



**War,
Central Planning
and Corporations**

The Corporate State

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Introduction

It was March 1979, and a small group of American Agriculture Movement (AAM) farmers had been invited to the White House to work with Stuart Eizenstat and his staff concerning issues of agricultural policy. President Jimmy Carter, a peanut farmer from Georgia, instructed his chief economics advisor and staff to work with the AAM farmers concerning their demands for higher price supports, production quotas, and acreage allotments.

The years immediately prior to Carter's administration (1977-81) were devastating to American farmers in an economic sense. The Nixon-Ford era had been marked by a period of staggering inflation. Costs for agricultural inputs had increased dramatically. Energy prices had skyrocketed as a result of the 1973 Organization of Petroleum Exporting Countries (OPEC) oil embargo. Agricultural prices had initially soared as well, especially following the "Russian Grain Deal" (1972). The Russians, with the cooperation of large grain companies, had quietly purchased large amounts of grain at a pre-inflationary price. Prices soared after the Russian Grain Deal was announced, but most farmers had already sold their grain at low prices. Farmers were frustrated when they learned what had happened.

Earl Butz, Secretary of Agriculture, made a public statement following the announcement of the Russian Grain Deal advocating that farmers plant "fence row to fence row," adding that never again would American farmers be able to overproduce for the expanding foreign market. Many farmers, following and believing Butz' advice, expanded their production along with their debt. Prices, however, continued to climb.

President Richard Nixon responded to the economic emergency created by the Russian Grain Deal by issuing a series of executive orders under the Trading with the Enemy Act of World War I to regulate the production, distribution, pricing, and exportation of agricultural products.¹ With the stated goal of fighting inflation, Nixon used an Executive Order to freeze the price of beef. In late

¹ Executive Order No. 11677, August 1, 1972. See relevant text in Appendix 1.

1973 Nixon announced a soybean embargo against the Japanese, and later related embargoes were expanded.

By 1977, when the farmer from Georgia took office, the price of corn had returned to \$1.77/bushel, less than half the price of its inflationary high. The farmers had been caught in a trap. The input costs remained at their inflated levels while market prices of commodities plummeted. Farmers who had bought stocker calves for \$.69/lb. were forced to sell them for less than \$.30/lb. during and after the price freeze. The price freeze cost thousands of farmers millions of dollars. The farmers could not repay the loans and debt they had incurred. As a result, the AAM was formed.

By the late 1970s, AAM farmers took the position that, as an atomistic group of small family farmers, they could not effectively compete with the concentration of economic power wielded when corporations and governments controlled both the price they received for their goods, and the price they paid for their inputs. They believed that as a last resort, the government should use its central authority to establish a parity between prices received and costs of inputs.

Returning to the March 1979 meeting in the White House, as the discussion began, I decided that we should go right to the heart of the matter. I posed the following question to Eizenstat. I said "Under the current prices for inputs and current market prices the family farmers cannot meet their obligations to the Farmers Home Administration, Federal Land Banks, and banks. If we do not change agricultural policy and support the market prices, what is the government going to do? Are you going to nationalize the farmland?"

Stuart Eizenstat was somewhat taken aback by my question and hesitated before responding. Finally he replied, "If we have to nationalize, we will. Agriculture is too important and vital a resource to be left in the hands of individual farmers."

Tommy Fulford, a farmer from Georgia, rose from his chair in disgust and pronounced, "I am immediately going home and sell my farm", which he did.

I was as much taken aback by Eizenstat's response as he was by my question. The full meaning and consequences of central planning authority had finally reached home with me. If, in fact, we

conceded that the Federal Government had central planning authority to set production quotas, acreage allotments, and price supports, then we must necessarily concede that it would also have the authority to "nationalize" if it so desired.

It was with this concept firmly planted in our minds that I and others began extensive research into the history of central planning and the influence of economic combinations, especially corporations, on the origination and use of the central planning power of government.

Historical & Constitutional Review

The historical view that our forefathers had of central planning authority is perhaps best summed up in the first petition for redress of grievances sent to the King and Parliament of Great Britain in 1774, entitled The Declaration of Rights. It began with the words:

Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever, hath in some acts expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.²

The power to bind by statute in all cases whatsoever was an all-encompassing power, accommodating central planning authority of the highest degree, with which our forefathers violently disagreed. Our forefathers claimed that this enormous power, which we would call today administrative or regulatory law, (the power to affect private individuals' lives and fortunes in the sovereign's name outside the common law court and jury systems), was in violation of the British constitution, as reflected in Magna Charta (1215), for example, and urged the British government to curb its abuse.

The British failed to respond, resulting in a second petition for redress a year later, in 1775. The British again failed to respond (in fact, the King declared to Parliament that he considered the colonies in rebellion against his sovereign rule), and our forefathers subsequently declared independence in 1776. They successfully prosecuted the war for independence and eventually adopted a Constitution for our country that included some aspects of the British constitution while fashioning many others out of classical and Enlightenment ideas.

The AAM's preliminary review of the economic aspects of our

²The reference to the last war refers to the French and Indian War or Seven Years' War, which ended in 1763.

Constitution as the Framers intended it revealed a concept of government that was rhetorically inconsistent with total central planning authority. While delegating a degree of central planning to Congress or the Executive Branch in certain areas, such as coining money and regulating its value, the Constitution did not appear to delegate a power of total central planning or nationalization of private enterprise to the federal government. In fact, a review of the history of the causes of the separation of our forefathers from England would show that the entire foundation and fabric of our country was structured to alleviate the rule of a few over the many.³ For example, while Article I, section 1, granted all legislative power to the Congress, that power originally was intended to be limited by the specific enumeration of the purposes for which Congress might enact legislation.⁴ Article I, section 8, clause 1, of the Constitution delegated to Congress a power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Customs duties, tariffs on imports and exports, conceivably could lead indirectly to some degree of central planning, especially if imposed in such a

³ This was an issue hotly debated at the Constitutional Convention in Philadelphia, 1787, and in the Federalist and Anti-Federalist Papers and the state ratifying conventions subsequently. Two of the best-known discussions of this issue, whether the Constitution was intended to create a facility through which the few might govern the many, are Madison's Federalist No. 10 and Hamilton's Federalist No. 60.

⁴ This was the original intention as reflected in the writings of the Federalists, although the Anti-Federalists charged that a more expansive agenda awaited if the Constitution were adopted. Later, in 1791, Treasury Secretary Alexander Hamilton argued persuasively to President George Washington that the "necessary and proper" clause at the end of Article I could be construed to allow Congress to enact laws establishing economic regulatory mechanisms not specifically enumerated, in that instance the First Bank of the United States. Chief Justice John Marshall's opinion in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), reaffirmed Hamilton's interpretation of the expansive economic regulatory powers of Congress under the Constitution.

way as to provide advantage to one sectional interest over another. This clause, however, goes on to say, "but all duties, imposts and excises shall be uniform throughout the United States." Accordingly, this clause tends to negate any sectional interest or special interest power but leaves intact some general central planning authority.⁵

The President, in Article II, was granted the power to execute the laws passed by Congress, to be Commander in Chief of the Army and Navy, to make treaties with the advice and consent of two-thirds of the Congress, and several other lesser powers, none of which could be considered the power to centrally plan or nationalize.

When the limited central planning elements of the Constitution are viewed in light of the specific prohibition clauses, an even more restricted picture emerges. Foremost among these clauses is the Fifth Amendment, which provides that "No person shall be deprived of life, liberty, or property without the due process of the law." Should central planning powers authorized in the Constitution be used so as to cause injury to any person, the governments actions were to be subject to review by the people themselves through the jury system. However, through the judicial doctrine of sovereign immunity, the federal courts have allowed ever-increasing expansion of governmental central planning, especially since the 1930s. Sovereign immunity was pointedly ignored by the Framers and introduced into the Constitution initially as applying only to disputes regarding the states in the Eleventh Amendment (1798).⁶ For further discussion of the constitutional provisions potentially related to central planning, see Appendix 2.

When the latent or potential central planning powers of the federal government granted in the Constitution are viewed in light of historical precedents - the uniformity clauses, the specific

⁵ Other examples of what might be called "latent" or "potential" central planning authority in the Constitution are reproduced in Appendix 2.

⁶ One of the high water marks for federal governmental central planning measures in the courts was *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); see also, *Wickard v. Filburn*, 317 U.S. 111 (1942).

prohibition clauses, and the 5th, 9th, and 10th Amendments of the Constitution - we see a very limited power that must be applied uniformly. Extensive central planning, as contrasted to the classically liberal government envisioned by the Founding Fathers, appears to be a thesis and antithesis. Both cannot (or should not) occupy the same constitutional space at the same time.

Herein lies the dilemma arising from Eizenstat's statement to AAM members. How can the federal government claim the power to centrally control and plan agricultural acreage, production quotas, and price supports, including the power to nationalize if so desired, under the authority of the originally intended or strictly construed, classical liberal view that underlay our constitution?

Because the historical perspective generated by AAM's constitutional review appeared to be inconsistent with the position taken by Mr. Eizenstat, a second review was initiated. Upon closer analysis of the first petition for redress of grievances in 1774, it was discovered that our forefathers did not entirely disagree with central planning, but that they violently disagreed with central planning during times of peace. The petition began with the words: "Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever...." Our forefathers did not argue against this power during the war, but claimed that it was an unconstitutional usurpation of power after the war ended, which was 11 years previously. Is it possible that the Constitution of the United States of 1787, as amended, contemplated such a significant power?

AAM's second in-depth examination of the Constitution revealed the following: At Article I, section 8, clause 11, Congress shall have the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." A new picture began to emerge.

If this article were viewed in light of the first petition for redress of 1774, only 13 years earlier, it would appear that the Constitution did indeed contemplate extensive central planning in time of war, but the Constitution also clearly contemplated that such war should be formally declared in the prescribed manner instead of being allowed to happen by way of "executive action" or "congressional

acquiescence." In fact, as one analyzes war powers, it becomes rather obvious that central planning is the essence of modern war.

Nations, like individuals, when faced with a life-or-death situation, react instinctively and do extraordinary things to preserve their very existence. All other issues fade into utter insignificance as long as the threat lurks. Nature provides extraordinary powers to man in such circumstances, and man in turn releases extraordinary powers to government when the nation's existence or safety is threatened. All resources will be inventoried and used in any manner deemed necessary. Anything short of this would be considered cautious stupidity. Thus, central planning becomes the essence of modern war.

Further analysis of the Constitution gives a picture that is entirely consistent with this conclusion. Article I, section 9, clause 2, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." Mere public unrest is insufficient to justify the suspension of the writ of habeas corpus; actual rebellion is required, and only then can the Great Writ be suspended. Similarly, even an actual state of war is insufficient to justify suspension of the Great Writ; actual invasion is required.

Article I, section 10, clause 3, prohibits the states against keeping troops in time of peace or engaging in war, "unless actually invaded, or in such imminent danger as will not admit of delay." But if a state is about to be invaded, it may raise an army and fight battles.

The 5th Amendment generally prohibits the jurisdiction of martial law courts over individuals "except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger." Martial law over individuals is clearly allowed only on two explicit conditions: the individual must be within the military service; and that service must be in time of war or public danger.

The Supreme Court's opinion in the Russell case gives us, in other words, a constitutional and historical view that is consistent with Mr. Eizenstat's statement concerning central planning in

general and central planning over agriculture specifically.⁷ We in AAM then asked ourselves if an understanding of the history of war and emergency powers in the United States would prove our analysis correct.

⁷ The power to create a central planning regime in wartime is clearly expressed in the following excerpt from the 1871 case, *United States v. Russell*, 80 U.S. 623 (Wall.) 627-628: Private property, the Constitution provides, shall not be taken for public use without just compensation. . . . Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized or appropriated to the public use, or may even be destroyed without the consent of the owner... Where such an extraordinary and unforeseen emergency occurs in the public service in time of war no doubt is entertained that the power of the government is ample to supply for the moment the public wants in that way to the extent of the immediate public exigency, but the public danger must be immediate, imminent, and impending, and the emergency in the public service must be extreme and imperative and such as will not admit of delay or a resort to any other source of supply... .

A Brief History of War and Emergency Powers in the United States

Our review of emergency powers in the United States immediately led AAM researchers to an extensive U.S. Senate study entitled, *Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency*.⁸

The foreword to that study begins as follows:

Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidential proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970, and August 15, 1971.

Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens.

An excerpt from the introduction reads thusly:

A majority of the people of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency. The problem of how a constitutional democracy reacts to great crises, however, far

⁸ Report of the Special Committee on Termination of the National Emergency, U.S. Senate, Nov. 19, 1973, 93rd Cong., 1st Sess., Sen. Rep. 93-549, page 1.

antedates the Great Depression. As a philosophical issue, its origins reach back to the Greek city-states and the Roman Republic. And, in the United States, actions taken by the Government in times of great crises have - from, at least, the Civil War - in important ways shaped the present phenomenon of a permanent state of national emergency.

The 1973 Senate Report indicated that the United States had in fact been under economic emergency rule since March 9, 1933, and that emergency rule, from at least the Civil War, had shaped the present phenomenon of a permanent state of national emergency.

In addition to the Senate Report, AAM researchers discovered a working paper prepared for the special Senate Committee on National Emergencies in 1974, entitled "A Brief History of the Emergency Powers in the United States," an extensive overview of this subject.⁹

On pages 10-11 the Senate Report quotes historian Clinton Rossiter's work, *Constitutional Dictatorship; Crisis Government in the Modern Democracies*, which states the contemporary view of crisis government as practiced by President Abraham Lincoln during the Civil War:

Mr. Lincoln subscribed to a theory that in the absence of Congress and in the presence of an emergency the President has the right and duty to adopt measures which would ordinarily be illegal, subject to the necessity of subsequent congressional approval. He did more than this; he seemed to assert that the war powers of the Constitution could upon occasion devolve completely upon the President, if their exercise was based upon public opinion and an inexorable necessity. They were then sufficient to embrace any action within the fields of executive or legislative or even judicial power essential to the preservation of the Union. [He]... implied that this government like all others, possessed an absolute power of self-defense, a power to be exerted by the President of the United States. And this power extended to the breaking of the fundamental laws of the nation, if such a step were unavoidable.

⁹ 93rd Congress, 2nd Session, Senate Report 93-549, July 1974, "A Brief History of Emergency Powers in the United States: A Working Paper."

On page 41 of the Senate Report, we find the following passage:

Like Lincoln, President Wilson acquired dictatorial powers during the period of American involvement in international hostilities. But the basis of Wilson's authority varied significantly from that of Lincoln's.

The most significant feature of the Wilsonian dictatorship is the way in which the President acquired his vast powers. The preponderance of his crisis authority was delegated to him by statutes of Congress. In brief, the most important single emergency device in the World War government was the delegatory statute. Confronted by the necessity of raising and equipping a huge army to fight overseas rather than by a sudden and violent threat to the Republic, Wilson chose to demand express legislative authority for almost every unusual step he felt impelled to take. Lincoln had shown what the office of President was equal to in crises calling for solitary executive actions. Now Wilson was to show its efficacy as a crisis instrument working along with the legislative branch of the government. The basis of Lincoln's power was the Constitution, and he operated in spite of Congress. The basis of Wilson's power was a group of statutes, and he cooperated with Congress.

With the passage of the Lever Act of August 10, 1917, President Wilson was authorized to establish new agencies or carry out emergency domestic functions through whatever established agency he devised.¹⁰

¹⁰[From Berdahl, Clarence A., *War Powers of the Executive in the United States*, Johnson Reprint Co., NY, 1970, c1921, pp. 204-206.] Control of Food and Fuel. From the first, it was recognized that the great contribution of the United States to the winning of the war must be the supplying of food for itself and the Allies. Hence a policy of food control was entered upon. . . . [204]

Finally, in August, 1917, Congress passed the Food and Fuel Control Act, vesting the President with complete control over the food and fuel resources of the nation. He was empowered, whenever he should deem it essential, to license the importation, exportation, manufacture, storage and distribution of food, feed, fertilizer, and fuel, and to prescribe regulations governing the businesses so licensed; to fix prices of such food and fuel; to requisition such food, fuel, and other

The picture portrayed in contemporary accounts is entirely consistent with that expected of a nation at war. However, the foreword to Senate Report 93-549 began by saying that the United States had been in a state of declared national emergency since March 9, 1933, a period in which there were no wars for at least the next eight years.

A closer look at the events of March 9, 1933, led AAM researchers to analyze the enactment of the "Emergency Banking Relief Act" that day (48 Stat. 1), whose text began as follows:

AN ACT

To provide relief in the existing national emergency in banking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

supplies, or factories or mines in which these are produced, "whenever he shall find it necessary;" to buy and sell wheat, flour, meal, beans, and potatoes, at prices to be fixed by him; to set a minimum guaranteed price for wheat (to be not less than \$2 per bushel); to regulate the operations of boards of trade; to limit, regulate, or prohibit the use of foodstuffs in the production of beverages, whether alcoholic or non-alcoholic; and, finally, "to make such essential [actions] effectively to carry out the provisions of this Act." [205]

Through a series of proclamations, the President required licenses of practically every sort of business connected with the production and distribution of food, including elevators and mills for the storage or distribution of wheat and rye; the importation, manufacture, and refining of sugar, syrups, and molasses; the importation, manufacture, storage, and distribution of more than twenty staple foods; the dealing in bread, bakery products, and green coffee; the arsenic, ammonia, and fertilizer industries; the trading in farm equipment; stockyards and connected businesses.

Besides inaugurating this system of regulation through licensing, the President empowered the Food Administrator to limit profits ____ [206]

TITLE

Section 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

Several important aspects of this Act immediately became apparent:

1. In the enabling portion of the Act the Congress did in fact declare a state of national emergency. Black's Law Dictionary (6th Edition) defines "national emergency" as: National emergency. A state of national crisis; a situation demanding immediate and extraordinary national or federal action. Congress has made little or no distinction between a "state of national emergency" and a "state of war".

2. Congress was going to implement "rules of uniform national application". Rules of uniform national application would be inconsistent with the peacetime Constitutional separation of State and Federal power as dictated in the 10th Amendment and in the uniformity clause (Art. I, sec. 8, cl. 1) but is entirely consistent with the state of affairs in a nation under war or emergency powers.

3. In section 1 of the 1933 Act, Congress retroactively approved all the actions, regulations, rules, licenses, orders, and proclamations of the President or Secretary of Treasury since March 4th, 1933, and automatically approved all actions, regulations, rules, licenses, orders, and proclamations of the President or Secretary of Treasury to be taken in the future. This is a rather broad, sweeping power, entirely consistent with the exercise of war or emergency powers. In fact, the authority cited by Congress for this delegation of broad power is the World War I Act of October 6, 1917, entitled the "Trading With the Enemy Act," as amended.

In light of subsequent events, the following passage from the U.S. Supreme Court case, *Stoehr v. Wallace*, 255 U.S. 239 decided Feb. 28, 1921, is more than merely interesting:

The Trading With the Enemy Act, originally and as amended, is strictly a war measure, and finds its sanction in the provision empowering Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Const. Art. I, sec. 8, cl. 11.

The original 1917 version of the Trading With the Enemy Act identified, in section 2, the targeted enemies as German citizens and German corporations, or citizens or corporations of nations allied with Germany, but the act specifically exempted citizens of the United States from the definition of "enemy". Section 5(b), in its original version, provided as follows:

That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States).

Obviously, the original version of the act did not convey broad powers to the President over citizens of the United States and their domestic transactions, even in time of war. However, section 2 of the Act of March 9, 1933, amended the original 1917 act to read as follows:

Section 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof;...

Regarding the 1933 amendment of the 1917 Trading With the Enemy Act, Senate Report 93-549, p, 186, has this to say:

Congress thus "spread its protective approval over executive acts the legality of which was uncertain." [citation omitted] . . . Congress also amended Section 5(b) to provide, among other things, that "[during time of war or during any other period of national emergency declared by the President,] the President may . . . regulate, under such rules and regulations as he may prescribe ... transfers of credit between or payments by banking institutions as defined by the President. . . . " . . . In the enactment clause Congress declared "that a serious emergency exists." . . . The exclusion of domestic transactions, formerly found in the Act, was deleted from Sec. 5(b) at this time.

The overwrought Congress at that time was perhaps influenced by a host of constitutional scoundrels. They applied to United States Citizens and their commercial transactions the same treatment reserved for declared enemies of the United States during war."

On March 4, 1933, when President Franklin D. Roosevelt was inaugurated President of the United States, he said in his inaugural address:

I shall ask the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.

Roosevelt obviously had a plan.¹²

¹ The retroactive approval by Congress of the President's actions went back to March 4, 1933, five days prior to the emergency enactment of March 9, in peacetime, despite the constitutional prohibition against ex post facto laws (Art. I, sec. 9, cl. 3).

² For detailed analysis of this plan, see Walker F. Todd, *The Federal Reserve Board and the 1930s Banking Crisis*, in George Kaufman, ed., *Research in Financial Services: Private and Public Policy*, vol. 8 (1996), pp. 97-138, Greenwich, CT: JAI Press Inc. Also published in earlier versions as *From Constitutional Republic to Corporate State*,

The legality of using war powers in times of peace, with no congressional declaration of war, is highly suspect, to say the least. Some New Dealers were, in fact, at least mildly concerned that the appearances of constitutionality be maintained; others could have cared less. The "appearances matter" faction within the Roosevelt camp deemed it prudent for Roosevelt to obtain the consent of the states to proceed with his radical reform of the U.S. economy in peacetime, especially in light of the 10th Amendment's provisions on the reserved powers of the states.

In fact, Roosevelt already had called for a governors' conference to meet March 6, 1933, in Washington D.C. In that conference the Governors passed two important resolutions:

RESOLUTION PROPOSED BY GOVERNOR EHRINGHAUS

That this Conference desires to express its confidence in the leadership of the President and its desire that he be granted immediately by the Congress such broad powers as may be necessary to enable the Executive to meet the present challenging emergency and we, as Governors of the several States here assembled, hereby pledge to him our wholehearted and sincere cooperation and support in his efforts to rehabilitate the Nation and end the present terrible depression.

RESOLUTION PROPOSED BY GOVERNOR WHITE

Resolved, That we look approvingly upon the President's plan for better land utilization, as presented to us this morning, not only as a measure for the conservation of the Nation's natural resources but also as an effective step toward the relief of unemployment; and that we severally pledge ourselves to use our best efforts to ascertain, through proper surveys, the acreage that might be made available for such a program in our respective States.

Committee on Monetary Reform and Education Monograph No. 51, October 1995, and originally as The Federal Reserve Board Before Marriner Eccles, 1931-1934, Federal Reserve Bank of Cleveland, Working Paper No. 9405 (April 1994). Roosevelt's emergency plan is described in the first article cited at pp. 111-112, and in the Working Paper at pp. 20-22.

A portion of Roosevelt's plan was unveiled a few minutes later. With the Governors' support, Roosevelt walked out of the conference and issued Proclamation No. 2039, seizing and closing all the banks in the country, citing section 5(b) of the Trading with the Enemy Act of October 6, 1917, as his authority.

Congress, in an attempt to legalize the actions, convened in emergency special session on March 9, 1933, declared a "state of national emergency", and passed the Emergency Banking Act bill, part of which amended section 5(b) of the Trading with the Enemy Act, without a copy for House members to read. A full-blown peacetime emergency government was born - a constitutional horror: Dire as the situation was, there was no declared war, no rebellion, and no invasion, which are the only constitutionally enumerated instances justifying military or other emergency rule. The House Congressional Record, March 9, 1933, p. 80, illustrates the problem:

Mr. McFadden. Mr. Speaker, I regret that the membership of the House has had no opportunity to consider or even read this bill [the Emergency Banking Act]. The first opportunity I had to know what this legislation is was when it was read from the Clerk's desk. It is an important banking bill. It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. . . . It is difficult under the circumstances to discuss this bill. The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917, with some slight amendments. The other gives supreme authority to the Secretary of the Treasury of the United States to impound all the gold in the United States. . . .

A few days later, this broad emergency power was to extend over more than just banking and finance. President Roosevelt's Papers, vol. 2, p. 79, contains this description of what followed:

Four days after my inauguration, Secretary of Agriculture Wallace at my request announced a meeting of representative farm leaders for March 10, 1933, in order to agree upon a farm program which would affect that year's crops. As I pointed out in the foregoing Message, speed was essential in order to avoid additional surpluses being accumulated by the 1933 crop. This

conference of fifty farm leaders met on March 10, 1933. They agreed on recommendations for a bill, which were presented to me at the White House on March 11th by a committee of the conference, who requested me to call upon the Congress for the same broad powers to meet the emergency in agriculture as I had requested for solving the banking crisis.

Three days later I sent the proposed bill, which had been drafted in accordance with the recommendations of the conference, to the Congress, accompanied by the foregoing message. It was the most drastic and far-reaching piece of farm legislation ever proposed in time of peace. [This statement is rhetorically untrue, because Congress did in fact declare a general state of emergency on March 9, 1933, and a non-emergency/non-war-powers state of peace did not exist on March 10, 1933, the day in question.]

The war and emergency powers of government, as authorized in the amended section 5(b) of the Trading with the Enemy Act, was now going to be applied to agriculture, as well as banking. In the House Congressional Record, March 22, 1933, we find the following astute observations:

Mr. Fuller. A few days ago we gave the power of dictatorship to the president of this Nation over the banks of the country. Why should we refuse a dictatorship to the Secretary of Agriculture under the leadership of this same President for the fanning industry of the country? [p. 759]

Mr. Lozier. I may confide to you that my business is farming. It is my only business. I will admit to you that it is not a particularly happy business at this time; but from my own experience and observation in the farming business and then upon reading the provisions of this bill, literally I am staggered - I am staggered at the character of the proposals and the difficulties which will be encountered by the Government in endeavoring to carry them out. I am amazed that such a proposal with all its infinite ramifications should come from any administration for the exercise of the power or control, guidance, and compulsion over this huge industry. I visualize the immense

bureaucracy that must be built up with its headquarters here in Washington, and its tentacles reaching all over this country, and as the gentleman from Kansas so well said a little while ago, reaching every back yard, endeavoring to control and to compel, Mr. Speaker, the citizens of this country in their millions. [p. 762]

Mr. Knutson. This legislation should be entitled "An act to Sovietize American agriculture", because that is just what it will do. [p. 762]

Mr. Beck. I think of all the damnable heresies that have ever been suggested in connection with the Constitution the doctrine of emergency is the worst. It means that when Congress declares an emergency there is no Constitution. This means its death.¹³ [p. 754]

On May 12, 1933, Congress passed the Agricultural Adjustment Act, of which the introduction follows:

AN ACT To relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

Be it enacted. . . .

TITLE I-AGRICULTURAL ADJUSTMENT

Declaration of Emergency

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities,

¹³ Appendix 3 contains the rest of Mr. Beck's speech on the peacetime emergency nationalization of agriculture.

and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.¹⁴

On its face, it would appear that centralized emergency power over agriculture could be beneficial to farmers. However, when viewed in light of the Supreme Court's ruling in *United States v. Russell*,¹⁵ being "impressed into public service" can lead to property's "seizure or appropriation to the public use", or "may even be destroyed without the consent of the owner". This is "central planning" of the highest degree.

While the millions of acres of agricultural land and assets that support the national credit structure is a critical concept to understand when viewed in light of Title IV of the Emergency Banking Act of March 9, 1933, authorizing the issuance of new emergency currency, such an inquiry is beyond the scope of this paper.

Section 2 of the Agricultural Adjustment Act continued as follows:

It is hereby declared to be the policy of Congress-

- (1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of

¹⁴ Except for the urban northeastern part of the United States, federal legislation on agriculture affected profoundly the economies on which state governments relied. The enactment of this bill had a far more profound effect on most states than any other federal economic emergency enactment could have had, except for the emergency banking act.

¹⁵ *U. S. v. Russell*, 80 U.S. 623 (Wall.) 627-628.

agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914.

The federal government now had blanket authority to set acreage allotments, production quotas, and fix prices for basic agricultural commodities. This is entirely consistent with the corporativist "central planning" policies espoused by President Carter's economic advisors.¹⁶

¹⁶ Title III of the Agricultural Adjustment Act also warrants study in connection with this push for central planning of the economy. In a section purportedly authorized by Article I, section 8, clause 5, of the Constitution, the coining money clause, the Act provides as follows: Section 43. Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a

Congress cited Sections 43 of Title III of the Emergency Agricultural Adjustment Act coupled with the Emergency Banking Act of March 9, 1933, as its authority for the creation of the Exchange Stabilization Fund in the Gold Reserve Act of January 30, 1934, which in turn the Clinton Administration cited as the statutory basis for the January-March 1995 Mexican bailout. It also was purportedly under these same statutes that President Nixon issued Executive Order 11677, August 1, 1972, freezing agricultural prices, which set in motion the eventual formation of AAM.¹⁷

These statutes and events provide proof that an emergency government continued to operate in the private sector of the U.S. economy through at least 1972. The New York City and Chrysler Corporation loan guarantee programs of 1976 and 1980 and the Mexican bailout of 1995¹⁸ are examples that an emergency government continued to operate on a peacetime emergency basis, from time to time, at least into the mid-1990's.

stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion- . . .

¹⁷ Ibid

¹⁸ The Mexican bailout program was announced in Washington, D.C., on January 31, 1995, and included up to \$20 billion of Treasury loans and loan guarantees. The maximum amount outstanding at any one time was \$12.5 billion, and the last \$3.5 billion outstanding were repaid to the Treasury in January 1997.

State Complicity

Having established a pretextual basis for federal economic emergency statutes and regulations, however dubious its constitutionality, a nagging question still remained for AAM researchers regarding the role and powers of the states. How can the federal government, in time of profound peace, assume and acquire such enormous power, especially in light of the Tenth Amendment? That Amendment, on its face, explicitly reserves all rights and powers not otherwise specifically delegated to Congress to the states or to the people.

In 1933, the states, despite the presumptive transfer of state powers to the federal government during the Civil War, still enjoyed a great deal of power to curtail the federal government. They could have elected to interpose themselves between the federal government and individual citizens of the states affected by the New Deal.¹⁹

The states, in some unanimous manner, must necessarily have abdicated their "States' Rights" to the federal government to allow the New Deal to be implemented within the states. Proceeding on this premise, the AAM initiated an investigation into state emergency powers and activities, with particular attention to state legislation and gubernatorial emergency proclamations in the period 1933-1935.²⁰

AAM's review of relevant state statutes began with the Colorado Session Laws of 1933, where a pattern emerged consistent with what one would expect of emergency government. On July 29, 1933, Governor Ed Johnson issued a proclamation calling for an extraordinary session of the General Assembly for August 2, 1933.

¹⁹ See discussion of the doctrine of interposition in Black's Law Dictionary, 4th ed., in Appendix 4.

²⁰ 1935 seemed to be an appropriate end date for the main part of AAM's investigation of state emergency economic activities because the centerpiece of the economic regulatory activities of the New Deal, the National Recovery Administration, was declared unconstitutional in *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

The "whereas" clauses of the governor's proclamation read as follows:

WHEREAS, the present nation-wide economic depression has created a serious emergency in this State due to widespread unemployment and consequent indigence and dependence of large portion of the people of this State; and

WHEREAS, because of the conditions aforesaid, distress and hunger exist among our people in such a degree that the public peace, order, tranquility and safety are seriously affected and endangered and the processes of orderly government itself imperiled. . . .²¹

A review of the first extraordinary session shows the passage of emergency acts in which the General Assembly granted the Governor nearly everything he asked for. However, many of these acts were in conflict with the Colorado Constitution. In fact, in Re House Bill No. 6,²² the Supreme Court of Colorado said:

We venture the assertion that no man, able to read and understand ordinary English, however otherwise educated or uneducated, wise or foolish, would question for a moment that this bill was a plain violation of the [state]

²¹ The listed purposes of the proclaimed emergency special session of the General Assembly included passage of legislation enabling the state to create an emergency relief administration, to enable counties and other political subdivisions to obtain federal loans for public works projects, to enable the state to cooperate with the federal government in establishing public employment agencies, to suspend the operation of the state's anti-trust laws, to enable public funds and fiduciary accounts to be invested in bonds of the new federal financial rescue corporations, and the like. The relevant portion of the text of the governor's proclamation is in Appendix 5.

²² Senate Journal of the 29th General Assembly of the State of Colorado, 2nd Extraordinary Session, 31st day, Wednesday, Jan. 3, 1934. Pages 102-104.

constitutional prohibition [which prohibited the state from contracting debts other than to defend itself], or find any reason to the contrary, save by a resort to profound legal learning and a doubtful application of judicial precedents. We think the bill contracts a debt by loan in one form.

Is that debt contracted to defend the state? On this question the declarations of the executive and legislative departments of the state government, while probably persuasive, are not binding here. If they were, the Constitution would cease to have even the force of a statute. If the people's "Thou shalt not" can be brushed aside by the simple ipso dixit of the public servants thus bound, the mandate is impotent. Such a construction, once adopted, breaks the barrier, and future legislatures, protected by the precedent, might pile up mountains of debt on future generations, resulting in inevitable impoverishment or ruthless repudiation.

Justice Adams commented in the case:

I am also unalterably persuaded that House Bill No. 6 is not a measure to defend the state when it needs no such defense. In witness, I point to the recent public utterances of the President of the United States and of the Governor of the State of Colorado, both of whom hail the dawn of prosperity. From whatever source economic improvement may have been derived, I cannot but feel that a subsidy of not to exceed \$ 10,000,000 with interest thereon, and which may equal that sum, is too big a price to pay to repel an enemy that does not exist. Beyond this I need not now express myself.

The Acts passed by the Colorado General Assembly in the extraordinary session, mostly on August 17, were those called for in Governor Johnson's proclamation. The governor obviously had foreknowledge of the acts he wanted passed at the time he issued the proclamation and almost certainly had pre-prepared copies in hand. It would have been virtually impossible for the state

legislators to have written these acts themselves on such short notice. This point is explored in some depth below.

In the proclamation itself, Governor Johnson alluded many times to the expectation that these acts were to be passed by the state in cooperation with federal government policies. This at least indicated that the federal government, or some entity acting in cooperation with it, had already prepared uniform acts for the states, which they were asking Governor Johnson to implement regardless of the peacetime constitutionality of the measures.

If AAM had guessed accurately about the existence of a larger, coordinated emergency plan involving more states than just Colorado, then examinations of the statutes and archives of other states should reveal similar emergency activities. In fact, a general examination of the statutes of the neighboring state of Kansas did reveal statutes written identically, in some cases verbatim. Other states had statutes substantively identical to those enacted at this time in Colorado. An examination of other states revealed essentially the same emergency legislation.

This discovery posed an interesting question. What foreknowledge of the coordinated effort did the governors have, and what influence did the governors have over the new emergency state legislation?

A search was begun in the state archives at Topeka of the personal papers of Alf Landon, Governor of Kansas during 1933-1937..²³

On the night of March 5, 1933, a telegram was sent to His Excellency Alfred M. Landon stating:

We respectfully submit to your consideration that the dire need of the hour calls for national unity in support of our president a unity even more complete and unselfish than that necessary in war.... Prompt and decisive action of a national scope in several directions is necessary to prevent economic collapse throughout the land the ordinary preparations of government that prevail and are suitable in

²³ David Schechter and Ed Petrowsky, researchers from Kansas, conducted the review of the Kansas state archives for AAM.

time of prosperity with normal conditions may be too slow to meet adequately this dangerous emergency and stem the danger of an economic avalanche carrying all before it. . . . We a coalition of different groups and political and religious faiths respectfully request that you join the other governors of our country in the issuance of a proclamation on Wednesday March 8th in support of the President of the United States. . . .

The telegram was signed by Richard E. Byrd, chairman; Mrs. Calvin Coolidge; William Green, President of American Federation of Labor; Louis J. Taber, Master of Grange; Edward A. O'Neal, President, Federal Farm Bureau Federation; Dr. Nicholas Murray Butler, President Columbia University; H. G. Harriman, President U.S. Chamber of Commerce; Rabbi Stephen Wise; Dr. Harry Emerson Fosdick (pastor of Riverside Church in New York); Daniel Willard, President Baltimore and Ohio Railroad; and Walter Lippman, Publicist. On March 6, 1933, another telegram was received, adding the following names to "the petition": Cardinal Mundelein; Alfred E. Smith; Newton D. Baker; and omitting Mrs. Coolidge.

It must be remembered that a Governors' Conference was held in Washington D.C. on the same day that the governors received the telegram, March 6. This was three days before the scheduled emergency session of Congress. The governors on March 6 passed unanimous resolutions pledging their "wholehearted" support to the President and requested Congress to delegate broad executive powers, as broad as if we were invaded by a foreign foe. Governor Landon did not attend the conference in Washington D.C, but on March 7, at 8:23 p.m., he received the following telegram:

Most governors who were not in person at the governors' conference have individually wired intentions to issue proclamations - stop - This respectfully is a final checkup to insure unanimity of the proclamations to be issued by all governors of states on Wednesday, March 8 - stop - You will recall that the governors conference on my motion unanimously resolved to recommend such issuance by all

governors on March 8th appealing to their fellow citizens to support the President of the United States and our institutions etc. Kindly wire confirmation that you will issue such proclamation address room eight three eight Hotel Willard = Clyde L. Herring Gov of Iowa

Then on March 8, 1933, Governor Landon responded:

Proclamation has been issued Mailed copy last night to Richard E. Byrd Willard Hotel... Now therefore I, Alf M. Landon, Governor of the State of Kansas, by virtue of the law vested in me, do convey this promise of cooperation to the President of the United States. . . .

At 6:24 a.m. on March 8, the following telegram was received by Governor Landon:

Complete success of program of simultaneous proclamations by all governors of states - stop - Please accept expression of deep appreciation - stop - Plans being made for reading your proclamation in every church in your state respectfully request immediate air mailing of your proclamation to me at Hotel Willard - stop - your patriotic and unselfish action in this emergency has supplied the leadership which will bring the nation to victory over every obstacle = Richard E. Byrd Chairman Coalition Committee

This telegram provides evidence that every governor of every state issued an emergency declaration simultaneously on March 8, 1933, the day before the federal Congress convened in emergency session. Further review of Governor Landon's papers disclosed a letter from the National Recovery Administration, dated August 5, 1933, signed by Hugh S. Johnson, the head of the NRA, to Mr. Franklin Corrick.

Some of the subjects and matters that may need consideration are set out below in five parts, viz: anti-trust laws, public works, national employment systems act,

Federal home owners' loan act, Federal Emergency Relief Act, and the Federal Banking Act of 1933. The acts or proposals which are of some length appear below in the form of synopsis. . . .

Frank Corrick, Kansas State reviser of statutes, organized these matters through the cooperation of the American Legislators' Association (ALA) in Chicago, Illinois. The public works act, the anti-trust act, the federal home owners' loan act, the federal emergency relief act, and the federal banking act of 1933 (Glass-Steagall Act), were passed in the first extraordinary session of the state of Colorado either verbatim or substantially identical to those proposed to the state of Kansas in NRA administrator Johnson's letter. In fact, the emergency legislation passed in every state was drafted to comply with these federal mandates organized by the ALA in Chicago, and was implemented by the general assemblies of the states in a uniform manner. This is highly consistent with the federal Emergency Banking Act of March 9, 1933, in which Congress declared that it was going to implement "remedies of uniform national application."

When state constitutional problems arose, we find telegrams of the following nature:

HonAlfLandon November 25, 1933
Existing statutes of Kansas including legislation passed at present special session are in the judgment of our counsel inadequate to provide basis for revenue bonds either by the state or by municipalities within the state - stop - Fish and game act and highway commission act also inadequate to remedy deficiencies - stop - Unless substitute for house bill two seventeen senate bill one sixty nine now in house committee on state affairs which has been approved by our counsel is engaged at this session see no hope for success of public works program in Kansas - stop - Your cooperation in securing speedy passage of committee substitute will be of great value = Harold L. Ickes
Administrator

Chas W. Eliot, second executive officer of the National Planning Board, Federal Emergency Administration of Public Works, issued a series of circular letters. The fifth circular letter, dated December 11, 1933, described the organization of state planning boards to meet the conditions which the national planning board had laid down for the states. Approaches and items for consideration of central planning were: public works programs; land use planning including "'zoning' for the purpose of classifying and guiding the proper use of rural lands"; transportation systems including "growth and size of industrial areas, present and potential agricultural production, and ports, terminals, and markets for distribution of goods." He said that all methods of transportation should be regarded as part of a single system, to that end we must work out a practical method of integrating the different units so as to use each method in its most efficient and economic form. Also housing; population redistribution and social survey; conservation and planning of natural resources; recreation; distribution of industry; water resources; fiscal programming; and governmental reorganization were authorized. The letter went on to say "A full fledged state planning project will eventually include all of these items, and others as well, which are included in the 'suggested outline of basic materials of planning' contained in the second circular letter sent to the regional advisors."

We see unfolding before us a well-conceived mission to implement central planning on a grand scale within the United States in a time of "peace". The appendix written by Dr. Eliot to the fifth circular letter was "An Act to promote more economical and orderly development of the [state] commonwealth through the creation of an unpaid state planning commission." The minutes of the state planning commission for Kansas of April 10, 1934 began to address this "unpaid" problem. Mr. Wilson, the state planner and liaison to the national planning board, began the State Planning Board meeting discussing financing for the staff. He said:

As you know, a provision was made for furnishing a staff of the planning board under the CWA. Also, you will recall that an order came out terminating the work of the CWA on March 31 st.... When we came up to the 31 st of March,

the curtain was running down on the payroll of our staff. Fortunately, John Stutz, saw the relationship of the work of the planning board to the task which is on the shoulders of the Emergency Relief Organization, and also where, in the public works program, there is a direct relationship with the work of his organization in order to provide a work relief program. There is temporary assurance that the state planning board staff will be continued with its 75% cut. The salaries of the staff of the planning board will go into the cost of the overhead of the Emergency Relief Organization. . . . Someone is going to wonder how many employees the planning board should have. There is no limit to the number of employees that might be used.

It is interesting to note that the "state" planning commission had access to limited federal emergency money with which to pay a limited staff, but, on the other hand, there appears to be an unlimited fund to hire unlimited numbers of employees. This conundrum is clarified when we read the letter from Governor Landon to Chancellor E. H. Lindley, University of Kansas, on March 20, 1935, when the Kansas General Assembly failed to pass the State Planning Board Act, which would have provided state funding for the staff.

Dear Chancellor,

There may be some question in your mind with regard to the immediate future of the Kansas State Planning Board in view of the fact that the planning bill failed to pass the legislature... . We are of course dependent on the National Resources Board and the Spelman Fund for the continuance of effective work. Both have been advised of what occurred and a reply has been received from the Spelman Fund indicating that their attitude is unaffected by the action of the legislature.

If there had been a liberal appropriation available for the Planning Board at the outset of its work, I would not have expected it to accomplish more than it has. As it has had no

state appropriation and has had to depend entirely on outside resources, I think its accomplishments are reason for sincere commendation.

This review of Alf Landon's personal papers answered AAM's questions about state complicity (under federal direction) in the implementation of emergency government within the states. The states clearly were principal actors in implementing the central planning apparatus of the New Deal, using private funds for that purpose when needed. However, the answer to one question often leads to another question. The analysis of Governor Landon's papers certainly led to other questions.

Corporatism and Central Planning

Who and what is the Spelman Fund, and what was its interest in funding the staff of the central planning boards in the state of Kansas in 1934? Apparently the Fund's attitude was unaffected by mere rejection of the formal, ongoing state central planning apparatus by an entire state legislative body.

The Spelman Fund is one of four great philanthropic foundations organized and funded by John D. Rockefeller in 1911. In 1929, the Laura Spelman Rockefeller Memorial Fund, named for Mr. Rockefeller's wife, was consolidated with the principal charitable fund, the Rockefeller Foundation, forming the largest privately funded charitable organization in the world. The director of the Spelman Fund after 1929 was Beardsley Ruml. A principal beneficiary of Mr. Ruml's donations at the time was Professor Charles Merriam of the Political Science Department of the University of Chicago. Professor Merriam was a prominent promoter of the application of discoveries of the behaviorist school of psychology to the social sciences generally .²⁴

²⁴ The Lincoln Library of Essential Information (1936), p. 1961, has the following relevant entry about Mr. Rockefeller and his charitable foundations: Rockefeller, John Davison, American capitalist, was born at Richford, N. Y., in 1839. At the age of 14, he moved to Cleveland, Ohio. He received a public school education; was clerk in a forwarding and commission house; and, at 19, became a partner in the firm of Clark and Rockefeller, commission merchants. Subsequently the firm engaged in the oil business. In 1865, the firm, then William Rockefeller and Company, built the Standard Oil works at Cleveland and, in 1870, was consolidated with others to form the Standard Oil Company. Still other interests were later acquired and the Standard Oil trust was formed in 1882, but was dissolved in 1892. Thereafter the various Standard Oil companies were operated separately with Rockefeller at the head until 1911, when he retired, without a near rival, the wealthiest man in the world. He devoted much time and money to the promotion of various educational, religious, and charitable interests. In 1892, he established the University of Chicago, to which he made gifts exceeding \$46,000,000. At the end of 1928, it was estimated that Rockefeller's total benefactions then exceeded \$540,000,000. About four-fifths of this amount had been given to the four great philanthropic and

The question of who or what was the Spelman Fund, the source of money for the State of Kansas central planning effort during the New Deal, is now answered, but what could have been the Spelman Fund's motive for funding central government planning?

A traditionally accepted view in the social sciences, including, apparently, the economics profession, has been that a presumptive laissez-faire attitude on the part of big business interests, including the corporate interests of the Rockefeller family, favored limited governmental intervention into their affairs. If the traditional view were correct, then central planning by government, even corporate-directed governmental planning efforts, would seem to be inconsistent with Rockefeller family funding of the Kansas effort in the first years of the New Deal.

AAM's researchers undertook a guarded and reluctant review of the Rockefeller family's philosophical and political interests specifically and big business corporate interests generally during the New Deal. Thousands of pages and many books have been written about big corporations and their interlocking directorates, divisions into different classes of voting and nonvoting shares for the purpose of retention of corporate control by management groups, influences on government policymaking, and monopolistic or monopsonistic economic behaviors, cartel-like behaviors, and even conspiratorial behaviors in the policy realm. The mechanism of the Mexican bailout by the U.S. Treasury Department in the early months of 1995, principally to relieve the financial distress of some large mutual funds and other institutional holders of Mexican debt obligations, is a reasonable recent model for such a study.

AAM's researchers had no desire to review all this data and literature. However, we did feel compelled to search for answers to the apparent inconsistencies that existed in our research on the

charitable corporations founded by him, which are as follows: The Rockefeller foundation, \$180,000,000; general education board, \$130,000,000; The Laura Spelman Rockefeller memorial, \$73,000,000; and The Rockefeller institute for medical research, \$39,000,000. The Laura Spelman Rockefeller memorial fund was consolidated with the Rockefeller Foundation in 1929, making the largest single philanthropic endowment in existence.

origins of governmental central planning at the state level after 1933. With a strict view toward confining further research to the emergence of the potentially fatal combination of emergency government and central planning, our task began. Our findings in this part of our study are summarized in Appendix 7.

During our first review of the normal peacetime constitutional authority of the federal government in economic affairs, several areas of limited forms of central planning, (or of government intervention in the market economy that could easily become implements of central planning if not scrutinized carefully) were identified.²⁵ These limited central planning authorities, however, appear to be intimately linked to corporate growth and influence in the subsequent history of the United States.

Sectional, personal, and corporate interest began to vie for government gratuities early in history, claiming Congress had power under our constitutional system to grant public land and monies as gifts. The power to provide post offices and post roads led states to request grants of public lands and monies for internal development of toll roads, canals, rivers, and eventually railroads. The states chartered corporations to develop these enormous projects. The history of U.S. government involvement in corporation chartering during the nineteenth century is summarized in Appendix 7.

From our brief analysis of the advancement of corporativism in nineteenth-century America, we see the classical, age-old struggle of mankind for liberty emerge. Men in government with power often used the power of the state to borrow money, thus creating an unsustainably and artificially stimulated level of economic activity based on debt. The increased influx of money and credit into the favored activities, such as internal improvements and railroad building, resulted in speculation and economic boom. The bubble collapsed at a future date, but the debt incurred could not be repaid

²⁵ Those opportunities for central planning identified in an earlier part of this paper and derived from the original Constitution of 1787 dealt mainly with the authority to dispose of the public lands, provide for post offices and post roads, and to some lesser degree lay and collect tariffs on imports and exports.

without severe austerity measures. Debtors banded together against creditors. Creditors, usually having the economic and political advantages of wealth, used their wealth to influence the men in government to compel performance by the masses (increased taxation, or increased levels of full-faith-and-credit borrowing going forward).

The process just described usually results in the "political elite" becoming more wealthy and powerful while the masses struggle to pay the debt. This is especially the case where the absence of progressive taxation leaves the creditor class largely immunized from the worst effects of the debt-linked tax increase, while the masses bear the full brunt of the taxation. In the nineteenth-century United States, the scenario just described eventually resulted in corporations becoming important political and economic forces in themselves, thereby causing major sectional conflicts.

During and after the Civil War, precedents previously unknown to American jurisprudence were established by the Northern government. First, President Lincoln established and administered a temporary constitutional dictatorship. The first grand experiment with a full-blown centrally planned economy occurred in this wartime era.

Wars cost a lot of money, after all. The earlier state attempt at repudiation of foreign bonds in the 1840s certainly had its effect on the foreign credit of the United States. Since the lender could not know who might win a Civil War, the Northern government could not easily borrow money. In war, nations can and will do whatever is necessary to put down the enemy. As a result, Salmon P. Chase, Secretary of the Treasury under Lincoln, brought forth two plans to provide adequate currency to fund the war.

In his report to Congress in December 1861,²⁶ Chase recommended not merely increased taxation and provisions for additional borrowing, but also fundamental changes in the currency system of the country. He discussed two plans. The first contemplated the gradual withdrawal from circulation of the notes of private corporations' obligations (state banks' notes) and the substitution of United States notes, payable in coin on demand. This

²⁶ Report of the Secretary of the Treasury, 1861, p. 17.

plan as envisioned by Chase was never enacted. The second plan, however, contemplated the printing of notes by the government and their distribution through national banks, which were to be chartered for the first time, guaranteeing the redemption of national banks' currency notes by pledges of United States bonds.²⁷

Central planning following the Civil War resulted in vast holdings previously un contemplated under the classical liberal view of U.S. constitutional government. The era of monopoly and trusts had begun.

Andrew Johnson continued to try to restrain Congress, as shown by his veto message on June 15, 1866, of a bill entitled, "An Act to enable the New York and Montana Iron Mining and Manufacturing Company to purchase a certain amount of the public lands not now in market." The Act authorized the New York and Montana Iron Mining and Manufacturing Company to purchase 12,800 acres of iron and timber land in Montana for \$1.25/acre. The land was not yet surveyed and was ineligible for sale or entry by individuals. When opened for pre-emptive settlement rights, individuals would be required to pay a minimum of \$20/acre and only have access to 160 acres. In his veto message to Congress,²⁸ Johnson said:

Why should incorporated companies have the privileges of individual preemptors? What principle of justice requires such a policy? What motive of public welfare can fail to condemn it? Lands held by corporations were regarded by ancient laws as held in mortmain, or by "dead hand," and from the time of Magna Charta corporations required the royal license to hold land, because such holding was regarded as in derogation of public policy and common right. Preemption is itself a special privilege, only authorized by its supposed public benefit in promoting the settlement and cultivation of vacant territory and in rewarding the enterprise of the persons upon whom the

²⁷ See Carl Swisher, *Constitutional Development*, p. 350.

²⁸ *Messages and Papers of the Presidents*, Bureau of National Literature Incorporated, NY Page 3614-3520. June 15, 1866.

privilege is bestowed. "Preemption rights," as declared by the Supreme Court of the United States, "are founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer, who is found in advance of our settlements, encounters many hardships, and not infrequently dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the spot selected by him, not to exceed 160 acres."

It is interesting to note that Congress did not know who the people were that formed this combination, but the artificial person in fact was granted a privilege not available to natural persons. Many such examples of corporate grants by the men in control of central planning took place. According to the Century Book of Facts (1905), p. 640, the following alien corporate holders of land in Colorado alone were: The Arkansas Valley Company, a foreign corporation, whose inclosures embrace upwards of 1,000,000 acres; the Prairie Cattle Company, upwards of 1,000,000 acres; H. H. Metcalf, 200,000; John Powers, 200,000; Mcdanies & Davis, 75,000; Rouchler & Lamb, 40,000; J. W. Frank, 40,000; Garnett & Langford, 30,000; Leivesy Brothers, 150,000; Vrooman & McFife, 50,000; Beatty Brothers, 40,000; and Chick, Brown & Company, 30,000; Reynolds Cattle Company, 50,000.

By 1893, statutes were passed in New Jersey, followed by Delaware, that opened the corporate door to allowing corporations to own other corporations. Liberal corporate laws were said to be an attempt to attract business. This provided a veil of secrecy as to the true ownership of corporations. In 1880, John D. Rockefeller, at age 41, said, "The day of the combination is here to stay. Individualism has gone, never to return."²⁹

²⁹ Allan Nevins, John D. Rockefeller, vol. 1 [1959], p. 622.) The "loose" corporate laws of New Jersey coupled with 14th Amendment federal corporate protection provided an environment for the formation of trusts, resulting in monopolies. John D. Rockefeller and Standard Oil emerged on top.

Industrial Labor Relations and The Colorado Plan

In the period immediately following the Reconstruction era (1865-1877), corporations concentrated enormous economic power, resulting in national emergencies in the field of industrial labor relations. The first of these followed the panic of 1873 and was centered in the railroad workforce. Appendix 8 contains an interesting account of the use of purported peacetime federal emergency power vested in the President to suppress an unemployed workers' march on Washington in 1893 and labor unrest in general.

In the course of our first review of the normal peacetime constitutional authority of the federal government in economic affairs, several areas of limited forms of central planning, or of government intervention in the market economy that could easily become implements of central planning if not scrutinized carefully, were identified.³⁰ These limited central planning authorities, however, appear to be intimately linked to corporate growth and influence in the subsequent history of the United States. See Appendix 8.

The "Colorado Plan "

The concentration of power into the hands of a few industrialists resulted in an exploitation of labor, causing conflict that finally erupted in the Ludlow massacre. This incident was the high-water mark in the formulation of the emergency corporate government policy implemented in the 1930s.

³⁰ Those opportunities for central planning identified in an earlier part of this paper and derived from the original Constitution of 1787 dealt mainly with the authority to dispose of the public lands, provide for post offices and post roads, and to some lesser degree lay and collect tariffs on imports and exports.

The Ludlow massacre in 1913, together with central planning initiatives linked to American entry into World War I in April 1917, marked a major turning point in the history of our nation that eventually led to the formation of what could be termed "left corporatism" or "socialist corporate" government. The new Colorado Plan, as proposed by the Rockefeller group, called for workers to be "given" education, health care, adequate housing, food requirements, employment security, and labor representation to discuss any problems with management. Fosdick [Raymond] also assisted and encouraged [John D. Rockefeller] Junior in investments in the field of social relations. Along with Mackenzie King, he convinced Rockefeller to put up the money to begin Industrial Relations Counsellors, Inc., an organization based on the assumption that labor relations was a field to bear watching, and the best opportunity for influencing its development was in the realm of management counseling. In its sales pitch, it stressed that a satisfied labor force meant more profits and that any increased costs from accommodating the human weakness of laborers would be more than counterbalanced by increased efficiency and contentment. Fosdick's next step was to encourage the development of the emerging science of industrial relations and industrial management in American universities. Beginning with the creation of an Industrial Relations section at Princeton in 1922, he went on to develop similar programs at other major schools. The first five years of the Princeton program were funded by Junior, as was every other institute of industrial relations set up at a major university in the interwar years.³¹

Princeton, Yale, Harvard, and Columbia were heavily funded by John D. Rockefeller, Jr., but the political science department at the University of Chicago, under the leadership of Charles E. Merriam and Beardsley Ruml, became the headquarters for the new "science" of industrial relations. Whether the increased costs of providing for laborers' "human weaknesses" would be offset by increased profits turns out to be immaterial. If government could provide these benefits, at no cost to the corporations, any increased

³¹ Peter Collier and David Horowitz, *The Rockefellers: An American Dynasty* (1976), p. 142.

productivity would be a windfall profit to corporate owners. It was this goal that the Rockefeller interests pursued through their foundations, university funding, and government collaboration, and that they ultimately achieved in 1933. The only problem to be overcome was the peacetime constitutional limitations on government to create money and "tax and spend" at will. President Roosevelt, the Congress, and the states solved this problem on March 9, 1933, by declaring a that a state of national emergency existed, thereby eliminating prior constitutional restraints.

The answers to the seemingly inconsistent theory that big business in general and Rockefeller interests more specifically would favor government non-intervention in individual and corporate life, as opposed to the facts that they were clearly encouraging and funding such interventions, began to emerge in 1933. The first hundred days of the Roosevelt administration were by and large no more than an implementation of the Rockefeller "Colorado Plan" by the national government in cooperation with the state and local governments, with purported constitutional authority under a state of declared national emergency that previously had been assumed to apply only in wartime.

The Emergency Banking Act of March 9, 1933, Title I, authorized emergency power (virtually dictatorial) for the President and Secretary of the Treasury over all finance, authorizing the Secretary of Treasury to seize all banks and gold and place them under control of the executive.

Title IV of the Act authorized the issuance of a new emergency currency collateralized by government bonds but removed any obligation on the part of the federal government that they be redeemed. Title III of the Act gave the Reconstruction Finance Corporation expanded powers and a seemingly unlimited appropriation for emergency credit and government loan guarantees for corporate bailouts.³² All emergency legislation necessary was promptly passed uniformly in emergency sessions in all the States.

HJR 192, June 5, 1933, declared it to be against the public policy for any creditor to demand payment in gold or silver for

³² Jesse H. Jones, with Edward Angly, *Fifty Billion Dollars: My Thirteen Years with the RFC, 1932-1945* (1951).

corporate or government bonds, thus freeing corporations and government from previous and later obligations.

The Emergency National Industrial Recovery Act of June 16, 1933, enacted the same day as the Glass-Steagall Act, exempted corporations from anti-trust and anti-monopoly law, authorized in section 7(a) national labor unions and minimum wages and hours of work, and authorized welfare, public works, and unemployment relief. The National Resources Board was established under Executive Order 6777 on June 20, 1934. The national and state planning boards, funded by the Spelman Fund, were established under this Executive authority. This program was placed under the head of General Hugh Johnson, former deputy director of the War Finance corporation, which was headed by Bernard Baruch during World War I.

The Emergency Relief Act of May 12, 1933, authorized government to provide welfare in exchange for work and authorized the President to make grants of money to the states for this purpose. States passed emergency statutes authorizing local governments to issue bonds to match the federal funds. This program (ERA) was headed by Harold Tckes, an associate and friend of Charles E. Merriam. The Home Owners' Loan Act of June 13, 1933, placed control and financing of homes under executive control and provided a bailout for many banks, savings banks, savings and loans, and the like.

Later, the Social Security Act of 1935 provided a national safety net and retirement plan for virtually all Americans, with no requirement of state funding and with only minimal state administrative involvement.

One of the most important acts of Congress in the early days of the New Deal was the Emergency Agricultural Adjustment Act of May 12, 1933. For more than a decade, agriculture had been the economy's "sick sector." American farmers enjoyed boom conditions during and immediately after World War I. The upsurge in demand for farm products had then boosted prices and induced enlarged production. In the process, farmers had borrowed heavily to expand land holdings (purchased at abnormally high prices) and to add to their stock of equipment. This episode of euphoria had been short-lived. When European producers recovered from the

devastation of war, export markets for American agricultural commodities collapsed. From the early 1920s onward, farmers suffered from reduced prices for their products and from the increased real burdens of debts incurred in happier times.

A fundamental imbalance between the agricultural sector's capacity to produce and the ability of the domestic market to absorb its output was abundantly apparent. In addition, a structural fault line could be identified that separated the agricultural and industrial sectors. Farming, with a large number of small producers, effectively replicated the conditions of the textbook model of perfect competition. But while farmers were price takers, manufacturers were not. The latter typically were able to exercise some measure of market power by reducing outputs rapidly in the face of softening demand. Farmers could not do so: when agricultural prices fell, they typically expanded production in an often futile attempt to improve their debt-service capacities. This response, given the relatively inelastic demand for staple food products, shrank their income still further. A case could thus be made that laissez-faire economics worked perversely in agriculture and that government intervention to stabilize agriculture was therefore imperative.

Section 1 of the Emergency Agriculture Act impressed all of agriculture into the public service, essentially effectuating an emergency nationalization. Section 2 authorized control of production and pricing, but the specific schemes for accomplishment were not discussed.

Henry Wallace, a longtime friend of President Roosevelt, was placed at the head of the Department of Agriculture, and many Rockefeller associates schooled at Columbia University and Cornell University, then the two most prominent universities in the state of New York, followed him. These original "brain trusters" included Raymond Moley, who had served Governor Roosevelt as an advisor in New York, Adolf A. Berle Jr., professor in Columbia's school of law, and Rexford Guy Tugwell, professor in Columbia's economics department. Henry Morgenthau, who later became Roosevelt's Secretary of the Treasury, was a Cornell graduate initially assigned to the Department of Agriculture.

By the 1920s Berle was persuaded that a "major shift in civilization" was underway as a by-product of the power acquired

by large corporations.³³ Berle's essential arguments were put before Roosevelt in memoranda and oral briefings early in the 1932 campaign. In a 39-page document of May 1932, for example, Roosevelt was informed that "Concentration has proceeded to a point at which 65% of American industry is owned and operated by about six hundred corporations. . . . This means that some six thousand men, as directors of these corporations virtually control American industry. . . ."

In light of this concentration of corporate control, Berle expected that "at the present rate of trend, the American and Russian systems will look very much alike within a comparatively short period - say twenty years." And he added that "there is no great difference between having all industry run by a committee of Commissars and by a small group of Directors." However, Berle rejected totally the traditional trustbusters' solution to the problem of concentration. Bigness should be accepted as a fact of life in modern industry. He proposed instead that the antitrust laws be amended to permit consolidations and "even monopolies at will", and he specified that the necessary regulation "should include power to require uniform prices; to control security issues; and to control further consolidation."³⁴

Tugwell had articulated his vision of a new economic order in some detail before the December 1931 meeting of the American Economic Association. He then endorsed a system of comprehensive national planning, which he characterized as follows:

Planning is by definition the opposite of conflict; its meaning is aligned to co-ordination, to rationality, to publicly defined and expertly approached aims; but not to private money-making ventures; and not to the guidance of a hidden hand.... Planning implies the guidance of capital

³³ A.A. Berle, Jr., "Corporations and the Public Investor" *American Economic Review* (March 1930), pp. 54-71.

³⁴ This argument also is from p. 6 of the Berle May 1932 campaign document.

uses; this would limit entrance into or expansion of operations. Planning also implies adjustment of production to consumption; and there is no way of accomplishing this except through a control of prices and of profit margins. It would never be sufficient to plan production for an estimated demand if that demand were likely to fail for lack of purchasing power. The insurance of adequate buying capacity would be a first and most essential task of any plan which was expected to work. . . . New industries will not just happen as the automobile industry did; they will have to be foreseen, to be argued for, to seem probably desirable features of the whole economy before they can be entered upon.³⁵

Tugwell became Undersecretary of Agriculture under Henry Wallace, and his job became the finding of political support for the programs to control agriculture specifically. Consensus as to the specific strategy, however, was difficult to reach. In 1928, Tugwell sketched a technique for doing this. He had then offered a blueprint for a system of production controls with the following features:

(1) A survey of the amounts necessary to meet normal needs and which will command a profitable price. (2) Notice of limitation of planting, on a basis of ten-year averages, by local (probably county) agents of a Farm Board. (3) Enforcement through denial of the use of railways and warehouses to produce grown on unauthorized acreage.

In July 1932, Tugwell made common cause with two agricultural economists: M. L. Wilson, then at Montana State College, who had formerly served with the Bureau of Agricultural Economics, and Mordecai Ezekiel, another veteran of the Bureau of Agricultural Economics who was then an official at the Federal Farm Board. An important programmatic ingredient was added to Tugwell's 1928 plan: direct payments to farmers who complied with recommended restrictions on production.

³⁵ Rexford G. Tugwell, "The Principle of Planning and the Institution of Laissez-Faire," *American Economic Review*, Supplement (March 1932), pp. 89-90.

It is important to note that the domestic allotment plan proposed by Tugwell had first been developed by the BAE economists William J. Spillman in a book entitled *Balancing the Farm Output* (1927), but its best-known formulation was in John D. Black's 1929 study, *Agriculture Reform in the United States*. Because the plan appeared in Black's book, he received credit for it, but in fact the allotment chapter drew from an outline prepared by Beardsley Ruml, director of the Laura Spelman Rockefeller Foundation. Ruml had agreed to underwrite agricultural reform largely in order to find a forum for presenting the allotment idea, which he thought was superior to the McNary Haugen Plan.³⁶

The farm relief plan with the greatest appeal to farm lobbyists came from a pamphlet issued in 1922 entitled *Equality for Agriculture*, produced by George N. Peek and General Hugh S. Johnson. The authors, both of whom were alumni of the War Industries Board, subsequently migrated to Illinois to enter the farm implement manufacturing business. The postwar break in farm prices had a direct and forceful impact on their personal fortunes. Their response took the form of advocacy of a plan to raise farm prices. Translated into legislative form, it became known as the McNary-Haugen Bill. The core idea held that the economy was fundamentally unbalanced as a by-product of the nation's tariff policies. The manufacturing sector had enjoyed systematic protection, whereas the agricultural sector had not. Elementary fairness, it could thus be argued, meant that government should even the scales. Moreover, were farmers to enjoy "tariff equivalence," their circumstances would be bound to improve. In the home market, prices of staple commodities would be raised above the world market price by the average amount of the tariff on manufactured goods. Surpluses that did not clear at home would then be sold abroad for what they would fetch - and the ultimate payout to farmers would be struck as a weighted average of the returns from domestic and foreign sales.

³⁶ From *New Day to New Deal, American Farm Policy from Hoover to Roosevelt, 1928-1933*. David E. Hamilton, University of North Carolina Press, Chapel Hill and London, page 298.

Another plan known as the Wisconsin Vision under the leadership of Richard T. Ely called for discouraging the extension of cultivated acreage and immediate repeal of the Homestead Acts. In addition, government should sponsor surveys to classify the nation's land resources and to identify their best uses. Aggressive measures should then be taken to retire submarginal lands from cultivation and to convert them to pasture or forests. This plan was implemented under the state planning boards established in the 1930s, later to become known as the soil bank and currently the Conservation Reserve Program.

Yet another plan, articulated by Professors George F. Warren and F. A. Pearson of New York's Land Grant College at Cornell University, argued for inflationary policies to pump up farm prices by raising the price of gold, thereby devaluing the new emergency dollar. This plan won the support of Henry Morgenthau, Jr., Roosevelt's second Secretary of Treasury, and was implemented in Title III of the Agricultural Adjustment Act of May 12, 1933, as amended May 27, 1933 ("AAA").

Professor Irving Fisher of Yale University had yet another plan. Fisher argued for proper monetary policy and money creation under control of the central bank. It was with this philosophy that Tugwell and Morgenthau eventually brought in Marriner Eccles, who became chairman of the Federal Reserve Board in 1934.³⁷

The AAA authorized the Executive Branch, in its discretion, to use any or all of the competing techniques then at the forefront of discussion: direct control over production (favored by advocates of domestic allotments); export promotion and negotiation of marketing agreements on terms favorable to farmers (McNary-Haugenites); retirement of submarginal acreage (supported by enthusiasts for land use planning); monetary inflation with deficit spending and world currency market interventions (Keynesian monetary policies); and cheap, affordable food for all (favored by manufacturing interests and organized labor).

³⁷ See discussion in Walker F. Todd, *From Constitutional Republic to Corporate State*, Committee for Monetary Research and Education, Monograph No. 51, Oct. 1995.

Parts of all these ideas were eventually implemented with respect to agriculture, and variations of these plans continue today. One thing common to almost all the plans was that they would cost a lot of money. Roosevelt had pledged on October 19, 1932, in his campaign, that "a complete and honest balancing of the federal budget" was "the one sound foundation of permanent economic recovery". However, he also said, "starvation and dire need" should be treated as emergency outlays and not chargeable against his commitment to match ordinary spending with receipts.³⁸

The change of emphasis from price support for commodities to income guarantees for farmers by government subsidies through deficit spending occurred in 1937, when the 1933 AAA was first amended. Although directly contrary to Roosevelt's campaign promise, direct payments to farmers, funded by deficit spending, if necessary, is very compatible with corporate-state logic. Direct payments, as opposed to price supports for commodities, provided cheap commodity prices for commodity processing corporations, increased exports and domestic consumption, provided industrial workers and consumers with more disposable income, and placed the cost of the program upon future generations with financing incurred through deficit spending.

Under post-1930s variations of the direct payments scheme, the price of corn has changed little from its \$2/bu. level in the 1940s through its \$2/bu. level of today, in spite of the tremendously inflationary increase in the cost of farm-manufactured inputs and the costs of government. In general, the domestic price level has increased approximately tenfold since 1933. As a result, the "family farms" have been almost annihilated. Corporate agriculture, off-farm incomes, and hobby farms are the centerpieces of agricultural rhetoric today. Inheritance taxes, imposed to fund, in part, the deficits caused by 1930s and subsequent emergency spending, make it almost impossible to hand down a farm from one family generation to another today. Corporations, being unnatural, man-made legal entities, which neither live nor die, in violation of legal rules against perpetuities, are thus exempted from inheritance taxes and can exist in perpetuity. The playing field in agriculture was

³⁸Roosevelt Papers, vol. 1, pp. 807-810.

tilted by central planning in favor of corporate agriculture in the 1930s, and the results are readily apparent today.

Revised and updated emergency central planning of the 1930s has become the ordinary condition of business over all aspects of American life, from monetary issues to agriculture. There remains some lingering, but almost purely rhetorical, disputation between the socially liberal left corporatists and the socially conservative right corporatists as to the amount of government deficits, how they should be spent, what forms of progressive taxation should be imposed to fund those deficits, and how best to plan agriculture. But a general consensus has remained since 1933: big government, firmly allied with big business, leaving little room left for individuals. The meaning of Stuart Eizenstat's statement cited at the beginning of this paper, "If we have to nationalize agriculture, we will. Agriculture is too vital a resource to be left in the hands of individual farmers", with all of its ramifications, is now clear.

Conclusion

Centrally planned schemes by powerful men in government probably antedate recorded history. However, the sustainability of such schemes historically is questionable at best: they usually have resulted in economic failure, over time, and may have prompted governing elites to attempt imperial expansion to find new markets, new sources of raw materials, and cheaper populations of laborers to keep the centrally planned economies functioning. Centralization of complex societies through population redistribution, production and market control, monetary manipulation, welfare, workfare or public works relief, social security, or global military and economic alliances ultimately collapses. Our forefathers tried, albeit unsuccessfully, apparently, to tell us this when they adopted the Constitution as the supreme law of the land. Through a system of checks, balances, and separation of powers, they attempted to forever limit the power of central planners. Under constitutional understandings reflected in the Ninth and Tenth Amendments, the Republic itself was composed of the several states, each retaining the mass of the residuary power unto itself that was not specifically delegated to the central government. The power to create money was dispersed widely to all the people, delegating no such authority to either state or federal government. The power of the federal government to control intra-state commerce originally was constitutionally denied but subsequently confirmed by the federal courts. Certainly, no power was delegated for Congress or the Executive Branch to make grants to states, corporations, individuals, or foreign nations, or to fix prices, set production quotas, domestic allotments, or land use mandates over agriculture. Most of the breaches of these barriers occurred in wartime, and the peacetime breaches did not occur, for the most part, before 1933.

As we build the bridge to the future, in the words of a currently powerful federal politician, maybe we should consider not only the sustainability of our water, air, agriculture, and economy. Maybe we should consider the sustainability of our large, centrally planned, largely inefficient, emergency-structured government as well.

President Roosevelt stated in 1932 that "a complete and honest balancing of the federal budget" was "the one sound foundation of permanent recovery". When viewed in light of the recovery since

the depression of 1933, we find the national debt now stands at some \$5.5 trillion, while state, local and municipal debt probably is at least half that large. This illusion of recovery is not based upon sound economic principles but was induced by the influx of money created through deficit spending and debt upon future generations. The controls on agriculture, while providing cheap food in support of the recovery, have resulted in billions of dollars of debt upon the millions of acres of farmland. The sustainability of this system would appear to be highly suspect when viewed from the perspective of the younger and future generations. While the older generations, corporations, and governments achieved real and currently consumed benefits, current and future generations are receiving only the burdens of austerity and debt, with very little, if anything, to consume currently in comparison with the consumption levels of prior generations.

How will future generations cope with the austerity that must surely come on account of prior spending and debt levels? Will industrial workers work when there are no incentives linked to either potentially increased consumption or visibly increased savings in which they have an identified share? Will young farmers produce food? Will the young generations be forced to revolt against the modern corporate state through ruthless repudiation of public debt?³⁹ A look at current events in Russia could possibly supply us in the United States with some answers to these questions.

Obviously, we need to build a bridge to a competitively sustainable future in the worst way, but perhaps before we start building, we should have a reality check and reexamine the corporatist foundations of the 1930s upon which we are being asked to build.

In the 1930s, our peacetime traditions of free competition under the Rule of Law largely were junked in favor of managed and even centrally planned economic activity under Executive Branch discretion. The principal novel aspect of this account provided by

³⁹ These ideas are developed further in *Free Our Children: Breaking the Chains of Debt*, Dr. Eugene Schroder and David Schechter, Buffalo Creek Press, 1998.

this paper is the discovery of the extent to which the states, as well as the federal government, were recruited into the central planning effort on a highly coordinated basis, with funding provided at the state level by the Spelman Fund, a Rockefeller family foundation. A bias toward central planning is probably endemic in big government and big business, and labor unions usually seem to favor it also. It has taken American agriculture more than 60 years to begin to shake off the worst aspects of the central planning legacies of the Agricultural Adjustment Act, but entrenched central planning, a lot of it at the state level, still surrounds most individual and family farmers. In this environment, it should be no surprise that the only farms that seem to be prospering today are corporate-owned farms.

The principal purpose of this paper is to appeal for a dismantling of the legacy of central planning in American economic life, beginning with those aspects most directly affecting agriculture. This paper also is an appeal to those same entities that funded the expansion of central planning in the past, such as Rockefeller family foundations, to recognize the error of that effort and to provide funding and support to the effort to disentangle American agriculture from the clutches of corporatism, at the state and local levels as well as at the federal level.

Appendix 1

Executive Order No. 11677

In Executive Order No. 11677, August 1, 1972. President Nixon claimed:

By virtue of the authority vested in the President by the Constitution and statutes of the United States, including Section 5(b) of the act of October 6, 1917, as amended (12 U.S.C. 95a), and in view of the continued existence of the national emergencies declared by Proclamation No. 2914 of December 16, 1950, and Proclamation No. 4074 of August 15, 1971, and the importance of continuing (a) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States; (b) to further significantly the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious inflationary impact of abnormal foreign demand, it is hereby ordered:

Section 1. Notwithstanding the expiration of the Export Administration Act of 1969, as amended, the provisions for administration of that act contained in Executive Order 11533 of June 4, 1970 shall continue in full force and effect and shall authorize the exercise and administration of export controls, under the authority vested in me as President of the United States by section 5(b) of the act of October 6, 1917, as amended (12 U.S.C. 95a).

Appendix 2

Constitutional Clauses on Central Planning

Article I, section 2, clause 3, of the Constitution says, "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers," by actual enumeration at least every ten years. Article I, section 9, clause 4, states, "no capitation, or other direct, tax shall be laid unless in Proportion to Census or Enumeration hereinbefore directed to be taken." Such a "direct" tax, if unequal, could prejudice certain groups or sections; thus it was contained by the uniformity clause.

Article I, section 8, clause 3, delegates a power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." This section does contemplate a power to indirectly plan commerce on a national scale; however, it does not contemplate regulation of commerce within the states, or intra-state commerce. If the power to regulate commerce is viewed in light of Article I, section 1, as a power to operate through duties and tariffs on imports and exports, with foreign nations or among the several states, the uniformity clause would counterbalance this power and thus diminish the ability of Congress to centrally plan.

Article I, section 9, clause 5, limited federal power by providing, "No tax or duty shall be laid on articles exported from any State. No preference shall be given by any Regulation of Commerce or Revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another." This clause was a clear reaction to the navigation laws of the British Empire with respect to the North American colonies.

Article I, section 8, clause 7, authorizes Congress "to establish Post Offices and Post Roads," which clearly contemplated a degree of central planning with a potential for sectional advantage.

Article I, section 8, clause 17, did in fact delegate a power "to exercise exclusive legislation in all cases whatsoever," but limited this power geographically to the District of Columbia and to "forts,

magazines, arsenals, dock-yards and other needful buildings." This certainly is a power of nationalization, but the authorization was confined strictly to the aforementioned areas and buildings. The central power granted for the "erection of forts, magazines, arsenals, dock-yards, and other needful buildings" required careful implementation because it could be done so as to provide sectional advantage.

Article IV, section 2, clause 3, stating that "new States may be admitted by the Congress into this Union," certainly was a central planning power seemingly left to the discretion of the Congress.

Article IV, section 3, delegated Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." This delegation of power to Congress encompassed enormous central planning authority over future land use and distribution. However, it also acts as a restraining influence by controlling the law of mortmain by providing, in effect, that the United States, in its corporate capacity, could only hold land outside the parameters of Article I, section 8, clause 17, until disposed of but could never permanently own land. Although the methods of disposal of federally owned or controlled land could easily lead to advantage of one interest over another, this disposal clause goes on, "and nothing in this Constitution shall be construed as to prejudice any claims of the United States, or any particular State."

At Article I, section 9, clause 2, the privilege of the Writ of Habeas Corpus denied the United States any summary process power whatsoever, thus ensuring only due process of law. The exceptions listed are for rebellion or invasion so serious that public safety requires it. Those conditions have not existed in the United States during the twentieth century.

At Article I, section 10, clause 1, and at Article I, section 9, clause 7, both the States and the United States are prohibited from granting any titles of nobility. This prohibition acts as a bar of both the States and the United States against the feudal system of Europe and tends to re-enforce the concept of equal rights and powers for all.

The 5th Amendment eliminated a federal power to enforce criminal laws as a means for central planning, to wit: "No person shall be held to answer for a capital or otherwise infamous crime unless upon a presentment or indictment," leaving all federal criminal charging powers in the hands of the people. In the context of English common law and the common law of the American states prior to 1791, this provision would have been understood as a barrier to the charging of any person for a federal felony unless a grand jury approved the indictment. The 6th and 7th Amendments granted jury trials in both criminal and civil actions, thus eliminating any arbitrary power on the part of the federal government. In principle, no one should be liable for felony indictments or for civil penalties or forfeitures on the sole say-so of an unelected federal bureaucrat.

The 9th Amendment specifically provided that the constitutional enumeration of certain rights in no way reduces the rights retained by the people. The language of the 10th Amendment could not have been clearer in limiting the powers of the United States to only those delegated, retaining all others for the states or the people, notwithstanding the subsequent attempts (largely successful, alas) of Alexander Hamilton and his intellectual successors to stand this amendment on its head and limit the states and the people to only those rights that the federal government wishes them to have.

Appendix 3

Mr. Beck's Speech on the Constitutional Doctrine of Emergencies as Applied to American Agriculture

Congressional Record (House), March 22, 1933, pp. 754-755

It is the very doctrine that the German Chancellor is invoking today in the dying hours of the parliamentary body of the German Republic, namely, that because of an emergency it should grant to the German Chancellor absolute power to pass any law, even though that law contradicts the constitution of the German Republic. Chancellor Hitler is at least frank about it. We pay the Constitution lip service, but the result is the same. With that dictatorship the German Republic will for some indefinite time probably try to function. . . . Thus we are making the Secretary of Agriculture a czar for the agricultural interests of the country, with a power not only over the American farmer, who once had great pride and self-respect - and I believe still has - but we are giving him a power such as was never dreamed before over the products of the farm and over the processors who convert them into useful commodities. What is the result then? We confer upon the Secretary of Agriculture these powers to determine who shall take part in any processing business, because the power is given to him to license, and if he refuses to grant a license, anyone who attempts to pursue a legitimate business of processing can be indicted in the federal courts and fined \$1,000 a day for daring - God save the mark - to engage in legitimate business interest without the visa and permission of the Secretary of Agriculture. . . I could not pretend to exhaust the constitutional objections to this bill. They are many and varied. I have hinted at two: one, the lack of power to deal with agriculture as such, except insofar as its products go into interstate commerce; and, I referred to the extraordinary power over the legitimate business of processing, which is given to the Secretary of Agriculture, which makes him another Stalin over agriculture. Just as the Russian dictator controls the unhappy

farmers of Russia, so, precisely, the Secretary of Agriculture is now to be lifted up on a supreme throne of power and made the most powerful official of the Government, measured by practical effects, by the powers thus conferred upon him. . . . The Constitution of the United States in respect to certain personal limitations that are to protect and safeguard the liberties of the individual still lives; but the Constitution of the United States, as a restraining influence in keeping the Federal Government within the carefully prescribed channels of power, is moribund, if not dead. We are witnessing its death agonies, for when this bill becomes a law, if unhappily it becomes law, there is no longer any workable Constitution to keep the Congress within the limits of its constitutional powers. [pp. 754-755]

Appendix 4

Interposition

The doctrine of interposition was invoked by several southern states before the Civil War and is defined in Black's Law Dictionary, 4th ed., as follows:

Interposition. The doctrine that a state, in the exercise of its sovereignty, may reject a mandate of the federal government deemed to be unconstitutional or to exceed the powers delegated to the federal government. The doctrine denies constitutional obligation of states to respect Supreme Court decisions with which they do not agree. *Bush v. Orleans Parish Sch. Bd.*, D.C.La., 188 F.Supp. 916.

The concept is based on the 10th Amendment of the Constitution of the United States reserving to the states powers not delegated to the United States. Historically, the doctrine emanated from *Chisholm v. Georgia*, 2 Callas 419, wherein the state of Georgia, when sued in the Supreme Court by a private citizen of another state, entered a remonstrance and declined to recognize the court's jurisdiction. Amendment 11 validated Georgia's position. [Adopted in 1798.]

Implementation of the doctrine may be peaceable, as by resolution, remonstrance or legislation, or may proceed ultimately to nullification, with forcible resistance.

The Constitution does contemplate and provide for the contingency of adverse state interposition or legislation to annul or defeat the execution of national laws. In *re Charge to Grand Jury*, Fed.Cas.No. 18,274 [2 Spr. 292].

Appendix 5

Enumerated Purposes of Emergency Proclamation of Governor Ed Johnson, July 29, 1933

NOW THEREFORE, ...The purposes for which the General Assembly is convened are as follows:

First-To create and define the powers and duties of an emergency relief administration;

Second-To authorize and empower the state, counties, municipalities or other political subdivisions of the state to obtain grants, loans or advances from the United States upon such terms as the President shall prescribe for the construction, repair or improvement of any public works project authorized by the National Industrial Recovery Act;

Third-To provide for cooperation with the federal government in the establishment of public employment agencies.

Fourth-To suspend the operation of the anti-trust laws of this state for the purpose of cooperating with the federal government in the administration of the National Industrial Recovery Act.

Fifth-To permit the investment of estate, trust or public funds in the bonds of the Home Owners Loan Corporation or in the bonds of any other corporation which is or may be created by the United States as a governmental agency or instrumentality..

Ninth-To permit county commissioners to construct and maintain highways either directly or by contract, and to enter into and perform contracts to build or maintain state highways.

Eleventh-To provide for the custody and safe-keeping of public funds and for the payment of interest thereon when deposited with banks or other financial institutions.

Appendix 6

Session Laws of 1933 Emergency Session of Colorado Legislature

The following are the relevant headings of session laws enacted during the 1933 emergency special session of the Colorado legislature:

Chapter 1, Anti-Trust and Unfair Competition Laws-Suspension, August 11, 1933.

Chapter 6, Blacklisting and Boycotting Laws-Suspension, August 18, 1933.

Chapter 8, Emergency Relief and Employment, Authorized Governor to make loans and receive grants from the President, August 17, 1933.

Chapter 9, Employment Agencies, Establishment and appropriation, August 17, 1933.

Chapter 10, Highways, Authorizing County Commissions to construct, August 17, 1933.

Chapter 13, Legal Investments, Home Owners Loan Corporation, August 10, 1933.

Chapter 14, Motor Vehicles, revenue, August 17, 1933.

Chapter 15, Public funds, Payment of interest on deposits, August 17, 1933.

Chapter 16, Public Works, Authorizing construction of by counties, cities, and towns, August 18, 1933.

Statutory Expansion of Corporate Powers in the 19th Century

In 1827, a canal to connect lake Erie with the Wabash River was promoted by Congress by a grant to the State of Indiana of alternate sections of the public lands on each side of the canal by the Act of March 2, 1827, 4 Stat. 235. Previously, the United States had subscribed for stock in canal companies, authorizing subscription for 1000 shares in the Louisville and Portland Canal Company. See Act of May 13, 1826, 4 Stat. 162.

In 1828 the State of Ohio was granted land to aid a canal from Dayton on the Miami Canal to the Maumee River; and in the same year, 400,000 acres were granted to the State of Alabama for a canal and river improvement at Mussel Shoals; a grant of 500,000 acres was also made to Ohio for general construction of canals. See generally, Charles Warren, *Congress as Santa Claus* (Arno Press, NY, 1978).

The centrally controlled issue of tariffs tended to split the nation's political interests along sectional lines. The Northern section of the country, largely industrial, supported protective tariffs on imports of manufactured goods, while the largely agrarian Southern States opposed those tariffs due to the increased input expenses.

At the same time, states began to issue and sell state bonds in Europe to raise money for railroad and other development. George Peabody, from Maryland, established a merchant banking house in England (Peabody and Company, later to become J.S. Morgan & Co.) and became a leading dealer in London for American state bonds ostensibly backed by state taxing authority. The subsequent influx into the United States of European money resulted in increased economic activity and excessive speculation, which collapsed in a banking crisis in 1837 and a severe depression in the early 1840's.

The worst moment arrived when five American states; Pennsylvania, Mississippi, Indiana, Arkansas, and Michigan, defaulted on their bond interest payments. In an early debtor's cartel, some state governors banded together to favor debt repudiation. In

1845 Peabody "conspired with Barings to 'set up' a political slush fund to spread propaganda for debt payment resumptons and to elect sympathetic legislators; they even drafted the clergy into giving sermons in the sanctity of contracts. By means of a secret account, the two firms transferred 1,000 pounds [then worth about \$5,000] to Baltimore, 90% from Barings and 10% from Peabody - a strategy Barings duplicated in Pennsylvania. Most shocking of all, Barings bribed Daniel Webster, the orator and statesman, to make speeches on the early history of debt repayment." Ron Chernow, *The House of Morgan*, 1990, Pp 5-6.

In 1830 there were only 23 miles of railroads, but by 1860 there were more than 30,000 miles in the United States, of which only 8,600 miles existed below the Mason-Dixon line. The central planning power to dispose of the public lands, coupled with political sectional interest, resulted in development biased toward the industrialized North. The power to impose tariffs resulted in economic advantage to the same industrial North when tariffs were placed on industrial products imported from abroad. See Carl Brent Swisher, *Constitutional Development*, Riverside Press, Cambridge, 1943, pp. 259-261.

In order to maintain political parity between the sections, a battle raged over new states that were admitted into the Union. In 1830 there were forty-eight senators, while in 1860, there were sixty-six. The Southern section favored admissions of new states as "slave" states, while the North favored "free" states, each side reluctant to give up its political advantage.

In 1860, with the election of the Northern Republican President, Abraham Lincoln, the conflict erupted into a Civil War. The Constitution was not originally intended to grant the Congress a power to favor one group over another. However, the industrial North, with increasing economic advantage, began to employ the proven methods of the "Peabody lobby" to gain advantageous privilege. With inadequate political "Peabody lobby" power, and faced with a voting power favoring Northern interests, the South felt compelled to secede. Jefferson Davis, in his first inaugural address to the Congress of the Confederate States, made these statements:

An agricultural people, whose chief interest is the export of commodities required in every manufacturing country, our true policy is peace, and the freest trade which our necessities will permit. It is alike our interest and that of all those to whom we would sell, and from whom we would buy, that there should be the fewest practicable restrictions upon the interchange of these commodities. There can, however, be but little rivalry between ours and any manufacturing or navigating community, such as the Northeastern States of the American Union. It must follow, therefore, that mutual interest will invite to good will and kind offices on both parts. If, however, passion or lust for dominion should cloud the judgement or inflame the ambition of those States, we must prepare to meet the emergency and maintain, by the final arbitrament of the sword, the position which we have assumed among the nations of the earth.

[From Davis's second Inaugural address.] . . . The people of the States now confederated became convinced that the Government of the United States had fallen into the hands of a sectional majority, who would pervert that most sacred of all trusts to the destruction of the rights which it was pledged to protect. They believed that to remain longer in the Union would subject them to continuance of a disparaging discrimination, submission to which would be inconsistent with their welfare, and intolerable to a proud people. They therefore determined to sever its bounds and established a new Confederacy for themselves.

The experiment instituted by our revolutionary fathers, of a voluntary Union of sovereign States for purposes specified in a solemn compact, had been perverted by those who, feeling power and forgetting right, were determined to respect no law but their own will. The Government had ceased to answer the ends for which it was ordained and established. To save ourselves from a revolution which, in its silent but rapid progress, was about to place us under the despotism of numbers, and to preserve in spirit, as well as in form, a system of government we believed to be peculiarly fitted to our condition, and full of promise for mankind, we determined to make a new association, composed of States homogeneous in interest, in policy, and in feeling. True to our traditions of peace and our love of justice, we sent commissioners to the United States to propose a fair and amicable settlement of all questions of public debt or property

which might be in dispute. But the Government at Washington, denying our right to self-government, refused even to listen to any proposals for peaceful separation. Nothing was then left to do but to prepare for war.

During the Civil War, Secretary of the Treasury Salmon P. Chase's currency plans resulted in the creation of two entirely different forms of emergency money. Under threat of destruction for lack of money or borrowing power, the Northern government turned to 1) money by government decree, and 2) borrowing from the production of future generations.

First was the issuance of United States notes which were unsecured and did not purport to pay in specie or any other thing, but were merely money by government decree (fiat money). The second plan involved a more comprehensive emergency money scheme.

The federal government chartered national banking associations, which could be but were not required to be corporations, to operate under its control. With the exceptions of the First and Second Banks of the United States, these were the first federally chartered banks. These banks were privileged to issue a new national currency, called national bank notes. The federal government could expand the money supply at will by issuing national bank notes that were secured by government bonds payable by future generations, but the bonds in turn purported to be redeemable in gold and silver coin. This was a scheme to debase gold and silver coin without an instant devaluation by maintaining public confidence in their value.

While the National Bank Act was presented in 1861, the bill was not passed by the Radical Congress until 1863. Civil War money in the form of U.S. notes in small-denomination currency continues to circulate to this day, with the exception that the purported redeemability in gold or silver was discontinued with the Emergency Banking Act of March 9, 1933.

In the central planning for the Civil War effort, the Northern Congress lavishly funded corporations through both land use appropriations and emergency money appropriations. Thousands of miles of railroad were built, heavily funded by Congress as a necessity of war, claiming a need to move troops and military

supplies. This called for vast amounts of iron ore to be mined and processed, which called for vast amounts of coal to be mined and available. (A review of the partitioning of West Virginia from Virginia during the war is interesting in this light.)

The enormous emergency powers in the hands of a few powerful men in Congress during the Civil War did not go un-abused. The railroad corporations were instruments of extreme abuse. From David Saville Muzzey, *American History*, Athenaeum Press, 1911, p. 398:

The generosity of Congress to the Pacific railroad companies was almost unlimited. It granted them over 100,000,000 acres of land along the proposed routes, and loans in government bonds amounting to \$60,000,000. The 47,000,000 acres granted to the Northern Pacific alone were estimated by a high official in the railroad business to be valuable enough "to build the entire railroad to Puget Sound, to fit out a fleet of sailing vessels and steamers for the China and India trade, and leave a surplus that would roll up into the millions."

The following excerpt from Swisher [1943] brings out the underlying reason why more restraint on corporations was not enforced by Congress:

On July 1, 1862, President Lincoln approved "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes." Pursuant to this act and amending the act of July 2, 1864, Congress provided for the first transcontinental railroad, chartering the Union Pacific Railroad Company and making grants of public land and loans of federal bonds, and making similar grants to the Central Pacific Railroad Company, a California corporation already in existence. The establishment of the first transcontinental connection was undoubtedly a great achievement for its time. It was engineered by men who were energetic, daring, individualistic, and - some of them - ruthless and predatory. Little concern for the public interest marked the use of government funds. The method of construction frequently followed was to let liberal contracts to companies in which the railroad managers themselves had substantial interests. In this

manner they enriched themselves without reference to the fate of the lines under construction. The outstanding instance was the organization of the so-called Credit Mobilier, a construction company which operated, under the domination of the brother of the man at the head of the Union Pacific, to drain away the financial resources of the railroad company. As a member of Congress, the head of the Credit Mobilier was in position to look out for the legislative welfare of his organization. When threatened with congressional investigation, he undertook to distribute shares of the Credit Mobilier stock among his fellow legislators for a small part of their value, with payments sometimes deferred until the obligations could be liquidated by dividends of the organization.

In Congress, men and the corporations they represented were the recipients of the appropriation of public funds. Experience once again teaches us that when unlimited power is put in the hands of a few men, corruption is sure to follow. See, for example, James Madison, *The Federalist*, No. 10. At any rate, enough money was thrown at the men behind the corporations to achieve the desired results of the early central planners. The North won the Civil War. Now the awesome job of reconstruction of the Union, or possibly the reconstruction of a new fundamental government, remained. While Lincoln called the Civil War merely a "spat among brothers" and would have allowed the South to return to the Union under a mild reconstruction plan, the Northern Radical Congress refused such a fate for the Southern "rebels".

Although a formal declaration of war was never adopted on either side of the conflict, and although the North had stated that it was unlawful for the states to secede and therefore never recognized the Confederate States of America as an independent nation, the Northern Radical Congress now claimed they were in fact an independent nation upon whom war had been declared and were now a captured nation. Under U.S. Constitution, Art. I, sec. 8, cl. 11, they now claimed the power "to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water" within American territory. For the first time in American history, a Congressional dictatorship was formed during the Reconstruction period.

Meanwhile, President Lincoln was assassinated, but not before he stated:

I see in the near future a crisis arising that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned, and an era of corruption in high places will follow and the money power will continue its sway by appealing to the people until all wealth is aggregated in a few hands, and the Republic destroyed. I feel more anxious for the safety of my country than ever before, even in the midst of the war.

Andrew Johnson succeeded Lincoln and tried unsuccessfully to restrain the Radical Northern Congress by vetoing nearly every bill they passed. The Congress retaliated with a narrowly unsuccessful impeachment proceeding. On March 7, 1867, Congress passed an Act dividing the Southern States into five military districts and declared that they had to ratify the new 14th Amendment, which had the legal effect of making federal law binding within the states in many areas, such as banking and intrastate commerce, where federal law had not previously applied, before being admitted back into statehood.

Howard Jay Graham in *Everybody's Constitution* [1968] p. 1-20 reveals the primary purpose for the 14th Amendment. Roscoe Conkling, an original member of the drafting committee for the constitutional amendment, argued, as the attorney for the railroads in the *San Mateo* cases, that the drafting committee intentionally inserted the word "person" into the amendment, instead of a word like "citizens," for example, to encompass corporations, which were deemed fictive "legal persons", thus placing them under federal protection from the states. Whether true or not, the important thing in the 1880's, 1890's, and after was that corporations had access to constitutional process and protection that earlier had been, once expressly and very often tacitly, denied.

"Corporations," as Mr. Justice Douglas has put it, "now [were] armed with constitutional prerogatives." Instead of restricting the corporations empowered and fully funded for war, Congress placed them under federal protection. Men who had gained excessive

political and economic wealth during the war continued amassing vast acres of land and resources, particularly in the western lands.

Appendix 8

Labor Unrest

From Senate Report 93-549:

Less than five months after President Hayes took office, the country was embroiled in a fierce internal conflict. Local, and even state, authorities were helpless to stem the impulsive and imprudent outbursts of violence. In a period of eight days during July 1877, no fewer than nine governors called on the President to assist in maintaining the peace. Singularly enough, in view of the domestic uprisings in preceding years, the wrath of the people was not directed against the government of the nation or of any state. For the first time in history the country was in the throes of a great industrial strike.

The solution to the problem of maintaining the domestic tranquility was the dispatching of troops to those areas where the public safety was endangered. After deliberating with his Cabinet, Hayes determined he had the right to declare martial law and, without any other authority, the regular army might be despatched quickly to those areas exhibiting turmoil.

In 1893, a group of unemployed, organized by Jacob S. Coxey marched [from near Canton, Ohio] on Washington. Some groups seized trains to make the long journey. The President was faced with many requests for military assistance in putting down the seizures. In a period of two months so many deputies were required to maintain the peace in the 14 states and two territories, where disturbances occurred, that Attorney General Richard Olney was compelled to ask for a deficiency appropriation of \$125,000.

After a meeting with the General Managers Association, which represented the employers, U.S. District Attorney Thomas E. Milchrist, in conjunction with the railroad attorneys, obtained an injunction against the strike on the grounds that it interfered with the transmittal of the mail. By July 8, Olney began moving the federal government toward the use of troops to relieve the halt in railroad services. On April 29, 1894, a Northern Pacific train was seized and the engineer compelled to carry the miners from several towns to Wardner, Idaho.

Nearly 1,000 men, some 200 of whom were armed and masked, gathered at the Bunker Hill mine. By means of 3,500 pounds of stolen dynamite, the \$250,000 [ore] concentrator, one of the world's largest, was blown to bits. In 1903, Governor James Peabody, of Colorado, dispatched state militias to stop a mining strike in Telluride, Colorado. In 1907, troops were dispatched to Goldfield, Nevada. (See Senate Report 93-549, *A Brief History of Emergency Powers in the United States*, 1974, pp. 32-40.)

In 1913, labor unrest once again flared in Colorado. From Senate Report 93-549:

The strike was not centered at any one town or at any one mine. Rather, it embraced the mines in many communities over a considerable area. Although there were a number of independent operators, the Colorado Fuel and Iron Company, a Rockefeller interest, was the recognized leader. The economic, political, and social life of the district was completely dominated by the operators, and it was in opposition to this domination, perhaps more than for any particular measure of relief, that the battle, in all its bitterness, raged. (Id., p. 39.)

Labor conditions in the Colorado Fuel and Iron Company naturally reflected the views of its officers. Employees lived in company houses, leased to them with the agreement that cancellations could be made on three days' notice. They did their shopping at the company store. The camps themselves were "closed camps," generally with no public highways running through, thus giving the company the right to turn back "undesirables," which of course included union organizers. Posted at the entrance of each camp was usually a camp marshal, an employee of the company deputized by the sheriff and responsible for screening all incoming travelers. Company spies were employed to ferret out subversive sentiments, and although it was claimed that men were employed irrespective of their relationship to the union, members were required to prove company loyalty in order to get or keep a job. Church and school activities were supervised by the company and again unsympathetic views were not countenanced for long. (Raymond Fosdick, *John D. Rockefeller: A Portrait*, [1952] p. 146.)

Bowers, the management for Colorado Fuel and Iron, said that the workers were thoroughly satisfied with the conditions in the mines, and that the strike represented a vicious attempt on the part of the union to foment dissatisfaction, or if this failed, to intimidate workers into going on strike. He also said, "We [will] work such mines as we [can] protect and close the others, and . . . the writer with every official of this company [will] stand by this declaration until our bones [are] bleached as white as chalk in these Rocky Mountains." Ultimately violence broke out between the workers and Rockefeller's private Felts-Baldwin security force. Women and children died in the famous "Ludlow Massacre". President Wilson called a meeting at the White House where he personally sought to mediate the situation. When John D. Rockefeller Jr. refused to attend the meeting, the President ordered troops into the strike zone. (Id.)

Public opinion resulting from this "massacre" turned against big business in general and Rockefeller interests specifically. From Fosdick, pp. 152-153.

Public demonstrations began almost at once. Mass meetings were held; there were hostile parades in New York; the Rockefeller office at 26 Broadway and the house on Fifty-fourth Street were picketed by riotous crowds; and an attempt was made by a New York group to stage a demonstration outside the gates of the Rockefeller home in Tarrytown. This attempt was thwarted by the action of the townspeople themselves. Haranguing a mob on lower Broadway, a speaker, referring to the younger Rockefeller, urged his listeners to "shoot him down like a dog". The seriousness of the situation became even more evident when by some ironic accident a time bomb, apparently intended for use at JDR Jr.'s house, exploded in a tenement building on Lexington Avenue, New York, killing four members of the I.W.W. and injuring at least seven occupants.

In the aftermath of the Ludlow massacre, Chas Eliot, President of Harvard and a board member of the Rockefeller's General Education Board (another Rockefeller foundation), suggested that Mackenzie King, who later became Prime Minister of Canada for 21 years, be appointed by the Rockefeller Foundation to formulate a new plan for industrial relations between Rockefeller interests and their workers.

After several hours of talks, after which King spent the night at the young Rockefeller's house, John D. Jr. agreed to King's appointment. (See Nevins, 1959, p. 673.) By December 17, 1913, President Wilson was able to announce to the public and the miners that a plan would be instituted for enabling workmen and company officers to discuss all complaints. Bowers, because of his failure to adopt the new scheme, was fired.

Along with the new scheme went important reforms. Miners were allowed to hold meetings on company property and before many years passed, 9/10 of them belonged to unions. More competitive stores came in, while workers were allowed to hire their own ministers and doctors. Two visits to the area by young Rockefeller had meanwhile produced a 'happy' effect. He had gone out in 1915, while the district was still full of resentment, had toured all the camps and towns, had taken pains to eat, talk, and fraternize with the workers, and had made many speeches. In the spring of 1918, he and his wife returned, again visiting the steel mills and all the camps, and finding a greatly changed atmosphere. Mrs. John D. Rockefeller Jr., talked with hundreds of women, played with the children, and did all that she could to prove that the owners were keenly interested in the workers' welfare. (Id., p. 674.)

Ivy Lee was hired as a public relations representative for the Rockefeller interests following the Ludlow massacre. Newspapermen eyed him with suspicion, dubbing him "poison ivy Lee" because of his corporate loyalty.

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