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# FUTURE OF FREEDOM

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*It is not desirable to cultivate a respect for the law,  
so much as the right.*

— *Henry David Thoreau*

# FUTURE OF FREEDOM

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<i>The Assassination of Orlando Letelier and Ronni Moffitt, Part 2</i>	2
Jacob G. Hornberger	
<i>How Food Stamps Subverted Democracy, Part 3</i>	11
James Bovard	
<i>The Marijuana Juggernaut Rolls On</i>	17
Laurence M. Vance	
<i>The Gold Clause Cases</i>	33
David D'Amato	
<i>The Badlands of Executive Order 9066</i>	34
Matthew Harwood	

# The Assassination of Orlando Letelier and Ronni Moffitt, Part 2

by *Jacob G. Hornberger*



**I**mmediately after the bombing that killed Orlando Letelier and Ronni Moffitt, Michael Moffitt began screaming, “DINA!” “Assassins!” The Washington, D.C., police who had arrived on the scene were mystified. Who the heck is Dina? they wondered.

Moffitt was referring to the National Intelligence Directorate, an internal military-intelligence force within the Chilean government that was established soon after Gen. Augusto Pinochet took power in the 1973 coup that ousted Salvador Allende, an avowed socialist-communist who had been democratically elected by the people of Chile in 1970. Known as DINA, and headed by an army colonel named

Manuel Contreras, the organization had all the powers of the military, the CIA, the FBI, and the NSA, all wrapped into one.

DINA agents wielded and exercised the omnipotent authority to kidnap people off the streets and cart them off to secret facilities, where they would torture, rape, or kill them. Tens of thousands of people were picked up off the streets and taken to places such as Villa Grimaldi in Santiago, where extremely sadistic acts were the order of the day. According to Wikipedia, uncooperative prisoners, for example, were taken to a parking lot where a car or truck would be used to run over their legs. The unnatural sex acts that were committed against women were so gruesome and so shocking that they cannot be repeated here.

Among the thousands killed by DINA’s agents were Victor Jara, a folksinger who was known as the Bob Dylan of Chile. Also killed were two young Americans, Charles Horman and Frank Teruggi, with the complicity of U.S. officials. (See “The Executions of Charles Horman and Frank Teruggi,” by Jacob G. Hornberger, on the website of The Future of Freedom Foundation.)

Among those carted away to concentration camps was Orlando

Letelier, who was then serving as defense minister under Allende and who had previously been his foreign minister and his minister of the interior. Taken into custody at the start of the coup, Letelier was transported to a Siberia-like camp in southern Chile and, along with others, subjected to cruel and brutal torture.

What had all these tens of thousands of people done to deserve being raped, tortured, or executed? They all supposedly had believed in socialism or communism or had supported or served in the administration of Salvador Allende, the socialist-communist who had been democratically elected president of Chile in a legitimate election, one, by the way, in which the CIA had played a major secret role funding and politicking for Allende's opposition. In the eyes of Pinochet, Contreras, DINA, and the rest of Chile's national-security establishment, believing in communism or socialism or having supported or voted for Allende or having been part of his government were considered grave crimes.

Of course, Pinochet wasn't the only one who was waging war on communists and socialists in 1973. So was the U.S. national-security state, which had been locked in a Cold War against the communist

world ever since the advent of the national-security state after World War II, fighting hot wars in Korea and Vietnam in the 1950s, 1960s, and into the 1970s, infiltrating American organizations, and secretly monitoring Americans who were suspected of having socialist or communist connections.

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**Pinochet wasn't the only one who was waging war on communists and socialists in 1973.**

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Indeed, it was its Cold War mindset that motivated the U.S. government, including the CIA and the Pentagon, to launch the forces that ultimately culminated in the assassinations of Orlando Letelier and Ronni Moffitt.

In the 1970 presidential election, Allende had received only a plurality of votes, and, therefore, under the Chilean constitution the final determination of who would be president would be made by the Chilean congress. A physician by training, Allende was an avowed socialist and communist who expressed no interest in participating in the U.S. national-security state's Cold War and, in fact, expressed a desire to establish friendly relations with both the Soviet Union and Cuba.

Long before he was elected president, Allende was considered a grave threat to U.S. national security. Throughout the 1960s, the CIA was, for all practical purposes, one of the primary players in Chilean politics. Of course, it was all secret, but the CIA was funding candidates and parties that stood in opposition to Allende and his political party. In fact, one of the main reasons that Allende wasn't elected before 1970 was the millions of dollars that the CIA was secretly funneling into opposition parties and candidates.

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### The CIA was funding candidates and parties that stood in opposition to Allende and his political party.

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Thus, at the moment that Allende received the most votes in the 1970 election, notwithstanding the CIA's major role trying to ensure his defeat in that election, U.S. officials, from Richard Nixon on down, became apoplectic. Under no circumstances, Nixon told his national-security team, would the United States permit another avowed communist (in addition to Castro in Cuba) take power in a Latin American country, not even if he was democratically elected. Henry Kissinger, Nixon's national security ad-

viser, put it bluntly and succinctly, "I don't see why we need to stand by and watch a country go communist due to the irresponsibility of its people. The issues are much too important for the Chilean voters to be left to decide for themselves."

The question naturally arises: What moral and legal authority did U.S. officials have to interfere with the democratic process in Chile?

There certainly is no authority under the U.S. Constitution for such action. In fact, the clear intent of the Framers was that the Constitution bring into existence a limited-government republic, one that would not go abroad "in search of monsters to destroy," as John Quincy Adams put it in his famous Fourth of July speech to Congress in 1821.

But during the Cold War, constitutional constraints became of secondary concern, especially given the revolutionary transformation of the federal government into a national-security state, a type of governmental apparatus that usually characterizes totalitarian regimes. The primary concern became national security, which would become the most important term in the political lexicon of the American people. Charged with protecting national security were the Pentagon and its vast and ever-growing

military establishment; the CIA and its omnipotent powers of assassination, kidnapping, and torture; the FBI and its surveillance of American citizens and organizations; and the NSA and its highly secret surveillance activities.

### Transforming America

What was the motive for this monumental transformation? U.S. officials said that it was needed to protect America from an international communist conspiracy that was based in Moscow and that was determined to conquer and take over the United States. Unless the U.S. government adopted the same type of national-security state apparatus that the Soviet government had, U.S. officials maintained, America would fall to communism, just like Korea, Vietnam, Cuba, and Chile, to say nothing of China and Eastern Europe. As soon as the Cold War was over, however, U.S. officials made it clear that the American people could have their limited-government republic back.

The transformation of the federal government into a national-security state was accomplished without even the semblance of a constitutional amendment, which the Constitution requires for any major alteration to the federal gov-

ernmental structure established by the Constitution. But constitutional provisions were considered niceties that simply could not be followed because of the enormous threat supposedly posed by international communism.

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**The national-security establishment quickly became the most powerful and influential part of the federal government.**

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It is no surprise that the national-security establishment quickly became the most powerful and influential part of the federal government. Budgets for the military and its armies of contractors grew exponentially, especially when U.S. officials embroiled the United States in the civil wars in Korea and Vietnam. Intended only as an intelligence-gathering organization, the CIA seized upon nebulous language in the National Security Act of 1947, which called the CIA into existence, to exercise omnipotent powers, including the powers to kidnap, torture, and assassinate as well as to effect regime change in foreign countries.

It all fell under the rubric of national security, even though no one could define the term with any specificity.

Where were the U.S. Supreme Court and the lower federal courts during all this? They were acquiescent in judicial cases involving national-security issues. Although the Constitution requires a congressional declaration of war before the president can wage war, the federal judiciary didn't dare interfere with the undeclared wars in Korea and Vietnam. By that time, the Pentagon and the CIA had become much too powerful. The federal justices and judges knew that any judgments of unconstitutionality wouldn't be obeyed anyway and that, as a practical matter, the courts had no power to enforce their rulings against the military and the CIA.

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**Years later, it was discovered that the military had defrauded the Supreme Court into judicially creating the state-secrets doctrine.**

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When the military demanded a state-secrets doctrine, for example, the Supreme Court gave it to them in a judicial ruling, notwithstanding the fact that it was more properly a matter that should have been debated and determined in Congress. Years later, when it was discovered that the military had defrauded the Supreme Court into

judicially creating the state-secrets doctrine, the justices meekly let the decision stand anyway.

It was no different in Congress. The Pentagon established thousands of military bases and projects all across the land, making millions of people dependent on its largess. If a congressman even hinted at objecting to whatever the military wanted, the bases and projects within his district would be threatened with termination, which inevitably would lead the local media to question the congressman's "effectiveness."

During the Cold War, most of the time the president and the national-security establishment were on the same page and worked together. But not always. While John Kennedy came into office as pretty much a standard cold warrior, by the time 1963 rolled around he had turned against the Pentagon and the CIA and had decided to end the Cold War and bring all the troops home from Vietnam. Few Americans realize that by the time he was assassinated, Kennedy had initiated top-secret negotiations with Soviet Premier Nikita Khrushchev and Cuban President Fidel Castro, the man that the CIA, in partnership with the Mafia, had been trying to assassinate.



Of course, today there are still Americans who just cannot believe that the CIA and the military would conspire to assassinate Kennedy, despite the mountain of circumstantial evidence, once highly secret, that points in that direction. What would be the motive, they ask?

They forget about national security. With his war against his national-security establishment, his supposed betrayal of Cuban exiles at the Bay of Pigs, his supposed capitulation to the communists during the Cuban Missile Crisis, his famous Peace Speech at American University, his nuclear-test-ban treaty with the Soviets, his secret negotiations with Khrushchev and Castro, and his decision to end the Cold War — to say nothing of his many sexual affairs, including the one with the girlfriend of a Mafia don, and his smoking of marijuana with his mistress Mary Pinchot Meyer — the U.S. national-security establishment had every reason in the world, given its concept of national security, to determine that Kennedy posed a grave threat to national security, a much graver threat, in fact, than Allende would pose prior to his violent removal from the Chilean presidency some ten years later. (For more on this subject, see FFF's five ebooks on the

assassination: *The Kennedy Autopsy*, by Jacob Hornberger; *JFK's War with the National Security Establishment: Why Kennedy Was Assassinated*, by Douglas Horne; *Regime Change: The JFK Assassination*, by Jacob Hornberger; *The CIA, Terrorism, and the Cold War: The Evil of the National Security State*, by Jacob Hornberger; and *CIA & JFK: The Secret Assassination Files*, by Jefferson Morley.)

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Americans deferred to the judgment of the national-security establishment that Castro posed a threat to U.S. national security.

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It was different with respect to the CIA's secret attempts, in partnership with the Mafia, to assassinate Cuban leader Fidel Castro. When Americans discovered those assassination attempts, most were acquiescent and even supportive, notwithstanding the fact that Castro had never attacked the United States or even threatened to do so. Americans deferred to the judgment of the national-security establishment that Castro, because he was a communist and ally of the Soviet Union, posed a threat to U.S. national security and, therefore, could be assassinated. After all, as U.S. officials constantly reminded

the American people, the United States was at war against communism and communists.

### One assassination after another

That Cold War mindset had been no different in 1954, seven years after the enactment of the National Security Act, when the CIA launched a violent regime-change operation against the democratically elected president of Guatemala, Jacobo Arbenz. Like Allende years afterward, Arbenz had no interest in participating in America's Cold War against communism and the Soviet Union. He even allowed avowed communists to participate openly in Guatemala's democratic political system. Some of them were even serving in his government.

As with Allende 16 years later, Arbenz's election caused U.S. national-security state officials to go ballistic. The CIA, with the approval of President Dwight Eisenhower, launched a violent regime-change operation, one that included a CIA "kill list" of Guatemalan officials who were to be assassinated as part of the coup. Arbenz was lucky: he fled the country before he could be assassinated.

In the midst of the Cold War over communism, few Americans in 1954 questioned the moral or le-

gal justification for destroying Guatemala's democratic system and targeting its democratically elected president for assassination. All that mattered was that the national-security establishment was protecting national security.

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I wonder what Eisenhower thought about the 30-year-long civil war in Guatemala that the coup launched.

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Ironically, it would be Eisenhower, the president who approved the CIA's coup in Guatemala, who would issue the famous warning just before leaving office in 1961 about the threat the "military-industrial complex" posed to the American democratic way of life and the liberties of the American people. I wonder what he thought about the 30-year-long civil war in Guatemala that the coup had launched, and which resulted in the deaths of more than a million Guatemalans. I wonder how many Chileans were familiar with his warning prior to the U.S.-inspired coup that destroyed their democratic system.

Once Kennedy was removed from the scene in 1963, the Vietnam War got ramped up, which, needless to say, fattened the coffers of the vast army of contractors that were feed-

ing at the warfare-state trough. As part of the Vietnam War, the CIA and the military established one of the largest kidnapping, torture, and assassination operations in history, known as Operation Phoenix, whose countless victims consisted of suspected communists.

Thus, the U.S. government's intervention in Chile to prevent Salvador Allende from serving as president was entirely consistent with its overall Cold War mindset. Foreign communists were bad. They posed a threat to U.S. national security. It was considered okay to capture them, torture them, kill them, and remove them from power.

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**The CIA's kidnapping plot ultimately became public (after repeated denials by the CIA).**

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Immediately after the Chilean election and before the Chilean congress had voted, U.S. officials launched a two-track plot to prevent Allende's accession to the presidency. One track involved a complex political scheme that would result in the election of someone other than Allende as president. However, the current Chilean president, whose cooperation was needed, refused to go along. This track also involved bribing Chilean con-

gressmen with large sums of U.S. taxpayer money to vote against Allende. That plan didn't work either.

The second track involved a violent Chilean military coup that would oust Allende from power and undoubtedly bring about the deaths of lots of people. There was one big problem with this track, however. The head of Chile's armed forces, Gen. Rene Schneider, refused to go along with the U.S. plan because it violated the Chilean constitution that Schneider had sworn to defend and uphold. Consequently, the CIA conspired with a local group to violently kidnap him, even smuggling two high-powered weapons into the country in a diplomatic pouch to give to the kidnappers.

When the CIA's kidnapping plot ultimately became public (after repeated denials by the CIA), the CIA maintained that it just wanted Schneider kidnapped, not killed. But that claim has always been disingenuous. Once Schneider was violently removed as an obstacle to the coup, there would have been no other choice but to have killed him. His murder, notwithstanding the CIA's claim of innocence, had to have been built into the plan, even if only implicitly.

As it was, during the kidnapping attempt, Schneider, who of

course was armed, fought back. The kidnapers shot him dead, leaving a widow and small children and most of the nation grieving his loss. Actually, the shock and anger over Schneider's assassination was what motivated the congress to quickly confirm Allende. At that point — 1970 — the military would not go along with a coup. Pinochet and the coup would not come for another three years.

There is another reason that the U.S. government cannot escape moral and legal culpability for Schneider's assassination: the felony-murder doctrine, which holds that whenever a murder is committed in the course of a felony, all the conspirators to the felony are equally liable for the murder, even if they don't directly participate in it. It goes without saying that kidnapping and murder are felonies under both U.S. law and Chilean law.

To this day, despite the indisputable evidence of the CIA's role in the kidnapping and assassination of Schneider, not a single U.S. official has ever been indicted. Indeed, the U.S. Justice Department has never even launched a federal grand jury investigation into Schneider's kidnapping-murder. When his family filed suit in federal court for the wrongful death of their husband

and father, the federal judiciary, following its Cold War custom of deferring to the national-security branch of the government, summarily dismissed their suit.

It's all a testament to the power that the national-security establishment played in America's governmental structure during the Cold War. When it came to fighting communism and killing foreign communists, anything and everything was justified.

That now returns us to the assassinations of Orlando Letelier, the Chilean socialist who had served under Salvador Allende and who was then in the United States, openly opposing the regime that the U.S. government had succeeded in installing in Chile, and of his loyal socialist American assistant, 25-year-old Ronni Moffitt.

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

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**NEXT MONTH:**  
**"The Assassination of Orlando Letelier and Ronni Moffitt, Part 3"**  
*by Jacob G. Hornberger*

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## How Food Stamps Subverted Democracy, Part 3

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by James Bovard



Barack Obama took office in 2009 amidst the worst recession since the early 1980s. He had more faith in government spending than any White House occupant since Franklin Roosevelt. He speedily pushed through a stimulus bill through Congress that helped increase the number of food-stamp recipients from 31 million to almost 48 million, making government handouts a central part of far more Americans' lives. Unlike what had happened in the aftermath of previous recessions, food-stamp enrollment continued rising long after unemployment began declining.

The Obama administration saw increasing the number of people being fed by the government as a tran-

scendent benefit, so it bankrolled state and local food-stamp recruiting drives. In Alabama, people received fliers proclaiming, "Be a patriot. Bring your food-stamp money home." The state of Florida is paying individual recruiters to sign up at least 150 new food-stamp recipients per month. The Department of Agriculture (USDA) urges state and local governments to conduct food-stamp parties (with "food and entertainment") and bingo games to whip up enthusiasm for enlisting. The USDA promoted a 10-part Spanish-language radio "novella" to encourage immigrants to go on the dole. A North Carolina social-services agency won a USDA "Hunger Champions Award" for its ad campaign attacking "mountain pride" as a reason for not accepting government handouts. The USDA is hectoring states to increase their "participation rates," putting out press releases praising states that have a high percentage of eligible people on food stamps and deriding laggard states.

Federally funded recruiting campaigns helped make food stamps more fashionable and inviting. A Salon article entitled "Hipsters on Food Stamps" noted that fancy food markets that specialize in "artisanal bread, heirloom tomatoes, and

grass-fed beef” are seeing far more food-stamp customers. One blogger, who relished buying Perrier water with food stamps, snarked, “The fancier the food, the more glee there is in knowing the government has once again helped in enabling a lavish lifestyle.”

The Food Stamp Poster Boy of 2013 was Jason Greenslate, a 29-year-old Californian surfer who achieved brief notoriety after he told Fox News that he avoids remunerative work and uses his monthly food-stamp allotment to “purchase as much sushi and gourmet lobster as \$200 can buy. Then it’s off to the beach.” Greenslate touted his gourmet purchases “all paid for by our wonderful tax dollars. It’s free food. It’s awesome.” Greenslate later complained to the *Huffington Post* about how Fox portrayed him: “I don’t feel like a bum. I pull hot chicks, drive nice cars, dress nice, and wear the most baddest jewelry in the world.”

The Obama administration pressured state governments to give food stamps even to people who are far wealthier than average Americans. Millionaires are now legally entitled to collect food stamps as long as they have little or no monthly income. Thirty-five states abolished asset tests for most food-stamp recipients.

After 59-year-old Leroy Fick won a \$2 million lottery jackpot, the Michigan Department of Human Services ruled that he could continue receiving food stamps. The *Detroit News* explained: “If Fick had chosen to accept monthly payments of his jackpot, the winnings would be considered income, according to the DHS. But by choosing to accept a lump sum payment, the winnings were considered ‘assets’ and aren’t counted in determining food stamp eligibility.”

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**Millionaires are now legally entitled to collect food stamps as long as they have little or no monthly income.**

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Ironically, decades after liberals derided Ronald Reagan’s references to “welfare queens in Cadillacs,” Obama administration policies could permit trust-fund babies driving Rolls Royces to get free food courtesy of Uncle Sam.

Food-stamp enrollment also soared thanks to new rules that automatically entitled vast numbers of otherwise ineligible people to benefits. A top USDA food-stamp official urged state governments in September 2009 to “adopt broad-based categorical eligibility” to “promote savings among low-in-

come households and simplify state policies.” Turning more people into government dependents was the surest way to “promote savings” — at least according to Obama logic. Categorical eligibility allows states to waive the asset and income limits on food-stamp recipients, permitting households with incomes twice the poverty level to snare benefits from a program purported to be designed for the poor.

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**People can automatically qualify for food stamps if they receive one from a long list of other government handouts or services.**

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People can automatically qualify for food stamps if they receive one from a long list of other government handouts or services. Bloomberg News detailed one such bureaucratic charade: “If a state gives a resident as little as \$1 a year in heating assistance, it allows that person’s household to automatically qualify for an average of \$1,080 in additional food stamps annually from the federal government.” This “heat and eat” enrollment ploy is used by 14 states and the District of Columbia, where 22 percent of the residents are on food stamps. This and similar machinations add almost 2 million households to the

food-stamp rolls. In many states, simply receiving a brochure describing government benefits is sufficient to automatically qualify some people for food stamps. A Heritage Foundation report noted that “half of all food stamp recipients now enroll in the program through this [categorical eligibility] procedure.”

The Obama administration made it far easier to collect food stamps than to go to job interviews. Most states now permit people to apply for food stamps online, and many states also invite applications by means of phone calls. Because such applications involve no signature, they can make it more difficult to prosecute fraudulent claims.

Food-stamp enrollment also surged because the Obama administration suspended the three-month limit for able-bodied adults without dependents to collect food stamps. Canceling the work requirement made the program much more attractive to 20-somethings. The GAO reported in 2012, “Local caseworkers across several states described an increasing trend of single people aged 22 applying as their own SNAP households.”

From its first months in office, the Obama administration portrayed food stamps as an engine of

prosperity. The White House website proclaimed, “Every \$5 in new SNAP benefits generates as much as \$9 of economic activity for more than 230,000 participating supermarkets, grocers, and farmers’ markets.” USDA officials perennially make a similar claim: “Every \$5 in SNAP generates \$9.20 for the local economy.”

But there is no evidence that a dollar of food stamps spurs more economic activity than a dollar someone earns on the job. If the Obama multiplier calculus was correct, the administration could give food stamps to all Americans and guarantee boom times and full employment in perpetuity. The multiplier was not intended to explain economic reality but to provide a cover for maximizing government handouts.

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**Food stamps drain the economy by swaying able-bodied adults to work less, while others are forced to support them.**

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In reality, food stamps drain the economy by swaying able-bodied adults to work less, while others are forced to support them. Food-stamp benefits are reduced by 30 cents for each dollar recipients earn past a certain point. A *Journal of*

*Public Economics* analysis concluded that receiving food stamps results in a nearly “50 percent reduction in total hours worked” by women. University of Chicago economist Casey Mulligan concluded that the food-stamp work-disincentive actually helped to prolong the recession and enfeebled the eventual recovery.

### Pro-fraud policies

After Obama took office, food-stamp anti-fraud efforts effectively collapsed. Lax bureaucratic attitudes spurred swindles across the nation:

- Troy Hutson, the chief of Washington state’s food-stamp program, resigned in 2011 after an uproar over his comments about a television exposé on pervasive abuses by food-stamp recipients. Hutson justified the state government’s lackadaisical response because “they’re poor. Even if you go after them, you’re not going to get the money back.” Washington State Sen. Mike Carrell complained, “Dozens of workers at DSHS [the Department of Social and Health Services] have reported numerous unpunished cases of fraud to me. They have told me that DSHS management has allowed these things to



happen, and in some cases actively restricted fraud investigations.”

- Thirty percent of the inmates in the Polk County, Iowa, jail were collecting food stamps in 2009. But Iowa could not prosecute them for fraud because the state’s food-stamp form failed to ask applicants if they were heading for the slammer. Roger Munns, a spokesman for the Iowa Department of Human Services, told the *Des Moines Register* that asking such questions could make food-stamp applications “unwieldy.”

- The *Milwaukee Journal Sentinel* revealed in 2010 that Wisconsin food-stamp recipients routinely sell their benefit cards on Facebook. An investigation discovered that “nearly 2,000 [food-stamp] recipients claimed they lost their card six or more times in 2010 and requested replacements.”

- New Mexico Human Services Secretary Sidonie Squier complained in 2013 that the biggest fraud issue in her state was recipients’ selling their food-stamp Electronic Benefit (EBT) Card and claiming that it was lost or stolen. Roughly 70 percent of all the EBT cards issued in New Mexico in 2012 were replacement cards. Squier told Albuquerque’s KOB-TV, “We know that there are some people who lose

them four, six, or eight times, and it’s pretty suspicious, but you can’t do anything about it based on the federal rules. They want people to have the cards — they want the card replaced.”

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When Obama left office, 43 million people were receiving food stamps — more than twice as many as relied on them in 2002.

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Looser federal rules are also spurring a bureaucratic crime wave. Two veteran employees for New York City’s Human Resources Administration were busted in 2010 for concocting 1500 fake food-stamp cases that netted them \$8 million. Nine Milwaukee, Wisconsin, staffers plundered almost \$300,000 from the program, and a Louisiana state bureaucrat pled guilty in 2010 for her role in a scam that snared more than \$50,000 in fraudulent food-stamp benefits.

The Obama administration recognized potential political windfalls from food stamps. In 2010, the Justice Department began hammering state governments to allow people to register to vote at the same time they applied for food stamps. A *New York Times* editorial declared, “The best reason to applaud the Justice Department’s new

posture is that it will bring more voters into public life.... The more people who have access to the ballot, the better the country will be.”

The more people who become government dependents, the more likely that democracy will become a conspiracy against self-reliance. When Obama left office, 43 million people were receiving food stamps — more than twice as many as relied on them in 2002. The vast increase in the number of government dependents has made it more profitable for politicians to bribe their way to reelection. Democratic candidates routinely receive far more votes in urban areas with concentrations of food-stamp recipients.

Handouts provide cheap halos for politicians. The more handouts politicians give, the more benevolent they appear — regardless of the

burdens that taxpayers suffer. The old saying, “don’t bite the hand that feeds you,” takes on new meaning when the feds are feeding more than 100 million Americans. The more people who depend on government for their next meal, the easier it becomes for politicians to seize everyone else’s paychecks.

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

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### NEXT MONTH:

“Obama’s AWOL Anti-War Protest”

by James Bovard

*Civil liberties are a great heritage for Americans.... They are not rights which the government gives to the people, rather they are the rights that the people carved out for themselves when they created the government.*

— Edward Bennett Williams

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# The Marijuana Juggernaut Rolls On

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by *Laurence M. Vance*



**A**lthough most media coverage last November was on national elections — and especially the presidential election — most elections are actually for state and local offices. On the national level, voters choose two senators every six years, a president every four years, and a member of the House of Representative every two years. That is it. No one gets to vote for federal judges, cabinet secretaries, or agency heads. But on the state and local level, in addition to governors, lieutenant governors, state senators, and state representatives, there are (depending on the state) judges, supreme court justices, secretaries, attorneys general, comptrollers, school-board members, state commissioners, county commissioners, city council members, and others to be voted on.

One thing that is unique about state elections is the inclusion of ballot questions — initiatives, referendums, legislative issues, and constitutional amendments — that voters have the opportunity to decide. In 2016, there were 165 statewide ballot measures that were certified for the ballot in 35 states. The Arkansas Supreme Court removed three certified measures from the ballot in October, reducing the number of measures voters considered down to 162. Of this number, a majority (71) were put on the ballot by citizens through signature petitions, not by state legislatures (69). Others were bond issues (11), veto referendums (5), advisory questions (3), or legislatively referred state statutes (2). Eight of those measures were decided in elections held during the year, thus leaving 154 measures on statewide ballots in the November election. More than 205 million Americans were affected by the results of ballot measures in the election.

The subjects of the ballot questions were wide-ranging. Voters in four states approved increases in their state's minimum wage by 2020: Arizona (\$12), Colorado (\$12), Maine (\$12), and Washington (\$13.50). Gun-control expansion was approved in three states

(California, Nevada, and Washington), but defeated in Maine. Voters expressed support for retaining the death penalty in the states of California, Nebraska, and Oklahoma. Voters in California and Maine passed measures to increase their state's income tax on wealthy persons. Voters in three states (Colorado, Mississippi, and North Dakota) defeated measures to increase taxes on tobacco, while voters in California approved a tobacco-tax increase.

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### The federal government considers marijuana to be more dangerous than cocaine.

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The most-watched ballot measures were those pertaining to marijuana. The states of Arkansas, Florida, and North Dakota each voted to legalize the medical use of marijuana. The states of California, Maine, Massachusetts, and Nevada all voted to legalize the recreational use of marijuana. Voters in Montana approved an initiative to loosen restrictions on medical marijuana. The initiative in Arizona (where medical marijuana has been legal since 2010) to legalize recreational marijuana failed to pass. What is so remarkable about the marijuana ballot measures is that the use of

marijuana for any reason is still illegal on the federal level.

### Marijuana on the federal level

The federal government considers the growing, distributing, buying, selling, possessing, or smoking of marijuana to be a violation of federal law. Marijuana is classified as a Schedule I controlled substance under the Controlled Substances Act (21 U.S.C. 801). As a Schedule I drug, marijuana is said to meet the following criteria:

- The drug has a high potential for abuse.
- The drug has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug under medical supervision.

Other Schedule I drugs include heroin, LSD, ecstasy, and methaqualone. Schedule II drugs, which the federal government considers to be less dangerous than Schedule I drugs, include cocaine, fentanyl, methamphetamine, OxyContin, Adderall, and Ritalin. That's right: the federal government considers marijuana to be more dangerous than cocaine.

According to a memorandum issued by the U.S. Justice Depart-

ment for selected U.S. state attorneys regarding investigations and prosecutions in states authorizing the medical use of marijuana,

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels.

Yet, “The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources.” Although “the prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department’s efforts against narcotics and dangerous drugs,” pursuit of these priorities “should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of mari-

juana.” But, on the other hand, since “no state can authorize violations of federal law,” the memorandum does not “alter in any way the Department’s authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property” or “legalize” marijuana or provide a legal defense to a violation of federal law.” “Clear and unambiguous compliance with state law” neither creates “a legal defense to a violation of the Controlled Substances Act” nor precludes “investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law.”

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**“The Department is also committed to making efficient and rational use of its limited resources.”**

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According to the federal Drug Enforcement Agency (DEA), “The effect of marijuana on perception and coordination are responsible for serious impairments in learning, associative processes, and psychomotor behavior (driving abilities). Long term, regular use can

lead to physical dependence and withdrawal following discontinuation, as well as psychic addiction or dependence.” In addition to arresting Americans for possessing or “trafficking in” marijuana, the DEA has, since 1979, been funding marijuana eradication programs in the states. It now provides resources to support the 128 state and local law-enforcement agencies that actively participate in the Domestic Cannabis Eradication/Suppression Program (DCE/SP). According to the DEA, the DCE/SP “was responsible for the eradication of 3,932,201 cultivated outdoor cannabis plants and 325,019 indoor plants for a total of 4,257,220 marijuana plants.”

In the Supreme Court case of *Gonzales v. Raich* (2005), the High Court ruled, by a vote of 6-3, that the Controlled Substances Act did not exceed Congress’s power under the commerce clause as applied to the intrastate cultivation and possession of marijuana for medical use. Therefore, the federal government has the authority to prohibit marijuana possession and use for any and all purposes.

Yet there is nothing in the Constitution that gives the federal government the authority to wage war against marijuana and have a Controlled Substances Act, a Drug En-

forcement Agency, a National Drug Control Strategy, a drug czar, or an Office of National Drug Control Policy. “The powers delegated by the proposed Constitution to the Federal Government, are few and defined,” wrote James Madison in Federalist No. 45, and “those which are to remain in the State Governments are numerous and indefinite.”

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**There is nothing in the Constitution that gives the federal government the authority to wage war against marijuana.**

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The federal government has been given no authority by the Constitution to regulate, criminalize, or prohibit the growing, buying, selling, or use of marijuana in any way for any reason. The federal government has been given no authority by the Constitution to interfere in any way with the eating, drinking, or smoking habits of Americans. The federal government has been given no authority by the Constitution to restrict or monitor the medical practices of Americans. The federal government has been given no authority by the Constitution to concern itself with the recreational activities of Americans. Actually, the federal government has

been given no authority by the Constitution to prohibit the consumption or use of any substance.

When the Progressives wanted the national government to ban alcohol, they realized that an amendment to the Constitution was needed. That is why the Eighteenth Amendment to the Constitution was proposed by Congress in 1917 and ratified by the states in 1919. Although the Eighteenth Amendment didn't ban the consumption or possession of alcohol, it outlawed the "manufacture, sale, or transportation" of alcohol, effectively curtailing the legal use of alcoholic beverages in the United States.

The National Prohibition Act (the Volstead Act) that was passed by Congress to institute and enforce Prohibition could not have been passed by Congress until after the adoption of the Eighteenth Amendment. It stated, "No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act." The passage of the Eighteenth Amendment was necessary because the Constitution nowhere authorizes the federal government to pro-

hibit or control the manufacture, sale, barter, transport, import, export, delivery, furnishing, or possessing of "any intoxicating liquor."

The Eighteenth Amendment was repealed by the Twenty-first Amendment in 1933. But when the federal government subsequently passed legislation regarding drugs throughout the twentieth century and officially declared a war on drugs in 1971, no amendment to the Constitution was ever even proposed.

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**The federal war on marijuana is a war on the Constitution, the Tenth Amendment, States' Rights, and limited government.**

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That means that the federal war on marijuana is a war on the Constitution, the Tenth Amendment, States' Rights, federalism, and limited government. It should be opposed by all Americans of every political persuasion as destructive to the whole American system of government, even if they don't share the libertarian view that the drug war is also destructive to individual liberty and property rights.

### **Marijuana on the state level**

But in spite of current federal laws regarding marijuana, the re-

cently passed ballot measures to legalize the medical use of marijuana in Arkansas, Florida, and North Dakota and the recreational use of marijuana in California, Maine, Massachusetts, and Nevada show that the marijuana juggernaut rolls on. The marijuana-legalization train has left the station and it is never going back.

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### California became the first state to legalize medical marijuana in 1996.

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Beginning with Oregon in 1973, 18 states and the District of Columbia have decriminalized the possession of small amounts of marijuana. California became the first state to legalize medical marijuana in 1996. Alaska, Oregon, and Washington joined California in 1998. Maine followed in 1999; Colorado, Hawaii, and Nevada in 2000; Montana and Vermont in 2004; Rhode Island in 2006; New Mexico in 2007; Michigan in 2008; Arizona and New Jersey in 2010; Delaware in 2011; Connecticut and Massachusetts in 2012; Illinois, Maine, and New Hampshire in 2013; Maryland, Minnesota, and New York in 2014; and Ohio in 2016. Medical marijuana has also been legal in the District of Columbia since 2010,

Guam since 2014, and Puerto Rico since 2015. Colorado and Washington legalized marijuana for recreational use in 2012. They were followed by Alaska, Oregon, and the District of Columbia in 2014.

The passage of eight out of nine 2016 ballot measures to expand access to marijuana significantly increases marijuana freedom in the United States.

The Arkansas Medical Marijuana Amendment (Issue 6) was approved by a vote of 53.09 to 46.91 percent. It legalizes medical marijuana for 17 qualifying conditions, allows for the establishment and regulation of marijuana dispensaries and cultivation facilities, creates a Medical Marijuana Commission, and allocates marijuana tax revenue.

The California Marijuana Legalization Initiative (Proposition 64) was approved by a vote of 56.14 to 43.86 percent. It allows adults 21 years or older to possess and use marijuana for recreational purposes and creates new taxes on the cultivation and retail price of marijuana to be used for drug research, treatment, enforcement, health and safety grants, youth programs, and preventing environmental damage resulting from illegal marijuana production. Individuals are permit-



ted to grow up to six plants within a private home as long as the area is locked and not visible from a public place. A state license is required for businesses to sell marijuana for recreational use.

The Florida Medical Marijuana Legalization Initiative (Amendment 2) was approved by a vote of 71.31 to 28.69 percent. A similar measure had failed in the 2014 general election. It legalizes medical marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician, allows caregivers to assist patients' medical use of marijuana, and requires the Department of Health to register and regulate centers that produce and distribute marijuana for medical purposes and issue identification cards to patients and caregivers.

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**The Florida Medical Marijuana  
Legalization Initiative was  
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28.69 percent.**

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The Maine Marijuana Legalization Measure (Question 1) was approved by a vote of 50.17 to 49.83. It aims to legalize and tax marijuana in Maine as an agricultural product regulated by the department of Agriculture, Conservation and Forest-

ry. It allows persons over the age of 21 to possess and use marijuana, provides for the licensure of retail facilities and social clubs, and imposes a 10 percent tax on marijuana sales.

The Massachusetts Marijuana Legalization Initiative (Question 4) was approved by a vote of 53.57 to 46.43 percent. It creates a regulatory structure called the Cannabis Control Commission, allows individuals at least 21 years old to use marijuana, grow up to six marijuana plants in their homes, and possess less than ten ounces at home and less than one ounce in public. It also subjects retail marijuana sales to state sales tax and an additional 3.75 percent excise tax.

The Montana Medical Marijuana Initiative (I-182) was approved by a vote of 57.64 to 42.36 percent. It repealed provisions of a state law passed in 2011 that required medical-marijuana providers to have no more than three patients, permitted the state to review physicians who prescribed marijuana to more than 25 patients per year, and allowed law enforcement to conduct unannounced inspections of medical-marijuana facilities.

The Nevada Marijuana Legalization Initiative (Question 2) was approved by a vote of 54.47 to 45.53

percent. It makes lawful the purchase, possession, and consumption of one ounce or less of marijuana for persons 21 years old or older and permits individuals to grow up to six marijuana plants for personal use as long as cultivation takes place in an enclosed area with a lock. It also institutes a 15 percent excise tax on marijuana sales by cultivation facilities, mandates a hefty fee for an annual license, allocates tax revenue, and authorizes the operation and regulation of a limited number of marijuana establishments.

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**It is inevitable that the day will come in the United States when marijuana will be treated similarly to alcohol.**

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The North Dakota Medical Marijuana Legalization Initiative (Initiated Statutory Measure 5) was approved by a vote of 68.3 to 36.2 percent. It legalizes the use of medical marijuana to treat defined debilitating medical conditions, requires patients and designated caregivers to apply for registry identification cards in order to participate in the medical-marijuana compassionate-care program, and develops certain procedures for regulating medical-marijuana growing, dispensing, and use.

In the United States, there are now 28 states and 3 territories where medical marijuana is legal and 7 states and 1 territory where recreational marijuana is legal. The number of U.S. residents living in a state with legal recreational marijuana is now close to 67 million. On the basis of positive things that Donald Trump said about medical marijuana while on the campaign trail, it is unlikely that the Trump Justice Department will devote resources to override state marijuana laws in order to enforce federal marijuana laws.

### **Marijuana freedom**

It is inevitable that the day will come in the United States when marijuana will be treated similarly to alcohol. Right now, government at the federal and state level heavily regulates alcohol, levies an excise tax on alcohol, requires a license to manufacture or sell alcohol, limits the amount of beer and wine one can make at home, restricts where and when alcohol can be sold, and forbids anyone less than 21 years old from consuming alcoholic beverages. There are also many states that contain “dry” counties, cities, or towns where the retail sale of distilled spirits is prohibited. But even though Americans don’t have com-

plete alcohol freedom (as they should), anyone 21 or older can go to his nearest liquor store and buy as much alcohol as he can afford, take it back to his house or apartment, and drink to his heart's content.

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**A Gallup poll taken before the election found that 60 percent of Americans now say that using marijuana should be legal.**

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Each election every two years is sure to have more ballot initiatives relating to the legalization of medical or recreational marijuana. And between elections, there will be more state legislatures passing laws to do the same as well as further liberalizing existing marijuana laws, as was done in Montana. And because it is much easier for individuals to grow marijuana at home than to distill spirits, make wine, or brew beer, it may be that Americans will eventually have more marijuana freedom than alcohol freedom. A Gallup poll taken before the election found that 60 percent of Americans now say that using marijuana should be legal. That is the highest level of support for marijuana legalization in the 47 years that Gallup has been asking the question. When the question was first asked in 1969, just 12 percent of Americans were

in favor of legalizing marijuana. Green Party presidential candidate Jill Stein and Libertarian Party presidential candidate Gary Johnson were both in favor of legalizing and regulating marijuana for medical and adult recreational use and removing it from the federal drug schedules. The tide is turning.

But why?

There are many reasons why more and more Americans are in favor of legalizing marijuana for medical or recreational use. Some feel that marijuana use can be controlled if the government regulates it. Others think that there are more efficient uses of government resources than arresting people for marijuana possession. Some see the tax revenue that could be generated by legal marijuana sales as a panacea for government budget shortfalls. Others believe that marijuana is not addictive. Some deem marijuana to be less harmful than alcohol. Others insist that marijuana is not a gateway drug. Some claim that marijuana is not inherently dangerous. Others assert that marijuana has important health benefits. Some judge that the cost to society of marijuana prohibition is not worth the benefits. Others maintain that legalizing marijuana will stop the violence associated with marijua-

na's being illegal. Some argue that marijuana prohibition is a major factor in police corruption. Others contend that jails and prisons are unnecessarily overcrowded with low-level drug offenders.

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**To libertarians, marijuana legalization is ultimately a freedom issue.**

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Although libertarians may accept some or all of those reasons, they nevertheless see things differently. To libertarians, marijuana legalization is ultimately a freedom issue because marijuana prohibition violates individual liberty and property rights. Libertarians maintain that it is not the business of government at any level to restrict consumption or commerce as long as one's actions are peaceful and don't violate the personal or property rights of others. The libertarian goal is complete marijuana freedom. It is an illegitimate purpose of government to monitor what any legal adult puts into his mouth, nose, lungs, or veins or why he does it. It is not the proper role of government to restrict what goods any legal adult can manufacture, grow, cultivate, process, buy, sell, trade, possess, or give away. Libertarians believe in marijuana freedom be-

cause they believe in drug freedom. This, of course, does not mean that libertarians recommend that everyone smoke weed, think that marijuana is a medical cure-all, or believe that using pot is harmless.

Libertarians recognize that state laws and ballot initiatives relating to marijuana are imperfect. It is absurd that people have to get government permission to grow a plant. It is absurd that people have to vote for freedom. It is absurd that the government limits the number of marijuana plants one is allowed to grow at any one time. It is absurd that people can't get the medical treatment that they want. It is absurd that the government regulates the marijuana industry. It is absurd that one must get a government license to sell something. It is absurd that some governments limit marijuana use to medical purposes. It is absurd that one must get an identification card to purchase marijuana. It is absurd that the government limits the number of establishments selling marijuana. It is absurd that one cannot possess the same amount of marijuana in public as in private. It is absurd that the government imposes special taxes on marijuana sales. It is absurd that one must get a prescription to obtain medical marijuana.

Nevertheless, since the chances that governments at any level will enact marijuana freedom are zero, state laws and ballot initiatives that move us closer to the ultimate goal must be welcomed. Drug freedom will not be obtained until we achieve marijuana freedom. And until that happens, libertarians must be willing to accept imperfect state laws and ballot initiatives relating to marijuana because some freedom is better than no freedom and more freedom is better than less freedom.

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**NEXT MONTH:**  
**“Free the Airports!”**  
*by Laurence M. Vance*

*Government! Three-fourths parasitic and the other fourth stupid fumbling — oh, he conceded that man, a social animal, could not avoid having government, any more than an individual man could escape his lifelong bondage to his bowels. But Harshaw did not have to like it. Simply because an evil was inescapable was no reason to term it a “good.” He wished that government would wander off and get lost!*

*— Robert Heinlein*

## The Gold Clause Cases

by David D'Amato



The Supreme Court's decision in the Legal Tender Cases in the late 1800s compelled the acceptance of otherwise worthless Treasury notes for all debts, removing from the individual's rightful sphere of control a matter of serious financial import. The Gold Clause Cases, decided in 1935, continued to erode the liberal tradition of economic freedom, the further decline of which corresponds to the growth of government in all areas during the Franklin Roosevelt administration. It is no surprise that the passage of the Legal Tender Act and the Supreme Court's subsequent decision in the Legal Tender Cases were among the principal catalysts of the widespread use of gold clauses. A gold clause is simply any provision whereby a party to an agree-

ment stipulates payment in gold; such contractual terms were ubiquitous in the decades leading up to the Supreme Court's decision in the Gold Clause Cases, central to the functioning of the financial sector and instruments such as bonds, which, of course, are just specific, specialized contracts. Businessmen and investors, prudently worried about the future value of the dollar, preferred bonds that included the additional protection afforded by gold clauses.

Still in its first few months, the Roosevelt administration sought to extricate the government and the financial system at large from the perceived constraints of the gold standard. In April 1933, the president signed an executive order that commanded all Americans, under penalty of steep fines or imprisonment, to turn their gold over to the government. In his signature "fireside chat" of May 7, he said of the gold seizures, "We have placed everyone on the same basis in order that the general good may be preserved." The president then parroted the old delusions of mercantilism and bullionism, smugly declaring that he had "decided not to let any of the gold now in the country go out of it." Specie monies have always been an important source of

financial independence and security, a bulwark against the movements of the market and a value that exists outside of arbitrary government decrees. Indeed, for centuries the term “money” itself was virtually synonymous with gold and silver. The move to confiscate Americans’ gold was therefore revolutionary, a coup d’état that shifted economic power from the decentralized interactions of private citizens to the national government.

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**The move to confiscate  
Americans’ gold shifted  
economic power to the national  
government.**

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In his *Economics and the Public Welfare*, economist Benjamin M. Anderson decried Roosevelt’s “course in connection with the gold standard” as “an act of absolute bad faith,” a betrayal of, among other things, his campaign promises to adhere to sound-money policies and the gold standard. During the election of 1932, when Herbert Hoover had merely suggested the possibility that the United States would abandon a gold standard, candidate Roosevelt was apparently aghast, calling the suggestion “a libel on the credit of the United States.” Those words would echo ironically

in Justice James Clark McReynolds’s Gold Clause Cases dissent. Underappreciated in its time and still largely neglected today, Anderson’s work is brimful with astute political and economic insights and vivid writing that speaks truth to power. Examining the role of the Federal Reserve System in the stock market crash and the subsequent Depression, Anderson issues a bold indictment: “they abandoned old standards and became daring innovators in the effort to play God.”

The apparent exigencies of the crisis thus created presented the Roosevelt administration with its own opportunity and license to “play God,” to preemptorily sweep aside long-lived precedent and constitutional limits. The legislature only too willingly acquiesced in the president’s power grab. Congress responded with a joint resolution that damned gold clauses as contrary to public policy and banned their future use, policies meant to stabilize the national economy during the “existing emergency” of the Great Depression. The practical upshot was the abrogation of millions of contracts, admittedly properly executed, at an untold cost to be borne by unwitting private parties who perfectly reasonably expected their terms to stand. This ex post

facto invalidation of existing gold clauses represented, of course, a significant windfall to the parties, government and otherwise, who were no longer required to furnish gold. The Legal Tender Cases had altered existing contracts by obliging parties to accept the federal government's paper notes in the place of the specie for which they had bargained; now, the Gold Clause Cases further subverted the freedom of contract in its definitive statement that no American could avail himself of the safeguard provided by a gold clause.

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**The Gold Clause Cases further subverted the freedom of contract.**

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### Neronian power

The Gold Clause Cases were a group of four lawsuits that opugned the constitutionality of the new policies, argued all in the first days of the new year 1935, decided the following month, in February. Of the four, two (*Norman v. Baltimore & Ohio Railroad Co.* and *United States v. Bankers Trust Co.*) concerned bonds issued by private companies to private citizens; the other two (*Perry v. United States* and *Nortz v. United States*) impli-

cated U.S. government bonds, the owners of which sued after the federal government refused to redeem the bonds “except by the payment of ... legal tender currency.” The plaintiffs argued that the refusals, predicated on the above-mentioned congressional joint resolution, deprived them of a constitutionally protected property interest without due process of law — that the government had no power to alter or suspend the terms of their contracts. It is remarkable that, as economist Gregory B. Christainsen notes, none of the contracts at issue in the Gold Clause Cases actually “insisted on payment in gold.” Rather, they stipulated that the “creditor could collect what was due him either in dollars or in a specified quantity of gold” (see Richard H. Timberlake’s essay “From Constitutional to Fiat Money: The U.S. Experience,” available online). Though seldom discussed today (even in the constitutional-law classroom, the cases are rarely taught), the Gold Clause Cases decision was controversial in its day, rightly regarded as a dangerous deviation from the existing constitutional order. So infuriated was Justice McReynolds, among the four dissenters, that he threw his papers to the floor and declared the opin-



ion of the Court tantamount to the Constitution's death. The actions of the government, he famously said, embodied "Nero in his worst form."

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**Had the Supreme Court decided to hold the government's actions unconstitutional, Roosevelt was prepared to disregard its opinion.**

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Had the Supreme Court decided to hold the government's actions unconstitutional, Roosevelt was prepared to disregard its opinion. He confided in Robert Jackson, then a Treasury Department lawyer and later to become a Supreme Court justice himself, that no option would be taken off the table — that, in Jackson's words, even "[outright] defiance of the Court was possible." Jackson was set to work exploring legal theories that the Roosevelt administration might use to ignore an adverse decision. It was during that period that Jackson, by his own admission, advised the president on the possibility of "enlarging the Court," recalling Ulysses Grant's addition of justices following the decision in *Hepburn v. Griswold*. As fate would have it, Jackson's labors to discover (or concoct) a viable legal argument were not needed, the Court deciding the Gold Clause Cases in the govern-

ment's favor. Chief Justice Charles Evans Hughes cited the 1884 legal-tender case *Juilliard v. Greenman* for his proposition that the federal government enjoys a "broad and comprehensive national authority over the subjects of revenue, finance, and currency." The connection between such vaguely defined yet far-reaching powers and the Constitution as written is tenuous at best. Hughes reasoned that this authority, though admittedly not an enumerated power, was a product of "the aggregate of the powers" that were explicitly granted by the Constitution. If the textual basis for such a theory was feeble, then that battle had been lost when *Hepburn v. Griswold* was overturned by the Legal Tender Cases.

The regulation of the monetary system (and the adoption of a "monetary policy") is just a special case of economic planning, grounded on the same conceits and errors as all similar top-down designs. In the first concession that such a power is, in and of itself, entirely proper and appropriate, administrators are invested with an inherently dangerous discretion; the possibility — in fact, the strong likelihood — is created that these planners and administrators will annex still other powers considered

necessary for the discharge of their duties. And since the monetary system is allowed to be properly the province of centralized government power, few arguments are available when, as in the Gold Clause Cases, government abuses its power. Today, there are precious few practical legal limits on the government's ability to impose its malfeasance on the economic sphere. McReynolds's warnings of "impending legal and moral chaos" have turned out to be prophetic. Today, we have an executive branch that is in no way bound by the rule of law, a Constitution that is more national symbol than functioning legal document. If the government has a free hand to confiscate one commodity — and to annul contracts whose terms implicate it — then there is no reason in principle that other commodities should be safe. Filled with indignation at the Court's overreach, McReynolds observed as much in his dissent, noting that the decision threatened the destruction of "the very rights which they [the Framers] were endeavoring to protect."

The tragedy is not so much that the government and the Court inflicted these disastrous policies on the American people, but that the

seriously flawed political and economic theories upon which the policies stood continue to be dignified. There might have been some small solace in the knowledge that people had learned, had proceeded from such fallacies and left them in the past with Roosevelt and Hughes. That they didn't learn, that they remain bound to economic superstitions that were exploded more than two centuries ago, attests to the need for continued education in the principles of liberty. Legal and political reforms that precede this education are a house built upon sand; the foundation lacking, everything else is doomed. The Gold Clause Cases represent the baleful idea, unfortunately triumphant today, that economic rights are lesser rights. But Chief Justice Hughes and his ilk were wrong. Individual liberty is an indivisible whole, the necessary precondition for a thriving society.

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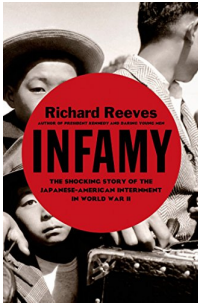
*Though freedom and wealth are both good things which most of us desire and though we often need both to obtain what we wish, they still remain different. Whether or not I am my own master and can follow my own choice and whether the possibilities from which I must choose are many or few are two entirely different questions. The courtier living in the lap of luxury but at the beck and call of his prince may be much less free than a poor peasant or artisan, less able to live his own life and to choose his own opportunities for usefulness.*

— Friedrich A. Hayek

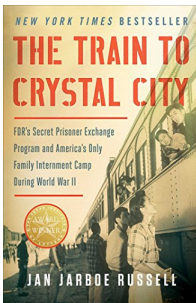
## The Badlands of Executive Order 9066

by Matthew Harwood

*Infamy: The Shocking Story of the Japanese American Internment in World War II* by Richard Reeves (Henry Holt and Company, 2015); 384 pages.



*The Train to Crystal City: FDR's Secret Prisoner Exchange Program and America's Only Family Internment Camp During World War II* by Jan Jarboe Russell (Scribner, 2015); 2015; 417 pages.



One of the great scandals of American history is that when loyalty to the Bill of Rights is needed most, obedience to the state prevails. This recurring theme has been with Americans since the Alien and Sedition Acts of 1798 up until our present crisis after 9/11. Often these failures to live up to constitutional ideals and obligations come at times where fear gets the better of people and the spectre of national insecurity can be summoned to sanctify and absolve great crimes.

The second great war was one of those times when the Constitution went on holiday for an extended period of time. On December 7, 1941, the Japanese Empire bombed the U.S. naval base at Pearl Harbor. The next day, Congress declared war on Japan. Three days later, on December 11, Germany and Italy declared war on the United States. Within a week, the American empire was fighting three imperial militaries on the march across Eurasia — the Axis powers.

Instantly, Japanese, German, and Italian Americans and residents, already suspect communities, became enemies of “the people,” as Richard Reeves and Jan Jarboe Russell document in *Infamy* and *The Train to Crystal City*, respectively.

Within two days of the Japanese attack, Franklin Roosevelt issued three proclamations allowing for the immediate arrest, detention, and expulsion of Japanese, German, and Italian nationals, who were described as “enemy aliens.” Then on February 19, 1942, he issued Executive Order 9066, which authorized the War Department to prescribe geographical areas under military control as a way to forcibly remove those of Japanese ancestry from the West Coast. It took only three months after Pearl Harbor for more than 120,000 people of Japanese descent, nearly 11,000 people of German descent, and more than 3,000 people of Italian descent to be denied their liberties and for the apparatus of forced removal and mass incarceration to be erected.

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**“More than two-thirds of the American Japanese rounded up in 1942 were citizens of the United States.”**

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This round-up and flagrant violation of habeas corpus and the Fourth Amendment has been erroneously described in Orwellian terms as “internment.” As Reeves notes, “internment applies only to government regulation of aliens.” While that, for the most part, accu-

rately describes those of German and Italian ancestry detained by the federal government, Reeves reminds us that “more than two-thirds of the American Japanese rounded up in 1942 were citizens of the United States.”

Gen. John DeWitt, one of the most aggressive advocates for the forced removal and relocation of Japanese Americans from the West Coast and the archvillain of *Infamy*, carried out E.O. 9066 expeditiously. “Within two weeks,” writes Reeves, “DeWitt designated the western halves of California, Oregon, and Washington as well as southern Arizona as Military Area No. I of the Western Defense Command.” As Reeves notes, DeWitt, commanding general of the Western Defense Command, became the “most powerful man on the West Coast,” embodying James Baldwin’s insight that “ignorance, allied with power, is the most ferocious enemy justice can have.”

The ostensible reason for mass “evacuation” and detention was that old malleable watchword “security.” The word had two meanings for the Japanese. Its first meaning was protecting the rest of the American population from the Japanese because of the fear that many of them were loyal to Emperor Hirohito

rather than to Uncle Sam. Thus they were potential spies and saboteurs, even though there was no evidence of either. That fact did nothing to change DeWitt's mind on the loyalty of the Pacific Coast's Japanese community. "The very fact," he told Secretary of War Henry Stimson, "that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken." That is a logic that should sound eerily familiar in our post-9/11 times.

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**"I am determined that if they have one drop of Japanese blood in them, they must go to camp."**

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The second rationale for imprisonment was the most patronizing, and largely disingenuous, of arguments: It was for Japanese Americans' own safety. This was at least one line of argument adopted by the influential newspaper columnist Walter Lippman, who would later write that he supported evacuation and detention of the Japanese because of the potential for white mob violence. Though that shouldn't be entirely dismissed, Reeves notes, "The official story was that the government was protecting the Japanese from violence by whites, but of course the first thing

Japanese Americans noticed about the centers and, later, the camps was that the machine guns on towers were pointed in, not out."

The Japanese, undoubtedly, got the worst of "internment" for two reasons. One was overt racism; at least Italians and Germans were considered white by the federal government. As Idaho Attorney General Bert Miller said, "All Japanese must be in concentration camps for the remainder of the war.... We want to keep this a white man's country." Or from a federal perspective was Karl Bendetsen, an advisor to DeWitt, who told a Catholic priest who ran an orphanage, "I am determined that if they have one drop of Japanese blood in them, they must go to camp." The priest called him a "little Hitler." But none was more violent than Gov. Nels Smith, who upon hearing that Washington wanted to build detention centers in Wyoming, exclaimed, "If you bring Japanese into my state, I promise you they will be hanging from every tree." Strange fruit, it seems, could come in a color other than black.

### "Kidnap camp"

Another big difference between people of Japanese descent and those of Italian and German de-

scent was their numbers. The rationale of putting the Japanese in concentration camps was strategic: There were just too many German and Italian American citizens and immigrants in the United States at the time, note both Reeves and Russell. If Uncle Sam had to violate the ancient writ of habeas corpus for people of German and Italian ancestry too, he would have to build a concentration camp system capable of detaining millions.

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**Japanese-owned businesses, farms, and homes were foreclosed and bought up by white competitors and neighbors.**

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Both authors anchor their stories in the disrupted, often ruined, lives of those held at the “relocation centers” and “internment” camps established by the U.S. government’s War Relocation Authority and the Justice Department. And they are devastating to read over and over again as the lives of people loyal to the United States, particularly second-generation children and teenagers of Japanese and German descent, are unnecessarily destroyed because of the hatred and Salem-like mob mentality unleashed during war. These children, American through and through,

overwhelmingly remained loyal to the United States, even as the land they loved relegated them to the “badlands,” as Russell notes, of America’s desolate and rugged interior. As Sally Tsuneishi realized, “I am a loyal American, yet I have the face of an enemy.”

Both Reeves and Russell highlight the downright despicable financial motives underlying the desire of many white Americans for the state kidnapping and imprisoning of their neighbors. “We’re charged with wanting to get rid of the Japanese for selfish reasons,” Austin Anson, managing secretary of the Grower-Shipper Vegetable Association of the Salinas Valley, told the *Saturday Evening Post*. “We might as well be honest. We do.” Along the West Coast, Japanese-owned businesses, farms, and homes were foreclosed and bought up by white competitors and neighbors. In California it was simply plunder. “Many lost their land and the work of a lifetime to plain and open thievery by local officials and residents,” writes Reeves, “because California’s escheat laws allowed the state and banks to take over ‘abandoned properties.’”

In Ohio, the German immigrant Mathias Eiserloh was arrested after his neighbor secretly accused

him of being a Nazi spy. They had a long-running property dispute. The FBI would come to justify Mathias's detention without trial, according to Russell, because "since Eiserloh designed bridges and had access to dynamite, he also had the capability to blow them up." That was all there was to it: capability was enough for incarceration, and this injustice would happen again and again as people lost their freedom because of what they could do.

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**Fathers detained as enemy aliens had only one way to be reunited with their families: Accept "voluntary repatriation."**

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Where Reeves concentrates his attention exclusively on Japanese American citizens and residents, Russell fixes her gaze on the Crystal City Internment Camp, the only family concentration camp in the constellation of prison camps constructed by the U.S. government. Many who found themselves under its watchtowers and surrounded by its barbed wires had another, more accurate name for it: a "kidnap camp." Unlike the relocation centers, which were operated by the War Relocation Authority, Crystal City was one of the Justice Department's sites for "enemy aliens."

As Russell vividly describes through the story of Eiserloh, fathers detained as enemy aliens had only one way to be reunited with their families: Accept "voluntary repatriation" to their "home" countries and the whole family would be indefinitely detained together at Crystal City until they could be shipped out of the country. Eiserloh, like others in his situation, agreed because there was no other way to keep his family together, even though his three children were U.S. citizens. What many "dangerous" German and Japanese immigrants who accepted the terms didn't know was that they and their families were especially valuable to the U.S. government. They were trade bait for prisoner exchanges between the United States and the Third Reich and Imperial Japan. When the repatriates, both German and Japanese, finally arrived home, they were devastated. They had no idea their countries were not only losing the war but were largely razed.

**Injustice, then and now**

Reeves's story, which concentrates entirely on the injustice committed is more concerned with drawing bright lines that separate the villains from the heroes, often



rightly so. His book is far angrier and searing than Russell's, and it's better for it, especially when he describes the hardship suffered by Japanese American Nisei, or second-generation U.S. citizens. In early 1943, the American government administered a loyalty test to the Nisei they kidnapped and indefinitely detained to determine whether they could enlist in the army. Most pledged their loyalty, with 30,000 boys and men going on to serve in the military after Roosevelt lifted the enlistment ban for them.

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**Currently, the U.S. government is indefinitely detaining thousands of traumatized women and children from Central America.**

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The Japanese American young men who somehow remained loyal to the United States after being treated as subhuman by their government were critical to the U.S. eventual victory in the Pacific theater. Those who spoke Japanese put their language skills and cultural knowledge to use in the Military Intelligence Service. Their impact could not be exaggerated. "Never before in history did an army know so much concerning its enemy prior to actual engagement, as the

American army during the Pacific campaigns," said Maj. Gen. Charles Willoughby, chief of intelligence for Gen. Douglas MacArthur, Supreme Commander of Allied Forces in the Southwest Pacific Area. "Those interpreters and translators saved over a million lives and two years."

The Japanese Americans who became grunts were also crucial to the war effort throughout France and Italy toward the tail-end of the war. The entirely Nisei 442nd Regimental Combat Team of the U.S. Army became the most decorated unit in army history. "They are the best goddamned fighters in the U.S. Army," Gen. Mark Clark told Gen. Dwight Eisenhower, Supreme Allied Commander in Europe.

At the very beginning of *Infamy*, Reeves explains his book is "a look into a dark side of the 'American way'" to remind ourselves that "there is always a possibility of similar persecutions happening again." Unfortunately something similar is quietly happening right now in America.

Currently, the U.S. government is indefinitely detaining thousands of traumatized women and children from Central America who last year began fleeing brutal violence in their home countries in search of asylum. Housed in family

detention centers like Crystal City, they are sent a clear message: You're not welcome.

When Secretary of Homeland Security Jeh Johnson opened the euphemistically named South Texas Family Residential Center last December — the government's largest immigration-detention facility — in Dilley, Texas, he spoke candidly. “Frankly, we want to send a message that our border is not open to illegal migration, and if you come here, you should not expect to simply be released.”

Instead these women and children are being detained like criminals and denied due process protections so that they can be deported as soon as possible. And so they remain behind high fences and watched over by surveillance cameras, afraid they will soon be returned to certain death.

When Americans and their leaders violate their ideals, there's

an urge to reply, “Never again.” Those words, however, aren't full of resolve but laden with resignation, just a national-security excuse away from the better angels of our nature breaking bad again.

“We are not only a nation of immigrants,” Reeves reminds us. “We are a nation made by immigrants, foreigners who were needed for their labor and skills and faith — but were often hated because they were not like us until they were us.” A reminder that's too often ignored, disastrously so.

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