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Laws do not persuade because they threaten.

— Seneca

FUTURE OF FREEDOM

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Opposing America's Participation in World War II

by *Jacob G. Hornberger*



Even in the face of ongoing catastrophes arising out of U.S. interventions in Afghanistan, Iraq, and elsewhere in the Middle East, proponents of empire and intervention still trot out America's entry into World War II to justify their imperialist, militarist, and interventionist philosophy. World War II was the "good" war, they say — a necessary intervention, one that saved the United States and the rest of the world from Nazi Germany.

Let's examine the consequences of World War II to see how "good" that war really was.

When Germany invaded Poland, Great Britain and France declared war on Germany, with the aim of freeing the Polish people from Nazi

tyranny. At the end of the war, it's true that that goal had been achieved. Nazi Germany had been defeated and the Polish people were no longer under Nazi control. That's one reason that Great Britain, France, and the United States celebrate World War II as the "good" war.

But the Polish people didn't feel the same way. That's because the war left them suffering under the brutal communist tyranny of the Soviet Union, America's World War II partner and ally.

Moreover, the Soviet communists killed a lot more people than the Nazis. And don't forget all the critical things that the U.S. national-security establishment said about communists, communism, and the Soviet Union during the Cold War.

But the Soviet Union wasn't any different before and during World War II from what it was after the war. It was always an evil regime, a point that, ironically, Hitler repeatedly emphasized to the German people.

Thus, since World War II left the Poles and Czechs, as well as Lithuanians, Latvians, Estonians, and other Eastern Europeans, under communist rule rather than Nazi rule, they never viewed World War II as the victory U.S. officials did. That's because the Eastern Eu-

Europeans didn't view living under communism any different, in principle, from living under Nazism.

Partnering with the USSR

How did Eastern Europe and East Germany end up under communist rule?

It was President Franklin Roosevelt who delivered those countries into the clutches of the Soviet Union. That's what the Yalta conference in 1945 was all about. He figured that since the Soviet communists were America's wartime partner and ally, there would be nothing wrong with giving the Soviet Union, which at that time was headed by communist tyrant Joseph Stalin, control over Eastern Europe.

In fact, one of the horrible legacies of America's intervention into World War II — one to which few Americans give much thought — is that the United States, in the name of battling evil, partnered with one of the most evil regimes in history — so evil, as a matter of fact, that it later served as a justification for the Cold War, the Korean War, the Vietnam War, the CIA, the NSA, a standing army, a military-industrial complex, foreign coups, support of foreign dictatorships, medical experiments on unsuspecting Americans, and the ever-growing U.S. na-

tional-security establishment — an establishment that, ironically, secretly hired Nazi officials to participate in America's Cold War against Hitler's World War II enemy, the Soviet Union.

When Germany invaded Poland, so did the Soviet Union a few weeks later. The dual invasion of Poland was pursuant to an agreement entered into between Germany and the Soviet Union to divide Poland and give part to Germany and part to the Soviet Union.

It was Franklin Roosevelt who delivered Eastern Europe into the clutches of the Soviet Union.

Yet, when Great Britain issued its declaration of war, it was only against Germany, not against the Soviet Union too. Why? In a moral sense, shouldn't the declaration of war have been against both the Nazi regime and the communist regime?

Of course, one might say that a war against both Germany and the Soviet Union wouldn't have been practical. But since England knew that it lacked the military might to liberate Poland from Nazi Germany, declaring war on Germany wasn't very practical either.

More important, there was never any reason to partner with evil in

the process of battling evil. England and the United States could have fought independently against Germany without partnering with or supporting the Soviet Union.

That raises the concept of “unconditional surrender,” which Roosevelt employed against Nazi Germany. It held that there would be no negotiated surrender by Nazi Germany. The only thing that would be acceptable would be an unconditional surrender to all the Allied powers, including the Soviet Union.

Roosevelt's unconditional-surrender demand, together with his partnership with the Soviet Union, combined with his actions at Yalta, guaranteed a permanent communist takeover of Eastern Europe, East Germany, and the Baltics, which then brought on the Cold War, Korea, Vietnam, coups, support of foreign dictatorships, the CIA, the NSA, assassination programs, and the transformation of the U.S. government into a national-security state, a type of governmental system that is inherent in totalitarian regimes.

If there had been no partnership with the Soviet Union and if there had been no unconditional-surrender demand, a negotiated surrender with Germany would have been a viable possibility. There came a time

on the Eastern front when Adolf Hitler and the Nazis knew they were finished and that it was just a matter of time before Germany would be invaded and conquered from both the east and the west. At that point, it would have been entirely possible to negotiate a surrender that would have sent Hitler and his henchmen to South America and brought independent governments to Germany — all of Germany — as well as to Poland, Czechoslovakia, and the rest of Eastern Europe, and possibly to the Balkans as well.

A negotiated surrender would have meant that countless lives would have been spared with an early termination of the war.

Yes, that would have meant no punishment for high Nazi officials for their crimes. But it also would have meant that countless lives would have been spared with an early termination of the war. It also would have meant that millions of people would have been liberated from Nazi tyranny without being relegated to communist tyranny. A negotiated settlement could also have entailed a release of those who had not yet died in the concentration camps.

Partnering with evil forever sullied the image of the United States. Indeed, ask yourself this: What if England, France, and the United States had instead partnered with the Nazis to liberate Poland from the communists? What would have been the difference in principle with that partnership compared with partnering with communists to defeat Nazis?

War crimes

America's partnership with the communists during the war had other moral ramifications as well. When the Allied powers brought Nazi officials to trial at Nuremberg, they completely ignored the war crimes that had been knowingly and intentionally committed by their partner, the Soviet Union. Those crimes included the mass rapes of German women by Soviet troops as they invaded Germany as well as the murder of 10,000 Polish officers who had been taken prisoner by Soviet troops. Even worse, the United States and England stayed silent and submissive over the Soviet Union's serving as a judge on the Nuremberg War Crimes Tribunal.

We also mustn't forget Operation Keelhaul, by which the U.S. government forcibly repatriated hundreds of thousands of Soviet

troops who had been taken captive by the German government, as well as by the Allied powers, into the clutches of Joseph Stalin and the communists, knowing full well that they were going to be tortured and murdered.

The Allied powers completely ignored the war crimes that had been knowingly and intentionally committed by the Soviet Union.

Among the most shameful actions of the U.S. government during the war was also the mass round-ups and incarceration in U.S. concentration camps of American citizens of Japanese and German descent as well as Japanese and German immigrants living in the United States. U.S. officials also encouraged the arrest and rendition to the United States of Japanese and German immigrants living in Latin America. Many of those prisoners and their families were later used as trade bait to secure the release of Americans held captive in Nazi Germany. The U.S. prisoners were never accused of any crimes. They were punished because of some personal or ancestral connection to Germany or Japan.

Those weren't the only examples of how World War II perverted the

values and principles of the American people. The war brought targeted bombing of civilians, a grave war crime, but one that wasn't punished, owing to the fact that those who committed the crimes were the victors. The bombing of Dresden, a defenseless city inhabited mainly by women, children, and seniors, comes to mind. So do the fire bombings of Tokyo and other Japanese cities.

It is never considered legal or morally proper to kill innocent civilians in order to save the lives of soldiers.

And of course, there were the atomic bombings of Hiroshima and Nagasaki, which U.S. officials continue to justify on the ground that it spared the lives of U.S. soldiers who would have been killed in an invasion of Japan. Never mind that it's never considered legal or morally proper under military codes of conduct to kill innocent civilians in order to save the lives of soldiers.

Here again, the notion of "unconditional surrender" raises its ugly head. If the United States had not insisted on "unconditional surrender," a negotiated surrender entailing the protection of the Japanese emperor would have spared

both American troops and the defenseless civilians at Hiroshima and Nagasaki.

Lies and sacrifices

We also must not forget how it was that the United States got involved in World War II.

Notwithstanding the sympathy that Americans had for England and France in their war against Germany, the overwhelming majority of Americans opposed U.S. entry into World War II. They had seen what U.S. intervention in World War I had accomplished — nothing but the needless loss of more than 100,000 American men in a worthless cause — one that was supposed to bring an end to all future European wars and to make the world, once and for all, safe for democracy. Yet, some twenty years later, England and France were involved in another war against Germany.

Roosevelt even pretended to oppose entry into the war by expressing anti-war sentiment during his 1940 presidential campaign. He assured the American people, "I have said this before, but I shall say it again and again and again. Your boys are not going to be sent into any foreign war."

But he was lying — deliberately lying. In actuality, he was doing ev-

everything he could to get the United States involved in the conflict. He first tried to bait the German war machine into attacking U.S. vessels, so that he could say, “We’ve been attacked! We’re innocent! We now have no choice but to defend ourselves by entering the war.”

But the Germans refused to take Roosevelt’s bait. So, he turned to the Pacific as a “back door” to war by engaging in actions designed to provoke the Japanese into attacking the United States. That’s what the oil embargo on Japan, the seizure of Japanese bank accounts, and the humiliating terms imposed on Japanese officials during pre-war negotiations were all about — to put an ever-tightening noose around Japan so that it would “fire the first shot” against the United States, thereby giving Roosevelt the justification for intervention that he was seeking.

His scheme succeeded on December 7, 1941, when Japanese forces attacked Pearl Harbor and then the Philippines, killing or capturing hundreds of U.S. soldiers who had been left there as bait. Soon thereafter, Germany declared war on the United States, thereby giving Roosevelt what he had been striving for. It is no surprise that public sentiment against the war

disappeared with the attack on Pearl Harbor, as Roosevelt knew it would.

In the early years after the war, Roosevelt proponents claimed that he had no intention of provoking the Germans or the Japanese into attacking the United States. They said that he would never have done such a dastardly thing, especially since it involved the intentional sacrifice of American soldiers.

Roosevelt engaged in actions designed to provoke the Japanese into attacking the United States.

But as the great weight and preponderance of the evidence has accumulated over the decades, Roosevelt apologists have changed their tune. They now say that it was a good thing that he got the United States into the war, even if it was through lies, deceit, intentional provocation, and the willingness to sacrifice American troops. The implication is that the U.S. troops at Pearl Harbor and the Philippines simply had to be sacrificed for the greater good.

What was that greater good? They say that if Roosevelt had not gotten the United States into the war, Japan and Germany would have ultimately conquered the

United States. In fact, it's really the only justification they have left because of how badly things turned out for Eastern Europe and East Germany and, for that matter, China, where the communists ended up taking control a few years after Japan's defeat.

The Japanese attack on Pearl Harbor was never intended to be the first stage in a Japanese invasion of the United States.

But despite all the wartime and postwar propaganda that Japan and Germany were determined to conquer the United States and the rest of the world, the facts belie that claim.

A different outcome?

During pre-war negotiations with U.S. officials, Japan was doing everything it could to avoid war with the United States, in large part because it was preoccupied with its war against China, which was still going on. Moreover, the Japanese attack on Pearl Harbor was never intended to be the first stage in a Japanese invasion of the United States but instead simply a step in breaking free of the noose that Roosevelt was tightening around Japan's neck, especially with respect to a

drastically reduced oil supply that the Japanese army in China desperately needed.

It was no different with Nazi Germany, which was always headed east, toward the Soviet Union (which, ironically, became America's archenemy after the war against Nazi Germany ended). That was reflected by its absorption of Austria and its invasions of Czechoslovakia and Poland. It is a virtual certainty that Hitler was ultimately going to war against the Soviet communists. The last thing that he wanted was a two-front war, much less a war with the United States, which is precisely why Hitler's navy refused to respond to Roosevelt's repeated provocations that would have brought the United States into the war.

Equally important, even if Japan had won its war against China and even if Germany had won its war against the Soviet Union, neither of them would have had the military means or resources to successfully invade, conquer, and occupy the United States for a very long time. Don't forget, after all, that Japan was having a difficult time defeating China and that Germany could not even cross the English Channel to invade England.

Moreover, the wars against China and the Soviet Union would

have left them weaker, not stronger. That's what war does to nations, especially extended wars.

Moreover, if the United States could survive and prosper in a world that contained the Soviet Union, it could just as well have survived and prospered in a world that contained Nazi Germany. If the communists never came and got us — either from the Soviet Union, China, North Korea, Vietnam, Cuba, Nicaragua, Chile, Guatemala, or elsewhere — there is no reason to believe that the Nazis would have done any differently.

The Holocaust? As everyone knows, World War II failed to save millions of people from Hitler's death machine. Of course, we would be remiss if we failed to observe that when Hitler offered to let Germany's Jews leave the country during the 1930s, Roosevelt refused to permit them to come to the Unit-

ed State. We have immigration controls, he said.

Today, amidst chaos, death, and destruction arising from U.S. interventions around the world, proponents of empire, intervention, and the national-security state continue hewing to their position that World War II, the war that killed 60 million people and injured countless more, was a “good” war.

Good? If that was a good war, I shudder to think what they would call a bad one.

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

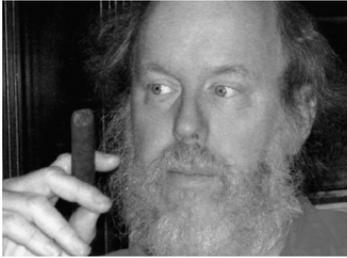
NEXT MONTH:
“The Inanity of the
Cold War”
by Jacob G. Hornberger

War loses a great deal of its romance after a soldier has seen his first battle.

— John Mosby

The Great Sugar Robbery Continues

by James Bovard



Seventeen years ago, The Future of Freedom Foundation published my piece “The Great Sugar Shaft.” That article hammered federal sugar policy as one of the most brazen interventionist failures in American history. Unfortunately, the political looting of sugar consumers and food producers continues unabated.

Federal price supports and import quotas combine to drive U.S. sugar prices far above the world sugar price. American consumers pay more than \$3 billion a year in higher prices thanks to the sugar program, according to the U.S. Commerce Department.

Federal sugar policy has a long, sordid history. In 1816, Congress imposed high tariffs on sugar imports in part to prop up the value of

slaves in Louisiana. In 1832, a committee of Boston’s leaders issued a pamphlet denouncing sugar tariffs as a scam on millions of low-paid American workers to benefit fewer than 500 plantation owners. In the 1890s, Congress first abolished and then re-imposed the sugar tariff, spurring a boom-bust in Cuba that helped drag the United States into the Spanish-American War.

The sugar tariffs are perhaps America’s least efficient welfare program. In the 1980s, it was costing consumers \$10 for each dollar of sugar growers’ income. The USDA ceased keeping track of sugar farmers’ income, but a University of Minnesota study estimated that sugar-beet farmers in that state lost an average of \$300 per acre in 2013.

Despite lavish subsidies, the number of sugar growers has fallen by more than 40 percent in the past 30 years. The benefits of price supports and import quotas flow overwhelmingly to the largest producers. The General Accounting Office estimated in 1995 that 1 percent of sugar growers captured almost half of all the benefits from the program. At that time, sugar farmers were collecting a subsidy more than 30 times larger per acre than did wheat farmers. And sugar farmers continue to receive far more per planta-

tion than the vast majority of subsidized farmers.

Candy and other food manufacturers are shifting production to foreign nations where sugar is much cheaper. The Commerce Department estimated that during the 1980s the number of jobs destroyed in food manufacturing and in sugar refining exceeded the total number of sugar farmers. A study by Agralytica, an economic consulting firm, estimated that the sugar program zapped more than 120,000 jobs since 1997. Nabisco recently shifted production of Oreo cookies to Mexico to capitalize on much lower sugar prices there.

Canada has almost no sugar growers and thus no trade restrictions or government-support programs.

The *Wall Street Journal* noted, “Total U.S. confectionary-manufacturing employment sank 22% to about 55,000 jobs in 2011 from 1998.... The number of industry manufacturing locations fell 7.7% to about 1,600 in the same period. Three candy-making jobs are lost for each sugar-growing and processing job saved by higher sugar prices, according to a Commerce Department report in 2006.” Many

food-manufacturing jobs have fled to Canada. Sugar is cheaper in Canada than in the United States, primarily because Canada has almost no sugar growers and thus no trade restrictions or government-support programs.

The U.S. sugar program has perennially sabotaged the effectiveness of U.S. foreign aid. The Reagan administration trumpeted its Caribbean Basin Initiative — and then slashed the amount of sugar that Caribbean nations could sell to Americans, even though Caribbean producers have huge natural advantages and lower labor costs compared with U.S. farmers. U.S. barriers on sugar imports sabotage the credibility of U.S. government efforts to sway foreign governments to drop their trade barriers against American exports.

Because the U.S. mainland does not have a natural climate for sugar production, farmers compensate by dousing the land with chemicals to artificially stimulate production. More than 500,000 acres of the Everglades have been converted from swamp land to sugar fields. Over the years, phosphorous from the fertilizer used by sugar growers leached into the water of the Everglades and helped destroy the ecosystem of the entire region. Politi-

cians have trumpeted several hugely expensive “compromises” to curb the environmental harm but, as a *New York Times* 2010 exposé showed, the main beneficiary was the United States Sugar Corporation, not the Everglades. The *Times* noted, “United States Sugar dictated many of the terms of the deal as state officials repeatedly made decisions against the immediate needs of the Everglades and the interests of taxpayers, an examination of thousands of state e-mail messages and records and more than 60 interviews showed.”

The history of the sugar program offers perennial confirmation of H.L. Mencken’s adage that every election is an “advanced auction of stolen goods.” Congress shafts consumers because the sugar industry has donated more than \$40 million to politicians since 1990. *Reason* magazine, summarizing a 2014 Heritage Foundation report, noted that “while sugar constitutes just 2 percent of the total value of U.S. crop production, the nation’s sugar farmers account for 35 percent of the crop industry’s total campaign contributions and 40 percent of its lobbying expenditures.” Congress repays the favor by conferring a license to pilfer consumers at grocery checkouts. The economic ar-

guments offered in defense of the program are merely camouflage for political plunder.

Congress shafts consumers because the sugar industry has donated more than \$40 million to politicians since 1990.

Sen. Marco Rubio (R-Fla.), a Republican presidential candidate, is one of the biggest champions of the sugar program. At a forum in July, Rubio urged that the federal sugar program be perpetuated as long as any foreign government provides aid to their sugar growers. This goes to the heart of the defense of so many current U.S.-trade barriers and is worth examining.

Folly

The folly of holding consumers hostage to foreign governments has been obvious for hundreds of years. John Taylor of Virginia, in a fiery 1821 book entitled *Tyranny Unmasked*, declared, “All monopolies and exclusive privileges [for protecting domestic manufacturers] have succeeded by using the same argument. It is invariably condensed in the single word ‘reciprocity’... It would be exactly the case of a pacific war, in which the nations should make laws that neither

should attack the other, but that each should shed at home a reciprocal portion of its own blood.”

Protectionists have for centuries warned that the United States must maintain its tariffs and other import barriers in defense against foreign government policies. But if your neighbor beats his wife, you don’t “teach him a lesson” by beating your wife. How can a restriction on freedom in one nation justify a corresponding reduction of freedom in another country? If foreign governments effectively lock up their consumers, is the U.S. government obliged to lock up American consumers?

Rubio says that the United States should negotiate with other nations to end their sugar subsidies. Bargaining with foreign countries over trade policies makes as much sense as bargaining with foreign health authorities before agreeing to clean up mosquito-infested swamps in Louisiana, or demanding concessions from a foreign government before removing the rocks on a Colorado highway after an avalanche. The reciprocal approach to reduction of trade barriers is similar to an alcoholic who promises to go “on the wagon” — but only after all other alcoholics formally agree to go on the wagon.

The case against unilateral free trade is simply the case against unilateral adjustment — that the United States should not do what it does best until foreign nations agree to do what they do best. Every trade barrier seeks to redirect capital and labor from relatively more-productive uses to relatively less productive ones. Early American protectionists clearly realized this principle and justified it by insisting that protection would be temporary — lasting only long enough to get a new industry’s feet on the ground — after which consumers would pay lower prices. After 200 years of protection for sugar, maybe it is time to stop giving America’s laggards the benefit of the doubt.

Every trade barrier seeks to redirect capital and labor from relatively more-productive uses to relatively less productive ones.

Reciprocity is the core of the intellectual fraud of American protectionism. For most of American history, “reciprocity” has been largely a fig leaf of moral respectability for American protectionists — claiming that they are shafting American consumers in order to teach foreigners a lesson. Reciprocity is based on the idea that two

trade barriers are always better than one. Reciprocity means finding foreign pretexts to forcibly redistribute income among Americans.

The United States should not allow its spite at foreign governments' foolish policies to continue diverting it from its citizens' self-interest.

Food manufacturers, environmental groups, and free-market activist groups are leading another assault on the program. When Congress re-authorized farm programs in 2013, the sugar program came under intense fire but survived. A coalition of congressmen is now pushing a bill to curb the program's exactions. This is a first step but any reform short of abolishing the program risks being reversed.

The history of federal sugar policy is a stark rebuttal to anyone who expects sagacious economic policy from Congress. Since the 1830s, sagacious analyses have shown that the program costs the nation far more than it benefits producers — and that the number of victims is thousands of times greater than the beneficiaries. But economic logic

cannot buy any congressional seats. And neither analysis nor hard facts can sway politicians from continuing to shaft the nation to fill their campaign coffers.

America would be more prosperous if the government weren't subsidizing even a single sugar beet or sugar cane. Bankrolling sugar production in Florida makes as little sense as a subsidy program to grow bananas in Massachusetts. At a time when detox diets are all the rage, abolishing the sugar program is a first step to detoxifying Washington.

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

NEXT MONTH:
**“The Cover-Up of the Damning
9/11 Report Continues”**
by James Bovard

Free the Gas Pumps!

by Laurence M. Vance



Aside from both being coastal states, New Jersey and Oregon have little in common except for one infamous thing. Drivers vacationing or passing through either state for the first time who have to stop to gas up their cars are in for a rude awakening if they try to pump their own gas. They will quickly find out from a gas station attendant that it is illegal to pump your own gas in New Jersey and Oregon.

True, other states used to have the same prohibition. But restrictions on self-service gas pumping were all lifted by the late 1970s. Thus, although it is perfectly legal in “the land of the free” to pump your own gas in any other of the 48 states and Washington, D.C., doing so in New Jersey or Oregon will still result in a fine. The prohibition in

Oregon has been partially lifted, but doesn’t take effect until the beginning of 2016.

Prohibitions

The prohibition in New Jersey goes back to the 1949 Retail Gasoline Dispensing Safety Act. According to the New Jersey Statutes,

No person shall dispense fuel at a gasoline station, unless the person is an attendant who has received instructions regarding the dispensing of fuel, had practical experience dispensing fuel under the direct supervision of an experienced operator for a period of not less than one full working day, and, upon examination at the end of that period, demonstrated his understanding of those instructions.

Riders of motorcycles are not exempt. Attendants “shall require a motorcyclist to dismount his or her motorcycle while gasoline is being dispensed into their vehicle.” Violators are “liable for a penalty of not less than \$50.00 and not more than \$250.00 for a first offense and not more than \$500.00 for each subsequent offense.” The New Jersey Statutes justify the prohibition on self-

service gas dispensing by appealing to “the public interest,” “the common welfare,” and “safety and convenience.”

The prohibition in Oregon has been in place since 1951. According to the Oregon Revised Statutes (ORS),

An owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not permit any person other than the owner, operator or employee to use or manipulate any pump, hose, pipe or other device for dispensing the liquids into the fuel tank of a motor vehicle or other retail container.

Unlike motorcyclists in New Jersey, motorcyclists in Oregon are exempt if they so request:

Upon the request of an operator of a motorcycle, the owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail shall set the fuel dispensing

device and hand the discharge nozzle to the operator of the motorcycle.

The state fire marshal may impose on violators “a civil penalty not to exceed \$500 for each violation of any provision of ORS 480.315 [policy] to 480.385 [civil penalty for gasoline dispensing law violations] or of any applicable rule adopted by the State Fire Marshal.” The Oregon Statutes likewise justify the prohibition on self-service gas dispensing by appealing to “the public interest,” “the public welfare,” and “safety.”

A majority of residents in New Jersey and Oregon favored retaining the prohibition on self-service.

Bills were introduced in the New Jersey and Oregon legislatures this year to free, or partially free, the gas pumps even as public opinion polls still showed that a majority of residents in both states favored retaining the prohibition on self-service.

A bill was introduced in the New Jersey Senate to allow “voluntary” self-service but require gas stations to retain at least one full-service island. If a station discounted the price of self-service gas, it

would still have to provide full service at the discounted rate to drivers with disabilities. But the senate president, Steve Sweeney, has indicated that the legislation will not pass as long as he is in charge. “We’ve been doing it the right way in New Jersey. We should not change,” he said. An editorial in a New Jersey newspaper opines that “there is no compelling reason to eliminate full-service gas stations” and “every reason to maintain the convenience that motorists in the Garden State have come to treasure.”

A bill to partially free the gas pumps in Oregon was introduced in February in the House.

A bill to partially free the gas pumps in Oregon was introduced in February in the House, approved unanimously in April, amended by the senate, approved unanimously again in the House in June, and approved in the senate in June with only five negative votes. It was signed into law by the governor on June 22, but doesn’t take effect until the beginning of 2016. The *Oregonian* reported that the chief sponsor of the bill, Rep. Cliff Bentz, “said several people drove hours from far-flung burgs around the state to testify in favor of the bill.” They told

stories “of drivers being forced to sleep in their cars or being stranded in an emergency because they couldn’t purchase gas.”

The relevant section of Oregon’s HB 3011 reads:

(2) Notwithstanding ORS 480.330 and 480.340, if a filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail is located in a low-population county, the owner or operator may, after 6 p.m. and before 6 a.m.:

- (a) Permit a person other than the owner, operator or employee to use or manipulate a device for dispensing liquids into the fuel tank of a motor vehicle or other retail container;
- (b) Permit the use of an installed coin-operated or self-service dispensing device for the liquids; and
- (c) Allow the use of an automatic nozzle to dispense the liquids without the owner, operator or employee being in the immediate vicinity of the tank or container being filled.

A “low-population county” is a county with a population “of not more than 40,000.” This designation applies to more than half of Oregon’s counties. Additionally, “If a county ceases to be a low-population county on or after the effective date of this 2015 Act, dispensaries located within the county may operate as described in subsection (2) of this section notwithstanding the change in county population.”

Arguments

The arguments given by the states of New Jersey and Oregon in their statutes to prohibit the self-serve pumping of gas are both illogical and comical.

Safety is the biggest concern. Attendants are needed because gasoline is a flammable liquid and dispensing it is a fire hazard. Attendants are needed to make sure customers turn off their vehicles and refrain from smoking while refueling. Attendants are needed because cashiers inside a store are unable to maintain a clear view of the customers dispensing fuel. Attendants are needed because gasoline’s toxic fumes make it a health hazard, especially to small children, pregnant women, and those with respiratory diseases. Attendants are needed because there is a risk that crime will

take place when a driver leaves his vehicle to pay for his fuel. Attendants are needed because children are at risk when they are left in vehicles while the driver pays for his fuel purchase. Attendants are needed because there is a risk of personal injury to drivers from slipping on wet surfaces when they walk to the cashier to pay for their fuel. The ORS even says that the dangers of crime and slick surfaces “are enhanced because Oregon’s weather is uniquely adverse, causing wet pavement and reduced visibility.”

The statutes to prohibit the self-serve pumping of gas are both illogical and comical.

Another concern relates to the disabled — especially those who rely on a wheelchair, walker, cane, or crutches for mobility — the pregnant, the aged, and the infirm. The usual safety hazards are heightened. And pumping their own gas is a special burden and unreasonable discomfort. Oregon even invokes the Americans with Disabilities Act (Public Law 101-336), which “requires that equal access be provided to persons with disabilities at retail gasoline stations.”

Another argument is that the use of self-service gas stations has

diminished the availability of repair and maintenance services at gas stations. And because gas station attendants are not available to make maintenance checks, vehicle maintenance is neglected, which is dangerous to customers and other motorists, and leads to unneeded costly repairs that result from deferring maintenance.

Oregon just ended its prohibition on self-service between the hours of 6 p.m. and 6 a.m.

And then there is the matter of employment. The ORS justifies Oregon's self-service prohibition by saying that "self-service dispensing at retail contributes to unemployment, particularly among young people." The legislation in both New Jersey and Oregon maintains that the self-serve prohibition provides "increased safety and convenience without causing economic harm to the public in general." New Jersey adds that "the prohibition of customer self-service does not constitute a restraint of trade in derogation of the general public interest."

Answers

Not only are there plenty of substances just as dangerous as gasoline that anyone can purchase at his

local hardware store, there are plenty of actions that people can undertake that are potentially much more dangerous than filling their car with gas. Consumers in New Jersey and Oregon can buy lye for their drains and weed killer for their lawns and use these hazardous chemicals themselves. Neither stores nor purchasers are required by state law to hire attendants to go to houses to pour lye into drains or apply weed killer to lawns. Residents of New Jersey and Oregon can freely use chainsaws, lawnmowers, and ladders even though thousands of Americans are injured every year while doing so.

All of the arguments about the bad things that could happen to a driver, his children, and his vehicle when he walks away from the gas pumps to pay for his gas seem rather ludicrous, since virtually all self-service gas stations are equipped with "pay at the pump" technology. And as mentioned above, Oregon just ended its prohibition on self-service between the hours of 6 p.m. and 6 a.m., effective the beginning of 2016. But if it is so hazardous for members of the general public to pump their own gas between the hours of 6 a.m. and 6 p.m. that an attendant must do it for them, then it is certainly just as hazardous

between the hours of 6 p.m. and 6 a.m., when it is dark and cold.

The disabled and senior citizens who have trouble pumping their own gas are not disadvantaged and burdened in states that allow self-service gas. Some stations in those states do still provide full-service pumps. And every self-serve gas station that I have ever been to has a notice posted somewhere that you can honk your horn if you are handicapped and someone will come out of the store and pump your gas for you. But even if there are no store clerks available to provide assistance, all a handicapped individual at a gas station has to do is ask for help from the general public in pumping his gas just like he might ask someone to get something off the top shelf in a grocery store. There are no special clerks employed in grocery stores to get items off the top shelf for disabled and short people. The same principle applies in the case of senior citizens and pregnant women.

Refueling your vehicle and having it checked or fixed are two entirely different things. The fact that fifty years ago one could have them done at the same location has no relevance to whether self-serve gas should be prohibited. Shops that provide automobile repair and

maintenance services are found in abundance throughout New Jersey and Oregon. Even if a station has only full-service gas, it doesn't follow that its attendants will be available to make maintenance checks on vehicles. That is not mandated by the governments of New Jersey or Oregon. And there is nothing preventing a station that offers only self-service gas from having an auto-repair facility on the property.

Refueling your vehicle and having it checked or fixed are two entirely different things.

If permitting self-service gas pumping contributes to unemployment, then allowing people to cook their own food, mow their own yards, and paint their own houses do likewise. To create more jobs, why don't the states of New Jersey and Oregon mandate that all of their residents hire cooks, landscapers, and painters? Why stop with gas station attendants? And why not ban ATMs and force banks to hire more tellers? Is it really in the public interest to force businesses to hire and pay the salaries and benefits of employees they don't need? In a free market without restraint of trade, gas stations in New Jersey and Oregon could hire atten-

dants and reserve one or more gas pumps for full-service — and even charge more for it — if they felt there was a demand for it. But the decision to do so would be up to each individual business. And were it not for minimum-wage laws, teenagers could pump gas for tips at gas stations.

The prohibition on self-service gas pumping is the ultimate in nanny-state paternalism.

And of course, all of the arguments put forth by the states of New Jersey and Oregon — and any of their residents who are gas station attendants who don't want to lose their jobs, citizens who don't want to pump their own gas, or politicians who pander to both groups and argue likewise — are demolished by the fact that self-serve dispensing of gasoline has been practiced without incident in the other 48 states and the District of Columbia for decades. Are there more fires at gas stations in all of the other states? Are all of the other states in violation of the Americans with Disabilities Act? Are cars really maintained less well in all of the other states? Are more children left unattended in cars in all of the other states? Is the weather better in all

of the other states? Do more crimes take place at gas stations in all of the other states? Do more people suffer from respiratory ailments in all of the other states? Are more drivers injured at gas stations in all of the other states? The answer to all of those questions should be obvious.

Freedom

The prohibition on self-service gas pumping in New Jersey and Oregon is the ultimate in nanny-state paternalism. Here is what those laws are actually saying to the people and businesses of New Jersey and Oregon:

You people are stupid. You are too stupid to pump your own gas without putting out your cigarette, breathing toxic gas fumes, causing a fire, leaving your children unattended, allowing your car to be vandalized, or slipping and falling when you go to pay for your gas. You are so stupid that you cannot safely do what teenagers do without incident thousands of times a day in the other forty-eight states. But never fear, your state government will keep you safe by forbidding you to pump your own gas and by forcing gas

stations to hire attendants to pump your gas for you.

You businesses are stupid. You are too stupid to make sure that when your customers pump their gas at your station they don't smoke, breathe toxic gas fumes, slip and fall, leave their children unattended, allow their car to be vandalized, and follow common-sense safety procedures so they don't start a fire and burn their car and your gas station to the ground. You are so stupid that you cannot safely run a gas station like thousands of other businesses do without incident in the other forty-eight states. But never fear, your state government will ensure that you keep your customers safe by forcing you to hire attendants to pump their gas, even though you will be unnecessarily paying employees to perform a service for customers that they may prefer to do for themselves.

The real issue, of course, is freedom. Freedom of gas stations to decide whether they want to have self-

service, full service, or a combination of both types of gas pumps. Freedom of businesses to ensure the safety of their customers as they see fit. Freedom of businesses to hire just the employees they think they need. Freedom of consumers to pump their own gas if they choose to do so. Freedom of consumers to take care of their own children. Freedom of consumers to be treated like adults with basic common sense. Freedom from government paternalism. Freedom from a nanny state.

Free the gas pumps!

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NEXT MONTH:
**“Unions and Strikes in
a Free Society”**
by Laurence M. Vance

Americans Toss Lady Liberty Overboard during Crises

by Ted Galen Carpenter



Americans take great pride in their country's commitment to the values enshrined in the Declaration of Independence and the Constitution. At the top of that list are the rights enumerated in the first ten amendments to the Constitution — the Bill of Rights. Americans are fond of contrasting the protections that freedom of speech, due process of law, equal protection of the law, and other fundamental rights enjoy in the United States, with their absence in many other nations. The historical record shows, however, that U.S. political leaders and much of the public have been extremely quick to sacrifice such liberties during apparent national-security crises. Three episodes over the past

century illustrate that unfortunate tendency.

The weak commitment to liberty during times of stress became glaringly apparent during World War I. Although a majority of Americans probably supported U.S. entry into that conflict when Woodrow Wilson sent his war message to Congress in April 1917, most initially seemed to do so with reluctance. Sizable pockets of anti-war sentiment remained among certain ethnic (especially German-American and Irish-American) communities and committed socialists. Only 73,000 men enlisted in the military during the first six weeks of the war, which caused a worried Wilson to embrace conscription. The president also created the Committee on Public Information to promote the war effort and discourage dissent. Denver journalist George Creel led that effort, immediately establishing a “voluntary” censorship code for the press. Frank Cobb, editor of the *New York World*, later described the overall mission of the Creel Committee:

Government conscripted public opinion as they conscripted men and money and materials. Having conscripted it, they dealt with it as they dealt with

other raw materials. They mobilized it. They put it in the charge of drill sergeants. They goose-stepped it. They taught it to stand at attention and salute.

The Wilson administration's propaganda strategy stressed two themes. One was glorification of the U.S. war effort as an idealistic crusade to advance freedom, democracy, and peace throughout the world. The other theme was the caricature of Imperial Germany as a loathsome menace to all of those values. U.S. propaganda personalized that threat by focusing on the "Beast of Berlin," Kaiser Wilhelm II. The German people became "the Hun," despoiling Europe and threatening the Western Hemisphere.

Espionage and sedition

And woe to anyone who dared publicly to challenge that narrative. Rumors of espionage and sabotage (mostly unfounded) swept the country, and "patriotic" groups, such as the National Security League and the National Protective Association, which the Wilson administration supported and encouraged, formed to deal with the imaginary menace. The vigilantes demanded a display of "100 percent Americanism" from all members of

their communities. Suspect persons were threatened, forced to publicly kiss the American flag, and subjected to beatings. In some cases, they were literally tarred and feathered.

The harassment of groups considered potentially disloyal sometimes reached ludicrous proportions.

The harassment of groups considered potentially disloyal sometimes reached ludicrous proportions. Several states passed legislation prohibiting the teaching of German or the conduct of religious services in that language. Statues of prominent Germans, including Revolutionary War hero Friedrich von Steuben, were removed from parks, and the Cincinnati government even banned pretzels from free-lunch counters in local saloons. Such episodes indicate that more-recent silly displays of jingoism, such as the congressional drive to rename French fries "freedom fries" to express displeasure with Paris's lack of support for the U.S.-led Iraq War, had a long, embarrassing history.

Threat inflation and war hysteria produced especially nasty results during World War I. Wilson's initial answer to opponents of the war was

the Espionage Act of 1917. Although Congress passed that measure in the heat of wartime, the administration had contemplated imposing censorship even before the United States entered the war. As early as August 1916, Secretary of War Newton D. Baker urged Congress to enact a censorship statute regarding the war in Europe. Two months before the declaration of war, Rep. Edwin Webb (D-N.C.), chairman of the House Judiciary Committee and one of the administration's closest legislative allies, introduced such legislation. Webb's measure authorized life imprisonment for anyone who circulated or published military information, false statements, or reports "likely or intended to cause disaffection in, or interfere with the success of, the military or naval forces of the United States."

The Espionage Act reflected a troubling desire to silence anyone who disagreed with Wilson's conduct of foreign policy.

With some modest differences in language and a reduction of the life imprisonment penalty, the Espionage Act was strikingly similar to the earlier Webb bill. Such premeditation suggests that the Espio-

nage Act was not merely a wartime overreaction. Instead, it reflected a troubling desire by Wilson administration officials to silence anyone who disagreed with their conduct of foreign policy. They exploited a crisis to implement their pre-existing intolerance.

It soon became evident that authorities would use the statute's vague provisions to suppress the mere circulation of anti-war literature. But the Wilson administration still was not satisfied. Just months later, it proposed amendments to the Espionage Act, and Congress passed them in May 1918. Those amendments were informally called the Sedition Act. At least theoretically, the Espionage Act required the government to prove that injurious consequences to national security would result directly from prohibited utterances. The Sedition Act dispensed with that obstacle and extended the power of the federal government over verbal and printed expressions of opinion regardless of consequences. Moreover, the substantive provisions in the statute were so vague as to seem calculated to exert the maximum chilling effect on freedom of expression. The act forbade "disloyal, profane, scurrilous, or abusive" remarks about the form of govern-

ment or military forces of the United States. Such language was so broad that it could mean virtually anything prosecutors wished it to mean. And there was soon an abundance of prosecutions.

Journalist Walter Karp documents how Wilson personally fostered the atmosphere of intolerance.

The World War I experience was appalling on several levels. There was more freedom of expression in France, although the front lines of the invading German army were sometimes less than 50 miles from Paris, than there was in the United States, more than 3,000 miles from the carnage. Worse, the repression underscored an authoritarian streak in the Wilson administration and the overall Progressive movement. Implicitly, officials feared that unless the country was regimented and dissenters silenced, the public might come to regard the Wilsonian crusade to “make the world safe for democracy” as a bloody fraud.

Journalist Walter Karp documents how Wilson personally fostered the atmosphere of intolerance, and he argues that it betrayed a frightening character flaw.

Cherisher of the “unified will” in peacetime, Wilson proved himself implacable in war. Despising in peacetime all those who disturbed “the unity of our national counsel,” Wilson in wartime wreaked vengeance on them all.... Nothing was to be said or read in America that cast doubt on the nobility of Wilson’s goals, the sublimity of his motives, or the efficacy of his statecraft. Wilson’s self-elating catch phrases were to be on every man’s lips or those lips would be sealed by a prison term.

The short-term effects of the wartime repressive apparatus, especially the Espionage and Sedition Acts, was extremely damaging to the fabric of American liberty. More than 2,000 people were prosecuted under those laws, the overwhelming majority for merely criticizing the government. The real motive for the legislation is evident when not a single enemy spy was convicted for violating the Espionage Act. Some of the prosecutions reeked of partisan political vengeance. Socialist Party leader Eugene V. Debs, for example, received a 10-year prison term for daring to give a speech expressing his distaste for the war.

A menacing bureaucracy developed to enforce the new ideological conformity. By 1920, a little more than a year after the war ended, the Federal Bureau of Investigation, which Karp accurately terms an institutional “swaddling fattened on war” had already amassed files on some two million people that the bureau considered dangerous or disloyal. And that development underscored a key aspect of the domestic hysteria that accompanied America’s entrance into World War I. Neither the mentality nor all the mechanisms of repression disappeared when the fighting ceased. Debs and numerous other political prisoners continued to languish until Warren G. Harding finally commuted their sentences. Indeed, foreign-policy hawks in the 21st century still look longingly at the Espionage Act as a possible weapon to use against ideological opponents.

New enemies

When the war ended, only the designated target of patriotic wrath shifted. The defeated Hun could no longer be cited as the threat to America, but a new Satanic threat conveniently emerged in the form of Russia’s Bolshevik Revolution. Despite the acute weakness of the

political Left in the United States, following the defenestration of the anti-war Socialist Party, Wilson administration officials fomented public fears that the republic was on the brink of a communist revolution. A proliferation of sometimes violent labor strikes and the discovery of bomb plots against some prominent public officials in the late winter and early spring of 1919 gave such allegations a patina of credibility. State legislatures expelled Socialist members, vigilante groups assaulted radical activists, and mobs vandalized the offices of numerous left-wing publications. The treatment meted out to dissenters during the war thus continued even though combat had ceased.

Neither the mentality nor all the mechanisms of repression disappeared when the fighting ceased.

Once again, instead of dampening the flames of hysteria, the Wilson administration fanned them and sought to exploit the atmosphere for political advantage. Attorney General A. Mitchell Palmer not only authorized a crackdown, symbolized by the infamous Palmer raids in January 1920 that detained suspects without trial, he sought to

expand the government's already frightening system of repression through enactment of a new peacetime sedition act. Not only would such legislation have made permanent the wartime restrictions of the 1918 Sedition Act, but it would have broadened the definition of what constituted sedition.

Even when peace returned, the American public "was still thinking with the mind of a people at war."

Fortunately, a GOP-led Congress balked at such a power grab, and the worst of the war hysteria and repression began to fade. But historian Robert K. Murray correctly concludes that in 1919 and 1920, "America's soul was in danger." The nation was "deserting its most honored principles of freedom — principles which had made it great and given it birth." He had little doubt about the primary culprit. "The war was largely to blame. During the conflict the demand for absolute loyalty had permeated every nook and cranny of the social structure." Even when peace returned, the American public "was still thinking with the mind of a people at war."

That legacy has never entirely disappeared. It is more than a little

unsettling that some current pro-war political leaders regard the Espionage and Sedition Acts with fondness. A few years before he was elected to Congress, Sen. Tom Cotton (R-Ark.), then a young Army officer in Iraq, circulated an open letter that urged jail terms for journalists he believed had violated the Espionage Act by publishing articles on terrorist financing. Directing his ire at *New York Times* reporters who had broken the story, Cotton stated that

having graduated from Harvard Law and practiced with a federal appellate judge and two Washington law firms before becoming an infantry officer, I am well versed in the espionage laws relevant to this story and others — laws you have plainly violated. I hope that my colleagues in the Department of Justice match the courage of my soldiers here and will prosecute you and your newspaper to the fullest extent of the law. By the time we return home, maybe you will be in your rightful place: not at the Pulitzer announcements, but behind bars.

Such intemperate sentiments would be worrisome enough coming from garden-variety pundits. (Shrill neoconservative columnist Ann Coulter actually suggested that reporters who revealed state secrets or otherwise undermined U.S. military missions should be prosecuted, convicted, and executed as traitors.) But it is much more menacing coming from a U.S. senator and rising GOP political star. Cotton and his allies might well be in a position some day to revive the repressive nightmare that the Espionage and Sedition Acts created during World War I.

World War II

When America entered a new global war following the Japanese attack on Pearl Harbor in December 1941, the commitment to liberty suffered another severe blow — this time highlighted by the persecution of an ethnic minority.

Although the atmosphere of political intolerance was noticeably milder in World War II than in the first global conflict, that was largely because no significant anti-war movement existed after Pearl Harbor. But a menacing attitude toward even mild dissenters lurked just below the surface, and it would not have taken much for it to have blos-

somed. Pervasive press censorship again became the norm, and the Roosevelt administration harbored an authoritarian mentality toward even mild criticism of how it was handling the war effort. Roosevelt himself believed that articles in the *Chicago Tribune* and other conservative newspapers critical of Washington's allies, especially Britain and the Soviet Union, might warrant prosecution under the 1917 Espionage Act. "The tie-in between the attitude of these papers and the Rome-Berlin broadcasts," the president fumed in one especially over-the-top tirade, "is something far greater than mere coincidence."

The Roosevelt administration harbored an authoritarian mentality toward even mild criticism of how it was handling the war effort.

Liberal supporters of the administration urged him to take action against such critics. Freda Kirchwey, editor of the *Nation*, asserted that the "treason press" in the United States constituted "an integral part of the fascist offensive." Supposedly disloyal publications "should be exterminated exactly as if they were enemy machine guns in the Bataan jungle." Roosevelt him-

self was only a shade more tolerant. He privately asserted that freedom of the press was “freedom to print correct news,” and freedom to criticize government policy “on the basis of factual truth.” He saw “a big distinction between this and freedom to print untrue news.” Responsible public officials, he implied, would be the proper judges of the truth or falsity of a news article.

But it was the repression directed against Japanese aliens (even longtime residents) living in the United States and their American citizen offspring that marked World War II’s most egregious abuse. The Office of War Information encouraged news stories and films from cooperative Hollywood producers that used crude stereotypes for the portrayal of Japanese. In account after account, the Japanese people were depicted not only as congenital aggressors but as scarcely human. Typical of the administration-orchestrated propaganda was a radio program, *A Lesson in Japanese*, narrated by actor Frederic March, which contained the following intellectual gem:

Have you ever watched a well-trained monkey at a zoo? Have you seen how carefully he imitates his trainer? The

monkey goes through so many human movements so well that he actually seems to be human. But under the fur, he’s still a savage little beast. Now, consider the imitative little Japanese who for seventy-five years has built himself up into something so closely resembling a civilized human being that he actually believes he is just that.

Given such prejudice, it was unsurprising that public support in the West Coast states (where most Japanese and Japanese-Americans resided) for imprisoning them became a potent movement. To its everlasting shame, the Roosevelt administration took the path of least political resistance and trampled the civil liberties of more than 110,000 people, approximately 80,000 of whom were American citizens.

The Japanese people were depicted not only as congenital aggressors but as scarcely human.

Three months after Pearl Harbor, the War Department proposed to “relocate” all persons of Japanese descent from the three West Coast

states. The underlying sentiments were not subtle. Gen. John DeWitt, head of the Western Defense Command, concluded that “in the war in which we are now engaged, racial affinities are not severed by migration. The Japanese race is an enemy race.” At first, the military command favored only a limited forced relocation — away from military and other sensitive installations — rather than a total evacuation, but pressure from state and local officials (and major interest groups) for the latter soon became overwhelming. Nativist groups had agitated for exclusion long before the war. One activist, using the moniker Native Son of the Golden West, stated candidly that “this is our time to get things done that we have been trying to get done for a quarter of a century.”

Wartime hysteria was at the root of that campaign, but mundane economic motives also played a role. Agricultural associations and small business groups stood to gain directly if their competitors were expelled. One public-opinion survey concluded that “those who regard Japanese as economic competitors tend to be more opposed to them.” Some 60 percent of the Japanese Americans were small vegetable and fruit farmers, and many

were extremely efficient, successful operators. Once the evacuation order was issued, most had no choice but to sell their properties quickly — typically at fire-sale prices to Caucasian neighbors. The beneficiaries not only saw troubling competitors taken out of action, they were able to expand their productive land holdings, often for 20 to 30 cents on the dollar. In the weeks leading up to relocation in February 1942, members of Congress from California, Oregon, and Washington hounded the War Department to adopt a comprehensive removal program.

The Roosevelt administration deprived 110,000 people of their basic rights because of political and economic pressure, not military necessity.

The ostensible military justification was extremely weak. Japanese military forces posed, at most, a remote danger to the West Coast of the United States, and there was no credible evidence that Japanese Americans constituted a fifth column. Moreover, residents of Japanese descent were never removed from Hawaii, even though that territory was much closer to the war zone. The Roosevelt administration

deprived 110,000 people of their basic rights because of political and economic pressure, not military necessity. Innocent people were herded into relocation centers surrounded by barbed wire, where armed personnel in guard towers forced them to remain until (conveniently) after the 1944 elections. It is not an exaggeration to describe those facilities as concentration camps.

Alarming assaults on civil liberties again occurred from time to time during the four-decade-long Cold War struggle.

Sad to say, the U.S. Supreme Court failed in its duty to protect the constitutional rights of those victims, even though there were no trials or any other semblance of due process. In the case of *Hirabayashi v. United States*, the Court in 1943 unanimously upheld the constitutionality of Roosevelt's executive orders excluding certain persons (i.e., those of Japanese ancestry) from certain parts of the country designated as military areas (including all of the West Coast states). The Court specifically held that racial discrimination was justified in this case because individuals sharing an ethnic affiliation with an enemy state could pose a greater

threat than those of different ethnicity. A year later, in *Korematsu v. United States*, the Court ruled that the need for national security outweighed the need to protect Korematsu's individual rights. Merely being a member of a suspect ethnic group was sufficient cause for detention and relocation. Individual liberties not only took a back seat, they weren't even in the vehicle. It was not until the 1980s, when Congress awarded financial compensation to the survivors and their families, that there was an implicit admission of government misconduct.

9/11

Alarming assaults on civil liberties again occurred from time to time during the four-decade-long Cold War struggle with the Soviet Union. The excesses of McCarthyism during the early and mid 1950s were the most prominent examples, but the FBI's monitoring and attempted disruption of anti-war and civil-rights groups during the 1960s also were troubling episodes. However, the most egregious developments, reminiscent of the abuses during the two world wars, have taken place in the years following the September 11, 2001, terrorist attacks.

George W. Bush's administration made bold assertions about the alleged extent of presidential authority to disregard legal and constitutional norms in waging the war on terror. And as in previous crises, ulterior motives were evident. National-security and federal law-enforcement agencies exploited the public's panic to implement long-sought-after powers. Most notably, they achieved their goal of greatly enhanced authority to engage in domestic surveillance of suspects without dealing with warrants or other pesky constitutional constraints.

The administration cited the president's "inherent" power under the Constitution to protect the nation from foreign and domestic enemies and the Authorization for the Use of Military Force, the measure that Congress passed shortly after the 9/11 attacks. The AUMF, the president and his advisors argued, granted the president extremely broad powers to prosecute the conflict, since it authorized him to "use all necessary and appropriate forces" against any nations, organizations, or individuals responsible for 9/11.

The centerpiece was the claimed authority to detain "enemy combatants," either aliens or U.S. citizens, without providing them access to U.S. civilian courts. That position

was at least plausible when confined to "enemy combatants" seized outside the United States, if those persons were not U.S. citizens. But the administration went far beyond that assertion. The president and his national-security team argued that given the nature of the terrorist threat, the entire planet was a potential battlefield. Consequently, suspected enemy combatants captured on U.S. soil were not entitled to those protections either.

The centerpiece was the claimed authority to detain "enemy combatants," either aliens or U.S. citizens, without providing them access to U.S. civilian courts.

The extent of the corrosive effects that such attitudes spawned was on horrific display in a December 2005 comment by John Yoo, who had served as a high-level official in Bush's Justice Department. Yoo was one of the authors of the infamous "torture memos," which argued that the president could lawfully order water boarding and other extreme interrogation techniques against terrorist suspects. During a Chicago debate, Yoo's opponent asked him whether it was legal "if the president deems that he's got to torture somebody, in-

cluding by crushing the testicles of the person's child." Yoo's reply: "I think it depends on why the president thinks he needs to do that."

For a time, it looked as though the extraordinary assertions of presidential power against parties accused of involvement in terrorist activities might ebb with the end of the Bush presidency. Candidate Barack Obama was caustic about the Bush administration's record:

This Administration also puts forward a false choice between the liberties we cherish and the security we demand. I will provide our intelligence and law-enforcement agencies with the tools they need to track and take out the terrorists without undermining our Constitution and our freedom.... No more ignoring the law when it is inconvenient. That is not who we are. And it is not necessary to defeat the terrorists.... Our Constitution works. We will again set an example for the world that the law is not subject to the whims of stubborn rulers, and that justice is not arbitrary. This administration acts like violating civil liberties is the way to enhance our security....

Those noble words are now bitterly ironic. Obama not only has persisted in the practices of the Bush administration, he has adopted measures that make the Bush-era abuses seem tame. Whereas Bush and his advisors asserted the right to imprison accused parties, including U.S. citizens, indefinitely without trial, the Obama team asserts the right to execute accused persons, including U.S. citizens, without trial or even any independent review. Obama exhibits an alarmingly casual dismissal of the constitutional rights of American citizens. At a National Defense University speech in May 2013, he argued that when it involves an accused terrorist, "his citizenship should no more serve as a shield" from lethal drone strikes ordered by the president, "than a sniper shooting down on an innocent crowd should be protected from a SWAT team."

The Obama team asserts the right to execute accused persons, including U.S. citizens.

An especially disturbing feature of the current assault on due process rights is the prominence and influence of persons who defend the president's alleged authority to im-

prison or even execute accused terrorists without trial. *Washington Post* columnist Charles Krauthammer mocked those who dispute the president's authority to order lethal drone strikes on people, including U.S. citizens, who are alleged to be aiding terrorist groups. He argues that "thousands of Americans died at Antietam without due process," and "when we stormed the beaches at Normandy, and Americans approached a German bunker, I don't think anyone asked, 'Is there a German-American here? I want to read you the Miranda rights.'"

Krauthammer seems unable or unwilling to make any distinction between actions taken against combat personnel in the midst of action on a battlefield and a calculated White House decision to execute an American citizen, absent the immediacy of an ongoing firefight. Unfortunately, his perspective is far from rare.

Discarded luxuries

Defenders of civil liberties are frustrated and worried about that situation. In a *Salon* article condemning drone strikes on U.S. citizens accused of aiding al-Qaeda, journalist Glenn Greenwald expressed dismay regarding the public's attitude. What is most striking,

he wrote, "is not that the U.S. Government has seized and exercised exactly the power the Fifth Amendment was designed to bar," although that was terrible enough. "What's most amazing is that citizens will not merely refrain from objecting, but will stand and cheer the U.S. Government's new power to assassinate their fellow citizens, far from any battlefield, literally without a shred of due process."

Public passivity is evident regarding the tremendous expansion of surveillance powers in the name of national security.

Similar public passivity is evident regarding the tremendous expansion of surveillance powers in the name of national security. Edward Snowden's leak of thousands of National Security Agency documents revealed not only that the NSA has spied on innocent citizens, but lied about it to Congress and the American people. The "dragnet" nature of the NSA's surveillance makes a mockery of the Fourth Amendment's prohibitions against unreasonable searches and seizures, as millions of communications have been monitored even when there is not a shred of evidence that the parties have engaged in terrorist activity.

And the tepid reforms of the recently passed USA Freedom Act curb those abuses just marginally.

The ever-watching “Big Brother” government of George Orwell’s dystopian novel *1984* is now perilously close to being a reality. National-security bureaucrats and their defenders behave as though they regard *1984* not as a cautionary tale, but a “how to” manual.

The intolerance of dissent that emerged during the two world wars has also resurfaced after the 9/11 attacks.

The intolerance of dissent that emerged during the two world wars has also resurfaced after the 9/11 attacks. A typical, ugly example was a column by neoconservative writer David Frum in the March 25, 2003, issue of *National Review*. Frum’s lengthy screed, “Unpatriotic Conservatives” directed much of its fire at conservative realists, including previous right-wing stalwarts such as Pat Buchanan and Robert Novak, who dared question any aspect of the Bush administration’s war on terror — especially the insistent drive for war against Iraq, a country that had nothing whatever to do with 9/11. Frum then linked a wide array of conservative war critics to

a few supposed anti-Semites, tarring all of them with that brush. He accused conservative skeptics of “having made common cause with left-wing and Islamist antiwar movements in this country and in Europe. They deny and excuse terror.” Even worse, “some of them explicitly yearn for the victory of their nation’s enemies.” One can certainly hear echoes of Freda Kirchwey’s infamous World War II-era *Nation* article “The Treason Press” and similar smears of anti-war figures such as Eugene Debs in World War I.

Some push-back is finally taking place against both war hysteria and the civil liberties abuses that it fosters. Sen. Rand Paul (R-Ky.) has been especially critical about the ominous path America’s political leaders are treading:

The discussion now to suspend certain rights to due process is especially worrisome, given that we are engaged in a war that appears to have no end. Rights given up now cannot be expected to be returned. So we do well to contemplate the diminishment of due process, knowing that the rights we lose now may never be restored.

He added, “As Ben Franklin wisely warned, we should not attempt to trade liberty for security. If we do, we may end up with neither.”

But in the years since the September 11 attacks, fundamental rights have again been under siege, and the most recent assault is even more worrisome than its predecessors. Not only has governmental disdain for civil liberties rivaled the record in previous crises, but as Senator Paul points out, a “war on terror” by its very nature has no discernible end. In other words, rights diminished or eliminated are not likely to be revived in a postwar setting, because there may never be a postwar setting.

Unfortunately, too many officials and opinion leaders act as

though the civil liberties protections contained in the Constitution are luxuries to be discarded in times of trouble. Nothing could be more inaccurate or pernicious. Those guarantees become even more relevant when the nation is under stress, for the historical record shows that is the setting in which gross abuses of power are most likely to occur.

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The one pervading evil of democracy is the tyranny of the majority, or rather of that party, not always the majority, that succeeds, by force or fraud, in carrying elections.

— Lord Acton

Inhumanity of the Minimum Wage

by Paul L. Poirot

A dictator, it is true, can arbitrarily declare human labor to be the only thing of value in the world; and he can set a minimum or a maximum wage, or just fix prices. But he cannot enforce his dictates, because they run contrary to the rules of human behavior. As long as men harbor their own distinctive sense of values, there is no way of predetermining the price they will pay for what they want. That is set in the market place, whether it is legal or “black.”

A \$5 minimum wage is indeed ridiculous, not because \$5 is the wrong amount, but because it is ridiculous to try to set a minimum wage at any level. It doesn't work. And it is an injustice to the people it is supposed to help — the less productive and less fortunate members of society. If a minimum wage is set high enough to have any effect, that effect must be a closing of the market to those persons least capable of earning a living. For the minimum wage denies such persons the right to offer their services for what they are worth. The law says in effect, “If

you are not worth the legal minimum wage, you are not worth anything.” This, of course, is arbitrariness of the very worst kind. It is difficult to visualize a greater injustice than this among supposedly civilized human beings — the strong ganging up to deprive the weak of their limited means of helping themselves.

Setting a minimum wage, below which no man may sell his services, is like setting a floor price for potatoes. The higher the floor price, the less demand there will be for potatoes. Those growers of potatoes who are least skilled in the arts of production will have been forced out of the market arbitrarily. And so will those buyers who can least afford to pay the price for potatoes.

If government intervenes to support the market at the floor price, then these two groups — the poorest producers and the poorest consumers — become the wards of the government, each dependent on a subsidy for survival. The government assumes the obligation, by means of unemployment compensation, to support those who were either directly or indirectly forced out of productive employment. The higher the minimum-wage level, the more unemployment there must be.

Denying a man the right to offer his services, by fixing the minimum wage at more than his services are worth, is to deprive him of a market for the only thing in the world he could have justified as his own. But that is not the end of the evil of the minimum wage. Those unused productive powers are lost, and society is poorer because of it. And if there is this kind of restraint upon the available supply of goods and services in the world, who suffers first and most? Why, the victims are those least able to pay the price for even the barest essentials of life!

Lessons of the Depression

The inhuman consequences of the minimum-wage idea were shown up during the Great Depression of the thirties. Labor unions, which had been gaining membership steadily during the twenties, were so bound to a philosophy of ever-rising wage rates that they could not adjust to a changed market situation, even though such rigidity forced many of their own members to join the ranks of the jobless. Equally well-meaning businessmen, lured by the promises of the National Industrial Recovery Act, pledged themselves to codes which would not let prices or wage rates find their proper level. Though

most of the minimum-wage legislation did not come until later in the thirties, the early years of the Depression were nonetheless marked by government compulsions along the lines of the minimum-wage idea. And the direct consequence of this organized coercive interference with the free market was a prolonged and unnecessary period of hardship for people who sought to earn a living.

The inhuman consequences of the minimum-wage idea were shown up during the Great Depression.

The “experts” on social problems speak glibly of the free market and open competition as forms of barbarism. They describe the individual bargaining process of price and wage determination as an outmoded application of “the law of the jungle.” But the basic law of the jungle is that might makes right; differences of opinion are subject to settlement by violence or compulsion. Perhaps the most significant departure human beings have ever made from jungle law is in the direction of a reasoned and deliberate tolerance for individuality — a mutual respect for both inherited and cultivated characteristics which make each of us different from every other person.

In the economic or material sense, this tolerance and respect for the rights of one another is reflected in the concept of private ownership and control of property. It allows and encourages exchange of goods and services among those who have something to offer and are willing to trade.

There is one big humanitarian reason for adherence to the market method of voluntary exchange, and that reason is the desire to act charitably toward those less fortunate than oneself. They are the ones who would not survive the rigors of the jungle and who would end up most permanently enslaved in any politically regulated society. The one great blessing of the market economy is that it encourages every individual to develop his talents, however limited they might be. And it assures each a full measure of value for the much or the little that he has to contribute to the satisfaction of human needs. Thus does a free society inevitably outproduce any other kind, creating more useful things the very abundance of which is the poor man's assurance of a chance for survival.

There are sound reasons why some men should earn more for

their efforts than do others — why skilled labor should be worth more than unskilled — why the successful manager of a business should receive more than any of his employees. Human beings are not all alike, in either capacities or desires. Prices and wages as determined in a free market, unrigged by political intervention, are the best means of insuring the production and equitable distribution of the goods and services all men seek. Those who have most clearly proved their productive capacity are rewarded accordingly through the voluntary acts of their fellow men in the market place. This is the signal to produce even more, and it is the incentive which attracts other men to lead more useful and productive lives.

A compulsory minimum wage, at any level, can only add to the hazards of the jungle.

Paul Poirot (1936–2006) was editor of The Freeman, published by The Foundation for Economic Education, for more than 30 years. This is an excerpt from his article “Inhumanity of the Minimum Wage” in volume 2 of Essays on Liberty, published by FEE in 1958. Reprinted with permission.

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