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# FUTURE OF FREEDOM

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*Life is like music; it must be composed by ear,  
feeling, and instinct, not by rule.*

— Samuel Butler

# FUTURE OF FREEDOM

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# Black Lives Matter, But Not to Everyone, Part 2

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by *Jacob G. Hornberger*



Some people argue that the solution to the problem of police abuse of blacks is to defund or dismantle the police. But that is no solution at all. That only opens the door to those who violate the rights of others through the commission of violent crimes. As we have seen in Portland and in foreign countries such as Libya and Somalia, anarchy breeds, well, anarchy.

Instead, the solution lies in limiting the power of the police to enforce only crimes involving the initiation of force against others, such as murder, rape, burglary, and robbery. In other words, repeal all laws that criminalize peaceful behavior but leave the police empowered to enforce the legitimate laws against force or fraud.

In particular, one of the best things that could ever happen to blacks is a repeal of all drug laws. Blacks should not settle for police “reform,” such as restrictions on no-knock raids, police sensitivity classes, or revisions in the judicial doctrine of qualified immunity. Ending the drug war is an absolute prerequisite to resolving the police-abuse problem. That includes all drugs — heroin, cocaine, meth, opioids, marijuana, and all the rest. While legalizing drugs would be one of the best things that could ever happen to all Americans, it would be especially beneficial to blacks because it would mean an end to the major excuse that bigoted cops and judges have to harass, abuse, and kill blacks.

Sure, they could still exercise their bigotry through the enforcement of laws against murder, rape, robbery, and other crimes, but it would be much more difficult to do that. My hunch is that once drugs were legalized, racial bigots would begin leaving the law-enforcement arena.

Another interesting reaction of American right-wingers to the police-abuse protests has been to point out the tremendous progress that blacks generally have made both politically and economically

over the past several decades. One favorite right-wing argument is to show how American blacks are so much better off than blacks in other parts of the world.

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**One of the big obstacles to drug legalization, unfortunately, is the support of the drug war by many blacks themselves.**

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And that is supposed to cause people to ignore police abuse of American blacks? Well, it shouldn't. No matter how well off generally American blacks might be, the police abuse of blacks, especially poor ones, cannot be justified. It needs to be brought to an end.

One of the big obstacles to drug legalization, unfortunately, is the support of the drug war by many blacks themselves. Having seen drugs ravage people in the black community, many blacks are loath to consider the idea of drug legalization. Like many white Americans, they believe that legalization would make drug abuse even worse.

Not so! Drug abuse belongs in the private sector — in rehab groups — not in the criminal-justice sector. With drug legalization, people could be more open about their addiction and more willing to seek

help, without fear of being busted by some narc at a drug-rehab facility or at Narcotics Anonymous. At the same time, the 200-year jail sentences, asset forfeitures, stop-and-frisks, no-knock raids, and drug-war abuses that have long ravaged blacks will be gone.

### **The myth of a communist threat**

Returning to Jean Seberg and the Black Panthers, it is clear that police abuse of blacks is not a new phenomenon. It has been going on for a long time. In fact, consider why Seberg, a white actress, was targeted for destruction by the FBI. The FBI's action was part of its COINTELPRO program, which was implemented during the Cold War. Its purpose was to spy on Americans who were suspected of being part of what the U.S. national-security establishment was convinced was a worldwide communist conspiracy to take over the world, especially the United States.

This was a period of time in which the Pentagon, the CIA, and FBI were on the hunt for domestic communists who were supposed to be internal infiltrators for the international Red conspiracy to take over America. Among the primary suspects were American civil-rights workers, especially blacks.

That's why the FBI was monitoring Martin Luther King Jr. and, later, blackmailing him. The FBI head, J. Edgar Hoover, and his agents were convinced that King was a Red. In fact, Hoover and his cohorts believed that the entire Civil Rights Movement was a communist front — the spearhead of what was set to be a communist takeover of America.

That's why they targeted Seberg for destruction. Anyone who was suspected of helping communists take over America was considered a legitimate target for destruction.

Thus, during the Cold War federal officials considered people in the civil rights movement to be communist traitors, while, at the time, America had local cops harassing, abusing, and killing blacks. That's not a coincidence. The two phenomena went hand in hand.

That's not the only role the U.S. national-security state played in the mistreatment of blacks. During the Cold War, the Pentagon and the CIA were establishing police departments in countries in which they effected regime-change operations. Two examples are Iran in 1953 and Guatemala in 1954. Inevitably, they would establish national police forces that consisted of a combination FBI, Pentagon, and CIA, and

were trained to wield omnipotent, tyrannical, and oppressive powers to maintain their grip on power, with no constitutional restraints.

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The result was extreme tyranny and oppression, all organized, supervised, trained, and supported by the Pentagon and the CIA. It was all justified by the supposed need to protect the foreign country as well as America from the international communist threat. In fact, the reason that the Iranian people finally revolted in 1979 was that they had had enough of U.S. tyranny and oppression within their own country. It was also why Guatemala was thrown into a 30-year civil war in 1960 that killed more than a million people.

We mustn't forget about the U.S. military's School of the Americas, which is known as the School of Assassins in Latin America. Many of the most brutal police personnel in Latin America were trained there. The U.S. government mindset was that immoral and illegal measures were justified when it came to dealing with communists.

That mindset ultimately seeped into local police departments in the United States. One reason was that the CIA and the Pentagon would sometimes import local policemen to help train foreign police forces; when they returned they employed at the local level what they had learned from the military and the CIA in fighting communists. Another reason was that Vietnam War veterans began working their way into police departments and bringing their military mindsets with them.

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### A national-security state comes with totalitarian-like powers.

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The worst mistake America ever made — much worse, in fact, than the drug war — was the conversion of the federal government to a national-security state after World War II. A national-security state is a totalitarian form of governmental structure. North Korea is a national-security state. So are China, Russia, Cuba, Vietnam, and Egypt.

As people in all those societies can attest, a national-security state comes with omnipotent, totalitarian-like powers. It's not a coincidence that the Pentagon, CIA, and the NSA can assassinate, torture, and spy on people with impunity,

regardless of what the Constitution says. It's also not a coincidence that the Pentagon and the CIA established their torture and prison camp in Cuba, where criminal defendants in the “war on terrorism” are denied the fundamental rights enumerated in the Bill of Rights, such as due process of law, trial by jury, and speedy trial.

Thus, the problem isn't just that the Pentagon has been militarizing local police over the decades. The problem is the national-security establishment itself. It has no role in a free society. The best thing the American people, especially black Americans, could ever do is dismantle the national-security state and restore a limited-government republic to our land.

### The welfare state

Finally, there is the welfare state to consider, even though it doesn't relate directly to police abuse. This is the big con that left-wingers induced American blacks to fall for. The notion is that the road to wealth, prosperity, and security for blacks lies in a government that takes care of them with money, food, housing, clothing, education, and other important things in life.

Nothing could be further from the truth. The welfare state has been

a disaster for all Americans, but especially for blacks. I refer readers, especially black Americans, to George Mason University economics professor Walter E. Williams's 1984 book, *The State against Blacks*.

Consider what welfare has done to encourage the birth of children out of wedlock — and what public housing has done to lock black families into poverty — and what public (i.e., government) schooling has done to inner-city black youths. Not only have these programs locked so many blacks into perpetual poverty, they have also created a mindset of dependency in all too many blacks.

In a sense, such programs are racist to the core. That's because their implicit message is: Since you're black, you need government assistance. How much more insulting can one get than that? Blacks no more need government assistance than whites, Asians, or anyone else. It's just that this mindset of dependency has been inculcated in blacks, just as it has with other Americans, such as seniors who are convinced they would die without their Social Security and Medicare.

Consider what minimum-wage laws have done to black teenagers. For many years, they have had a chronic unemployment rate of 30–

40 percent. That's because the government's minimum-wage laws have locked them out of the labor market. The repeal of the minimum wage would be among the best things that could ever happen to black teenagers.

For more than 100 years, America had an economic system in which people were free to keep everything they earned and to decide for themselves what to do with it. There was no income taxation and no IRS. There was also no mandatory charity, including Social Security, Medicare, public housing, welfare, or corporate bailouts. The result was the most prosperous and also the most charitable nation in history.

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**This mindset of dependency has been inculcated in blacks, just as it has with other Americans, such as seniors.**

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It is that founding economic system of economic liberty to which America must restore if we are to get our nation on the right track. For those who claim that blacks are not ready for economic liberty, let's keep in mind that there were those who said the same thing about ending 19th-century slavery — that blacks weren't ready for freedom.



Such notions are demeaning and false. God has created resilient human beings, ones who are always prepared for freedom.

In sum, there are three essential things that would put America on the right track with respect to blacks and everyone else: (1) legalize all drugs; (2) dismantle the national-security state and restore a limited-government republic; and (3) repeal the welfare state and restore economic liberty to our land.

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

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**NEXT MONTH:**  
“**Salvador Allende and the  
JFK Assassination, Part 1**”  
*by Jacob G. Hornberger*

*In the case of good books, the point is not how many of them you can get through, but rather how many can get through to you.*

— *Mortimer J. Adler*

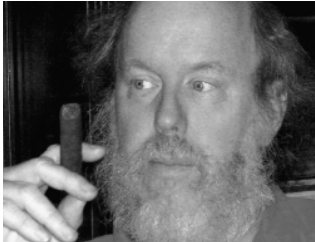
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# Federal Censorship Protects Leviathan's Crimes

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by James Bovard



Ever since the 9/11 attacks, Republicans and Democrats have conspired to keep Americans increasingly ignorant of what the federal government does. The number of secret federal documents skyrocketed, and any information that was classified supposedly cannot be exposed without dooming the nation.

Politicians and federal agencies recognize that “what people don’t know won’t hurt the government.” James Madison, the father of the Constitution, declared in 1798 that “the right of freely examining public characters and measures, and of free communication among the people thereon ... has ever been justly deemed, the only effectual guardian of every other right.” But this right

has faded badly in recent decades. During the 2020 Senate impeachment trial of Donald Trump, Senate Minority Leader Charles Schumer warned that if the Senate did not vote to hear witnesses, “this country is headed towards the greatest cover-up since Watergate.”

Actually, “conventional wisdom” in the nation’s capital is often the result of cover-ups, ignorance, and servility. Daniel Ellsberg, who risked life in prison to leak the Pentagon Papers, observed in 2002, “It is a commonplace that ‘you can’t keep secrets in Washington’ or ‘in a democracy.’ ... These truisms are flatly false.... The overwhelming majority of secrets do not leak to the American public.”

Since the 1990s, the number of documents classified annually by federal agencies increased more than tenfold. In 2004, Rep. Chris Shays (R-Conn.) derided the federal classification system as “incomprehensibly complex” and “so bloated it often does not distinguish between the critically important and the comically irrelevant.” The *New York Times* reported in 2005 that federal agencies were “classifying documents at the rate of 125 a minute as they create new categories of semi-secrets bearing vague labels like ‘sensitive security information.’”

The more information the government withholds, the easier it becomes to stampede people with deceptive disclosures. As a federal appeals court warned in 2002, “When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.” The current classification system combines the worst aspects of cover-ups and arbitrary power.

Classification can be a political flag of convenience that politicians exploit to dominate the media. *New York Times* columnist Maureen Dowd observed in 2006 that “the entire Iraq war was paved by [Bush administration] leaks. Cheney & Co. were so busy trying to prove a mushroom cloud was emanating from Saddam’s direction, they could not leak their cherry-picked stories fast enough.” Bush administration disclosures of sensitive information were often handed on a silver platter to pliant journalists. *Newsweek’s* Richard Wolffe explained the Bush White House method: “They declassify when they feel like it. I’ve been with senior administration officials who have just decided to declassify something in front of me because it’s bolstering their argument.”

## Under Obama

Each classified document is tacitly backed by a federal iron fist ready to squash anyone who discloses it without permission. William Leonard, former chief of the federal Information Security Oversight Office, complained in 2011 that the Obama administration had “criminally prosecuted more leakers of purportedly classified information than all previous administrations combined.”

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“When government begins closing doors, it selectively controls information rightfully belonging to the people.”

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The Obama administration portrayed leaking classified information to the media as worse than spying for a hostile government. The Obama Justice Department declared in 2011 that government officials who “elected to disclose the classified information publicly through the mass media” were “posing an even greater threat to society” than were foreign spies. Unless, of course, the leaks were approved by political appointees to serve the president’s purposes. Obama administration officials compared former NSA analyst Thomas Drake to mass killers and terrorists after he

was accused of leaking information on NSA boondoggles to the *Baltimore Sun*. Drake and his lawyers heroically whipped the Justice Department in federal court.

*New York Times* reporter James Risen, a courageous Pulitzer Prize winner, spent almost a decade in the federal crosshairs after his 2006 book, *A State of War*, exposed the NSA's illegal warrantless wiretapping and other federal crimes. Justice Department official Robert Parker compared Risen's case to a reporter who received drugs and then refused to expose his source. Robert Litt, general counsel for the Director of National Intelligence, compared journalism to drunk driving to justify punishing any journalist who published confidential information. But the Justice Department could not prove Risen's disclosures harmed anything except the credibility of the government.

When Risen appealed his case to the Supreme Court, he declared, "Compelling journalists to testify about their conversations with confidential sources will ... create the inevitable appearance that journalists either are or can be readily converted into an investigative arm of the government." But the Obama administration's brief told the Supreme Court that "reporters have

no privilege to refuse to provide direct evidence of criminal wrongdoing by confidential sources." The administration also invoked "the uniquely federal interest in preventing the unlawful disclosure of classified national-defense information" to sway the Court not to hear the case. Risen labeled the Obama administration as the "greatest enemy of press freedom" in our time. He also declared, "The attorney general of the U.S. has been turned into the nation's chief censorship officer."

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**Risen labeled the Obama administration as the "greatest enemy of press freedom" in our time.**

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The Obama administration believed that its classification decrees were so sacrosanct that no federal judge could overturn them. "We don't think there is a First Amendment right to classified documents," Justice Department lawyer Catherine Dorsey told a federal judge in 2015. Dorsey agreed that the "government's position is tantamount to claiming the Court 'has absolutely no authority' to unseal evidence even if it's clear the government's bid to keep it secret is based on 'irrationality' or that it's 'hiding something,'" as the *Intercept* reported.

Expansive definitions of secrecy provide a pretext to harass anyone who dissents from the official line.

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**Expansive definitions of secrecy provide a pretext to harass anyone who dissents from the official line.**

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William Binney, a legendary retired National Security Agency computer expert, was targeted because he was suspected of leaking classified details of NSA illegal surveillance years after he left the agency. Despite his voluntarily agreeing to several FBI interviews, a dozen federal agents raided his home. According to the *New York Times*, one agent “ran upstairs and entered the bathroom where Mr. Binney was toweling off after a shower, pointing a gun at him. Agents carried away a computer, disks, and personal and business records.” Despite finding no evidence of criminal wrongdoing, NSA stripped Binney of his security clearance, thereby destroying his consulting business. The feds eventually cleared him of any wrongdoing, but “the investigation derailed his career and changed his life,” the *New York Times* reported. Binney commented, “After a raid like that, you’re always sitting here wondering if they’re coming back.

This did not feel like the America we grew up in.”

### Selective censorship

Hundreds of thousands of former officials and military personnel with security clearances must allow pre-publication reviews of their books and other writings. Former Justice Department lawyer Jesselyn Radack observed that pre-publication review “has always been a filter to promote fawning memoirs by senior government officials while censoring whistleblowers and critics.” A 2019 lawsuit claimed that the pre-publication censorship vested excessive power in government officials “who can delay or discriminate against lower-ranking people who criticize government actions, while speedily clearing favorable memoirs and other writings by retired senior officials.” Jameel Jaffer, executive director of the Knight First Amendment Institute at Columbia University, declared, “This far-reaching censorship system simply can’t be squared with the Constitution.”

Torturers have benefited mightily from censorship. Mark Fallon, a veteran counterintelligence officer and counterterrorism expert, wrote a book entitled *Unjustifiable Means: The Inside Story of How the CIA,*

*Pentagon, and US Government Conspired to Torture.* But his account of the torture regime was badly delayed and heavily censored. Fallon asserted that much faster, better treatment was given to books by the architects and apologists for CIA torture, including former CIA director George Tenet, acting general counsel John Rizzo, and former Counterterrorism Center chief Jose Rodriguez.

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**Official lies have done vastly more harm to America than unauthorized disclosures.**

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Similarly, when former FBI counterterrorism agent Ali Soufan wrote a book on CIA torture abuses, the CIA demanded that Soufan — who was on-site for brutal interrogations — remove the pronouns “I” and “me” from his narrative. The CIA also deleted quotations in his book that had previously appeared in congressional hearing transcripts.

While books by former FBI and CIA agents can be endlessly delayed and heavily censored, the feds speedily approved memoirs by Hillary Clinton and former FBI chief James Comey.

Federal censorship may have had a cameo role in the congressional case against Trump. John

Bolton wrote a book about his experiences as Trump’s national-security adviser that was said to provide additional information regarding Trump’s dealing with the Ukrainian government. Trump was impeached by the House of Representatives for his dealings with Ukraine, though the Senate failed to convict and remove him from office. Bolton’s lawyer denied the book contained classified information, but previous manuscript reviews of other would-be authors have dragged out for months or years. The Trump administration sought to block the book’s release but federal judge Royce Lamberth approved publication in June, though he did state that Bolton had “gambled with the national security of the United States” by opting out of a pre-publication review process. In September (2020), federal prosecutors convened a grand jury to pursue charges relating to Bolton’s book.

The growth of government secrecy sparks practically an arms race by citizens seeking to learn what politicians are doing before it is too late to stop them. Official lies have done vastly more harm to America than unauthorized disclosures. Lies subvert democracy by crippling citizens’ ability to rein in

government. Citizens are left clueless about perils until it is too late for the nation to pull back. In his 1971 opinion on the Pentagon Papers case, Supreme Court Justice Hugo Black declared that a free press has “the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.” Unfortunately, the media’s acquiescence to mass secrecy has long betrayed that duty. If Americans had contemporaneous access to the actual information in government files, far more citizens would recognize the false claims used to plunge the nation into one foreign debacle after another.

When federal judge Amy Berman Jackson sentenced former Trump aide Rick Gates early this year, she declared, “If people don’t have the facts, democracy doesn’t work.” But Republicans and Democrats in Washington have long since approved denying Americans the facts millions of times a year. Unfortunately, secrecy and lying are often two sides of the same political coin.

The more secrets politicians keep, the less trust they deserve. Secretary of State Hillary Clinton declared in 2012, “Lack of transpar-

ency eats away like a cancer at the trust people should have in their government.” And the federal government is giving citizens trillions of reasons each year for distrust.

Thanks to pervasive secrecy, we have an Impunity Democracy in which government officials pay no price for their abuses. If democracy depends on transparency, and government transparency is an illusion, then what is U.S. democracy? We can either have vast secrecy or we can have “government under the law.” We cannot have both, and to pretend otherwise is to forfeit our liberty.

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*James Bovard is a policy advisor to The Future of Freedom Foundation and is the author of the ebook Freedom Frauds: Hard Lessons in American Liberty, published by FFF; Public Policy Hooligan, Attention Deficit Democracy, and eight other books.*

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**NEXT MONTH:**  
“The Deadly Precedent of the Waco Whitewash”  
*by James Bovard*

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## Conservative Principles

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by *Laurence M. Vance*



**B**ack at the beginning of the coronavirus crisis in the United States in March of this year, two Democratic representatives (Tim Ryan of Ohio and Ro Khanna of California) proposed that the federal government give at least \$1,000 to every American making less than \$65,000 a year. Three Democratic senators (Michael F. Bennet of Colorado, Cory Booker of New Jersey, and Sherrod Brown of Ohio) proposed that the federal government send \$2,000 to every American adult and child plus a \$1,500 check in the summer and a \$1,000 check in the fall, as long as the “public health emergency” continued.

Not to be outdone by Democrats in a presidential election year, Republicans put forth their own stimulus-check plans. Republican

senator Mitt Romney of Utah called for every American adult to “immediately” receive a \$1,000 check from the federal government until other government aid could arrive. Another Republican, Sen. Josh Hawley of Missouri, proposed that the federal government provide families experiencing financial hardship with a monthly benefit of \$1,446 for a family of three, \$1,786 for a family of four, and \$2,206 for a family of five lasting through the end of the coronavirus emergency. The benefit would be available to single parents making less than \$50,000 and to married parents making less than \$100,000.

What ended up passing was the Coronavirus Aid, Relief, and Economic Security (CARES) Act. It instituted a refundable tax credit to be applied to 2020 tax returns but advanced to taxpayers now based on their 2018 or 2019 tax returns. An “economic impact payment” of \$1,200, plus an additional rebate of \$500 per qualifying child, was sent by the federal government to every American whose income was less than \$75,000 (single) or \$150,000 (married filing jointly). The rebate phased out at \$50 for every \$1,000 of income earned above those thresholds. The CARES Act passed the Senate by a vote of 96-0 and



passed the House by voice vote over the objection of one of the few principled House members, Thomas Massie (R-Ky.).

### The principle

Some conservatives have defended Republican support for the CARES Act. Jennifer Burns is an associate professor of history at Stanford University and a research fellow at the Hoover Institution — a think tank based on the Constitution, representative government, peace, personal freedom, private enterprise, limited government, and “the safeguards of the American system.” She is also “the leading independent expert on Ayn Rand and the American conservative movement” and is working on a biography of Milton Friedman. In an opinion piece for *The Hill* titled “Granting Cash Payments Is a Conservative Principle” that was published soon after the passage of the CARES Act, she makes the case that making government cash payments is a conservative principle.

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#### Friedman came up with the idea of “a minimum income.”

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Although “today, cash grants or universal basic income (UBI) seems a classic Democratic Party idea, as-

sociated with upstart presidential contender Andrew Yang,” the “first president who embraced the idea was Republican Richard Nixon” and “the name most associated with the reform was Milton Friedman, the face of free-market economics for his generation.” As Burns explains about Friedman,

Friedman came up with the idea of “a minimum income” during a crisis many liken to coronavirus: the Great Depression. As a young economist, Friedman struggled to reconcile his belief in markets with the suffering he saw all around him. A conversation with Swedish socialist Gunnar Myrdal suggested a way forward: a plan for guaranteeing “a minimum income for all.”

The idea of setting a “floor” under each member of society resolved several problems. First was the basic support to those who couldn’t make a living, even if they worked. More broadly, the idea could ameliorate the failings of capitalism without deconstructing capitalism itself. Markets would remain intact. They’d even be strengthened, by giving the poor money to spend.

Over time, Friedman's commitment to the idea grew. Originally conceived during hard times, Friedman maintained his support of the basic concept even during the prosperous 1960s. He came up with a new twist — send the money through the IRS — and called it a “negative income tax.” The proposal was widely debated among conservatives and liberals.

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**Friedman came up with a new twist — send the money through the IRS — and called it a “negative income tax.”**

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And as she explains about Nixon,

President Nixon seized upon the idea when he came into office, calling it the Family Assistance Plan.... Supporters inside the administration included George Shultz, who later headed the Treasury Department and the State Department under President Ronald Reagan. But conservatives were not unanimous in their support. Although the [Family Assistance Plan] was carefully designed to avoid pe-

nalizing work, some conservatives worried it was an unearned handout. Joining them in opposition were liberals who felt the benefit was too stingy. [The Family Assistance Plan] made it into Congress, but didn't make it out.

Burns sees today's populist, “newer wave of conservatives, tied closely to President Trump” as those leading “the push for immediate and universal cash support.”

But she is not just speaking as an observer of the American conservative movement. Opines Burns,

Cash payments are a way to acknowledge the importance of the crisis without growing the government in ways conservatives consider misguided. Although they seem like a big spending liberal program, they rest upon a fundamental belief in individual decision making and the power of spontaneous order over top-down planning.

The relief program could stimulate interest in cash as part of conservative industrial policy — a deliberate program of economic development keyed to the needs of Republi-

can voters and incorporating traditional Republican principles.

Both the coronavirus crisis and the long history of UBI show how cash grants can resonate with conservative principles of individualism, efficiency and government doing more with less. In the long recovery that lies ahead, ideas like cash that can bridge both partisan and intra-party divides should be taken out of the archive and put to work.

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**The federal government's handing out cash to Americans is a conservative principle.**

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Since when are cash payments from the federal government a conservative principle? What happened to the conservative mantra of fidelity to the Constitution, federalism, limited government, fiscal conservatism, private property, less government, lower taxes, individual freedom, the free market, and free enterprise? Aren't cash payments from the federal government the very antithesis of those things?

Burns is exactly right. The federal government's handing out cash to Americans is a conservative principle, and has been for quite some

time. The CARES Act was not the first time the federal government sent stimulus checks to Americans.

The first Bush tax cut, the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), was signed into law by George W. Bush on June 7, 2001. The EGTRRA lowered federal income tax rates, capital gains taxes, and the estate tax. It also included, for the first time in American history, a stimulus check from the federal government. Single filers with no dependents could get an amount up to \$300, single parents could get one up to \$500, and married couples could get one up to \$600. Checks were sent in the mail over a 10-week period from July 23 through September 24, depending on the taxpayer's Social Security number.

The Economic Stimulus Act of 2008 was signed into law by Bush on February 13, 2008. It too provided taxpayers with a stimulus check from the federal government. Individuals could receive an amount up to \$600 and married couples could receive one up to \$1,200, plus an additional benefit of \$300 per dependent child. The "tax rebate" was phased out for taxpayers with incomes greater than \$75,000 (single) or \$150,000 (married couples) at the rate of 5 percent

of the income above the thresholds. Direct deposits were made during the first half of May 2008 and paper checks were sent out during May, June, and July.

But conservatives don't just support cash payments from the government when there are extenuating economic circumstances. Rather than being the exception to the conservative mantra, cash payments by the government are the rule. There are three main cash-payment programs in the United States — all of them supported by conservatives.

### TANF

When Americans think of welfare they generally think of programs such as Temporary Assistance to Needy Families (TANF) — formerly known as Aid to Families with Dependent Children (AFDC) — which pays assistance in cash directly to recipients to spend as they choose. The TANF program “assists families with children when the parents or other responsible relatives cannot provide for the family’s basic needs.” States receive block grants from the federal government to design and operate programs that are intended to accomplish four goals:

- to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- to end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage;
- to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- to encourage the formation and maintenance of two-parent families.

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**Rather than being the exception to the conservative mantra, cash payments by the government are the rule.**

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States determine the amount of assistance payments, the range of other services to be provided, and the rules for determining who is eligible for benefits. The fiscal year 2020 TANF budget was \$15.2 billion. Although conservatives sometimes call for increased welfare work requirements, they don't have any philosophical objection to the

government's handing out cash to the "poor" or "disadvantaged" or "needy."

## Social Security

There are two parts to Social Security. The Old-Age and Survivors Insurance (OASI) program provides monthly benefits to retired workers, families of retired workers, and survivors of deceased workers. The Disability Insurance (DI) program provides monthly benefits to disabled workers and families of disabled workers. For those born between 1943 and 1954, the full retirement age is 66. For those born in 1960 or later, the full retirement age is 67. Early retirement with reduced benefits is available for those who have reached age 62, no matter what year they were born.

The Social Security program is funded by a 12.4 percent (10.03 percent OASI and 2.37 percent DI) payroll tax (split equally between employers and employees) on the first \$137,000 of an employee's income. Self-employed individuals pay the full 12.4 percent, but receive a deduction toward their income tax equal to 50 percent of the amount of the Social Security tax they pay. One must pay Social Security taxes for a minimum of 40 quarters to be eligible.

Because some of the taxes they pay are termed Social Security taxes, most Americans believe that they are entitled to receive Social Security benefits because they "earned" them by "contributing" to the system over the course of their working life. But there is no connection between the taxes one pays into the system and the benefits that one receives from the system. Social Security benefits are figured on the basis of one's "primary insurance amount," the average of a worker's 35 highest years of earnings (up to a particular year's wage base), adjusted for inflation. And Congress can

- change the arbitrary formula that is used to calculate benefits;
- reduce or eliminate benefits at will;
- increase Social Security taxes without increasing Social Security benefits;
- raise or eliminate the wage base upon which Social Security taxes are figured at any time;
- pay Social Security benefits in perpetuity regardless of the amount of Social Security taxes that are collected;
- raise the retirement age; and

- increase the taxes owed on Social Security benefits.

Although Social Security is an intergenerational wealth-redistribution scheme, conservatives regularly put forth plans to save, reform, overhaul, or privatize it.

### Refundable tax credits

A regular tax credit is a dollar-for-dollar reduction of the amount of income tax owed. Tax credits may reduce the tax owed to zero, but if there is no taxable income to begin with, then no credit can be taken. Tax credits, like their cousins tax deductions, are always a good thing. A refundable tax credit is treated as a payment from the taxpayer like federal income tax withheld or quarterly estimated taxes paid. If the “payment” is more than the tax owed after regular tax credits are applied, then the taxpayer receives a refund of money he never actually paid in. And no amount received as a tax refund is counted as income when determining eligibility for federal welfare programs.

Low-income Americans have access to three refundable tax credits: the American Opportunity Tax Credit (AOTC), the Additional Child Tax Credit (ACTC), and the Earned Income Tax Credit (EITC).

The maximum AOTC is \$2,500, 40 percent of which is refundable. The maximum ACTC is \$1,400. The amount of one’s EITC benefit depends on a recipient’s income and number of children.

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### Low-income Americans have access to three refundable tax credits.

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The AOTC is 100 percent of the first \$2,000 plus 25 percent of the next \$2,000 in qualified tuition and related educational expenses the taxpayer pays for each eligible student in each of the first four years of the student’s post-secondary education in a degree or certificate program. The maximum credit is therefore \$2,500. No credit can be claimed if the taxpayer’s modified adjusted gross income exceeds \$90,000 (\$180,000 for married couples). There is a phase-out for taxpayers with modified adjusted gross incomes exceeding \$80,000 (\$160,000 for married couples). Forty percent (up to \$1,000 per student) of the AOTC is refundable.

The maximum Child Tax Credit (CTC) is \$2,000 per child, of which \$1,400 is refundable as the ACTC. The ACTC is the refundable portion of the CTC that is available if the CTC reduces one’s tax liability

to zero. In most cases, one must have \$2,500 or more of earned income to be eligible for any portion of the ACTC.

The EITC is the king of the refundable tax credits. According to the IRS, “The Earned Income Tax Credit, EITC or EIC, is a benefit for working people with low to moderate income. To qualify, you must meet certain requirements and file a tax return, even if you do not owe any tax or are not required to file. EITC reduces the amount of tax you owe and may give you a refund.” For tax year 2020, to be eligible for the EITC, investment income must be \$3,650 or less and earned income and adjusted gross income must each be less than

- \$15,820 (\$21,710 for married couples) with no qualifying children;
- \$41,756 (\$47,646 for married couples) with one qualifying child;
- \$47,440 (\$53,330 for married couples) with two qualifying children;
- \$50,954 (\$56,844 for married couples) with three or more qualifying children.

The maximum amount of EITC that one can receive is

- \$538 with no qualifying children;
- \$3,584 with one qualifying child;
- \$5,920 with two qualifying children;
- \$6,660 with three or more qualifying children.

The EITC functions as a universal basic income. Although conservatives sometimes call for reductions in welfare spending or the rate of increase of welfare spending, they never mention the EITC — one of the greatest forms of welfare in existence. The amount of the EITC has increased every year since 1986, when the maximum benefit was a mere \$550. It increased when Democrats controlled both Houses of Congress, it increased when Republicans controlled both Houses of Congress for six years under Bill Clinton, and it increased when Republicans controlled both Houses of Congress under George W. Bush for more than four years. No doubt all of the congressional Republicans in those years emphasized in their campaigns how “conservative” they were.

### Conservatism and libertarianism

The conclusion is inescapable: conservatives are welfare statist just

like liberals, progressives, Democrats, and socialists. Conservatives have no philosophical objection to the federal government's plundering some Americans for the benefit of other Americans (and itself, since the government is then viewed as a benefactor). Conservatives believe that the federal government should take money from some Americans and redistribute it to other Americans — after it is filtered through a massive government bureaucracy — in the form of subsidies, vouchers, loans, EBT cards, and grants, and through the ultimate form of welfare — cash payments.

The conservative mantra of fidelity to the Constitution, federalism, limited government, fiscal conservatism, private property, less government, lower taxes, individual freedom, the free market, and free enterprise is a smokescreen. It is a ruse to sucker those rank-and-file conservatives who may genuinely believe in some of those things to support the conservative movement, donate to conservative organizations and causes, and back the Republican Party.

When conservatives get enough Republicans elected to gain control of Congress (as during the last six years of Clinton's presidency and the last two years of Obama's presi-

dency) or Congress and the White House (as during four-plus years of Bush's presidency and the first two years of Trump's presidency), they not only do nothing to reverse the progressive policies enacted by Democrats, they often increase their funding, expand them, and supplement them with new progressive policies of their own.

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**Republicans not only do nothing to reverse the progressive policies enacted by Democrats, they often expand them.**

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Now contrast conservatism with libertarianism. When it comes to the welfare programs of the U.S. government, libertarianism says seven things:

1. The Constitution does not authorize the federal government to institute welfare programs, operate welfare programs, or give the states block grants to provide welfare programs.
2. It is an illegitimate purpose of government to fund or operate welfare programs, fight poverty, establish a safety net, subsidize wages, or help the disabled, the aged, the infirm, or the poor.
3. Transferring resources from one American to another — wheth-



er it takes the form of a deposit on an EBT card, a hot lunch at school, a subsidy, a voucher, a grant, or cold hard cash — is immoral, even when the government does it.

4. No one is entitled to receive from the government cash or other welfare benefits no matter what his situation or how much he “needs” the money.

5. “The rich” have no legal obligation to help “the poor,” no matter how much money some government bureaucrat or private organization thinks “the rich” should hand over.

6. All charity should be private and voluntary, not public and forced.

7. Welfare needs to be eliminated, not reformed.

Too bad those are not conservative principles.

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**NEXT MONTH:**

**“Non-Issues in the 2020 Election”**  
*by Laurence M. Vance*

*War cannot be driven out by war, for the use of evil breeds more evil, hostility more hostility, and the use of force more force.*

— Hans F. Sennholz

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# Collectivism Breeds Indifference to the Loss of Liberty

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*by Richard M. Ebeling*



**W**ho does not want to make the world a better place? With so much sorrow and suffering, poverty and plunder, cynicism and corruption in far too many places, nearly everyone, if asked, will usually say that if he could he would try to make this shared planet of ours a safer, prettier, more prosperous, and less unjust shared domicile on which we all live. The problem is, what are the best means to that end?

The answer to that question has plagued mankind for a very long time, going back to the ancients. With all the nuances and distinctions that have been discussed and debated, I would suggest that it all comes down to a decision between force and freedom. For most of hu-

man history, the implied or articulated presumption has been that human beings left to their own personal devices will bring about a world of cruelty, injustice, and societal harm.

## The presumption that people need paternalism

In other words, human beings in general need someone or something to control and command them, to restrain their harmful proclivities and direct them into the ways of living and interacting that ensure degrees of harmony and fairness in the relationships between them. Conquerors and kings, as well as democratically elected politicians or populist demagogues hungry only for power, have all insisted that they want authority over others for the good of those over whom they wish to assert and impose their rule.

Whether it is just rhetorical concealments to cover the desire simply for power and privileges over others, or whether some or many of those proposing planned societies have done it or do it out of a sincere belief that they know better how human beings should live their lives and interactively associate with their fellow human beings, the end result is the same.

The latitude and liberty of the individual person is narrowed to various degrees by political constraints of one type or another that limit his options and opportunities to more fully choose his own ends and utilize various means that he considers to be most likely to successfully achieve the goals he has in mind.

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**“Defending one dictatorship is in fact defending the principle of tyranny.”**

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The extreme instances of such planned societies were experienced over the last one hundred years in the form of Soviet and Nazi totalitarian systems. Little was left out of the control, command, and central direction of these collectivist regimes. They were determined, on the basis of their respective ideologies of either class or race conflict, to remake the entire world in their own images. Human life has neither meaning nor value outside of service to “the cause” nor independently of it.

### **The common tyranny in modern collectivist systems**

Eugene Lyons (1898–1985) was an American news correspondent in the Soviet Union from 1928 to

1934. In his book, *Assignment in Utopia* (1937), he explained that when he first arrived in Moscow, he was full of sympathy for the idea of the “great experiment” in making a new socialist society. Yes, the communists were a one-party dictatorship. But he accepted the notion that sometimes a dictatorship might be necessary and acceptable if a “higher good” came out of it all, at least in the long run.

But after finishing his tour in Moscow for the United Press news agency, he travelled extensively in fascist Italy and Nazi Germany before returning to the United States. He watched and listened carefully to what was going on in those other totalitarian countries, and concluded the following:

We had gone to Russia believing there were good dictatorships and bad. We left convinced that defending one dictatorship is in fact defending the principle of tyranny... The European journey strengthened that conviction. The common denominator in all that we saw, it seemed to me, was the decadence of the moral sense in mankind, the attrition of ethical values. That decadence showed itself in an

indifference to suffering and callous disrespect for the stuff of life. The moral collapse of Europe was far more terrible than its economic collapse

Until the [First] World War, even the narrowest philosophies of progress decked themselves in the feathers of humanism: greater freedom, happiness and security for individual men and women.... Now individual human beings were being degraded, brutalized, tortured, and murdered for the glorification of some abstraction of class or race. Whatever its pseudo-scientific justifications, every specialized phobia was like the other in that it began by nullifying the individual. Not one of them has room in its scheme of salvation for individual liberties and happiness....

What is socialism but a society of regimented slaves and regimented slave-drivers.... What is the essential differentiation between state socialism in Russia according to the Politburo and state socialism for Germany according to the Nazis...? I felt this increasingly the longer I lived in Russia. Every visit to fascist countries

and the long “tour of tyrannies” that I undertook after I left Russia, deepened that feeling. The “coming struggle” — and it is not coming, it is already here — is not between communism and fascism. It is the struggle for the moral and ethical ideals which have been renounced by both of these movements....

I left Russia and Europe convinced that the immediate task — for those who have the urge to participate consciously in the historical processes of their lifetime — is to defend the basic concepts of freedom, humaneness, intellectual integrity, respect for life.

Eugene Lyons referred to philosophies before the First World War that spoke of freedom, happiness, and respect and security for individual human beings. That world was, to a great extent, the product of the classical-liberal ideas of the eighteenth and nineteenth centuries, ideas that had transformed Western society into one of greater personal liberty, increasing prosperity, and relatively limited government constrained by constitutions that in principle, if not always in practice, declared that gov-

ernment should be the servant and not the master of human beings who possessed individual rights.

### From liberty to totalitarianism

Another America journalist who spent 1922 to 1934 in the Soviet Union reporting for the *Christian Science Monitor* was William Henry Chamberlin (1897–1969). He, too, had gone to Russia with hopes for the socialist experiment and left strongly anti-communist and anti-totalitarian. Like Lyons, Chamberlin left Moscow and spent time reporting in Nazi Germany.

In *Collectivism: A False Utopia* (1937), Chamberlin contrasted that older classical-liberal world before 1914 and the new collectivist world of communism, fascism, and Nazism that was enveloping Europe in the 1930s:

Before the [First] World War it would have seemed banal and superfluous to make out a case for human liberty, as far as North America and the greater part of Europe were concerned. Such things as regular elections, freedom of press and speech, security against arbitrary arrest, torture, and execution, were taken for granted in almost all leading countries.

People could travel freely in foreign lands without worrying overmuch about passports and were not liable to be arrested by the police of one insolvent country if they failed to declare a few bills of the currency of its equally insolvent neighbor at the border. Concentration camps for political recalcitrants, and the wholesale conscription of forced labor as a means of getting public works done was unknown....

The revolutions of the twentieth century, unlike those of the eighteenth and nineteenth, have led to the contraction, not to the expansion, of freedom. The two main governmental philosophies which have emerged since the war, fascism and communism, are based, in practice, on the most rigid regimentation of the individual.

### The premises behind totalitarianism are still present.

But, wait! We have left those extreme forms of totalitarian tyranny long behind us, have we not? The Italian fascist and the German Nazi regimes were brought down in the devastating destruction of the Sec-

ond World War in 1945. And after decades of seeming to be winning the Cold War, the Soviet Union imploded owing to its political corruption and economic stagnation, along with its ideological bankruptcy in 1991.

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**In April 1934 the country was very different from the one Lyons left several years earlier.**

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Yes, the government of China still wraps itself in the Marxist rhetoric that was first imposed on the Chinese people with the victory of Mao Zedong and his communist armies in 1949. And there are those residues of communism in Cuba, North Korea, Nicaragua, and Venezuela. Surely, however, the ideas behind these past and present regimes are a spent force.

Unfortunately, that is not the case. We have been seeing the same philosophical premises at work here in the United States for a century now. Its modern origins can be traced to the Progressive Era in the early decades of the twentieth century. But its far more direct appearance occurred with the coming of the New Deal with the Franklin Roosevelt administration in the 1930s.

It is interesting to note that Lyons tells us near the end of *Assign-*

*ment in Utopia* that when he arrived back in the United States in April 1934 the country was very different from the one he left several years earlier. He entered “an America of the New Deal, N.R.A. industrial codes, brain trusts, legal liquor ... [and] the state’s obligation to feed, clothe, and house its population was no longer disputed.” He went on:

But the differences were microscopic when measured on the scale of social and moral distances separating our life from life in [Nazi] Germany or [Soviet] Russia. The talk of New Deal regimentation sounded absurd against my experience of totalitarian practices.... I now found myself angered by glib and off-hand denunciations of American democracy by [“leftist” and socialist-leaning] people who could not even imagine what total annihilation of democratic processes and civil rights meant.... And I was shocked by the cavalier fashion in which certain Americans seemed ready to trade in these hard-won rights for a mess of slogans. They needed to be reminded, I felt, that

these liberties, for all their limitations and blemishes, were wrenched from unwilling masters and are treasures to be guarded.

The stark contrast between the comprehensive and centralized command-and-control regimes that Lyons witnessed in Stalin's Russia and Hitler's Germany, on the one hand, and the far less dominating presence of Roosevelt's New Deal, on the other, over American life, made him reluctant to say that there was any fully one-to-one comparison of what he saw in Europe with what was occurring in the United States in 1934.

### **Nullifying the individual in service to a higher collectivist cause**

Yet in hindsight the similarities were clearly evident if one stepped back just a little bit to see the family resemblances. The key, let me suggest, was among the tragic aspects of European society that Lyons had pointed out: the "nullification" of the individual, with a reduced place and space for the individual liberty and rights of each and every human being.

Once the focus is taken away from the individual person, and instead attention is given to a greater

end or cause — "the nation," a "master race," a "social class," the "common good," or "the general welfare" — the way is made for the abuse and misuse of individual persons who fail to conform to the blueprints and dictates of those in political authority who assert insight on how all "should be made to right" for a better and more beautiful future for the collective as a whole.

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**The New Deal abridged the personal freedom and private property rights of the American citizenry.**

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The New Deal abridged the personal freedom and private property rights of the American citizenry. Private enterprises under the National Recovery Administration (NRA) compulsory regulatory codes were told what to produce, how much to produce, to whom to sell, and at what prices they might sell their output, as well as what to pay those who supplied the needed inputs for the functioning of their businesses. The same heavy-handed central planning was imposed on American farming under the Agricultural Adjustment Act (AAA), with commands over the types and quantities of crops to be

grown and the kinds of livestock that might be raised and supplied to the market, and the prices at which their produce and animal products might be sold.

For the nearly three years that the NRA and AAA codes and commands were in effect, until the U.S. Supreme Court declared that version of American economic fascism to be unconstitutional, the citizens of the United States were invited to be police informers to report on businesses not complying with the imposed price, wage, and production controls; in principle, that was not much different from those who surreptitiously supplied information in Soviet Russia to the NKVD or to the Gestapo in Nazi Germany, with often disastrous if not lethal consequences for those they denounced. American businessmen were not threatened with concentration camps or slave labor in Siberia, but there were legal financial penalties to be faced and possible jail time.

### Desensitizing people to the loss of liberty

What was significant in this admittedly far milder version of a planned economy was the growing desensitizing to government abridgement of people's liberty and

property. There was now the explicit and constant presumption that it was the duty and responsibility of the government to intervene into the market affairs of ordinary citizens. It was increasingly taken for granted that government had the right and responsibility to restrict or prohibit those voluntary trades and associations that in an earlier era were considered the natural and sovereign activities for individual persons to enter into without worrying that political power would preempt their own decisions and peaceful interactions with others.

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**There was now the explicit presumption that it was the duty of the government to intervene.**

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When the twentieth century began there were very few in America who considered it the role and responsibility of government to guarantee jobs, supply subsidized housing, set wages and prices, or redistribute income and wealth on the basis of a political paternalism ensuring a more "just" income equality among the people in the country.

Today, how many Americans ever think about ending or even just radically reducing any such interventionist-welfare state programs?



Answer: virtually none; advocates for real human liberty are very, very few and far between. And private property rights? They practically do not exist, if one means by economic liberty an unrestricted right to buy and use and sell private property as desired, on the basis of voluntary, honest, and peaceful consent.

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**Advocates for real human liberty are very, very few and far between.**

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A few months ago, a YouTube video showed a young woman being arrested, handcuffed, and dragged away from an open-air grandstand at some school sports event where fans were “distanced” from each other. What was her “crime”? She was not wearing a facemask.

What was the reaction of the other spectators also sitting on the bleachers as she shouted her innocence of not having done anything wrong and asking for help? Nothing. Just quiet, passive indifference to what was happening to the young lady. And seemingly everyone was focused, instead, on the players and the play on the field.

In Nazi Germany, people looked away or cheered when Jews were beaten up on the street or were rounded up and sent off to concen-

tration and death camps. In the Soviet Union, people would quietly sit in their apartments or verbally support the secret police when some neighbor was arrested and removed from his dwelling, usually in the middle of the night never to be seen again.

Victor Klemperer (1881–1960), in his diary, *I Will Bear Witness* (1999), documented his virtually daily observations and experiences during the entire Nazi period in Germany, including the war years. He recounted that after Jews such as he had been required to always wear a yellow Star of David on their jackets whenever outside of where they lived, he was walking home one day when a German woman, who was a total stranger, whispered to him as they closely passed each other on the street, “I am sorry.”

On the YouTube video of the young lady being forcefully removed at a sporting event, not only did everyone else sitting there just ignore what was happening to her, no one seemed to object or say he was sorry. This is not to equate removing someone from an American sporting event in 2020 for not wearing a face mask with the humiliation, abuse, and brutality that German Jews suffered at the hands of the Nazis in the 1930s. But it says

something about the indifference and disregard for another person's freedom in contemporary America, I would suggest.

### Jealous for your own liberty and that of others

When the British laissez-faire liberal Herbert Spencer (1820–1903) was on a lecture tour in the United States in 1882, he said to an American newsman, “The fact is, that free institutions can be properly worked only by men each of whom is jealous of his own rights and is also sympathetically jealous of the rights of others — will neither himself aggress on his neighbors, in small things or great, nor tolerate aggression on them by others.”

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**What is needed is the character, confidence, and courage to defend liberty in all its facets.**

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In the 1880s, many British and Americans would have agreed with Spencer, even though they may not have always fully or consistently practiced it, since already in the United States, for instance, the federal and state governments bestowed favors and privileges on some at others' expense. But many at that time would have said, no doubt, that they shared the idea and

the sentiment in Herbert Spencer's words, even if they did not always practice it in their own lives.

This individualist conception of liberty seems to be understood and believed in by fewer and fewer people every year in the United States, and certainly by even fewer in most other parts of the world. The only aroused excitement, apparently, is for collective or tribal group “rights” based on gender, race, or social class, which in reality are “entitlement” privileges that can be given to some only by burdening others to provide the income and wealth to supply them, along with the regulations and restrictions so that some may get what they might not be freely given or earn in a free society.

All of this opens the door to the totalitarian trends so visible in American society currently, especially among the cancel culture and identity-politics warriors with their ideological certainty and self-righteous determination to destroy property, burn down neighborhoods, and beat up and even kill gender, race, and class “enemies.”

I have written a number of times against pessimism among friends of freedom, regardless of how far gone and hopeless current political circumstances seem to be. The fact

is, trends that seemed to be irreversible have been halted or have been reversed in history, and that includes our own times.

What is needed, however, is the character, confidence, and courage to defend liberty in all its facets: political, economic, and social. Otherwise, the idea and ideal of American liberty might very well be lost.

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**NEXT MONTH:**  
“The Case for Freedom in  
Ludwig von Mises, F.A. Hayek,  
and Ayn Rand”  
by Richard M. Ebeling

*I would remind you that extremism in the defense of liberty is no vice. And let me remind you also that moderation in the pursuit of justice is no virtue.*

— Barry Goldwater

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# The Gold Clause: A Free-Market Gold Standard

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by Wendy McElroy



President Franklin Roosevelt destroyed one of the most valuable uses of gold when he nationalized ownership of the metal in 1933: the gold clause. This value did not return when private ownership of gold was legalized once more in 1974, partly because its use is still discouraged by anti-usury laws.

The impact of its sudden absence was dramatized by a letter dated February 4, 1964, from the libertarian newspaper magnate R.C. Hoiles to Robert LeFevre. Hoiles explained that as a result of “the government abrogation of contract ... I lost \$240,000.” The contracts to which Hoiles referred were gold clause ones by which he sold

two newspapers, with full payment due in 1935. The abrogation was House Joint Resolution 192 or the “Gold Clause Ban” of 1933, and the Gold Reserve Act of 1934, which annulled the clauses. (Adjusted for inflation, \$240,000 in 1934 is equal to more than \$4.5 million today.) Hoiles was a victim of Roosevelt’s war on private gold, which led to the erasure of an estimated 40 percent of public and private debt from 1933 to 1935 owing to the erasure of the gold clauses still in force. The debtors, especially government, benefited; creditors lost.

A gold clause is a provision that stipulates that a contractual obligation should be paid in a specific amount of gold or in its paper equivalent. The clauses were ubiquitous in America during the late nineteenth and early twentieth centuries. The 1934 essay “Some Aspects of the Nullification of Gold Clauses in Obligations,” published in the *University of Chicago Law Review*, stated, “It has been estimated that, of the \$200,000,000,000 public and private debt, approximately one half contains a gold clause in one form or other.” They were a standard aspect of financial instruments such as bonds and mortgages because they provided protection against any future devaluation of

the dollar. If the dollar was devalued vis-à-vis gold, then the dollar equivalent of the gold specified in the contract would simply increase by the amount of the devaluation.

Gold clauses sound antiquated to modern ears. Perhaps that is why the impact of Roosevelt's debt default is not appreciated as a watershed moment in American economic history. But their annulment was pivotal. To impose a radical reorganization of America's economic and political structure through the New Deal, he needed to control and manipulate the monetary system. Gold clauses blocked his path, and so he eliminated them. Especially now, with calls for debt forgiveness that range from student loans to global obligations, it is useful to review how the U.S. government handled a perceived debt crisis in its past.

### The gold clause

The story begins with the election of Roosevelt, who was inaugurated on March 4, 1933, at the height of the Great Depression. He immediately took unprecedented control of the monetary system. In the early hours of March 6, after little more than a day in office, a national banking "holiday" was declared to stop bank runs and give

Congress time to pass an Emergency Banking Act. The bill added a subsection to the Federal Reserve Act that allowed the Treasury secretary "to protect the currency system." The secretary, "in his discretion," could require "all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates" they owned. In return, they would receive "an equivalent amount" of fiat currency.

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### Gold clauses blocked Roosevelt's path, and so he eliminated them.

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Also in early March, Roosevelt's famous "Hundred Days" began and lasted into June. Legislation and Executive Orders issued during this time changed the fundamental manner in which the U.S. economy and society functioned; it paved the way for a welfare state. But, again, gold was a barrier because it was a private currency and store of wealth. He needed to nationalize it.

On April 5, 1933, after one month as president, he issued Executive Order 6102 "forbidding the hoarding of gold coin, gold bullion, and gold certificates within the continental United States." With few exceptions, such as jewelry, people

and businesses were required to surrender their gold holdings to the Federal Reserve Bank “on or before May 1, 1933” and receive the long-standing price of \$20.67 per ounce in legal tender.

Generally speaking, people complied. Murray Rothbard explained, “One reason why it was so easy for the government to confiscate everyone’s gold in 1933 was that by that time, Establishment propaganda had worked to the extent that few people were actually *using* gold in their daily lives. Not using gold much, they didn’t think they missed it.”

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**The common man was not  
the one most impacted by the  
confiscation of gold.**

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Another reason was the reassuring tone assumed by Roosevelt. In his May 7 “fireside chat” — a distinctive feature of his presidency — he reached out to the common man by stating, “We have placed everyone on the same basis in order that the general good may be preserved.” The common man was not the one most affected by the confiscation of gold, however. Nevertheless, he assured the American people that the decision “not to let any of the gold now in the country go out of it”

would strengthen the fiat currency with which most people conducted daily life. He pledged to debtors that his “administration has the definite objective of raising commodity prices to such an extent that those who have borrowed money will, on the average, be able to repay that money in the same kind of dollar which they borrowed.”

Gold clauses prevented Roosevelt from fulfilling his objective. If such contracts were widely used, then the “controlled” inflation would have a diminished impact because dollar payments would simply rise to reflect the dollar equivalent of the specified gold. The gold clause constituted a free-market version of a gold standard. (A free-market gold standard is based on the market price of gold, as opposed to redemption at a legally fixed price.)

It was not the first time in American history that the gold clause served that purpose. During the Civil War (1861–1865), the Bechtler gold coin, which was minted in North Carolina by Christopher Bechtler Sr., became the coin of choice because of its consistent purity. Even after new coins ceased to be issued, the old ones circulated widely in the South. In his book *Lost and Buried Treasures*

of the Civil War, professional treasure-hunter W.C. Jameson said the coins were so popular that the monetary obligations of the Confederacy, such as purchasing contracts, were often specified as payable in Bechtler gold rather than Confederate currency or government-issued coins. Thus gold coins and clauses provided a free-market gold-standard defense against wartime inflation, albeit one that functioned in limited circumstances.

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**Roosevelt devalued the dollar by setting the price of gold at \$35 an ounce.**

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On June 5, 1933, Roosevelt responded to the threat posed by this free-market gold standard. Congress passed Joint Resolution No. 10, which annulled gold clauses in past and in future contracts. Critics cried out that the resolution invited the debasement of contracts and the devaluation of currency. Advocates argued that the contracts were not being repudiated and, since private ownership of gold was already banned, Congress was merely clarifying the type of payment that was legal. The annulment occurred abruptly before contracts could be renegotiated or alternative arrangements made. That caused a huge

and immediate transfer of wealth from creditors to debtors; the government was the largest debtor of all because of its bonds and other financial instruments on which it made payments.

On January 31, 1934, the endgame became clear. Roosevelt devalued the dollar by setting the price of gold at \$35 an ounce, which was an increase of 69 percent over \$20.67 an ounce. The currency was officially devalued. Not only did the government hold all legal gold; the currency with which it paid off debts was now debased. It was another huge transfer of wealth from creditors to the debtor government.

Those who held contracts or securities based on a gold clause moved to have Resolution No. 10 declared unconstitutional. Of the many lawsuits filed, four made it to the U.S. Supreme Court and were heard between January 8 and 10, 1935. *Norman v. Baltimore & Ohio Railroad Co.* and *United States v. Bankers Trust Co.* dealt with bonds that had been issued by private companies to private citizens. *Perry v. United States* and *Nortz v. United States* concerned U.S. government bonds that the government insisted on redeeming in legal-tender currency. The plaintiffs argued that the refusal to redeem in

gold constituted a “taking” without due process of law. They also contested the power of government to alter the terms of a contract that had been legally entered into.

Arguably, *Perry v. United States* was the key case. Perry owned a \$10,000 Liberty Bond that specified payment of principal and interest “in United States gold coin of the present standard of value.” At the time of the bond’s purchase, the standard gold dollar contained 25.8 grains of gold. At the time of redemption, the standard gold dollar was 15 5/21 grains. Perry argued that he was entitled to the weight in the original gold dollar at the time of purchase, or its legal tender equivalent. In essence, he demanded an additional \$7,000 over the bond’s face amount. After all, the “takings clause” of the Fifth Amendment states, “[Nor] shall private property be taken for public use, without just compensation.” The question before the Court: Did the gold clause entitle Perry to legal tender in excess of the face amount of the bond?

On February 18, 1935, the Court ruled 5 to 4 in favor of Congress; Perry was entitled only to the bond’s face amount of legal tender, not the weight of the gold. The complicated and somewhat contradictory deci-

sion, written by Chief Justice Charles Evans Hughes, cited a broad congressional power to regulate the economy. The Court found that the government had a plenary power — an unlimited power — to regulate money. It denied the “taking” had damaged Perry, who would have been required to surrender any gold payment to the government at a fixed price, which was less than the market value.

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The bitter dissenting opinion was signed by the “Four Horsemen” — the four conservative Supreme Court judges. Written by Justice James C. McReynolds, it accused the government of ignoring contractual obligations in order to enrich itself. McReynolds predicted that the ruling foreshadowed the confiscation of private property and financial chaos. Extemporaneously, he declared that “this is Nero at his worst,” and “shame and humiliation are upon us now.” He concluded that the Constitution “is gone.”

Certainly, the gold clause was gone for several decades.



## The clause restored

In 1974, under President Gerald Ford, private gold ownership became legal once more. The situation regarding gold clauses was not so clear, however. On December 9, 1974, the Treasury Department issued a press release entitled “Statement on Gold Clause Resolution.” The Treasury saw nothing inconsistent with private ownership of gold and prohibiting gold clauses. But it concluded that “this area of the law is subject to varying legal interpretations and, as in other cases of statutory construction, the final arbiter must be the courts.”

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**As long as the clause existed, the government could not effectively detach from the gold standard.**

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In early 1977, the District Court for the Southern District of New York heard *Feldman v. Great Northern Ry. Co.* The question under consideration was whether “repealing the long-standing prohibition on private ownership of, and speculation in, gold, also repealed the ... prohibited enforcement” of gold clauses. Just as the Treasury had thrown the question to the courts, the court now threw it to Congress. “It is Congress’ prerogative, not ours, to find and legislate that the

public policy declaration of the Gold Clause Resolution [that annulled the gold clause] is no longer operative.” This effectively re-legalized the clause. Congress later reinstated its use in contracts issued after October 1977.

Why, then, did gold clauses not enjoy a vibrant revival? *The Gold Clause: What It Is and How to Use It Profitably*, edited by Henry Mark Holzer, explained that long-term loan contracts through which a debtor may be required to pay back far more in gold-equivalent dollars than the face value of the contract itself may run afoul of state anti-usury laws. Although Holzer proposed a way of side-stepping the usury issue — namely, by requiring repayment in physical gold — the clause remains in a legal gray area.

That is a shame. The gold clause became a standard feature of business and credit contracts because it safeguarded private contracts against inflation by government or unforeseen forces. Roosevelt destroyed the gold clause for its virtues, not for its flaws. As long as the clause existed, the government could not effectively detach from the gold standard.

Instead of lobbying to return the dollar to a gold standard, however, free-market advocates should de-

mand a free-market monetary system, one whereby the marketplace chooses the best money and people are free to use gold clauses — or clauses denominated in any other commodity — in their contracts.

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*We must choose between freedom and fear — we cannot have both. If the citizens of the United States persist in being afraid, the real rulers of this country will be the fanatics fired with a zeal to save grown men from objectionable ideas by putting them under the care of official nursemaids.*

*— Zechariah Chafee Jr.*

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