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Leave no authority existing not responsible to the people.

— *Thomas Jefferson*

FUTURE OF FREEDOM

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

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The Presidential Authority to Torture and Assassinate, Part 2

by *Jacob G. Hornberger*



The 9/11 attacks provided George W. Bush, the Pentagon, and the CIA with the perfect opportunity to seize extraordinary powers. That shouldn't surprise anyone. A crisis fills much of the citizenry with great fear, and government officials have long known that in the midst of a crisis many people will eagerly trade their freedom for the promise of safety or security.

Among the extraordinary powers seized by Bush and his military and intelligence forces were the power to torture and assassinate people, including American citizens, without regard to the rights of trial by jury, due process of law, and other long-established procedural

guarantees enumerated in the Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution.

That's not to say, of course, that the U.S. government hadn't been torturing and assassinating people before 9/11. As Americans have discovered over the decades through the release of once-highly classified documents, U.S. national-security state officials have been participating in torture and assassination schemes since the 1950s, in such places as Africa, Latin America, and Vietnam.

But before 9/11, U.S. officials strived to keep the torture and assassinations hidden from the American people. With the 9/11 attacks, torture and assassination were brought to the surface and made the official policy of the U.S. government.

How did Bush pull off that remarkable feat? How did he get away with actions that flew in the face of the Constitution and the Bill of Rights? How did he revolutionize American life without even the semblance of a constitutional amendment or even an act of Congress?

Bush and his national-security team made a clever legal argument. They said that since the 9/11 attacks were acts of war, Bush could wield all the powers of a wartime com-

mander in chief. Moreover, this was a different type of war, Bush said, one that was to be waged against “terror,” a war that would inevitably last much longer than traditional wars, such as World Wars I and II or even the Vietnam War. This “war on terror” would very likely go on for decades, Bush intimated, perhaps even longer than the Cold War.

Bush said that since the United States was now at war, it was legally permissible for him to employ military and intelligence forces to kill the enemy. In the war on terror, the enemy was suspected terrorists.

What about torture? After all, signatories to the Geneva Convention, which include the United States, are prohibited from torturing prisoners of war.

Bush said that the Geneva Convention applied only to legal enemy combatants — that is, those who wore uniforms. Since terrorists are illegal enemy combatants, given their failure to wear uniforms, Bush said that they weren’t entitled to the protections of the Geneva Convention. In any event, Bush denied that U.S. officials were torturing people. They were just employing “enhanced interrogation techniques,” he said.

There were several big problems, however, with Bush’s reasoning.

Federal crime

First and foremost is the fact that under the law, terrorism isn’t an act of war but rather a criminal offense. Anyone who doubts that can simply examine the U.S. Code, which enumerates federal criminal offenses. Terrorism is listed there.

Terrorism isn’t an act of war but rather a criminal offense.

That includes the 9/11 attacks. Indeed, the 1993 terrorist attack on the World Trade Center was no different in principle from the 2001 terrorist attacks on the World Trade Center (and on the Pentagon). When one of the suspects in the 1993 attack, Ramzi Yousef, was discovered living in Pakistan, he was taken into custody, extradited to the United States, indicted by a federal grand jury, and prosecuted, convicted, and sentenced in U.S. District Court. That’s because terrorism is a federal criminal offense.

It’s no different from a multitude of other federal criminal prosecutions for terrorism. Accused terrorists are indicted, tried, and prosecuted in federal district court, where they are afforded the procedural guarantees enumerated in the Bill of Rights, including trial by jury, right to counsel, right to cross-

examine adverse witnesses, due process of law, and others. Again, that's because under U.S. law, terrorism is a federal criminal offense.

Bush and his national-security team never denied this fundamental principle of the law. What Bush decreed was that since the United States was engaged in a “war on terror,” he and his military and intelligence forces now had the option of treating suspected terrorists as either criminal defendants or enemy combatants.

If they chose the enemy-combatant route, the accused would be denied all constitutional protections.

Imagine that some Mexican drug lord sneaked into the United States and bombed a DEA office in El Paso, killing hundreds of people, including federal personnel. Assume that the president then declared a “war on drugs,” just as he declared a “war on terror,” and announced that from now on, he, the Pentagon, and the CIA would wield the legal authority to treat suspected drug-law violators either as criminal defendants or as enemy combatants. If U.S. officials chose to go the enemy-combatant route, drug suspects would be denied the

protections of the Bill of Rights and be subject to being indefinitely incarcerated in a military dungeon or concentration camp, tortured, and assassinated.

Do you see the problems with that, at least from a constitutional perspective? That's what they did with the federal crime of terrorism and their war on terror.

Which option they chose for an accused terrorist — criminal defendant or enemy combatant — made all the difference in the world. If they chose the criminal-defendant route, the accused would be accorded all the rights and guarantees provided in the Bill of Rights, as required under our constitutional system. If they chose the enemy-combatant route, however, the accused could be denied all those rights and be subject to torture, indefinite detention, kangaroo military tribunals, and execution, or even be assassinated.

Given that the president now has the option to treat suspected terrorists as either criminal defendants or as enemy combatants, the Bill of Rights has effectively become a nullity. That is, since the president now can, at his discretion, treat a person suspected of terrorism as an enemy combatant, what good are the rights and guarantees in the

Fourth, Fifth, Sixth, and Eighth Amendments?

At the inception, some people assumed that the extraordinary powers to torture and assassinate people applied only to foreigners. Knowing that Americans might be more reticent about such powers if they knew that they applied also to them, Bush and his team did little to disabuse people of that notion.

But anyone who gave careful consideration to Bush's argument could easily see that such powers applied also to Americans. After all, he always made it clear this was a war against terrorism. It didn't take a rocket scientist to figure out that an American can just as easily be a terrorist as a foreigner can.

The threat to citizens

Equally important, Bush also made it clear that his war on terror was not limited to foreign lands but instead was a global war. That meant that the war also encompassed the United States, which further meant that the presidential powers to torture and assassinate could be exercised right here on American soil against American citizens suspected of terrorism.

The Jose Padilla case made it clear that the federal courts were not going to stand in the way of

Bush, the Pentagon, and the CIA. Padilla, an American citizen, was taken into custody and accused of terrorism. When Bush ordered that Padilla be transferred from federal court jurisdiction to the jurisdiction of the Pentagon, the federal judiciary buckled, not daring to stand in the way.

What many Americans didn't realize is that the ruling upholding what was done to Padilla applies to all Americans.

Padilla was held in a military dungeon without trial for about three years, during which he was subjected to what is known as "touchless torture," a process, used by the North Korean communists against American POWs that subjects a prisoner to isolation and sensory deprivation with the aim of causing permanent mental damage. Since the torture is mental, the torturer can innocently say, "I never laid a hand on him."

Exercising the option of treating an accused terrorist as an enemy combatant, the president and the Pentagon claimed that Padilla was an illegal enemy combatant. The federal judiciary, continuing a decades-long tradition of deferring to the national-security state appara-

tus, upheld what the Pentagon was doing to him. What many Americans didn't realize — and still don't realize — is that the ruling upholding what was done to Padilla applies to all Americans.

Several years later, U.S. officials decided to assassinate an American citizen named Anwar al-Awlaki, who was living abroad and was accused of terrorism. Awlaki's father brought suit in federal district court seeking to prevent the assassination of his son. Relying on the Fifth Amendment, the suit contended that the government was prohibited from depriving his son of his life without due process of law.

Can the presidential authority to torture and assassinate people be reconciled with the principles of a free society?

Once again, the federal judiciary deferred to the CIA, saying that Awlaki's father lacked "standing" to bring the case. Awlaki himself would have to come to court to seek relief, the court held, ignoring the fact that the CIA would kill him before he could set foot in the courthouse.

And sure enough, the CIA did assassinate Awlaki. They also assassinated his 16-year-old son, who

was also an American. When family members brought suit in federal district court for the wrongful death of both Americans, the federal judiciary summarily dismissed the suits without even permitting the plaintiffs to take depositions, demonstrating once again the extreme deference that the judicial branch of government has always shown to the military, the CIA, and national-security state operations.

Can the presidential authority to torture and assassinate people be reconciled with the principles of a free society? Of course they can't. Legalizing such powers is inherent to dictatorial regimes — regimes that will not countenance dissent or disagreement with what the government is doing and which inevitably begin viewing critics, dissidents, and whistleblowers as enemies of the state, especially in the middle of a big crisis.

With the Constitution and the Bill of Rights, the Framers and the American people in the late 1700s did everything they could to protect us from such dictatorial power. As we have seen, however, no words on some parchment will ensure the protection of the rights and freedoms of the citizenry from those people who have an insatiable thirst for power and will look for every

opportunity to wield it and exercise it. Ultimately, the liberty of the people turns on citizens who understand the genuine meaning of freedom, are passionately committed to it, and refuse to permit federal officials to take it away, even in the midst of crisis.

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

NEXT MONTH:
“The U.S. Executions of Charles Horman and Frank Teruggi, Part 1”
by *Jacob G. Hornberger*

Real freedom means the least government — government conspicuous by its absence — with sufficient power only to protect life, liberty, and property from frauds, thieves, and murderers. Real freedom means the full right of ownership and to make decisions for one’s self and one’s family.

— John C. Sparks

The Middle East Harvests Bitter Imperialist Fruit

by Sheldon Richman



The wall-to-wall coverage of the disintegration of Iraq ought to carry this credit: “This bloodshed was made possible by the generosity of British and French imperialists.”

The stomach-wrenching violence in Iraq — not to mention the horrendous civil war in Syria, the chronic unrest in Palestine/Israel, and problems elsewhere in the Middle East — are direct consequences of the imperialist acts of the British and French governments at the end of World War I, the history-altering catastrophe that began 100 years ago.

The story has been told many times. The government of Great Britain wanted to disrupt the Otto-

man Empire’s ability to help Germany and the Austro-Hungarian Empire in the Great War. So the British dispatched personnel, most famously T.E. Lawrence (“Lawrence of Arabia”), to persuade the Arab leaders to revolt against the Turks, in return for which they would gain their independence in (roughly) the Levant (what today is Israel/Palestine, Jordan, and Syria), Mesopotamia (Iraq), and the Arabian Peninsula. The Arab leadership agreed and proceeded to obstruct the Turks’ war efforts.

In the 1915-16 correspondence between the British High Commissioner in Cairo, Sir Henry McMahon, and Arab leader Hussein bin Ali, McMahon acknowledged Hussein’s demand for independence in most of the Levant (Palestine included) and the Arabian peninsula:

Subject to the above modifications, Great Britain is prepared to recognize and support the independence of the Arabs in all the regions within the limits demanded by the Sherif of Mecca [Hussein].

McMahon did not give a blanket guarantee; he excluded western parts of the Levant (Lebanon) in

favor of French interests and declared,

With regard to ... Bagdad [sic] and Basra [in Iraq], the Arabs will recognise that the established position and interests of Great Britain necessitate special administrative arrangements in order to secure these territories from foreign aggression, to promote the welfare of the local populations and to safeguard our mutual economic interests.

Nevertheless, the British led the Arabs to believe — and the Arabs indeed did believe, perhaps naively, given Britain's control of Egypt since 1882 — that they would gain independence in most of their lands not only from the Turks but also from Britain and France as well if the Allied powers prevailed.

Betrayal

The British officials, however, never intended to honor their promise to let the Arabs go their own way at the war's end. The British (and French) cynically used the Arabs for their own advantage while secretly planning for a post-war Middle East dominated by their countries.

In 1916, after McMahon's correspondence with Hussein, Sir Mark Sykes, a Middle East adviser to the British cabinet, and French diplomat François Georges Picot negotiated the famous secret agreement that bears their names. (It was also signed by tsarist Russia's representative.) The Sykes-Picot Agreement presumed to divide up the Middle East among the imperial Allied Powers, even before it had been wrested from the Turks.

The British officials never intended to honor their promise to let the Arabs go their own way at the war's end.

Generally, the better-developed parts of the Arab lands — Iraq and Greater Syria (including Lebanon) — would be controlled by Britain and France (western oil companies were already interested in this area), while the undeveloped peninsula — today's Saudi Arabia and Yemen — would be independent, though divided into British and French spheres of influence. (Its oil potential was yet unknown.) Part of what is today's Turkey would be in Russian hands.

More specifically Britain would control southern Mesopotamia (Iraq), two Mediterranean port cit-

ies, and what would become Jordan. France would get Greater Syria, including today's Lebanon, and northern Mesopotamia. Palestine (minus Jordan) would be under international supervision. That is not exactly how things ended up, but it set the stage for the final division of Arab territory between Britain and France after the war.

Obviously the agreement had to be kept secret, or else the Arabs would not have cooperated with the British. Moreover, the Allied powers hoped that Woodrow Wilson would bring the United States into the war — and Wilson said he opposed territorial gains by the belligerents and spoke of self-determination.

The interests of subjugated people were to receive only "equal" consideration with the colonial claims of governments.

The agreement might have remained secret through the war except that after the Bolshevik Revolution in the fall of 1917, the Bolsheviks discovered it in the tsar's files and made it public in order to embarrass the French and British governments.

That did not deter them from going ahead with their plan, in apparent disregard for Wilson's Four-

teen Points, issued in January 1918, ten months before the end of the war. While Wilson is known for insisting on the principle of self-determination, in opposition to colonialism, the closest his Fourteen Points came to endorsing that principle was a call for

[a] free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

Note that the interests of subjugated people were to receive only "equal" consideration with the colonial claims of governments. That hardly sounds like self-determination. At any rate, Wilson, who took sick when the Paris Peace Conference convened, was unable to stop the British and French from carrying out their imperial plans. In the end, his administration acquiesced in return for oil concessions for American companies.

As noted, the actual division of the Middle East did not follow

Sykes-Picot precisely, because modifications were made in light of subsequent agreements, conferences (such as the 1920 San Remo conference), and events (such as the Bolshevik Revolution). The language of 19th-century colonialism was dropped in favor of the “mandate” system, which (in theory) authorized Britain and France to oversee newly created Arab states until the Arabs were ready for self-government. In other words, the two great powers of Europe would treat the Arabs like children, directly in violation of Britain’s promise. As the infamous Article 22 of the League of Nations Covenant (formulated during the Paris conference) put it,

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples *not yet able to stand by themselves under the strenuous conditions of the modern world*, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embod-

ied in this Covenant. [Emphasis added.]

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

New states

The British created the states of Iraq and Transjordan (later Jordan). What was left of Palestine (it had different boundaries at different times) would not be designated a state but would be administered by Britain. France took Syria, out of which it created a separate Lebanon.

The arbitrarily drawn “national” boundaries cut through sectarian, ethnic, and tribal lines.

The arbitrarily drawn “national” boundaries cut through sectarian, ethnic, and tribal lines, planting the seeds of future conflicts that continue to this day. (The imperialists had done the same thing in Africa.)

Regarding Palestine, in the November 2, 1917, Balfour Declaration the British government expressed its approval of “the establishment . . . of a national home for the Jewish people,” and pledged to “use their best endeavours to facilitate the achievement of this object.” The declaration also stated that “nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.” These provisos were little more than boilerplate.

The report noted that the establishment of a Jewish state in Palestine would have to be accomplished by violence.

Note that the declaration was issued before the British army conquered Palestine. The government was making promises about land it did not yet control — and this promise to the Zionist movement conflicted with the promises made earlier to the Arabs, again setting the stage for later conflict.

The Balfour Declaration, which created anxiety among Arabs and most Jews (Zionism was embraced by only a small minority of Jews), of course paved the way for the cre-

ation of the state of Israel some 30 years later and the continuing frustration of the Palestinian Arabs’ aspirations for independence.

It is important to understand that throughout this process, the Arabs, Kurds, and other indigenous people were never consulted about the imperialists’ disposition of their lands. No wonder: what they wanted — independence from foreign powers — conflicted with the objectives of British and French politicians. But by what authority did they decide the future of the people in the Middle East?

During the Paris conference, the American delegation suggested that a tripartite (Britain, France, and the United States) commission go to Arabia to ask the inhabitants what they wanted. Since Britain and France had no interest in doing so, it became a purely American project, the King-Crane Commission, named after co-chairmen Oberlin College president Henry Churchill King and Chicago businessman Charles Richard Crane. After a month of interviewing inhabitants of the Levant, King and Crane reported that most Muslim Arabs (a majority of the region) wanted complete independence and that if they could not have that, they preferred American supervision over

British and French. The report also noted that the establishment of a Jewish state in Palestine would have to be accomplished by violence.

The secret report made no impact on the final resolution of the matter by the Paris conference, and it wasn't even published until three years later.

The beacon of liberty

The King-Crane findings should have been no surprise. When the Paris conference convened, Arab leaders looked to the United States to frustrate the imperialists' designs, because they associated Wilson with the principle of self-determination. Their hopes, however, were dashed. (For details see Ussama Makdisi's *Faith Misplaced: The Broken Promise of U.S.-Arab Relations, 1820–2001*.) Anyone who protested the callous treatment of the Arabs and others was dismissed or ignored as naive.

Let that sink in: the Arabs — Muslim, Christian, and secular — looked to the United States as a beacon of liberty and independence. (Whether American history justified that attitude is another matter.) They were let down and have suffered as a result ever since.

America may be despised by many people in the Middle East to-

day — but it did not have to be that way.

The French and British proceeded to create states and governments in their new possessions. In the early 1920s, whenever Arabs tried to resist foreign rule, they were brutally suppressed — by the British in Iraq and the French in Syria. (This was reminiscent of the American suppression of the Filipinos, 1899–1902.) The Arab resistance was no match for the Europeans' bombers, artillery, and mechanized vehicles.

America may be despised by many people in the Middle East today — but it did not have to be that way.

Let's now take a step back from the trees and view the forest.

This is a story about arrogant Western imperialists who thought enlightened, civilized Europeans should govern the childlike Arabs (and Kurds) rather than let them determine their own destiny. While describing their rule in paternalistic terms, the imperialists barely disguised their updated colonial system.

The paternalistic view, let's remember, was voiced by men representing countries that had just engaged in more than four years of

savage trench warfare in a “war to end war,” not to mention the previous centuries bloodied by Europe’s religious and political wars. The condescension, of course, concealed the imperialists’ narrow economic and political interests. (When Britain and France were unable to continue managing the Middle East after World War II, the United States took over and is still trying to maintain the region as its sphere of influence.)

What’s happening in the Middle East today may be seen as a violent attempt to undo the Sykes-Picot, San Remo, et cetera, impositions of the last century. The newly declared Islamic State in parts of Syria and Iraq, for example, is attempting to erase the artificial boundary between those countries. One wonders how the Arab world would have evolved without violent foreign intervention. It’s hard to imagine that the process would have been more violent than it was and continues to be.

In this light, further Western intervention looks like a recipe for an even greater disaster.

As we view the violence today in Iraq, Syria, Palestine/Israel, Egypt, and elsewhere in the region, we should remember that it all might have been avoided had the Euro-

pean powers not launched World War I, or if, in the event of war, the British and French had let the Arabs chart their own course. U.S. intervention of course did not help, but the European imperialists might have wrested the Middle East from the declining Ottoman Empire without the world war anyway.

War and empire do not produce good results but only further misery. As Edward Woodward’s character, Harry Morant, says in the movie *Breaker Morant* just before being executed by the British army in order to make an example of him during the Second Boer War, “Well ... this is what comes of ‘empire building.’”

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NEXT MONTH:
“Smedley Butler and the Racket That Is War”
by Sheldon Richman

Freedom Lost in Obama's Secrecy-Censorship Crossfire

by James Bovard



On June 2 the Supreme Court provided invaluable aid to the Obama administration's campaign to protect Americans from evidence of federal abuses. The Court acceded to the administration's appeal and refused to hear a free-speech case involving *New York Times* reporter James Risen. Risen, a courageous Pulitzer Prize winner, has been in the federal crosshairs since his 2006 book, *A State of War*, exposed numerous federal crimes, including the NSA's illegal warrantless wiretapping.

Obama's Justice Department issued two subpoenas to squeeze Risen into testifying about a confidential source. The first subpoena went nowhere, and federal judge Leonie Brinkema quashed the sec-

ond one, declaring that "a criminal trial subpoena is not a free pass for the government to rifle through a reporter's notebook." But her ruling was overturned in a split decision by a federal appeals court.

Risen appealed that decision to the Supreme Court. In his petition Risen told the justices, "Compelling journalists to testify about their conversations with confidential sources will ... create the inevitable appearance that journalists either are or can be readily converted into an investigative arm of the government." But the Obama administration's brief told the Supreme Court that "reporters have no privilege to refuse to provide direct evidence of criminal wrongdoing by confidential sources."

The administration also invoked "the uniquely federal interest in preventing the unlawful disclosure of classified national-defense information" to sway the Court not to hear the case. The Obama legal team brushed aside the fact that the most controversial press cases in recent years have involved exposés of government outrages. The crux of the case was the classification of information about government abuses.

The Risen case presented an ideal opportunity to curb the Obama administration's systematic cam-

campaign to silence those who would expose its abuses, failures, and deceptions. But the Supreme Court's refusal to consider the appeals court ruling ensured that the Justice Department and the White House would continue to have a stack of cards that could legally trump the right to know the truth.

Attorney General Eric Holder has built his career on whitewashing government abuses.

Obama still periodically pirouettes as the civil-liberties champion that some Americans remember from his 2008 presidential campaign. Yet in early 2013 the Justice Department secured a secret "search warrant for a Fox News reporter's emails that invoked the 'suspect exception' by portraying the reporter as a criminal participant in the crime of the leak to the reporter," the *New York Times* noted. In his highly touted national-security speech in May 2013 at the National Defense University at Fort McNair, Obama declared that "a free press is essential for our democracy. That's who we are. And I am troubled by the possibility that leak investigations may chill the investigative journalism that holds government accountable."

During the same speech Obama also announced that Attorney General Eric Holder would conduct a review of recent federal crackdowns on reporters. But as the *New York Times* noted, "Asking Mr. Holder to lead the review puts the attorney general in the awkward position of scrutinizing investigations that his department has pursued." Actually, that is not "awkward" — Holder has built his career on whitewashing government abuses. His mastery in covering up the 1993 federal debacle at Waco may have done much to recommend him to Obama. Holder later spearheaded the investigation that vacuumed up "two months of records for 20 Associated Press phone lines and switchboards — used by more than 100 AP reporters in three news bureaus and the House of Representatives."

"Classified"

The administration's attitude towards investigative journalists is akin to the legendary *National Lampoon* cover headline, "Pornography — Threat or Menace?" The administration has perennially shown contempt for journalists who expose government abuses. Two years ago Justice Department official Robert Parker compared Risen's case to a reporter who re-

ceived drugs and then refused to expose his source. Robert Litt, general counsel of the U.S. Office of the Director of National Intelligence, recently compared journalism to drunk driving. He explained why the feds must be allowed to punish journalists who publish confidential information: “We ban drunk driving because drunk driving increases the risk of accidents. That doesn’t mean that any particular drunk driver causes an accident.” Litt said nothing about policymakers whose actions raised grave doubts about their sobriety.

**The more information
the government withholds, the
easier it becomes to manipulate
public opinion.**

The Obama legal team continues dropping hammers on the media at every opportunity. While Obama promised Americans “the most transparent administration in history,” his Justice Department has already launched more than twice as many federal prosecutions for Espionage Act violations as all previous administrations combined. For the Obama team, leaking classified information to the media is the legal and moral equivalent of spying for a hostile government. The

administration was badly beaten in federal court when it ferociously prosecuted former National Security Agency official and whistleblower Thomas Drake, but that loss did nothing to dint its hunger for using legal threats to silence potential critics.

The key to the Obama administration’s legal campaign is the supposed sacrosanct nature of classified information. Americans are somehow obliged to assume that any information which is classified must be treated like a politically holy relic that cannot be exposed without cursing the nation. But the amount of classified information is multiplying even faster than congressional ethics scandals. In 2012 alone there were almost 100 million decisions to classify U.S. government documents, according to the Information Security Oversight Office. That is a huge increase since 2010, when a mere 77 million classification decisions were made. A Justice Department Inspector General report last October found many cases where unclassified information was wrongly given official secrecy status.

The more information the government withholds, the easier it becomes to manipulate public opinion with whatever “facts” are

released. By selectively disclosing only details that support the administration's policies, government prevents citizens from fairly assessing the latest power grabs or interventions. *New York Times* columnist Maureen Dowd noted that "the entire Iraq war was paved by its leaks. Cheney & Co. were so busy trying to prove a mushroom cloud was emanating from Saddam's direction, they could not leak their cherry-picked stories fast enough."

The Obama administration is exploiting cover-up precedents established during the previous administration. The Bush administration took an extreme position on the government's right to refuse to release information about Vice President Cheney's Energy Task Force, and the Supreme Court swallowed the argument. Jay Leno lampooned the Bush administration's view of separation of powers: "That means that people who don't have any power shouldn't be allowed to find out what the people who do have power are doing."

The harm of secrecy

The feds have not shown that the disclosures in Risen's book and articles have harmed anything except the credibility of the federal government. Should it be a federal

crime to expose federal criminality? It is not as if Americans can safely wait for presidents or members of Congress to notify them when the Constitution has been trampled. As Roger Parloff noted at Fortune.com, "Every reporter who won a Pulitzer Prize this year for reporting the leaks of Edward Snowden would be — without a shadow of a doubt — in Risen's shoes were it not for the rare twist that Snowden chose to reveal his own identity (after fleeing the country)."

Should it be a federal crime to expose federal criminality?

In 2012 Secretary of State Hillary Clinton declared, "Lack of transparency eats away like a cancer at the trust people should have in their government." (Mrs. Clinton did not permit her speechwriter's flourish to impede her from deriding Snowden's disclosures.) When the government has a long record of deceit, citizens are entitled to presume that secrecy routinely covers up abuses. The government cannot censor coverage of its actions without making it far more difficult for citizens to rein in their rulers. As the Supreme Court declared in 2010 in the *Citizens United v. FEC* case, in "a republic where the peo-

ple are sovereign, the ability of the citizenry to make informed choices ... is essential.”

The righteousness of the Obama crackdown on leaks ignores the fact that official lies have done vastly more harm to America than unauthorized disclosures. From the Clinton administration’s 1999 portrayal of the murderous Kosovo Liberation Army as “freedom fighters,” to the Bush administration’s justifications for attacking Iraq, to the Obama administration’s contortions to justify bombing Libya and arming Syrian “moderates,” false claims paved the way to foreign debacles. If Americans had had contemporaneous access to the information in government files, there would have been far more opposition to launching new military assaults. Naturally, politicians do not want that constraint on their power.

The Obama administration’s crackdowns on the media are a step towards turning America into a banana republic. In 2009, when Obama took office, the United States ranked 20th in the world in the World Press Freedom Index of

Reporters Without Borders — in the same league as Germany, Japan, and the United Kingdom. Now it ranks 46th — just after Romania and just before Haiti.

No president is entitled to blindfold the American public. Will the Obama administration succeed in using secrecy and selective prosecutions to prevent Americans from learning of more federal crimes? Regardless of whether one disdains the media, freedom of the press remains one of the most vital safeguards for any semblance of self-government.

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NEXT MONTH:
“Americans’
Fading Love of Freedom”
by James Bovard

Command Posts: Roads, Railroads, and State

by Joseph R. Stromberg



As any viewer of the British Channel 4 *Time Team* series will have noticed, almost everywhere below Hadrian's Wall that the archaeological team digs, they have a fair chance of finding an Imperial Roman road, or a local road leading to it. The Romans were great engineers and road builders (and not just in Britain). Roman roads were all about political control and moving armies, and later kings were not ignorant of the connection, nor were republics and democracies. Everywhere, ruling classes and states have spotted the obvious advantages of controlling peoples' movement and communications. The royal road is also the post road, and road intersections are good points for collecting revenue. Roads are a perfect example of Murray

Rothbard's very promising notion of "command posts," that is, "vital nerve centers" of society which the state seeks to own or monopolize.

In *The American Story* (1955), Old Right author Garet Garrett, a rather strict American nationalist, took a coldly political-economic view of the geographical logic of 19th-century American transportation systems. By themselves, cheap land, canal projects, and the on-rushing tide of homesteaders would have yielded two increasingly separate economic-geographical entities: the Atlantic-Appalachian and Appalachian-Mississippian. Fortunately, he thought, practical politicians and enterprisers saved America from Balkanization, arising from water routes and steamboats, by deliberately building an *east-west* transportation network. Railroads and the telegraph made continental political unity possible. In contrast, Albert Jay Nock wrote (approvingly) in 1935 that had natural, unsubsidized homesteading directed American expansion, "our western frontier would not yet be anywhere near the Mississippi River."

And there was a downside or two to better roads and railroads. Following hard upon the Jacobite rising of 1745, the English crown chose to create, in Paul Mantoux's

words, “a complete system of well-kept roads ‘proper for the passage of troops, horses, and carriages, at all times of the year.’” Economist Gerald Gunderson has noted the impact that better canals, steamboats, and roads had on the American war of 1861–1865, relative to the poor transportation on hand during America’s Revolutionary War. In the later war, bigger armies could maneuver around, permitting bigger battles and (probably) greater destruction. In that war railroads played a secondary role, Gunderson notes, but their future military potential had been shown. In Europe, World Wars I and II realized it (and what a success). Capt. Basil Liddell Hart has described how Russia’s hopelessly bad roads worked as a military asset against invading German forces in the Second World War.

Know-all, grab-all, and rule-all

If memory serves, it was around 1977 when we first heard rumors of GPS. Car manufacturers were about to install marvelous devices to ensure your rescue if you ran out of gas in the Mojave Desert. Wonderful, but drawbacks loomed. In 2001 French urbanist Paul Virilio could flatly call GPS a “form of sovereignty,” as revealed by the U.S.-NATO

bombing campaign in Kosovo. He meant something like this: with total knowledge comes (the illusion of) total power.

There are political and military leaders who want all imaginable power, lethality, and control.

Here we crash into the modernist idea that if the state (or other gifted elite) organizes social space according to a rational grid or under an all-seeing Panopticon, life will be better. Anyone who qualifies can play this game. Just as there are state capitalists who want to engross all the wealth in the world, so too are there political and military leaders who want all imaginable power, lethality, and control, and, finally, intellectuals who want all imaginable real-knowledge (which rests, apparently, on the boring old laws of physics).

Imagine a tight-knit alliance of those three kinds of extremist, overseen by the state, and you have a key to the age. Taking our cue from Georges Dumézil, these insane aspirations constitute the great “sins” of three estates: the producers, the warriors, and the priests (= intellectuals). Sir Francis Bacon’s famous power/knowledge program integrated those goals and prom-

ised massively greater wealth, power, and practical science, albeit at the modest price of completely remodeling society and humanity. In the name of transparency these people should form a Trifunctional (referring to the Three Estates) — and not a Trilateral — Commission. Transcending their long-standing demands for an Open Door, current U.S. policymakers recklessly pursue their *Griff nach der Weltmacht* (grab for world power): total worldwide economic, military, and ideological power; and that last item now entails their “right” to know about everyone and everything on the planet.

19th-century American transportation follies

Restricting ourselves here to transportation, let us examine how such economic, political-military, and ideological actors interacted in one political space and time. Adam Smith’s famous dictum — “that the division of labor is limited by the extent of the market” — apparently led a good many 19th-century liberals to conclude that widening markets by any means (including state subsidies) was good — even better if they themselves profited. The early 19th-century American canal mania is a case in point. The

enormous debts heaped up thereby in the states briefly discouraged boomers and projectors, but by mid century, as railroads came into view, a new projecting, subsidizing, and swindling mania took hold in the states and (not least) in Congress. The implicit slogan was “Build it, and they will compete within it.” Building railroads on state and federally owned land with generous government loans and other favors bespoke the real (applied) American notion of “laissez faire.” Partisan clashes alleged to be “about” slavery derailed transnational railroad projects into debates about northern versus southern routes and threw the fate of Kansas and Nebraska into the fray.

As railroads came into view, a new projecting, subsidizing, and swindling mania took hold in the states and in Congress

In 1862, with Southern congressional delegations sitting elsewhere, the U.S. Congress acted on its wisdom and, choosing both routes and future public beneficiaries, created the Union Pacific corporation outright to build eastward and chartered the already existing (on paper) Central Pacific to complete the route from the West. (The Southern

Pacific came along a bit later.) Like the war, these iron turnpikes were meant to unite all the states from the Atlantic to the Pacific.

Profits for some

And so from 1862 forward, “railroads defined the age,” as historian Richard White writes in *Railroaded: The Transcontinentals and the Making of Modern America* (2011). That is entirely true, but (very important) they began their career just when Northern war contracts built up a cadre of sharp operators drawn mainly from Greater New England. Many of these war-borne capitalists climbed aboard the locomotive of history. Jay Cooke famously mass-marketed U.S. government war bonds to small investors, giving new meaning to the term “stock jobbing.” Naturally, he took up railroad finance, and Herman Melville’s *Confidence Man* (1857) stalked the land.

The transcontinental railroads largely enriched promoters, owners, and insiders.

Big money could be made from overcapitalized and heavily indebted railroads. The same men would sit, interlocking and overlapping, on the corporate boards of various

railroads, banks, and insider-controlled construction companies (so one hand could overpay the other), as their conflicts of interest stretched heavenward. This was no problem: dancing with themselves, they couldn’t lose. Trickery with bonds and stock issues abounded — water in, water out — and, as White puts it, stockholders’ “reports” ranked among the great works of 19th-century fiction. Ocean transport remained more efficient, and transcontinental traffic was worth little on overbuilt lines — hence more building. In the real competition for political assistance, a future “exclusive right to build” outweighed having a real railroad that moved anything. Worse, these highly “leveraged” railroads arose in a deflationary economy, which in practice meant that bankers liked to lend paper and get gold in return, thereby earning double (or more) interest. The transcontinental railroads largely enriched promoters, owners, and insiders.

As Nock told us in 1935, railroads were not about transportation but financial politics. To that end railroad men bought newspapers and “reformers” and fielded mighty lobbies to purchase congressional votes in bulk. As White says, railroads dictated the “terms

of [all other] competition.” Yet railroad companies were not modern, rational corporations, and *corporate failure* was just fine for owners and insiders, whose money was elsewhere. The railroads’ organizational charts meant little, and their generally crooked managers hardly made good bureaucrats, as Charles Francis Adams, president of the Union Pacific from 1883 to 1890, learned when he tried to oversee them. (Through it all Adams, a former Union officer, took the Union Army as his organizational model but could never fully implement it.)

In extremis railroad supporters developed new, apologist economic theories to cope with railroad-generated problems. Among them was Adams — a modernizing, liberal (in the positivist, Auguste Comte mode). White dryly suggests that by ignoring speculation and corruption, some of these apologists’ theories fell rather short.

Restructuring American life

It should be plain that profits for railroad boondoggles directly implied losses for others, losses that were not merely monetary. Thus *space* became political as railroads made cities “nearer” to each other than to their own hinterland. They measured space by speed and then

by *cost*. Much like Edmund Burke’s “sophisters, economists, and calculators,” railroad functionaries reduced local knowledge to mere numbers. Geography became “absolute space”: ordered and controlled, it *imposed* on Americans a new life space.

Profits for railroad boondoggles directly implied losses for others, losses that were not merely monetary.

Seeing like a railroad was seeing like a state. Travel calculated in hours/costs created *relational space*. Aiming at the maximum number of maximally loaded railroad cars, operating with the lowest costs and highest levels of traffic possible, railroad calculators brought forth considerable economic instability and life-threatening practices. Railroad timetables and rates could make nearby places *distant*, so that a straight line was not always the shortest distance. Railroads discriminated among commodities they carried, and as long-haul rates declined, they made up for losses through higher short-haul rates. Given state-subsidized money-oriented disorder on a new scale, sheer “ineptitude” (as White says) was often compatible with high profits.

Given how much seemingly arbitrary railroad rates affected other industries, “radicals” demanded fair, uniform rates. Instead, railroads “calculated,” by *trial and error*, the maximum prices they could charge per commodity without reducing volume (bringing to mind Oskar Lange’s proposals for calculation under “market socialism”). In California, where railroads were particularly unneeded, railroad price strategy effectively suppressed much river shipping. The Southern Pacific railroad paid the Pacific Mail steamboat company to *raise* its prices, diverting traffic to the railroad. Here railroad “tariffs” really were *tariffs*.

Damage to American law

Among other losses imposed on Americans in aid of railroads, corporate personhood stands out. The U.S. Supreme Court invented it, by assertion, in *Santa Clara v. Southern Pacific Railroad* (1886). When the railroads got into trouble, White writes, “The law preserved insolvent railroads as corporate zombies” and “made the managers the receivers.” Restructuring saved the railroads and sidelined their creditors. The idea that individual workers could really “bargain” with large corporate persons seemed in-

creasingly implausible, outside the courts, which invariably treated corporations better than unions. (They had not “incorporated” themselves correctly.) Richard Olney, railroad-friendly U.S. attorney general, used the Pullman (and related) strikes of 1894 as an occasion to provoke railroad workers’ unions and crush them with federal intervention. Technicalities about “protecting the mails” and the federal courts’ sudden constitutional discovery involving injunctions finished the job.

The losers rally

An anti-monopoly movement of Grangers and belated Jacksonians soon sprang up. Opponents of the (government-fostered) railroads, they restated the old republican theorem on the relationship between widely distributed property and independent citizens. Angry farmers organized the Farmers Alliance and poured into the Populist movement. Populists also included craftsmen and other small-scale enterprisers, and Populist leaders were often prominent local businessmen.

Obviously railroads had a much more direct impact on the thousands of railroad workers, who began organizing brotherhoods, or

unions, that briefly coalesced with the Knights of Labor. The brotherhoods contended with railroad managers over arbitrary rules versus workers' learned practices, miles versus hours as the basis of pay, and safety — inasmuch as railroad work could be very deadly. Their “producerism,” which derived from American republican theory, allied them with the anti-monopoly cause. (The Chinese Question, racism, et cetera cut across these issues.) By the late 1880s railroads grew stronger vis-à-vis workers, achieving “legitimate violence” and turning anti-monopoly rhetoric against unions.

Cozy relations between the railroads and the new Interstate Commerce Commission (1886) quickly emerged.

Critics stressed that railroad rate discrimination violated established common-carrier theory. Railroad economic theorists countered by making competition the enemy, insisting that railroads were natural monopolies. Over time, some reformers began to distinguish “good” railroads from bad, and those reformers and railroads converged on federal regulation. Railroads could abide friendly regulation under flex-

ible statutory language involving vague standards of “reasonableness.” For them, the key question was who would control the regulatory agencies. In practice, cozy relations between the railroads and the new Interstate Commerce Commission (1886) quickly emerged. Bankers, previously complicit enough in railroad fraud, eventually tried to rein in the iron horses and make them as “honest” as they were. Railroad owners went on borrowing, building, and borrowing again to postpone any reckoning.

Social costs of railroad mania

Railroads could move troops and supplies, which made the state happy. Transcontinental railroads enriched promoters, owners, and insiders, which made them happy. The western railroads were so premature and overextended that they had to recruit their own settlers and customers, adding to an already existing wave of land speculation. Railroads speeded settlement and control of the West while fostering farm, cattle, and mining overproduction. They hastened assaults on Indian lands and the destruction of the bison. With keen insight, White sees the destruction of southern cattle during the Civil War as the essential precondition of the fa-

mous western cattle drives, which railroads further enabled.

For farmers the final blow came after the Panic of 1893, when corn and wheat prices began falling faster than freight rates. White finds no support for Joseph Schumpeter's claim that American railroading constituted "creative destruction" somehow excusable in the end. White adds that in conventional assessments of the social costs of American railroading, higher land values (i.e., real-estate prices) serve as a proxy for social benefits. (That is almost as convincing as the argument that higher rents vindicate English Enclosures, i.e., *not very*.) As for Americans en masse, White concludes that, separating *income* from *property* (rents, stocks, and bonds "owned in the East"), almost

everyone suffered losses except for railroad owners, insiders, and promoters.

The railroad moguls had their goals, and the military-political estate had others. Between them they built an iron cage and ordered Americans to live in it. Railroads as such did not entirely destroy American localism and human-scale life. The completion of that task was left to the automobile, indirectly subsidized from as far back as the Wilson administration. (See Kevin Carson, "The Distorting Effects of Transportation Subsidies," *The Freeman*, October 22, 2010; <http://bit.ly/1j7HCMY>.)

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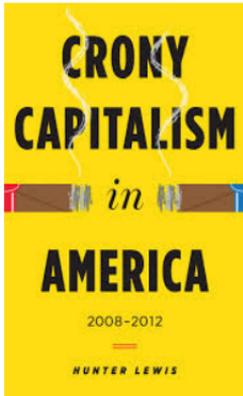
Whenever the offense inspires less horror than the punishment, the rigor of penal law is obliged to give way to the common feelings of mankind.

— *Edward Gibbon*

Government-Rigged Markets

by George C. Leef

Crony Capitalism in America 2008 – 2012 by Hunter Lewis (AC² Books 2013), 399 pages.



Ayn Rand called it “the aristocracy of pull.” That was her term for the political-economic system in which people can get ahead (and even become exceptionally wealthy) by virtue of their connections with those in power, rather than by their work, innovations, and risk-taking. Over the last several years, sales of Rand’s magnum opus, *Atlas Shrugged*, have surged as Americans increasingly realize that the nation is mimicking her novel, where success de-

pends on whom you know rather than what you produce.

An excellent companion to *Atlas Shrugged* would be *Crony Capitalism in America*, by Hunter Lewis. Focusing on the years immediately after the bursting of the housing bubble, Lewis documents the vast array of sleazy relationships between politicians (and other government officials) and many business, professional, labor, and nonprofit entities that benefit from “you scratch my back and I’ll scratch yours” dealings. Lewis demonstrates that enormous amounts of wealth are funneled into organizations that could never pass the test of the market (earn their revenues through production and exchange) and that many special privileges are ladled out to interest groups in violation of a neutral, universal rule of law.

All of that makes the average American much worse off. It isn’t that the rich exploit the poor, but that the well-connected exploit everyone else.

The book’s great value is in Lewis’s relentless turning over of rocks so that we can see the creepy things that prefer to dwell in darkness. Readers will remember his big message because it is so well-supported with particulars. The book’s

weakness, however, is that much of the nasty stuff Lewis reveals doesn't exactly fit the term "crony capitalism." More on that point later.

The cronies

Lewis doesn't provide a precise definition of crony capitalism, so I will, by contrasting it with real free markets. When markets are free, individuals or groups invest money obtained through voluntary means so they can produce goods or services they hope to sell at a profit. If they do earn profits, they're entitled to keep them, but if they incur losses, the losses come at their expense. Government's role is limited to enforcing the law in an even-handed way.

Crony capitalism, per contra, involves government in various ways, for example, in providing start-up capital, guaranteeing profits or covering losses, and restricting competition. In return for those favors, crony capitalists support "friendly" politicians with campaign contributions and lucrative business opportunities, or treating them to lavish parties and junkets. Much of the book shows how prevalent that has become.

For example, the key players in the housing bubble, Fannie Mae and Freddie Mac, were (and, sad to

say, *still are*) government-sponsored enterprises whose shareholders and managers had long benefited from government favors. For example, the two could borrow at artificially low interest rates, thereby enjoying a competitive advantage over private firms. Fannie and Freddie had cultivated their political relationships carefully, and when the housing bubble (which we might call a Government-Sponsored Calamity) burst, leaving the two on the verge of bankruptcy, their political angels flew in with billions of tax dollars to bail them out — just as expected. The political angels also protected them against efforts by advocates of free markets to get the government out of the housing market entirely.

Crony capitalists support "friendly" politicians with campaign contributions and lucrative business opportunities.

Another famous instance of pure crony capitalism was the federal government's support for the solar-cell manufacturer Solyndra. Under the Energy Policy Act of 2005, federal officials gave the firm a loan guarantee of \$535 million in 2009. Not coincidentally, the main investor in Solyndra was a huge

supporter of Barack Obama's 2008 presidential campaign. Investors with their own funds at risk wouldn't have put \$5 into the shaky firm, but government bureaucrats, who never stand to lose personally from bad decisions with Americans' tax dollars, did not hesitate. When the company went bankrupt in 2012, the taxpayers took the hit.

Selling federal bonds, Goldman Sachs enjoys a cozy relationship with the high and the mighty in Washington, D.C.

And in a final slap at the taxpayers, Solyndra workers were declared eligible for \$13,000 each under a law that assists workers who lose their jobs owing to foreign trade — in this case, alleged unfair competition from Chinese solar panels.

Goldman Sachs is another prime illustration of the harms resulting from crony capitalism. This financial giant, which makes much of its profit from selling federal bonds, enjoys a cozy relationship with the high and the mighty in Washington, D.C. When the housing bubble burst and the firm was consequently left with gigantic losses, its political friends parroted its “but we're too big to fail” line and delivered a huge bailout package to “save” Goldman.

Lewis rightly criticizes the “too big to fail” claim, noting that when any company goes bankrupt, it doesn't disappear; instead its assets are purchased cheaply and then put to more efficient use. But a key part of crony capitalism is having political supporters who will drown out commonsense arguments against favoritism.

With its losses covered by taxpayers, Goldman Sachs was able to continue with business as usual — with a new headquarters in Manhattan near the old World Trade Center site and therefore eligible for tax-free financing with “Liberty Bonds.”

Skullduggery

Those and other instances show how crony capitalists rely on government to fatten their bottom lines or wipe out their losses. Quite a lot of the book is devoted, however, to political skullduggery that I don't think of as exemplifying crony capitalism. What Lewis documents instead is the profusion of undesirable results that stem from America's leviathan state.

For example, Americans suffer from regulatory inertia that has little or nothing to do with efforts by crony capitalists to benefit from their “pull.” The Food and Drug

Administration, for instance, is slow to approve new drugs and innovations, such as cell-phone apps that would help doctors diagnose illnesses more promptly. Bureaucrats have nothing to lose by being overly cautious. But that is not crony capitalism — just a bad consequence of having politicized decision-making in the health-care field.

Lewis envisions a future where the government tries to keep the crony enterprise going by printing money faster and faster.

Lewis also includes many instances of the harms done by special-interest-group politics that don't embody crony capitalism either. The Obama administration has, for example, done some huge favors for its allies in big labor, including trampling on the rule of law to reward the United Auto Workers the lion's share in the Chrysler bailout at the expense of secured creditors who were expropriated. Another blatant case of favoritism was the effort by the Obama-stacked National Labor Relations Board to prevent Boeing from shifting production of its new 787 Dreamliner plane from Washington state to South Carolina. Those were cases of

special-interest-group politics but not, in my view, crony capitalism.

A third category of harms that Lewis attributes to crony capitalism is the phenomenon of unintended consequences from laws and regulations. He points out, for example, some of the bad side effects that the atrociously misnamed Affordable Care Act is visiting on Americans. Although there were crony capitalist aspects to the drafting of the law, I don't see how the manifold unintended consequences can be classified under "crony capitalism."

Crony capitalism is undoubtedly a bad thing, but we shouldn't throw every bad result of excessive government into its cart.

Clearing the crony banquet table

Lewis sums up the problem America faces, writing, "Elite crony capitalists will try to 'buy' the electorate by offering them small crumbs from the crony banquet table. They may succeed for a time. But like all parasites, they depend on the continuing health of their host, in this case the economy. As crony-capitalist policies sicken the economy, the money with which to try to buy the electorate becomes scarcer." He envisions a future where the government tries to keep the crony enterprise going by print-

ing money faster and faster. That can't work for long, but will inflict "untold damage" on nearly all of us.

The solution? Lewis devotes his final chapter to that crucial question. Although I don't agree with everything on his list (e.g., I don't think that mandating disclosure of political contributions would be helpful; it could even backfire against those who donate to campaigns the crony establishment doesn't like), almost all his recommendations are consistent with the libertarian goal of separating economy and state. If we could do that, the conditions necessary for crony capitalism (and other governmental evils) would vanish.

Before closing, I must say that the book could have used more careful fact-checking. Among the errors that should have been caught: misspelling of journalist Matt Taib-

bi's name, incorrectly giving the year of the Supreme Court's decision in the *Beck* case (1976, not 1966), and referring to South Carolina as a "non-union" state. (South Carolina does have a right-to-work statute that disallows union-shop contracts, but that does not mean that there can be no unions.)

All in all, this is a fine, well-researched, and cogently argued book. It makes a strong case that the United States is paying a heavy price for having allowed politics to dominate in place of freedom and peaceful cooperation. Crony capitalism is certainly a big part of that, but not the only part.

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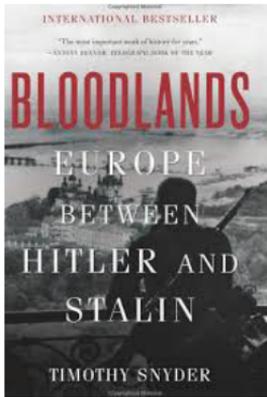
Truth never envelops itself in mystery, and the mystery in which it is at any time enveloped is the work of its antagonist, and never of itself.

— *Thomas Paine*

The Worst Government Crimes

by Anthony Gregory

Bloodlands: Europe between Hitler and Stalin by Timothy Snyder (Basic Books 2010), 560 pages.



We can locate the deadliest place and time in world history, certainly for the modern West, in the stretch of land between Berlin and Moscow in the 1930s and 1940s. That setting hosted an unimaginable bloodbath thanks to the worst killers ever to plague Europe — Adolf Hitler and Joseph Stalin. The region was home to the two dictators’ military conflict, the Eastern Front of World War II, the most lethal theater of war humanity ever saw. But even

putting the combat aside, those two rulers implemented policies of deliberate mass murder of unarmed civilians and POWs that took more lives in a narrower span of time and space than we can attribute to virtually any other human cause.

No historian had ever before unified Hitler’s and Stalin’s deliberate killings under this geographical theme. Focusing on the bloodshed inflicted in this area, especially in Poland, Ukraine, Belarus, Estonia, Latvia, and Lithuania, Timothy Snyder has written a superb history of Nazi and Soviet crimes in the region he calls “the bloodlands.” His book will shake to the core any reader with a love of humanity. With a grip on 10 relevant European languages, this Yale professor has created a gem of original archival research and a synthesis of the most recent historical literature in *Bloodlands: Europe between Hitler and Stalin*.

The geographical focus is justified, as Snyder partly explains in his potent introduction, describing the historical setup of the two totalitarian regimes. “Hitler and Stalin rose to power in Berlin and Moscow, but their visions of transformation concerned above all the lands between. Their utopias of control overlapped in Ukraine,” a fertile land that both

saw as a key to feeding their people and “the place that would enable them to break the rules of traditional economics.” The atrocities took place between two regimes striving for territorial conquest and to nationalize land, so an analysis of the inhumanity should take account of the political economy.

This “history of political mass murder” accounts for 14 million “victims of a Soviet or Nazi killing policy.”

This “history of political mass murder” accounts for 14 million “victims of a Soviet or Nazi killing policy,” many of whom died from the “interaction between the Soviet Union and Nazi Germany.” As Snyder notes, in the 1930s “the Soviet Union was the only state in Europe carrying out such policies,” during which Stalin murdered millions and Hitler murdered only thousands. Hitler caught up with Stalin’s murderousness as the two teamed up to invade Poland, and, upon betraying his ally and invading the Soviet Union, he soon overtook Stalin’s death toll. “Of the fourteen million people deliberately murdered in the bloodlands between 1933 and 1945, a third belong in the Soviet account.”

This may surprise those accustomed to the idea that Stalin killed more than Hitler, but Snyder shows exhaustively that this is simply not so. *Bloodlands* shatters other myths, including a few that have long been held by those who whitewash Soviet crimes.

Famines and terror in the 1930s

Stalin’s greatest crimes were the famines of the early 1930s, particularly in Ukraine, where he implemented policies of collectivization to foster food surpluses as part of his industrialization strategy, punishing those who did not hand over enough grain by seizing more, as well as their livestock. Of course, the most vulnerable suffered especially: “Children born in Soviet Ukraine in the late 1920s and early 1930s found themselves in a world of death.” The Ukrainian people, as would any people, Snyder stresses, resorted to cannibalism. “At least 2,505 people were sentenced for cannibalism in the years 1932 and 1933.” People ate members of their own family, and children sometimes even ate parts of their own bodies. The Ukrainian famine, which took about 3.5 million lives, amounted to a particularly cruel method to murder Stalin’s enemies. It only bolstered the political capital of Hitler,

who pointed to the atrocity as the embodiment of Soviet terror.

It is horrifying, Snyder writes, that “communists in the Soviet Union, witnesses to the famine, somehow managed to see starvation not as a national tragedy but as a step forward for humanity.” Also disturbing were the Stalin apologists in the United States. Snyder discusses the shameful case of *New York Times* journalist Walter Duranty, a Pulitzer Prize winner who called

accurate reporting ... of the famine a “big scare story.” Duranty’s claim that there was “no actual starvation” but only “widespread mortality from diseases due to malnutrition” echoed Soviet usages and pushed euphemism into mendacity. This was an Orwellian distinction; and indeed George Orwell himself regarded the Ukrainian famine of 1933 as a central example of a black truth that artists of language had covered with bright colors.

The early 1930s also saw both Hitler and Stalin intimidating political enemies through violent suppression. Stalin engaged in “purification” to eliminate alleged class

enemies from the institutions of government. Stalin’s political purges foreshadowed his “Great Terror, which in 1937 and 1938 would take the lives of hundreds of thousands of people for reasons of class and nation.”

The early 1930s saw both Hitler and Stalin intimidating political enemies through violent suppression.

We more often hear about Stalin’s purges based on economic class — the crackdown on relatively wealthy peasants called kulaks. Indeed, “Collectivization had forced millions of kulaks into the Gulags or into the inner cities” and under Stalin’s police-state agency, the NKVD, kulaks were forced to confess under torture. Show trials resulted in mass death. “In a single night the Lenin-grad troika, for example, sentenced to death 658 prisoners of the concentration camp at Solovki.” Meanwhile, the Nazis rounded up political enemies into concentration camps. Yet “in comparison with the Gulag, these ... camps were rather modest. While more than a million Soviet citizens toiled in the Soviet concentration camps and special settlements in late 1939, the number of German citizens in the Ger-

man concentration camps was about twenty thousand.”

“In 1937 and 1938, a quarter of a million Soviet citizens were shot on essentially ethnic grounds.”

What is often neglected is the nationalist flavor of Stalin’s murders. “By the late 1930s, Hitler’s National Socialist regime was well known for its racism and anti-Semitism. But it was Stalin’s Soviet Union that undertook the first shooting campaigns of internal national enemies.” As Snyder explains, “In 1937 and 1938, a quarter of a million Soviet citizens were shot on essentially ethnic grounds.” While today we often think of Soviet show trials and political killings of the late 1930s, the Soviet Union also exterminated people on the periphery of its empire — in particular Poles, Ukrainians, and Jews. Without any oversight, the NKVD implemented a “Polish operation” that took 72,000 lives through its “special troikas.”

The Soviet murderousness toward Poles expanded and was matched with Nazi aggression against Poles once Hitler and Stalin allied and invaded Poland in September 1939. The Nazis killed those at the top of Polish society in order

to better fit their supremacist views, which looked down on Slavs. Bombed-out cities became ghettos and labor camps. The Nazis began aggressive transportation schemes to deal with the millions of Jews in Poland. “[Between] September 1939 and June 1941, in their time as allies, the Soviet and German states had killed perhaps two hundred thousand Polish citizens, and deported about a million more,” Snyder writes.

Extermination and ethnic cleansing in the 1940s

Hitler had ambitions surpassing what he actually achieved. His *Generalplan Ost* — Master Plan East — involved the relocation of many millions of people, the destruction of the Soviet state, the enslavement of ethnic Slavs, the forced starvation of tens of millions of Soviet citizens, and the eventual elimination of Jews from Europe by any means necessary. With his betrayal and invasion of the Soviet Union in June 1940, his attempt at these plans began to unfold and he overtook Stalin in murderousness, all with his expectation of a quick “lightning victory.” When that didn’t happen, he had to reprioritize his plans.

Hitler’s foreign-policy agenda, particularly his “hunger plan,” was

all about food. “The Soviet Union was the only realistic source of calories for Germany and its west European empire,” Snyder writes. Looking at the Soviet Union’s starvation campaigns, Hitler’s men saw “the collective farm” as a perfect method “to starve millions of people.” But because he lacked the ideological allies and established police-state apparatus in Ukraine that Stalin had, he was not able to recreate Stalin’s death count there. It also became quickly apparent that the “lightning victory” was a failure and Germany “lacked contingency plans for failure.” Some of the greatest victims of their frustrations were Soviet war captives: “The Germans shot, on a conservative estimate, half a million Soviet prisoners of war. By way of starvation of mistreatment during transit, they killed about 2.6 million more.”

By that point the Nazi policy toward Jews was also a failure. “By late 1941,” Snyder writes, “the Nazi leadership had already considered, and been forced to abandon, four distinct versions of the Final Solution.” By November 1939 the leadership abandoned the idea of a reservation in eastern Poland. In February 1940 they gave up on sending Jews to the USSR: Stalin didn’t want them. The idea of ship-

ping them to Madagascar wouldn’t work because of Polish and British noncooperation. And having failed to destroy the Soviet Union, the plan to forcibly send Jews eastward didn’t work either. Given those frustrations dealing with the five million Jews within their control, and informed by their recent experiences of gassing and otherwise killing Soviet prisoners, the Nazis shifted their emphasis: “a war to destroy the Soviet Union became a war to murder the Jews.”

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Snyder very ably demonstrates the somewhat nuanced historical reality that Hitler did not set out to kill all the Jews from the very beginning — he initially considered less lethal ways to get rid of them — but his frustrations early in the war turned total extermination of European Jewry into the main goal. “The plan had been to destroy the Soviet Union and then eliminate the Jews,” Snyder writes. “Now, as the destruction of the Soviet Union was indefinitely delayed, the utter extermination of the Jews became a wartime policy.”

The Holocaust began in earnest in 1941 and was conducted first in the east of Nazi-occupied territory, mostly by bullets fired by *Einsatzgruppen* death squads. In 1942 most of the remaining Jews living under German occupation were murdered:

West of the Molotov-Ribbentrop line, mass murder would be carried out at gassing facilities. East of the Molotov-Ribbentrop line, the Germans continued the mass shootings, and also used the gas vans that had been tested on the Soviet prisoners of war.

By such warfare against noncombatants, the Nazis turned Belarus into a bloodbath.

Many were killed in “reprisals,” murderous shootings where Nazi officials blamed and collectively punished groups of Jews for violence against Nazi forces. By such warfare against noncombatants, the Nazis turned Belarus into a bloodbath, one of the very worst places anywhere on earth during the war, a fact neglected in many casual accounts.

Of course, the most well-known of the Holocaust methods

was the death camp, and Snyder gruesomely discusses the six run by Germans — Auschwitz-Birkenau, Sobibor, Treblinka, Majdanek, Chelmno, and Belzec. Unlike the concentration camps where many starved or died of disease, the gassing facilities were designed and operated primarily to kill those who checked in. Jews were led into gas chambers and told they would be disinfected:

As a result of feverish struggles and death agonies, the bodies were twisted together, limb through limb, and sometimes very fragile. As the Treblinka laborer Chil Rajchman recalled, they underwent “an atrocious metamorphosis.” Their corpses were covered, as was the chamber itself, with blood, feces, and urine. The Jewish laborers had to clean the chamber, so that the next group would not disbelieve the disinfection lie.

At the close of the war, atrocities continued. With Stalin’s approval, victorious Soviet soldiers raped their way through conquered Germany, and millions of Germans were forcibly relocated, many from where their families had lived for generations. Many thousands per-

ished in the relocations. In the late 1940s, Stalin targeted thousands of Jews and worked to rewrite history to make ethnic Russians into the primary victims and victors of the war, rather than the Ukrainians, Belarusians, Poles, Balts, and Jews, millions of whom he had himself directly or indirectly murdered.

Understanding the height of political evil

Hitler's and Stalin's crimes were the worst European atrocities of modern times. To this day they are still misunderstood in very basic ways. The Soviet crimes were most extensive at peacetime, demonstrating that in a state of "normalcy," nothing is quite so murderous as Marxist state socialism. But what is often forgotten by those who understand communist evil is that most of the killing was conducted on the periphery of the empire. The vast majority of Stalin's worst victims were not Russians living in the heart of his nation. They were outsiders — Poles, Ukrainians, Belarusians. "Stalin, no less than Hitler, spoke of liquidations and cleansing.... Stalinism was a project of self-colonization."

The Nazi mass murders, in contrast, were fueled by war. "Nazi colonization ... was totally dependent

upon the immediate and total conquest of a vast new eastern empire," Snyder writes. People often think of the internal depredations of Hitler's regime. But war was the health of the Nazi state. Hitler's criminality took place primarily outside Germany. Ninety-seven percent of his Jewish victims never spoke German and most never met a German until the war. They were mostly Eastern European victims of his war machine. The western-centric vision of the Holocaust, informed by such stories as that of Holland's Anne Frank, is a very incomplete picture. Hitler murdered and mistreated Jews and others in Western Europe, but the vast majority of his criminality was directed eastward. The Holocaust was a foreign-policy initiative.

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Conservatives warn against fascism at home, forgetting that the true fuel of tyranny is in most systems militarism and empire. Liberals decry racism and inequality without realizing that left-wing collectivism occasioned the most peacetime race-based mass murder

in the early 20th century. In any event, those who love liberty and humanity will want to educate themselves on the greatest negation of their values to occur in the West in the 20th century. *Bloodlands* is essential reading for all who care to understand the modern world, its most gruesome events, and the pure evil that only state power can produce.

Anthony Gregory is research fellow at the Independent Institute, a policy adviser to the Future of Freedom Foundation, author of The Power of Habeas Corpus in America (Cambridge University Press, 2013), and a history PhD student at the University of California, Berkeley.

*Now-a-days, men wear a fool's cap, and call it a liberty cap. I do not know but there are some, who, if they were tied to a whipping-post, and could but get one hand free, would use it to ring the bells and fire the cannons, to celebrate **their** liberty.*

— Henry David Thoreau

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