
FUTURE OF FREEDOM

VOLUME 26 | NUMBER 12

DECEMBER 2015

To have striven, to have made an effort, to have been true to certain ideals — this alone is worth the struggle.

— Sir William Osler

FUTURE OF FREEDOM

★★★

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.

Our (free) FFF Daily email provides hard-hitting commentary on current events and describes the most recent additions to our website. Our op-eds are published in newspapers all over the nation as well as in Latin America. We also give speeches on liberty and libertarianism throughout the United States. The Foundation's other activities are described on our website.

The Foundation neither solicits nor accepts government grants. Our operations are funded primarily by donations from our supporters, which are invited in any amount.

© Copyright 2015. *The Future of Freedom Foundation. All rights reserved. Please send reprint requests to The Foundation.*

★★★

The Future of Freedom Foundation

11350 Random Hills Road

Suite 800

Fairfax, VA 22030

....

www.fff.org

fff@fff.org

Tel: 703-934-6101

Fax: 703-352-8678

<i>The Inanity of the Cold War</i>	2
Jacob G. Hornberger	
<i>The Cover-Up of the Damning 9/11 Report Continues</i>	11
James Bovard	
<i>Unions and Strikes in a Free Society</i>	16
Laurence M. Vance	
<i>War of Pure Defense: A First Sketch</i>	23
Joseph R. Stromberg	
<i>The Forgotten Meaning of “Sound Money” (and Why It’s Coming Back)</i>	30
Guy Christopher	
<i>Patrick Henry’s Choice</i>	33
Ben Moreell	
<i>The Resurgence of Lochner</i>	35
David D’Amato	

The Inanity of the Cold War

by *Jacob G. Hornberger*



There were many inanities that came with the Cold War, the 45-year period of tension between the United States and the Soviet Union. In fact, one might easily argue that the entire Cold War was an exercise in inanity.

U.S. officials, of course, have always maintained that the Cold War was necessary to prevent the Soviet Union from imposing communism on the United States and the rest of the world. There could never be peaceful coexistence with the Soviet Union, U.S. officials repeatedly told the American people throughout the Cold War, because the communists would never rest until their goal had been achieved. Any move toward peaceful coexistence was, in the eyes of U.S. officials, a first step

in the surrender of the United States to the communists.

The utter inanity of that position is reflected by the fact that the United States did coexist with communist regimes, both during the Cold War and after it ended in 1989. In fact, today it peacefully coexists with China, Vietnam, and Cuba, all of which have long had communist governments.

There is absolutely no reason why United States and the Soviet Union could not have done the same in the postwar years. After all, the Soviet Union had been America's World War II partner and ally in the fight against Nazi Germany. One of the inanities of the Cold War was that as soon as the so-called good war was over, U.S. officials converted the Soviet Union, which had been Germany's wartime enemy, into America's Cold War enemy. Equally inane, the U.S. government, operating through the CIA, secretly brought former high Nazi officials into the U.S. government in order to help U.S. officials wage the Cold War against their former partner and ally (and Hitler's World War II enemy). In fact, U.S. officials did the same thing with high Japanese officials who had engaged in gruesome germ experiments on Chinese citi-

zens during the brutal occupation of China.

The national-security state

Perhaps the biggest inanity of the Cold War was the decision to graft a national-security state apparatus onto America's original federal governmental system that had been established by the Constitution. That's how the American people ended up with an enormous, permanent military establishment, headed by the Pentagon, the CIA, and the NSA, an apparatus that remains part of America's governmental structure more than 25 years after the end of the Cold War.

Prior to the Cold War, America had never been a permanent national-security state. After the Constitution called the federal government into existence, there was no large standing army or even a national police force (i.e., an FBI). That's because our American ancestors had a deep antipathy toward standing armies. They knew that throughout history enormous military establishments not only bankrupted nations with their endless wars but also were the means by which tyrannical regimes imposed "order and stability" on the citizenry, especially when they objected to governmental policies.

Now, it's true that in some of America's wars, such as the Civil War and World War I, enormous military and intelligence establishments became part of the federal government. But after the wars were over, those enormous apparatuses were dismantled, pursuant to the founding principles of the country.

Prior to the Cold War, America had never been a permanent national-security state.

Not so after World War II. U.S. officials said that this time, things were different. They said that because their World War II partner and ally, the Soviet Union, was determined to establish communism in the United States and the rest of the world, it was necessary to adopt the same type of governmental system that had long characterized totalitarian regimes, including, needless to say, the Soviet Union!

Is that inane, or what? Think about it: In order to combat the so-called communist threat, they said, it was necessary for America to graft the totalitarian-like apparatus known as a national-security establishment onto the U.S. governmental system.

To appreciate the inanity of that reasoning, think about one of the

distinguishing characteristics of living in the Soviet Union. The Soviet regime spied on its own people with the aim of ferreting out those who opposed communism. People who said (or thought) the wrong thing about communism or the Soviet communist regime were subject to being arrested, incarcerated, destroyed, punished, or killed.

How did the U.S. national-security establishment respond to that? In the most predictable way — by mimicking what the Soviets were doing, but doing it against Americans. If that's not inane, what is? Think about the entire Cold War anti-communist crusade here in the United States. Mass surveillance on dissidents. Secret FBI files. McCarthyism. Ruination of lives. Infiltration of organizations. Persecutions, prosecutions, and incarcerations. Assassinations.

In other words, the same types of things the Soviets were doing! Of course, U.S. officials maintained that what they were doing was different because they were doing it to “communists” while the Soviets were doing it to “capitalists.” But isn't that a distinction without a difference? A free society necessarily consists of people who have the right to believe in whatever they want to believe in and advocate any ideas or philoso-

phy, no matter how despicable, dangerous, or unpopular, they desire. That necessarily includes communism, socialism, fascism, or any other form of collectivism. If people are free to believe in and advocate only views that are respectable or acceptable, that is not a free society.

Berlin

Now, consider two of the biggest inanities in the Cold War, Berlin and Cuba, both of which became constant, ongoing flashpoints for crises, which obviously made it appear that the U.S. national-security state was an absolute necessity. Both of those Cold War flashpoints brought the world to the brink of nuclear holocaust.

A free society consists of people who have the right to believe in whatever they want to believe in.

In 1948, the U.S. military initiated what has gone down in history as the Berlin Airlift. Circumventing a blockade that the Soviets had imposed on ground travel through East Germany to West Berlin, U.S. military aircraft flew into Berlin to provide food and other supplies to the people of West Berlin.

A question naturally arises: Why did the Soviets impose that

blockade? That was a question that hardly anyone dared to ask in 1948 because to do so risked the ire of the entire U.S. national-security bureaucracy. To ask that type of question was akin to political heresy and subjected the questioner to being labeled a communist or a communist sympathizer. Americans were expected to blindly damn the communists and support the troops.

The Morgenthau Plan called for the destruction of all German industry after the war.

To appreciate the utter inanity of Berlin during the Cold War, we need to go back to World War II. As the capital of Germany, and as the city where Hitler was based, Berlin was the target of massive bombing by Allied forces during the war. The United States and England were doing everything they could to kill everyone in Berlin, just as they were doing in Dresden and the rest of Germany.

Have you ever heard of the Morgenthau Plan? It was a plan devised by U.S. Secretary of the Treasury Henry Morgenthau Jr. that called for the destruction of all German industry after the war, which Morgenthau and other U.S. officials knew would produce massive death

by starvation among the German populace. That didn't bother many people within the U.S. government. As far as they were concerned, the only good German was a dead German. In fact, while the Morgenthau Plan was never adopted, even the president of the United States, Franklin Roosevelt, supported it.

While we are on the subject of Roosevelt, let's not forget how it was that the Soviet Union ended up controlling East Germany, where Berlin was located, and, for that matter, all of Eastern Europe. It was because Roosevelt, viewing the Soviet Union as America's wartime partner and ally, agreed during the war that the Soviet Union would take control over Eastern Europe and East Germany. That's why Poland, Czechoslovakia, and the rest of Eastern Europe never viewed the victory over Nazi Germany as the great triumph that the United States and Great Britain did. For them, living under communist tyranny wasn't any different from living under Nazi tyranny.

Now jump ahead three years to 1948, the year of the Berlin Airlift. All that enmity toward Germans had been converted into love and concern for the people of West Berlin, who, you will recall, U.S. and British officials were trying to kill a

few years before for being Nazis or Nazi supporters. Suddenly the people of West Berlin were worth risking a nuclear war over, which would take out much of the United States.

Suddenly the people of West Berlin were worth risking a nuclear war over.

Well, why only them? Why not the Germans in East Berlin or, for that matter, the Germans in the rest of East Germany? Why not the people of Eastern Europe, who had been sold down the river as part of America's wartime partnership with the Soviet Union?

Let's examine West Berlin from the standpoint of the Soviets. They had a part of a city within the Soviet empire that was controlled by their Cold War opponents, including West Germany, who were determined to bring an end to the Soviet empire. It was an area that could easily be infiltrated by U.S. military personnel and spies. Moreover, the area was providing an easy means of escape for people who wished to flee the Soviet empire and move to West Germany.

To get a better grasp of how the Soviets viewed West Berlin, think of Cuba, the other big Cold War flashpoint, where the Soviet Union

and the United States also came to the very brink of all-out nuclear war. Recall how the U.S. national-security state viewed Cuba. They said that America could never survive with a communist outpost 90 miles away from American shores. Later, they said that a communist regime much further away — in Chile — also posed a grave threat to U.S. "national security."

Why then should it surprise anyone that the Soviet national-security establishment would feel the same way about a U.S.-controlled outpost inside the Soviet empire, especially given that the United States, at the same time, was rebuilding West Germany (by means of the Marshall Plan) and even incorporating former Nazis into the U.S. national-security establishment? Why would anyone think that the Soviet Union, which had gone to war with Germany twice in 25 years and which had lost some 27 million people and 25 percent of its capital resources in World War II, would not be concerned about the possibility of another invasion within the next 10–20 years, especially given that the United States was now helping to rebuild West Germany as rapidly as possible?

When Harry Truman was formally calling into existence the U.S.

national-security establishment, he was told that in order to get the support of the American people for this dramatic change in their governmental structure, he would have to “scare the hell” out of them. If the American people could be filled with fear, the argument went, they would be less apt to object to a fundamental change in the nature of their government.

Truman was told that he would have to “scare the hell” out of the American people.

So, the question naturally arises: Why was the U.S. government so insistent on keeping control of half of Berlin, the city it had just recently tried to demolish during the war, especially given that the eastern half of Germany, along with its inhabitants, had already been relinquished to the Soviet Union? Whatever the reason was, U.S. officials came to realize that maintaining control over half a city in the middle of Soviet-controlled East Germany could provide a continuous, ongoing flashpoint between the United States and the Soviet Union, which would “scare the hell out of the American people” and thereby justify converting the federal government into a national-security state, with ever-growing

budgets for the Pentagon and, later, the CIA and the NSA.

Cuba

As inane as the ongoing Cold War crisis in Berlin was, its inanity actually paled compared with the inanity of the never-ending Cold War crisis with Cuba.

Consider the Cuban Missile crisis, which was precipitated by the installation of Soviet nuclear missiles in Cuba. Every American schoolchild is inculcated with the notion that the Soviets installed those missiles as part of their plan to subject America to communism and that it was the steadfast refusal of the United States to countenance such action that caused the Soviets to back down and withdraw the missiles.

Nothing could be further from the truth. The Soviets placed missiles in Cuba purely for defensive purposes. After all, if they had done it in order to start a nuclear war with the United States, they would have proceeded to start the war by firing the missiles at the United States. They didn't do that. And the reason they withdrew the missiles is that they achieved what they had intended to achieve with the installation of the missiles. As part of a negotiated agreement with John F. Kennedy,

the Soviets secured a commitment from him to not invade Cuba. Once they got that commitment (plus a secret commitment by Kennedy to withdraw U.S. nuclear weapons in Turkey aimed at the Soviet Union), they withdrew their missiles. That's, in fact, why Army Gen. Curtis LeMay called Kennedy's settlement with the Soviets "the greatest defeat in our history." Of course, that was before the Vietnam War.

You see, Kennedy did what the Pentagon and the CIA could not do. In analyzing the Cuban Missile Crisis, he asked himself why Soviets were installing the missiles. He figured that if he could come up with the answer to that question, he might be able to avoid war by coming up with a negotiated agreement. As far as the Pentagon and the CIA were concerned, that made Kennedy a weakling, a coward, and an appeaser. As far as they were concerned, there was only one right response to Soviet communist "aggression" with respect to Cuba: bombing, followed by a full-scale invasion. Of course, as we all know now, if Kennedy had done what the U.S. national-security establishment wanted him to do, the result would have been nuclear war.

Why were the Soviets concerned about the possibility of a

U.S. invasion of Cuba? Because they knew that the Pentagon and the CIA wanted to invade Cuba for the purpose of effecting regime change. That's what the Bay of Pigs had been — a CIA-sponsored invasion intended to effect regime change on the island, one that would oust Fidel Castro from power and install a pro-U.S. "capitalist" dictator in his stead.

What gave the U.S. national-security establishment the authority to attack and invade Cuba?

After the ignominious and humiliating defeat of the CIA's troops at the Bay of Pigs, the U.S. national-security establishment was more determined than ever to do whatever was necessary to defeat Castro and his communist regime, including, if necessary, coming up with bogus pretexts for war. That's what the infamous Operation Northwoods was all about.

During the entire Cold War, owing to deference to authority, hardly anyone asked a fundamental question: What gave the U.S. national-security establishment the authority to attack and invade Cuba, which was a sovereign and independent nation, one that had

never attacked the United States? Indeed, what gave the national-security establishment the authority to repeatedly attempt to assassinate Cuban leader Fidel Castro? Aren't those the types of things that totalitarian regimes do?

The national-security state's attitude was that because Castro was a communist and because Cuba was governed by a communist regime, the U.S. national-security state had the authority to initiate a sneak attack on the island and also to assassinate the country's ruler.

That's the same mindset, of course, that guided their harassment, abuse, surveillance, and prosecution of American citizens who believed in communism, such as the members of the Communist Party and the Fair Play for Cuba Committee.

Chile

The inanity of that mindset was reflected in 1976, when national-security state agents of Chilean military dictator Augusto Pinochet entered the United States and assassinated a Chilean citizen named Orlando Letelier and his young assistant Ronni Moffitt, who was an American.

What was Pinochet's justification for assassinating those two

people on the streets of Washington, D.C.? The same justification for the U.S. national-security state's assassination attempts against Fidel Castro. Letelier, who had served in the administration of Salvador Allende, a communist-socialist physician who had been elected president of Chile and whom Pinochet had ousted in a U.S.-supported coup, and Moffitt were considered communists. In Pinochet's mind, that made them legitimate targets for assassination, just as Castro's being a communist made him a legitimate target for assassination in the minds of the Pentagon and the CIA.

The Pinochet regime compounds the utter inanity of the entire Cold War.

In fact, the Pinochet regime compounds the utter inanity of the entire Cold War. For three years — from 1970 to 1973, the Pentagon, the CIA, and President Richard Nixon orchestrated the ouster of Allende from office and the installation of Pinochet's military dictatorship. In the process, the CIA did everything it could to secretly compound the economic suffering of the Chilean people from Allende's socialist economic policies and even orchestrated the violent kidnapping of the

commander of the Chilean armed forces, a man who stood in the way of the coup, owing to his allegiance to the Chilean constitution.

Consider the aftermath of the coup. Pinochet's dictatorship, which was also founded on a national-security state, proceeded to round up, incarcerate, torture, rape, or execute some 30,000 people, with the full support of the U.S. national-security establishment. Pinochet's justification? All those people were communists and, therefore, got what was coming to them.

In fact, as I pointed out in my article "The U.S. Executions of Charles Horman and Frank Teruggi," during the coup U.S. national-security state officials used the Chilean national-security establishment to murder two Americans, Charles Horman and Frank Teruggi. The justification? They were con-

sidered communists and, therefore, it was okay to kill them. Moreover, Horman had discovered evidence of U.S. complicity in the coup, which made him a threat to U.S. "national security."

The Cold War was one of the biggest mistakes in American history, exceeded only by the U.S. adoption of a national-security state. It would be difficult to find better examples of pure inanity.

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

NEXT MONTH:
"Gun Control and the Right to Resist Tyranny"
by Jacob G. Hornberger

Political freedom and the whole gamut of civil rights were impossible until there existed the freedom of property which emerged as the burdens of feudal tenure were cast off.

— Bertel M. Sparks

The Cover-Up of the Damning 9/11 Report Continues

by James Bovard



Do Americans have the right to learn whether a foreign government helped finance the 9/11 attacks? A growing number of congressmen and senators are demanding that a 28-page portion of a 2002 congressional report finally be declassified. The Obama administration appears to be resisting, and the stakes are huge. What is contained in those pages could radically change Americans' perspective on the war on terror.

The congressional Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, completed its investigation in December 2002. But the Bush administration stonewalled the release of

the 838-page report until mid 2003 — after its invasion of Iraq was a fait accompli — and totally suppressed a key portion. Former U.S. Sen. Bob Graham (D-Fla.) chairman of the investigation, declared that “there is compelling evidence in the 28 pages that one or more foreign governments was involved in assisting some of the hijackers in their preparation for 9/11.” Graham later indicated that the Saudis were the guilty party. But disclosing Saudi links to 9/11 could have undermined efforts by some Bush administration officials to tie Iraqi leader Saddam Hussein to the 9/11 attacks.

Almost everyone has forgotten how hard the Bush administration fought to torpedo that report. In April 2003, controversy raged on Capitol Hill over the Bush administration's continuing efforts to suppress almost all of the report by the Joint Intelligence Committee investigation. Some intelligence officials even insisted on “reclassifying” as secret some of the information that had already been discussed in public hearings, such as the FBI Phoenix Memo. On May 13, Senator Graham accused the Bush administration of engaging in a “cover-up” and said that the report from the congressional investigation “has not been released because it is,

frankly, embarrassing ... embarrassing as to what happened before September 11th, but maybe even more so the fact that the lessons of September 11th are not being applied today to reduce the vulnerability of the American people.” Sen. Trent Lott (R-Miss.) complained that intelligence agencies sought to totally censor the report: “The initial thing that came back was absolutely an insult, and it would be laughable if it wasn’t so insulting, because they redacted half of what we had. A lot of it was to redact a word that revealed nothing.”

“The American people are crying out to know more about who funds, aids, and abets terrorist activities in the world.”

When the report was finally released, Sen. Richard Shelby (R-Ala.) added an additional opinion in which he castigated “the FBI’s dismal recent history of disorganization and institutional incompetence in its national-security work.” The congressional report was far blunter than the subsequent 9/11 Commission. The congressional investigation concluded that the FBI’s “mixed record of attention contributed to the United States becoming, in effect, a sanctuary for radical

terrorists.” But the Bush administration may have succeeded in stonewalling the most damaging revelations.

Suppressing the 28 pages was intensely controversial at the time. Senator Shelby, the vice chairman of the joint inquiry, urged declassification of almost all of the 28 pages because “the American people are crying out to know more about who funds, aids, and abets terrorist activities in the world.” Forty-six senators, spearheaded by Sen. Chuck Schumer (D-N.Y.) and including almost all the Democratic members, signed a letter to President George W. Bush urging the release of the 28 pages.

Bush, at a July 30, 2003 press conference, justified suppressing the 28 pages:

We have an ongoing investigation about what may or may not have taken place prior to September the 11th. And therefore, it is important for us to hold this information close so that those who are being investigated aren’t alerted.... If we were to reveal the content of the document, 29 [sic] pages of a near-900-page report, it would reveal sources and methods. By that, I mean it

would show people how we collect information and on whom we're collecting information, which, in my judgment, and in the judgment of senior law-enforcement officials in my administration, would be harmful on the war against terror.

And then he dangled a carrot: "Now, at some point in time, as we make progress on the investigation, and as a threat to our national security diminishes, perhaps we can put out the document. But in my judgment, now is not the time to do so."

Protecting incompetence

The claim of secrecy is routinely a cloak for incompetence. As former Senator Graham said earlier this year, "Much of what passes for classification for national-security reasons is really classified because it would disclose incompetence. And since the people who are classifying are also often the subject of the materials, they have an institutional interest in avoiding exposure of their incompetence."

Rep. Walter Jones (R-N.C.) revived the push to declassify the pages in 2013. Jones is a conservative stalwart best known for coining the phrase "freedom fries" in 2003

when France opposed invading Iraq. He has since become one of the most outspoken opponents of reckless U.S. intervention abroad. He explained that he introduced a resolution because "the American people deserve the truth. Releasing these pages will enhance our national security, not harm it."

The claim of secrecy is routinely a cloak for incompetence.

Jones further explained that "the information contained in the redacted pages is critical to our foreign policy moving forward and should thus be available to the American public. If the 9/11 hijackers had outside help — particularly from one or more foreign governments — the press and the public have a right to know what our government has or has not done to bring justice to all of the perpetrators."

Last May, Sen. Rand Paul (R-Ky.) fresh from a bracing filibuster against the renewal of the USA PATRIOT Act, joined the 28-page fight. He introduced the Transparency for the Families of 9/11 Victims and Survivors Act, co-sponsored by Sens. Ron Wyden (D-Ore.) and Kirsten Gillibrand (D-N.Y.). The suppressed pages are another

wedge between Paul and other Republican presidential candidates: New Jersey Gov. Chris Christie rejects declassification, instead urging deference to the president's judgment on the issue. A person attending a recent New Hampshire event asked Christie, "Don't we have a right to know?" Christie replied, "That's for the president of the United States to decide.... [The] question is: In his judgment and the judgment of the people in the national-security apparatus, do they believe there's something in there that's classified that would cause harm or danger to American interests?" But cravenness is never a good recipe for safety.

Rep. Thomas Massie (R-Ky.) one of the few members to read the report, was shocked.

Members of Congress can read the still-classified pages in a special secure room on Capitol Hill if they get prior permission from the House or Senate Intelligence Committee. Rep. Thomas Massie (R-Ky.), one of the few members to read the report, was shocked: "I had to stop every couple of pages and just sort of absorb and try to rearrange my understanding of history for the past 13 years and the years leading

up to that. It challenges you to re-think everything." Massie is one of 18 co-sponsors of Jones's resolution in the House.

Too much trouble

It is encouraging that the effort spearheaded by Congressman Jones has garnered support on Capitol Hill. But it is surprising that the 28-page disclosure campaign has not yet spurred far more members of Congress to read the document. Unfortunately, members of Congress were also grossly negligent when it came to the evidence to justify invading Iraq. In October 2002, prior to the vote on the congressional resolution to permit Bush to do as he pleased on Iraq, the CIA delivered a 92-page classified assessment of Iraq's weapons of mass destruction to Capitol Hill. The classified CIA report raised far more doubts about the existence of Iraqi WMDs than did the five-page executive summary that all members of Congress received. The report was stored in two secure rooms — one each for the House and the Senate. Only six senators bothered to visit the room to look at the report, and only a "handful" of House members did the same, according to the *Washington Post*. Sen. John Rockefeller (D-W.Va.) explained

that congressmen were too busy to read the report: “Everyone in the world wants to come to see you” in your office, and going to the secure room is “not easy to do.” Hundreds of thousands of Americans were sent 6,000 miles away to swelter for months in burning deserts because congressmen could not be bothered to walk across the street. Most congressmen had ample time to give saber-rattling speeches for war, but no time to sift the purported evidence for the invasion.

Why is the Obama administration continuing to suppress a report completed more than a dozen years ago? It is not as if the White House’s credibility would be damaged by revelations of Saudi bankrolling the worst attack on American soil since Pearl Harbor (15 of the 19 hijackers were Saudis).

And it is not as if the Saudis became squeaky-clean Boy Scouts after 9/11. Saudi sources are widely reported to be bankrolling Islamic State terrorists throughout the Middle East; Gen. Martin Dempsey, the chairman of the Joint Chiefs of Staff, told a Senate committee last September, “I know major Arab allies who fund [ISIS].”

Barack Obama just ordered more U.S. troops to Iraq to seek to

rebuff the ISIS onslaught. If the Saudis are helping sow fresh chaos in the Middle East, that is another reason to disclose their role in an attack that helped launch conflicts that have already cost thousands of American lives and more than \$1.6 trillion, according to the Congressional Research Service.

“Don’t confuse me with the facts” should be the motto of the war on terror. Self-government is an illusion if politicians can shroud the most important details driving federal policy. If Americans have learned anything since 9/11, it should be the folly of deferring to Washington secrecy.

James Bovard serves as policy advisor 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:
“Supreme Fashion Reject”
by James Bovard

Unions and Strikes in a Free Society

by *Laurence M. Vance*



The labor-union membership rate of American workers has been declining for years. Labor-union strikes have concomitantly decreased as well. Unions have historically been associated with violence, corruption, anti-capitalistic propaganda, Democratic politics — and strikes.

Unions

According to the Bureau of Labor Statistics, in 2014, union membership fell to 11.1 percent, down 0.2 percent from 2013, although the number of workers belonging to unions held steady at about 14.6 million. By contrast, in 1983, “the first year for which comparable union data are available, the union membership rate was 20.1 percent, and there were 17.7 million union

workers.” Public-sector workers have a union membership rate (35.7 percent) more than five times that of private-sector workers (6.6 percent). Workers in education, training, library occupations, and protective-service occupations had the highest unionization rate (35.3 percent). The states of New York and North Carolina continue to have the highest (24.6 percent) and lowest (1.9 percent) union participation rates.

Unions are nothing more than labor cartels that restrict the supply of workers in a company or industry to drive up the existing workers’ wages or benefits. The cost of higher wages and benefits either lowers profits, is passed on to consumers through higher prices, or both. In general, labor unions benefit their members at the expense of consumers and workers who are denied job opportunities.

The power of labor unions lies in collective bargaining, the power of unions to negotiate with management on behalf of an entire work force. All discussions about compensation, benefits, performance, promotions, or working conditions must occur only between the union and the employer. Directly negotiating with unionized employees is prohibited by law and enforced by

government. If negotiations between the union and management fail and union demands are not met, unions use the tactics of strikes, picketing, and hindering replacement workers from entering the workplace or performing their jobs in order to force companies to give in to union demands.

Unions oppose free trade, outsourcing, immigrant workers, automation, and competition.

Unions oppose free trade, outsourcing, immigrant workers, automation, and competition, since a cartel can get away with charging higher prices — in this case wage rates — only as long as it retains its monopoly power.

Strikes

Although strikes are not as commonplace in America as they used to be, the longest strike in recent history occurred this past summer in Tucson, Arizona.

In 1905, the Tucson Rapid Transit Company assumed operations of and electrified the town's horse-drawn streetcars. The streetcar lines were converted to buses by the 1930s. In 1969, the City of Tucson assumed control of Tucson Rapid Transit's struggling transportation

system. Public transit flourished when new buses were added and service improved. In 1975, the public transportation system was renamed Sun Tran. Today, Sun Tran operates about 250 buses on 40 routes to destinations in and around Tucson, and makes about 20 million passenger trips annually.

On August 6, after negotiations between the Teamsters Union and Sun Tran broke down, around 530 bus drivers, mechanics, and other Sun Tran workers went on strike. The striking workers were represented by Teamsters Local 104, which demanded a 75-cent hourly wage increase this year, \$1-per-hour increases in the next two years, \$1.58-per-hour increases to pension contributions this year, and \$1 increases in each of the next two years. Top pay for drivers is \$19.22 an hour; for mechanics, it is \$22.66 an hour.

Naturally, transportation throughout the city was crippled during the work stoppage, as only limited weekday service on a few routes was available, with even more limited Saturday service. Tucson Mayor Jonathan Rothschild issued a statement encouraging both parties to restart negotiations because the strike was "hurting the community." But he said that he and the City Council

could not by law intervene in the negotiations. The strike went on for 42 days until Teamsters Local 104 and Sun Tran management firm Professional Transit Management signed a two-year contract that is good until June 30, 2017. Sun Tran workers previously went on strike for one week in 1997, two weeks in 2001, and one week in 2010.

A free society

In a free society, there would be no government monopoly on transportation. Ideally, there would be no city or county bus, trolley, streetcar, subway, or train service — it would all be privately owned, financed, and operated. But even in the event that cities or counties still had public transit systems, there would be no prohibitions, restrictions, regulations, or licensing to hinder private transit systems from competing with public ones.

In a free society, there would be no government monopoly on transportation.

The problem is simply that Americans do not live in a free society. They live in a relatively free society. Compared with North Korea, Cuba, Venezuela, Egypt, and Saudi Arabia — yes, it appears that Amer-

icans live in a freedom paradise. But compare living in the United States with living in the United Kingdom, Western Europe, Canada, New Zealand, or Australia and the freedom gap narrows considerably or disappears.

Americans sing on the Fourth of July that they are proud to be Americans “where at least I know I’m free.” But they are free only if they don’t possess a plant the government doesn’t approve of, don’t brew too much beer at home, don’t hire someone for less than the minimum wage, don’t set the wrong prices on their products, don’t have a garage sale, and don’t work as raisin farmers.

Get caught in possession of too much of a plant the government doesn’t approve of and you might end up in jail; get caught too many times and you might go to prison for life.

It used to be illegal on the federal level to brew beer at home. That changed in 1979. However, it is a federal crime for an individual to brew more than 100 gallons of beer at home. A household with two or more adults can brew up to 200 gallons. None of the home-brewed beer can be sold. There are also state laws relating to that as well.

Minimum-wage laws violate the freedom of contract between em-

ployers and employees, and especially young, unskilled minority employees. In addition to worrying about the federal minimum wage, many states and cities have a higher minimum that employers need to be cognizant of.

If you own a business and you charge too much, the government accuses you of price gouging. Charge the same as your competitors and the government will accuse you of collusion. Charge too little and the government will accuse you of predatory pricing.

In many communities across the United States, one cannot have a garage sale without first getting a government permit.

Writer James Bovard in these pages a few months ago pointed out that the U.S. Agriculture Department's Raisin Administrative Committee in one year "prohibited producers from selling 47 percent of their raisin harvest in order to drive up raisin prices as part of a 'reserve scheme" and in the next year "decreed that producers must forfeit 30 percent of their harvest to the Raisin Committee."

There is no labor freedom in the United States either. The Wagner Act of 1935 forces employers to bargain collectively "in good faith" with any union the National Labor

Relations Board decides has been chosen by a majority of an arbitrarily defined "bargaining unit." In some states you are required to either join the union at your workplace or pay union dues. In other states you can be forced to have a union represent you, but not to pay union dues. Employees who strike over "unfair labor practices" cannot be fired or permanently replaced. Any replacement workers who are hired must be let go when the strike is over. Employers must provide unions with organizing space and cannot discriminate against union organizers or members. Union contracts make firing underperforming workers difficult. And federal anti-trust laws exempt labor unions.

There is no labor freedom in the United States.

There are a number of things that could be said regarding unions and strikes in a free society.

- In a free society, any or all striking workers could legally be fired and never rehired.
- In a free society, "scabs" could freely be hired to temporarily or permanently replace striking workers.
- In a free society, acts of vi-

olence, trespassing, or vandalism committed by strikers would be criminal and subject to prosecution.

- In a free society, there would be no National Labor Relations Board.
- In a free society, there would be no Department of Labor.
- In a free society, there would be no Bureau of Labor Statistics.
- In a free society, there would be no government labor economists.
- In a free society, there would be no Wagner, Norris-LaGuardia, or Railway Labor Acts.
- In a free society, union membership would be voluntary.
- In a free society, no one could be forced to pay union dues while not a member of a union.
- In a free society, workers could agree as a condition of employment to join a union.
- In a free society, workers could agree as a condition of employment not to join a union.
- In a free society, individual workers not belonging to a union could go on strike.

- In a free society, businesses could refuse to collectively bargain with unions.
- In a free society, companies would still be responsible to maintain safe work environments.
- In a free society, increased pay and benefits would depend on individual productivity, seniority, or overall value to the company, not membership in a union.
- In a free society, workers at a company might be organized into several different unions.

In a free society, the government would not interfere in any way with the employer-employee relationship.

- In a free society, employers could prohibit the dissemination of information concerning union membership when such dissemination occurred on an employer's property.
- In a free society, businesses could forbid their workers to form or join unions.
- In a free society, workplaces might contain a mixture of unionized and nonunionized employees.

- In a free society, employers could collectively bargain with some or all employees without going through a union.
- In a free society, the relationship between management and unions wouldn't necessarily be antagonistic, as it is now.
- In a free society, the government would not interfere in any way with the employer-employee relationship.

There is nothing inherently wrong with labor unions or collective bargaining. As long as like-minded people want to join together into groups, there will be unions of some kind — even in a free society. And it might be easier and cheaper for a company to engage in collective bargaining with all or a portion of its employees. The difference is that in a free society everything concerning unions and their relation to employers, management, and employees would be voluntary, peaceful, and noncoercive.

In a free society, the union's chief weapon — the strike — might still exist as well. But it is mistaken to think that all workers who strike — that is, refuse to work — would just summarily be fired. They certainly might be fired — and black-

listed, and denied severance pay, and deemed ineligible for re-employment. But a company might very well give in to the demands of striking workers if it calculates that the cost of training new workers to replace them exceeded the cost of acceding to the strikers' demands. But again, in a free society, strikes would be voluntary, peaceful, and noncoercive — or they would not be allowed to take place.

In a free society everything concerning unions would be voluntary, peaceful, and noncoercive.

The widely disseminated union propaganda that without unions American workers would labor in unsafe working conditions, for long hours, at subsistence wages, and receive no benefits is ludicrous. The 89 percent of American workers who are not members of a labor union certainly don't all toil in dangerous sweatshops for seven days a week at minimum wage with no time off. Union propaganda certainly doesn't apply to companies such as Netflix, which now allows its employees to take unlimited paid parental leave during the first year after a child is born or adopted, with full salaries and benefits. And

just because a company has unionized employees, it doesn't necessarily follow that it pays them high or even above-average wages. Most of the workers at Disney theme parks in Florida are represented by unions, but starting pay is still less than \$10 an hour.

Labor unions could conceivably still exist in a free society, and strikes might very likely still take place by workers in and out of unions. The difference in a free society would be that unions and strikers would receive no special government protection, promotion, patronage, or privilege.

Laurence M. Vance is a columnist and policy advisor for The Future of Freedom Foundation, an associated scholar of the Ludwig von Mises Institute, and a columnist, blogger, and book reviewer at LewRockwell.com. Visit his website: www.vance-publications.com. Send him email: lmvance@laurencemvance.com.

NEXT MONTH:
“The Libertarian Solution”
by Laurence M. Vance

Nothing is more revolting than the majority; for it consists of few vigorous predecessors, of knaves who accommodate themselves, of weak people who assimilate themselves, and the mass that toddles after them without knowing in the least what it wants.

— Johann Wolfgang von Goethe

War of Pure Defense: A First Sketch

by Joseph R. Stromberg



Few thinkers have ever set forth (much less developed) the rather straightforward idea of purely defensive war, i.e., war limited to repelling invaders — and otherwise doing nothing at all. The term “defensivism” would suit the case, but since philosopher Eric Mack put it (in my view) to different and rather conventional use almost forty years ago (“Permissible Defense,” *Reason*, July 1977), we shall speak here of Wars of Pure Defense (WPD).

1788: Brutus

While the critical writings of Erasmus of Rotterdam (1466–1536) and Étienne de la Boétie (1530–1563) on war and peace perhaps readied the ground for WPD, the earliest “pure-defensivist” (that I

have found) wrote two centuries later. In his Seventh Essay (*New York Journal*, January 3, 1788), the Anti-Federalist “Brutus” (who was possibly Robert Yates [1738–1801] of New York, who had walked out of the Constitutional Convention in Philadelphia) took up some arguments made in Federalist No. 23. There, Alexander Hamilton defended the proposed Constitution’s grant of indefinite federal power to raise revenue, arguing there could be no foreseeable limit to the necessities of military defense.

Brutus countered that without a clear division of revenue (taxing power) between the federal center and the states, the Constitution would fail; either it would be too weak to do any good or it would in time subjugate the states completely. The plan of having the federal center “provide for the protection and defense of the community against foreign attacks” was reasonable in itself, but “brilliant martial achievements” were not essential to public happiness. If law and justice prevailed internally, the people “would be ready to repel any invasion that might be made.... And more than this, I would not wish from them — A defensive war is the only one I think justifiable.” In any case, defense was “not the most im-

portant, much less the only object of [governmental] care.”

Americans fighting on their own ground would have every advantage.

In Europe, by contrast, wars arose from petty dynastic quarrels or pursuit of glory, and “merely” destroyed men’s lives. The people’s economic well-being was a worthier end, and its regulation would remain (overall) with the states. What good came of undermining the states’ capacity for self-defense by vesting the central government with an unlimited claim on revenue? The costs of American defense were not beyond reasonable calculation; the states themselves could probably estimate them. Neither tribal Indians nor European colonies on U.S. frontiers constituted an existential threat. European aggression would require an imperial power to send men, arms, and supplies across a vast ocean, while Americans fighting on their own ground would have every advantage, including the morale of people defending their homes. Actual American *defense* costs could be shared between the governments and be defrayed, at the federal level, by modest (and presumably limit-

ed) taxes on foreign trade, on imports and exports.

1793: William Godwin

English liberal William Godwin (1756–1836) was a near-utilitarian, strongly influenced by Jean Jacques Rousseau (1712–1778). Taking a step that Thomas Paine resisted, Godwin became the first modern anarchist. In his *Political Justice* (1793), he wrote, “As defense is the only legitimate cause, the object pursued, reasoning from this principle, will be circumscribed within very narrow limits. It can extend no further than the repelling the enemy from our borders.” In themselves, perceived threats did not justify war, and “wars undertaken to maintain the balance of power [were] universally unjust.”

Turning to the conduct of war, he wrote that “it is never allowable to make an expedition into the provinces of the enemy, unless for the purpose of assisting its oppressed inhabitants.” (This last clause is a bit troubling.) Since, in a WPD, everyone will oppose the invaders, and thus even deceit became unnecessary, “Why should war be made the science of disingenuousness and mystery, when the plain principles of good sense would answer all its legitimate pur-

poses?” The point was to keep wartime operations from producing more evils “than defence inevitably requires.” This standard ruled out “levying military contributions, and the capture of mercantile vessels.” Neither should defenders be subjected to “implicit faith and military obedience, as they are now understood.... Soldiers will cease to be machines.”

The point was to keep wartime operations from producing more evils “than defence inevitably requires.”

Godwin took the fact that overseas possessions complicated the analysis of war as an argument against having them. He saw as doubtful “the propriety of cultivating, under any form, the system of military discipline in time of peace.” He saw standing armies as “altogether indefensible” and asserted that “a universal militia is a more formidable defence....” *Battle* was “not the object” in a war of real defense, whose “very essence is protraction” (compare Thomas Paine’s discussion of guerrilla strategy), nor were iron-bound discipline and military punctilio necessary, since defenders would learn their jobs and develop working structures as they went. Fi-

nally, treaties of alliance were “nugatory, or worse.” In actual danger, parties having the same enemies would coalesce naturally. (We can merely note here the underlying Calvinism shared by Godwin and Robert Dabney [see below].)

1847: Veritatis Amans

Some ten years after Godwin’s death, an American writing as Veritatis Amans (“Lover of Truth”) asked, “Can war, under any circumstances, be justified on the principles of the Christian Religion?” (*Christian Review*, September 1847). His tentative answer was “yes,” provided the war was truly defensive, i.e., “when its object is to repel an invasion; when there is no alternative but to submit to bondage and death, or to resist.” If “a hostile army landed on our shores,” attempts to expel it amounted to justifiable self-defense. Developing some analogies with law enforcement (including capital punishment), the writer urged that since society could not exist without a right of defense, it had the right to “repel an invasion or suppress a domestic tumult.” (That last phrase became, for some, a very useful loophole in 1861. See below.) Unfortunately the writer did not address the scope of defensive war —

e.g., would a British invasion of St. Augustine permit (or require) American bombing of London if that were possible?

1897: Robert Dabney

The Virginian theologian Robert Lewis Dabney (1820–1898) was a prolific polemicist in the Presbyterian tradition. He taught at Union Theological Seminary before and after the War of 1861–1865, and served on the staff of Confederate Gen. “Stonewall” Jackson in 1862. His writings included *A Defence of Virginia* (1867) and *The Sensualistic Philosophy of the Nineteenth Century* (1875). Late in life he taught moral philosophy at the University of Texas in Austin.

“But war should be only defensive.”

In his last book, *The Practical Philosophy* (1897), Dabney agreed that “the horrors of war ... are enormous.” Reasoning from the magistrate’s right and duty to punish, he found war justifiable: “*But war should be only defensive.* As soon as the invader is disarmed, his life should be spared,” especially since as a “private subject” the individual invader had had “little option” (italics added).

Aggressive war was, by contrast, “wholesale murder,” and Dabney attacked the inconsistency of “those Americans who repealed capital penalties and yet launched eagerly into aggressive war against their own brothers.” He noted that the American Peace Society, based in Boston, which had long denounced all war as criminal, met “just before the War Between the States began” and decided that “against a war of this complexion their principles did not apply, urged its vindictive prosecution, and then adjourned *sine die.*” (Bostonian peaceniks soon re-invented themselves as a Northern war committee, under the loophole noted earlier.)

1917, 1940: Jeanette Rankin

Republican Congresswoman Jeanette Rankin (1880–1973) of Montana famously voted against U.S. entry into both world wars. She aligned herself with Western progressives on matters of war and peace and with Eastern progressives on social issues. Rankin did not write much in the way of theory and we must deduce her views from speeches, actions, and occasional writings. In the 1930s she called for coastal defenses and a unified military command structure. After Pearl Harbor, she argued that the

president's constitutional *duty* to repel attacks on U.S. soil already allowed him to do all the repelling he liked: around Hawaii. He did not need a declaration of war.

1963: Murray Rothbard

Economist Murray Rothbard (1926–1995) was greatly influenced by Old Right publicist Frank Chodorov (1887–1966), whose “isolationist” writings left no room for overseas military operations. In “War, Peace and the State” (1963) (reprinted in *Egalitarianism as a Revolt against Nature and Other Essays*, 1974), Rothbard sought to ground nonintervention on individuals’ rights of self-defense against actual invaders. He suggested that Smith “has no right to repel [Jones] by bombing a building and murdering innocent people.” He reasoned that it is impossible to use modern weapons morally, because they cannot be *pin-pointed* against actual aggressors. Rejecting rationalizations about “collateral damage,” Rothbard saw aerial bombing and nuclear weapons as the criminal heart of modern war.

Adding in some practical considerations on the nature of states, he concluded that, since modern weaponry could not be wished or reformed away any time soon, the

best plan was for each state to pursue a policy of peaceful coexistence = “isolationism” = nonintervention. Even Rothbard’s own “deviation” in *For a New Liberty* (1973) (allowing voluntarily funded defense organizations to have a few Polaris submarines) was a pragmatic concession, pending nuclear disarmament. (Rothbard re-stated his arguments in *The Ethics of Liberty* [1998 (1982)].)

How would pure defense work?

Eric Mack’s 1977 critique defined “isolationism” in terms that answer in detail to our WPD. His treatment very usefully highlighted its implications and imposed a kind of consistency from which actual “isolationists” or noninterventionists would benefit.

Rothbard reasoned that it is impossible to use modern weapons morally.

WPD would meet actual attacks on national territory while declining to devastate the invaders’ home territory and society. It would therefore undertake no colossal overseas operations, invasions, surrenders, occupations, and the rest. Nor does WPD require granting semi-magical war powers to state

bureaucracies while rationalizing the damage done to law and liberty. We could quit agonizing over the “laws” of war, except perhaps to exceed them on the side of humanity. The world-striding U.S. unitary executive, stripped of his mercenary companies, could shrink into a glorified sewer commissioner. Alliances would be the exception, never the rule. Agreements whereby an attack on Micro-Magnesia is fictitiously seen as an attack on U.S. soil would not arise.

With invaders repelled, there would be little to do except to arrange prisoner exchanges and discuss damages, perhaps in a real peace treaty (out of fashion since 1945).

Pure-defense planning would surely be cheaper than constant preparation to invade and bomb the world.

Where mere money is concerned, pure-defense planning would surely be cheaper than constant preparation to invade and bomb the world. With respect to a pure-defense budget, libertarian realists have made useful suggestions (despite the lack of commitment to strict nonintervention). Earl Ravenal’s “Case for Adjustment” (*For-*

eign Policy, 81, Winter 1990–1991) outlined a massive reduction of U.S. defense spending simply by assuming withdrawal from Europe, protection of sea lanes and essential allies, and a minimal nuclear deterrent.

In WPD, air power would *defend*. Militia on a Swiss or early American model might prove essential and WPD might incorporate civilian defense and resistance as theorized by pacifists such as Gene Sharp.

Some other advantages

Pure defense would make it easier to apply the criteria of Just War Theory, while forgoing the supposed need to *punish* enemy rulers for their misdeeds (even when genuine). WPD therefore might bridge much of the oft-noted gap between rigorous Just War Theory and pacifism.

Since the difference between the “collateral damage” attendant to shooting down invading planes over one’s own territory and that attendant to blowing up entire cities abroad seems rather stark, high-flown arguments over foresight, “intentions,” and “double-effects” could grind to a near-halt. Genuine *pin-pointing* might come into play.

We have heard much of the heroics of the Battle of Britain. Those stories are true enough. British de-

fenses permanently destroyed the *Luftwaffe* (never designed for area bombing) as an effective force. But think how much better that defense might have been had the massive resources committed to leveling and burning German cities instead been allocated to aerial defense.

Perhaps, as philosopher David Gordon suggested to me, “the best defense is a good defense.”

Joseph Stromberg is a historian and free-lance writer.

I do not choose to be a common man. It is my right to be uncommon — if I can. I seek opportunity — not security. I do not wish to be a kept citizen, humbled and dulled by having the state look after me. I want to take the calculated risk; to dream and to build, to fail and to succeed. I refuse to barter incentive for a dole. I prefer the challenges of life to the guaranteed existence; the thrill of fulfillment to the stale calm of utopia. I will not trade freedom for beneficence nor my dignity for a handout. I will never cower before any master nor bend to any threat. It is my heritage to stand erect, proud, and unafraid; to think and act for myself, enjoy the benefit of my creations, and to face the world boldly and say, this I have done.

— Dean Alfange

The Forgotten Meaning of “Sound Money” (and Why It’s Coming Back)

by *Guy Christopher*



We Americans no longer carry gold and silver money in our pockets and purses as our grandparents did during their lives. But we still carry the history, legacy, and spirit of those gold and silver coins in our language — with more meaning than you might imagine.

“Sound money” has a clear message recognized for centuries around the world. It describes the musical, metallic ring of a gold, silver, or copper coin dropped on any hard surface of glass, stone, wood, or metal. Sound money literally refers to real wealth, with a natural, unmistakable signature of honesty and integrity, as opposed to the

swishy paper and plastic debt used almost exclusively today.

The term “sound money” is believed to have come from Ancient Rome, where small silver coins were standard in everyday commerce, from paying Roman soldiers to buying exotic goods from all corners of the known world. As Rome squandered its wealth, it found what seemed an easy shortcut to shore up the treasury. It gradually debased those silver coins with common metals, ultimately cutting the silver content to just 5 percent.

But that didn’t fool anyone for long, least of all disciplined Roman soldiers, who did not appreciate being paid with worthless mystery metal in return for risking their lives on Rome’s bloody battlefields.

Do you want true money or a debased dud?

Not every Roman soldier had room in his gear for a touchstone, usually fieldstone or slate, also used to test the purity of metals. But they quickly discovered the difference in the sound of true money and a debased dud.

They recognized that real silver had a distinctive melodious ring when bounced on a hard surface, such as the blade of a handy sword, a bronze breastplate, or an ornate

marble floor. Sound money carried the ring of truth, while debased coinage landed with a dull, disappointing thud.

The debasement of Rome's silver currency unmasked the deceit of a bankrupt empire, which ended with the fall of Rome, a pattern repeated many times. Sound money's "ring of truth" had found its place in the history of money and of nations.

Sound money stands for strength and durability, which were also characteristics of those pioneering Americans who built our nation.

As the United States grew westward to the Pacific Coast and north to Alaska, gold, silver, and copper coins of all nations were legal tender in the young United States until the 1850s and were in use even long after that. Americans with no formal education in reading, writing, and arithmetic relied on the sight, sound, and feel of the only money they knew. Learning the different musical ringing sounds of those coins could easily qualify even a prairie settler fresh off the wagon train as an economic expert.

In the Old West of the range-roving American cowboy, the ring

from that silver dollar tossed on the bar of polished oak told the saloon keeper he was pouring whiskey for sound money, and not for a counterfeit forgery.

The sound money test unmasked one of the most famous counterfeiting schemes in American coinage history. The Liberty Nickel (1883–1913) was originally struck without the words "Five Cents," bearing instead only the Roman numeral "V." Gold plated Liberty Nickels were passed off as a newly designed \$5 gold piece, but the sound-money test quickly identified the scandal. Within six months of issuing the first "V" nickels, the U.S. Mint added the words "Five Cents." But for the next many years, every Liberty \$5 Half Eagle in town was tested for its ring of truth.

Sound money means simplicity, honesty, and trustworthy recognition. It stands for strength and durability, which were also characteristics of those pioneering Americans who built our nation.

The ring of sound money for centuries has transcended borders and nationalities by singing its own melodic language. No matter what words were stamped into a precious metal coin, that ring of sound money certified its value, or exposed the deception.

Governments have distorted the meaning of money.

“Sound money” carries such a powerful message there’s little wonder that governments issuing paper fiat currency have attempted to corrupt its meaning, with help from unimaginative and lazy educators and journalists.

“Hard currency” first referred to metal coins, not paper money, but the term over the years has come to mean that flimsy, paper, folding cash is more trustworthy than a handwritten check or IOU.

“Good as gold” is another aberration of “sound money,” usually referring to credit-worthiness, even though there is no credit as good as gold.

When Washington and Wall Street began pushing plastic credit cards, which are nothing more than debt disguised as wealth, Americans were introduced to the gold card along with the credit rating and FICO score as a false measure of one’s financial worth. Today, the newest edition of the \$100 Federal Reserve note carries a golden inkwell and feather pen, as if to sarcastically say money itself is a masquerade of paper script and not precious metal.

Americans today have no memory of those times when gold, silver,

and copper coins were tossed across a store counter, or counted out by hand, to pay for everything from penny candies to Ford Model-T automobiles. That era began ending when Franklin Roosevelt in 1933 outlawed the use of gold coins in everyday American commerce.

The separation of Americans from their Constitutional heritage of true money continued through 1964, with the end of small coinage containing 90 percent silver. The deception was complete by 1982, when copper quietly disappeared from the Lincoln penny.

But no government could remove the ringing echo of sound money from history, or from us. And government cannot camouflage its counterfeits with gold-colored paint. You can experience sound money’s evident ring of truth for yourself. Toss any gold or silver coin on your kitchen table and you will hear the history of honest money ringing down through the centuries.

Guy Christopher is a columnist for the Sound Money Defense League and MoneyMetals.com.

Patrick Henry's Choice

by Ben Moreell



In 1775, an American patriot stood before his neighbors in a small church in Virginia and challenged the tyranny of government — his own government — in a ringing statement on liberty and death.

While I subscribe wholeheartedly to Patrick Henry's choice of death in lieu of slavery to government, I would like to call your attention to another thought in the same sentence wherein he defied governmental encroachment upon the natural rights of man. Here are the familiar words with which he concluded that memorable address:

I know not what course others may take, but as for me, give me liberty or give me death!

It is important to note that Patrick Henry did not say that he wanted a law to force everyone else to do as he wished. Nor was he trying to stampede a mob into following him. When he said, "I know not what course others may take," he was stating the very essence of liberty; for he was respecting the right of each person to be free to follow the dictates of his own conscience. And when he added, "but as for me," he was declaring for himself the same freedom of choice that he acknowledged for all others. Thus, having indicated that everyone should be free to decide for himself, he announced his own decision: "Give me liberty or give me death." And let us remember that when he spoke of liberty, he meant freedom from the injustices imposed by his own legally constituted government, which he had previously supported.

This philosophy of Patrick Henry — his belief that individual liberty is more sacred than life itself — seems to be forgotten in America today. Now our leaders seem to direct their energies primarily to acquiring power over their fellow men through government office. And once such political power has been obtained, the possessors of it seem to say to the rest of us,

We do not know what course you would follow if government were to leave you free to pursue it, but we strongly suspect that you would act in ignorance of your own best interests. Therefore, we will take no chances — we will pass a law that will force you to follow the course that we have decided is best for you. But as for us — give us more power to impose controls, rules, and regulations upon you for your benefit, and for our glory.

That philosophy is a far cry from the ideas that prevailed when Americans were demanding freedom from governmental dictation

over their daily lives and business. And I believe that if we do not return to our original concept of a government of strictly limited functions, freedom in America will eventually be as dead as it now is in Russia and other totalitarian countries.

Ben Moreell was chairman of the board of Jones & Laughlin Steel Corporation. This article was extracted from a speech he delivered to the Illinois Manufacturers' Association in 1951. It appeared in volume 2 of Essays on Liberty, published by The Foundation for Economic Education in 1954. Reprinted by permission.

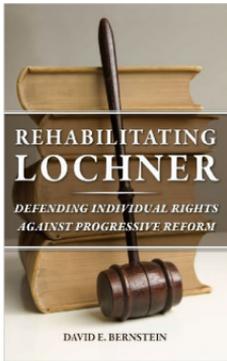
The facts are that every form of wealth is dedicated to the improvement and advancement of the so-called common man. Capital, with negligible exceptions, is used for the orderly production and distribution of goods, 95 percent of which are consumed by those who claim to be disinherited.

— William Feather

The Resurgence of *Lochner*

by David D'Amato

Rehabilitating Lochner: Defending Individual Rights against Progressive Reform by David E. Bernstein (University of Chicago Press, 2012), 208 pages.



David Bernstein begins his short book, *Rehabilitating Lochner*, by noting that “*Lochner* [*v. New York*] is likely the most disreputable case in modern constitutional discourse.” If you want to raise eyebrows in legal circles, he says, simply embark on a defense of the Court’s decision in the infamous 1905 case; from experience, I know Bernstein’s claim to be true. So convinced is the legal community of the federal government’s limitless wisdom and benev-

olence as protector of the otherwise defenseless worker that any attempted rehabilitation of *Lochner* is bound to be met with the most vitriolic response. To defend *Lochner* in polite legal society marks one as a kind of reactionary, hardened and unfeeling in the face of the poor worker’s plight.

The assumption, usually left unspoken, is that the implacable forces of free-market greed benefit only the employing classes, labor being left at the mercy of cruel, uncaring bosses — at least until the kind-hearted government intervenes on their behalf. That this narrative and its view of free-market competition are fundamentally at variance with the historical record matters not at all. Facts that undermine the progressive account of early 20th-century history are unceremoniously discarded. As Bernstein notes in his introduction, statutes like the one at issue in *Lochner* often “favored entrenched special interests at the expense of competitors with less political power.”

Indeed, Supreme Court decisions such as *Lochner*, treating the freedom of contract as a right worthy of constitutional protection, often yielded “clearly ‘pro-poor’ distributive consequences.” It is worth noting that those observations, in-

convenient for those committed to the dominant story of the Progressive Era, are consistent with the revisionist theses of historians such as Gabriel Kolko, whose work exposed the Progressive Era regulatory state's role in consolidating and stabilizing corporate power rather than curbing it. Aligned unambiguously with the political and cultural Left, Kolko and other revisionists like him (for example, James Weinstein and William Appleman Williams) challenged the shallow notion that the expansion of the regulatory and administrative state always benefited the poor, wage-earning classes.

***Lochner* must be detested and ridiculed precisely because Progressive Era reforms must never be seriously questioned.**

The unexampled disdain for *Lochner* is revealing. For the respectable member of legal academia, *Lochner* must be detested and ridiculed precisely because Progressive Era reforms must never be seriously questioned. The inordinate hatred of *Lochner*, then, represents a particular historiography as much as it represents a judicial philosophy. And as Bernstein's book shows, painstaking revision-

ism has thoroughly discredited that historiography, one suffused with the myth that *Lochner* epitomizes "laissez-faire Social Darwinism." This unfriendly treatment of *Lochner* is especially surprising and paradoxical given that the Court's lionized privacy cases, in particular (and beginning with) the Warren Court's decision in *Griswold v. Connecticut*, relied pivotally on the reasoning from cases decidedly within the *Lochner* lineage. For example, in *Meyer v. Nebraska*, decided almost a half-century before *Griswold*, the Court explicitly followed *Lochner* in defining constitutionally protected liberty broadly, preparing the ground for the view of substantive due process typified by *Griswold*.

This jurisprudential connection between *Lochner*, through its progeny, and *Griswold*, though downplayed or denied by legal scholars and the Court, did not go entirely unremarked upon. Dissenting from the Court's opinion in *Griswold*, Justice Hugo Black protested that long-disgraced *Lochner*, which the Court declined to cite, was the true source of "the natural law due process philosophy" on which the *Griswold* holding rested. The connection between the *Lochner* family of cases and more recent substantive due-process cases such as *Griswold*

embarrasses both conservatives and progressives. “[Conservative] legal analysts,” Bernstein writes, “overwhelmingly adopted the critique of ‘substantive due process’ pioneered by Hugo Black in *Griswold*...” Black’s dissent in that case maintained that while “certain specific constitutional provisions ... are designed in part to protect privacy at certain times and places with respect to certain activities,” there is nevertheless no textual support for a broad, general constitutional “right to privacy.”

The right of contract

Conservatives have, in the main, hewed to the kind of strict constructionism personified by Black. Progressives, for their part, regard the *Lochner* decision as a shocking example of judicial activism, the Court legislating from the bench and thereby usurping the rightful role of the legislature. Yet they argue that the Court should not shrink from adopting an expansive view of substantive due process in the protection of unenumerated rights that they favor, for example, the right to terminate a pregnancy or to use contraceptives. Libertarians are distinguished from both groups by the fact that they support, even cheer, an active judiciary,

one that does not simply defer to legislative bodies but takes seriously its role as protector of important individual rights and liberties. Thus do libertarians generally endorse the majority opinions of both *Lochner* and *Griswold*. For libertarians, the right to earn a living, to choose one’s occupation and contract free from arbitrary limitations, is as important a protected liberty as others that the Court has shielded more solicitously.

Without the right to contract, to form enforceable agreements with other parties, there can be no such thing as a free market.

Without the right to contract, to form enforceable agreements with other parties, there can be no such thing as a free market. Preservation of the free and voluntary exchange of goods and services in an open marketplace demands assurance that the law will protect contracts — that, to the greatest extent possible, courts and policymakers will refrain from interfering with the expressed intentions of market actors. While the legal framework must impart certain tacit terms (for example, that a party is of adult age, that he possesses the proper mental capacity, that a contract is not de-

signed for an illegal purpose), courts in a free society should, as a general rule, give force to parties' freely made agreements. As Justice Rufus W. Peckham wrote, delivering the opinion of the Court in *Lochner*, "Statutes of the nature of that under review ... are mere meddlesome interferences with the rights of the individual."

Such interferences ought to trigger the kind of strict legal scrutiny applied in cases that implicate a fundamental right, cases such as *Griswold*, where the Court demands that the government demonstrate a compelling state interest in regulating the activity at issue. In those cases, assuming the government is able to demonstrate a compelling interest, it must still show that the law at issue is narrowly tailored to serve that interest. Tasked with the legal burdens entailed in strict scrutiny, governments often fail, their intrusive laws adjudged unconstitutional. But it may surprise non-lawyers to learn that economic rights rate not strict scrutiny — or even intermediate scrutiny — but are instead subject to something called the "rational-basis test," which allows the government to successfully defend virtually any oppressive economic restriction.

Junior rights

The Supreme Court has treated economic rights as junior rights, so unimportant as to be almost impossible to vindicate in court. In *Rehabilitating Lochner*, Bernstein suggests that economic rights ought to be treated just like any other fundamental right, that the distinction between economic rights and those that the Court actually protects is ultimately artificial and nonsensical. There can be no tidy separation of political and economic rights, even in theory. The freedom to act in whatever peaceful, noninvasive ways one chooses is a fundamental right worthy of the most scrupulous judicial attention. Bernstein's book is exactly the kind of rigorous scholarship that could save important economic rights from the place of disesteem they now occupy, further encouraging libertarian lawyers and legal scholars to challenge the judicial status quo.

The Supreme Court has treated economic rights as junior rights.

The *Lochner* decision has been criticized (by legal scholars such as Laurence Tribe and Cass Sunstein) as standing for "the myth of mechanical neutrality," whereby the Court takes its own assumptions

about politics and society as given in an attempt to obscure the fact that it is actually making a choice. Such critiques echo a familiar refrain from progressives — the claim that since *all* politico-economic systems, including free markets, require a careful and comprehensive set of rules, the very notion of *laissez faire* is a speciously and irresponsibly advanced nonconcept. Libertarians, however, neither deny that “the obvious and simple system of natural liberty,” borrowing Adam Smith’s words, rests on a delicately balanced set of rules, nor pretend that they know everything about how best to blueprint a free society. Rather they simply propose that free persons enjoy the widest possible sphere of action, limiting the violence and coercion of government.

Moreover, one need not believe that “existing resource distributions [are] neutral” to agree with the holding in *Lochner*. Indeed, many libertarians have argued that the existing distribution of wealth and natural resources in society is unjust precisely *because* the freedom of contract and exchange is restricted, legal and regulatory restrictions often benefitting the powerful and politically connected. That is, if prevailing political and economic

structures are not a living embodiment of libertarian principles, then we have reason to question distributions of wealth and resources as a matter of course.

Progressives’ critiques of *Lochner* reflect their largely unexamined assumptions about what kinds of economic arrangements led to the disparities of wealth and bargaining power to which they disapprove. As Bernstein argues, it is simply not at all clear that free-market arrangements redound predominantly to the benefit of rich and powerful market participants — much less that they *must always* favor such participants. Progressives such as Sunstein seem not to realize that even if we accept as true the proposition that large corporate employers have too much power over employees, we are nonetheless left with the question of *how this situation arose*.

Libertarians propose that free individuals enjoy the widest possible sphere of action.

Rehabilitating Lochner fulfills the promise presented early in its introduction, “[taking] the revisionist project significantly further” than have previous attempts to challenge “the dominant narrative

about liberty of contract inherited from the Progressives.” Bernstein’s is the most complete and comprehensive treatment of a case that “justices of all ideological stripes use ... as an epithet to hurl at their colleagues when they disapprove of a decision declaring a law unconstitutional.” We learn that *Lochner* was hardly a judicial aberration when it was decided — that it was nowise a result of the majority’s supposed hardcore ideological commitment to libertarianism. Bernstein deftly rights a historical record warped

beyond recognition by decades of progressive political propaganda passed off as objective fact. With any luck, Bernstein’s efforts will lead legal scholars to give *Lochner* a fair reassessment and, perhaps, will “lead to a more nuanced, civil, and constructive debate about modern constitutional law,” as he hopes.

David S. D’Amato is an attorney with an LL.M. in international law and business.

Put fear out of your heart. This nation will survive, this state will prosper, the orderly business of life will go forward if only men can speak in whatever way given them to utter what their hearts hold — by voice, by posted card, by letter, or by press. Reason never has failed men. Only force and oppression have made the wrecks in the world.

— William Allen White

SUPPORTING THE FUTURE OF FREEDOM FOUNDATION

Our work advancing freedom depends on the financial support we receive from people who share our commitment to the moral, philosophical, and economic principles of a free society. Since The Future of Freedom Foundation is a 501(c)(3) educational foundation, donations are tax-deductible.

.....

Donations can be made on our website

— www.fff.org/support —

or by calling us at 703-934-6101.

.....

Here are ways that you can support our work:

1. A donation, with check or credit card.
 2. A donation in any amount you choose by means of a recurring monthly charge to your credit card.
 3. A donation of stock, the full market value of the stock being tax-deductible.
 4. Naming The Future of Freedom Foundation as a beneficiary in your will or living trust, charitable gift annuity or trust, or life-insurance policy.
-

Over the years, planned giving has played an important role in sustaining our operations.

*Thank you for your support of our work
and your commitment to a free society!*



THE FUTURE
—of—
FREEDOM FOUNDATION

11350 Random Hills Road
Suite 800
Fairfax VA 22030

★★★

www.fff.org

fff@fff.org

Tel: 703-934-6101

Fax: 703-352-8678