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FUTURE OF FREEDOM

VOLUME 25 | NUMBER 8

AUGUST 2014

Dream manfully and nobly, and thy dreams shall be prophets.

— E.G. Bulwer-Lytton

FUTURE OF FREEDOM

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

Future of Freedom is FFF's monthly journal of uncompromising essays on liberty. The price is $25 for a one-year print subscription, $15 for the email version. Past issues of *Future of Freedom* and *Freedom Daily* can be accessed on our website: www.fff.org.
Editor: Sheldon Richman

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The Presidential Authority to Torture and Assassinate, Part 1

by Jacob G. Hornberger

If our American ancestors in 1787 had been told that the Constitution was going to bring into existence a national government that would have the powers to torture and assassinate people, including American citizens, there is no reasonable possibility that Americans would have approved the document. They would undoubtedly have instead chosen to continue operating under the Articles of Confederation, notwithstanding the problems that had arisen under the Articles.

The American people were very skeptical about the new government that the representatives at the Constitutional Convention were proposing to them. Don't forget, after all, that when the respective states selected delegates to the Constitutional Convention, it was with the aim of simply reforming the Articles of Confederation, which had provided for a national government with very weak powers. In fact, many people today are shocked to learn that under the Articles, the national government didn't even have the power to tax.

The simple truth is that our American ancestors just didn't trust government, especially after having lived under a British government that essentially wielded omnipotent powers over them. The last thing our ancestors wanted was to replace their previous government — the British government — with a similar type of government, albeit an American government.

Thus, when the Constitutional Convention, which had operated in secret, proposed a brand new national government to replace the government established under the Articles of Confederation, our American ancestors were not overenthusiastic about it. They were especially concerned that the new federal government would end up doing bad things to them, such as arbitrarily killing them, torturing them into confessing to crimes, incarcerating them without trial, or

arbitrarily searching their persons and homes, or a combination of such things. Our ancestors knew that that's what governments, including the British government, had done to people throughout history.

So how did the proponents of the new federal government convince Americans to overcome their reticence to the proposed new government?

The most important condition was that their new federal government would be a limited-government constitutional republic.

The proponents explained that the Constitution would set forth what powers the new government would have. If a power wasn't enumerated, then it simply could not be exercised under the terms of the Constitution itself.

Therefore, the idea was that people would not have to concern themselves with the possibility that their new federal government would end up doing the types of things that other governments in history had done. Since the Constitution failed to delegate a power to arbitrarily kill people, the government was simply precluded from exercising it. The same held true for a power to torture people into making confessions, a power to arbitrarily search people's homes or persons, or a power to incarcerate people without trial.

That argument — that the new government's powers would be limited to those enumerated in the Constitution — was persuasive to people. They could read the Constitution and see that the new government would be subject to the terms and conditions of the document. The most important condition was that the new federal government would be a limited-government constitutional republic, one whose powers would be confined to those few powers enumerated in the Constitution itself and to the implied powers that would be necessary to implement the enumerated powers.

More limits

However, even the enumerated-powers doctrine wasn't good enough for our American ancestors. They knew that the federal government would inevitably attract the type of people who would thirst for ever-increasing amounts of political power over others.

Indeed, that's the way it has been throughout history. There have always been those who will do whatever they can to satisfy what seems

to be an uncontrollable compulsion to expand the power of government over others, just as there have always been those who instead yearn to live in a free society.

To satisfy lingering concerns over the possibility of the federal government's going bad, the American people demanded that immediately after the enactment of the Constitution, it be amended to provide express restrictions on the authority of federal officials to infringe the fundamental rights of the people.

Proponents of the Constitution responded that no such express restrictions were necessary, given the enumerated-powers doctrine. Keep in mind: If a power wasn't enumerated, it couldn't be exercised.

Reflecting their severe distrust of government, the American people nonetheless demanded the enactment of a Bill of Rights, which wasn't really a "bill of rights" at all. It was instead a "bill of prohibitions." Reflecting Thomas Jefferson's observation in the Declaration of Independence that people's rights preexist government, the Bill of Rights expressly prohibited the federal government from violating people's fundamental, natural, God-given rights.

Consider, for example, the First Amendment. It doesn't give people the right of freedom of speech, freedom of the press, or freedom of religion. Instead, it prohibits Congress, and implicitly the entire federal government, from infringing those fundamental rights.

Why did our ancestors believe it was important to specify the protection of those particular rights in the First Amendment?

The Bill of Rights prohibited the federal government from violating people's fundamental, natural, God-given rights.

The answer is obvious: Because they knew that the federal government would inevitably attract the type of people who would infringe those rights or use governmental power to punish people for exercising them, especially people who were critical of what the government was doing.

After all, if our ancestors believed that that likelihood was minuscule, they would never have bothered to enact an amendment that made it clear that federal officials, regardless of who they were, would not have the authority to do those sorts of things to people.

The Constitution established a judicial branch of government. Its job would be to enforce the Constitution against the president and the

Congress. Thus, when the president or Congress engaged in actions that infringed freedom of speech, which our ancestors believed they inevitably would do, it would be the responsibility of the federal judiciary to declare such actions null and void under the express terms of the Constitution.

When we examine the Fourth, Fifth, Sixth, and Eighth Amendments, we see that the rights and guarantees in those amendments are very much different from those in the First Amendment and, for that matter, the Second Amendment, which guarantees the right to keep and bear arms. Those four amendments pertain to powers of the federal government to kill, torture, incarcerate, and search people.

The Fifth Amendment prohibits any person from being deprived of life without due process of law.

Let's keep in mind two points: The powers to do those types of things were not among the enumerated powers in the original Constitution, just as the power to deprive people of freedom of speech isn't enumerated.

But just to play it safe, the American people secured the passage of those four amendments as an express message to federal officials, a message that essentially said: You are expressly prohibited from doing bad things to people without following well-established procedures and without honoring time-honored procedural guarantees.

To make clear that that the new government would be prohibited from arbitrarily killing people, our ancestors enacted the Fifth Amendment. It prohibits any person from being deprived of life without due process of law.

Notice something important about the Fifth Amendment (and, for that matter, the Fourth, Sixth, and Eighth Amendments): It doesn't limit its applicability to American citizens. It includes within its protection all persons, regardless of citizenship. Our American ancestors didn't want a government that was prohibited from arbitrarily killing only American citizens. They wanted to make certain that the new federal government would be prohibited from arbitrarily killing anyone, American citizens and foreign citizens alike.

"Due process"

Why did our ancestors deem it important to have such an express protection? Because they were convinced that the federal government

would ultimately attract the type of people who favored arbitrarily killing people, especially people who were opposing governmental wrongdoing. If our ancestors didn't believe that there was a high likelihood that the government would end up attracting those types of people, there would have been no real reason to enact such an amendment.

What about the phrase "due process of law"? It actually stretches back centuries into British history, all the way back to the year 1215. That was when Magna Carta — the "great charter" — was signed. That was when the barons of England required their king — King John — to formally acknowledge that his authority over them was not omnipotent but instead was limited in nature.

Prior to Magna Carta, the king took the position that he could kill, assassinate, incarcerate, torture, and execute anyone he wanted and for any reason he wanted, including to punish people who were criticizing what the government was doing. His authority as king was omnipotent. The citizen, as a subject of the king, was required to obey and submit.

Magna Carta required the king to acknowledge that he no longer wielded total authority over the English people. The charter expressly prohibits the king from going against anyone in violation of "the law of the land."

That phrase — "law of the land" — gradually evolved into the phrase "due process of law," a phrase that our American ancestors applied against the president and Congress in the Fifth Amendment.

Magna Carta required the king to acknowledge that he no longer wielded total authority over the English people.

What does "due process of law" mean? At the very least, it means that the government may not kill or otherwise punish a person without providing him a trial and an opportunity to be heard. A short-hand rendition would refer to this protection as "notice and hearing."

In other words, with the passage of the Fifth and Sixth Amendments our ancestors were effectively saying to the president and Congress: Before you kill, assassinate, or execute anyone, you will first have to have a hearing or a trial before an impartial jury, during which the accused will be entitled to challenge your accusation and during which he will have time-honored procedural guarantees, such as the right to counsel, the right to remain silent (i.e., the right not be tortured into making a con-

fession), the right to confront and cross-examine witnesses, the right to call witnesses, and the right to be free from cruel and unusual punishments (e.g., torture).

Those procedural guarantees, plus more, are enumerated in the Fourth, Fifth, Sixth, and Eighth Amendments. The central idea was that the new federal government was designed to be different from other governments throughout history. This government would lack the legal power to do bad things to people without first following processes and procedures that had been carved out by English citizens during centuries of resistance against the tyranny of their own government.

Yet here we are today with a federal government that wields the omnipotent legal power to search, incarcerate, torture, assassinate, and execute people, both foreigners and American citizens alike, without hearing, trial, or due process of law.

How did such a revolutionary change in our constitutional system come about? Why did the federal judiciary abrogate its constitutional responsibility to enforce the Constitution against the president and Congress? How have we ended up with a federal government that our American ancestors would never have permitted to come into existence?

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

NEXT MONTH:

"The Presidential Authority to Torture and Assassinate, Part 2"
by Jacob G. Hornberger

The great thinker is seldom a disputant. He answers other men's arguments by stating the truth as he sees it.

— Daniel March

On Work

by Sheldon Richman

I hear therefore with joy whatever is beginning to be said of the dignity and necessity of labor to every citizen. There is virtue yet in the hoe and the spade, for learned as well as for unlearned hands. And labor is everywhere welcome; always we are invited to work.

— Ralph Waldo Emerson,
"The American Scholar," 1837

Work! (Exclaimed in horror.)

— Maynard G. Krebs,
The Many Loves of Dobie Gillis,
circa 1960

From the start, Americans have had a love-hate relationship with work. We tend to rhapsodize about labor, but, at least in our personal lives, we praise labor-saving devices and condemn "make work" schemes. (Unfortunately, public policy is another matter.) Emerson and other pillars of American culture — whom for these purposes I will call the moralists — associated work with dignity and purpose. Historian Thaddeus Russell teaches us that when the slaves were freed from the Southern plantations, they were pounded with the gospel of work. "Slaves generally considered work to be only a means to wealth, but after emancipation, Americans told them that work — even thankless, nonremunerative work — was a virtue in itself," Russell writes in *A Renegade History of the United States.* He reports that the Freedman's Bureau admonished the former slaves, "You must be industrious and frugal. It is feared that some will act from the mistaken notion that Freedom means liberty to be idle. This class of persons, known to the law as vagrants, must at once correct this mistake." Russell notes that "thousands of black men were rounded up for refusing to work."

The message was that work is not just an honest and proper way to obtain the necessities of life without mooching off others. The activity in itself is a source of goodness, even saintliness, and should be engaged in unceasingly, taking time out only for eating, sleeping, other bodily functions, and tending to one's fam-

ily duties. One didn't work to live; one lived to work.

Whites had been subjected to the same harangue for ages: work was a reward in itself, apart from remuneration, because "idle hands are the devil's playground."

We must be clear that the message was not merely that work could be a source of satisfaction apart from the money. The message amounted to a vilification of leisure, indeed, of consumption. (Some conservatives seem to hold this view.)

Adam Smith equated work with "toil," which is not a word with positive connotations.

In a good illustration of the "Bootleggers and Baptists" phenomenon, the moralists were joined in their labor evangelism by employers, who needed uncomplaining workers willing to spend long hours in unpleasant factories. People preferred leisure and looked for every opportunity to indulge in it. Hence, "Saint Monday," which, as Russell notes, Benjamin Franklin sneered at because it "is as duly kept by our working people as Sunday; the only difference is that instead of employing their time cheaply in church, they are wasting it expensively in the alehouse."

We get a different picture of labor from the economists. The classical economists and the Austrians (at least from Ludwig von Mises onward) stressed the unpleasantness — the "disutility" and even sad necessity — of labor. Adam Smith and other early economists equated work with "toil," which is not a word overflowing with positive connotations. In *The Wealth of Nations,* Smith writes,

> The real price of everything, what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What everything is really worth to the man who has acquired it, and who wants to dispose of it or exchange it for something else, is the toil and trouble which it can save to himself, and which it can impose upon other people. What is bought with money or with goods is purchased by labour as much as what we acquire by the toil of our own body. That money or those goods indeed save us this toil.

Gratuitous utility

Frédéric Bastiat carried on this tradition by emphasizing that exchange arises out of a wish to be

spared labor. One accepts the terms of an exchange only if obtaining the desired good in other ways would be more arduous.

For Bastiat and other early economists, exchange was the foundation of society.

For Bastiat and other early economists, exchange was the foundation of society. "Society is purely and solely a continual series of exchanges," Destutt de Tracy wrote. It follows that the penchant for economizing effort — the preference for leisure — is a beneficent feature of human nature. (Somewhere, the science-fiction writer Robert Heinlein has a character say that the wheelbarrow must have been invented by a lazy person.)

Further, Bastiat explained, technological advancement is valued precisely because it substitutes the free services of nature for human toil. In his uncompleted magnum opus, *Economic Harmonies,* he wrote,

> It is characteristic of progress (and, indeed, this is what we mean by progress) to transform onerous utility into gratuitous utility; to decrease [exchange-] value without decreasing utility; and to enable all men, for fewer pains or at smaller cost, to obtain the same satisfactions.

By onerous utility, he meant utility bought with sweat and strain; by gratuitous utility, he meant utility provided by nature free of charge. When ingenuity is applied to the making of a good, "its production has in large measure been turned over to Nature. It is obtained for less expenditure of human effort; less service is performed as it passes from hand to hand." Needless to say, this is a good thing. Of course, some of the freed-up time will be devoted to producing other goods that were unaffordable yesterday, but some will be devoted to consumption, or leisure. The proportion set aside for leisure will very likely increase as living standards rise (assuming government interference doesn't deny workers their rewards for higher productivity).

> The goal of all men, in all their activities, is to reduce the amount of effort in relation to the end desired and, in order to accomplish this end, to incorporate in their labor a constantly increasing proportion of the forces of Nature.… [They] invent tools or machines, they enlist the chemi-

> cal and mechanical forces of the elements, they divide their labors, and they unite their efforts. How to do more with less, is the eternal question asked in all times, in all places, in all situations, in all things.

(Bastiat elaborates on this in his remarkable chapter 8, "Private Property and Common Wealth," which was the subject of my article "Bastiat on the Socialization of Wealth," online at http://bit.ly/1jW1Xby.)

The economists rejected the moralists' view that production is an end in itself.

Bastiat agreed with Adam Smith, who wrote, "Consumption is the sole end and purpose of all production." Hence the economists rejected the moralists' view that production is an end in itself.

We see this same lack of enthusiasm for work in John Stuart Mill, an influential classical economist as well as a philosopher. In 1849 Thomas Carlyle published an article lamenting that the end of slavery in Great Britain meant that white people couldn't make sure that blacks worked enough (for whites). ("Occasional Discourse on the Negro Question," *Fraser's Magazine for Town and Country,* December 1849.) Indeed, that is why Carlyle dubbed economics, which was premised on free labor, "the dismal science."

Mill wrote an anonymous response ("The Negro Question") in the following issue. He protested Carlyle's suggestion that blacks were meant to serve white people. Then, as I have written previously (http://bit.ly/1jW37Uo),

> Mill … turned to "the gospel of work," praised by Carlyle, "which, to my mind, justly deserves the name of a cant." He attacked the idea that work is an end in itself, rather than merely a means. "While we talk only of work, and not of its object, we are far from the root of the matter; or, if it may be called the root, it is a root without flower or fruit.… In opposition to the 'gospel of work,' I would assert the gospel of leisure, and maintain that human beings cannot rise to the finer attributes of their nature compatibly with a life filled with labor … the exhausting, stiffening, stupefying toil of many kinds of agricultural and manufacturing laborers. To reduce very greatly the quantity of work re-

quired to carry on existence is as needful as to distribute it more equally; and the progress of science, and the increasing ascendency of justice and good sense, tend to this result."

In Mises and Murray Rothbard we find similar views: work is to be economized. Mises devoted an entire chapter in *Socialism* to refuting the state socialists' claim that work is unpleasant only because of the market economy, and that it would be blissful if private property were abolished and the market were replaced with state central planning. Under any system, Mises wrote, labor may afford a small (and insignificant, he thought) measure of direct satisfaction, but that soon passes. Yet people must keep working to obtain its indirect satisfactions, the goods it enables them to buy.

"Be happy in your work."

Mises may overstate his case here, as did his mentor, Carl Menger, in the other direction (in 1871, mind you): "The occupations of by far the great majority of men afford enjoyment, are thus themselves true satisfactions of needs, and would be practiced, although perhaps in smaller measure or in a modified manner, even if men were not forced by lack of means to exert their powers."

Mises mocked the state socialists by putting scare quotes around the words *joy of labor,* asking, "If work gives satisfaction per se why is the worker paid? Why does he not reward the employer for the pleasure which the employer gives him by allowing him to work?"

Mises mocked the state socialists by putting scare quotes around the words *joy of labor*.

What people often take for the "joy of labor," he said, was actually the satisfaction of finishing a task, the "pleasure in being free of work rather than pleasure in the work itself." Mises quoted the medieval monks who appended to the manuscript copies they had just painstakingly produced, "*Laus tibi sit Christe, quoniam liber explicit iste*" (which he translated inexactly as "Praise the Lord because the work is completed").

For Rothbard, leisure is a "desirable good," a consumer good, which people will forgo only if at the margin the fruits of a unit of labor undertaken are preferred to the satisfaction that a unit of leisure would

afford. Rothbard acknowledged that labor can be satisfying and wrote,

> In cases where the labor itself provides positive satisfactions, however, these are intertwined with and cannot be separated from the prospect of obtaining the final product. Deprived of the final product, man will consider his labor senseless and useless, and the labor itself will no longer bring positive satisfactions. *Those activities which are engaged in purely for their own sake are not labor but are pure play, consumers' goods in themselves.* Play, as a consumers' good, is subject to the law of marginal utility as are all goods, and the time spent in play will be balanced against the utility to be derived from other obtainable goods. In the expenditure of any hour of labor, therefore, man weighs the disutility of the labor involved (including the leisure forgone plus any dissatisfaction stemming from the work itself) against the utility of the contribution he will make in that hour to the production of desired goods (including future goods and any pleasure in the work itself), i.e., with the value of his marginal product. [Emphasis added.]

Rothbard's mentor, Mises, made a fundamental point about human action when he wrote, "Even if labor were a pure pleasure it would have to be used economically, since human life is limited in time, and human energy is not inexhaustible."

That being the case, I will reserve further thoughts on work for another time. Meanwhile, *Laus tibi sit Christe, quoniam liber explicit iste!*

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NEXT MONTH:
"The Middle East Harvests Bitter Imperialist Fruit"
by Sheldon Richman

America's Cluster-Bomb Congress

by James Bovard

Tens of thousands of Americans have been bushwhacked by a single arcane sentence in a 673-page law Congress enacted six years ago. The IRS is seizing both federal and state tax refunds for individuals whom the Social Security Administration accuses of having received excessive benefits years ago. But the government often has zero evidence of the overpayments, and the feds have sought to hold people liable for the alleged debts of their long-dead parents.

The Food, Conservation, and Energy Act of 2008 contained more than 275,000 words shoveling out benefits far and wide. But the hubbub this year arises from a single sentence in Section 14219: "Notwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective."

Before that law, federal agencies had a ten-year statute of limitation for collecting debts alleged to be due them.

Thanks to that 2008 farm bill, the IRS is hammering taxpayers for the Social Security benefits their deceased parents received in the 1970s or earlier. The *Washington Post* noted in April, "Since the drive to collect on very old debts began in 2011, the Treasury Department has collected $424 million in debts that were more than 10 years old."

This scandal has been brewing but only recently showed up on the Beltway radar. Last year a report by NBC Channel 5 Chicago noted that, thanks to that 2008 provision, "anyone overpaid by a federal agency, at any time in their life, can now be tracked down and put on the hook for debts that are decades old."

No one in Congress would take credit or blame for crafting that sentence in the 2008 farm bill. It is still unclear who authored that provision (which may have been inserted into the bill at the behest of some federal agency).

In many cases, agencies have zero evidence that people were ac-

tually overpaid. But all they need do is make the assertion and the IRS will redirect people's tax refunds into the Treasury's coffers. CNBC noted that the seizure-notification "letters the government sends to unsuspecting taxpayers are frightening, use accusatory language, and include other financial threats."

Social Security exploited that 2008 provision to target 400,000 taxpayers who it claimed "collectively owe $714 million on debts more than 10 years old." In many cases, Social Security had the IRS seize tax refunds from people whose parents had died decades ago. For alleged debts of deceased parents, "the government doesn't look into exactly who got the overpayment; the policy is to seek compensation from the oldest sibling and work down through the family until the debt is paid," the *Post* noted. Similar methods are favored by loan sharks, but automatically seizing tax refunds means the government doesn't need to break thumbs to snare money. Streamlined administrative procedures prevent embarrassing photo ops of G-men fleecing their targets.

Social Security began paying out benefits in 1940, so there is nothing to prevent the government from expanding its grab to include alleged overpayments to people's grandparents. Perhaps the Interior Department could arrange for the IRS to begin seizing tax refunds of persons whose great-great-grandparents are thought to have seized more than the permitted 160 acres of land in the great Oklahoma Land Rush of 1893.

Social Security had the IRS seize tax refunds from people whose parents had died decades ago.

After the *Post* splayed that story on its front page, acting Social Security Commissioner Carolyn Colvin announced that the agency would cease having the IRS confiscate tax refunds for alleged overpayments more than 10 years old, "pending a thorough review of our responsibility and discretion under the current law." But even alleged debts that are eight or nine years old can be nightmares to disprove when people are blindsided by Uncle Sam. Colvin also declared, "If any Social Security beneficiary believes they have been incorrectly assessed with an overpayment under this program, I encourage them to request an explanation or seek options to resolve the overpayment." It was supposed to be comforting to people that they were permitted to

"request an explanation." But that is scant consolation from an agency that had been snubbing for years people's requests for explanations on seized tax refunds

The *Post* effectively declared victory after Colvin's announcement and after the primary victim in its article — federal employee Mary Grice — received a refund of her seized tax refund. But the plundering continued fast and furious. A week after Tax Day, the feds seized a $33 refund owed to a Navy employee living in Maryland because of an alleged overpayment to his father, who died in 1985. One lawyer lamented, "It's really very sad: The class of people affected by this policy can be defined as people who lost a parent at an early age."

It is unlikely that Congress will repeal the 2008 sentence that granted federal agencies vast power over Americans.

A Social Security spokeswoman told the *Post,* "We believe that the overpayments of the individuals receiving notices in the last few days had already been referred to Treasury, were already in the pipeline for processing, and the processing of those cases could not be stopped." The processing will presumably stop after Social Security commandeers all the money it wants. The agency also made clear that it was not abandoning seizures: "While referral of cases [more than 10 years old] to Treasury have [sic] been halted, there has been no change in policy pending the agency's review." Rep. Vern Buchanan (R-Fla.) responded to the uproar by proposing the SPIT (Stop Punishing Innocent Taxpayers) Act.

The debtors' prison

It was predictable that nullifying the statute of limitations on government debt collection would lead to gross abuses of American citizens. Similar outrages have occurred with federal environmental enforcement against wetland owners, with asset-forfeiture proceedings against innocent property owners, and against small businesses targeted to help IRS agents fill their quota of seizures and levies. Unfortunately, most congressmen don't give a damn about any injustice that profits the federal government. Several senators condemned the Social Security Administration for snatching the tax refunds of sons and daughters to settle ancient alleged debts of their parents. But once the media spotlight shifts, it is unlikely that Congress will repeal the 2008

sentence that granted federal agencies vast power over Americans.

The controversy over the tax-refund seizures is another example of our dysfunctional Attention Deficit Democracy. Congress routinely enacts massive laws that are neither read nor understood by the vast majority of House and Senate members. Last January Rep. Earl Blumenauer (D-Ore.) declared that "nobody" read the 1,528-page trillion-dollar spending bill that Congress enacted. How long will it take for Americans to learn of the all the surprises included in the 959-page farm bill Congress enacted in February? It took less than two months before farm-state House and Senate members were indignant about how the law was being interpreted and evaded. Ignorance of the law is an excuse only for the members of Congress who voted for the law.

For them, reckless legislating is a lifestyle, not a crime. Members of Congress will object that it is unreasonable or unfair to expect them to read or understand everything they vote on. But if they cannot be expected to know what they are doing, that proves they are doing too much, that their political power exceeds their mental grasp. Once they are routinely voting on things they have not read and do not understand, we are left with a blind trust in their good characters, or in the good intentions of whoever is pulling the strings behind the scenes or whichever lobby is actually writing the bills.

Members of Congress will object that it is unreasonable or unfair to expect them to read or understand everything they vote on.

The massive bills that Congress routinely enacts nowadays often resemble legislative cluster bombs. A cluster bomb scatters hundreds of small bomblets across a wide landscape. The bomblets can lie dormant in the landscape for years waiting to kill or maim children or anyone else who takes an unlucky step nearby.

Similarly, arcane provisions in legislation can suddenly explode under people peacefully going about their daily routine in every nook and cranny in the nation. The victims are shocked to see their lives disrupted by senseless decrees that no one seemed to notice when a law was enacted. The worst cases will spawn a brief flurry of news coverage after which the media and Congress will return to championing new laws to protect people against themselves.

The reckless seizure of tax refunds based on the puniest pretexts is a harbinger of how the feds will enforce Obamacare penalties for individuals without federally approved health-insurance policies. Their tax refunds will be preemptively commandeered. The burden will be on the citizen to hire a lawyer and fight the feds in their own courts to get due process. Good luck, chumps!

"Freedom under the law" increasingly means freedom to be fleeced by federal agencies.

The nullification of the statute of limitations on federal debt collection is a step towards turning the nation into a giant debtors' prison to serve politicians and bureaucrats. And there is seemingly no way to exact retribution on the legislators whose negligence spawns injustices far and wide.

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:
"Freedom Lost in Obama's Secrecy-Censorship Crossfire"
by James Bovard

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

Due Process versus Secret Courts

by Wendy McElroy

Due process is a set of legal requirements that protect the individual against abuse by the state. Examples are a person's right to be notified of court proceedings in which he is involved and the right against self-incrimination. Due process is woven into the fabric of American society through both the Constitution and legal precedent.

Few practices are as damaging to due process as secret courts and secret law. From the abuses of the Spanish Inquisition to the English Star Chamber, historians have detailed how individual rights decline as state secrecy rises. This relationship can be explained in various ways. One of them is with reference to knowledge and power.

Why secrecy empowers the state

"[A] people who mean to be their own governors, must arm themselves with the power which knowledge gives," James Madison wrote.

Knowledge is power. That's why an individual's right to close his front door behind him — that is, the right to privacy — is a crucial defense against state intrusion. Privacy protects an individual's power over his own life because it restricts the ability of others to know about him without his cooperation.

In terms of freedom, the ideal state is one that exists only to protect the person and property of individuals. Its operations need to be transparent so that individuals and society can judge its propriety and efficiency. That is especially true in the rendering of justice because it is an area defined by conflict and the penalties enacted can be severe. When transparency is present, the courts are reluctant to be blatantly unjust; when proceedings are open, defendants can appeal a ruling to another court or to public opinion.

When a court becomes secret, however, it claims the power that comes from controlling knowledge. Transparency can be properly breached, of course, if the defendants themselves agree to do so —

perhaps to protect a child's identity. But transparency cannot be properly breached in the interests of the court. Why? Because the proper purpose of a court is to serve individuals by delivering justice, not to serve itself. If a court's operations are unseen, then they are also unchecked. And traditional safeguards, such as accessible transcripts that allow avenues of appeal, are absent.

A current debate on a secret court

The Foreign Intelligence Surveillance Act of 1978 (FISA) established legal procedures for the surveillance and collection of information on foreign powers, including the surveillance of Americans who may be in contact with them. FISA prescribes when and how Americans suspected of espionage or terrorism can be wiretapped or the electronic equivalent thereof. It also permits the issuance of warrants for physical searches.

The stated purpose of the act was to restrain law enforcement agencies such as the National Security Agency (NSA) from conducting domestic surveillance without a warrant from a judge. The act was a response to the exposure of widespread spying on political opponents by the Nixon administration. Without warrants to document "probable cause," that spying was considered to be a violation of the Fourth Amendment's ban on unreasonable search and seizure. Thus FISA created oversight. To legally conduct domestic surveillance, a law-enforcement agency needed to receive a warrant from the Foreign Intelligence Surveillance Court (FISC), which consists of 11 judges appointed by the U.S. chief justice; only one judge's approval is required.

> The proper purpose of a court is to serve individuals by delivering justice, not to serve itself.

The FISC is a secret court. Its hearings are ex parte, which means they occur in the absence of the targeted individual and without notification to him; the ex parte aspect also places the FISC outside congressional oversight. Records of FISC hearings are classified; they are rarely made public and, if reports are released, they are in redacted form. The Department of Justice can appeal the denial of a warrant to the U.S. Foreign Intelligence Surveillance Court of Review (FISCR), which is a three-judge panel appointed by the head of the

DOJ himself. Denials happen so rarely, however, that the FISCR first met in 2002, 24 years after its formation. Until then, the FISC had not denied a single surveillance request. Indeed, the first denial did not come as the result of a warrant but because the DOJ requested approval of a secret regulation to let its prosecutors work with counterintelligence agents from the FBI.

Criticism of the FISC has grown in concert with public awareness of the extraordinary extent to which the NSA has been monitoring the communications of ordinary Americans. The increase in surveillance was partly due to a 2011 ruling by an FISC judge who eliminated a ban on domestic intelligence gathering. The *Washington Post* (Sept. 7, 2013) stated, "The Obama administration secretly won permission from a surveillance court in 2011 to reverse restrictions on the National Security Agency's use of intercepted phone calls and e-mails, permitting the agency to search deliberately for Americans' communications in its massive databases...." In short, the searches no longer required warrants.

Backlash is also coming from tech and social-media companies that have been ordered to facilitate NSA surveillance orders. For example, in June 2013, Google petitioned the FISC for permission to release NSA requests for information about its users. Google needed permission because the warrants it received were served in conjunction with a gag order. Other media giants that received FISC warrants and gag orders include Yahoo, Twitter, Facebook, and Microsoft.

> "We have reams of secret laws for our secret intelligence agencies, interpreted by a secret court that hands down secret rulings."

In a *Bloomberg* article (June 12, 2013) entitled "Stop the Official Lies by Revealing Secret Court Rulings," Tim Wiener captured the spirit of backlash. It opened, "The U.S. has forsworn secret prisons. But we have reams of secret laws for our secret intelligence agencies, interpreted by a secret court that hands down secret rulings." Weiner concluded, "The time is ripe to declassify the rulings, enough to reassure us that the rule of law remains in the realm of government eavesdropping."

The FISC is a cautionary tale. Even if the court's origin is rooted in an attempt to protect an individual's right to due process, critics claim its secrecy doomed that at-

tempt and produced the opposite. A more general issue is, what role does secrecy play in justice and due process? History provides an answer that has particular relevance to the United States because its influence is reflected in the Constitution forged by the Founding Framers.

The Star Chamber becomes a negative role model

When a court is called a "Star Chamber," the term refers to the court's secretive nature and abuse of individual rights. It is way to call the court illegitimate.

The Star Chamber was an English court that emerged in the mid 15th century from the king's privy council but included outside authorities. It was named for the pattern painted on the ceiling of the room in which it met at Westminster Palace. In 1487, under the Tudor king Henry VII, a seven-man court was authorized to handle cases that the lower courts of common law and equity would not or could not handle. Some cases concerned wealthy and powerful people whom the lower courts simply would not punish; the Star Chamber became a court of appeal for those cases. Later, the Star Chamber dealt with state security and other matters that were beyond the jurisdiction of the lower courts.

The Star Chamber's procedure was generally triggered by a petition or information presented to the court; depositions were taken; the accused was questioned under oath and confessions were often elicited through torture. The judges could not impose the death penalty but, otherwise, they enjoyed almost arbitrary discretion in meting out punishments, including life imprisonment. Short of a royal pardon, no appeal was possible. Under Henry VIII, the Star Chamber's jurisdiction expanded and it became a political weapon wielded against the king's enemies. It remained popular, however, because it was seen as an efficient keeper of public peace and a recourse for crimes committed by the powerful.

A more general issue is, what role does secrecy play in justice and due process?

Scholars differ in describing the Star Chamber as both public and secret during the Tudor period. In its early days, the court seems to have been something of a mixture, although heavily weighted toward secrecy. In an article entitled "Council, Star Chamber, and Privy

Council under the Tudors" in *The English Historical Review* (Oxford Journals, 1922), A.F. Pollard explained, "There was the large room generally indicated by the words star chamber when used alone; there was the inner star chamber; and there was a 3rd room on the east side overlooking the river, in which suitors could wait and distinguished visitors ... could watch the course of proceedings." At times, therefore, a few people could witness some of the procedures. Nevertheless, witnesses were questioned privately and without cross-examination. No appeal mechanism existed and the proceedings were not available to the public.

The Star Chamber fell into notorious disrepute during the reign of the House of Stuart, especially the second Stuart ruler, Charles I, who believed in the divine right of kings. Charles was especially vindictive toward the rebellious Puritans. The Puritans were a group of Protestants who preached strict religious discipline and sought to simplify the existing rituals and teachings of the Anglican church. They were extremely vocal in their criticism of Charles who they believed was moving England toward Roman Catholicism. The Puritans were also a rising power in both society and politics; many were wealthy merchants and land owners who assumed positions in Parliament. Charles and Parliament clashed.

No appeal mechanism existed and the proceedings were not available to the public.

In 1629 Charles adjourned Parliament and ruled without it for the next 11 years. A now entirely sequestered Star Chamber became a parliamentary substitute through which Charles enforced a flood of royal proclamations and punished his enemies. The court became hated for its persecution of nobles and religious dissenters, especially the Puritans. The dissenters were often prominent gentlemen and respected scholars whose brutal treatment could not be hidden even if the proceedings were secret. As details emerged, public outrage grew. One of the Star Chamber's most despised weapons was the ex officio oath; individuals who were summoned had to swear to answer questions truthfully. The Puritans viewed oaths with great seriousness because breaking one was an offense against God. The ex officio oath was a Catch-22 for the Puritan. If he refused the oath, he could be

held in contempt and jailed indefinitely. If he took the oath, he could be asked incriminating questions. Simply being summoned was a prison sentence for every Puritan, depending on the court's discretion.

The Puritans were extremely influential in discrediting the Star Chamber and establishing what later became the due-process right against self-incrimination as embedded in the Fifth Amendment to the U.S. Constitution.

In 1640 Charles was forced to assemble Parliament to pass finance bills for his campaigns in war. One of the first acts of Parliament was to abolish the hated Star Chamber. The secret court lived on only as a pejorative term.

But the Star Chamber of Charles deeply affected the colonies in America. After all, the secret court had been instrumental in inspiring prominent Puritans to flee England in search of a new world in which to practice their religion.

America grows in the Star Chamber's shadow

The Pilgrims (who were largely Puritans) landed in the New World in 1620. They formed the Plymouth Colony in what later became Massachusetts. Despite a bleak start, the colony took hold and proved to Puritans still in England that colonization of the New World was feasible. History calls it the "Great Migration." The migration of Puritans from England (circa 1620–40) spiked after Charles I adjourned Parliament. In the 1630s, an estimated 20,000 people migrated to New England, many of them Puritans.

The Puritans were extremely influential in discrediting the Star Chamber.

In her book *The Right to a Speedy and Public Trial: A Reference Guide to the United States Constitution,* constitutional law scholar Susan N. Herman explained, "While colonists did not generally enjoy all of the other rights later codified in the Sixth Amendment, like the right to counsel or the right to call witnesses, the customary public trial before a jury was considered a very fair proceeding for its time."

The American revolutionaries who broke away from England in 1776 drew upon their roots, to which they added the subtleties of due process. For example, in 1761 attorney James Otis Jr. passionately argued a case for hours before the Massachusetts superior court. It involved a legal instrument called a "writ of assistance" that often served

as a general search warrant with no expiration. Otis pleaded with the court to "demolish this monster of oppression, and tear into rags this remnant of Star Chamber Tyranny." He argued for fundamental law that was superior to government by men. Young radicals in the audience, including Samuel Adams, were mesmerized and immediately adopted Otis as a leader. The radicals became one of the core groups around which the American Revolution materialized.

Elbridge Gerry believed a "tribunal without juries" would result in "a Star Chamber as to civil cases."

During the Constitutional Convention of 1787, references to the Star Chamber were voiced. For example, the original version contained no provision for a right of jury trial in civil cases. According to the papers of James Madison, which are the best record of the Convention's proceedings, Elbridge Gerry refused to sign because he believed a "tribunal without juries" would result in "a Star Chamber as to civil cases."

In the ratification debates that raged in individual states thereafter, the Star Chamber was also invoked. Later, in protest of the Adams administration's Alien and Sedition Acts, the Resolutions of Virginia and Kentucky, written by James Madison and Thomas Jefferson, quote the famous English jurist William Blackstone on the destructive impact of the Star Chamber on freedom. Over and over, the secretive court was invoked as a symbol of what should be avoided. Strong protections were erected against it within the Constitution. They included:

A tripartite division of power. The Star Chamber was a system of justice administered by the executive as a means to impose law. In *The Federalist Papers,* Madison wrote, "[The] accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self appointive, or elective, may justly be pronounced the very definition of tyranny." To prevent centralized power, the Constitution provided for a tripartite structure in which the legislative, judicial, and executive branches were independent. Each branch functioned as a check on the power of the others. As Jefferson commented, "The Constitution has erected no such single tribunal [as a star chamber], knowing that to

whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves."

The most dramatic influence of the Star Chamber, however, was on the Bill of Rights, which was missing from the original Constitution and was added after some of the ratifiers demanded it.

The most dramatic influence of the Star Chamber was on the Bill of Rights.

The Fourth Amendment. This amendment spelled out the people's right "against unreasonable searchers and seizures"; it required warrants to be issued only "upon probable cause" and with specific descriptions of "the place to be searched, and the persons or things to be seized." This was a reaction to the general and open-ended "writs of assistance," which Otis had denounced as a "remnant of Star Chamber Tyranny."

The Fifth Amendment. This amendment provided in part, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." No one could be tried twice for the same crime or be forced to testify against himself. No one should "be deprived of life, liberty, or property, without due process of law...." The prohibition against self-incrimination was a response to the ex officio oath administered by the Star Chamber. In *Pennsylvania v. Muniz* (1990), the U.S. Supreme Court declared its "unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury, or contempt, that defined the operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury." The insistence upon "due process of law," which includes notice, was a response to the ex parte of secret courts by which a person could be subjected to adjudication without his knowledge.

The Sixth Amendment. This Amendment gives specific due-process rights to a person who is criminally accused. He "shall enjoy the right to a speedy and public trial, by an impartial jury." He shall "be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,

and to have the Assistance of Counsel for this defense." (The ability to compel testimony is lamentable and runs counter to the right to silence that is claimed by the criminally accused defendant himself.)

The Seventh Amendment. This Amendment addressed Gerry's concern. Civil cases in controversies that "exceed twenty dollars" should preserve "the right of trial by jury."

The Eighth Amendment. This Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This is sometimes called the "Proportionality Requirement." It protects against the arbitrary punishment inflicted by the Star Chamber at its sole discretion. During the ratification debates, Patrick Henry highlighted the need for proportionality in order to prevent the establishment of federal courts of "criminal equity" — a reference to the Star Chamber.

A deep and reasonable fear of secret courts runs through Anglo-American history. Where there is secrecy, there is little accountability and great scope for abuse. A rebellious Parliament outlawed the Star Chamber in the 17th century; rebellious Americans embedded protections against it in the very structure of their new nation. The transparency and attending accountability of courts may be the single greatest protection of the individual rights expressed by the Bill of Rights. Secret courts, like secret police, have been a hallmark of tyrannical rule.

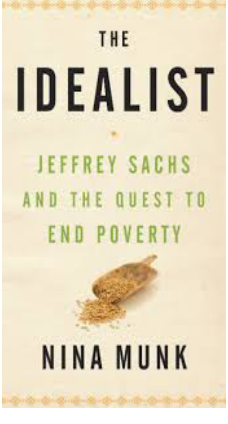
The conflict between the FISC and the Bill of Rights cannot be resolved. State secrecy is anathema to the very structure of the United States.

Wendy McElroy is a fellow of the Independent Institute and the author of The Art of Being Free.

The Poverty of Top-Down Anti-Poverty Efforts

by David D'Amato

The Idealist: Jeffrey Sachs and the Quest to End Poverty by Nina Munk (Doubleday 2012), 272 pages.



In the idealist, the system-building visionary, there is a certain natural attractiveness, a gravitational pull centered on the strength of his convictions. We desire to be a part of his crusade, or at least to root it on, because we admire the stalwart heroism we think we see in the attempt to change society and help people against all odds. The "leave the world alone" watchwords of the libertarian are, in contrast, rather less glamorous, less capable of inspiring the support of the socially conscious.

In Nina Munk's book *The Idealist,* we find the story of Harvard professor Jeffrey Sachs, a charismatic economist extraordinaire who, in Munk's words, "never fails to inspire." Munk, a business and financial journalist who has worked at *Fortune* and *Forbes,* followed Sachs as he launched his Millennium Villages Project, a "hugely ambitious social and economic experiment" based on his vision of a world without extreme poverty. Having observed first-hand the horrors of extreme poverty — and having crunched the numbers himself — Sachs became convinced that he could "bend history" and, with a relatively small private investment, design a repeatable plan for lifting poor countries up and out of poverty. The result is a dramatic show of the power of culture and ideas, and the comparative feebleness of, as the saying goes, our best-laid plans. In her interview with EconTalk's Russ Roberts, Munk describes the Millennium Villages Project as a "rambling runaway train," its many twists and turns resulting in a "terrible black comedy" of unintended consequences and bureaucratic holdups. But Munk's

account is not bereft of admiration for Sachs, for his believer's zeal and his focus. Rather it is mindful of the important difference between genuine development and charity. A remarkable naivete and, less charitably, arrogance characterize Sachs and his grandiose plans, yet their sincerity is impossible to impugn. For free marketers, the lessons contained in the story Munk weaves will prove depressingly familiar. (See the Munk interview here: http://bit.ly/1jWfYWX. Roberts gave Sachs a chance to respond here: http://bit.ly/1jWgowo.)

Libertarianism itself eschews social visioning; its fundamental principles esteem spontaneity as among the most powerful and effective forces for good, with many of its most central critiques contending that this spontaneity is lamentably undervalued both by contemporary politics and social theorists. *The Idealist* shows us the lack of faith among society's elites in the kind of progress and order that result from the voluntary, unpremeditated arrangements of free individuals. Experts, philanthropists, politicians, and bureaucrats are regarded as simply knowing better, possessing superior information and judgment, ready to mobilize resources in a way that the poor and ignorant — those who supposedly beg to be helped — cannot hope to match. Hubris and arrogance trivialize the important role of moral systems, historical realities, and cultural tendencies that are nowhere codified and are everywhere largely unquantifiable. Assumptions that Western intellectuals make about what those in "the developing world" *ought to* want mistakenly abstract real people out of the predicate conditions that have defined their lives.

The Idealist demonstrates that misconceived paternalism may come in the shape not only of pure government action, but also of ostensibly private philanthropy.

This is Hayek's fatal conceit made tangible on the level of social engineering. Regardless of the resources at our command or the quality of our ideas, it is, in Hayek's words, "logically impossible" to, for example, reconstruct Somalia in the image of the West. *The Idealist* is instructive for libertarians insofar as it demonstrates that misconceived paternalism may come in the shape not only of pure government action, but also of ostensibly private philanthropy, among others. Skepticism and even cynicism toward

the efforts of foreign scholars and do-gooders are thus not merely jaundiced naysaying; instead they are more often than not justified by the nature of the case, by the inescapable fact that *we don't* know better — that notions of such concepts as progress, development, and prosperity are not readily transferable between cultures. Just as one cannot legislate cultural and historical differences out of existence, neither can one donate or volunteer them away.

The need for principle

The libertarian suspicion concerning reformism and the prospects of the political process grows out of the insight that an understanding of liberty is a necessary precondition of a libertarian society. As articulated by Benjamin Tucker, a free society "means something more than the possession of liberty"; rather it is "defined as the possession of liberty by libertarians, — that is by those who know what liberty means." Efforts to create a free society, Tucker knew, would prove fruitless and futile unless preceded by and built on a foundational comprehension of the value and significance of freedom.

Such comprehension, to the extent that it has taken hold, has been the result not of deliberate designs, but of the slow evolution of ideas. So while libertarians such as Tucker actually shared Sachs's view that the problem of systematic, extreme poverty is neither unavoidable nor insurmountable, he also appreciated the less obvious truths implied by poverty's man-made, political character; if poverty is not simply the natural result of economic law — if indeed at this point in history it is a creation of class legislation and politics — then no amount of planned reformism can destroy it. Instead only economic activity completely free from coercive control can end poverty. And that dissolution of the malignant link between the political and the economic must take root in individual minds before it can culminate in genuine societal change.

An understanding of liberty is a necessary precondition of a libertarian society.

In a passage illustrative of the inevitable pitfalls of top-down schemes for development, Munk describes the working relationship between the Millennium Project's local team in East Africa and management back in New York. The local team, Munk writes, "started to

bad-mouth the executives in New York. Sachs and his deputy, John McArthur, were 'imperial' and 'arrogant.' 'They ask no questions, they solicit no information,' said one frustrated manager when I passed through Nairobi. 'It's just one long monologue from New York — orders given to be executed by us. They are utterly out of touch with what is actually going on.'" Under the banner of philanthropy and "the end of poverty," Sachs and his project brought a command-and-control economy to people who neither understood nor wanted it.

Sachs and his project brought a command-and-control economy to people who neither understood nor wanted it.

While, as Munk relays, Sachs is known for having brought market reforms to post-Soviet Poland through what came to be called "shock therapy," his preferred political economy is anything but laissez faire. It was Sachs's work advising government officials — rather than his scholarly achievements as a Harvard academic — that secured his reputation as something of a hotshot, a celebrity intellectual. Sachs's "shock therapy," Munk explains, entailed "huge cuts in government spending, massive layoffs of state employees, the end of fixed gasoline prices, a complete overhaul of the tax system, and above all, an abrupt shift to a free-market-based economy." Given his advice along these lines to Bolivia and Poland, we might be tempted even to glimpse a libertarian bent in Sachs, at least an underlying trust in markets. Addressing the apparent contradiction between "the former Dr. Shock [and] the new, humanitarian persona," Munk notes that "Sachs himself sees no conflict," describing himself as a "clinical economist." In this capacity, Sachs is, he imagines, an "emergency physician" who prescribes economic medicaments on the basis of the particularities of the diagnosis. His fundamental philosophy, he insists, has remained constant; seeming differences in approach are thus attributable to the differences between the patients and their needs. Poland required one treatment, Kenya another.

Not a thing at all

Whatever his vision of himself, Sachs is deeply fascinated by the practice of political power and its relationship with economic development. In a 2009 feature for *Time* magazine, "The Case for Bigger Government," Sachs made explicit

his view of the relationship between state and economy, a view that makes government a "partner ... of the private sector." With the exhortation, "We need more government," Sachs pits his proposals — using a familiar bit of sleight of hand — against the extreme limited government and free market that we are thought to have in the United States today. Reading Sachs's hopes for "government to expand its share of GDP," one wonders how much more government the United States could possibly have. In urging "a smartly rebalanced partnership between the public and private sectors," Sachs is less visionary trailblazer than he is stale, stock progressive, a quintessential example of the Progressive Era ideas that in fact still dominate all of American politics across both parties.

An economy is continuously expanding and contracting, its variables countless; indeed, an economy is no *thing* at all.

Advancements in science and industry at the end of the 19th century led elites and intellectuals to believe that an efficient economy could be deliberately constructed, tailored for rationality, and adjusted to avoid the perceived disorder and destruction of competition. Certainly if railways, canals, and steam engines could improve efficiency and productivity, so too could the right authorities lay plans for an optimum economic arrangement. But an economy (or economic development, as the case may be) is a thing rather unlike a steam engine, continuously expanding and contracting, moving and changing, its variables countless; indeed, an economy is no *thing* at all. To understand it is to appreciate that attempts to control its fluctuations using laws, regulations, or edicts — i.e., coercive authority — is to stunt or destroy entirely those of its features that we should most desire to preserve.

Like Sachs, the progressives thus misunderstood the science, rationality, and progress that were ostensibly so central to their philosophy; their efforts at social and economic engineering were not genuinely scientific at all, but were a bastardization of science, a misreading of its principles. Jeffrey Sachs represents just that kind of hubristic delusion, the firm belief that social relations, economies, governments, etc. can and should be crafted and tweaked into some ideal, achievable form. And of course, these intricate designs must always bear the imprimatur of scientific expertise, thereby

granting the experts — people such as Sachs — enormous power.

Nina Munk's book *The Idealist* offers us a vivid picture of the vain-gloriousness and conceit of elite power, of the fact that economic development as we know it is not just a matter of dollars and cents, but also of culture and ideas. History, it turns out, is not so easy to bend, society not so susceptible to being manipulated and molded like clay. While progressivism, with its symbioses between economic players and the state, offers plenty of populist rhetoric, it in fact harms and hobbles the poor wherever we find it. Unintended consequences reverberate out from every attempt at centralized control. The end of poverty may come around yet, but it won't be due to the machinations or grand plans of colluding elites; instead it will be from the adaptability that inheres in a society built on the principles of individual sovereignty and free, competitive exchange.

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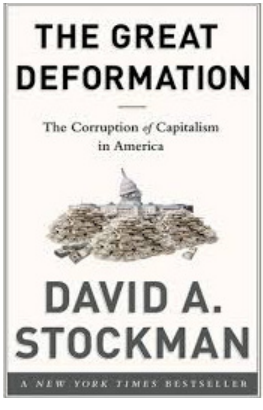
The history of government limitation of price seems to teach one clear lesson; that in attempting to ease the burdens of the people in a time of high prices by artificially setting a limit to them, the people are not relieved but only exchange one set of ills for another which is greater.

— Mary G. Lacy

A Conservative Dissents from the Corporate Status Quo

by Anthony Gregory

The Great Deformation: The Corruption of Capitalism in America by David A. Stockman, (Public Affairs 2013), 768 pages.



Most leftist critiques of libertarianism focus on an alleged blind defense of corporate power. Indeed, left-libertarian Kevin Carson has helpfully criticized the very real problem of "vulgar libertarianism," the working assumption that current economic realities are a product of free-market dynamics and therefore deserve an emphatic defense. In truth, massive wealth accumulation in at least a few conspicuous sectors, the plight of workers, and growing inequality all flow at least in large part from government interventions in behalf of the economically powerful, and libertarians err insofar as they ignore this.

On the other hand, the conflation of laissez faire and corporate power is at least as common on the Left, which often derides libertarians for the sin of "market fundamentalism." The argument sometimes comes that libertarians are hypocrites, failing to see how much government props up fat-cat beneficiaries, but rarely do progressives or so-called liberals follow through and argue that real free markets are the answer. It seems, to the contrary, that many on the Left would much prefer the conservative variants of economic management we get from Republican politicians, inequality and all, over the unplanned results of genuine free enterprise.

In fact, radical libertarians have often argued against corporate privileges that much of the Left ignores or even defends. Libertarians have for generations drawn attention to the Federal Reserve's cozy relationship with the banks. We have long criticized the distribution of wealth arising from unfair land

policies. Libertarians provide many of the most trenchant critiques of patent and licensing privileges, which entrench powerful economic players. A lot of the economic interventions that appear egalitarian are in fact regressive, but even some of the ones that are obviously regressive — sales taxes, occupational permit requirements, eminent domain — have long received far more aid and comfort among progressives than among any kind of libertarians.

At any rate, we who favor the market should rejoice at the sight of pro-market critiques of modern American capitalism, such as it is. One reason is dialectic and historical — classical liberals traditionally championed the economically weak against consolidated corporate power, and much of the reason libertarians are associated more with the latter lies in historical accident, the circumstantial alliance libertarians made with conservatives against New Deal liberalism in the last century. Another reason is substantive. Corporate power drives state power, and vice versa, and misunderstanding that relationship will not bring us any closer to a free society.

When conservatives, and not just libertarians, turn against the corporate status quo, we can learn a bit about public trends in discourse, as well as arm ourselves with knowledge gained from those critiques, leveled as they are from an unusual perspective. A pro-market attack on big business is always welcome, and when it comes from relatively mainstream conservatives, and not only from radical libertarians such as Carson, there are likely to be fresh arguments for libertarians to consider.

We who favor the market should rejoice at the sight of pro-market critiques of modern American capitalism, such as it is.

David Stockman was Ronald Reagan's director of the Office of Management and Budget. His recent book, *The Great Deformation: The Corruption of Capitalism in America,* contains much of value to complement the libertarian critique of the corporate status quo, while remaining within the broader tradition of conservative thought. The book jumps around chronologically, from the 2008 bailouts to the Reagan years, from the New Deal to the financial shenanigans leading to today's recession. At more than 700 pages, the volume warrants that thematic organization for readability.

Stockman does not believe that "greed" alone can explain why the

financial markets went haywire in 2008. He blames "an unprecedented aggrandizement of the state and its central banking branch," leading to "the vital nerve center of capitalism, its money and capital markets," to become "perverted and deformed." The crisis was thus "about the need to drastically deflate the Wall Street behemoths — that is, dangerous and unstable gambling houses — fostered by decades of money printing and market rigging by the Fed," but instead "policy veered in the opposite direction."

The author would have allowed financial institutions to fail and for the bad investments to liquidate.

The author would have allowed multiple financial institutions to fail and for the bad investments to liquidate, a prescription advocated by a fair number of libertarians. His detailed criticism of the AIG bailouts is especially worth reading. And he reminds us of how seriously we should take mainstream interventionists: "During the midst of the housing boom, of course, Fed policy makers insisted that nothing was amiss."

The book gives us a valuable reminder of other times when the establishment was wrong, including the immediate aftermath of the crash. Politicians declared a "threat that a financial contagion would ripple out from the corpus of AIG, bringing disruption and job losses to the real economy." But Stockman makes the compelling argument that there existed "no logical or factual basis for the incessantly repeated claim of Washington high officials that Wall Street's losses would spill over into the nation's $12 trillion commercial banking system and from there ripple outward to infect the vitals of the Main Street economy." The "'run' on the wholesale money market was almost entirely confined to the canyons of Wall Street." That surely suggests that the many got shafted for the benefit of the few in the bailouts, which Stockman describes as "crony capitalist plunder."

Puncturing Reagan and the New Deal

The economic theories dominating both mainstream Left and Right could not explain the crisis. The conservatives resorted to "conjuring a mythical past — an alleged golden age of Reaganomics," when in fact the "Reagan Revolution had ... been a progenitor of the calamity now upon the nation." The Left, in its own response, mostly "channeled FDR and the New Deal," mis-

understanding the true nature of Franklin Roosevelt's legacy.

One very welcome feature of Stockman's analysis is that it so harshly criticizes both Reaganite conservative economics and New Deal liberalism, casting both as big-government, crony capitalist disasters. How refreshing!

Stockman is critical of the high defense spending under Reagan.

During Reagan's second term, "federal outlays averaged 21.7 percent" of GDP — which Stockman notes was "obviously no improvement at all on the 21.1 percent of GDP" under Jimmy Carter or the 19.3 percent of GDP under Lyndon Johnson. Aside from high spending, the Reagan years were characterized by a "false prosperity" fueled by a "massive exercise in Keynesian deficit finance." Stockman also takes issue with what he regards as an illusory reduction in inflation in the 1980s. As for the 1990s, the Fed precipitated a "$13 trillion credit bubble" that "caused a phony boom on Wall Street."

Stockman is harshly critical of the high defense spending under Reagan, but more unusual is his critique of the Reagan-era "triumph of the welfare state." Reagan's embrace of a bipartisan fiscal package rendered him "the tax collector for the welfare state," adding to the defense spending surge to create an atmosphere of massive deficit finance across the board. Under the 12 years of Republican rule from 1981 to 1993, "cumulative deficits ... totaled $2.4 trillion, causing the national debt to triple."

If conservatives suffer confusion about the profligate nature of pre-Clintonian Republican governance, liberals are just as deluded about the New Deal's relationship to their current ideology. Roosevelt had no "affinity for anything that resembled full-strength Keynesian demand stimulus" like the Democratic rescue package of early 2009. "The only New Deal initiative that even remotely embodied Keynesian demand stimulus was the giant veterans' bonus payment of 1936," which Roosevelt vetoed.

Stockman criticizes Roosevelt's public-works projects as acts of political expediency, and levels other such somewhat common conservative critiques. More interesting is the characterization of Roosevelt as "the patron saint of crony capitalism." The author describes the rise of Fannie Mae and other government-sponsored enterprises, which corporate liberals often celebrate as

"public/private partnerships," as in fact products of "crony capitalism," whose "cancerous growth is truly perilous." Stockman also identifies corporate graft in Roosevelt's hayseed coalition — the farming interests that profited from the Agricultural Adjustment Act. "The AAA's original seven-crop cartel included corn, wheat, cotton, rice, milk, peanuts, and tobacco, and provided for government controlled acreage and production restrictions and artificial price supports." In the farming sector, crony capitalism continues to thrive: "the USDA's crop cartels have been vigilantly stationed at the epicenter of American fiscal politics ever since the New Deal."

Finally, Stockman views the New Deal's interventions into gold and money as the major condition allowing for never-ending fiscal recklessness. Roosevelt's domestic policies constituted "a development which was bound to end in the triumph of crony capitalism and the fiscal bankruptcy of the nation."

Nonpartisan critiques of American empire and debt

Much in Stockman's analysis of modern U.S. political economy runs against conventional wisdom. He lauds John Kennedy for backing the Bretton Woods attempt to shore up gold, contrasted with Johnson's "entirely hollow" promise to "defend the $35 gold price." Despite the common characterization of Alan Greenspan as a Fed chairman who was too deferential to the free market, Stockman blames Greenspan for "the end of free market finance" and for much of the advent of "speculative finance" wherein firms gambled with leveraged credit, wallowing in a swamp of moral hazard. Stockman attributes the decline in household savings to Greenspan's stock bubble.

Wall Street banks used to show some restraint.

Wall Street banks used to show some restraint, but Keynesian policies unleashed their drunken recklessness. "As recently as 1998 ... the combined balance sheet [of Goldman, Morgan Stanley, Merrill Lynch, Lehman, and Bear Stearns] or their predecessors was only $1 trillion. And back in 1980, before these 'investment banking' houses were reborn as hedge funds, their footings had totaled only a few ten billions." By the "eve of the 2008 crisis, these five Wall Street houses had combined balance sheet footings of $5 trillion, meaning that their girth exceeded the GDP of Japan at the time." Stockman blames 1 percent

interest rates for the subprime crisis. He gives an entertaining account of how fats cats stripped their businesses of actual assets, intoxicated by easy credit.

Always rising above partisanship and frequently attacking liberal and conservative sacred cows in unpredictable ways, Stockman provides some fun critiques of both Mitt Romney and Barack Obama. Unusual among conservatives, Stockman even criticizes the business model that enriched Romney personally, which Republican partisans have celebrated. The author sees those successes as a product of irresponsible gambling fueled by easy credit.

Overall, the Obama domestic program has amounted to "reactionary welfare, progressive style":

> Four years after the crisis, median family income has fallen by 10 percent in real terms.... [The] main street economy has been failing for years.... Yet the total amount of funding for means-tested assistance in the Obama stimulus was just $28 billion, or 3.5 percent, of the $800 billion package. Funding for unneeded bridges, interchanges, and road repair got more money than the combined total for food stamps, the earned income tax credit, and federal grants for public assistance and WIC (the health and nutrition program for women, infants, and children).

That is just a sample of the refreshingly unusual critiques that flow throughout the book. One thing Stockman is not is a predictable partisan commentator.

Libertarian caveats

Stockman blames Milton Friedman's monetarist economics for modern finance policies that led to the "unshackling [of] the Fed from the constraints of fixed exchange rates," which he goes so far as to say "rendered trivial by comparison the ills owing to garden variety insults to the free market, such as rent control or the regulation of interstate trucking." Friedman's "monetary theory actually placed the nation's stock of bank reserves, money, and credit under the unfettered sway of what amounted to a twelve-member monetary politburo."

Libertarians are divided on monetary theory, and some Austrians will cheer Stockman's criticism of Friedman, while others will say it's unmeasured or wrong, although it will win over progressive critics of

libertarianism. At any rate, it is not the only analysis that will give some libertarians pause. Stockman is a little bit soft on Herbert Hoover for my taste, and implicitly defends the myth of World War II prosperity when he says that ultimately it was "the outbreak of war in 1939–1940 which pulled the world out of the rut of economic nationalism and stagnation to which FDR's quixotic action had condemned it." He also seems a bit too enamored of how America's wars used to be financed. "As it turned out," he writes, the Korean War "marked the end of sound war finance, and also the beginning of extended wars of occupation — in Vietnam, Iraq, Afghanistan — that were financed with Treasury bonds." And yet World War II occasioned far more actual inflation, hurting everyday people, than the most recent wars.

Libertarians will also rebel against one of Stockman's main "crucial steps" to fix the economy, as he advocates a "Super Glass-Steagall II" to force large banks "to divest their deposit banking business, and cap their balance sheets at 1 percent of GDP ($150 billion) for ten years." That seems to play into the progressive myth of the significance of the eroded regulatory boundaries between investment and commercial banking leading to the 2008 crash, when in fact those regulations were virtually unique to the United States among the developed nations and were most likely irrelevant. Stockman also advocates various federal safety nets as an alternative to the current mixed-economy approach, and calls for a national sales tax, which has been effectively condemned as a horrible idea in several articles in this very publication.

Nevertheless, many of his prescriptions are worth celebrating: reining in the Fed, abolishing deposit insurance, scrapping the welfare state, closing "ten major federal agencies and departments," and adopting a less belligerent foreign policy. But regardless of the policies he advocates and whatever flaws we might find in his analysis, Stockman's book is worth reading as a conservative critique of crony capitalism.

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