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The least initial deviation from the truth is multiplied later a thousand fold.

— Aristotle

FUTURE OF FREEDOM

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The Future of Freedom Foundation

11350 Random Hills Road

Suite 800

Fairfax, VA 22030

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www.fff.org · fff@fff.org

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703-934-6101

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How We Got a National-Security Police State, Part I

by *Jacob G. Hornberger*



The biggest mistake America has ever made since the inception of our country was the conversion of the federal government from a limited-government republic to a national-security state. It is the reason that all of us have been born and raised under what can only be called a national-security police state.

Throughout history, governments have been vested with inherent powers to do what officials felt was in the best interests of the people. Our American ancestors rejected that concept insofar as the federal government was concerned. The Constitution created one of the most unusual governmental structures ever — one in which the federal government would not have the

traditional powers that were inherent to government. Instead, the federal government's powers were limited to those few powers that were enumerated in the Constitution. If a power wasn't listed, it simply could not be exercised.

This radically different governmental structure shocked the world. People couldn't believe that a citizenry of a country was actually dictating to their government what it could and couldn't do. Everyone was accustomed to the opposite — where government dictates to the citizenry what they can and cannot do.

A limited-government republic

A limited-government republic is what Americans wanted. They didn't trust the federal government. Unlike so many Americans today, our American ancestors never believed that the biggest threat to their freedom and well-being lay with foreign regimes or foreign groups. Instead, Americans were convinced that the greatest threat to their freedom and well-being lay with their very own federal government. That's why they wanted it to have so few powers — so that it would lack the ability to do bad things to them.

Thus, for more than a century, the United States had only a small, basic military force — one that was

sufficiently large to protect settlers from attacks by Native Americans and to serve as a mobilizing force in the event the United States was ever invaded. Our American ancestors fiercely opposed a large, permanent military-intelligence establishment — what they called “standing armies” — because they believed that a standing army would ultimately destroy their freedom and their well-being. They instead believed in the concept of “citizen soldiers” — well-armed and self-trained citizens who would be willing to come to the defense of their country if it were ever invaded by a foreign power.

For more than a decade, the federal government operated without the ability to forcibly extract money from people.

Prior to the Constitutional Convention, Americans had been operating under the Articles of Confederation, under which the federal government’s powers were so few and weak that it didn’t even have the power to tax. Imagine: for more than a decade, the federal government operated without the ability to forcibly extract money from people.

The purpose of the Constitutional Convention was simply to

modify the Articles of Confederation. Thus, imagine the surprise of our ancestors when they learned that the Convention came out instead with a proposal for a different governmental structure — a limited-government republic — one that gave the federal government more power, including the power to tax.

Needless to say, Americans were extremely leery. But they finally decided to go along with the deal under the assurance that the federal government’s powers were to be limited to those few powers enumerated in the Constitution.

The Bill of Rights

But there was one condition that Americans imposed in return for accepting the new Constitution. They demanded the enactment of a Bill of Rights immediately after ratification of the Constitution. The Bill of Rights reflected the conviction of the American people that the federal government was an enormous threat to their freedom and well-being. With the Bill of Rights, Americans wanted to drive the point home — that federal officials were absolutely prohibited from infringing on people’s fundamental, natural, God-given rights.

The Bill of Rights should actually have been called the Bill of Pro-

hibitions. That's because it doesn't give people rights at all. As the Declaration of Independence observes, people's rights preexist government. It is the duty of government to protect, not destroy, such rights.

Thus, the First and Second Amendments protected from federal assault such rights as freedom of speech, freedom of religion, freedom of assembly, and the right to keep and bear arms. The Ninth Amendment made it clear that people have more rights than those enumerated in the Bill of Rights.

An unusual society

Because its powers were so few, throughout the 19th century the federal government didn't have much to do. The result was the most unusual society in history. Imagine:

- No income taxation, income-tax returns, or IRS. People were free to keep everything they earned, and there was nothing the federal government to do about it.
 - No Social Security, Medicare, education grants, public schooling, farm subsidies, or other socialist programs.
 - No public (i.e., government) schooling systems.
 - No drug laws.
 - No immigration controls.

- No Federal Reserve or fiat (i.e., paper) money. The official money was gold and silver coins.

- Few economic regulations. No minimum-wage laws. No occupational-licensure laws.

- No sanctions or embargoes.
- No coups and no foreign wars in Europe, Asia, or Africa.

- No Pentagon, military-industrial complex, "defense" industry, CIA, NSA, or FBI.

Never in history had such a society existed. We know that it wasn't a perfect libertarian paradise, especially given slavery and lack of women's rights, but our American ancestors showed what was possible to achieve with respect to freedom and genuinely limited government.

The Fourth, Fifth, Sixth, and Eighth Amendments

Within the Bill of Rights was a fascinating grouping of four amendments: the Fourth, Fifth, Sixth, and Eighth Amendments. Our ancestors believed that at some point, federal officials would want to kill people, incarcerate them, or take away their property. Thus, those four amendments address what must happen before those things can occur.

For example, the Fifth Amend-

ment prohibits the federal government from killing people without “due process of law.” Due process was a term that stretched all the way back to the Magna Carta, when the barons of England required King John, at the point of a sword, to acknowledge that his powers over them were not omnipotent.

Over the centuries, due process had come to encompass two requirements: (1) a person would have to be formally notified of the charges against him before the government could kill him or incarcerate him, and (2) the person would have to be accorded a trial, where the government would be required to prove his guilt beyond a reasonable doubt. If those two requisites weren’t meant, the federal government could not kill or incarcerate a person.

There is something important to note about the due process clause: Our ancestors did not limit it to American citizens. The protections of due process also extended to foreigners.

The Eighth Amendment gave a targeted person the option of choosing a jury trial, with the jury consisting of regular citizens, rather than having a judge decide the guilt or innocence of the accused. Our American ancestors didn’t trust

judges to make such a determination.

Our ancestors were convinced that federal officials would end up keeping people incarcerated for indeterminate periods of time. To prevent that from happening, the Sixth Amendment guaranteed people the right to a speedy trial.

Our ancestors believed that federal officials would want to kill people, incarcerate them, or take away their property.

Our ancestors also believed that the federal government would inevitably attract people who relished inflicting cruel and unusual punishments on people. Thus, the Eighth Amendment prohibits the federal government from doing that.

Among the unenumerated rights mentioned in the Ninth Amendment was privacy — that is, the right to be left alone by the government — the right not to be spied on and monitored by government officials.

After the Constitutional Convention was finished, people asked Benjamin Franklin, “What do we have, a republic or a monarchy?” Franklin replied, “A republic, if you can keep it.”

Americans were able to keep their limited-government republic in existence for some 150 years. But it came to an end with the decision to convert the federal government to a national-security state after World War II, when the national-security police state under which we live today came into existence.

A national-security police state

What is a police state? It is a government that wields omnipotent powers. To put things into context, North Korea is a national-security state. So is China. And Russia, Egypt, and Saudi Arabia. And post-World War II United States.

If any part of a government wields omnipotent powers, the entire government wields omnipotent powers.

Usually in a national-security state, the entire government is controlled and operated by the military-intelligence establishment. China and Egypt are good examples. An interesting aspect of the U.S. national-security state, however, is that the three original branches of the federal government — the executive, legislative, and judicial—continued operating under the

limited-powers concept of the Constitution. Therefore, after the conversion, there was still a veneer of a limited-government republic, which gave comfort to people who didn't want to acknowledge the significance of the conversion.

It was the new national-security branch of the government that was vested with omnipotent, totalitarian powers. At the risk of belaboring the obvious, if any part of a government wields omnipotent powers, the entire government wields omnipotent powers. In such a case, the other three branches essentially become supportive elements of the branch that is wielding the omnipotent powers. In fact, as Tufts University law professor Michael Glennon details in his excellent and insightful book *National Security and Double Government*, over time, the national-security branch of the government took control over the federal government, especially with respect to foreign policy, while permitting the original three branches to maintain the veneer of being in charge.

In regimes like China and Egypt, the military-intelligence establishment is one great big monolithic enterprise. In the United States, the national-security establishment consists of the Pentagon,

the military-industrial complex, the vast “defense” industry, the CIA, the NSA, and, to a certain extent, the FBI. It is these agencies that maintain the national-security police state under which modern-day Americans live.

Consider, for example, the power of assassination. From the time the CIA was called into existence, it wielded the power of assassination. At first it was only the CIA that engaged in assassination, but later, the Pentagon began exercising the power as well.

At the risk of belaboring the obvious, assassination does not involve due process of law. That is, before a person is assassinated, he is not provided formal notice of charges and is not provided with a trial. He is simply killed. The CIA’s and Pentagon’s power to assassinate people clearly nullified the Fifth Amendment’s due process clause, which, as I stated above, expressly provides that no person shall be deprived of life without due process of law.

Assassination is the ultimate power that any totalitarian regime can wield. In the United States, this power is omnipotent. The Supreme Court has made it clear that it will not interfere with the national-security establishment’s power of assassination, no matter what the

Fifth Amendment states. The court has held that it lacks the expertise to determine matters of national security, including assassination, and, therefore, it just defers to the expertise of the Pentagon and the CIA in such matters.

The CIA’s and Pentagon’s power to assassinate people clearly nullified the Fifth Amendment’s due process clause.

It is worth noting that the power of assassination extends not just to foreigners but also to Americans. In fact, the national-security establishment has actually assassinated both foreigners and Americans. It is also worth noting that the power to assassinate people applies not just to foreign lands but also to the domestic United States. That’s because the “global” war on terror, which is a popular justification for assassinating people, obviously encompasses the domestic United States.

Consider torture, another police-state power wielded by the national-security establishment. It would be difficult to find a better example of a “cruel and unusual” punishment than torture. Thus, the provision of the Eighth Amendment that prohibits such punishments has clearly been nullified.

When it comes to torture, the federal judiciary has, once again, taken a passive, deferential, and even supportive role. It is important, again, to point out that the power to torture people extends not just to foreigners but also Americans. That was what the Jose Padilla case was all about. He was an American citizen, and the federal judiciary upheld the Pentagon's power to torture him.

The Pentagon and the CIA also wield the power to keep people incarcerated for as long as they want without according them a trial, in contravention of the speedy-trial provision of the Eighth Amendment. In fact, there are people who have been incarcerated at the Pentagon's and CIA's prison and torture center at Guantanamo Bay for more than 20 years without a trial. Officials have long promised them a trial, but it never comes. And even if it did come, it would be in the form of a kangaroo military tribunal rather than a jury trial as provided in the Sixth Amendment.

The conversation of the federal government to a national-security state also brought into existence the power to engage in mass secret surveillance of the American people, thereby nullifying their natural, God-given right of privacy, one of

the unenumerated rights encompassed by the Ninth Amendment. That's what the Edward Snowden revelations were all about. Snowden revealed that federal officials were engaged in secret mass secret surveillance of the American people.

When it comes to torture, the federal judiciary has, once again, taken a passive, deferential, and even supportive role.

Even though federal officials acknowledged that Snowden had told the truth and that their surveillance contravened the principles of a free society, if anyone thinks they have stopped monitoring people's Internet activity, he is hopelessly innocent and naive. After all, why would they stop? No official was indicted, lost his job, or was even reprimanded for that surveillance. The only person who was punished was Snowden, the person who revealed the wrongdoing to the American people. They went after him with a vengeance. In fact, my hunch is that the only reason they haven't assassinated him is because they haven't figured out how to get the assassin out of Russia, where Snowden is consigned to living to avoid a U.S. criminal prosecution.

Snowden's case is similar to that of Julian Assange, the Australian citizen who disclosed dark-side secrets of the national-security establishment to the world through his organization WikiLeaks. As with Snowden, they have pursued Assange with a vengeance, vowing to extradite him to the United States to stand trial under a 1917 World War I law called the "Espionage Act." Like Snowden, Assange's only "crime" was to disclose the truth about the national-security state's illegal and improper actions.

Sending a message

Both the Snowden and Assange cases reveal an implicit pact that was entered into between the American people and the national-security establishment when the conversion to a national-security state took place. The pact was that the national-security establishment would use its omnipotent powers to do unsavory things but that it would keep such things secret from the American people so that their consciences would not be troubled over what their government was doing in their name.

In the minds of U.S. officials, Snowden and Assange interfered with that pact by bringing some of those unsavory actions to the attention of the American people, which indeed did cause consternation among many Americans. Thus, Assange and Snowden had to be punished for having interfered with the pact. Perhaps more important, U.S. officials have used them to send a message to anyone else who contemplates disclosing the national-security establishment's dark-side secrets to the American people: "Do that and prepare to have your life destroyed, as we have done with Snowden and Assange."

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

NEXT MONTH:
"How We Got a National-Security Police State, Part 2"
by Jacob G. Hornberger

Biden the Bogus Benevolent Dictator

by James Bovard



On July 4, President Biden declared, “Liberty is under assault ... rights we assumed were protected are no longer.” Biden, however, was referring solely to a few Supreme Court decisions he deplored, not to the federal supremacy he championed for almost 50 years in the Senate and the White House.

Though Biden took office preaching the need for “unity,” he increasingly rules like an elective dictator, relying on executive orders and dubious decrees. The Constitution is not permitted to impede the president from any action that might temporarily increase his approval ratings by one or two percentage points. Biden’s arbitrary actions are thrilling some of his supporters. Many of the protestors who denounced Trump during his

presidency were not opposed to dictators per se; they simply wanted different dictates, and Biden is doing his best to satisfy their demands.

Mandates for all

On his first day in office, Biden issued an executive order compelling people to wear face masks any time they were on federal property. The edict had an unwritten exemption for Washington Poohbahs. Biden went to the Lincoln Memorial a few hours after signing the order, where he posed by the statue of Abraham Lincoln; neither Lincoln nor Biden were wearing a mask. Biden spokeswoman Jen Psaki scoffed at a reporter’s concern over the apparent crime: “He was celebrating a historic day in our country.... We have bigger things to worry about.”

Biden’s order inflamed legions of junior Stasi, who screamed in rage at anyone hiking in national parks without a mask. If Biden has a right to compel everyone to wear a mask on property controlled by the National Park Service, he would also have the right to dictate that people wear two masks — a policy endorsed by flip-flop king COVID Czar Anthony Fauci on Tuesdays and Thursdays but not on other days of the week.

Biden issued an executive order early last year proclaiming “the goal of conserving at least 30 percent of our lands and waters by 2030.” That target would require almost tripling the amount of land under government restrictions — an area twice the size of the state of Texas. Farmers dread future decrees that could hogtie them in perpetuity. The Biden administration is also pushing to revive the Obama-era definition of wetlands that would effectively permit federal control over “virtually any wet spot — or occasionally wet spot in the country, including ditches, drains, seasonal puddle-like depressions, intermittent streams, ponds, impoundments, prairie potholes, and large ‘buffer areas’ of land adjacent to every waterway.”

Unfortunately for Biden, he cannot also command people to have delusions about politicians being trustworthy.

Last November, the Supreme Court struck down the Biden administration’s attempt to perpetuate a national moratorium on evictions of renters. Six justices scoffed that the administration’s legal defense relied “on a decades-old statute that authorizes ... measures like fumiga-

tion and pest extermination.” The court declared, “Our system does not permit agencies to act unlawfully even in pursuit of desirable ends.” The decree (initially promulgated by President Trump) profoundly disrupted housing markets in many areas and turned struggling landlords into hostages of renters who were tacitly encouraged by the feds to cease paying their bills. Biden extended the decree even though he publicly admitted, “The bulk of the constitutional scholarship says that it’s not likely to pass constitutional muster. But there are several key scholars who think that it may — and it’s worth the effort.” Biden’s standard for “constitutional” apparently includes any dictate that might conceivably be accepted by five Supreme Court justices.

Last December, Biden issued an executive order to “rebuild trust in government.” Unfortunately for Biden, he cannot also command people to have delusions about politicians being trustworthy. Biden’s executive order called for “transforming federal customer experience and service delivery” from the Social Security Administration and other agencies. But Biden is failing as badly as Mussolini did when he promised to make the trains run on

time. Social Security Administration local offices were shut for more than 600 days straight. Federal bureaucrats stayed home, “imposing hardships on millions of people who need to apply for benefits, apply for a card” and wounding “many of those in greatest need of its services,” according to the *Washington Post*. Disability advocates and congressional Republicans “contend that the Biden administration is kowtowing to [government employee] unions” in permitting the offices to stay closed year after year (while workers draw full pay for sitting at home).

COVID mandates run amok

In April, federal judge Kathryn Kimball Mizelle struck down the Biden administration’s mask mandate for air travel, ruling that agencies were not permitted to “act unlawfully” to justify even desirable ends. Mizelle pointed out that the Centers for Disease Control had violated notice and comment guidelines for the proposed mandate. While the CDC claimed that it was vital to compel all passengers to mask up, it did “not explain why all masks — homemade and medical-grade — are sufficient.” The homemade masks have been a farcical remedy from the start — nothing

but a placebo designed to alleviate the spread of anxiety. Mizelle pointed out that the CDC mandate “does not require universal masking. It exempts individuals who are ‘eating, drinking, or taking medication’ and a person who is ‘experiencing difficulty breathing’ or who is ‘feeling winded.’” The end of the mask mandate resulted almost overnight in a huge decrease in conflicts between passengers and flight attendants.

Biden issued the equivalent of a declaration of war on 80 million unvaccinated Americans.

Law professor Jonathan Turley observed, “President Biden has arguably the worst record of losses in [federal court] the first two years of any recent presidential administration.” Perhaps Biden’s biggest power grab was his decree that more than 80 million Americans working for large private companies must get a COVID vaccine injection. But there is no asterisk in the Bill of Rights: “Void in Case of Virus.”

In a televised September 2021 speech announcing the mandate, Biden declared, “My job as president is to protect all Americans.” Actually, his oath of office was to uphold and defend the Constitution, but no matter. Biden issued the

equivalent of a declaration of war on 80 million unvaccinated Americans, portraying them as Public Enemy Number One (except for postal workers, who the White House exempted from the mandate due to the clout of postal unions). Biden castigated the unvaxxed: “We’ve been patient but our patience is wearing thin. And your refusal has cost all of us.” Biden’s declaration sounded like the threat a dictator makes prior to invading a foreign nation.

Biden finger-wagged: “This is not about freedom or personal choice. It’s about protecting yourself and those around you — the people you work with, the people you care about, the people you love.” But who would protect Americans from Biden’s lawless mandates?

**Biden finger-wagged:
“This is not about freedom or
personal choice.”**

Biden did not formally issue his vaccine order until November 5, when his appointees issued a 150,000+ word *Federal Register* sidewinder, which announced a “job or job” ultimatum to 10 million health-care workers, millions of private workers at companies with more than 100 employees, and millions of federal employees. The of-

ficial notice touted the initial 95% claimed efficacy of COVID vaccines from the clinical trials but ignored recent reports that the efficacy had collapsed to far less than 50%. The announcement explained that the “most important inducement [for vaccination] will be the fear of job loss.” The notice did not cite the provision of the Constitution that entitled presidents to destroy jobs. The ultimatum was justified, according to the *Federal Register* notice, because “vaccination mandates have generally been more effective than merely encouraging vaccination.” In other words, compulsion produces submission.

In January, the Supreme Court obliterated that vaccine mandate, ruling by a 6 to 3 vote that there was no basis in federal law for his decree. (The court upheld Biden’s vaccine mandate for health-care workers despite plenty of evidence of its folly.)

The student loan fiasco

On August 24, Biden invoked an obscure provision in an obscure law — the post-9/11 Heroes Act — to justify hundreds of billions of dollars of handouts to people who had taken out federal college loans. The Heroes Act permits the Education Department “to waive or mod-

ify student loan payments in times of national emergency.” Biden had previously admitted that the law would not justify blanket forgiveness of college loans, but he and his advisors decided to force Americans to pay any price for Democrat votes in the midterm congressional elections. The Department of Education justified Biden’s decree as “a program of categorical debt cancellation directed at addressing the financial harms caused by the COVID-19 pandemic,” including “cancellation for borrowers who have been financially harmed because of the COVID-19 pandemic.” But college graduates were doing much better financially than other Americans who get stuck with the bill for their schooling.

Biden’s actions as president make a mockery of his rhetoric.

Former Education Department lawyer Hans Bader estimates that the total cost of Biden’s student loan write-offs could exceed a trillion dollars. A *Wall Street Journal* editorial headlined “Biden’s Half-Trillion-Dollar Student-Loan Forgiveness Coup” derided his decision as “easily the worst domestic decision of his Presidency.” The *Journal* pointed out that Biden based the

loan cancellation for more than 40 million borrowers “on no authority but his own” power as president. “This is a college graduate bailout paid for by plumbers and FedEx drivers,” the *Journal* noted. As former OMB director David Stockman observed, “Student debt is overwhelmingly an investment in professional credentialization that should never have been an obligation of the taxpayers in the first place.” ZeroHedge quipped on Twitter: “Have colleges raised tuition by \$10,000 yet or are they waiting a few days first?”

There was no rationale for blanket cancellation of student debts that would not also justify blanket cancellation of almost any debt citizens owed to the government. At the same time that Biden is playing Santa Claus with selective loan forgiveness, his administration is hiring 87,000 new IRS agents and employees to squeeze more money out of working Americans.

Biden’s actions as president make a mockery of his rhetoric. In his first speech to Congress in April 2021, Biden declared, “It’s time we remembered that We the People are the government. You and I. Not some force in a distant capital. Not some powerful force we have no control over.” But Biden adminis-

tration officials have worked to vilify anyone who doesn't obey his commands.

Once a president escapes the confines of the Constitution, the American people will eventually find themselves shackled. Despite four years of nonstop howling about the peril from President Trump, many Biden supporters apparently understand nothing about the danger of absolute power. Sen. Daniel Webster warned in 1837 that “the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be

good masters, but they mean to be masters.”

James Bovard is a policy advisor to The Future of Freedom Foundation and 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.

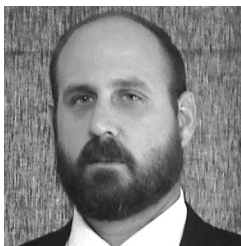
NEXT MONTH:
“Biden’s Bloated IRS Will Skewer Taxpayers”
by James Bovard

Law must be restricted to its proper role; prevention of use of force and fraud against any individual or group by the state, except where necessary to prevent the actor from invading the equal freedom of another; provision of processes and institutions for adjudication and enforced settlement of private disputes; and, provision of reasonable channeling procedures through which private individuals may utilize their voluntarily chosen ends.

— Ridgway K. Foley Jr.

When Will Congress Admit Its Mistakes?

by Laurence M. Vance



“I was wrong,” says a group of *New York Times* opinion writers. “Eight *Times* Opinion columnists revisit their incorrect predictions and bad advice — and reflect on why they changed their minds” is the statement that appears at the end of each of the articles.

“I was wrong about inflation,” writes Paul Krugman. He “made a very bad call” when he said that the \$1.9 trillion American Rescue Plan would not be inflationary. “I was wrong about Al Franken,” writes Michelle Goldberg. She regrets “calling for Franken to resign without a Senate investigation” when he was accused of sexual harassment. “I was wrong about capitalism,” writes David Brooks. “By the time the financial crisis hit, the flaws in modern capitalism were blindingly

obvious, but my mental frames still didn’t shift fast enough.” “I was wrong about the power of protest,” writes Zeynep Tufekci. She concluded that “although today’s big protests look the same as those in the past, the different mechanisms that produce them — in particular, the internet and lately, especially, social media — help determine whether governments or other authorities will see them as a genuine threat or just something that can be dismissed like a focus group.” “I was wrong about Trump voters,” writes Bret Stephens. Although he regrets “almost nothing” of what he said about Trump “and his close minions,” he now believes that “the broad swipe at his voters caricatured them and blinkered me.” “I was wrong about Chinese censorship,” writes Thomas Friedman. He pleads guilty to “premature optimism when it comes to China developing a more open information ecosystem.” “I was wrong about Facebook,” writes Farhad Manjoo. His “2009 exhortation for people to go all in on Facebook” still makes him “cringe.” He now believes that “had we all decided to leave Facebook then or at any time since, the internet and perhaps the world might now be a better place.” “I was wrong about Mitt Romney,” writes

Gail Collins. She regrets the columns she wrote about the “boring” Romney when he was running for president.

Mistakes

Even now, and undoubtedly more so in the future, many doctors, health-care professionals, and writers are saying that they were wrong about the dangers of COVID-19, the effectiveness of its vaccine, and the value of face masks, lockdowns, and other restrictions put in place by the government over the past two years.

How many marriages would not have ended in divorce if only one or both parties had simply admitted: “I was wrong” or “I made a mistake?”

In 2003, Secretary of State Colin Powell made a speech before the United Nations Security Council in which he laid out the Bush administration’s rationale for war in Iraq and gave a detailed description of Iraqi weapons programs that did not exist. Two years later, Powell famously admitted that he was wrong and called the speech “painful” and a “blot” on his record.

In 1985, the Coca-Cola reformulated its iconic soft drink as New Coke and made what was called “the biggest marketing blunder of

all time.” After just 77 days, the original version of Coke was brought back as “Coca-Cola Classic,” resulting in the company losing millions in research and advertising costs.

Powell famously admitted that he was wrong and called the speech “painful” and a “blot” on his record.

Sometimes individual politicians will acknowledge that mistakes were made, but not necessarily by them. In 1997, President Clinton admitted that “mistakes were made” in Democratic Party fundraising. In 2005, Senator John McCain, when asked about the war in Iraq, remarked: “Serious mistakes are made in every war. Serious mistakes were made in this one.” In 2014, New Jersey governor Chris Christie said that “mistakes were clearly made” in reference to the George Washington Bridge lane-closure scandal. But if there is one group of men and women in government that should be acknowledging and profusely apologizing for their mistakes, it is members of Congress.

The legislative branch

As every child is supposed to learn in school, the three branches

of the American government are the legislative, the judicial, and the executive. Furthermore, the legislative branch (the Congress) is divided into two chambers: the House of Representatives and the Senate. It is the legislative branch that makes the laws. Although the House and Senate have some procedural differences between them, according to usa.gov (an official government website), the process by which laws are made is as follows:

1. A bill can be introduced in either chamber of Congress by a senator or representative who sponsors it.

2. Once a bill is introduced, it is assigned to a committee, whose members will research, discuss, and make changes to the bill.

3. The bill is then put before that chamber to be voted on.

4. If the bill passes one body of Congress, it goes to the other body to go through a similar process of research, discussion, changes, and voting.

5. Once both bodies vote to accept a bill, they must work out any differences between the two versions. Then both chambers vote on the same exact bill, and if it passes, they present it to the president.

6. The president then considers

the bill. The president can approve the bill and sign it into law, or he can veto (not approve) the bill.

7. If the president chooses to veto a bill, in most cases, Congress can vote to override that veto and the bill becomes a law. But if the president pocket vetoes a bill after Congress has adjourned, the veto cannot be overridden.

Government agencies make hundreds of rules and regulations based on the authority given to them by Congress.

Of the thousands of bills introduced in Congress every year, only a small percentage of them actually pass in both chambers and are signed into law by the president. Still, Congress passes hundreds of new federal laws every year. Some of them are simple laws like designating the name of a public building. Others, like the Affordable Care Act (ACA, or Obamacare), are over 2,000 pages long. Many Americans think that government agencies also make laws. They don't. However, they do make hundreds of rules and regulations based on the authority given to them by Congress. But every government agency — and bureau, corporation, commission, administration, authority, office,

board, and department — is a creation of Congress. It all goes back to the Congress, which can create a new agency or repurpose or abolish an existing one at will. It is Congress, then, that must own up to its mistakes, and there are a lot of them. In fact, most of the legislation passed by Congress has been a mistake.

Congressional mistakes

When will Congress admit its mistake about Social Security? In 1935, Congress passed, and President Roosevelt signed into law, the Social Security Act. Social Security — now the most expensive item in the federal budget — provides benefits for retirement, disability, survivorship, and death to about 65 million Americans at a price to its 175 million taxpayers of more than a trillion dollars a year.

This legislation was a mistake, because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the authority to fund or operate a retirement system or a disability program. Social Security is an intergenerational, income-transfer, wealth-redistribution scheme that takes money from those who work and gives it to those who don't. Social Security is a government wel-

fare program, not a government retirement program. All retirement and disability programs should be private. No American should live at the expense of any other American.

**In fact, most of the
legislation passed by Congress
has been a mistake.**

When will Congress admit its mistake about the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH)? In 1965, Congress passed, and President Johnson signed into law, the National Foundation on the Arts and the Humanities Act that created the NEA and the NEH. The NEA partners “with state arts agencies, local leaders, other federal agencies, and the philanthropic sector.” The NEH gives grants to “cultural institutions, such as museums, archives, libraries, colleges, universities, public television, and radio stations, and to individual scholars.”

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the authority to subsidize art and culture. And government funding of art and culture is basically just pro-

viding welfare for cultural elitists. The government should not subsidize art and culture for the simple reason that it should not subsidize anything. Funding for art and culture should be entirely voluntary.

When will Congress admit its mistake about Medicare and Medicaid? Also in 1965, Congress passed, and President Johnson signed into law, the Social Security Amendments of 1965 that created Medicare (Title XVIII) and Medicaid (Title XIX). They were the nation's first public health-insurance programs. Medicare is government-funded health care for Americans 65 years old and older and for those who are permanently disabled, have end-stage renal disease, or ALS (Lou Gehrig's disease). Medicaid is government-funded health care for poor Americans of any age and people with certain disabilities.

Funding for art and culture should be entirely voluntary.

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the authority to subsidize any American's health insurance or health care, pay for anyone's prescription

drugs, have health-care programs, or have anything whatsoever to do with health insurance, health care, or medicine. No American should be forced to pay for the health care of any other American. Health care should be completely separated from the state.

When will Congress admit its mistake about the drug war? Congress passed, and various presidents signed into law, the Harrison Narcotics Tax Act of 1914, the Marijuana Tax Act of 1937, the Narcotic Control Act of 1956, the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Anti-Drug Abuse Act of 1986, the Anti-Drug Abuse Act of 1988, the Chemical Diversion and Trafficking Act of 1988, the Illicit Drug Anti-Proliferation Act of 2003, and the Combat Methamphetamine Epidemic Act of 2005. In 1973, Congress created, and President Nixon signed into law, the Drug Enforcement Administration (DEA), which now employs over 10,000 people.

All of this legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the authority to have anything to do with drugs. There should be no rules, restrictions, or regulations

regarding the buying, selling, possessing, growing, processing, transporting, advertising, using, delivering, or “trafficking” of any drug. A free society must include the right of people to take risks, engage in self-destructive behavior, live an unhealthy lifestyle, and undertake dangerous actions — including the use and abuse of drugs.

A free society must include the right of people to take risks and engage in self-destructive behavior.

When will Congress admit its mistake about the Fair Labor Standards Act (FLSA)? In 1938, Congress passed, and President Roosevelt signed into law, the FLSA. It established a national minimum wage of 25¢ an hour (now up to \$7.25 an hour), mandated time and a half for overtime in certain jobs, and established a 44-hour workweek (lowered to 40 hours in 1940).

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the authority to establish a minimum wage, require overtime pay, or mandate how many hours should be in the workweek. Establishing a

minimum wage is simply forbidding workers from freely contracting with firms under mutually agreeable terms. The minimum wage prevents people from selling their labor for whatever amount they choose even though they can sell any of their goods for whatever amount they choose. In a free society, an employee’s hourly wage, workweek hours, overtime pay, vacation pay, holiday pay, sick leave, family leave, and other fringe benefits would be determined solely by contract or agreement between employer and employee. In a free society, government would not interfere in any way with the employer-employee relationship.

When will Congress admit its mistake about the Transportation Security Administration (TSA)? In 2001, Congress passed, and President Bush signed into law, the Aviation and Transportation Security Act that created the TSA. The TSA is charged with protecting “the nation’s transportation systems to ensure freedom of movement for people and commerce.” Most TSA employees are airport screeners.

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the

authority to provide security for private businesses. Airlines are all private businesses. The nation's airports are either owned by local government entities or are privately owned. Either way, they are not owned by the federal government. The federal government has no more authority to provide security at airports than it has authority to provide security at convenience stores. The only security business the federal government should be in is national security. There is no reason why airports and airlines cannot use private screening services, just like many other countries do.

The only security business the federal government should be in is national security.

When will Congress admit its mistake about the National Organ Transplant Act of 1984? It outlawed the sale of body organs and established the Organ Procurement and Transplantation Network (OPTN). It also made it illegal to pay bone marrow donors. Violators are subject to a fine of up to \$50,000 or up to five years in prison, or both.

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the

federal government does the Constitution grant the government the authority to dictate what anyone does with their body organs. The procurement of body organs could be handled entirely and more efficiently by the private sector on the free market. Because everyone owns his own body, anyone should be able to do what he wants with his own body. And if you own your own body, then you certainly also own the organs in your body. And if you own the organs in your body, then you should be able to sell a kidney while you are still alive or any organ upon your death.

When will Congress admit its mistake about the Equal Employment Opportunity Commission (EEOC)? In 1964, Congress passed, and President Johnson signed into law, the Civil Rights Act. Among other things, it established the EEOC, the independent federal agency “responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.”

This legislation was a mistake because discrimination — against

anyone, on any basis, and for any reason — is not aggression, force, coercion, threat, or violence. As far as the law is concerned, therefore, the government should not proscribe it, seek to prevent it, or punish those who practice it. Although employment discrimination is neither necessary in, nor essential to, a free society, the absolute freedom to discriminate in employment on any basis and for any reason is crucial and indispensable.

All charity should be private and voluntary.

When will Congress admit its mistake about instituting the Earned Income Tax Credit (EITC)? In 1975, Congress passed, and President Ford signed into law, the Tax Reduction Act that instituted the EITC. The EITC is based on income and family size. But unlike regular tax credits, which are dollar-for-dollar reductions in the amount of income tax owed, the EITC is a refundable tax credit that is paid to taxpayers even if they have no taxable income.

This legislation was a mistake because nowhere in its list of enumerated powers delegated to the federal government does the Constitution grant the government the

authority to take money from some Americans and give it to other Americans. No American should receive a tax refund from the government of money that he never paid in. To do so is to receive the equivalent of a cash welfare payment. No American should live at the expense of any other American. All charity should be private and voluntary.

Conclusion

Because of the tremendous number of federal laws on the books already, it can be said with absolute certainty that the only new laws that can be considered good laws are those which repeal previous laws in their entirety or undo the damage that they caused. That is, laws that result in increased liberty, freer markets, less intrusive government, lower taxes, sounder money, greater decentralization, less government intervention, fewer government regulations, or a more limited government.

This will happen only if Congress admits its mistakes — like the Supreme Court recently did in the case of *Dobbs v. Jackson Women's Health Organization* that overturned *Roe v. Wade* (1973) and returned the abortion question to the states, where it belongs. As Justice

Samuel Alito wrote in his majority opinion: “Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences.” How much more should Congress admit the mistakes it made in passing all the egregiously wrong legislation that it has!

Laurence M. Vance is a columnist and policy advisor for The Future of Freedom Foundation, an associated scholar of the Ludwig von Mises

Institute, and a columnist, blogger, and book reviewer at LewRockwell.com. Send him email at: lmvance@laurencemvance.com. Visit his website at: www.vancepublications.com.

NEXT MONTH:

“The Free Market Can and Should Be Absolute”
by *Laurence M. Vance*

For their happiness such a government willingly labors, but it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances: what remains, but to spare them all the care of thinking and all the trouble of living?

— *Alexis de Tocqueville*

A Swiss Oasis of Liberal Sanity in a Totalitarian Europe

by Richard M. Ebeling



On September 16, 1939, barely more than two weeks after the beginning of the Second World War in Europe with the German invasion of Poland on September 1, the “Austrian”-oriented British economist Lionel Robbins finished the preface to his short book, *The Economic Causes of War*. The five chapters making up the 125-page volume had originally been delivered as a series of lectures at the Graduate Institute of International Studies in Geneva, Switzerland, in the spring of 1939.

With a new world war now threatening to once again place political and military barriers in the way of relatively easy travel for the exchange of goods and ideas across the European continent, Robbins

wistfully paid homage to that institution and what he considered its significance in the interwar period:

How much of all that was most stimulating and inspiring in the period between the two wars is typified in their lovely college by the lake. Long may it flourish, an oasis of sanity in a mad world, to preserve and advance the great principles of international citizenship for which it conspicuously stands. (Robbins, 1939, p. 9)

In the face of the rising tide of Italian fascism and German national socialism (Nazism) in the Europe of the 1920s and 1930s, (classical) liberal refugee scholars escaping from Benito Mussolini’s and Adolph Hitler’s totalitarian tyrannies searched for any safe place where their lives would not be in danger and they could continue their intellectual pursuits of the ideals of political, economic, and social liberty. The Graduate Institute of International Studies in Geneva, Switzerland, became such a refuge for a number of such individuals, an oasis of liberal sanity in an increasingly totalitarian Europe.

The Graduate Institute's purpose and mission

Yet, insufficient attention has been paid, in my opinion, to the significance of the Graduate Institute in the history of liberal ideas in the first half of the twentieth century. The classical liberal economist and political scientist William E. Rappard (1883–1958) and the economic historian Paul Mantoux (1877–1956) founded the institute in 1927. Its mission was to offer a center for scholarly research into the interrelated problems of international politics, economics, and law and offer an advanced education to a cosmopolitan selection of students interested in the public affairs of the world in which they would be living.

In the 1930s, European liberals were shocked, horrified, and fearful of the rise of totalitarian collectivism.

During the decade of the 1930s, the Graduate Institute, especially under Rappard's daily administrative direction, brought together a fairly unique faculty. It was international in makeup, including both Europeans and Americans. Some of the most prominent members, particularly as the decade progressed,

were refugee intellectuals from countries in Central and Eastern Europe escaping from or threatened by Italian fascism and German Nazism.

What the Graduate Institute ended up creating during the period was that "oasis of sanity," as Robbins called it, in a Europe that seemed to be falling more and more under the grip of totalitarianism. In the 1930s, European liberals were shocked, horrified, and fearful of the rise of totalitarian collectivism. Understanding this is, in my view, essential for appreciating the significance of the institute and those affiliated with it at that time.

The liberal world before the First World War

It needs to be recalled how very much the First World War had been a hurricane-like storm that seemed to shatter the liberal institutional structures and order of the nineteenth century. Nineteenth-century liberalism had ended human slavery in most of the world; it had widened democratic government through expanding voter franchises; it had become more inclusive in extending civil liberties to religious and other minorities; it had abolished many if not most of the earlier mercantilist restrictions on domes-

tic and foreign freedom of trade and occupation; it had attempted to limit the human costs of international conflicts through agreements concerning the “rules of war,” the treatment of prisoners of war, and respect for the life and property of noncombatants in occupied territories during times of war; and it had cultivated the idea of arbitration of international disputes in place of the taking up of arms.

The world was becoming an increasingly global community of commerce, culture, and cooperative market competition.

The world was becoming an increasingly global community of commerce, culture, and cooperative market competition. Standards of living, especially in parts of Europe and North America, had increased significantly for a growing number of people, and the same process was also, slowly but surely, happening in other parts of the world. The quality of life in terms of longevity, health, and material comfort was improving, seemingly on a day-by-day basis.

Equality of rights before the law, even when not fully incorporating all in society, was considered the ideal and the norm that was expect-

ed to serve as the benchmark to judge all future grievances and improvements. Of course, the realities of these ideals were far from being completely practiced even in the most enlightened and advanced nations of the “civilized world.” Discrimination, prejudice, and bigotry against various peoples and minorities abounded. Subject peoples in the far-flung empires of the Western “great powers” too frequently experienced arrogance and cruelties at the hands of their administrative representatives and European colonists. It was for this reason that the British laissez-faire liberal Herbert Spencer (1820–1903) acidly summarized the course of empire when rationalized as a means of bringing the Christian gospel to the heathen: “The policy is simple and uniform — bibles first, and then bombshells.”

But at the same time, it would be a misplaced exaggeration when pointing out these contradictions, inconsistencies, and hypocrisies to then conclude that the stated values and beliefs were all a sham, a cover for baser and less praiseworthy motives in both domestic and global affairs. Ideas do have consequences, and these liberal ideas of personal freedom, representative government, impartial rule of law, free-

dom of association, and market-based voluntary exchange required, indeed, compelled those who espoused them to adjust their practices and policies as the years went by.

The postwar, antiliberal counter-revolution

Then came the First World War and the rising European tyrannies in the postwar period that seemed to classical liberals to be a cataclysm of ideological, political, and economic destruction threatening the end to all that liberalism had achieved in the earlier century.

There was the victory of Lenin and the Bolsheviks in Russia following the 1917 revolution and a three-year bloody civil war, which by the end of the 1920s became Stalin's dictatorship, with its forced collectivization of the land that resulting in millions starving to death in the name of "building socialism"; there was the rise of Italian fascism in 1922 with Mussolini's "march on Rome," with Ill Duce's coining of the term "totalitarianism" that was meant to capture the new collectivist vision of the individual as nothing and the state as everything; and then there was the coming to power of Hitler's national socialism in Germany in 1933, with its swift removal of Weimar democracy and

the imposition of a brutal race-based tyranny enforced by Nazi street thugs and the building of concentration camps.

Said the internationally famous Italian liberal philosopher Benedetto Croce (1866–1952) in 1932:

We remember the old [pre-war] Europe with its riches, its flourishing trade, its abundance of goods, its ease of life, its bold sense of security; we see today the new Europe – impoverished, discouraged, crisscrossed with high tariff walls, each nation occupied with its own affairs, too distraught to pay heed to the things of the spirit and tormented by the fear of worse to come.... Impatience with free institutions, has led to open dictatorships, and, where dictatorships do not exist, to the desire for them. Liberty, which before the war was a faith, or at least a routine acceptance, has now departed from the hearts of men even if it survives in certain institutions.

Guglielmo Ferrero, Italian historian of liberty

The Graduate Institute was to serve, in its modest way, as an intel-

lectual defense against these collectivist and totalitarian trends. The first internationally noteworthy scholar to find refuge and residence at the institute in Geneva was the Italian historian Guglielmo Ferrero (1871–1942). Almost forgotten today, in the first half of the twentieth century, Ferrero was one of the most well-known and respected historians in both Europe and America. He had published a widely regarded five-volume history of *The Greatness and Decline of Rome* (1909), as well as works on *The Ruin of Ancient Civilization and the Triumph of Christianity* (1921) and a comparison of *Ancient Rome and Modern America* (1914).

Ferrero was also a strongly anti-war liberal, having penned a work on *Militarism* (1902) devoted to this theme. In the immediate aftermath of the First World War, he pondered *The Problems of Peace, from the Holy Alliance to the League of Nations* (1919). Its theme was that Europe's conflicts and instabilities had their roots in the search for political legitimacy and stability since the demise of belief in monarchy, symbolized by the beheading of Louis the XVI during the French Revolution; in its place had arisen competing political alternatives (despotism, democracy, national-

ism, and socialism), with the rivalries between them as bases for political legitimacy helping plant the seeds that culminated in the Great War of 1914–1918.

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Strongly anti-fascist, Ferrero had been placed under house arrest by Mussolini's government and was prohibited from teaching or lecturing in Italy. In 1930, he was given permission to leave for Switzerland to take up a chair in history at the Graduate Institute, which he held until his death in 1942. In that tranquil environment, he wrote a series of books on understanding the antiliberal ideas of the time in their historical context, including *Peace and War* (1933); *The Reconstruction of Europe: Talleyrand and the Congress of Vienna, 1814–1815* (1941); *The Principles of Power: Great Political Crises of History* (1942); and his posthumously published lectures from his time at the Graduate Institute on, *The Two French Revolutions, 1789–1796* (1968).

An underlying theme in these works was the growing threats of total war with unimaginably de-

structive weapons due to the unbalancing of the delicate relationship between increasing human liberty and traditional institutional order that somehow prevailed in various ways in the nineteenth century as conservatism grudging gave way under the pressures of liberalism.

Ferrero captured part of the idea behind the Graduate Institute. He offered the sweep of history for understanding man's long struggle for social order, economic liberty, and political legitimacy. He linked the intellectual currents of the liberal nineteenth century with the rise of the collectivist state in the twentieth century that included that new ideology of total war and total state control of humanity. Ferrero expressed its impact on ordinary people in a volume offering *Words to the Deaf* (1926), written while he was still living in fascist Italy:

Little by little, states become monstrous and all-powerful divinities. They force people to work, to fight. They no longer let them sleep; they grind them down and fleece them mercilessly, in the name of liberty, of progress, of country, of king, of emperor, of the republic, of socialism, of the people,

of the proletariat. Multiple names of one and the same duty: to obey, to work, to pay.

And the more demanding the States become, the more complete is the surrender of the people. They coalesce in homogeneous masses; races, nations, classes, parties, professions; they learn to work without rest, like soldiers; they allow themselves to be indoctrinated by the teacher, oppressed by the treasury; maltreated by the magistrate; manhandled by the sergeant; they go to the school, the factory, the barracks; and in this age ... they wear the uniform of three disciplines: labor, state, and army.

Hans Kelsen and Ludwig von Mises, the "Austrian" contingent

The year 1934 saw two significant additions to the Graduate Institute's faculty: the Austrian jurist Hans Kelsen (1881–1973) and the internationally renowned Austrian economist Ludwig von Mises (1881–1973). Kelsen had been a primary author of the 1920 constitution of the postwar new Austrian Republic, following the breakup of the old Austro-Hungarian Empire, a generally liberal constitution that

remained in effect until 1933, when a fascist-type dictatorship was established in Austria. He left Austria in 1930 for a professorship in Germany but was removed from his position by the Nazis in 1933 with the purging of those with Jewish ancestry from the German university system. He accepted a professorship in international law at the Graduate Institute beginning in the autumn of 1934 and remained there until he moved to the United States in 1940, where he accepted a position at the University of California at Berkeley.

Ludwig von Mises was recognized in the 1920s and 1930s as one of the leading figures of the Austrian School of Economics, having developed the “Austrian” theory of money and the business cycle and having also challenged the viability of a centrally planned economic system by questioning the ability for rational economic calculation in a socialist society that has abolished private property in the means of production and ended a functioning competitive price system.

Mises was also widely known as a critic of both communism and Nazism. Indeed, already in 1925, he had analyzed the emerging anti-Marxist ideology of “national socialism” in Germany. He warned

that many Germans were “setting their hopes on the coming of the ‘strong man’ — the tyrant who will think for them and care for them.” He asked, if such a German national socialism came to power and if it wished to militarily strike out in revenge for Germany’s defeat in the First World War, which country might be its logical ally? Mises’s answer was Soviet Russia, the other pariah and outsider of European politics. After all, he said, “German Anti-Marxism and Russian Super-Marxism are not too far apart.” In other words, Mises anticipated the Nazi-Soviet Pact of August 1939, almost 15 years before the Hitler-Stalin alliance that set the stage for the beginning of the Second World War in Europe.

Mises warned that many Germans were “setting their hopes on the coming of the ‘strong man’ — the tyrant who will think for them and care for them.”

When William Rappard wrote to Mises in March 1934 with an offer of a visiting position at the Graduate Institute as a Professor of International Economic Relations, Mises almost immediately accepted the invitation and moved to Geneva for the autumn 1934 term. This vis-

iting professorship ended up being renewed each year, and Mises remained at the Graduate Institute until the summer of 1940, when he moved to the United States, where he lived until his death in 1973.

Wilhelm Röpke, outspoken enemy of national socialism

Adolph Hitler's coming to power in Germany in January of 1933 opened a floodgate of refugees looking for a new resting place in the face of Nazi brutality, terror, and anti-Semitism. In the weeks following Hitler's appointment as German chancellor, the liberal, free-market economist Wilhelm Röpke (1899–1966) publicly warned his fellow Germans of the evil that was being set loose on their country. Nazism represented a new “illiberal barbarism” based on: “servilism,” with the state “the subject of unparalleled idolatry”; “irrationalism,” with its call back to “blood,” “soil,” and a “storm of destructive and unruly emotions”; and “brutalism,” under which “every immoral and brutal act is justified by the sanctity of the political end.” If the German people actively or passively accepted this, then “a nation that yields to brutalism thereby excludes itself from the community of Western civilization.”

Röpke's public criticisms and scorn for the new Nazi epoch in Germany, which included his protests against the expelling of Jewish professors from German universities, resulted in his own dismissal from the University of Marburg and a visit from two Nazi thugs who warned him of the consequences of being out of step with the “new order.” For the safety of his family, Röpke went into exile with an appointment at the University of Istanbul in Turkey in 1934. He accepted a professorship at the Graduate Institute in Geneva in 1937, a position that he held until his death in 1966. Three times during the war years, he had offers of teaching positions in the United States. Each time, he politely declined, saying that his duty was to remain in neutral Switzerland and to be a voice of market-oriented liberal reason for the reconstruction of a postwar Europe, including a post-Nazi Germany.

For the safety of his family, Röpke went into exile with an appointment at the University of Istanbul in Turkey in 1934.

Röpke spent the war years at the Graduate Institute writing a trilogy: *The Social Crisis of Our Time* (1942),

Civitas Humana (1944), and *International Order* (1945), in which he insightfully analyzed the philosophical, social, cultural, and economic ideas and ideologies that had brought about the demise of the older liberal world order. Copies of his books were smuggled into Nazi Germany during the war years, and they greatly influenced and inspired the surviving liberal-oriented German economists, who used his ideas and policy views to help bring about free-market reforms in post-war West Germany after 1945.

Michael Heilperin and the dangers of economic nationalism

One other member of the Graduate Institute's faculty is worth mentioning, Michael A. Heilperin (1909–1971). Originally from Warsaw, Poland, Heilperin joined the faculty in 1937, around the same time as Wilhelm Röpke. His writings included *International Monetary Economics* (1939), *Economic Policy and Democracy* (1943), *The Trade of Nations* (1952), *Studies in Economic Nationalism* (1962), and *Aspects of the Pathology of Money* (1968). A continuing theme in these works was the political and economic danger of collectivist planning, the neomercantilism in Keynesian economics, and the in-

stabilities arising from paper monies in undermining economic prosperity through monetary inflations. For a time during the war, he worked in New York City for Bristol-Myers Company, for which he wrote free-market pamphlets, including one on “How Full is ‘Full Employment?’” (1944) challenging Keynesian “stimulus” policies in the United States.

William Rappard, an international man against totalitarianism

But the guiding figure at the Graduate Institute was its director, William E. Rappard. Born in New York City of Swiss parents while his father was working in the United States, he completed his graduate studies in economics at Harvard University (1906–1908) and then spent the following academic year (1908–1909) at the University of Vienna attending, among other courses, Eugen von Böhm-Bawerk's graduate seminar. He taught political economy at Harvard University (1911–1913), following which he was appointed a professor of economic history and public finance at the University of Geneva in Switzerland.

Besides bringing together a high-caliber faculty of international scholars at the Graduate Institute,

Rappard initiated an annual series of guest lectures on a wide variety of topics concerning political, economic, social, and legal issues surrounding international peace, prosperity, and order. The lectures were published in an annual series under the general title, *Problems of Peace*, which appeared in print from 1928 through 1939. In addition, in 1938, a volume of essays, *The World Crisis*, was published marking the tenth anniversary of the Graduate Institute written by members of the Institute's faculty; the contributions to the volume, especially those by Mises, Röpke, Heilperin, and Ferrero analyzed and refuted the collectivist ideologies and policies engulfing Europe.

The twentieth century had seen a return to a dominating political order in the form of communist, fascist, and Nazi regimes.

Every year, individual guest scholars were invited to the institute, usually in the spring, to deliver a series of weeklong lectures on some chosen theme relating to international political and economic relations, with a good number of them later published as books; among these latter lecturers and authors were F. A. Hayek, Lionel Rob-

bins, Louis Rougier, Quincy Wright, Mortiz J. Bonn, and Wilhelm Röpke (before his appointment at the Graduate Institute).

Rappard himself was a prolific writer. If an underlying concern might be assigned to virtually all of Rappard's writings, especially in the 1930s, it would be the threats to a peaceful, prosperous, and free world brought about by the rise and spread of totalitarian and nationalist regimes. In Rappard's eyes, the great achievement of the nineteenth-century liberal movement had been the freeing of the individual from the often harsh and unjustifiable constraints of oppressive governments in the areas of personal, social, political, and economic life. The twentieth century, however, had seen a return to a dominating political order in the form of communist, fascist, and Nazi regimes.

All of these alternatives on the collectivist theme claimed to be imposing rigid and all-encompassing political-economic systems on society in the name of "the people" and their well-being; unfortunately, too many, especially in European societies, were enraptured by the ideas of the rise of paternalistic governments promising to take care of them and provide for all their needs

and desires. Or as he expressed his concern: “The individual has increasingly demanded of the state services which the state is willing to render. Thereby, however, he has been led to return to the state an authority over himself which it was the main purpose of the revolutions in the beginning of the nineteenth century to shake and break.” This had created what Rappard called, *The Crisis of Democracy* (1938), in which the free society was facing the challenge of being totally undermined and overthrown in all of its political, economic, and social facets.

“The individual ... has been led to return to the state an authority over himself which it was the main purpose of the revolutions to shake and break.”

Central to the free and liberal world community, Rappard argued in a number of insightful essays, was the ideal of an international order in which countries respected the individual rights of their own citizens and mutually those of the citizens of other nations through a regime of free and open commerce and exchange. These noticeable achievements of the pre-World War I era were being supplanted by eco-

nomic nationalism and protectionism in the form of dangerous economic and military armaments. All the best efforts of friends of a peaceful and prosperous world had failed, and finally led to the disaster of the Second World War.

In the post-World War II period, Rappard continued to warn of the dangers from superpowers attempting to plan and “police” the world, and he articulated the premises and principles behind Swiss neutrality and nonintervention as a guide for international politics in general.

The Geneva Graduate Institute’s lasting legacies

By serving as that European oasis of liberal sanity in the interwar period of the 1920s and 1930s, Rappard and the Graduate Institute not only most likely saved the lives of some scholars who might otherwise have been imprisoned, tortured, or even murdered by the Nazis, especially those like Ludwig von Mises, Hans Kelsen, and Michael Heilperin, who were Jewish. They also provided the safe and peaceful intellectual environment for some of the surviving classical liberals in Europe to preserve and advance the ideas of liberty in a surrounding ocean of totalitarianism.

In the memoirs Mises wrote after coming to the United States in 1940, he looked back at his six years at the Graduate Institute and said: “There was a friendly atmosphere between teachers and students, and the spirit of genuine liberalism flourished in that unique institution. All round us the barbarian flood was rising and we all knew we were fighting with nothing but forlorn hope.” But as Mises also expressed it in the foreword to the first edition of his 1949 treatise *Human Action*, in the “serene atmosphere of this seat of learning,” he was able to write the original German version of his great work on economics and the social philosophy of the free society.

The Geneva Graduate Institute of International Studies’ lasting legacies from that period between the world wars are the ideas of some of the great European classical liberals of the twentieth century who found

a tranquil place of safety to reside or visit in that rising tide of tyranny, terror, and war. Let us hope that such oases always exist somewhere to help preserve the spirit of classical liberalism during times of ideological and philosophical crisis.

Richard M. Ebeling is the BB&T Distinguished Professor of Ethics and Free Enterprise Leadership at The Citadel. He was professor of Economics at Northwood University and at Hillsdale College and president of The Foundation for Economic Education, and served as vice president of academic affairs for FEE.

NEXT MONTH:
“**Monetary Freedom Instead
of Central Banking**”
by *Richard M. Ebeling*

The Historical Foundation of Civil Liberties, Part I

by Tom G. Palmer



When we think about civil liberties, it's very common in contemporary discourse to distinguish civil liberties from economic liberties, even political liberties. And occasionally, you'll hear the term civil liberties used interchangeably with personal liberties. Civil liberties are commonly distinguished from or even considered superior or prior to economic liberties. That's a topic of some controversy, and I'm going to circle around at the end of this presentation to that very question. Such distinctions between civil liberties and other liberties are quite recent, actually dating just from the previous century. So for a far longer period of time, civil liberties re-

ferred to those liberties that are constitutive of civil liberty — that is to say, the liberties enjoyed by people in a civil society.

John Locke, one of the very important figures in establishing the intellectual foundations of modern liberty, put it very neatly. He talked about natural liberty — that is to say, the liberty people had prior to joining a civil society — and civil liberty:

The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it.

What's very important when examining this is to understand that property for Locke and people of his generation and for many years to follow didn't mean what it means today. Today in contemporary English, we say, "This is my property." It means "my stuff." For Locke, it had a much broader meaning, referred to lives, liberties, and estates, which

I call by the general name of property. So property was anything to which you had, as we would say, a right. A right to your life, a right to your liberty, and a right to your estate, which is your stuff. The term property today has shrunk substantially to mean mainly your stuff, your house, your car, your land, your farm, and so on.

Blackstone pointed out that civil liberty was incompatible with arbitrary and unrestrained power.

If we look at later writings about civil liberty, John Brown, an English divine or prelate, put it very succinctly. He said that the necessity of curbing and fixing the natural desires or unlimited activities of human beings in a natural state was to be given up when we join a state of civil liberty. And it was from this restraint on our ability or power to harm other people that civil liberty was derived. So civil liberty referred to the liberty that people enjoyed in a civil society.

William Blackstone, in his very famous runaway best-seller, *The Commentaries on the Laws of England*, had a huge impact on thinking in the American colonies. It's very difficult to overstate the im-

portance of Blackstone in the foundation of the American republic, certainly the American Revolution prior to that, and the establishing of how people thought about law and freedom. He pointed out that civil liberty was incompatible with arbitrary and unrestrained power. "One of the principal bulwarks of civil liberty," he said of the British Constitution, was "the limitation of the king's prerogative by bounds so certain and notorious, that it is impossible he should ever exceed them, without the consent of the people." So civil liberty meant living in a society in which power was very carefully controlled and bounded.

The liberty of people in a civil society

Civil society is a term that we often hear bandied about today. It's been used in different and sometimes contradictory ways over the centuries, so it's important to specify what you mean by it. It's a term of sociological-political analysis. We think of government and state and so on. To understand the meaning of civil society, it helps to understand a little bit of its own history. Like many modern institutions, it arose in the reemerging urban orders of Europe, and it distinguishes civil societies from feudal societies and other kinds of societies. It's

comparable to the tradition of democratic government — government by the demos, by the people — that was pioneered in ancient Greece. But it evolved in new conditions that encouraged public deliberation and voluntary cooperation, and it replaced tribalism, political tyranny, and absolutism.

The reemergence of these urban institutions in Europe that we call civil society were influenced by the rediscovery of classical texts — texts from the ancient world — that provided a political terminology, often derived from Latin or Greek, that would be used to describe the ways in which people lived together in legal relationships.

One thing that's important to grasp is that civil societies are not the natural or equilibrium state of mankind. That was a big error that the American government and other governments were informed by when they invaded Iraq and Afghanistan. Their view was that a civil society is the natural state of humanity, and that all you have to do is to remove some obstacle — a dictator, like Saddam Hussein or the Taliban or al-Qaeda — and then society will turn out to be just like Oregon or Belgium. Obviously, it didn't turn out that way, and the reason is that civil societies are

characterized by equality of citizens, by civil liberty, which can be expressed as a multitude of liberties. That's why we talk about civil liberties in the plural. But it has to be developed. It's not something that just naturally happens. It's difficult and takes time to establish principles such as the rule of law, equality before the law, and the presumption of liberty, a topic that I'll return to toward the end.

One thing that's important to grasp is that civil societies are not the natural or equilibrium state of mankind.

So let's start to understand civil society, the society of equal liberty, by looking at the idea of liberty. If you go back to the archaic world in the works of Homer, there are four mentions of liberty, and it's quite interesting. Three of them concern women, and the scholars have suggested that liberty emerges primarily in the contrast between the free person and the slave, that it was that distinction that was so striking to people in the archaic world.

Here we have a scene from *The Iliad* in which Hector is worried about what happens if Troy falls. He says specifically to his wife, Penelope, "It is not so much the pain to

come of the Trojans that troubles me ... as troubles me the thought of you, when some bronze-armoured Achaian” or Greek “leads you off, taking away your day of liberty. But may I be dead and the piled earth hide me under before I hear you crying and know by this that they drag you captive.”

What he means in this context is that women understood that for a city to lose in a conflict with another city meant they would be enslaved. They would become sex slaves. They would become domestic servants. They would be enslaved. The men were going to die in battle, so that very much slavery was an experience women anticipated in the event of defeat. That fundamental idea of liberty, not being enslaved, comes to fill up more of the political space and to carry more connotations of personal independence.

This article is from a transcript of the opening presentation of FFF’s September 21, 2021, conference “Restoring Our Civil Liberties.”

Tom G. Palmer is executive vice president for international programs at Atlas Network, where he holds the George M. Yeager Chair for Advancing Liberty. He is also a senior fellow at the Cato Institute. Before joining Cato, he was a vice president of the Institute for Humane Studies at George Mason University.

NEXT MONTH:
“The Historical Foundation of Civil Liberties, Part 2”
by Tom G. Palmer

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11350 Random Hills Road
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www.fff.org

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703-934-6101