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The first and last thing required of genius is the love of truth.

— Goethe

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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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Two Brothers in Search of Monsters to Destroy

by Jacob G. Hornberger

In celebration of the Fourth of July, 1821, John Quincy Adams delivered a speech before Congress that is famously titled, "In Search of Monsters to Destroy." Adams used the occasion to describe the foreign policy of the United States:

> Wherever the standard of freedom and Independence has been or shall be unfurled, there will her heart, her benedictions and her prayers be.
>
> But she goes not abroad, in search of monsters to destroy.
>
> She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own.

Needless to say, America abandoned that foreign policy long ago in favor of one based on going abroad in search of foreign leaders to destroy or replace. Central to that fundamental shift in U.S. foreign policy has been the Central Intelligence Agency.

A recently published book details the role the CIA played in regime-change operations from its origin in 1947 through the early 1960s: *The Brothers: John Foster Dulles, Allen Dulles, and Their Secret War,* by Stephen Kinzer, a former reporter for the *New York Times* and currently visiting fellow at the Watson Institute for International Studies at Brown University.

(In 2008 Kinzer was a speaker at FFF's conference, "Restoring the Republic: Foreign Policy and Civil Liberties." The video of his speech can be found online at fff.org/freedom-in-motion/video/regime-change-promise-and-peril.)

Kinzer is author of several other books, some of which revolve around U.S. regime-change operations, such as *Overthrow*, *All the Shah's Men,* and *Bitter Fruit*. *The Brothers* is a masterful culmination of Kinzer's study in this area. What makes this book so fascinating is that it examines the role of two brothers, John Foster Dulles and

Allen Dulles, in the early years of the CIA.

"During their childhood and early teens, both brothers came to feel at ease in the most rarified circles."

The first part of the book constructs the personal backgrounds of the Dulles brothers, creating a foundation for the second part of the book, which focuses on the six "monsters" the Dulles brothers sought to destroy with the CIA, along with the repercussions and consequences of those operations.

Their background

The Dulles brothers did not have ordinary childhoods. Their maternal grandfather, John Watson Foster, was "an eminent lawyer, diplomat, and pillar of the Republican Party," and served as minister to Mexico and Russia. Thus their mother, Edith, grew up riding horses in Chapultepec Park in Mexico City and dancing with Russian princes at grand balls. While later serving as U.S. secretary of state, John Foster Watson was instrumental in engineering the overthrow of Hawaii's monarchy in 1893.

Their father, Allen Macy Dulles, had pursued the same career path as his father and his two other brothers — as a clergyman. As such, both boys, John Foster and Allen, were imbued with a deep religiosity that would later play a major role in their foreign-policy views.

Believing her boys were too special for public schools, Edith had them educated by live-in governesses and tutors from a private academy. Grandfather Foster played an active role in the raising of the two boys. According to Kinzer,

> During their childhood and early teens, both brothers came to feel at ease in the most rarified circles. They dined with ambassadors, senators, cabinet secretaries, Supreme Court justices, and other grand figures, including William Howard Taft, Theodore Roosevelt, Grover Cleveland, William McKinley, Andrew Carnegie, and Woodrow Wilson.

Both brothers graduated from Princeton and became lawyers. At 38, Foster became sole managing partner in the New York law firm of Sullivan and Cromwell, the biggest and most successful law firm in the country at that time. Soon after, he brought his brother Allen into the firm. Sullivan and Cromwell specialized in international finance

and represented some of the biggest corporations in the United States. It was that particular area of law practice that would also help shape the Dulles brothers' foreign-policy views later on.

Not surprisingly, both brothers served stints in the government as well. For example, Foster was appointed by Woodrow Wilson to serve as legal counsel at the Versailles Peace Conference after World War I. During World War II, Allen served in the OSS (Office of Strategic Services), the intelligence service for the U.S. government and the precursor to the CIA.

The fierce Cold War mindset that guided Truman was shared by the Dulles brothers.

But both brothers had specific dreams for a particular form of government service. Foster's dream was to become secretary of state. Allen's dream was to become director of the CIA. With the election of Dwight Eisenhower, a Republican, both dreams became reality in 1953.

By that time, America was fully embroiled in the Cold War against the Soviet Union. In 1947 Harry Truman had secured passage of the National Security Act, which brought the CIA into existence. While he had intended the CIA to be nothing more than an intelligence-gathering agency, the CIA relied on nebulous language in the law to justify its expansion into covert activity.

Truman also announced his Truman Doctrine, which offered to have the United States guarantee freedom from communism to countries all over the globe. He issued NSC-68, a top-secret document that committed the United States to ever-increasing military expenditures to confront greatly exaggerated Soviet capabilities and intentions.

The fierce Cold War mindset that guided Truman was shared by the Dulles brothers. Thus when they took over the reins of state and the CIA, they were prepared to hit the ground running with the Cold War machinery that Truman had put into place.

What guided the two brothers was their view that communism, especially Soviet communism, posed a grave threat to the United States and the Western world. Unless the United States assumed the responsibility of opposing this threat, the entire world would end up under communism. Integrated into this Cold War mindset were their deep religious beliefs. In the eyes of the

Dulles brothers, the U.S. government was doing God's work in opposing communism. Viewing the United States as serving in a messianic role, they viewed themselves as saving mankind from the devil.

Thus it was that John Foster Dulles and Allen Dulles went abroad in search of six monsters to destroy during their tenures as secretary of state and CIA director.

Overthrowing monsters

The first monster was the prime minister of Iran, Mohammad Mossadegh, who had been appointed by Iran's parliament and named *Time* magazine's 1951 "Man of the Year." Mossadegh, an ardent nationalist, had committed the cardinal sin of nationalizing British oil interests in Iran. When the British sought help from the CIA in overthrowing Mossadegh, Truman nixed the deal by saying the U.S. government would not involve itself in toppling foreign governments.

When Dwight Eisenhower became president, however, the CIA simply repackaged the plan in Cold War language. Mossadegh's unstable administration, the CIA argued, made Iran ripe for a Soviet takeover, with obvious ramifications for the supply of oil to the West. On that basis Eisenhower approved Operation Ajax, the CIA regime-change plan that succeeded in ousting Mossadegh from power and reinstalling the brutal regime of the shah of Iran, a pro-U.S. ruler.

While the CIA celebrated the short-term success of the operation, the celebration was muted some 25 years later when the Iranian people revolted against the shah's tyrannical regime and installed a radical Islamic regime that the U.S. government is still waging war against today.

John Foster Dulles and Allen Dulles viewed themselves as saving mankind from the devil.

The second monster was the democratically elected president of Guatemala, Jacobo Arbenz, who nationalized some of the vast real estate holdings of United Fruit, a giant U.S. corporation that had long been one of Sullivan and Cromwell's premier clients. The CIA engineered Arbenz's ouster, installing a pro-U.S. brutal military dictator, Carlos Castillo-Armas, in his stead. Kinzer points out,

> His first acts included dissolving Congress, suspending the Constitution, disenfranchising three-quarters of the population by banning illiterates

from voting, and decreeing repeal of the land reform law that had enraged United Fruit.

Again, the CIA celebrated the short-term results of their coup. Never mind that the coup laid the groundwork for a civil war that would last decades and take the lives of hundreds of thousands of people.

The third monster was situated in Asia. His name was Ho Cho Minh, a nationalist who wished to free his country, Vietnam, from French colonial rule. Why was he considered a monster? Because he was a communist and therefore it was necessary to stop or destroy him; otherwise the "dominoes" would start falling and ultimately bring down the United States.

Since it was a virtual certainty that Ho would prevail in national elections in Vietnam that had been agreed on under the Paris Peace Accords after the French defeat at Dien Bien Phu, the Dulles brothers ensured that South Vietnam would not participate in any such elections. Instead, they installed their own authoritarian as president of South Vietnam and set the United States on the road to intervention to preserve its independence. It was a road that would ultimately lead to the deaths of some 58,000 Americans and 2 million Vietnamese. North Vietnam won anyway, and the dominoes never fell.

The fourth monster was Sukarno, the first president of Indonesia. What was his offense? He actually loved the United States, a sentiment he made very clear when he visited here. The problem, however, as far as the Dulles brothers were concerned, was that he also loved China and the Soviet Union. In fact, Sukarno's philosophy seemed to be one of love for everyone.

In their minds, in the war against godless communism there could be no neutrals.

That didn't sit well with the Dulles brothers. In their minds, in the war against godless communism there could be no neutrals. The way they figured it was that if a foreign ruler wasn't squarely on the side of the United States in the Cold War, he was an enemy. So the CIA, in a super-secret operation, incited a massive military rebellion against Sukarno, one that ultimately failed. As Sukarno lamented later in his life, "Oh America, what is the matter with you? Why couldn't you have been my friend?"

Assassinating monsters

The fifth monster was Patrice Lamumba, the first democratically elected prime minister of the Republic of the Congo. His offense was his refusal to become embroiled in Cold War politics. He wanted the Congo to be neutral.

In the eyes of the Dulleses, that made Lamumba an enemy of the United States. This time, however, their plan involved more than just a standard coup. For the first time in U.S. history, a president, Eisenhower, authorized the CIA to assassinate a foreign leader.

Enlisting the assistance of a man named Sidney Gottlieb, the CIA devised its plan to murder Lamumba. Who was Gottlieb? He headed the CIA's MKULTRA, an infamous Cold War plan whereby the CIA drugged unsuspecting people with LSD and other drugs in order to study their effects. Gottlieb's job was to furnish the poison that would be used to murder Lamumba. The poison, however, never had to be used because Lamumba was murdered by domestic opponents before the CIA could get to him.

The sixth monster is the one with whom Americans have lived for more than 50 years — Cuba's Fidel Castro. Believing that America could never survive with a communist outpost 90 miles away, the Dulles brothers committed the United States to ousting Castro from power and replacing him with a pro-U.S. ruler.

For the first time in U.S. history, a president, Eisenhower, authorized the CIA to assassinate a foreign leader.

That's what the Bay of Pigs debacle was all about. The CIA had assured John Kennedy that the plan would succeed without U.S. military intervention, but that was lie. The CIA assumed, incorrectly as it turned out, that Kennedy would change his mind about using U.S. forces once the operation looked like it was failing.

Allen Dulles's career as CIA director ended ignominiously when he was fired by Kennedy, who also promised to tear the CIA into a thousand pieces. (Foster had died of cancer in 1959.)

It wouldn't be the end of governmental service for Allen Dulles, however. In 1963 he was appointed by Lyndon Johnson to serve on the Warren Commission, whose ostensible mission was to investigate the assassination of Kennedy. As Kinzer states,

Allen never told the other members of the Warren Commission that the CIA had plotted to kill Castro, or revealed what it knew about Kennedy's accused assassin, Lee Harvey Oswald. He advised other members of the commission about ways to question CIA officers, while at the same time advising the officers how to reply. By one account he "systematically used his influence to keep the commission safely within bounds, the importance of which only he could appreciate…. From the start, before any evidence was reviewed, he pressed for the final verdict that Oswald had been a crazed gunman, not the agent of a national and international conspiracy."

Kinzer points out that history has not been kind to the Dulles brothers. While they were two world-famous figures in their time, they have both been long forgotten by most Americans. I'll bet not one American in a thousand even knows whom Dulles International Airport is named after.

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

NEXT MONTH:

"What Does It Mean to Be Free?"

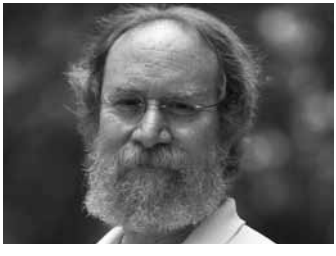
by Jacob G. Hornberger

Poverty in a society is overcome by productivity, and in no other way. There is no political alchemy which can transmute diminished production into increased consumption.

— John Chamberlain

Lysander Spooner on the National Debt

by Sheldon Richman



Once again, last autumn we were inundated with dire warnings about what would befall the American people and the world economy if Congress did not raise the debt ceiling — or, as I call it, the debt sky, because apparently the sky's the limit.

As he has each time this issue has come up, Barack Obama emphasized that increasing the debt would permit the government only to pay expenses *already incurred* and would not finance new spending. To which I again reply, rhetorically, Why is Congress allowed to spend money that it knows it won't possess unless the debt limit is raised? It's as though you kept charging purchases on a credit card, assuming that every time you maxed it out, the bank would automatically raise the limit.

Not only does that violate good sense, it also rigs the debate over the debt limit by threatening so-called default as the price of voting no. (In fact, the government each month takes in an order of magnitude more revenue than it needs to avoid defaulting on its debt. It would not be able to cover all its appropriations, but that is different from a default.)

My query about the debt sky, of course, assumes that Congress operates in a context of legitimacy. So what we really need to do is step back and question that context itself. To do that, there is no better person to turn to than Lysander Spooner (1808–1887), lawyer, abolitionist, entrepreneur, and libertarian subversive. It so happens that in section XVII of his 1870 essay, "The Constitution of No Authority" (Number 6 in his *No Treason* series), Spooner took up the question of government debt with his signature fresh look. As you might imagine, he left nothing standing.

"On general principles of law and reason," Spooner wrote, "debts contracted in the name of 'the United States,' or of 'the people of the United States,' are of no validity."

How could that be?

It is utterly absurd to pretend that debts to the amount of

> twenty-five hundred millions of dollars are binding upon thirty-five or forty millions of people, when there is not a particle of legitimate evidence — such as would be required to prove a private debt — that can be produced against any one of them, that either he, or his properly authorized attorney, ever contracted to pay one cent.
>
> Certainly, neither the whole people of the United States, nor any number of them, ever separately or individually contracted to pay a cent of these debts.

He has a point. I can't recall ever registering such consent — or being asked to, for that matter. Can you? Aren't we taught that the "consent of the governed" is a sacred American principle?

How can one actually consent if there is no possible way to withhold consent?

Earlier in the essay, Spooner handily disposed of the claim that voting or paying taxes implies consent. Since we are subjected to the government's impositions whether or not we vote — opting out is forbidden — any given individual may have cast a vote purely in self-defense, for the perceived lesser of two evils. And paying taxes certainly cannot signify consent, because the penalty for nonpayment is theft of one's property, imprisonment, or (should one resist) death.

In fact, there is no way *not* to consent, which makes the whole question suspect. As a matter of logic, how can one actually consent if there is no possible way to withhold consent? As Charles W. Johnson writes in "Can Anybody Ever Consent to the State?": "If there is no effective possibility of refusal, then there is no possibility of publicly expressing consent, and if there is no possibility of publicly expressing consent, then there is no possibility of consenting. If existing states make a standing threat to force people to submit to their terms, even if they do not agree to those terms, then governments cut off any effective possibility of refusal, and thus nobody can do anything that would count as consenting to be ruled by an existing state — *even if she wants to do so,* and even if she sincerely says that she agrees to the terms."

So by what authority do the people who claim to constitute the U.S. government borrow money in

our names and compel us to repay the debt? By no authority at all, as far as I can see, unless "might makes right" counts as authority.

"Who, then, created these debts, in the name of 'the United States'?" Spooner asks.

Spooner continues,

> How, then, is it possible, on any general principle of law or reason, that debts that are binding upon nobody individually, can be binding upon forty millions of people collectively, when, on general and legitimate principles of law and reason, these forty millions of people neither have, nor ever had, any corporate property? never made any corporate or individual contract? and neither have, nor ever had, any corporate existence?

It seems that this is not possible. "Who, then, created these debts, in the name of 'the United States'?" he asks.

> Why, at most, only a few persons, calling themselves "members of Congress," etc. who pretended to represent "the people of the United States," but who really represented only a secret band of robbers and murderers, who wanted money to carry on the robberies and murders in which they were then engaged; and who intended to extort from the future people of the United States, by robbery and threats of murder (and real murder, if that should prove necessary), the means to pay these debts.

Here, when Spooner says the members of Congress only "pretended to represent" Americans at large, he is referring to his earlier point that because the ballot is secret, we really don't know whom these supposed representatives actually represent, that is, whose agents they really are.

> The money, therefore, was all borrowed and lent in the dark; that is, by men who did not see each other's faces, or know each other's names; who could not then, and cannot now, identify each other as principals in the transactions; and who consequently can prove no contract with each other.

No legitimate debt

But that is just the beginning of the problems with the so-called public debt.

> Furthermore, the money was all lent and borrowed for criminal purposes; that is, for purposes of robbery and murder; and for this reason the contracts were all intrinsically void; and would have been so, even though the real parties, borrowers and lenders, had come face to face, and made their contracts openly, in their own proper names.

And how is this borrowed money to be repaid?

> Having no corporate property with which to pay what purports to be their corporate debts, this secret band of robbers and murderers are really bankrupt. They have nothing to pay with. In fact, they do not propose to pay their debts otherwise than from the proceeds of their future robberies and murders. These are confessedly their sole reliance; and were known to be such by the lenders of the money, at the time the money was lent.

And it was, therefore, virtually a part of the contract, that the money should be repaid only from the proceeds of these future robberies and murders. For this reason, if for no other, the contracts were void from the beginning.

In fact, Spooner continues,

> these apparently two classes, borrowers and lenders, were really one and the same class. They borrowed and lent money from and to themselves. They themselves were not only part and parcel, but the very life and soul, of this secret band of robbers and murderers, who borrowed and spent the money. Individually they furnished money for a common enterprise; taking, in return, what purported to be corporate promises for individual loans. The only excuse they had for taking these so-called corporate promises of, for individual loans by, the same parties, was that they might have some apparent excuse for the future robberies of the band (that is, to pay the debts of the corporation), and that they might also know

> what shares they were to be respectively entitled to out of the proceeds of their future robberies.

When Spooner rips away the veil, we are left with the fact that a group of unknown profit-seeking principals authorized their agents to use the former's money in order to, among other things, extort a larger sum of money from a larger group of people who never consented to the arrangement in the first place. And it is all done, dishonestly, in the name of that larger group with the fraudulent words "government of the people, by the people, for the people." It's the greatest swindle ever perpetrated.

"Finally," Spooner writes,

> if these debts had been created for the most innocent and honest purposes, and in the most open and honest manner, by the real parties to the contracts, these parties could thereby have bound nobody but themselves, and no property but their own. They could have bound nobody that should have come after them, and no property subsequently created by, or belonging to, other persons.

The debt, then, was and is illegitimately incurred. The lenders, who voluntarily entered into this relationship with government officials, should have known that. Perhaps the lenders should sue those officials and collect damages from the officials' personal property, but it seems more accurate to think of them as Spooner did: as accomplices in crime. (See section XVIII of his essay.)

At any rate, they can have no proper claim against the rest of us.

Sheldon Richman is vice president of The Future of Freedom Foundation, editor of Future of Freedom, *and author of* Tethered Citizens: Time to Repeal the Welfare State *and two other books published by FFF. Visit his blog, "Free Association," at www.sheldonrichman.com.*

NEXT MONTH:
"One Moral Standard for All"
by Sheldon Richman

Common Sense versus Obama's Next War

by James Bovard

The Obama administration tottered on the edge of launching a cruise missile attack on Syria this past August and September. Obama hesitated and decided to seek congressional approval before blowing up many targets on the Syrian landscape. After Americans made it loud and clear that they did not want another war, congressional opposition helped curb his bellicosity. But he came close to plunging the United States into another war, and the episode provides warnings for the next foreign-policy brouhaha.

After it accused the Syrian regime of launching a chemical-weapons attack that killed masses of civilians, the administration harangued Americans to support going to war on the basis of blind faith in the president's character and wisdom. On August 28, a front-page *Washington Post* headline blared, "Proof Against Assad at Hand." But that hand remained hidden. On a Sunday talk show on September 8, White House Chief of Staff Denis McDonough admitted that the administration lacked evidence "beyond a reasonable doubt" proving that the Syrian regime had carried out the gas attack. But McDonough asserted, "The common-sense test says [Assad] is responsible for this. He should be held to account."

But was it "common sense" for Americans to accept Obama's case for war even though his administration's numbers were even shakier than its explanations for last year's Benghazi debacle? Secretary of State John Kerry was emphatic that Assad's alleged gas attack on August 21 had killed 1,429 people, including 426 children. House Minority Leader Nancy Pelosi declared, "With this 1,400, he crossed a line with using chemical weapons."

The *Los Angeles Times* noted, "The casualty figures are important because the administration is resting its case for military action in part on the scale of the attack." But no credible sources invoked such high casualty numbers. The French and British concluded that only a

few hundred people were killed in that attack, as did the nonprofit organization, Doctors Without Borders. The *Los Angeles Times* reported that the most reliable source on local casualties — the Syrian Observatory for Human Rights — scoffed at the administration's 1,429 number as wildly exaggerated. Rami Abdel-Rahman, the head of that organization, explained, "America works only with one part of the [Syrian] opposition that is deep in propaganda."

Apparently, that charge alone was supposed to establish the regime's guilt in the August attack.

McDonough sought to buttress his "common sense" test by declaring that "nobody is rebutting the intelligence; nobody doubts the intelligence" purportedly showing that Assad carried out the attack. But that was a brazen falsehood: several members of Congress who attended confidential briefings on the case for attacking Syria found the Obama team's evidence either circumstantial or shaky. Rep. Justin Amash (R-Mich.) commented,

> The evidence is not as strong as the public statements that the president and the administration have been making. There are some things that are being embellished in the public statements. The [classified] briefings have actually made me more skeptical about the situation.

The Obama team has continually asserted that the Assad regime possesses chemical weapons. Apparently, that charge alone was supposed to establish the regime's guilt in the August attack. But should Americans use the same standard to judge federal agencies? The Department of Homeland Security and other federal agencies have recently purchased hundreds of millions of rounds of ammunition, helping to spark a nationwide ammo shortage. Does "common sense" prove that the feds will soon commence warring on the American people?

The administration relied on pictures of supposed victims to justify attacking the Assad regime. On September 9, U.S. ambassador to the United Nations Samantha Power tweeted, "Video from Senate Intelligence Committee classified briefing on Syria. Such searing suffering. Such clear evidence." If prosecutors could use the same ploy — merely showing a photo of a corpse and then pointing at a supposed

perp — every murder trial would end in a conviction. But judicial procedures developed over the centuries because the civilized world recognized the folly of executing people solely on the basis of accusations of government officials. Apparently, the worse the alleged atrocity, the lower the standard of proof should be.

> American history has not been kind to the standard the Obama team invoked for going to war.

The Obama administration's "common sense" also insisted that attacking Syria would boost American "credibility." But unless "credibility" is defined solely as assuring the world that the president of the United States can kill foreigners on a whim, that is a poor bet. This type of credibility is more appropriate for a drunken brawl in a bar than for international relations.

Did "common sense" require assuming that Obama was more honest on Syria than on the NSA? It was only a few months earlier that administration officials ridiculed people who accused the National Security Agency of illegally vacuuming up millions of Americans' emails and phone records. After NSA internal documents began leaking out three months ago, Obama ludicrously asserted that the secret Foreign Intelligence Surveillance Act court is "transparent" and denied that the U.S. government has a "domestic spying program."

Common-sense history

American history has not been kind to the standard the Obama team invoked for going to war. It was "common sense" that the Spanish government blew up the USS *Maine* in the Havana harbor in 1898 — even though that pretext for war never held water. It was "common sense" that the North Vietnamese attacked U.S. destroyers in the Gulf of Tonkin in 1964 — even though Pentagon officials quickly recognized that Lyndon Johnson was lying about that incident. It was "common sense" to assume that Saddam Hussein had weapons of mass destruction — even though American intelligence had serious doubts. It was "common sense" to assume that toppling Muammar Qadaffi would bring peace to Libya — though the result has been chaos and the triumph of terrorist cohorts.

Nor is there good reason to expect the U.S. government to be honest about an alleged atrocity that the president invokes to sanctify his

foreign policy. For instance, during World War II the Roosevelt administration worked ceaselessly to present Soviet dictator Joseph Stalin as a friendly quasi-democratic type — "Uncle Joe." However, in 1940, after the Soviets seized much of Poland, the Soviets executed 22,000 Polish officers and intellectuals in the Katyn Forest in western Russia. When the German army discovered the mass grave site in 1943, the Roosevelt administration rushed to blame the killings on the Nazis.

Whitewashing the Katyn Forest massacre helped blindfold both American policymakers and the American public regarding the brutality of the Soviet Union. That deceit helped the Soviets cement control of Poland and other East European nations after World War II.

Last year, the National Archives finally declassified a thousand pages of documents that exposed the U.S. government coverup of Soviet responsibility. The Associated Press noted, "The White House maintained its silence on Katyn for decades, showing an unwillingness to focus on an issue that would have added to political tensions with the Soviets during the Cold War." The record showed that the United States had plenty of proof from 1943 onwards that the Soviets were guilty. But when Polish-American radio stations in Detroit and Buffalo began broadcasting the details of the killings during World War II the Roosevelt administration "brusquely silenced them," as historian Thomas Fleming noted in his book *The New Dealers' War.*

It took 69 years for the U.S. government to disclose that it had deceived the American people.

Last year's revelations happened in large part because of pressure from U.S. Rep. Marcy Kaptur, whose Ohio district includes many Polish Americans. It took 69 years for the U.S. government to disclose that it had deceived the American people regarding one of the war's landmark atrocities.

If it takes as long to find out what the U.S. government knew regarding recent alleged Syrian attacks, we will not have the full story until 2082. And perhaps our descendants will not even learn the truth then unless there are members of Congress who bludgeon the facts out of the government's archives.

Does "common sense" demand that Americans now defer to politicians who want to start unnecessary wars? "Presidents have lied so much to us about foreign policy that

they've established almost a common-law right to do so," George Washington University history professor Leo Ribuffo observed in 1998. And the more power government seizes, the more easily it can suppress the truth. Obama has aggressively used the "state secrets" doctrine to cover up the U.S. government's involvement in torture and other high crimes. There is no reason to expect he would be more candid regarding an opportunity to showcase his moral greatness by killing supposed bad guys.

No liability

What would have happened if an American cruise missile inadvertently struck a Syrian oil refinery or other flammable target and ten thousand civilians perished in the resulting explosion? A White House official would presumably issue a statement of regret while assuring Americans that the blame for the deaths rested with the Assad regime, since it had angered Obama.

Unfortunately, if Obama had whacked Syria, it would have been effectively impossible to hold him legally liable for any wrongful killings. In 1998 Bill Clinton launched a missile strike against a Sudan pill producer after U.S. embassies in Kenya and Tanzania were bombed. After the U.S. government failed to offer any evidence linking its target in Sudan to the terrorist attacks, the owners of Sudan's largest pharmaceutical factory sued for compensation for damage. In 2009 the U.S. Court of Appeals for the District of Columbia Circuit decreed, "President Clinton, in his capacity as commander in chief, fired missiles at a target of his choosing to pursue a military objective he had determined was in the national interest. Under the Constitution, this decision is immune from judicial review." As long as the president or spokesmen claim benevolent motives, any killings are legally sacrosanct.

> America cannot afford another "trust me" war based on secret evidence.

America cannot afford another "trust me" war based on secret evidence. Lies subvert democracy by crippling citizens' ability to rein in government. Citizens are left clueless about perils until it is too late for the nation to pull back. Regardless of Obama's lofty invocations, there is no such thing as retroactive self-government. And citizens cannot afford to trust Obama-style "common sense, " which unleashes

politicians to wreak havoc around the globe.

James Bovard serves as policy adviser to The Future of Freedom Foundation and is the author of a new ebook memoir, Public Policy Hooligan, *as well as* Attention Deficit Democracy *and eight other books.*

NEXT MONTH:
"How I Learned Not to Shovel"
by James Bovard

There is no possible way to allow a person to be right without also allowing him to be wrong. The only way to avoid responsibility for another's mistakes is to allow him the full glory and reward of being right, as well as the full dishonor and penalty of being wrong. Only in this way can one person isolate himself from the mistakes of another.

— F.A. Harper

Contested Ground: The Semantics of "Laissez Faire"

by Joseph R. Stromberg

One frequently runs across accounts of the modern world which hold that laissez faire (or some ideally free market) *never existed* but yet was (or is) somehow *responsible* for most ills that have faced mankind for several centuries. The writers seem to have it both ways. How, you might well ask, can that be done? Rather easily, it seems.

On the facts, it is usually necessary to concede many historical points raised by critics of business (generally from the Left); indeed, advocates of laissez faire often complain about the very same things as violating their notion of laissez faire. But that reasoning seems to be too subtle for most participants. In such debates, then, "laissez faire" reaches rather early limits. Arbitrary use by both critics and defenders of capitalism has not helped things. Roundly damned, or (less often) praised, on the basis of partisan definitions, "laissez faire" thus resembles "states' rights" — anti-federalist rhetoric employed by political "outs" and abandoned when they get *in*. The latter artful dodge is so well-known that critics blithely assume that local autonomy must *always* mean things such as slavery or segregation. Similarly, laissez faire *always* means gross exploitation, economic collapse, et cetera.

Capitalism broadly considered

If we take "capitalism" (provisionally) as naming economies defined by private ownership of capital, production for profit, rational accounting, market prices, and free wage laborers, it is clear that many, very different societies could claim the title. So far, we would know little about what sorts of capitalism have arisen since 1492. We would, however, soon learn that for many historians, past political and economic relations so crucially defined European and, later, American economic development that early capitalism bears little resemblance to any ideal market economy.

England's early start in commercial activity notwithstanding, John Stuart Mill could write in his *Principles of Political Economy*, "The principle of private property has never yet had a fair trial in any country; and less so, perhaps, in this country than in some others." He added that "the system still retains many and large traces of its origin." Writing in 1943 of the age-old division of European societies into large-scale proprietors opposed to peasant masses, sociologist Franz Oppenheimer, who influenced Albert Jay Nock and Frank Chodorov, and through them, Murray Rothbard, said,

> In this way, the primal distribution of the factors or agents of production came into existence. Rising capitalism inherited it from its predecessor, feudal absolutism. Capitalism took over all of feudalism's basic institutions, especially two, the privileges of State-administration, and the monopoly of land…. [It] took over feudal class-domination and class-distribution.

For both liberal (Whig) historians and Marxists, the arrangements called "feudalism" were the seedbed of capitalism. Remaining questions were how evolutionary or revolutionary the break was, and whether the resulting societies were good. For many writers, few intermediate or "transitional" phases worth noticing intervened. Whig historians and classical liberals do condemn, as "mercantilism," a period of state-regulated capitalism (while complacently accepting its results as beneficial enough), after which regulation gave way to laissez faire, at least in 19th-century Great Britain and the United States.

"Feudalism" versus "feudal absolutism"

But there was at least one intervening social formation, possibly two. The first "feudal absolutism" resulted from struggles for supremacy (modern sovereignty) between lesser feudal lords and Europe's aspiring territorial kings. From about 1500, centralizing monarchs allied themselves (when necessary) with urban bourgeois strata, built up loyal bureaucratic hierarchies and large armies, and overawed their feudal rivals. State-building wars between those monarchies culminated in the misnamed 17th-century wars "of" religion. Surviving kings used tamed nobles to head their bourgeois bureaucracies and peasant armies, which raised reve-

nue and magnified royal power. Larger internal markets (not especially free) came into being, partly by sovereign command. It goes almost without saying that feudal-absolutist economic policy favored large property and incomes for those closely linked with the rulers. Everyone one else was merely a source of revenue. Decentralization, reciprocal obligations, and divided sovereignty that had characterized genuine feudalism fell by the wayside, while consequences for land ownership varied by kingdom.

Economists often oppose ideal notions of the free market to historical facts involving actually existing capitalism.

What Marxist scholars call Small Commodity Production (SCP) played an important part in the genuine feudal order and survived into feudal absolutism, with one major exception: England. It lived again, for a time, in Europe's overseas colonies. Recently some Marxist scholars have sought to theorize that SCP was a full-blown mode of production and possible alternative to both "feudalism" and capitalism. SCP was essentially the program of the 17th-century English "Levellers" (named by their enemies). As things worked out historically, however, SCP did not survive. (Free and fair *economic* competition was probably not the major reason.)

To clarify underlying issues, economists often oppose ideal notions of the free market to historical facts involving actually existing capitalism. Following this reasonable procedure, let us take as an ideal model what C.B. Macpherson calls "simple market society." Here we find "no authoritative allocation of work … no authoritative provision of rewards … authoritative definition and enforcement of contracts … individuals [who] seek rationally to maximize their utilities … [and who] have land or other resources on which they may get a living by their labour." Here SCP is normative — a measuring rod unlikely to assist defenders of those 19th-century capitalist titans whom right-wing economists typically shield from charges of greedy Robber Baron-hood. The point, of course, is that ideal models matter.

Agrarian capitalism in England

If laissez faire really means "leaving things alone," then such a policy pursued from the 15th century forward would have given SCP a fighting chance in England, if rights to land either remained am-

biguous or were settled in favor of small proprietors. Instead, over several centuries, big landholders dominated Parliament and decided such questions entirely in their own interest. The famous Enclosures played an important role, along with other assaults on customary rights. The result has been called "agrarian capitalism," which did not arise by "leaving things alone." John Locke was one of its champions, adding slogans about progress and productivity to the system's weaponry. Here we find postfeudal lords (and gentry) as estate owners, large-scale capitalist farmers as tenants, and descendants of former peasants as wage laborers. Of this classic "triad," laborers got wages, farmers profits, and landowners rent.

It was a model rent-seeking society. Common law, gradually remodeled, helped secure the new arrangements. With an eye on landholdings and high profits for the right sort, English statesmen turned to overseas colonization, extending their system to North America, where the "merchant State" and "State system of land tenure" got a foothold. (See Albert Jay Nock's *Our Enemy the State,* chapter 3: "The State in Colonial America.")

By the 19th century, profit-making possibilities and political coalitions changed and Britain and America abandoned mercantilism for laissez faire. Thus, these two cases testify to what historically existing laissez faire was or was not. In truth, policymakers simply refrained from *using* state powers in some areas of economic life, while holding those powers in reserve.

Laissez faire in Great Britain (1846–1914)

A famous 1948 essay by J. Bartlet Brebner ridiculed the idea of sustained, consistent British laissez faire, rightly pointing out the mistake of adducing the influential Jeremy Bentham (fount of bourgeois statism) as a principled proponent of laissez faire. As middle-class social engineers, Benthamites favored cutting restrictions in some areas and increasing them in others. Business itself pragmatically wanted new state services and the state's incremental interventions were cumulative and systematic. At best, relative laissez faire coexisted with its own countertrend and successor. ("Free trade" involves similar paradoxes, but we cannot examine them here.)

Further, there were numerous overseas exceptions to English laissez faire. Ireland was fair game for economic and social engineering enforced with special police pow-

ers. And Manchester liberals, including Richard Cobden, MP, supported state-funded development projects (e.g., railroads) in India to promote cotton production and get products to ports, nicely anticipating sundry World Bank infrastructure projects. (Service of prominent English liberals in the India Office is a valuable clue for anyone pursuing the sources of liberal sellout.)

Laissez faire in the United States (1832–1860? 1865–1900?)

If things were complicated in England, perhaps they were simpler in an Exceptional Nation (and failed federation). It is interesting that the American colonies that revolted in the 1770s were in most respects hotbeds of Small Commodity Production. It was precisely the *political* creation, as of 1789, of a stronger central apparatus under a new constitution that pushed America into capitalism as such. As in Britain, federal policy was at first mercantilist, but political fortune later favored Jeffersonian-Jacksonian (relative) laissez faire from roughly 1832 to 1860. Throughout, American federal (and state) judges steadily reinterpreted common law to favor industrialization from at least 1810 forward.

By 1897 southern theologian Robert Lewis Dabney could complain that by "establishing corporations and protecting particular industries," American federal and state legislatures had "already produced, in democratic America, diversities of conditions more gigantic than were found in the feudal monarchies…." Oppenheimer, no friend of the state, noted in 1914 that, "the United States of America, is among the most powerful state-formations in all history," and economist Wilhelm Röpke, once a president of the Mont Pelerin Society, observed in 1950 that in the United States the interconnection of capitalists and bureaucracies (already an old story) had "probably reached its highest degree."

Political fortune favored Jeffersonian-Jacksonian (relative) laissez faire from roughly 1832 to 1860.

So here, then, an important puzzle arises: How did the United States manage to achieve such "feudal" results, given its supposedly free starting point?

Well, one thing that intervened was the war of 1861–1865, which smashed America's imperfect prewar laissez faire along with local autonomy. The war decisively moved Oppenheimer's "political means to

wealth" upwards, resulting in considerable federal assistance to capitalist accumulation. Friends and (oddly) foes contrived to call this policy "laissez faire." Classical liberals have particularly noted the role of America's high tariffs in producing postwar capitalist fortunes.

History and rhetoric of "laissez faire"

Some of that is a failure to communicate. Parties to the discussion are not using "laissez faire" in the same way. Further, the dodges to which interested parties resort befog the question. Worse, there is often an implicit Hobbesian and centralizing 19th-century framing of laissez faire in which, first, we *impose* an order meant to be self-regulating and self-sustaining once imposed, and *thenceforward* we can say we are practicing laissez faire. (There were a number of discussions on these lines in 2002 and 2003, just before armed U.S. bureaucracies destroyed Iraq.) Karl Polanyi argued (1944) that in 18th- and 19th-century Britain the state *did* impose new "free market" relations of production, although "laissez faire" taken literally would have meant leaving various existing customary arrangements alone. In any case, having reformed the entire property system ("relations of production"), the financial system, et cetera, on the Hobbesian plan, paladins of this kind of laissez faire will countenance no *further* interferences within their comprehensive new establishment. Such was the posture of Gilded Age big businessmen, lawyers, and judges.

Karl Polanyi argued (1944) that in 18th- and 19th-century Britain the state *did* impose new "free market" relations of production.

At present, depending on the writer, "laissez faire," "free market," or both, can refer (going forward) to corporatism-minus-unions, military-industrial complexes, phony privatizations, or the American empire, while old standby terms such as "mixed economy" and "American empirical collectivism," in use until the 1970s (and which at least admitted a range of forms to be explored), have disappeared. (The state, too, has disappeared from discussion, much to the relief of both halves of the state-capitalist bloc.)

As already noted, when defenders of laissez faire provide details of why a given market was not "free," hostile disputants claim victory on the ground that a free market is *impossible* anyway. We have seen those exchanges a thousand times.

Would-be advocates of free markets find themselves in the position of English Marxists after 1956 trying to distinguish between "really existing" socialism (= Soviet [and other] practice) and socialism ideally conceived. Alas for principled friends of market exchange, actually existing capitalism bears little likeness to a normative "free market." Röpke traced the "plutocratic taint" and "immense accretions of capital and economic positions of power" of early capitalism to the "feudal-absolutist heritage" that gave the system "a false start from the very beginning." Historian Ralph Raico writes, "The self-proclaimed liberal parties of the nineteenth century were, in fact, machines for the exploitation of society by the now victorious predatory middle classes, who profited from tariffs, government contracts, state subsidies for railroads and other industries, state-sponsored banking, and the legion of jobs available in the ever-expanding bureaucracy."

Against that background, Oppenheimer asserted, "Free competition is innocent of all the crimes laid at its door.… It has the best alibi imaginable: Free competition has never yet existed." Murray Rothbard took a similar tack, writing in 1962 that contemporary advocates of laissez faire looked "to the future, but as redeeming the partially-fulfilled promise of the past." That seems a bit speculative at this late date. "Capitalism" as we know it falls fatally short: rather than being a *partial embodiment* of free markets, it seems just another power-system standing athwart them.

With that in mind, we shall have to sift through all proposed instances of "laissez faire" with unwontedly great care. Doing so might raise the level of discussion and promote better communication across the political spectrum.

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Exit over Voice

by Alexander William Salter

By what standard should we judge collective decision-making? In the liberal-democratic tradition, the overwhelming consensus affirms the supremacy of process. On this view, the justness and efficacy of collective decision-making depend on the inclusiveness of the process. That concern, what philosophers and social scientists call "voice," has manifested itself in many familiar and important ways, chiefly through an expansion of the franchise and the creation of rules that forbid the silencing of minority groups' opinions.

By making sure each and every interested party has the opportunity to voice its concerns, it is widely believed that the outcomes of collective decision-making will be equitable across groups and effective at implementing the popular will. It would be difficult to overstate the importance of that view for justifying the outcomes of collective decision-making. It is largely by granting to individuals an equal chance to voice their concerns that democratic processes claim to derive their legitimacy.

The trouble is that despite its normative appeal, voting (as it is conducted in liberal democracies today) is simply not a very good way for translating preferences into welfare-enhancing outcomes. First, and most obviously, voting in electoral processes yields "all or nothing" results. If Al and Bob are running against each other, the voting public really faces a discrete choice between Al's and Bob's list of policies. Folks who prefer Al's policies on some issues but prefer Bob's on others are left with little or no way to act on their concern. Similarly, there is no way for voters to express their degree of preference. If 51 percent of voters weakly prefer Al to Bob, and the other 49 percent strongly prefer Bob to Al, normal electoral procedures would result in Al's beating Bob, even though Bob's supporters have a good argument for why it oughtn't be Al who governs them. (As an aside, if Bob supporters could trade with Al supporters for their votes, both groups would be better off in their own es-

timation. Such deals are usually forbidden by electoral rules.) In addition, the appeal of voting drops off considerably as the voting population grows in size. "One man, one vote" may sound like a noble conformance with the principle of equality before the law, but in practice that equality simply translates into equal powerlessness before the law. Those examples are admittedly oversimplified, but they get to the heart of the problem with voting, and hence with voice.

Insulation

Far more important than equal participation in the collective decision-making process is the ability to insulate oneself from the process's harmful outcomes. It matters much less that my voice is heard if there is an easy way for me to get around laws or regulations that impose significant costs. This is typically called "exit" and is contrasted with voice as the fundamental quality by which collective processes ought to be scrutinized. Exit addresses many of the concerns with voting raised above. By opting out of collective outcomes that impose undue harm, it is much more likely that the arrangements I choose not to opt out of command my assent. Exit is far less romantic a concern than voice — which does a lot to explain its relative neglect by political philosophers — but far more effective a solution to the problem of translating individual preferences into welfare-enhancing outcomes at the group level.

While political processes rely heavily on voice, market processes rely heavily on exit.

While political processes rely heavily on voice, market processes rely heavily on exit. If Safeway stops offering me high-quality food at prices I am willing to pay, it is easy for me to switch to Trader Joe's. That is because exercising my exit option in market processes is not very costly. In contrast, exit is a highly imperfect check on political power, because the only way for me to exit my polity is to move to another. However, other polities probably don't look very different from my own in terms of implementing policies that I enjoy. In the current range of political institutions, governments do not face anywhere near the pressure to compete for citizens as private businesses do for customers. That is why so many of a polity's citizens approve of only a small number of its policies at any given time.

It is possible to structure political institutions to improve the viability of exit. Federalism, the separation of powers between local and national political entities, is probably the best-known example. Unfortunately, in the United States, discussions of federalism and its manifestation in states' rights has become mistakenly entangled with pro-Confederacy apologias, making an honest public discussion of federalism's benefits nearly impossible.

That is a shame, because dedication to federalism has the potential to result in welfare-enhancing outcomes for a great number of people. By requiring the majority of political activity to take place at the state level, with the relegation of only a few specifically defined powers to the national government, states could experiment with different policies in an attempt to attract citizens. Progressives who enjoyed heavily subsidized government health care and strict commercial regulation could live in California; conservatives who enjoyed government support of religious institutions and strict regulation of personal conduct could live in Mississippi; and libertarians who enjoyed none of those things could live in New Hampshire. But since all of those states are also part of a larger political union, the costs of moving from state to state would be much lower than the costs of moving from country to country, ensuring that people will continue to be happy with the policies they get over time. The important thing is that, in a truly federal system, it is much more likely that individual members of these groups can all get what they want, without infringing on other individuals' ability to achieve the same. In contrast, in a system where major political decisions are made at the national level, everybody will have to settle for a compromise with which nobody is happy.

The concern with giving members of a political community equal voice is admirable. But without a corresponding concern for the practicability of exit, collective decision-making processes will continue to be deeply flawed. It is exit, not voice, that will promote welfare-enhancing collective decisions, and hence governance founded more closely on the consent of the governed.

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The Classical Liberal Legacy of Percy Bysshe Shelley

by Wendy McElroy

"I have deserted the odorous gardens of literature to journey across the great sandy desert of Politics." In this manner, the English Romantic poet Percy Bysshe Shelley (1792–1822) announced a political treatise entitled *A Philosophical View of Reform* (1819). It states, "The first principle of political reform is the natural equality of men, not with relation to their property but to their rights." The unfinished draft was Shelley's longest political statement delivered as nonfiction.

Coming from a celebrated poet, *A Philosophical View* should have been issued immediately and shelved with respect in the library of freedom. But it took almost a century after Shelley's untimely death to appear. Several factors contributed. The Irish writer Thomas William Rolleston, who transcribed the book from barely legible notes, explained, "It was doubtless the unfinished condition of the MS., coupled with the feeling that all Shelley's prose work is of subordinate interest as compared with his poetry, that led to the suppression for a hundred years of a work on which he himself set considerable store."

Another factor in the book's obscurity could be its dated tone, structure, and philosophical approach. Shelley infused his nonfiction with a flowery rhetoric that can sound odd to modern ears. The book's rambling structure can also be jarring because it is not currently fashionable. Moreover, it sweeps through centuries of history and dozens of nations, making broad assertions about rulers, writers, and artists. In places, it resembles a stream-of-consciousness work.

Shelley's political philosophy may also seem naive and dated. Like many contemporaries, Shelley believed in the moral perfectibility of man. Knowledge and art could persuade men to adopt moral virtues which would naturally result in a cooperative society with no need for government institutions. Indeed, government was the greatest

obstacle to perfectibility and cooperation. In his pamphlet *An Address to the Irish People* (1812), Shelley declared, "Government is an evil; it is only the thoughtlessness and vices of men that make it a necessary evil. When all men are good and wise, government will of itself decay." (Shelley's views on government changed somewhat over time.)

As a schoolboy, Shelley was profoundly influenced by the philosopher and anarchist William Godwin and by his book *Enquiry concerning Political Justice.* Godwin's *Enquiry* declared, "There are three principal causes by which the human mind is advanced towards a state of perfection; literature...; education; and political justice, or the adoption of any principle of morality and truth into the practice of a community." Shelley believed men of letters and literature were the key to creating a just society; he collapsed the distinction between politics and poetry.

Reclaiming *A Philosophical View*

Shelley is often classified as a socialist or communist, whereas he falls more appropriately within classical liberalism. The confusion is somewhat justified.

Shelley was deeply influenced by the French philosopher Jean-Jacques Rousseau, who idealized primitive man and society. Many radicals were similarly drawn as a response to the Industrial Revolution, which they believed enslaved men and coarsened life. Most of them were socialists.

Shelley is often classified as a socialist or communist, whereas he falls more appropriately within classical liberalism.

Shelley championed the cause of the common man. Indeed, one of his poems (*Queen Mab,* 1813) became known as the "Chartist's Bible"; Chartism was a working-class movement in mid-19th-century England. Classical liberalism has a deep history of championing the common man, for example through the Anti-Corn Law League of John Bright and Richard Cobden. Nevertheless, this historical mantle has been utterly usurped by modern socialism.

Shelley could be contradictory. For example, he vigorously attacked the institution of marriage and argued instead for entirely voluntary unions. Yet he married twice in a traditional manner. Such inconsistencies leave room for debate about where he genuinely stood. Moreover, his admirers span the political

spectrum, including Henry David Thoreau, Mohandas Gandhi, and Friedrich Engels. If people are known by the company they keep or the fans they attract, then Shelley is difficult know.

Shelley traveled England and Ireland to distribute pamphlets and to lecture.

The most powerful reason for confusion: Shelley often expressed his political philosophy through allegorical poems. That invites interpretation and makes his nonfiction works more important for providing clarity.

Thus, the most rewarding result of considering *A Philosophical View* is the rediscovery of Shelley's classical liberalism.

Born into privilege and wealth

Shelley was born in 1792 in Sussex into a family of wealth and political connection. Educated at Eton and at Oxford, Shelley displayed the rebellion and literary genius that defined his life. Oxford lasted only one year, however. Shelley and the provocatively named student Thomas Jefferson Hogg published a short tract entitled *The Necessity of Atheism,* which argued against compulsory Christianity. University officials and bishops to whom an early draft had been circulated were deeply offended. In 1811 Shelley was expelled.

For the next two years, Shelley traveled England and Ireland to distribute pamphlets and to lecture. An 1812 pamphlet titled *A Declaration of Right*s showing the clear influence of Thomas Paine was deemed too radical for distribution in England. It stated,

> Government has no rights.... It is therefore just, only so far as it exists by [the people's] consent, useful only so far as it operates to their well-being.... No law has a right to discourage the practice of truth.... Law cannot make what is in its nature virtuous or innocent, to be criminal, any more than it can make what is criminal to be innocent. Government cannot make a law, it can only pronounce that which was law before its organization.

Shelley and his first wife eventually settled in an English village where he hoped to gather a community of radical friends. But his speeches and pamphlets had caught the eye of the British Home Office. The couple prudently left England again.

On returning, Shelley forged a warm friendship with Godwin and dove into the radical politics of London, particularly with regard to freedom of speech. Defending writers and publishers against censorship was a constant theme of Shelley's life. One incident is indicative. Leigh Hunt was a cofounder and editor of the *Examiner,* which John Stuart Mill called "the principal representative, in the newspaper press, of radical opinion." In 1812 Hunt was charged with libel for an article that criticized the Prince of Wales. Hunt and his brother received two years' imprisonment each. Although they were mere acquaintances, Shelley sent Hunt "a large sum of money" and faithfully corresponded with the imprisoned man. In turn, Hunt became the foremost champion of Shelley's work.

Defending writers and publishers against censorship was a constant theme of Shelley's life.

In 1814 Shelley and Godwin became estranged. Godwin's 16-year-old daughter Mary (the future author of *Frankenstein*) ran off with Shelley. After Shelley's first wife committed suicide, he and Mary wed. In 1818 they moved to Italy, where Shelley produced the massive body of work on which his reputation rests. Four years later, at the age of 29, he drowned while sailing in a storm.

A philosophical view of reform

A Philosophical View opens,

> Those who imagine that their personal interest is directly or indirectly concerned in maintaining the power in which they are clothed by the existing institutions of English Government do not acknowledge the necessity of a material change in those institutions.

The words were written in 1819. Europe had just emerged from the Napoleonic Wars (1803–1815), which ended with the Battle of Waterloo. In his introduction, Rolleston sketched the effects on England:

> She had emerged victoriously, but the country was full of distress and unrest. The National Debt had risen to what was then considered an appalling figure. Prices of all the necessaries of life had soared.... England was facing a very threatening future under the rule, broadly speaking, of the country gentlemen and the

> Church of England, with some admixture of what Shelley calls the "new aristocracy," the profiteers and speculators to whom the war had brought much wealth and a growing power. The working-classes on whom the system of taxation weighed with intolerable oppression had practically no voice in the still unreformed Parliament.

The working class was further burdened by Corn Laws, which imposed duties on imported grains in order to protect British agricultural interests. Every mouthful of food cost more.

The Peterloo Massacre, as it was called, is considered a turning point in English populism.

On August 16, 1819, a crowd of 60,000 to 80,000 gathered in a Manchester field to demand parliamentary reform. Local authorities ordered the military to arrest speakers and disperse the assembly. A cavalry charged the peaceful crowd, killing an estimated 15 to 18 people and injuring hundreds more. The Peterloo Massacre, as it was called, is considered a turning point in English populism because it inspired movements such as Chartism and individuals such as the nonconformist liberal John Edward Taylor, who established the *Manchester Guardian.*

A Philosophical View was Shelley's response, and his anger shows through. Consider his description of the military:

> From the moment that a man is a soldier, he becomes a slave. He is taught obedience; his will is no longer, which is the most sacred prerogative of men, guided by his own judgement. He is taught to despise human life.... He is more degraded than a murderer; he is like the bloody knife which has stabbed and feels not: a murderer we may abhor and despise; a soldier, is by profession, beyond abhorrence and below contempt.

But Shelley did not call for anarchy, which he had come to view as dangerous in the hands of 'unperfected' men. He stated, "We would establish some form of government ... through nonviolence for the purpose of securing five specific protections to the people."

1. We would abolish the national debt.
2. We would disband the standing army.
3. We would, with every possible regard to the existing rights of the holders, abolish sinecures.
4. We would ... abolish tithes, and make all religions, all forms of opinion respecting the origin and government of the Universe, equal in the eye of the law.
5. We would make justice cheap, certain and speedy, and extend the institution of juries to every possible occasion of jurisprudence.

In his introduction Rolleston went out of his way to dispel the misconception that Shelley was a communist. He wrote,

> [On] the question of property he was certainly no Communist. What a man had honestly earned was rightfully his, to hold and to bequeath. But there were dishonest and wrongful ways of procuring or of using property, and for property so acquired or used he had no respect. He believed, however, that these means would not flourish in any State where property and political rights were reasonably well distributed among the whole population.

But what if "well distributed" rights resulted in ill distributed wealth? Would Shelley have advocated a forced redistribution? He certainly idealized a society of roughly equal wealth but that is true of various individualists throughout history. For example, the American individualist anarchist Josiah Warren joined communities that practiced a voluntary communism but he rejected the idea of enforcing it.

The government Shelley envisioned is extremely limited and dedicated to removing obstacles to freedom.

It seems clear Shelley would have rejected an enforced equality. For one thing, the government he envisioned is extremely limited and dedicated to removing obstacles to freedom, not to social engineering. Of his five "protections," four removed laws or institutions; the other established "cheap, certain and speedy" justice. The intrusive bureaucracy required by socialism would have appalled Shelley.

Moreover, Shelley's flashes of political and economic insight indicate a mind that would have seen the error of legislating how much a man could freely produce or keep. One such flash: On the question of currency issuance and repudiating the national debt, he wrote,

> The existing government of England in substituting a currency of paper for one of gold has had no need to depreciate the currency by alloying the coin of the country; they have merely fabricated pieces of paper on which they promise to pay a certain sum. The holders of these papers came for payment in some representation of property universally exchangeable. They then declared that the persons who held the office for that payment could not be forced by law to pay. They declared subsequently that these pieces of paper were the current coin of the country.

Shelley's home is within classical liberalism, which has long missed him.

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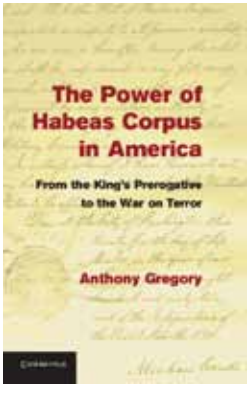
If a man does not keep pace with his companions, perhaps it is because he hears a different drummer. Let him step to the music which he hears, however measured or far away.

— Henry David Thoreau

The Great Writ

by David D'Amato

The Power of Habeas Corpus in America: From the King's Prerogative to the War on Terror by Anthony Gregory (Independent Institute/ Cambridge University Press 2013), 390 pages.



Among libertarians generally, there is a somewhat dependable tendency to hark back to the halcyon days of a supposed free age somewhere in the past, and to spotlight certain related features of Anglo-American legal history in service to that narrative. As those features are romanticized, they become totemic symbols of the classical-liberal tradition and its precursors, and are thus held away from criticism and analysis to a regrettable extent. In his new book, *The Power of Habeas Corpus in America: From the King's Prerogative to the War on Terror,* Anthony Gregory attends to this propensity as it applies to the recondite legal doctrine of habeas corpus. And in dismantling facile, oversimplified conceptions of the Great Writ and its tangled history, Gregory reveals what he says "could be called a dark side of the writ," offering in the process an encyclopedic study like few before it.

Part of the difficulty of chronicling habeas corpus is its inherent insusceptibility to easy definition. The celebrated and widely read English jurist William Blackstone — cited early in the book for his rather sunny view of habeas corpus — acknowledged part of the writ's complexity in writing that "there are various kinds made use of by the courts." Avoiding conflating these "many varieties of the article" (quoting Edward Jenks), Gregory solicitously treats linguistic arguments that attempt to pierce the shadows of a distant history to shed light on the origins of habeas corpus as we know it. Throughout his book, Gregory's review is enriched by his understanding that habeas corpus is, like most creatures of the common law, not a single, "clear-

cut doctrine" to be assessed as one monolithic whole. It is a swirling medley of historical, political, and legal currents that have often flowed at cross-purposes, with expediency, not principle, determining the tides. Gregory demonstrates the frailty of the stock appeal to the writ as a categorically libertarian instrument by featuring a host of skirmishes in which one power bloc leveraged habeas corpus to check the power of another. Explanations of struggles between Parliament and the Crown, higher and lower judicial officials, and the states and the federal government whittle away at the mythologies that have encrusted habeas corpus.

Gregory's thesis about the fickle character of habeas corpus comes to the fore in the discussion of "judicial activism."

Gregory's thesis about the fickle character of habeas corpus, its dual nature in relation to individual liberty, comes to the fore in the discussion of "judicial activism" that surfaces in the book. If historical habeas corpus has never been quite as formidable a force as its idealized, imaginary version, then upsurges in its power have been the results of activism from the bench almost per se. On the grounds of vertical federalism, conservatives and even many libertarians could take exception to the Supreme Court's mid-20th-century habeas corpus jurisprudence. But by effectively expanding federal courts' power to review state courts' decisions, those cases "marked an expansion of habeas corpus in its scope," a turn that redounds to the benefit of the individual.

Gregory's survey of the cases illustrates the broader point that, even taken on its own terms, the kind of "judicial restraint" fervidly counseled by conservatives would produce (and has produced) results both libertarian and not. Libertarian views of deference to precedent should thus be as shaped by expediency and consequence as are those of the state and its agents; it does not profit the liberty movement to play into the hands of tyrants by mechanically accepting their standards and rules — which they themselves readily ignore whenever it serves them. The radicalized form of habeas Gregory hopes for would be a departure from historical precedent, not a continuation of it — and that is exactly the point. Because his interpretations and analyses of the historical record are radical, Gregory's book will almost

certainly bear all of the familiar cries of cynicism from all quarters of power apologists. It is not cynicism, however, that pervades the book, but discernment. One wishes there was more libertarian revisionism of such a high quality, especially in the academy.

A more accurate picture

Certainly there have been earlier attempts to revise the record of habeas corpus to add needed nuance to the picture of the Great Writ, but none so dauntless or so complete. Gregory's is a scholarly achievement, equipped even with a chart of historical terms (full of legal Latin, the large part of which the author of this review, an attorney, could not define). A number of habeas books over the past decade or so have emerged, essaying to offer a fuller picture of the writ, capable of shedding some of the mystique and romance that has clothed it. Paul D. Halliday's *Habeas Corpus: From England to Empire,* published in 2010 by Harvard University and referenced by Gregory, contributed in no small way to the undertaking that Gregory so adeptly continues in his book. Rather than approaching the writ as "something grander" than it actually is or ever was, Halliday made it his goal to balance and remedy a record that too often "has been written less as a history than as an exercise in legal narcissism."

Gregory's is a scholarly achievement, equipped even with a chart of historical terms.

Legal narcissism is, of course, itself a well-documented piece of the American historical experience. So much of what has prevented Americans (libertarians included) from accepting or at least honestly confronting deeper, more consistent — that is, more *radical* — accounts of power relationships is the tendency to impute the growth of government and erosion of individual liberty to an insufficient adherence to their own historical legal values. Were we to just go back to X (fill in the blank: the Constitution, the ideas contained in the Declaration, the Articles of Confederation, Magna Carta, habeas corpus, or some other favorite), we could have the good government and laws that we were promised.

This longing, retrograde gaze is in fact what has provided the precarious common ground between American libertarians and conservatives. Gregory's book is important, then, not just for painting a

more accurate picture of habeas corpus, but also for, by logical extension, disenchanting those who would see a libertarian Eden somewhere in the past. If there is something approaching a libertarian paradise to be had in the future, it cannot be a result of backward-looking invocations of a varied Anglo-American legal history; rather it will have to issue from a healthy, prudent distrust toward that past, an unflinching readiness to subject it to just the kind of trenchant scrutiny provided in *The Power of Habeas Corpus in America*. Indeed, few habeas scholars have been willing to face "fully the ironic affirmation of power that it also implies," even when it is used as a liberatory device. "For every undermining of a custodian's power [over a prisoner]," Gregory observes, "there is the affirmation of another official's power — a judge's power, to say nothing of the state's general power to decide whom to detain." This is the glaring trouble with libertarian appeals to legal protections, whether grounded in habeas corpus, the Constitution, or something else. As a matter of course, all such theories and arguments tacitly admit the arbitrary power of the state over the lives of individuals.

To be sure, Gregory's disquisition into the minutiae of habeas and its legal context is not for the faint of heart, or even necessarily the only moderately interested in the subject matter; exhaustively, expertly researched and teeming with footnotes and legal terms of art, his book does not read like a trendy member of the *New York Times* nonfiction bestsellers, though it is never wearisome or needlessly donnish in its air. For those unshrinking before arcane Latin terms and legal citations, *The Power of Habeas Corpus in America* presents a rich reward, as comprehensive a probe into such a massive history as can be advanced in 416 pages. If this is a promise of things to come from Gregory, history lovers and libertarians are in for a treat.

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