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Center for the Study of America and the West

**What are We Fighting For?  
Western Civilization, American Identity,  
and U.S. Foreign Policy**

**by James Kurth**



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## ***About the Author***

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## I. The Real Clash of Civilizations

Fifteen years ago, Samuel P. Huntington published, first as an article (“The Real Clash of Civilizations?” *Foreign Affairs*, Summer 1993) and then as a book (*The Clash of Civilizations and the Remaking of World Order*, Simon and Schuster, 1996), his famous argument about the clash of civilizations. The clash that he was referring to was the clash between the West—Western civilization—and the rest. Of the rest, he considered the greatest challenges to the West would come from the Islamic civilization and the Sinic, or Confucian, civilization. These challenges would be very different because these civilizations were very different. But together they could become a dynamic duo that might raise very serious challenges to the West.

Since Huntington published his thesis, these challenges have indeed occurred. We all know about the conflict that we have with at least the Islamic extremists, the Islamists within the Islamic civilization—not only with Al Qaeda since 9/11, but then in Iraq and now once again in Afghanistan. There is also the clash with the Chinese civilization. This takes a very different form, being much more a competition over “smart power” and “soft power” (more on which below) than over hard power. But this is also a conflict that may become more intense in the next generation.

More recently, Huntington wrote a book about the clash within the West itself, and especially within the United States: *Who Are We? The Challenges to America’s National Identity* (Simon and Schuster, 2004). That is the struggle that I will address here—the internal conflicts over America’s identity.

These internal conflicts have been maturing over the course of some forty years. One might date them to 1968, the most pronounced year of the famous decade of the 1960s. One could thus call them a forty-year war; a decade or so ago, some people called them the “culture wars”. However, although this war has been going on for a long time, with truces or *modus operandis* and *modus vivendis* between the contending parties from time to time, we are now in a new stage because of the current world economic crisis. This is becoming very important in terms of the clash of civilizations within America itself.

For many years we have been governed by a free-market ideology. This is a distinctive product of the West in general, and more specifically of the Anglo-Saxon or Anglo-American tradition in economics and government and in the relationship between them; it has been especially pronounced in the United States and its Republican Party in the past few decades. This particular product of the West—the free-market ideology—is now under serious assault, not only from a counter ideology—i.e., the belief in extensive government regulation—but indeed from economic reality. A good argument

can be made that what has recently happened to the world economy was a result of the free market being carried to an extreme.

This ongoing economic debate was refracted through the political elections of 2008. As a result, we now have the most dominant one-party government in America since 1964, when Lyndon Johnson won a handsome landslide and was supported by a heavily Democratic Congress. That Democratic dominance in government shortly issued in substantial social and political changes, most obviously the Great Society programs and a variety of other initiatives that greatly altered America and produced what is seen as the radical 1960s. There is a very good chance that the new Democratic administration and Congress will also make very significant changes. One expression of the West, i.e., the free market, will likely be confronted and put down by another expression of the West, i.e. extensive government regulation, something that has developed in Western societies over the last several generations. But there may be a better way to go than either of those two extremes, something that combines the best of the West and the best of these two extremes, while eliminating their dangerous consequences. I will call this Liberty under Law—the free market as refracted into something deeper—liberty—and government regulation as redefined into something much better—law.

## **II. From Traditional Western Civilization to Contemporary American Civilization**

### **A. The Three Sources of Western Civilization**

Scholars of Western civilization have normally focused on three major sources: Classical culture, Christianity, and the Enlightenment. These developed chronologically, but as they accumulated over the millennia, they began to exist simultaneously. In the last two hundred years or so, since the Enlightenment, these three sources have often been in great tension between themselves.

Adherents to Western civilization point to many legacies from the *Classical culture*, from Greece and Rome, that they love and revere. For our purposes, I will focus on the political and civil legacies. Greece gave us the idea of democracy, and Rome gave us the idea of a republic. But more fundamentally, Greece gave us something that had never existed before and that, for the most part, has not existed in other civilizations since. This is the idea of the autonomous, self-realizing person (not the individual, a concept which is too narrow), one defined by a distinctive character, virtues, and energy. Such persons express themselves not just as isolated individuals, but within a *polis* or civil society; they are dynamic entities competing with each other for honor, glory, and excellence within a social and political setting. That was a distinctively Greek concept, and it lives on today, two millennia later. It was exemplified in the Greek tragic dramatists and in the Greek

philosophers, e.g., Socrates, Plato, and Aristotle. This conception of the person is a fundamental element of Western civilization, and it has been more pronounced in our civilization than in any other.

As for the Romans, they understood the value of the autonomous person, but they also understood the need to channel and contain these persons so that they did not go to extremes, as demagogues like Alcibiades in Athens went to extremes and led their cities into disaster. Thus, the Roman contribution to civilization was Roman law. It is therefore Greek liberty, channeled and contained within Roman law—a conjunction of Greece and Rome, of democracy and republic, and especially of liberty and law—that is a fundamental legacy of the Classical culture for Western civilization.

*Christianity* had its own version of this particular tension between liberty and law. The individual Christian believer obviously had a personal relationship with God, through the second person of the Trinity, Jesus Christ. Christianity thus also enhanced the idea that a person had a special value, in this case a value given from above, from the Divine. But this personal relationship with God was governed and channeled through Biblical law. Like Classical culture, Christianity and its theological deductions combined the idea of personal liberty with the idea of higher law.

This was further enhanced by the way the Catholic Church developed through centuries in Western Europe. On the one hand, there was a unified Roman Catholic Church, a unification in the spiritual or religious realm. On the other hand, the temporary or secular realm was divided into thousands of petty principalities, each with limited powers within a system of feudalism. The tension between many competing secular powers, each with its own ambitions, and a unified spiritual power gave rise to a conception of the division of powers that was found in no other civilization.

*The Enlightenment* wanted to say goodbye to Christianity, however. Its advocates believed that they were turning on the lights after the Dark Ages of the Christian religion. In many ways, however, the Enlightenment secularized Christian, as well as Classical, concepts. In particular, the Enlightenment believed very much in natural law and individual rights, which were variations upon Christianity and Classical culture.

Of all the rich legacies of Western civilization, therefore, the ones that I am focusing upon are liberty and law and the creative tension between them. More than any other civilization, the West has embodied this particular tension, and that has given us our particular direction and dynamism.

## **B. The American Version**

The American variation on the Western theme, and in particular the civilization of the American founding, developed within the full richness of the Enlightenment. However, it expressed the British Enlightenment more than the French or continental Enlightenment, just as the American Revolution expressed a very different spirit than the French Revolution. The

American founders had a particular vision of what we now call Western civilization (since they couldn't conceive of any other civilization, for them it would have been civilization itself), and America was going to be a new and better version of it. We can identify six fundamental elements of this American version of Western civilization.

1. *Natural law, social hierarchy, and virtuous character.* Fundamental to the founders' conception was natural law and natural rights, e.g., those rights that are self-evident. They did not want to stress divine law, but they did think that these self-evident, natural rights were given by the Creator, so they were willing to include this idea as well. Thus, there were certain laws and rights that were above human caprice, including the caprice of governments. Today, this conception might seem a bit musty (since we no longer believe that much in natural law), but even now the idea is not very controversial.

But the founders also believed in a social hierarchy. They believed that people did not have equal characters and equal abilities, even though they had equal civil rights in society. Their conception was that there should be equal civil rights for unequal characters and abilities. Almost no other society has defined itself so much by this particular tension between equality and inequality.

In particular, the founders believed that the social hierarchy should be topped with a government by those who were especially virtuous, the virtuous characters. This was a conception that they derived from the Greeks. Jefferson thought that the people should be ruled by a natural aristocracy of the best. Hamilton, always a bit rougher and tougher, thought that the people should be ruled by the rich, the well-born, and the able. But in both the Jeffersonian, gentler version and the Hamiltonian, harsher version, there was a belief in social hierarchy and rule by persons of virtuous character. Moreover, these persons would have to be nurtured from their childhood in the development of that character.

2. *Republic versus democracy.* The political form that this social system would take would be a republic, not a democracy. Just as the Roman republic was divided into a number of estates or classes, so too the American republic would be divided into a number of states and interests, with these refracted through a political constitution. Our separation of powers would represent different bodies and tendencies within the wider society. This would be the case at the level of the federal government, with its legislative, executive, and judicial branches, and with the legislative branch in turn divided into the Senate and the House; each of these political elements represented different tendencies within the wider society. It would also be the case with the system of government as a whole, which was divided into the federal, state, and local levels. The basic idea behind this complex system was the republic—i.e., composing and constraining the various political and social elements so that they would check each other; as Madison put it, “ambition will check ambition.” However, virtually all of the founders believed that this outer constitutional framework would work only if the persons who were within its

different elements and who would operate the system would also be defined by a virtuous character.

3. *Liberty versus sameness.* Related to this, the founders believed in the liberty for these virtuous characters to develop and express their ambitions, but they also believed that they had to be constrained within the Constitution and the law. They very much opposed the notion that everyone should be leveled down to the same character and temperament to the least common denominator. However, the different and unequal characters would all have equal civil rights. They would compete with their different abilities within a framework of equal civil rights, within the framework of the Constitution and the law.

The founders saw this Constitutional or republican framework as expressing what was the best of Western civilization as it had existed before them. A good case can be made that they were correct; that they had taken the best of the West, at least within the political realm, and that they had perfected it, at least within the conditions of the late 18th and early 19th centuries.

4. *Americanization versus multiculturalism.* The founders knew that there would be new Americans arriving from other shores and in later generations. They believed that they had to deal with this challenge by nurturing, acculturating, and civilizing these new Americans into the intricate, delicate, but soundly grounded American civilization. Thus, they believed that they had to Americanize these new immigrants. Benjamin Franklin, in particular, thought that too many Germans in Pennsylvania would remain un-American, and that harsh measures would have to be taken to Americanize them.

In later generations, American elites were comfortable and confident with a robust Americanization program; during much of the 20th century, one part of this was known as “civics classes.” This belief in Americanization was in sharp contrast with the now dominant conception within most American institutions, especially those institutions dealing with the things of the mind (e.g., the media and education), a conception that has developed over the last forty years. For the founders and for many later generations, however, Americanization was a fundamental part of the de facto constitution of the American nation and civilization and of America’s place in the wider Western civilization.

5. *Familism versus feminism.* The founders also strongly believed that at the core of society was the family, and they had a particular ideal of the family. They took this ideal so much for granted that they didn’t have to discuss it much. They more or less assumed that this kind of family would be the foundation for the civilization that they were constructing.

a. *The marriage trinity versus the temporary contract.* This conception of the ideal family had been developed centuries before by Christian theologians and leaders in the late Roman empire (e.g., St. Augustine), as they observed the disintegration of Rome and concluded that it had a lot to do with the disintegration of the families of that time. These

Christian leaders conceived of a reconstruction and revival of the family, and their conception did much to revive the Christian sectors of the Roman empire. At the core of their conception was the idea of the marriage trinity. This was composed of three elements: sanctity, fidelity, and progeny. *Sanctity* was the idea that all marriages were made in the sight and under the auspices of God—in other words, holy matrimony. *Fidelity* was an enduring and caring relationship between husband and wife. *Progeny*, the children, were the product of sanctity and fidelity and included an enduring and caring relationship between parents and children. The family relationships between God, husband and wife, and children were the synthesis of competing persons and interests operating within the common framework of the family. The family was a kind of society in miniature. As such, it nurtured and educated the children into their future roles within the larger society, culture, and civilization.

b. *The nursery of civilization versus nobody at home.* This fundamental importance of the American family was discussed at great length by Alexis de Tocqueville in the 1830s when he wrote about what by then was democracy and increasing equality in America. As the old American republic was replaced by the new American democracy, the old emphasis on social hierarchy was replaced with a new emphasis on social equality, and more broadly the old emphasis on the liberty of persons was beginning to be replaced by a certain amount of sameness of individuals. Tocqueville argued that it was extremely important that the citizens of a democracy be nurtured in morality and ethics. He believed this was done most obviously in the churches, but even more fundamentally it was done in the family. He specifically argued that the major nurturing of culture and civilization was done in the home and by mothers. The mother was the real foundation of society and the acculturating and civilizing of new Americans arriving with the new generations. The American founders had this kind of conception in mind, and Tocqueville explicitly underlined it in his own brilliant and acute analysis.

We are thus beginning to perceive a distinctive and fundamental constitution for the distinctive American civilization. It is certainly embodied in its outer form in our written Constitution, which orders various political elements. Underneath this, however, is an unwritten but real constitution, which is composed of certain and necessary social and even family elements.

6. *Liberty under law.* The central pillar of this American civilization, again, remains liberty under the law, which is grounded in the Classical culture, in the Christian religion, and in the Anglo-American version of the Enlightenment.

This system established by the American founders was preserved, more or less and despite some shifting of its elements—especially from republic to democracy and from liberty to equality—for the course of the first 150 years after the founding. It was still largely in place as recently as the early 1960s. This American civilization had such a robustness and confidence

that, when great disasters befell the original European half of Western civilization in the 20th century—World War I, the Great Depression, World War II—and Europe was left in ruins, it was America that was able to redeem and restore it, and also to lead it during the new challenges of the Cold War. For America to be the leader of Western civilization, however, it had to possess both a material strength and a spiritual and intellectual vision, and the American civilization of that time did indeed possess both these qualities. This was a civilization that got other peoples' respect, not only in the West but also in the rest. Even if some of these other peoples did not want to fully emulate our civilization, they took it seriously because they saw that we ourselves did.

### **C. From Western to Post-Western Civilization: The Recent American Transformations**

In the past four decades, however, there have been a series of transformations away from the original American civilization.

1. *The institutional transformations:* Some of the most important transformations have been in American institutions. It is particularly important to look at those that compose the brain and central nervous system, so to speak, of a society. These are the media, education, and of course (given what I have said about the Western and American emphasis on law) the law schools and the courts. It is also important to look at that most fundamental of social institutions, the family.

It is fair to say that, in the last four decades or so, the institutions that constitute the mind of our civilization—media, education, and law—have undergone a great transformation with respect to, first, their attitude toward Western civilization and second, their conception of the ideal person or individual that should be produced by these institutions, i.e., by themselves. They have come to disdain and dismiss the idea of a distinctive and Western civilization as being obsolete, parochial, or even dangerous; they now prefer the idea of a global or universal civilization. Moreover, they have also come to disdain and dismiss the idea of social elites (which is somewhat paradoxical, since their leaders now themselves constitute a new elite). They especially find the conception of a social hierarchy that is led by virtuous elites to be contemptible, incomprehensible, or, again, even dangerous. They now prefer an elite selected primarily by “merit” (e.g., the accumulation of credentials), but alloyed by “multiculturalism” (e.g., representatives from favored racial and cultural minorities). These changes in the institutions that constitute and shape the mind of American society add up to a major transformation in the fundamental constitution of American civilization.

There have been changes in the American family, as well. A good case can be made that many families no longer see themselves as nurturing, acculturating, and civilizing their children into a pre-existing and valued tradition and civilization. Even if they did, however, there have been major

changes in the ability of these families to carry out the civilizing task. The secure liberty of parents to raise their children within a system of a few basic laws—liberty under law—has been eroded and undermined by a wide variety of bureaucratic regulations. Indeed, the government agencies and the public schools have increasingly displaced or replaced many of the social functions which were once performed by the family.

We all would applaud some of these changes, and indeed most of us did applaud them at the time that they were made. Only now are we beginning to see their negative effects, however. One can certainly see these negative effects in the public schools—at the child level of the life cycle—with curricula that are often banal and boring, dumbed down and politically correct, and that do little to prepare children for the realities of adulthood. But in recent years, these negative effects have become especially obvious at the opposite—or senior—level of the life cycle, i.e., in the social security system.

Certainly when Social Security was instituted in the United States in 1935, it was a necessary and good thing. Similar programs were instituted in Europe at that time or in the postwar era, often with the benign approval of the United States and certainly supported by the Social Democratic parties and even the Christian Democratic parties in Europe. On the other hand, a governmental social security system does have some interesting and troubling consequences.

In previous generations and indeed for millennia, parents took it for granted that their social security would have to come from their children. Now, however, their social security would come from the government. Consequently, parents began to view their children differently, and in particular they began to view them in different economic terms. Instead of providing benefits in the parents' later life, to compensate for the sacrifices that the parents had made for their children earlier, it now seemed that children no longer would be providing any necessary benefits at all. So what was the point of parents sacrificing for any children now?

In Europe, this mentality has been carried to such an extreme that many social analysts have arrived at the conclusion that it has been the very pervasiveness, the very strength and comfort, provided by the social security state that has been a major cause of the sharp decline in European birthrates in the past two decades. (Of course, it is now also becoming evident that these magnificent social security systems can no longer be sustained by the sluggish European economies.)

I am definitely not arguing for the abolition of Social Security. I was opposed to privatizing Social Security, a proposition that the Republican Party put forward quite strongly before the recent crash of the stock market. (Of course, had that privatization been instituted, it would have crashed along with the market.) But we must recognize that every time the government displaces a central function of the classical family defined by sanctity, fidelity, and progeny, it is likely to have important inadvertent

consequences. These consequences, since they are occurring at the basic foundation of civilization, will begin to change the civilization itself. Government social services can be good things, but one has to understand that, in the process of providing these services, government will hollow out the good things once done by the family. And these changes in the institution of the family add up to another major transformation in the fundamental constitution of American civilization.

2. *The individual transformations:* There have also been major transformations at the level of the individual. The hollowing-out process that I have described has given rise to a different kind of American than had been prominent before. The original American civilization was based upon the conception that the institutions within it should nurture a particular kind of person. That kind of person was the independent, autonomous citizen. These citizens were not autonomous in the sense that they were isolated individuals, but that they were independent enough to reasonably and realistically look at arguments for and against the major issues of the day and that they could then participate in the civil and political process on the basis of their independent judgments. In particular, these persons would not be dependent upon someone else; for example, they would not be cringing before an employer in regard to what they could say and do in the civil and political arenas.

Of course, this kind of independent, autonomous citizen corresponded to a society that, until perhaps a century ago, included vast numbers of independent small farmers, independent small businessmen, and independent liberal professionals. (The professions today seem to be populated more by professional liberals than by liberal professionals; however, a liberal professional once meant a free professional, i.e., one who relied only upon their clients, whom one could choose.) For a vast number of Americans, this economic independence was an important center of gravity, which enabled and nurtured them to be independent, autonomous citizens.

It is very different today. There are now virtually no independent small farmers. There is instead agribusiness—a much smaller part of the American population than the farmers of an earlier day, and agricultural workers now constitute less than 2-3 percent of the population, whereas even in the early 1930s as much as 25 percent of the American population still lived on farms. Small businesspersons still exist, but they exist in a context of large business corporations, in which virtually everybody is a dependent employee. The change in the professions is the most dramatic. In particular, there has been a heavy bureaucratization of the organizations that now dominate the professions (be they business firms or professional associations). These are now far larger and far more hierarchical than before, and their members are far more likely to be some kind of dependent, frightened, and cringing employee.

In part, this is the product of the new educational institutions, because they no longer teach anything about character or virtue; consequently the individuals which they produce have no moral or even psychological basis upon which to stand up for something, including for themselves. In part, it is the product of great, underlying economic changes, by which a new system developed that has degraded many independent, autonomous persons into many dependent, atomized individuals, who are crowded into giant, hierarchical organizations. If an individual's life has already been bureaucratized by their work in the "private sector," they will be much more likely to accept the bureaucratization of other aspects of their life when this is done by the "public sector," i.e., by the government, and the biggest and heaviest bureaucracies of them all. Such individuals take it for granted that life is to be designed and directed by hierarchical bureaucracies. In short, there has been a great hollowing - out of the kind of persons, and the kind of citizens, that the American founders thought would be absolutely necessary for our own distinctive civilization.

3. *Consequences for U.S. foreign policy.* These transformations within the American version of Western civilization have had, and will continue to have, important consequences for U.S. foreign policy. These can usefully be addressed in terms of the distinctions between military or "hard" power, economic or "smart" power, and cultural or "soft" power (following concepts which have been articulated by Joseph Nye and Walter Russell Mead).

*Military power.* The new preponderance of isolated individuals among the American citizenry has greatly diminished the idea of the citizen's commitment to the wider American nation. We no longer expect to ever have a military draft in the United States, because the effort to impose one would lead to widespread resistance and perhaps even rebellion. Instead, the United States must rely upon a volunteer military. Our volunteer military is certainly excellent, but it draws upon a very small sector of society. One consequence is that its members have to be used (and abused) beyond what they really signed up for. Terms of service in Iraq and Afghanistan have been repeatedly extended. More generally, U.S. hard power relies more and more upon fewer and fewer people, those who have really committed themselves to the nation and who embody the original conceptions of natural law, social hierarchy, virtuous character, and excellent leadership.

Indeed, the most perfect embodiment of the old American character today is the U.S. Marine Corps. It is no accident that the Marines have been the military organization that was most successful in reversing what in 2005-2006 seemed to be an impending U.S. defeat in Iraq. It was the Marines in Anbar province who discovered ways to work with the local Sunni tribes against the Sunni Al Qaeda insurgents, while engaging in hard work and great sacrifices, while spilling their blood in the mud because they had their boots on the ground.

In a nation which has fewer and fewer children, every child becomes more and more precious. Thus, Americans and especially Europeans have become more and more fearful of military casualties. Wars must now be fought not only with a very small sector of the society, but they must be fought with very few casualties. The Islamists and the rogue states have understood this very well, and they both have a particular history of U.S. military interventions in mind. That history is composed of such events as the Vietnam War, Lebanon in 1982-84, and Somalia in 1992-93. The lesson which they have drawn is that if you bloody a few Americans, they will then pick up and go home. For America, this is a very dangerous conception to have prevailing in the rest of the world. It was not a conception that foreigners had of Americans in the earlier era. The classical “American way of war” was based on the idea that the United States could overwhelm its adversaries not only with our high-tech and capital-intensive weaponry, but with our overwhelming military manpower. In recent decades, the United States has abandoned that American way of war, and this has important consequences for our hard power.

*Economic power.* As is well-known, in much of the contemporary American system of public education, standards of learning are quite mediocre. American performance in this important arena hardly conforms to “international standards.” Educators are more interested in socializing their students into a politically correct mentality in a multicultural society than in preparing them for productive participation in a global economy. Thus, vast numbers of American young people enter adulthood with no skills and no abilities, not only to compete within America, but more importantly to compete in the world market. As not only low-tech and unskilled jobs, but also high-tech and skilled jobs go overseas, fewer and fewer Americans are able to compete with more and more foreign workers, who are well educated in the tough, high-skill schools that one finds in China, India, and elsewhere among the emerging economies.

*Cultural power.* Although Joseph Nye thinks that the attractiveness of American culture abroad is one of the great strengths of the United States, we might look at just what that culture is and who is attracted to it. The American culture, the pop culture, that Nye exalts is loved by self-centered adolescents, but not by mature adults. The adults and the elites in other countries—those who have to raise families and those who are decision-makers in their professions—do not admire this kind of American culture. Rather, they often refer to Americans as “big children.”

Taking together the weaknesses in American hard power and smart power and the banality of American soft power, the United States has no coherent and convincing vision that it can offer to the serious adults and elites in other countries. The Bush administration’s “Freedom Agenda” was good as far as it went, but it was simply about freedom or liberty per se. The more mature and more essential idea of liberty under law was not very evident in the policies of the Bush administration, nor was it very evident in

those of the previous Clinton administration. Yet, it is precisely the incorporation of law (or, as it is sometimes seen, of justice) that is necessary for American culture to be attractive to people in other societies, and in particular to those who are responsible for raising children, maintaining families, keeping order, and preserving and enhancing their own culture and civilization.

### **III. Toward a Renewed Western Civilization: The Centrality of Liberty under Law**

Despite the great and damaging transformations that we have discussed, there remains a real potential for a renewed Western civilization, and for a renewed American civilization within it. Certainly the economic crisis and the governmental expansion that we are now experiencing represent substantial threats to what civilization remains. On the other hand, these also provide certain opportunities, because they impose certain necessities, to go back to the first principles of America and the West and, in the aftermath of the economic crisis and the governmental changes, to reconstruct our civilizations.

In the midst of the current economic crisis, the dominant argument being put forward is that the free market has failed and that it must be replaced with greatly expanded bureaucratic regulation. This formulation, however, considers only two options, and they are the extreme ones. This is a great misrepresentation of what is really possible, although given the current public discourse, one of these extreme alternatives is what we will probably get, i.e., a vast expansion of bureaucratic regulation, not only in the economy but in the society more generally. Even the departing Bush administration brought about a great increase in de facto government ownership or equity in a wide variety of financial institutions and industrial corporations, e.g., in commercial banks, investment banks, insurance companies, the housing industry, the automobile industry, etc.

However, a better alternative than this exists, and indeed it did exist and was quite successful from the 1930s to the 1990s in the United States. This alternative is neither the unconstrained free market allowing all sorts of reckless business excesses, nor bureaucratic regulation bearing down heavily upon productive business enterprise. Rather, it is a few simple laws and rules of the game, which are enforced by courts and judges (rather than complicated regulations enforced by executive agencies and bureaucrats.) It is true that from the 1930s to the 1990s, the implementation of these laws and rules of the game was often overseen by some federal agency, but overall this system allowed and encouraged a relatively smooth operation and growth of the American economy. It was also a system of liberty under law.

During the current economic crisis, a large number of American financial institutions have been deemed to be “too big to fail,” and the government accordingly has intervened and prevented them from failing,

often in ways that have been inconsistent and unpredictable, that have therefore appeared arbitrary, and that have therefore been destabilizing for the economic system as a whole. However, for many decades, there were actually two fundamental banking laws, which carefully composed a kind of constitution for the American financial sector. One was the Glass-Steagall Act of 1933, which limited the *functional* expansion of banks. Commercial banks were not allowed to become bigger by expanding into investment banking or into other kinds of financial activities (and conversely, investment banks could not become commercial banks). The other law was the McFadden Banking Act of 1927, which limited the *geographic* expansion of banks. Commercial banks could not operate outside the state in which they were chartered. It was a financial system defined by liberty under law. Together, the two laws kept banks from becoming too big too fail. Every once in a while a large bank might fail, such as Continental Bank in Illinois in the early 1980s. The government would then come in and liquidate that bank, but its failure never produced a “systemic crisis.”

Under this framework or constitution for the financial sector, the banks were overseen by two agencies that worked quite well and were not seen as heavily intrusive: these were the FDIC and the SEC. The first oversaw commercial banks, and the second oversaw investment banks. Overall, there was a well-ordered but economically efficient American financial system. The United States did have many economic problems from the 1930s to the early 1990s, e.g., periodic recessions, along with the savings and loan crisis of the late 1980s (which was handled very nicely by the FDIC and the Resolution Trust Corporation, which the FDIC established to sell off assets of failed firms). However, these problems did not give rise to systemic crises such as we have experienced since September 2008.

The current systemic threats demonstrate some of the problems that a completely unconstrained free market can produce. This kind of free market came into being in the 1990s, when the larger banks lobbied successfully for the elimination of the McFadden Act (which occurred step by step in the early 1990s) and of the Glass-Steagall Act (which occurred in 1999). Moreover, the Bush administration caused the SEC to pay less attention to serious risk-taking by investment banks. However, as we go from one extreme to the other, from the unconstrained free market to intrusive bureaucratic regulations, we will face other problems. These will be enhanced by the fact that bureaucrats can be arbitrary in their decisions and corruptible as to how they make them.

The norm of liberty under law can and should also be applied to the cultural sectors of society, particularly to the educational sector. It is very likely that the Obama administration and the heavily Democratic Congress will push for a greatly increased role of the federal government in education. This would bear down upon and grind out whatever role remains for parents in the education of their children and would be yet another step in the progressive hollowing out of the family. This process is also occurring at the

level of state governments. In California, for instance, legislative and judicial actions are making sure that every child must go to a public school or to a private school which is heavily regulated by the multicultural norms of the public schools. An alternative way to go would be to have a few simple laws about what schools have to do, but to leave plenty of opportunity and liberty for a healthy variety of private schools.

## **Conclusion**

America should consider moving (or returning) to a system of liberty under law, avoiding the extreme extensive government regulation (which in Europe has gone too far in recent decades) or complete freedom of the individual (which in America has also gone too far in recent decades.) Liberty under law is not only a system, however. It is the foundation of American civilization and of Western civilization more generally. But it is even more than this. It is an ideal and a practice that America can offer not only to the West, but to the rest, to other civilizations as well. Above all, it is an ideal and a practice which America can offer to itself. It is something that has always been, is now, and always will be worth fighting for.

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