation according to Keynesian dictates, yet the nation's unemployment rate just before the United States entered World War II was still in double digits. It fell from a high of 25 percent at the beginning of 1933 to about 15 percent in 1935 and back

to 20 percent by the end of 1938. The Keynesian prescriptions to “fight unemployment” never came close to bringing the economy to full employment.

While Keynesians like to claim that World War II “ended the Great Depression,” it did no such thing, according to economist Robert Higgs.

While Keynesians like to claim that World War II “ended the Great Depression,” it did no such thing, according to economist Robert Higgs. In an often-quoted 1992 paper in *The Journal of Economic History*, Higgs pointed out that during the war years, millions of American men were shipped to battlefields in Europe and the Pacific to engage in combat and support roles that would hardly fall into a category of desired employment. Furthermore, he noted, the war years were a time of great deprivation on the home front, which meant that while people might have had jobs and money in their pockets, there was little they could spend it on and their consumption choices were severely limited.

Like people who supported communism, especially after World War II, Keynesians tend to view

prosperity as something determined by government statistics. If a nation's reported GDP figures are high and its reported unemployment numbers are low, then that economy officially is declared to be "prosperous." I saw that firsthand during a locally televised debate 30 years ago in Chattanooga. On one side was someone who had written his doctoral dissertation under Mises and on the other side was a Marxist who taught at a local state university.

When the free-market economist noted the very real and widespread deprivation that he observed during a recent tour of Romania, the Marxist professor retorted, "But there's no unemployment there." In other words, it did not matter that people in Romania were desperately poor and were living under a truly despotic and murderous regime, or that their economy functioned no better (and probably worse) than what one would expect in the Third World.

No, the only thing that mattered to the Marxist was that Romania's government reported that everyone

had a job. Therefore, on that point alone, the Marxist based his entire view of economics. Unfortunately, Keynesians who claim that World War II created "prosperity" in the United States and that all that is needed to end an economic downturn is a massive explosion in government spending really are no better than Marxists in their economic analysis. Whether the barbarians at the gate are Krugman's imaginary space aliens or real armies carrying real weapons does not matter. All that matters to Keynesians is that someone somewhere is spending money and "creating jobs."

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NEXT MONTH:

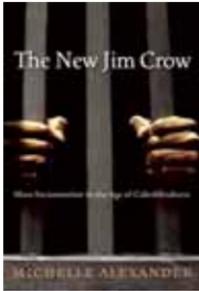
"Keynesians, Austrians, and the Continuing Economic Depression, Part 3"

by William L. Anderson

The Reality of American Race Oppression

by Anthony Gregory

The New Jim Crow: Mass Incarceration in the Age of Colorblindness by Michelle Alexander (New York: New Press, 2010); 312 pages.



Many Americans deny that their country is home to any serious problem of institutional racism. Segregation was abolished generations ago and slavery has been extinct nearly a century and a half. Those favoring smaller government often see that the race card is used by leftist politicians and agitators to push for more government, and recognize that unfair, politically correct accusations of racism are frequently thrown around without justification, doing great damage to civil

discourse. It is sometimes forgotten how much a threat racism itself continues to pose to liberty when backed up by the guns of the state.

In a presidential debate in South Carolina, Ron Paul echoed a theme he has repeated for years, that although much progress has been made in race relations, there remains one area where racism is still a major problem: the criminal-justice system. Juan Williams asked him, “Do you see racial disparities in arrests and convictions as a problem?” Paul responded, “It’s not that it’s my opinion. It’s very clear ... blacks and minorities involved with drugs are arrested disproportionately.” This is mostly true with “victimless crimes,” Paul said, although it is also reflected in other areas: “Rich white people don’t get the death penalty very often.”

Libertarians have condemned the Drug War’s racism for decades, looking back at the bigoted origins of the first federal laws against opium and marijuana, examining arrest and conviction rates, and noting the disparity between sentences levied for powder and crack cocaine. Yet it has not always been clear exactly how the racist element has persisted in the modern era, when most Americans are more openly anti-racist than ever. A fail-

ure to reconcile this paradox is at the root of both the right-wing attitudes that America's days of institutional racism are over and the left-wing attitudes that mainstream American society is as hopelessly racist in a conventional sense as ever before, the criminal-justice system merely being a symptom of that disease.

The New Jim Crow: Mass Incarceration in the Age of Colorblindness, by Michele Alexander, makes sense of it all. While I cannot endorse all of her political opinions, her analysis of the criminal-justice system's racism is indispensable for anyone attempting to understand our times, when we live under the first black president yet there are more blacks in prison than ever.

The criminal-justice system has become the primary mechanism of subjugating racial minorities in the United States.

First it must be understood that the criminal-justice system is “not just another institution infected with racial bias but rather a different beast entirely.” It has become the primary mechanism of subjugating racial minorities in the United States, and the numbers are staggering. A higher percentage of

blacks are behind bars in the United States than there were in South Africa at the height of apartheid. “One in three young African American men will serve time in prison if current trends continue, and in some cities more than half of all young adult black men are currently under correctional control — in prison or jail, on probation or parole.”

Racial caste systems in American history

Alexander briefly tells the story of racial oppression in the United States going back to colonial times. The very notion of racial distinctions is tied up with a legacy of persecution: “[The] idea of race emerged as a means of reconciling chattel slavery — as well as the extermination of the American Indians — with the ideals of freedom preached by whites in the new colonies.” Because the Declaration of Independence and Constitution touted such lofty ideals about liberty, a racial mythology was necessary. Racism was as much a product of slavery, which came about for economic and political reasons, as it was a cause of it. The emphasis on race became increasingly important as a means of the powerful elite to divide poor powerless whites against slaves to prevent a class con-

sciousness from emerging among all the disenfranchised against the privileged.

After the Civil War and Abolition, black codes were implemented to keep blacks in their submissive place.

After the Civil War and Abolition, black codes were implemented to keep blacks in their submissive place. “One vagrancy act specifically provided that ‘all free negroes and mulattoes over the age of eighteen’ must have written proof of a job at the beginning of every year. Those found with no lawful employment were deemed vagrants and convicted.” Those who could not pay fines to the very state that imprisoned them were forced back into slavery: “With no means to pay off their ‘debts,’ prisoners were sold as forced laborers to lumber camps, brickyards, railroads, farms, plantations, and dozens of corporations throughout the south.” It is no exaggeration to say that this was the continuation of slavery by other means. A Virginia Supreme Court decision found that a convicted man was “for the time being a slave to the State.”

Again there was a risk, in the late nineteenth century, that poor

whites would form a populist movement with disenfranchised blacks, but they ended up co-opted by conservatives and the class realignment never came. It was through government action that the caste system would be solidified and the era of Jim Crow was born:

By the turn of the twentieth century, every state in the South had laws that disenfranchised blacks and discriminated against them in virtually every sphere of life, lending sanction to a racial ostracism that extended to schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisoners, funeral homes, morgues, and cemeteries.

As the twentieth century progressed, the federal government began intervening to overturn state segregation, although that led to a backlash. Tens of thousands of activists were jailed. The KKK was re-born. The Civil Rights Act and federal court cases overturned official racism, but soon enough “the seeds of the new system of control — mass incarceration — were planted during the Civil Rights movement itself, when it became clear that the

old caste system was crumbling and a new one would have to take its place.” In the guise of “law and order” and cracking down on crime, there was a new resentment against blacks — largely felt by working-class whites who had suffered far more disruption by Civil Rights measures, such as forced busing, compared to the “affluent white liberals who were pressing the legal claims of blacks and other minorities.” Today, decades later, while segregation and legal discrimination have long since been abolished, “it is not at all obvious that it would be better to be incarcerated for life for a minor drug offense than to live with one’s family, earning an honest wage under the Jim Crow regime — notwithstanding the ever-present threat of the Klan.”

Drug War and criminal-justice system evils

We must recognize that the criminal-justice system, particularly the Drug War, disproportionately hurts poor minorities. But first it may be beneficial to appraise the overall reach of the problem and how it affects us all. “In less than thirty years,” since the modern drug war began, “the U.S. penal population exploded from around 300,000 to more than 2 million, with drug

convictions accounting for the majority of the increase.” The incarceration rate in the United States is “six to ten times greater than that of other industrialized nations — a development directly traceable to the drug war.”

The criminal-justice system, particularly the Drug War, disproportionately hurts poor minorities.

The Drug War was not demanded by the people but imposed by politicians, especially Ronald Reagan, who whipped up hysteria:

At the time he declared this new war, less than 2 percent of the American public viewed drugs as the most important issue.... Participation in the drug war required a diversion of resources away from more serious crimes, such as murder, rape, grand theft, and violent assault — all of which were of far greater concern to most communities than illegal drug use.

By 1989, the Drug War had won over the population. A major poll found that “64 percent ... now thought that drugs were the most

significant problem in the United States.”

The 1980s saw a rapid rise in federal Drug War spending and power. “Between 1980 and 1984, FBI antidrug funding increased from \$8 million to \$95 million. Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1,042 million in 1991.” Penalties for victimless crimes became increasingly draconian. “Prior to the Drug Reform Act of 1986, the longest sentence Congress had ever imposed for possession of any drug in any amount was one year. A life sentence for a first-time drug offense is unheard of in the rest of the developed world.”

Civil liberties have of course taken a hit. Alexander has a great summary of the many ways searches and seizures and asset forfeiture have expanded the police state to the detriment of liberty. Under Reagan, “state and law enforcement agencies were granted the authority to keep, for their own use, the vast majority of cash and assets they seize when waging the drug war.” Fourth Amendment standards once seen as sacrosanct have been discarded. The rule of law has been destroyed, as innocent people are turned into informants and witnesses and people are intimidated

into pleading guilty to avoid ridiculously draconian sentences. Sometimes, guilty suspects share confiscated assets if they rat on others. Meanwhile, the system is heavily tilted against the poor. “Two-thirds of people detained in jails report annual incomes under \$12,000 prior to arrest” — they cannot afford private lawyers and the public ones they are assigned will often meet with them for literally a few minutes before striking deals with the prosecution.

Alexander has a great summary of the many ways searches and seizures and asset forfeiture have expanded the police state to the detriment of liberty.

Americans are sentenced to life for selling marijuana while being in possession of guns, even if no violence is committed or threats made. One man got ten years for giving a ride to a drug dealer. Property crimes are sometimes disproportionately punished, too: “Fifty years to life was the actual sentence given to Leandro Andrade for stealing videotapes, a sentence upheld by the Supreme Court.”

The police in nearly every city and town have been federalized and militarized. The trend has been es-

pecially bad under Democrats Bill Clinton and Barack Obama. “Clinton escalated the drug war beyond what conservatives had imagined possible a decade earlier.... Clinton — more than any other president — created the current racial under-caste.” Funding for “drug task forces had begun to dwindle during George W. Bush’s tenure, but Obama, as a presidential candidate, promised to revive” the program. Obama’s stimulus program “included more than \$2 billion in new Byrne funding and an additional \$600 million to increase state and local law enforcement across the country.”

The police in nearly every city and town have been federalized and militarized.

Today’s criminal-justice system has also brought back the debtors’ prison. Alexander gives an account of a woman who was detained in a Diversion Center “because she owed a \$705 fine” to the court system. “As part of the diversion program, Hurley was permitted to work during the day and return to the center at night.... Room and board at the diversion center was about \$600, and her monthly transportation cost \$52.” If she had \$700

she could have bought her freedom, but she was stuck month after month in this dystopian situation.

Law enforcement as race oppression

The swelling of the prisons and its racial disparities cannot be attributed to differences in violent crime rates, Alexander argues, pointing out, for example, that only 7.9% of federal prisoners are there for violent crimes. And she provides ample evidence that minorities are disproportionately hurt by the system, especially the Drug War. In Georgia, 98.4 percent of those serving life sentences were blacks. Over a three-year period, there were more than 2,000 federal crack-cocaine prosecutions — all but 11 of the accused were black; none were white. In 2000, blacks were “more than six times as likely as whites to be sentenced to prison for identical crimes.” In seven states in 2000, blacks were “80 to 90 percent of all drug offenders sent to prison.” Prison admissions for blacks increased by a factor of 26 from 1983 to 2000.

“[Studies] suggest that white professionals may be the most likely of any group to have engaged in illegal drug activity in their lifetime, yet they are the least likely to be made criminals.” Black youth are

far more likely to be severely punished for drug dealing than white youth, even though “[the] National Household Survey on Drug Abuse reported in 2000 that white youth aged 12–17 are more than a third more likely to have sold illegal drugs than African American youth.” Moreover, whites are “actually more likely than people of color to be carrying illegal drugs or contraband in their vehicles,” yet they are much less likely to be pulled over and searched than blacks or Latinos. In many neighborhoods, black youth reflexively stand waiting to be frisked when police drive by, a condition reminiscent of the days “when black men were expected to step off the sidewalk and cast their eyes downward when a white woman passed.”

A few factors explain the racial gap. Police disproportionately search for drug criminals in poor minority neighborhoods. Prosecutors have the most discretion of anyone in the system, and they tend to be lenient to whites and hard on blacks. White suspects are far more successful in plea agreements. Then there is the effect on juries: “[Thirty-one] states and the federal government subscribe to the practice of lifetime felon exclusion from juries. As a result, about 30 percent of

black men are automatically banned from jury service for life.” In addition, prosecutors tend to excuse blacks from the jury pool, using shoddy excuses or none at all.

The image of a drug offender conjured up by most in society tends to be a black person, even though whites are as likely to violate drug laws.

Alexander argues, fairly convincingly, that street criminality has in modern American culture become a major element of “what it means to be black” — at least according to perceptions. The image of a drug offender conjured up by most in society tends to be a black person, even though whites are as likely to violate drug laws — this misconception only reinforces the institutional bigotry. It also explains such disparities in the way illegal drugs are treated compared to drunk driving:

The total of all drug-related deaths due to AIDS, drug overdose, or the violence associated with the illegal drug trade, was estimated at 21,000 annually — less than the number of deaths directly caused by drunk drivers, and a small fraction of

the number of alcohol-related deaths that occur every year.

Alexander makes a fairly persuasive case that the whole purpose of the drug war was to wage war on minorities in the guise of race-neutral policy. Ironically, she argues that the attempt to be colorblind makes the problem worse, since we can't challenge it on a racial basis. But, as she points out, the ways in which the Drug War are not specifically racist apply somewhat to Jim Crow, too:

Although it is common to think of Jim Crow as an explicitly race-based system, in fact a number of the key policies were officially colorblind. As previously noted, poll taxes, literacy tests, and felon disenfranchisement laws were all formally race-neutral practices.

She also urges readers to understand that Drug-War supporters are not racist in a traditional sense — but the effect of the policy is just as racist. “We, as a nation, seem comfortable with 90 percent of the people arrested and convicted of drug offenses in some states being African American, but if the figure were 100 percent, the veil of colorblind-

ness would be lost.”

Another confusion comes in thinking that the Drug War is not as bad as Jim Crow because it punishes only those who choose to do drugs.

But herein lies the trap. All people make mistakes. All of us are sinners. All of us are criminals. All of us violate the law at some point in our lives. In fact, if the worst thing you have ever done is speed ten miles over the speed limit on the freeway, you have put yourself and others at more risk of harm than someone smoking marijuana in the privacy of his or her living room.

All in all, nothing has devastated the black community more than the Drug War:

Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire, but because they are warehoused in prisons, locked in cages. They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

More African American adults are under correctional control today — in prison or jail, on probation or parole — than were enslaved in 1850.

Solutions and implications

Alexander writes, “If we hope to return to the rate of incarceration of the 1970s — a time when many civil rights activists believed rates of imprisonment were egregiously high — *we would need to release approximately four out of five people currently behind bars today.*”

While many focus on the election of a black man or affirmative action, issues the author thinks are in many ways distractions from bigger issues, the true racial oppression of our time has largely been ignored, both by whites who don't tend to see it as nearly on the level that Jim Crow was and by an official Civil Rights movement that puts the criminal-justice system very low on its priority list. Alexander urges all Americans, of all races, to see the criminal-justice system and Drug War as a huge blight on all of society, and the greatest racial injustice of our time.

The author has some left-liberal views I don't share on government programs — education, health care, and welfare. But they are in many instances incidental to her analysis. This book contains a tremendous amount of insight, important history, and arguments that must be taken seriously. Nothing is a bigger domestic catastrophe in modern American life than the correctional system and Drug War. Repealing the drug laws and slashing the police state as much as she recommends — if not more so — would be the greatest triumph of American liberty in a lifetime, and a blow against racism as significant as the end of Jim Crow, if not the abolition of slavery.

Anthony Gregory is research editor at the Independent Institute and is currently writing a book on individual liberty and the writ of habeas corpus. He is a policy advisor for The Future of Freedom Foundation and a columnist at LewRockwell.com. His website is www.AnthonyGregory.com.

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