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Great men are they who see that spiritual is stronger than material force, that thoughts rule the world.

— *Ralph Waldo Emerson*

FUTURE OF FREEDOM

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The Evil of the National-Security State

Part 5

by *Jacob G. Hornberger*



Americans should have suspected that something was amiss when, after the end of World War II, U.S. officials began enlisting former Nazis into the service of the U.S. government. Given the massive death and destruction of World War II and the Holocaust, Nazi Germany was obviously one of the most evil regimes in history. That's in fact one of the major justifications given for America's entry into World War II — to bring an end to that evil regime.

Yet here were U.S. officials recruiting and employing Nazis. The reason? The Cold War had started! While the Allies had vanquished

Nazi Germany, they simultaneously acquired a new official enemy — the Soviet Union, which had served as their ally and partner during the war.

The U.S. embrace of Nazi functionaries signaled what would become a guiding motif for the U.S. national-security state: The end justifies the means. Whatever needed to be done to defeat communism — as represented primarily by the Soviet Union but also by Red China and North Korea — was considered morally justified. It was a motif that would ultimately lead to the embrace of policies that, ironically, characterized totalitarian regimes, including Nazi Germany and the Soviet Union.

Consider, for example, the CIA's highly secret drug experiments, a program known as MKULTRA. Under that program, the CIA subjected unsuspecting Americans to LSD and other mind-altering substances. They did it to people in hospitals, to people in prisons, and to others, with the knowledge and cooperation of officials in those facilities, always under a vow of secrecy. What they didn't have was the consent of many of the people to whom they were administering the drugs.

What was the justification for

those drug experiments, which somewhat resembled the medical experimentation that had been undertaken by the Nazis? Why, national security, of course. Pentagon and CIA officials had learned that the Soviet Union was conducting LSD experiments on people. Therefore, U.S. officials concluded that in order to keep up with the communists and ultimately defeat them, it was necessary to do the same thing. In war, sometimes people have to be sacrificed. The end justifies the means.

It is impossible to know how many people's minds were damaged or destroyed or, indeed, how many people were killed, by the CIA's drug experiments. When information about the program became public, the CIA destroyed most of its MKULTRA files, no doubt on the grounds of national security. After all, if the public and the world were to learn the details of MKULTRA, including the identities of the victims, the CIA could be damaged, which, in the minds of national-security-state officials, would logically threaten national security.

One of the best accounts of MKULTRA is found in the book *A Terrible Mistake: The Murder of Frank Olson and the CIA's Secret Cold War Experiments*, by H.P. Al-

barelli Jr. (2011). This fascinating and gripping book recounts the life and death of a CIA agent named Frank Olson.

It was discovered that the CIA had actually subjected Olson to an LSD experiment without telling him or asking him.

For years, the CIA's official story was that Olson had taken his own life while suffering the throes of depression. It was all a lie. Many years after Olson's death, it was discovered that the CIA had actually subjected him to an LSD experiment, without telling him or asking him.

Once that truth came out, the CIA's official story changed. Under its new story, it acknowledged that it had in fact drugged Olson without his knowledge or consent. Thus, it said that Olson was suffering from both hallucinations and depression as a result of the LSD experiment on him, which supposedly led to his jumping out of a window from an upper floor of a New York City hotel. Under the new official story, the CIA deeply regretted what it had done and apologized profusely to Olson's widow.

Why would the CIA subject one of its own employees to an LSD ex-

periment? Why, national security, of course. The CIA wanted to see how someone would react if he ingested LSD without being told in advance, information that could enable the United States to defeat the Soviet Union in the Cold War.

The natural question arises: Why would the CIA feel the need to do that to one of its agents, when that was precisely what it was doing to patients and prisoners in hospitals and prisons?

In his carefully researched book, one that relies on confidential sources within the CIA, Albarelli provides a convincing case showing that the CIA's new official story was also a lie and that, in fact, it was a fallback position to disguise the CIA's murder of Frank Olson.

Why would the CIA murder one of its own agents? Why, national security, of course. Albarelli's research disclosed that Americans were not the only ones who were the subject of the CIA's LSD experiments. He points to a small village in France, Pont St. Esprit, that in 1951 became a target of the CIA's LSD experiments. The experiment resulted in the death of five people and in the need for 300 people to seek medical care or to be placed in treatment facilities.

According to Albarelli, Frank

Olson had participated in that horrifying LSD experiment and was deeply troubled about it. Ultimately, in a crisis of conscience, he disclosed the highly classified secret to an unauthorized person.

If people were to find out about the CIA's LSD experiment on an entire village in France, that would damage the CIA, which in turn would threaten national security.

In other words, Olson knew too much and talked too much. He had become a threat to national security. If people were to find out about the CIA's LSD experiment on an entire village in France, that would damage the CIA, which in turn would threaten national security. There was no effective choice. In order to protect national security, Olson had to be eliminated. Albarelli's sources revealed that Olson didn't jump out of a window. He was thrown out of it, by two men working for the CIA.

Undeclared war

There were also several regime-change operations in different parts of the world, where agents of the national-security state initiated what can be described only as undeclared attacks on foreign regimes,

with the goal of ousting their rulers from power and replacing them with U.S.-approved rulers — all under the notion that national security required that such operations be conducted.

In 1953, the CIA instigated a coup in Iran that succeeded in ousting the democratically elected prime minister, Mohammed Mossadegh, from power and replacing him with the brutal dictatorial regime of the shah of Iran. Needless to say, in justifying its coup, the CIA cited national security, saying that Mossadegh had been leaning toward communism and the Soviet Union. Never mind that British officials had asked the CIA to oust Mossadegh owing to his nationalization of British oil interests.

One year later, 1954, the CIA ousted the democratically elected president of Guatemala, Jacobo Arbenz, and installed a brutal unelected military dictatorship in his stead. The justification? National security, of course. U.S. national-security-state officials maintained that Arbenz was a communist, as reflected by his socialist economic policies and his sympathies for Guatemalan communists, some of whom were serving in his administration. Never mind that some high CIA officials and some members of Con-

gress owned stock in the United Fruit Company, some of whose land in Guatemala was being seized and redistributed to the poor. U.S. officials were convinced that the national security of the United States would be severely threatened if a communist regime were permitted to exist in the Western hemisphere. When Arbenz was caught purchasing weaponry from the Soviet satellite state of Czechoslovakia, his fate was sealed.

Agents of the national-security state initiated undeclared attacks on foreign regimes, with the goal of ousting their rulers from power and replacing them with U.S.-approved rulers

It is interesting that defenders of the national-security state justify the CIA's Guatemala coup by claiming not only that it protected U.S. national security but also that it saved Guatemala from tyranny and destruction at the hands of a communist regime. Their argument is that a country's laws and constitution are not a suicide pact. Moreover, voters make mistakes, and if illegal means are necessary to save a country from such mistakes, then it is right and proper that such means be employed. The end justifies the

means.

Arbenz was lucky. By fleeing the country early in the coup, he saved his life. It later turned out that among the CIA's contingency plans were his assassination and those of other Guatemalan officials.

There were the countless regime-change operations against Cuba, a country that had never attacked the United States, including the Bay of Pigs invasion, terrorist attacks on Cuban soil, the U.S. embargo against Cuba, and, of course, the many assassination attempts against Fidel Castro and other Cuban officials.

There is every reason to believe that the CIA was behind the extrajudicial execution of Che Guevara, one of Castro's fellow communist revolutionaries.

In fact, there is every reason to believe that the CIA was behind the 1967 extrajudicial execution of Che Guevara, one of Castro's fellow communist revolutionaries. After he was taken into custody by the Bolivian military, Guevara's captors executed him on orders from above. The killing was a grave violation of international law. While the CIA has always denied any role in the illegal execution, the fact is that a

CIA agent was present during the execution. Given the subservient nature of most Latin American regimes to the U.S. military, which has long supported and trained Latin American troops, the chances that the Bolivian military would have executed Guevara in the face of ardent opposition by the CIA are nil. Moreover, given that Guevara was on the CIA's assassination list, the chances that it would have objected to his extrajudicial execution are also nil. Finally, soon after the execution the CIA issued a report detailing the benefits of Guevara's death.

The CIA's participation in another extrajudicial execution had occurred in South Vietnam a few years previous to the Che Guevara execution. A few weeks before the John Kennedy assassination, a CIA-supported military coup succeeded in ousting the South Vietnamese president, Ngo Dinh Diem, from power. Soon after Diem was taken into custody, South Vietnamese military forces executed him. While the CIA denied any role in the assassination, there is little doubt that the South Vietnamese military would never have done it if the CIA had fiercely opposed it.

It is not surprising that the CIA-supported regime-change opera-

tion in South Vietnam was justified by the claim of national security. Diem's authoritarian regime — a regime that was long supported by the U.S. government — was so brutal and corrupt that it increased the odds of a communist takeover of South Vietnam. If the communists took over South Vietnam, that presumably would cause Southeast Asian “dominoes” to start falling, which would ultimately mean a communist takeover of the United States. Thus, the idea was that national security required Diem's ouster.

Support for dictatorships

Support for brutal Latin American dictatorships, especially military ones, was another policy of the U.S. national-security state. Often pro-U.S. dictatorships were more brutal than communist ones. Like the shah's pro-U.S. regime in Iran, the pro-U.S. dictatorships in Latin America, especially the military dictatorships, brutalized their own people — torturing them, “disappearing” them, and killing them with U.S.-trained military and intelligence forces. Whenever citizens who were suffering under such brutal dictatorships resisted the U.S.-supported tyranny under which they were suffering, they were con-

sidered communists and terrorists who needed to be captured, tortured, executed, or otherwise suppressed. National security required it.

Often pro-U.S. dictatorships were more brutal than communist ones.

U.S. officials didn't care what their puppet regimes did to people within their own countries. After all, national security requires order and stability, which is, in fact, why the U.S. national-security state has always leaned toward pro-U.S. military dictatorships.

In fact, when American citizens became the victims of torture at the hands of U.S.-trained military or intelligence goons in Latin America, U.S. officials were noteworthy for their lack of interest. One example involved the torture and rape of an American nun, Sister Dianna Ortiz, who stated that present during her ordeal was a man who spoke Spanish with an American accent. Needless to say, no subpoena was ever served by Congress or the Justice Department on the CIA demanding the production of all CIA agents operating in Guatemala during the time that Sister Dianna was tortured and raped. Obviously, revealing the identities of such agents

would have threatened national security; therefore Sister Dianna was simply left to adjust to her unfortunate experience without any expectation of justice from the U.S. government.

A similar example involved an American woman named Jennifer Harbury, who married a Guatemalan insurgent, Efraim Bamaca Velasquez, who was resisting the tyranny of the U.S.-supported military dictatorship in Guatemala. Bamaca was captured by Guatemalan forces and was “disappeared.” Harbury attempted to locate him and save his life through a series of hunger strikes and legal actions.

The CIA not only knew where Bamaca was but also had a close working relationship with his torturers and killers.

Through it all, the CIA claimed to have no information about Bamaca’s whereabouts. It turned out to be a lie. A U.S. State Department official blew the whistle and disclosed not only that the CIA knew where Bamaca was but also that it had a close working relationship with his torturers and killers. By the time Harbury acquired that information, Bamaca had been killed by his captors, another grave violation

of international law. The CIA retaliated against the whistleblower by ensuring that he lost his security clearance, which was essential to his position at the State Department.

And at home ...

In the United States itself, the preoccupation with communism and communists caused the national-security state to take extraordinary actions against the American people, actions that constituted severe violations of the principles of freedom.

First of all, there were investigations and accusations of Americans who were suspected of having connections to communism and the Communist Party. Reputations and careers were ruined on the supposition that anyone who believed in communism or had believed in communism during some part of his life was obviously a threat to national security.

Only a few people had the courage to point out that a free society protects the rights of people to believe anything they want, associate with whomever they want, and to promote anything they want, no matter how despicable such beliefs and associations might be to others. After all, to defend the right of peo-

ple to be communists subjected the defender to the charge of being a communist.

Both the FBI and the CIA illegally spied on and closely monitored the activities of American citizens. Secret files were kept on people, often detailing nothing more than their sexual activity or other personal matters, with the aim of blackmailing them, embarrassing them, or destroying them.

**In the mind of the ordinary
national-security-state official,
such practices were evil
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or communists.**

Of course, those were the sorts of things that were done by the Gestapo and that were being done by the KGB. In the mind of the ordinary national-security-state official, however, such practices were evil only when committed by Nazis or communists, not when they were committed by U.S. officials, who were charged with the difficult and dangerous task of protecting national security from people like the Nazis and the communists. The end justified the means.

In fact, the communist scare started long before the formal advent of the national-security state.

As Americans were later to find out, the federal government was keeping secret files on Americans suspected of being communists as far back as World War I, when U.S. officials were raiding, busting, and prosecuting communist-socialist organizations and deporting foreign residents for having communist views.

Among the most famous of the victims during that time was a Russian immigrant named Emma Goldman, who was arrested and deported for advocating anarchy and communism. She described her thoughts as she was involuntarily departing New York harbor: “It was my beloved city, the metropolis of the New World. It was America, indeed America repeating the terrible scenes of tsarist Russia! I glanced up — the Statue of Liberty!”

Among the national-security state’s favorite tactics during the Cold War was to plant “moles” within communist organizations, with the goal of getting their membership lists, spying on them, and looking for evidence of subversion and treason. If a person were caught doing something illegal, sometimes he’d be promised leniency if he agreed to become a spy for the national-security state.

Hardly anyone noticed the totalitarian nature of those extraordi-

nary “national security” measures. That didn’t matter. What mattered was the defeat of communism. Anything that had to be done to achieve victory was justified. The end justified the means. If the United States was doing it, it had to be good, since it was being done to defeat communism.

Two organizations that the U.S. national-security state was determined to destroy were the U.S. Communist Party and an organization called the Fair Play for Cuba Committee, an organization that included many mainstream Americans who were sympathetic to the communist-socialist revolution in Cuba. U.S. officials successfully planted moles in both organizations. Such moles were trained by the national-security state to falsely portray themselves as communists. They were so well-trained that they successfully fooled people in those organizations into believing that they were genuine communists.

Meanwhile, at the height of the Cold War, as the U.S. national-security state was doing everything it could to destroy communists, one of the most mysterious episodes in the history of the national-security state occurred, an event that can be described as a Cold War miracle.

An American man who suppos-

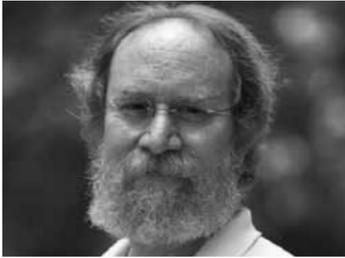
edly attempted to defect to the Soviet Union and promised to divulge to the Soviet communist regime all the information that he had acquired during his time in the U.S. military — a man who later returned to the United States and then openly started a chapter of the Fair Play for Cuba Committee — a man who openly corresponded with the U.S. Communist Party — a man who was a self-described Marxist — a man who supposedly visited the Soviet and Cuban embassies in Mexico with the intent to re-defect to the Soviet Union — sauntered across the Cold War stage with not even a single grand-jury subpoena, much less arrest, torture, incarceration, or criminal prosecution at the hands of the U.S. national-security state. That man was a former U.S. Marine named Lee Harvey Oswald.

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

NEXT MONTH:
“The Evil of the National-Security State, Part 6”
by Jacob G. Hornberger

The Market and Uncertainty

by Sheldon Richman



Relying on the mass media for accurate economic analysis is like relying on a mobile home for shelter from a tornado. It's a rather bad idea. Two items in the news demonstrate this beyond a shadow of a doubt: JPMorgan Chase's big loss last spring and the role of private equity in an economy.

It's widely believed that JPMorgan Chase's recent \$2 billion-plus loss proves we need the comprehensive banking regulation called for by the 2010 Dodd-Frank law.

That belief is wrong.

In thinking about the loss, remember that the future is always uncertain. It's easy to look back on a bad decision — especially someone else's bad decision — and claim the mistake was preventable. The no-

tion that regulators have knowledge superior to that of people acting in the marketplace is ridiculous. Economic activities are based on local and often unarticulated knowledge that regulators could never acquire. It's a fallacy to think that because imperfect human beings make mistakes, government oversight is necessary. Government also is populated by imperfect human beings, and, on top of the usual fallibility, they also suffer from this particular "knowledge problem," as identified by Nobel-laureate economist F.A. Hayek.

But that is not all they suffer from. Even if we ignore the knowledge problem, we must confront the incentive problem. What reason do we have for believing that government regulators would do the right thing even if they knew what it was? Political economists have been aware of the principle of "regulatory capture" for many years. It refers to the near-inevitability that a regulated industry will have far more influence over a regulatory body than anyone else. Often the industry has a hand in writing the rules, which is what is going on with the writing of the myriad Dodd-Frank rules now under way. Regulators cannot be assumed to be as pure as the driven snow. Many

come out of the regulated industry and plan to return when they retire from government “service.” Regulation is fraught with such perils, which those who see government as an all-knowing, all-good deity routinely overlook.

Guarantees and private-equity firms

A further error made by those who see a panacea in regulation is the belief that banks can harm us because government has kept its hands off. That couldn't be less true. Throughout American history governments at all levels have partnered with banks, ostensibly in the public interest but actually in the interest of the bankers.

Commenting about JPMorgan's loss, Barack Obama stumbled onto the truth — but didn't realize it — when he said that, since the taxpayers could be on the hook for large bank mistakes, vigilant regulation is needed. But why are the taxpayers on the hook?

The most important thing to understand about the banking industry is that the government maintains a safety net of guarantees in case a big bank stumbles. And it is that safety net which makes the stumbling more likely. This is known as “moral hazard.” A bank with a government guarantee will

be less careful than a bank without one. The crisis of 2008 is a textbook case study in banking moral hazard.

A bank with a government guarantee will be less careful than a bank without one.

One government guarantee has mostly been overlooked: federal deposit insurance. It's the sacred cow of banking programs, which originated in the New Deal, even though Franklin Roosevelt feared it would encourage bank irresponsibility. (Unfortunately, he signed the bill anyway.) The FDIC is usually thought of as a guarantee for bank depositors, but in reality it is a massive privilege for banks. If government assures depositors that they cannot lose a penny in their bank accounts, they no longer need to be wary about their banks' conduct. Why worry, if the FDIC will make good? But that guarantee eliminates the customer scrutiny that would otherwise keep banks prudent. No promises by regulators can match depositor vigilance in reining in banker recklessness. (In a competitive market, nothing would prevent the offering of private insurance or other devices to prevent bank runs.)

Roosevelt was right:

The general underlying thought behind the use of the word “guarantee” with respect to bank deposits is that you guarantee bad banks as well as good banks. The minute the Government starts to do that the Government runs into a probable loss.... We do not wish to make the United States Government liable for the mistakes and errors of individual banks, and put a premium on unsound banking in the future.

The only way to minimize systemic damage from banking without stifling productive innovation is to end all guarantees and all barriers to competition. Free-market advocates must emphasize that deregulation is not enough. It must be combined with the removal of all privileges accorded the banking and finance industry, from the most explicit to the most implicit. Eliminating restrictions without also eliminating guarantees and bailouts is an injustice against the taxpayers, as Rep. Ron Paul understood in 1999 when he voted against Gramm-Leach-Bliley, the bill to repeal parts of the New Deal Glass-Steagall law, which separated commercial from investment banking. Libertarians must think dialectical-

ly: that is, they must not fail to look at things in their full context and realize that many government interventions are interrelated. In other words, what may look like a step in the direction of free markets may not be.

Eliminating restrictions without also eliminating guarantees and bailouts is an injustice against the taxpayers.

The other hot economic item in the news is the role of private-equity firms, the best-known of which at the moment is Bain Capital, founded and run by Republican presidential candidate Mitt Romney before he went into politics. Romney's primary opponent Newt Gingrich charged Romney with engaging in job-destroying activities when he was at Bain's helm, undercutting Romney's claim that he was a job-creator. That charge has now become a central theme of Obama's reelection campaign. Obama argues that since Romney has offered his business credentials, specifically as a job-creator, as his top qualification to be president, his record at Bain is fair game. That record, Obama and his supporters argue, shows that Bain created wealth for its investors but not jobs, and in fact

that it presided over the bankruptcy of companies, leading to job losses.

I will make no judgment of Bain. That would require looking deeply at its particular projects and sorting out allegations that it stiffed workers who had contractual agreements with their companies for retirement and medical benefits. I will note that in all that has been said about Bain, I have not heard anyone say it broke the law or breached a contract. Nevertheless, I pass no judgment on Bain *per se*.

A business is the embodiment of someone's plan for the production of goods that satisfy a consumer demand.

Rather, I want to examine the claim that private-equity firms “create wealth not jobs.” Further, I want to say something about the impression that if a company is taken over and then downsized or even later closed, something unseemly has taken place.

A private-equity firm is one that, among other things, pools investors' money in order to, as Wikipedia puts it, “[provide] working capital to a target company to nurture expansion, new product development, or restructuring of the company's operations, manage-

ment, or ownership.” That's a fairly wide range of purposes, so let's zero in on the restructuring aspect.

In a free market, what makes the activities of private equity possible is human fallibility.

Scarcity and fallibility

As the Austrian school of economics emphasizes, purposeful human action entails the execution of plans in a state of uncertainty about the future. A business is not merely a loose collection of land, machines, materials, and workers. It is the embodiment of someone's plan aimed at the production of goods that will (ultimately if not immediately) satisfy a consumer demand. As noted, plans are always formulated in the fog of ignorance, specifically uncertainty about the future. A business assembled according to a plan at one time may, because of new knowledge, look like a foolish idea at another time. If so, what should the business do? Persist no matter what? That would be futile because it would lead to bankruptcy and perhaps extinction of the firm. Adjustment to new conditions — including even liquidation — is in order.

To complicate things, what if the business management doesn't quite realize what the problem or

solution is? It is entirely possible, however, that someone outside the firm *does* understand things more clearly or has a more accurate estimate of what the future holds, and so has a sounder *new plan* for the company. Private equity is one device for enabling such outsiders to bring their ideas to companies that are struggling or falling short of their potential.

Why does that matter? The political controversy surrounding private equity spotlights the profits of the investors. But what is overlooked is Adam Smith's insight: people seeking profit in the market are led *as if by an invisible hand* to create benefits that are (or may be) no part of their intention. Assuming no government favors, one makes money by providing things that other people find useful and are willing to buy.

It is entirely possible that a business will unwittingly hire too many people or build too many plants relative to consumer demand.

We live in a world of scarcity. Indeed, were that not the case, there would be no need for economics. Our ends exceed the means available for achieving them. Thus re-

sources and labor devoted to one purpose cannot at the same time be devoted to other purposes. People do not rank all their purposes as equally important. So we care how resources and labor are used. As the Austrians, especially F.A. Hayek, have taught us, the free market, particularly the price system, provides the best indication possible of what consumers prefer among all the possibilities to which resources and labor may be devoted. Prices guide entrepreneurs in formulating their plans. But human infallibility is pervasive. Plans are based on estimates of future prices, which may in turn be based on "present" prices. However, present prices are recent history, and the future cannot be absolutely counted on to be like the past.

The upshot is that if a business assembles resources and labor for purposes that time proves to be out of sync with consumer demand (because of, say, changing tastes or innovation), the price system provides ways (losses) for the error to be detected and corrected so that those scarce things can be redirected as consumers would prefer.

Of course, that may entail eliminating jobs or closing facilities or even shutting down the entire company. That surely creates hardship

for employees who built their own personal plans around the company. But it is a consequence of inescapable features of our world: scarcity, ignorance, and change. In such a world it is entirely possible that a business will unwittingly hire too many people or build too many plants relative to consumer demand — a fact that did not reveal itself until the investment was made. What to do in such circumstances? Stick with the plan? That can't be in the longer-run interest of anyone, including those dependent on the company.

**A private-equity firm,
if successful, will create
employment opportunities,
new products, and new wealth
in general.**

On the other hand, if the failing company's resources are redeployed to purposes more consistent with consumer demand, new opportunities for work and investment will arise. As Frédéric Bastiat taught, we must look for the "unseen" as well as the "seen" in economic matters. The closing or downsizing of a company releases scarce factors of production, including labor, for purposes hitherto out of reach. Ironically, Romney seems not to

understand this. He boasts of the jobs Bain *directly* created (at, for example, Staples), but I have yet to hear him say that his activities *indirectly* created jobs by freeing up resources and labor for new projects.

Thus the dichotomy between producing wealth and producing jobs is false *in a free market*. A private-equity firm may have as its only goal the creation of wealth for its investors, but the activities aimed at that goal, if successful, will create employment opportunities, new products, and new wealth in general. The reason the pundits can't see that is that they are skeptical or ignorant of "invisible hand" explanations. In a free market one does not need to set out to "create jobs" to actually do so.

Note that I have often qualified my remarks with "in a free market." That is crucial. We don't live in a free market, but rather in a mixed corporatist economy. Government regulations, tax rules, favors, and guarantees could well convert activities that would serve the general interest in a free economy into activities that are inimical to the general interest. (Someone familiar with corporate tax law once told me that most mergers are arranged for tax purposes, not because they improve efficiency in serving consum-

ers.) That is why one cannot give a priori approval to the conduct of Romney's Bain Capital and similar firms. A final judgment must await close examination of their activities in light of government corporatist intervention. But I wouldn't expect that from the mass media.

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editor of The Freeman. Visit his blog, "Free Association," at www.sheldonrichman.com. Email him at sheldon@sheldonrichman.com.

NEXT MONTH:
**"The Supreme Court's Word
Game Saves Obamacare"**
by Sheldon Richman

*The natural progress of things is for liberty to yield
and government to gain ground.*

— Thomas Jefferson

The Federal Wetlands War

Part 2

by James Bovard



In August 1993, the Clinton administration announced a new policy that tightened the federal noose over private lands. The White House Office on Environmental Policy (echoing a 1988 George H.W. Bush campaign promise) proclaimed a national goal of no net loss of wetlands, creating a presumption that any citizen whose land was labeled “wet” by a federal bureaucrat lost his right to use his land. Previous wetlands definitions specifically prohibited only activities such as dumping dirt on so-called wetlands or otherwise building on them.

The Clinton administration announced that it was banning any activities on so-called wetlands that

“have environmental effects of concern.” A federal attorney told an appeals court that, under the new policy, the Army Corps “could require a permit to ride a bicycle across a wetland” — though the Corps was careful not to outrage the cycling lobby. A White House press release suggested that “Congress should amend the Clean Water Act to make it consistent with the agencies’ rulemaking.” It was unusual for federal officials to declare openly that Congress should be a rubber stamp; usually, agencies expand their own power and assume either that no one in Congress will notice or that no one on the Hill will have the gumption to stop them.

Federal agencies prosecuted private citizens on the basis of laws that had never been written, of memos that had never been made public, and of assumptions that could not stand the light of day. Nancy Cline, a mother of five young children, testified to Congress in 1995 that federal bureaucrats had hounded her and her husband for years. Her husband bought 350 acres of farmland in Sonoma County, California, to establish a winery. The fact that the land had been farmed for more than half a century did not stop the Army Corps from

reclassifying it as a wetland. The Clines were threatened with fines of \$25,000 per day and imprisonment up to one year if they continued farming.

When the Clines refused to bow to the Army Corps's demands, the feds upped the ante and launched a criminal investigation.

When the Clines refused to bow to the Army Corps's demands, the feds upped the ante and launched a criminal investigation. As Mrs. Cline told the House Judiciary Committee,

In January 1994, the FBI showed up. Obviously the Corps had no desire to discuss or resolve this issue. We were told to hire a criminal attorney.... Their issue was power and control. Their issue was an edict from the U.S. Attorney General demanding more criminal environmental convictions in the Ninth Circuit apparently short of the prescribed quotas.

The FBI and EPA interrogated neighbors, acquaintances, and strangers. They asked about our religion, whether we were intelligent, did we have

tempers. They asked how we treat our children.

Our property was surveyed by military Blackhawk helicopters. Their cars monitored our home and our children's school. They accused Fred of paying neighbors to lie. The FBI actually told one terrified neighbor that this investigation was top secret, with national-security implications. The community reeled, as did we.

We spent thousands of additional dollars to hire more attorneys. The Justice Department told our attorneys that unless we would plead guilty and surrender our land they would seek a criminal indictment of both Fred and me. According to one government attorney, I was to be included because I had written a letter to the editor of a local paper, in their opinion "publicly undermining the authority of the Army Corps."

In December 1994, shortly after Republicans had recaptured Congress in part because of a "Contract with America" that called for greater respect for private-property rights, a Justice Department attorney informed the Clines' attorney

that the government had chosen not to proceed with criminal charges.

Other targets

Grace Heck, a 77-year old woman from Farmingdale, New Jersey, also submitted testimony to the House Judiciary Committee for its 1995 hearing on wetlands abuses. She related how she and her 82-year-old husband — who had had eight heart attacks — had been devastated by the Army Corps of Engineers. The Hecks owned 25 acres of land which a local government had approved for building a 45-house subdivision. But after the Army Corps expanded the definition of “wetlands” in 1987, the project was blocked. The Army Corps claimed that the hardwood forest was actually a wetland. Moreover, the U.S. Fish and Wildlife Service protested that the project should not be approved because a federally protected plant species was “within five miles of the proposed project site.”

“The EPA did not file any civil-enforcement action and instead sought criminal indictments.”

The land was practically the only asset the Hecks possessed; after the Army Corps’s ruling, it be-

came practically worthless. Instead of selling their property for \$2 million, the Hecks were driven into near-destitution — forced to move into their daughter’s small house, no longer able to afford their family doctor, and not even able to afford hearing aids. Heck bitterly complained,

We have never asked our government for anything. We were proud to be Americans. Now we are ashamed of our country and a government that allows the bureaucrats to steal from its citizens under the false pretense that it is for the public good.

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. Mills had been a vocal critic of the EPA and was targeted for punishment by prosecutors and bureaucrats. As the Washington Legal Foundation noted,

The EPA did not file any civil-enforcement action and instead sought criminal indictments. If EPA’s goal was truly environmental protection, EPA would have filed a civil suit or-

dering the removal of the so-called pollutant. Instead, the sand remained on the property over two years while Mr. Mills and his son were in prison.

After Mills was released from the pen, he filed suit to have his felony conviction overturned. Federal Judge Roger Vinson, ruling on Mills's suit in 1993, denounced the federal government's wetlands interpretations as a "regulatory hydra ... worthy of Alice in Wonderland." Vinson concluded, "A jurisprudence which allows Congress to impliedly delegate its criminal law-making authority to a regulatory agency such as the Army Corps — so long as the Congress provides an 'intelligible principle' to guide that agency — is enough to make any judge pause and question what has happened." Vinson denounced a bureaucratic interpretation that "a landowner who places clean fill dirt on a plot of subdivided dry land may be imprisoned for the statutory felony offense of discharging pollutants into the navigable waters of the United States."

Gaston and Monique Roberge bought several acres of undeveloped land in Orchard Beach, Maine, in 1964. In 1976, they allowed the city government to dump

some clean fill onto part of their lot. In 1986, a developer offered the couple \$440,000 for their land — which the two of them considered their personal retirement fund. But the Army Corps announced that the land had miraculously become a wetland — largely because they had allowed the local government to place the clean dirt on the land. After Gaston Roberge publicly complained about what he considered an unfair decision, Army Corps field officer Jay Clement wrote a memo to his superiors stating, "Roberge would be a good one to squash and set an example." The Roberges fought the feds in court, and the government paid the couple more than \$300,000 in 1994 to settle their lawsuit alleging that the U.S. had "effectively and unjustifiably grabbed the property."

Army Corps field officer Jay Clement wrote a memo to his superiors stating, "Roberge would be a good one to squash and set an example."

Louise and Frederic Williams, saw their Little Compton, Rhode Island, property plummet in value by almost 90 percent — from \$260,000 to less than \$30,000 after federal agents declared the land a

wetland. The Williamses, who in 1988 had started construction on a new home on the five-acre plot, were ordered by state environmental officials to tear down the partly built structure, and, at their own expense, follow a precise 13-point property-restoration plan. Mrs. Williams complained, “Not only did we have to plant what they dictated, but we had to make sure the trees were alive and well when they inspected them the next year.”

No plot too small

Even the smallest amount of alleged wetland can be sufficient to allow federal bureaucrats to seize control and paralyze owners. John Piazza, president of a construction company, received a permit from his local government to build a mini-storage facility on a seven-acre tract in Mount Vernon, Washington. But a federal agent claimed he had found three small wet areas on the land. Piazza redesigned his facility so that it would affect only 0.18 of an acre of wetland and re-submitted his proposal to the Army Corps. While Piazza’s revised application was gathering dust, the federal government redefined “wetlands” and, under the new definition, the mini-storage project should have affected only 0.089 of

an acre of wetland. Yet federal enforcers announced that Piazza would have to contribute \$25,000 to a federal fund to buy wetlands elsewhere before he could build.

Even the smallest amount of alleged wetland can be sufficient to allow federal bureaucrats to seize control and paralyze owners.

The Army Corps and the EPA were imposing controls over sections of a development as small as 26 square feet — roughly half the size of a Ping-Pong table. One Rhode Island town was forced to wait for almost two years to get federal permission to do mosquito-control work on 0.009 acres of wetlands. When federal bureaucrats assert control over a Ping-Pong-sized square in a plot of land, they can effectively prohibit the owner from building on a much greater portion of his property. And the legal costs of getting government permission to build on or near suspected wetlands can easily exceed \$50,000 — a prohibitive cost for most individual landowners

At the same time that federal officials were conducting vendettas against private citizens, a 1994 Interior Department report conceded

that the federal government was the main culprit in the destruction of the nation's wetlands. (The report had been mandated by Congress in 1985; in the time it took to complete the study, tens of thousands of jobs were lost and many lives were ruined because of arbitrary, absurd rulings against private landowners.) The 327-page report presented an alphabet soup of federal programs that undermined the American environment, ranging from the Army Corps of Engineers' damming to the federal tax code. The report concluded that federal agricultural policy had played a key role in rewarding the conversion of more than 10 million acres of wetlands to cropland since the mid 1950s. The impact of agricultural policies dwarfed any other single factor in the loss of wetlands. Interior Secretary Bruce Babbitt declared, "Many of these programs are designed and financed in ways that violate the most basic principles of economics. Such programs distort

market signals and provide subsidies that have both negative environmental and economic effects, wasting resources, and adding to the federal deficit."

Unfortunately, this de facto federal confession did not stop bureaucratic vendettas against private property rights in the name of wetlands.

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NEXT MONTH:
**"The Federal Wetlands War,
Part 3"**
by James Bovard

Keynesians, Austrians, and the Continuing Economic Depression

Part 3

by William L. Anderson



Shortly after Barack Obama took office in 2009, he requested new spending of \$800 billion to help “stimulate” the economy, and given that the Democrats controlled the White House and Congress, he faced little opposition. Soon construction workers were making highway repairs and digging ditches, and new signs declared that the workers were funded by the newly passed “stimulus.”

(Near where I live, stimulus-funded workers rolled sod onto the narrow median in a stretch of I-68 on the Allegheny Plateau. The place

where they were putting the new grass receives heavy snowfall during the winter, and a number of us predicted that much of that grass would be killed by the next spring because of leaching from road salt. In fact, by the next summer, most of the “stimulus grass” was dead.)

Before long, the money was spent, but the jobless rate went up to about 10 percent by 2010, well above where it had been when Obama took office. And while the official rate of unemployment has fallen about a point since then, no one except a few White House flacks is claiming that the country is in anything approaching a meaningful recovery.

By all accounts, the U.S. government has ramped up its borrowing and spending for the past five years, yet the economy has not improved. When faced with these hard facts, the Keynesians usually reply in one of two ways (or say both things). The first is that the spending *has kept the economy from getting worse*, as though if there had not been the huge amount of spending, then the economy would have fallen into a depression with unemployment rates in the double digits.

The second excuse has been that the Obama administration has been too timid in its approach, and

that it should have demanded and spent considerably more money than it has. Paul Krugman has claimed that had the stimulus been the \$1.2 trillion that *he* demanded, versus the \$800 billion that was spent, then the economy would have gained what Krugman calls “traction” and then would have moved back into prosperity.

Massive new government spending treats only the symptoms of the downturn, and in the end it prevents a real cure from happening.

There are serious logical problems with both explanations. The former is true *only* if the economy is directed by government spending and private investment carries little weight. If it matters little what kind of capital investments would have been created in a free market and if it matters little in what direction consumer spending and preferences lead investment, then the “we prevented a bigger downturn” might be accurate.

However, if capital investment matters, and if an economy can be sustained only if the mix of capital and consumer goods reflects both the rate of savings in a society (which provides funding for capi-

tal) and consumer preferences, then one can argue — as the Austrians do — that the influx of government spending has *prevented* the economy from making the necessary adjustments that must be made in the wake of a crisis. While it is true that the massive injections of new money might have resulted in some people’s being able to be temporarily employed, in the long run, if the capital investment adjustments are not made, then there will be no real recovery and no new and meaningful employment opportunities.

Economies are complex things, and capital and other factors of production are heterogeneous, not homogeneous, as Keynesians assume. Massive new government spending treats only the symptoms of the downturn, and in the end it prevents a real cure from happening.

Second, Krugman’s contention is based on the fallacy that new stimulus spending would result in an economic recovery, and would not simply have put the economy into a holding pattern. To put it another way, he takes it as a given that new spending will bring about recovery, so the more spending government achieves, the better and stronger the recovery. Thus, he can always claim that the reason there has not been a real recovery is that

the amount of new spending is too low. (That view is an example of the logical fallacy of *begging the question*, in which a conclusion is embedded in the assumptions of an argument. Krugman assumes that new spending will bring recovery, so the more spending, the better for the economy.)

Austrians rightly believe that the Keynesian view is terribly flawed for a number of reasons. First, as already has been mentioned, it makes wrong-headed assumptions about the homogeneity of factors of production and then claims that the newly unemployed factors will always respond positively to new bouts of spending.

For example, when the housing boom collapsed, the first response of the government was to throw more money into the system, as well as to essentially nationalize the mortgage industry so that lenders would have more confidence when making questionable loans. (We should not forget that for all of the claims that the problem was a lack of government regulation of the home lending market, it was the government that was pushing lenders to make loans to borrowers who had dubious qualifications. Those two points are mutually exclusive, despite what those who blame the

free market might say.)

When the housing market dried up (because it meant continuing to insist that people making \$50K-a-year incomes should be purchasing \$500K homes), government then tried a number of programs to prevent foreclosures, but foreclosures continued apace. And even when the government ramped up its spending, the housing market continued to collapse.

As Austrians predicted, when people received new money, they did not point it in the direction of continued capital investment.

All of that should give us pause in accepting Keynesian theory, for if the problem were simply “idle resources” that needed only to be “stimulated,” then why did people continue to move away from the housing market? In fact, as Austrians predicted, when people received new money, they did not point it in the direction of continued capital investment in housing and related industries but, instead, spent the money on consumer goods.

“Green energy”

We see the same patterns in Obama’s “investment” centerpiece, “green energy.” The Solyndra failure

made the headlines, but the bigger story is that this administration (like administrations before it) has diverted hundreds of billions of dollars into alternative fuels and “green” production of electricity, yet that industry continues to flounder, kept alive only with new injections of government money.

Because of federal and state mandates for electric utilities to purchase “green electricity,” consumers are forced to pay more for less electricity.

Furthermore, because of federal and state mandates for electric utilities to purchase “green electricity,” consumers are forced to pay more for less electricity, but even those mandates have not made “green energy” economically viable. Now, if the Keynesian theories were true and the only things the factors of production in “green energy” needed were injections of new money, then by all rights, those factors should be profitable. After all, if factors of production are homogeneous, then it does not matter where the spending is directed, just as long as it goes *somewhere*.

Yet that is not the case. Taxpayers are forced to contribute billions to “green energy” companies, yet

they cannot turn a profit on their own by selling their products in the marketplace. And even though the “green energy” advocates claim that solvency is “just around the corner,” it is quite doubtful that the firms can *ever* be profitable in something that even approaches a free market.

There is something else that Austrians point out, and that is the simple fact that when government uses coercion to direct money into lines of production that are not profitable, on the whole, it makes everyone poorer. Yes, those on the receiving end of the subsidies benefit, but it is at the expense of the greater public.

Austrians are the only economists actively to point out that profits in a free market mean that producers and entrepreneurs are moving resources from lower-valued to higher-valued uses, as ultimately determined by consumers. It is not a trivial point; people on the Left, along with Keynesians, believe that profits in a free market actually amount to an *extraction* of wealth from everyone else.

Yet free-market profits are not an extraction but instead are a signal to producers that consumers believe that the actions of those producers have made consumers better off. When Mises wrote that

socialism lacked a method of economic calculation that would enable producers to move resources from lower-valued to higher-valued uses, he pointedly referred to profits (and losses) as the ultimate signaling devices.

Because Keynesian spending has been directed in ways that subsidize losses or prop up government projects, they ultimately are moving resources from higher-valued uses to lower-valued uses. They are making us poorer in real terms, and when such policies are applied on a massive scale, they succeed in destroying wealth and, thus, destroying economic opportunities.

Conclusion

For the past several years, we have seen government engaged in an “experiment” of massive new spending. At the same time, government regulators have imposed new costs and burdens on private producers, ostensibly in the name of “protecting consumers.”

Unfortunately, what the government has done has been to ensure that malinvested resources are not liquidated or transferred to profitable uses. Instead, government has created huge new costs, imposed economic losses, and then laid the burden on taxpayers and consum-

ers. Out of that, Washington argues, will come an economic recovery.

Ideas matter and in regard to boom and bust, they matter greatly. The U.S. economy at present is under the grip of people who are diverting resources to politically connected producers who continue to destroy wealth, with those in charge appealing to Keynesian theory as well as a “people before profits” mantra that hides the hard fact that when government continues to subsidize losses, it is people who suffer.

The Austrians really do have the answers even if the government and academic elites don’t want to hear them. Because Washington continues to ignore the Austrians, the economy will founder and economic opportunities will disappear. The American economy is a wonderfully productive and resilient thing, but even the strongest economies can be brought to their knees when governments continue to assault them, and especially assault them in the name of creating a false prosperity.

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Citizens United and the First Amendment

by Laurence M. Vance



As we move closer to another presidential election, the Supreme Court case of *Citizens United v. Federal Election Commission* will be brought up with increasing frequency. Decided by a vote of 5-4 on January 21, 2010, it was one of the most polarizing Supreme Court decisions of the Roberts Court.

Justice Stephen Breyer, who joined fellow justices John Paul Stevens, Ruth Bader Ginsburg, and Sonia Sotomayor in a dissenting opinion, talked about the decision last year on NPR's *On Point* with Tom Ashbrook. The second anniversary of the case was the occasion of numerous articles, as was the first.

In *Citizens United*, the Supreme Court reversed the ruling of the U.S. District Court for the District

of Columbia that upheld the provisions of the Bipartisan Campaign Reform Act (BCRA) prohibiting unions and corporations, whether for-profit or not-for-profit, from broadcasting “electioneering communications” that mentioned a candidate within 60 days of a general election or 30 days of a primary. Unions and corporations no longer have to create political action committees (PACs) to spend on electioneering.

The case had nothing to do with whether unions and corporations used funds from their treasuries to make contributions to political candidates or for independent expenditures that advocate the election or defeat of a candidate in federal elections. That is still prohibited under federal law.

The ban on corporate contributions to federal election campaigns was enacted in 1907. The ban was extended to unions in 1943, which led to the creation of PACs. Modern campaign-finance rules began with the Federal Election Campaign Act of 1971 (FECA), which set contribution limits and requirements for disclosure of contributions and expenditures, and instituted public financing of presidential election campaigns. The BCRA, also known as the McCain-Feingold law, after

its two Senate sponsors, was passed in 2002.

Citizens United is a conservative nonprofit group that “seeks to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security.” The organization is known for producing documentaries featuring conservative leaders and politicians such as Newt Gingrich, Dick Morris, Mike Huckabee, Michele Bachmann, and Fred Thompson.

“There is simply no support for the view that the First Amendment ... would permit the suppression of political speech by media corporations.”

The controversial documentary *Hillary: The Movie* was released by Citizens United in January 2008. It was a critical look at Sen. Hillary Clinton, a Democratic candidate for president that year, and now the U.S. secretary of State. Citizens United sought to make *Hillary* available through video-on-demand within 30 days of the 2008 primary elections and to advertise that fact on broadcast and cable television, thus violating the BCRA. In December 2007, Citizens United sought declaratory and injunctive

relief against the Federal Election Commission (FEC) in federal district court, which was denied.

In his oral arguments before the Supreme Court, U.S. deputy solicitor general Malcolm Stewart, representing the FEC, argued that under existing law the government could ban books published or distributed by a corporation or union if they contained one sentence expressly advocating the election or defeat of a candidate, ban the distribution of political books over Amazon’s Kindle, and prevent a union from hiring a writer to author a political book.

In overruling the U.S. District Court for the District of Columbia, as well as reversing all or part of two previous Supreme Court decisions (*Austin v. Michigan Chamber of Commerce* [1990] and *McConnell v. Federal Election Commission* [2003]), Justice Anthony Kennedy, writing for the majority in *Citizens United*, often refers to the First Amendment:

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.

There is simply no support

for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations.

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what dis-trusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment con-firms the freedom to think for ourselves.

But civil-rights lawyer and professor of law at Temple University School of Law David Kairys sees things differently. In his article “Money Isn’t Speech and Corporations Aren’t People,” he says,

The money-is-speech theory turns out to be a rhetorical device used exclusively to provide First Amendment protection for all money that wealthy people and businesses want to give to, or to spend on campaigns. It also doesn’t make sense under long established free-speech law. Spending or donating money to support or facilitate speech is expressive and de-

serves some protection. But money simply doesn’t make it into the category of things that are and embody speech, such as books, films, or blogs. Traditional speech-law analysis would separate the speech from the conduct (or “nonspeech”) elements of campaign spending and donation and allow considerable leeway to regulate the latter. Even as to “pure” speech, “compelling” government interests are overriding. And spending and donating money seem, among the traditional speech-law categories, a “manner” of speaking that the court has said usually can be “reasonably regulated.”

The other basic theory supporting the ruling in Citizens United — the court’s claim that, for some purposes, corporations are constitutionally, if not actually, people — comes out of the long history of the development of corporations. But the extension of corporate personhood to campaign speech is a controversial innovation of the conservative justices over the last few decades.

Both of these theories — that money is speech and that corporations are people — have

an easier time than they should in courts and with the public, too, because they are posed as counters to censorship.

Kairys is right, but he is wrong.

The BCRA had nothing to do with the amount of money that could be spent by unions and corporations on “electioneering communications”; it prohibited them from spending *any* amount of *their* money (money donated by individuals was okay) at all on “electioneering communications” within 60 days of a general election or 30 days of a primary. The BCRA was clearly designed to permit the government to limit who could speak and when they could speak, contrary to the First Amendment, which reads,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Whether the broadcast of “electioneering communications” is considered to be freedom of speech

or freedom of the press is irrelevant, since both are equally protected. And the debate over “corporate personhood” is likewise irrelevant. The protection of the freedom of speech and of the press is not limited to individuals. And since when do “compelling” government interests override “pure” speech? What part of “Congress shall make no law” allows for government interests, compelling or not, to abridge the freedom of speech?

Since when do “compelling” government interests override “pure” speech?

Note also that the First Amendment does not merely bar Congress from *suppressing* the freedom of speech; it uses the broader term *abridging* the freedom of speech. It could be argued that any law limiting campaign contributions or expenditures abridges the freedom of speech and the freedom of the press.

But those who have argued that the federal government has no authority to regulate political spending or donations because they are a form of speech, and are therefore protected by the First Amendment, likewise err. Spending or donating money to support or facilitate

speech is clearly not speech. Government decrees and Supreme Court rulings have made unwarranted speech distinctions (such as classifying flag burning as a form of speech) because they misconstrue the nature of the First Amendment.

The First Amendment merely prohibits the government from infringing the natural rights that Americans already have.

Rights and the Constitution

The First Amendment, like the entire Bill of Rights, does not grant Americans rights because the benevolent U.S. government feels like doing so. That is an all-too-common, but erroneous, viewpoint. The First Amendment grants nothing. It merely prohibits the government from infringing the natural rights that Americans already have. The Constitution grants certain limited powers to the central government. No power was granted to abridge any of what are commonly referred to as our First Amendment freedoms. The First Amendment merely reinforces the idea that the government lacks the power under the Constitution to abridge Americans' existing freedoms.

As Judge Andrew Napolitano

has recently explained,

If there were no First Amendment, would we still have the freedom of speech? The answer, like many in the law, depends on what values underlie the legal system. If the government is the source of our rights, then without the First Amendment's guarantees of free speech, any government could legally punish you for saying words and expressing thoughts it hated or feared; and it could even silence you before you spoke.

On the other hand, if our rights come from our humanity and our humanity is a gift from God, then we would still enjoy the freedom of speech, whether it is insulated from government interference by the First Amendment or not. The wording of the First Amendment itself gives us a peek at what its authors thought. They wrote, "Congress shall make no law ... abridging the freedom of speech." It doesn't say that Congress shall grant freedom of speech; rather, it prohibits Congress from interfering with it. And by referring to free speech as the freedom of speech, the drafters recognized that the freedom of

speech already existed before the country that they were founding even came to be.

All Americans, whether individually or corporately, had the natural right to speak, publish, and spend any amount of their money freely before there was any First Amendment, Bill of Rights, or Constitution.

It is a myth that money spent on or in behalf of political campaigns translates into buying election victories.

The ultimate purpose of campaign-finance laws is to limit the influence of money on elections. Here is how Barack Obama condemned the *Citizens United* decision during his 2010 State of the Union Address:

Last week the Supreme Court reversed a century of law that I believe will open the flood-gates for special interests — including foreign corporations — to spend without limit in our elections. Well I don't think American elections should be bankrolled by America's most powerful interests, and worse, by foreign entities. They should

be decided by the American people, and that's why I'm urging Democrats and Republicans to pass a bill that helps to right this wrong.

But not only was the president wrong about current law regarding the expenditures foreign corporations and entities make in U.S. elections, it is a myth that money spent on or in behalf of political campaigns translates into buying election victories. In 2010 Linda McMahon of WWE fame spent \$50 million of her own money to be the Republican nominee for the U.S. Senate from Connecticut only to lose to the Democrat in the general election by 11 points. If Obama received trillions of dollars in donations from every union and corporation in the United States and bought up all the available TV and radio advertising time from now until election day, he still would not get the votes of millions of Americans. And if the Republican nominee for president received and did likewise, he still would not get the votes of millions of Americans.

In a free society, individuals, groups, organizations, corporations, and unions would be free to spend any amount of their own money in whatever way they choose

for or against any candidate they choose — including “electioneering communications” and direct spending on election campaigns. There would be no public financing of elections, spending limits, donation limits, disclosure requirements, 30- or 60-day rules, distinctions between types of speech, distinctions between hard and soft money, or campaign-finance restrictions.

But, of course, in a free society, individuals, groups, organizations, corporations, and unions would be free to spend any amount of their own money in whatever way they choose on whatever product or service they choose. Likewise, in a free society, individuals, groups, organizations, corporations, and unions would be free to receive any amount of money they could for whatever product or service they choose to

sell. And there would be no government regulation, subsidies, or interference in any peaceful transaction.

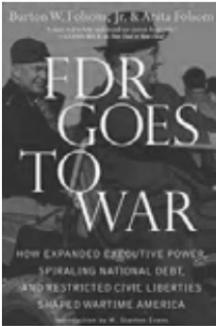
The *Citizens United* decision is a small step — albeit a very small one — toward a freer society because it eliminates a government attempt to abridge the freedom of speech. Unfortunately, there are many more steps that must be taken to restore the American republic to a free society. But, as it has often been said, a long journey begins with one small step.

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Roosevelt and World War II

by George C. Leef

FDR Goes to War by Burton W. Folsom Jr. and Anita Folsom (Threshold Editions, 2011); 386 pages.



Hillsdale College history professor Burton Folsom and his wife, Anita, have given us in this book a much-needed counterweight to the standard view that Franklin D. Roosevelt was one of the greatest American presidents. After reading *FDR Goes to War* anyone who isn't an utter zealot for America's welfare-warfare state will have to conclude that Roosevelt's years of control over the nation were nothing short of cataclysmic.

Folsom's earlier book, *New Deal or Raw Deal?*, focused on the dam-

age Roosevelt's economic policies did. This new book examines Roosevelt and his administration from 1939 on as war engulfed Europe, an event that gave him an opportunity to reinvent himself as a wartime leader. The war was truly a godsend for Roosevelt, since many Americans had grown tired of the Depression (which his statist policies had greatly prolonged) and the election of 1940 looked to be very difficult for the president.

Roosevelt was as deceptive and conniving as any politician ever. As war raged, he had to walk a tight-rope. Most American citizens did not want the country to be drawn into conflicts that did not threaten their shores. Therefore, Roosevelt had to pretend that he desired to maintain U.S. neutrality, while at the same time he was doing all he could to aid Britain and was desperately seeking an excuse to enter the war. In his speeches and avuncular "Fireside Chats" Roosevelt reassured Americans that he was not going to get the country involved in the war. "But behind the scenes," the authors write, "Roosevelt wanted the United States involved in the war," and they quote his speechwriter, Robert Sherwood, admitting that his statements "may be denounced as deliberately misleading

or at best wishful thinking.” Roosevelt’s policy was one of quietly preparing for war and putting American naval forces in danger, hoping that Germany would be provoked into creating a *casus belli*.

At the same time his administration refused to help refugees escaping from the Nazis. The authors recount the terrible SS *St. Louis* incident of the spring of 1939, when a ship carrying several hundred Jewish refugees fleeing from the likelihood of death at the hands of Nazi killers was forced by the State Department to return to Europe with its despairing human cargo. The ship eventually landed in Antwerp and many of its passengers later perished under Nazi rule.

Roosevelt’s policy was one of quietly preparing for war.

That fateful decision was made by Breckinridge Long, an old friend and political supporter whom Roosevelt had appointed as assistant secretary of State. The xenophobic Long did all he could to keep people who were not, in his opinion, “the kind of immigrants that America wanted.” It tells us much about Roosevelt that he tolerated a man such as Long, who also used his authority to obstruct other Americans

who were trying to help people escape the Nazis. While Roosevelt always paid lip service to humanitarianism, he was in perfect agreement with Long that the nation had to keep out “undesirables.”

Roosevelt’s lawlessness

A key, recurring theme in the book is the way Roosevelt would ignore the law — even the Constitution — when doing so helped him accomplish his goals. One example is the deal he struck with the British in September 1940, wherein the United States would trade Navy ships (50 destroyers) in exchange for British military bases from the Caribbean to Newfoundland.

There were, however, two legal problems with that deal: the Constitution gives the president no authority to make such deals unilaterally; and making this one clearly violated a federal statute, the Neutrality Act. Roosevelt was fully aware of the illegality involved but went ahead anyway through an “executive agreement.” He admitted to his close confidant Bernard Baruch, “I might get impeached for it.” The famed constitutional lawyer Edward Corwin found the deal to be a flagrant violation of the law, but that simply did not matter to the president. The destructive idea that

the president must be allowed to do whatever he thinks best no matter what the law says is one of Roosevelt's most lasting and harmful legacies.

Roosevelt used the prospect of war to seize more power.

Again and again, Roosevelt used the prospect of war to seize more power for himself. In May 1941 he declared that the Germans were about to invade the Cape Verde Islands (which lie just off the west coast of Africa), which could then lead to an invasion of South America, which in turn justified him in declaring an unlimited "national emergency" that expanded his powers. There was no actual threat to the Cape Verde Islands, much less any possibility that the Germans would use them as a base to invade South America; it was all just a deceptive ploy to move closer to the imperial presidency Roosevelt wanted for himself.

Throughout the presidential campaign of 1940, Roosevelt's allies in the bureaucracy steered government contracts into swing states with great fanfare and the implication that if the president were defeated, the federal goodies would stop. In a particularly brazen vote-

buying scheme, just four days before the election, Roosevelt's secretary of Agriculture announced the creation of a free-milk-for-children program in the key state of New York. Roosevelt, readers learn, would say and do almost anything for political advantage. He perfected the nasty tactic of using taxpayer dollars to buy votes from interest groups. America's massive federal budget and looming debt avalanche today are a result of that.

The war

Pearl Harbor is a topic that has to come up in any book about Roosevelt and World War II. Some apologists for him say that the Japanese attack took him completely by surprise, but the Folsoms present a much more complicated picture. First, Pearl Harbor had not been the base for the American Pacific Fleet until Roosevelt (who had been undersecretary of the Navy in Woodrow Wilson's administration and fancied himself something of a naval expert) had ordered it there late in 1940. The fleet commander, Adm. James O. Richardson, protested that the fleet would be vulnerable there, so Roosevelt relieved him of command shortly after the November election had been won. (That shows another of his charac-

teristics — unwillingness to listen to those who disagreed with him.)

Second, he refused to heed the counsel of military men who said that the nation's armed forces were terribly ill-prepared for war and that America should not underestimate the capabilities of the Japanese. Nevertheless, Roosevelt kept on with his bellicose policies while doing little to make the armed forces ready for the war he desired. Also, he continued to believe that a war with Japan would be over in a mere six months.

The president knew that he was provoking the Japanese, with war the likely result.

Third, Roosevelt's administration had been playing a highly aggressive game with the Japanese regarding trade. In June 1941 he ordered all petroleum products to be placed under "export controls" and then employed what the authors call the "devious strategy of hindering all oil exports to Japan by adding layers of red tape and freezing Japanese financial assets in the United States." The president knew that he was provoking the Japanese, with war the likely result.

With regard to the attack on Pearl Harbor itself, the authors

don't go so far as to say that Roosevelt knew ahead of time, from the Japanese diplomatic transmissions that U.S. officials had intercepted and decoded, that an attack on the base would occur on December 7. They do say, however, that from those intercepts, he must have known that war was imminent on December 6 and that Pearl Harbor was a possible target. (For an in-depth treatment of Roosevelt and Pearl Harbor, I strongly recommend *Pearl Harbor: The Seeds and Fruits of Infamy*, edited by Bettina Bien Greaves, which I reviewed in the June 2011 *Freedom Daily*.)

The war years included many attacks by the administration on Americans' liberty and property, but none so egregious as the internment of Japanese-Americans under another of Roosevelt's many executive orders. Tens of thousands of them were forced into detention camps without the slightest pretense of due process of law. There was no evidence that any of those people would or could aid the Japanese military. But with anti-Japanese hysteria raging after Pearl Harbor, Roosevelt did not hesitate to order that a great number of innocent men, women, and children be imprisoned under his "emergency powers." Not coincidentally, the or-

der helped Democrats in California, where Japanese farmers and businessmen were often hated by their white competitors because of their industriousness.

Why was there no internment of German-Americans or Italian-Americans? Once again, as the authors make clear, Roosevelt's decision was purely political: "In Roosevelt's political calculation, he wanted votes from German-Americans and Italian-Americans. He also wanted to carry California and the western states. By relocating only the Japanese-Americans, he could please native Californians and not offend the many ethnic Germans and Italians he would need to win reelection in 1944."

By 1944, Roosevelt was very ill. Despite his failing health, he resolved to run again and managed to keep his condition hidden from the populace. During the campaign he gave a speech that has often been praised by statist, a speech in which he proposed an "economic bill of rights" that would put the federal government in the business of ensuring every American's "right to medical care," "right to decent housing," "right to a good education," and so on. That speech indi-

cated Roosevelt's intention to revive his New Deal domestic agenda with a great expansion of entitlement programs after the end of the war. He did not live to push that agenda through, however. He died in the spring of 1945, but the fact that he yearned for more of the collectivistic policies that had prolonged the Depression is revealing. He was an arrogant authoritarian who was devoted to the mega-state and was utterly blind or indifferent to the damage it was doing to the liberty and prosperity of the people.

From the beginning of his presidency to its end, Roosevelt worked steadily to expand the federal government's power, never understanding or caring that he was wrecking the nation's foundation of freedom. Far from the brilliant and almost saintly leader that most historians and politicians see, he was a devious man of limited intellect who was really good at only one thing — winning elections.

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