

The Golden Age at Risk

by Bruce Yandle

What a wonderful world! Wait a minute. What about the Asia meltdown and declining stock market values? What about horrible ongoing civil wars and terrorism that plague large numbers of people on the planet? What about scandals in high public office? Impeachment? Wonderful?

In spite of all this, we know that more people are experiencing freedom than ever before. Think about it. Just a short time ago, Eastern Europe was a walled community; ordinary people were unable to move their families from one province to another, let alone to cross country lines or venture forth to the land of the free.

I shall never forget seeing Czech families making their way on the autostrada in Italy in 1991, proudly displaying cardboard signs telling the world that they were free. The story has been repeated for millions.

Free markets are burgeoning where command and control once dictated the who, what, and when of production and consumption. The power of contracts, property rights, and gains from trade are lifting and spreading incomes and wealth.

Consider our routine activities. We have almost unlimited access to information, goods, and travel. There are spot and futures

markets for things as diverse as natural gas, electricity, stock market averages, and even permits to emit sulfur dioxide. We go online to buy automobiles, airplane tickets, and financial derivatives.

We can swap e-mail messages in the dead of the night. In split seconds, contracts are negotiated, deals are made, and the rights of contracting parties are respected in the rough and tumble of the marketplace. Goods, capital, and people move to the four corners of the globe with less government interference and friction than ever before. Incomes are rising rapidly; wealth is being created. Life expectancies are increasing, and the world is getting cleaner.

The Other Side

This is one side of the ledger. But, alas, there is another side.

While we can design, build, and sell new products with relative ease, we must think more than twice before cutting down a juniper tree that may be listed as potential habitat for an endangered species. The wiser course of action says we should first get permission from a federal agent. Unloading a truck of builder's sand on a new home construction site can land us in the federal penitentiary, unless we first have federal permits. Building duck ponds without permission can yield penalties more severe than manslaughter. Sending a small amount of chemical waste to a local recycler can generate liability for cleaning up an entire landfill.

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Taking steps to build a home on land initially zoned residential but later rezoned can lead to an uncompensated loss of the entire investment. Making an effort to plow and plant a dry field that was temporarily covered by a flooding river can lead to lessons learned about wetlands violations. Setting aside land for a retirement home can be frustrated if there is a possibility that a golden-cheeked warbler may decide to locate there.

While we live in a veritable Garden of Eden on the one hand, we live as peasants on a feudalistic manor on the other. And the baneful lord of the manor is not bashful when it comes to command and control.

Superfund, wetlands, endangered species. How did the lord of the manor become so powerful? What happened to property rights? What happened to liberty?

Property Rights and the Constitutional Order

Time prevents a complete rendering of the story. Understanding what happened requires us to reconsider the important and precious foundation stones of this wonderful republic, to remember the vital constitutional constraints that set in motion the most powerful story of human action the world has ever witnessed.

Our Founders knew much that is now seemingly forgotten. They knew from bitter experience that for human beings to be free, for the free spirit of man to soar, there must be basic protections that limit the powers of the government. They understood the difference between rules of law based on just conduct and wisdom of the ages, and rules of politics based on expediency, concentrated power, and special-interest struggles.

They knew that for markets to flourish—for wealth to be created, preserved, and accumulated—property rights had to be protected. More than words on parchment, the Constitution they penned formed moral and legal constraints believed necessary to limit the heavy hand of government. They wrote in the Constitution: “Nor shall private property be taken for public use without just compensation.”

Property rights. Why are they so important? Deep in the genetic material that forms

human life, instincts lie buried calling for survival, reproduction, and conservation of energy and resources. Over the millennia, human beings who survived and prospered devised rules, customs, and traditions that protected the stuff of life. The rules were simple: You do not reap where you have not sown. You do not eat unless you have contributed. You do not impose unwanted costs on your neighbor, nor he on you. Property rights formed the foundation for moral behavior and markets. And government was invented for the purpose of protecting those rights.

The Founders did not put a happy face on government as we do now. They knew that government was not Santa Claus. They understood that self-interest—the natural human desire to improve position and family—could be channeled beneficially by rules of law, property rights, and free-market forces. They knew from experience that those same motivations are perverted by the rule of politics. Special-interest groups driven by self-interest will tilt the hand of government in their direction. Instead of working the soil, factory, and field to produce new wealth, the special-interest groups will work the halls of Congress and transfer wealth to themselves from the unorganized, unwitting common man.

Leviathans One and Two

The constitutional containment delivered by the Founders lasted for almost 100 years. Then, at the turn of the century, roughly 100 years ago, the rules changed. Marked by the 1887 Act to Regulate Commerce and the rise of the Interstate Commerce Commission, then by rules for regulating food and other products, the federal government took on new powers that limited competition, provided monopoly protection, and transferred wealth across special-interest groups. The genie was out of the bottle. The first American Leviathan was born. But while government flexed its new regulatory muscles, the industry regulation that emerged did not systematically destroy bedrock private-property rights. That was to come later, delivered by the environmental revolution in the late 1960s and early 1970s, the advent of Leviathan Two.

The environmental revolution cut through and across the property-rights fabric that formed the market economy. The new social regulation that emerged regulated industries and functions within each and every plant, factory, field, and mine. Command-and-control, technology-based regulation emerged in the fine print of the Federal Register. The rule book grew thick with regulations affecting water and air, waste disposal, reconstruction of closed mines and wells, landfills, tree-cutting, waste disposal, homebuilding, and chemicals from birth to grave. The creative energies of America's brightest and best entrepreneurs were diverted. Energy previously devoted to finding new and better products and services, making markets, and reducing costs became focused on regulators, regulation, and ways to avoid costs and gain political favors.

And who supported this massive effort? Dedicated environmentalists with true concerns about the biological envelope that supports all life; quasi-environmentalists who saw an opportunity to stop economic development in its tracks; bureaucrats who found enriched careers in regulating; politicians who found new markets for their services; and some industrialists who found it easier to compete in Washington for political favors than to slug it out in competitive markets. The famous iron triangle emerged full-blown.

Baptists and Bootleggers

And what was the glue that held it together? An alliance of "Baptists" and "bootleggers." (These labels hark back to the tacit alliance in the old battles for alcohol prohibition; the Baptists wanted liquor outlawed because it was sinful, while the bootleggers silently supported them because legal liquor threatened their business.) Those who take the moral high ground in appealing for rules they believe will protect the earth are the "Baptists" in the story. The "bootleggers" are the businessmen who let the Baptists fight their battles for them knowing the result will be regulations that raise competitors' costs, limit the entry of new competition, and shield them from common-law suits that previously protected the proper-

ty rights of ordinary people. If government was going to regulate, then let's get the right regulation, the one that favors us.

What do we have? Rules that limit the emissions of sulfur dioxide to fight acid rain, even though the scientists who studied the issue said there was no acid-rain problem. Rules that give a black eye to industries that must publicize emissions of more than 600 chemicals, in pounds, even though all industry taken together produces just 17 percent of the total emissions. Rules that set stricter controls on new and expanding plants while grandfathering older ones. Regulations that favor one fuel over others. Endangered-species protection that limits timber-cutting on government land, raising the price of timber and the profits of firms that cut on their own land. The list could go on.

Quite understandably, firms and industries that live in this age of regulated capitalism have invested in the rules and stand to lose when the rules are revised. They quite logically support the Leviathan, hoping always to bring down costs once the favors have been won. And just as understandably, there are the politicians who seek to harvest a political commission each time they pass favors for special-interest groups.

Any effort to deregulate raises the wrath of the favored groups. Is it any wonder that Congress is unable to take meaningful action to eliminate Superfund, the program that produces lots of litigation and hardly any cleanup? Is it any wonder that Congress is unable to pass a property-rights protection bill? Should we be surprised that Congress cannot completely modify the Endangered Species Act in ways that reverse incentives, making exploration, production, and conservation of species attractive endeavors instead of deadly activities to be avoided at all costs?

Houses Built on the Sand of Politics Will Fall

Societies that fail to protect fundamental property rights are destined to fail. We are no exception. But why?

Rapidly expanding global markets, advances in technology, the unavoidable need

to reduce costs, the failure of old smokestack regulation, rising incomes, and a veritable property rights rebellion are combining to force change. In the absence of meaningful international competition, U.S. firms can gain from costly regulations that cartelize industries. When technological change is slow and obsolescence rates even slower, firms can gain with command-and-control, technology-based regulation. Eventually, the true environmentalist begins to wonder what it's all about. If air and water quality is no longer improving, if Superfund sites are caught in a deadly gridlock that accomplishes nothing, if firms are required to spend huge amounts on trivial problems and little on more serious ones, eventually, environmentalists say "enough." Rapidly rising incomes generate demand for real environmental improvements that cannot be and are not being delivered by central authorities. And when countless ordinary people find that rights to use their land in customary ways are challenged and taken without compensation by regulatory authorities, they rebel. The house built on sand comes crashing down.

The Property Rights Rebellion

Led by westerners fed up with increased interference with traditional land rights, hundreds of grassroots organizations nationwide reminded politicians of the Fifth Amendment prohibition against taking private property for public purpose without just compensation. Failing to get satisfaction in Washington, the movement turned to the states. Today, 24 states have passed some form of property-rights legislation, and legislation is pending in seven others. The geographic pattern that results is interesting. The Pacific northwest and Rocky Mountain states have all passed property-rights laws. Just four western states have failed to respond. By contrast, the northeastern states have done practically nothing. In urban America, it seems, property rights are not an issue. City folks commuting on morning trains to New York, Hartford, and Boston know little about wetlands, Superfund, and endangered species. Indeed, they know little about the importance of basic

property rights to land. Opposition to compensated takings comes understandably from the urban areas—the organized interests that support zoning, planning, and government ownership of environmental resources.

There is friction in the workings of the property rights movement, but its force cannot be denied. Recognizing this, regulators have changed their behavior. They have backed away from the more blatant and arbitrary enforcement of rules. And gridlocked Washington is getting the message.

Following in the wake of the property movement, we see a devolution of environmental protection to the states, where politicians recognize that they cannot keep investors from building and expanding facilities elsewhere. When it's cheap to vote with your feet, politicians sometimes see the light.

But if the house of regulation falls, will another, even stouter one take its place? Will property rights be more secure?

America's Golden Age

I leave these important questions on the table momentarily to tell you about the prospects for America's coming Golden Age. Think with me for a few minutes about this country 100 years ago, and then let us compare that time with the one we now face.

Three major forces played through the economy a century ago. The first was massive waves of immigration—the largest seen in our history. People came to these shores looking for a better life, seeking opportunity to work and build. Wages fell. Prices fell. Incomes rose. Second was the technological revolution: electricity, petroleum, moving assembly lines, interchangeable parts, transportation, and communication. Finally, there was a massive restructuring of firms and industries: efficiency-enhancing mergers, consolidations, alliances, spin-offs. The decades that followed delivered America's first Golden Age: rapid increases in income and wealth. Improvements in basic living conditions. The emergence of the Great American Bread Machine.

What do we observe today? Massive waves of immigration; a technological revolution;

cost-minimizing restructuring, mergers, consolidations, and alliances; and the computer-driven virtual corporation.

Is there another Golden Age in the offing? I think so, but that is because I am extremely optimistic. We Americans face a daunting challenge. Along with the positive features mentioned, we also have higher taxes, a mountain of regulation, and a threatened system of property rights. There is a Golden Age in the offing, but its realization is threatened.

Where Do We Stand?

Let me return to the question: will a stouter regulatory regime replace the one that is falling? This, perhaps, is the most troublesome question, one addressed by the Kyoto Agreement on global warming. Out of that agreement comes an international authority,

an international cartel manager, if you will, that seeks to coordinate nations worldwide in production and consumption activities that relate to carbon emissions. This parallels the earlier formation of the U.N. Commission on Global Governance, important elements written into the North American Free Trade Agreement, and the new powers of the World Trade Organization. These fledgling bureaucracies will naturally seek to build a global regulatory regime, a potential threat to property rights, free markets, and the coming Golden Age.

Will the Golden Age emerge? Will enforcement of constitutional constraints be strengthened? Will this time of environmental feudalism come to an end?

These are the questions that seize us. And the answers? The answers depend on what you and I do to strengthen the case for liberty and individual responsibility. □

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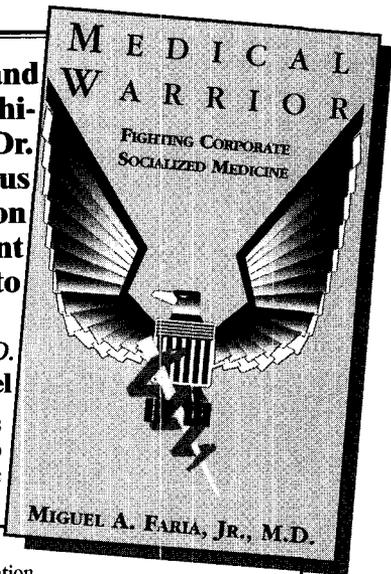
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No Credit Due

The pundits are bewildered over the public's contradictory response to President Clinton during his recent troubles. Most Americans have a low opinion of his character. Yet at least 60 percent of those polled think he's doing a terrific job and should not resign. How can this be?

Assuming the polling results are accurate, it may be possible to make sense of this strange combination of opinions. First, we can dismiss the theory that most Americans are cynics who care about nothing but the economy or money. Of course, they place a priority on the material well-being of themselves and their families. No one should object to that.

Nevertheless, Americans do think the character of officeholders is important. That's why they frown on the President's admitted moral lapse. If character were unimportant we would not find Clinton's "unfavorables" exceeding his "favorables" in the polls.

Clearly, people have judged the President a scoundrel who nevertheless can do his job well. What needs explaining is the connection between the (so far) good economy and the President's positive job-performance rating. People assume that if inflation and unemployment are low and incomes are rising, the President deserves credit. Why?

One obvious reason is that most people went through government-run schools. Those schools self-servingly teach children that the government is responsible for the well-being of the nation, economic well-being included.

History and social studies classes comprise a series of tales in which noble political leaders saved the country from the rapaciousness of greedy businessmen.

Although the federal government has been meddling in our private economic activities for well over a century, the explicit idea that it is the steward of the economy goes back to the Great Depression of the 1930s. That calamity supposedly proved that government is the indispensable glue that holds the economy together. As a result, since the days of Franklin Roosevelt, Washington has openly assumed responsibility for nearly all economic matters. Planners and administrators came to the capital in droves beginning in 1933 and found an abundance of work. When World War II began, they found even more to do through such agencies as the War Industries Board.

The restoration of peace did not send the planners packing. Government agencies were expected to maintain full employment, manage the money supply, finely calibrate the levels of taxation, spending, and inflation, and do all the other specialized tasks that a great economy can't do for itself. Postwar legislation set up the President's Council of Economic Advisers, sending out the unobtrusive message that the President was at the helm.

So no one should be surprised that today's generations believe government keeps the economy going or that the President deserves credit in good times. That's what they've heard since they were old enough to understand the language.

Sheldon Richman is editor of The Freeman.