

# THE CAPITALIST ADVISOR

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## The Rule of Lawlessness Democracy is Killing Nomocracy

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This year has been one of the most violent in U.S. history (excepting the Civil War, 1860-65).<sup>1</sup> The air is filled with denunciations of cops and capitalism, but the violence itself is but a *manifestation* of on-going *wars on cops and capitalism*.

Failure to maintain law and order is an *epic government failure*.<sup>2</sup> American officials are making massive mistakes of both *commission* (doing the *wrong* things) and *omission* (failing or refusing to do the *right* things). American government is becoming both *despotic* and *negligent*. Sadly, little evidence suggests that this hostile, anti-capitalist climate will improve anytime soon (regardless of who becomes president in November). The bullishness of equity holders and strategists is unjustified; bullishness on gold, in contrast, remains warranted and should remain so for a while.<sup>3</sup>

**Wrongful acts of commission.** At least since FDR's anti-capitalist "New Deal" (1933-38), property rights and economic liberties in America have been severely abridged, in viola-



tion of the "takings" clause of the 5<sup>th</sup> Amendment of the U.S. Constitution. More recently, the U.S. Congress fraudulently impeached an innocent president (Trump) after the FBI, NSA and CIA illegally spied on his campaign (pre-election) and his administration (post-election).<sup>4</sup> They also persecuted and

<sup>1</sup> For example, in Chicago this year (January-June), compared to the same months in 2019, shootings increased 42% while murders were up 34%; in June alone shootings were up 75% while murders increased 78% ("Chicago Murders and Shootings Up, Overall Crime Down Halfway Through 2020, Police Say," *NBC Chicago*, July 1, 2020). In New York City in June (versus June 2019) the NYPD made 40,000 fewer overall arrests while shootings increased by 130%, burglaries by 118%, auto thefts by 51%, and murders by 30% ("NYPD Announces Citywide Crime Statistics for June 2020," July 6, 2020). Further examples: "Crime is Surging in U.S. Cities," *CNN*, July 14, 2020; "Gun Violence Surges in Major American Cities in the Midst of a Pandemic and Policing Crisis," *CNN*, July 1, 2020; "Major U.S. Cities, Gripped With Crisis, Now Face Spike in Deadly Shootings, Including of Children," *Washington Post*, July 6, 2020; "Gun Violence is Surging in Cities, and Hitting Communities of Color Hardest," *NBC News*, July 9, 2020; and Kevin McCullough, "Six Weeks, Six Cities, 600 Murders," *Townhall.com*, July 5, 2020.

<sup>2</sup> See Heather MacDonald, *The War on Cops: How the New Attack on Law and Order Makes Everyone Less Safe* (Encounter Books, 2016); "Police 'Defunding' Has Occurred Already," *The Capitalist Advisor*, July 5, 2020; and Richard Salsman, "[Ten Varieties of Anti-Capitalism](#)," *Capitalism Magazine*, June 29, 2020.

<sup>3</sup> "Beware of Bull Runs in Bear Markets," *Investment Focus*, May 28, 2020.

<sup>4</sup> "Fallout from the Impeachment Travesty and Acquittal," *The Capitalist Advisor*, February 7, 2020.

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## The McCloskeys of St. Louis

*Exercising their 2nd Amendment right and trying to protect their lives and possessions against a mob of thirty thugs on their lawn*



*None of the thugs were arrested, but a few days later the district attorney sent reluctant officers to the house, to seize the McCloskey's weapons, abridge their 2nd Amendment rights, and publicize their defenselessness*

prosecuted his top aides for purely *political crimes* (aka “process crimes”). This was a “silent coup” attempt, an existential form of lawlessness verging on treason. The articles of impeachment were not based on anything in the U.S. Constitution.

After Mr. Trump was acquitted he joined with the CDC, FDA, WHO, and various governors to badly misdiagnose and over-react to the Wuhan virus, using junk science to compel millions of Americans to cease working, shutter businesses, leave schools, vacate hospitals, and cower at home. This is also lawlessness—straight from the top. The result has been *mass unemployment* and a multiplication of *non-virus* ailments (mental, physical, and financial).<sup>5</sup>

Washington then borrowed \$3 trillion (from whom?) while the Fed issued \$3 trillion in fake money, allegedly to “stimulate” the economy; in truth these schemes subsidize joblessness, pro-

mote consumption (anti-production), reward cronies, bail out fiscally profligate states, cause poverty, and create dependency.<sup>6</sup>

**The violence is attributable to wars on both cops and capitalism. This is epic government failure.**

Many businesses seeking to safely re-open amid the corona-phobia have been summarily shut-down by the arbitrary and punitive cancellation of operating permits and licenses. This too is a form of lawlessness: a vengeful politician or bureaucrat effectively wields a *license to kill livelihoods*. Anyone needing political *permission* to work and live is working and living like a Medieval serf (but under better material conditions, due to previous capitalism).

<sup>5</sup> “The Equity-Price Plunge: Sanders-virus versus Corona-virus,” *Investor Alert*, February 25, 2020; “Investing Amid the Triple-A Virus: Autocracy-Autarky-Anxiety,” *The Capitalist Advisor*, March 16, 2020; “[The Defense Production Act: More Market Destruction](#),” *The Capitalist Standard*, March 18, 2020; “Incarceration, Monetization, and Nationalization Can’t Preserve Our Health or Wealth,” in *The InterMarket Forecaster*, March 29, 2020, pp. 6-12; “[Unwealthy is Unhealthy, So Why Mandate It?](#)” AIER, April 5, 2020; “[Pandemic = DEMPanics](#),” *The Capitalist Standard*, April 21, 2020; The Great Lockdown: A Running Critique of Anti-Capitalist Covid Policies,” *The Capitalist Advisor*, May 11, 2020.

<sup>6</sup> See “Fiscal-Monetary ‘Stimulus’ is Depressive—as Japan Proves,” *The Capitalist Advisor*, June 5, 2020.

<sup>7</sup> “Jails and Prisons Spring Thousands of Inmates to Prevent COVID-19 Outbreaks,” *U.S. News & World Report*, April 16, 2020.

**“Sanctuaries” of secessionists.** For many years Democratic governors and mayors have declared their domains “sanctuaries” from federal law, creating partially *lawless* pockets in America. They’ve done this more and more lately regarding law enforcement. Such acts are unconstitutional, secessionist, and treasonous. In 2019 Democrat presidential candidates vowed to strip Americans of their constitutional right to bear arms. Meanwhile public officials have released 67,000 convicts from prison, allegedly to protect them from getting the Wuhan virus.<sup>7</sup>

It should be mentioned also that *phony* lawlessness today results from government illegitimately prohibiting acts that harm (at most) only the *actors* (not non-participants): *i.e.*, those who are engaged in illicit drugs, prostitution, or gambling. These laws are *unjust* and should be *repealed*. The brief era of “prohibition” (of alcohol) in the U.S. (1919-33) was a disaster; it spawned even more drinking and *real* violence (Al Capone, etc.). Today it is both crazy and criminal to devote *any* law enforcement resources to combatting such acts, to filling already-crowded prisons with non-violent “criminals” rendered less employable (and potentially more violent) by having bogus “rap sheets.” Do these unjust prohibitions have the effect of disproportionately jailing certain types of people (“minorities”) and ruining their lives? Yes—which suggests that the pushers and enforcers of such laws may be motivated by bigotry—which fuels lawlessness.

**Wrongful acts of omission.** Most such acts pertain to a failure by government to adopt and apply *objective law*. As philosopher Ayn Rand wrote, “an *objective* law protects a country’s freedom; only a *non-objective* law can give a statist the chance he seeks: a chance to impose *his* arbitrary will—*his* policies, *his* decisions, *his* interpretations, *his* enforcement, *his* punishment or favor—on disarmed, defenseless victims.” A legitimate government, she added, “is the means of

placing the retaliatory use of physical force under objective control—*i.e.*, under objectively defined laws.”<sup>8</sup> The basic purpose of any proper (moral, just) government is to protect its citizen’s *individual rights*—to life, limb, liberty, property, and the pursuit of happiness. The rule of law serves and guides this crucial purpose.<sup>9</sup> Among other things, it requires that *no one should be above or below* the law. Regardless of one’s societal status, whether high, medium or low, or whether one operates in the private or public sector, no one whose *guilt* is probable should be able to *escape* lawful *prosecution*, nor should anyone whose *innocence* is likely should be subjected to unjust *persecution*.

*Distributive justice* requires fair, objective, and lawful treatment of the *good*—*i.e.*, those individuals who work diligently (and intelligently), earn their way, and *deserve* their positions and possessions, *regardless* of whether they have more or less than what others have. Such good people must be treated *equally under the law*, whether constitutional, statutory, or tax. We don’t have that today. We see punitive taxation of the rich and freeloading by others.<sup>10</sup> We see trustbusting.<sup>11</sup> We observe illegal immigrants storming borders.

We see executive orders proliferating. Those who administer the lawless Obamacare routinely excuse favored groups. The U.S. Congress itself routinely grants itself immunity from the laws, regulations, taxes, and penalties it inflicts on citizens.

We also observe unequal, unjust, and unpredictable treatment of cronies and innocents alike, the former presumed *worthy*, the latter presumed *guilty* (and, being wrongly *prejudged*, are the worst victims of *prejudice*). We see bailouts of reckless, politically favored banks and Fed control of “private” bank policies on dividends, capital, lending, and pay. We see a cascade of arbitrary, illiberal, confiscatory rules issued by the SEC, EPA, FDA, FTC, OSHA, FCC, FAA, etc. “Regulatory law” is lawless per se, entailing what jurists call *prior restraint* (a presumption of *guilt*, not innocence); the “alphabet agencies,” instead of exhibiting a *separation* of powers, *unite* legislative, judicial, and executive powers in a stew of despotism.

**A just government dispenses both distributive justice and retributive justice. Tragically, each has eroded in America in recent decades.**

<sup>8</sup> See “[Law, Objective and Non-Objective](#),” in *The Ayn Rand Lexicon: Objectivism from A to Z* (1986).

<sup>9</sup> Although Aristotle (350B.C.) was the first major thinker to extoll lawful government (in his *Politics*), the phrase itself (“rule of law”) originated in the great and influential work of British jurist A.V. Dicey (*Introduction to the Law of the Constitution*, 1885). In recent years the staunchest academic defender of the rule of law has been Australian Martin Krygier. See his essay, “The Rule of Law: Pasts, Presents, and Two Possible Futures,” *Annual Review of Law and Social Science*, October 2016, pp. 199-229. See also “[The Rule of Law](#)” (*Wikipedia*).

<sup>10</sup> See “Representation Without Taxation,” *The Capitalist Advisor*, April 30, 2010; “Ominous Trends in the Burden of the Jobless on Taxpayers,” *The Capitalist Advisor*, March 31, 2010; “Economic Stagnation and Punitive Tax Burdens on the Rich,” *The Capitalist Advisor*, April 18, 2011; and “The Punitive Tax Burden on America’s Richest,” *The Capitalist Advisor*, April 15, 2019.

<sup>11</sup> See “Three Risks That Won’t Abate,” *Investor Alert*, December 18, 2018; “Trust-busting: The Risk That Won’t Recede,” *Investor Alert*, July 10, 2001. “The Injustice of Antitrust,” *The Capitalist Advisor*, July 21, 2000; and “Antitrust: Landmarks and Landmines,” *Investor Alert*, April 4, 2000.

*Retributive justice* pertains not to production and reward but to *crime and punishment*. It's the "flip side" of the justice coin which demands fair, objective, lawful treatment of the *bad*—*i.e.*, those people who cheat, steal, riot, loot, torch, maim, rape, and murder. Like income earners they are *deserving*, but deserving of punishments that fit their crimes, however unequally they may, as a class, commit them. It is *irrelevant* if some statistic reveals some types of people being charged, convicted, or jailed at rates disproportionate to their share of the *population*. It matters only whether an *individual* commits a crime; then, of course, it's possible that some types of people commit more crimes relative to their portion of the population. That's *not* unjust.

People of late have *not* been treated *equally* under the criminal law. We've seen leniency toward crime, hatred of crime fighters, disdain for law enforcement, and excuse-making for law-breaking. Many American mayors, police chiefs, and prosecutors—especially in Democrat-dominated American cities—now brazenly *refuse* to enforce laws against assaulting police officers, or rioting, or looting, or arson, or murder. They also refuse to enforce laws equally for all *regardless* of race, gender, creed, or wealth. They relax or suspend bail, furthering violence. Lately, using the Wuhan virus excuse, they have closed courts, or forced them to operate at diminished capacity, causing case backlogs and delays, even as cases skyrocket. *Justice delayed is justice denied*.

As violence mounts, we see police precincts being attacked, torched, ransacked, abandoned by cops, and occupied by thugs. We see irresponsible calls for "defunding the police," the harassment and ambushing of police, plus officers ignoring 911 calls, calling in "sick," and retiring early.<sup>12</sup> We also observe "the Ferguson effect," whereby *anti-police policies cause less law enforcement*, leading to more law-breaking.<sup>13</sup> Finally, with the war on cops we see attrition: diminished recruitment, a need to accept inferior candidates, a decline in training, discipline, and morale. The downward spiral signals a future of increasing hordes of societal miscreants interacting with successively lower-quality cops.

**Easier said than done?** Law enforcement isn't rocket

science, but it can be difficult if laws are arbitrary or, even if fair, are disrespected, unequally enforced, or unenforced. We suffer all three problems today. In 2020 American government at every level—federal, state, and municipal—has failed utterly at exercising the rule of law. Senator Lee (R-UT) has rightly condemned street violence and astutely traced its source, but he couldn't get a single Senate Democrat to agree even to a resolution.<sup>14</sup> Nor has Mr. Trump's Justice Department done much besides saying it will "consider" designating Antifa a terrorist group (as it is); there have been few arrests even as Antifa atrocities are openly *filmed*. The U.S. Department of Homeland Security, created specifically in 2002 after a lack of agency coordination before and during the 9/11 attacks, also has done little to ensure safety and security in 2020.

President Trump will not even invoke the Insurrection Act and send federal law enforcement to cities, as many of his predecessors did at one time or another in circumstances far less severe or persistent than what we now witness. This year's street violence is not due to "police brutality," a rare phenomenon, but to the brutality of rioters, looters, arsonists, vandals, and murderers—who apologize as "protesters." For weeks the mayhem of the savages has gone unchecked. Few have been arrested and most of those arrested have had charges dropped, or have had to post only minor bail, or, if facing large bail, have been sprung by organized, deep-pocketed accomplices. The miscreants are aided and abetted by sympathetic corporate funders, media mavens, and public officials.

What supposedly instigated violence in America this year? The death of a black suspect (George Floyd) while resisting arrest at the hands of a Minneapolis cop. The act was horrific—and *universally condemned*. The cop was arrested and charged. This was not evidence of "systemic" racism of police (or Americans), as the incendiary propagandists and provocateurs claimed, but of police brutality, which occurs, rarely, against suspects of all race types. Incidents like this also occurred under President Obama. Why violence now? In the two decades through 2019 violent crime in the U.S. *plummeted*. In 2019 there was no economic depression, no mass unemployment, no mili-

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<sup>12</sup> "Police 'Defunding' Has Occurred Already," *The Capitalist Advisor*, July 5, 2020.

<sup>13</sup> Heather MacDonald, "The New Nationwide Crime Wave: The Consequence of the 'Ferguson Effect' are Already Appearing," *Wall Street Journal*, May 29, 2015. See also Aamer Madhani, "Ferguson Effect' Makes 72% of U.S. Cops Reluctant to Make Stops," *USA Today*, January 11, 2017.

<sup>14</sup> "Senator Lee's Condemnation of Mob Violence and Its Roots," *The Capitalist Advisor*, July 2, 2020.

tary draft for a senseless war, and no evidence of “systemic” racism in America or her police.<sup>15</sup> America has seen domestic violence before, but nothing as disgusting as this.<sup>16</sup>

The violence is partly explained by the fact that Mr. Trump is president and his foes fear he might get even more of the “black vote” in 2020 than he did in 2016. At a deeper level, there’s *already* been a persistent war on cops in America for many years, motivated not by the bad behavior of cops or a desire to defend the unjustly treated—if that were true the demand would be to *reform* policing, not “defend” or dismantle it—but by a desire of anti-capitalists to undermine law and order. There always exists an array of anti-capitalist thugs and mobs ready and eager to exploit isolated cases of police misconduct. Amid chaos, mayhem, and violence they see a better chance for radical change, usually for the worse. Even normally peaceful citizens may demand strong-arm leaders, to “restore order.” Brutality in the streets becomes brutality in political leadership; as Hayek explained long ago, the worst get to the top.<sup>17</sup>

**Given the role of the rule of law in undergirding capitalism, it shouldn't be surprising to see avowedly anti-capitalist groups practicing, condoning, and praising lawlessness in America. Three obvious cases are the Democratic Party, “Antifa,” and “Black Lives Matter” (BLM).**

**A campaign to “normalize” savagery.** Emblematic of our barbarous times is this recent article: “Amid Spike in Crime, a Question of Who Owns the Streets.”<sup>18</sup> Why is this even a *question*? See also the disgusting podcast “debate” sponsored recently by the *New York Times*, titled: “Can Riots Force Change?” The subtitle: “A debate about the destruction of property as a tool for social justice, and where America goes from here.”<sup>19</sup>

The deliberate *destruction of property* is no longer considered evil, unjust, vicious, or dangerous; those are useless, old-fashioned, even “racist,” concepts, irrelevant to the

new “woke” climate of opinion (albeit acceptable, even *advisable*, if used to *describe capitalism*). On this view, property destruction is an *option*, a way to achieve other aims. It is open to . . . *debate*. Destroy property, they say, if it might serve as a “tool” (or *weapon*?) for “social justice.” And what is “social justice?” Not plain, old-fashioned justice—meaning that people *deserve* their rewards (or penalties) according to whether they *productively create values* (or *criminally destroy them*)—but the requirement that all people possess all things *equally*, regardless of their acts and contributions, for good or ill. If anyone produces values (or “too many” of them) they are to be taxed, regulated, and expropriated, for the benefit of those who did not; those who harm life, limb and property are to be coddled, excused, housed, and fed (by taxpayers), then paroled prematurely.

Another sign of the times, also from the *New York Times*, was its recent firing of its opinion editor, who made the terrible mistake of publishing an op-ed by a sitting U.S. Senator (Tom Cotton, R-Arkansas) which called for deploying federal

troops to combat urban violence where state and municipal officials are condoning or fueling it.<sup>20</sup> Among “thought leaders” and “elites” these days—academics, journalists, executives, or policymakers—the bad thing to want today is *law and order* and a return, as soon as possible, to normal economic activity, while the good thing to want is *lawlessness* and *no more growth*. Eco-socialists and eco-terrorists also approve, applauding the visible decline in “greenhouse gas emissions” during the global economic shutdown and pushing even more vigorously their “de-growth” agenda, which says economic stagnation isn’t a failure of policy but “a sign of success.”<sup>21</sup>

<sup>15</sup> See Heather MacDonald: “The Myth of Systemic Police Racism,” *Wall Street Journal*, June 2, 2020; “Repudiate the Anti-Police Narrative,” *City Journal*, June 10, 2020; and “There is No Epidemic of Fatal Police Shootings Against Unarmed Black Americans,” *USA Today*, July 3, 2020. See also the study by Harvard economist Roland Fryer, “An Empirical Analysis of Racial Differences in Police Use of Force,” NBER Working Paper Series, January 2018.

<sup>16</sup> Some anti-capitalist anarchists bombed Wall Street a century ago. In 1933 the anti-capitalist FDR criminalized gold ownership and seized supplies. The 1960s saw four major assassinations, riots and arson in major cities, campus violence, and violence from the Weather Underground and Black Panthers. Between 1974 and 1983 the terror group FALN did 70 bombings in New York, Chicago and Washington (President Obama pardoned its leader). From 1978 to 1995 the anti-capitalist “Unibomber” sent letter bombs killing three and maiming twenty-three. In 1995 a terrorist bombed a federal building on Oklahoma City, killing 168 and injuring 680.

<sup>17</sup> Friedrich Hayek, “Why the Worst Get on Top,” Chapter 10 in *The Road to Serfdom* (University of Chicago Press, 1944).

<sup>18</sup> “Amid Spike in Crime, a Question of Who Owns the Streets,” *Christian Science Monitor*, July 14, 2020.

<sup>19</sup> Frank Bruni, Ross Douthat, and Michell Goldberg, “Can Riots Force Change?” *New York Times*, June 4, 2020.

<sup>20</sup> Tom Cotton, “Send in the Military: The Nation Must Restore Order. The Military Stands Ready,” *New York Times*, June 3, 2020.

<sup>21</sup> John Cassidy, “Can We Have Prosperity Without Growth? The Critique of Economic Growth, Once a Fringe Position, is Gaining Widespread Attention,” *The New Yorker*, February 3, 2020. Dietrich Vollrath, *Fully Grown: Why a Stagnant Economy Is a Sign of Success* (University of Chicago Press, 2020).

Given the role of the rule of law in undergirding capitalism, no one should be surprised to see avowedly anti-capitalist groups practicing, condoning, or praising lawlessness in America. Three obvious cases are the Democratic Party, Antifa, and “Black Lives Matter” (BLM). The Democratic Party has been the party of Jefferson, Jackson, racism, slavery, secession, the Southern Confederacy, segregation, Jim Crow laws, and the KKK.<sup>22</sup>

None of this is pro-capitalist—nor is the racist, poverty-pushing welfare state which Democrats have pushed so actively for nearly a century. Each of their most admired American presidents have been avowed anti-capitalists—Wilson, FDR, and Obama. Antifa is an anti-capitalist, anarchist terrorist group which chooses to label itself “anti-fascist” precisely because it is *pro-fascist* and knows that benevolent, gullible Americans are notorious suckers for the Trojan horse and the false flag. It is similar with BLM. Most Americans value *all* lives, including “black” ones, but very few of them want to obsess (as do racists) over unchosen, irrelevant traits like skin color. But BLM obsesses—then declares most Americans and cops to be “racist.” BLM’s mission statement is anti-capitalist; its leaders identify as “trained Marxists;” the group also opposes the nuclear family, even though broken homes have ruined millions of black lives since the welfare state was expanded by LBJ’s 1960s “Great Society.” Nor are any lives valued or enhanced by “defunding the police” (or *up-funding* the failing public schools).

**Speech, action, and election fraud.** When the rule of law erodes in one area, it tends to erode in others, because its features are mutually reinforcing; when some features are attacked, undermined, or jettisoned, others become vulnerable. If an architectural design isn’t coherent, the building will not function; it may not stand.

Politics (public governance) *also* must be architecturally sound. Law creates coherence and stability when it is properly written, interpreted, and enforced. A constitution is the foundation upon which other law is erected and defended. It is fitting that those who convened at Independence Hall in 1787 and founded the United States of America were called the “framers of the Constitution,” for they were political architects who framed a political house for a body politic, a house in which people could safely enjoy liberty, rights, peace, and pros-

perity. President Lincoln said “a house divided against itself cannot stand.” Nor can a nation. *He held it together* against the hatred, violence, and militarism of treasonous anti-capitalists and separatists who preferred to keep profiting from their enslavement of people based on skin color.

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America today still has treasonous, anti-capitalist racists and separatists. They want to eviscerate the U.S. Constitution, to deprive citizens—among other things—of their right to property (5<sup>th</sup> Amendment), their right to be secure in their persons and possessions (4<sup>th</sup> Amendment), their right to keep and bear arms (2<sup>nd</sup> Amendment), and their right to free speech (1<sup>st</sup> Amendment). The 1<sup>st</sup> Amendment includes a right to lobby government to fight injustice (“to petition for a redress of grievances”), *not* to petition for *injustice* (favors, handouts, and bailouts which inflict harm on others). It also includes “the right of the people peaceably to assemble,” *not* a right to organize and act as a mob, to conspire for purposes of inflicting violence.

The sanctity of property, exercise of speech, and right to own and use weapons are the three most steadily assaulted freedoms in today’s America. Fascistic censors declare that any speech *they* hate is “hate speech” akin to a “threat” (assault) or “action” (battery) which should be prohibited or penalized. Unable to refute opponents’ messages, they prefer to shame, silence, maim, or kill the messengers. Their “BDS” tactics<sup>23</sup> and reign of “cancel culture” aim to intimidate and eradicate opponents, to smear them, get them fired, and ruin their careers. Notice the gimmick of these bullies: first *they re-classify harmless speech* (which they oppose) as dangerous *physical action* to be prohibited and punished; next they *re-classify dangerous actions* (which they endorse) as mere *speech* to be protect-

<sup>22</sup> See Bruce Bartlett, *Wrong on Race: The Democrat Party’s Buried Past* (St. Martin’s Press, 2009) and professor Carol Swain, “[The Inconvenient Truth About the Democratic Party](#),” Prager University, May 22, 2017.

<sup>23</sup> “BDS” stand for “boycott, divest, sanction.” The BDS “movement” is both anti-capitalist and anti-semitic. See <https://bdsmovement.net/>.

ed and rewarded. If any person (or statue) stands for America or for capitalism, they must be torn down; vandalism, rioting, looting, and torching must be “re-imagined” as sacred expressions of feeling, never to be questioned.

This tragic trend won’t reverse anytime soon, given the dearth of pro-capitalist among major influencers: public school teachers, university professors, politicians, CEOs, media members, entertainers, and pro athletes. Polls show that most of these people are registered Democrats—*i.e.*, the friends and financiers of America’s most lawless, anti-capitalist party (besides the Green Party).

Look next for severe erosion in American *election integrity*—a central cancer in any corrupt “Banana republic.” In the U.S. state and local officials are responsible for the conduct of elections; far too many of them are incompetent or corrupt party hacks. Coronaphobia, now stoking a *second* wave of lockdowns, is being used to substitute remote, *mail-in ballots* for in-person voting; the latter has already been corrupted by a refusal to demand identification; the former is notorious for corruption (outside of ballots submitted by out-of-country military personnel). The November elections will be more corrupt than ever; that will invite putative losers to *violently reject the validity* of the results. That *already happened* in 2016, when Democrat nominee Clinton refused to accept her loss; her allies thereafter called themselves the “resistance,” a term used for underground opposition to a tyrannical, illegitimate government.

**Philosophic roots.** Besides hatred of capitalism, foes of the rule of law are fueled by subjectivism, egalitarianism, and populism. The brazen *subjectivists* are ruled by emotions, not reason. They insist (or pretend) that objectivity is impossible, that theorizing is mere rationalizing, that law-making and law-enforcing are inherently biased, since rules originate with rulers and rulers are invariably the rich, powerful, and privileged—those who (per Marx) “control the means of *production*” (finance, industry, commerce) and the means of *instruction* (ideology, schools).<sup>24</sup> The *egalitarians* hold that all people should enjoy equal results in life, *regardless* of their diverse talents, interests, and life choices; if so, laws must be written and applied *unequally*, to favor the “less-privileged” and disfavor the more-privileged. In pushing equality of

*result*, by any means necessary (even if extra-legal), they necessarily erode equality *before* the law—which is the essence of *lawfulness*. Finally, many foes of the rule of law and fans of lawlessness are rube *populists*, faith-based apostles of democracy who believe the “voice of the people” is akin to the “voice of God,” that the multitude ensures rectitude, that whatever a mob majority wants it deserves—to hell with the so-called “rights” of minorities.

Now imagine juries, judges, and Supreme Court justices equally entranced by subjectivism, egalitarianism, and populism. Tasked with administering justice, even invoking the principle of *judicial review* to strike down unconstitutional laws, they will default on their solemn duty. Increasingly, that’s what they been doing. Lambasted by democrats and populists as unelected, privileged elites, many of them assume unearned guilt and try to absolve their “sins” by defying the law and deferring to the mob.

Just as the rule of law is a pillar of capitalism, the rule of lawlessness permits *anti-capitalism*, whether anarchism, socialism, nationalism, fascism, “de-

growth” eco-ism, or some *synthesis* (like nationalist socialism: Nazism). This principle animates much of the savagery in America today. Until and unless the rule of reason prevails, the savagery will persist. The rule of law is not an “end in itself” but a *means* to other ends—*liberty, peace prosperity* (what capitalism delivers). Those who hate these values recognize (at times more astutely than do pro-capitalists) that to destroy them they must *first* destroy the rule of law. They also know that harm can be inflicted as much (and worse) from the *top* (by politicians) as from the *bottom* (by thugs).

**Democracy contra nomocracy.** A society ruled not by men and their whims but by law (*nomos*) is a *nomocracy*, whereas governance by the “people” (*demos*), *whatever* their whims may be, is a *democracy*. Most everyone agrees with Winston Churchill that “democracy is the worst form of government except for all the others.” Thus, they believe democracy is the *best* form. That’s an erroneous belief, since neither a guarantee nor a high chance exists that some majority of a people will be substantively or sustainably wise and moral. Everyone knows (by experience)

**Capitalism succeeds  
where other systems  
fail because it ensures  
law and order,  
voluntary exchange,  
free markets, the  
sanctity of contract,  
and the rule of law.**

<sup>24</sup> French socialist poet Anatole France (1844-1924) wrote that “in its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread.” Note his attempt to justify and legalize *mooching and looting*—and to suggest they’re akin to *sleeping*.

that many people can be stupid, vicious, or both; yet under democracy they still vote (or get elected). To the extent such people teach in “democratic” (public) schools, they spread their ignorance and vice nationally, like a virus.

It’s not enough, of course, to extoll the rule of law versus “the rule of men,” since men (and women) necessarily *make, apply, and enforce* the law. Nor is it sufficient to ensure that the men and women who work in law are themselves wise and good; even if true, *the laws themselves may be bad*. Laws that violate rights are, in fact, wrongs, or torts, which should be repealed or declared null and void. *The only right and proper law is law that protects individual rights*. All others are bad (unjust) laws, literally, *wrongs*. These include laws that mandate or permit slavery, theft, rape, murder, and a wide array of possible wrongs. The rule of law is not administered by some robot or a dispassionate, blindfolded lady trying to balance the scales of justice, but the American mind holds that image and model—of “Lady Justice”—precisely because it’s the *ideal*, the objective standard. It is *not* an unknown or impossible standard because *objectivity itself is possible*. The ideal has been elucidated and practiced before—and no *other foundation* exists for liberty, peace, and prosperity.

For the past century far too many American intellectuals and politicians have transformed America from a no-mocracy to a democracy, while far too many teachers have rendered hordes of youngsters (through public schools) less educated, less moral, and less human. It’s a terrible combination for those who prize rationality, sanity, sobriety, civility, liberty, prosperity, and America’s sustainability. It seems that anyone today, even non-citizens, can vote for anything they please, unrestrained by constitutions or laws.

According to one scholar seeing a “Lawless America,” it has been “obvious to discerning observers for a considerable period that the United States is moving at an accelerating pace from constitutionalism toward arbitrary power.” Moreover, “the vast majority of Americans have been slow to recognize this crisis of governance” because “entire structures of understanding are crum-

bling.” “At root it is a crisis of reason and morals.”<sup>25</sup> Specifically, the crisis reflects the *rejection of reason* (and an embrace of subjectivism), the *rejection of equality before the law* (and embrace of egalitarianism, or equality of result), and the *rejection of rights* (and embrace of populism).

**Despite negative trends, a positive case.** Capitalism, being the only truly *moral* social system, because based on rational self-interest and its economic manifestation, the profit motive,<sup>26</sup> is thereby also the most *practical, productive, and prosperous* system.<sup>27</sup> Wealth results not from a “zero-sum” game but from free minds and free mar-



kets—and wealth makes possible not only high and rising living standards but robust, sustainable portfolio returns. The *financial* capitalist (investor) who is not *also* an *ideological* capitalist, or at least aware of what it means

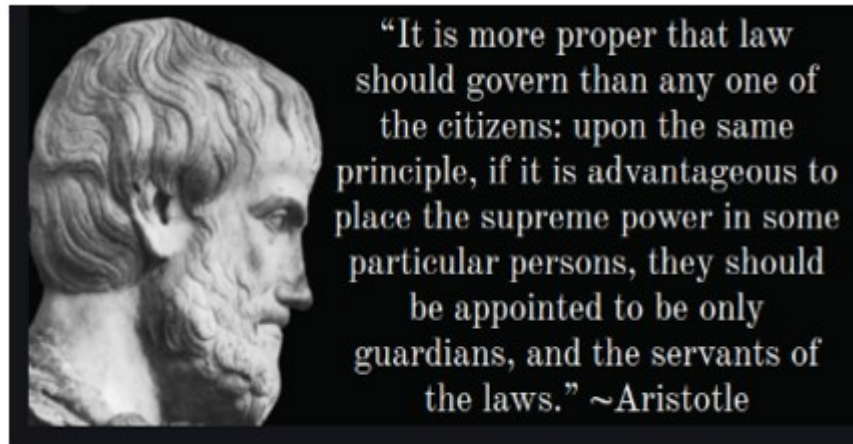
<sup>25</sup> Bruce Frohnen, “Lawless America: What Happened to the Rule of Law?” *Humanitas*, 2011, pp. 5-27.

<sup>26</sup> Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New American Library, 1964) and *Capitalism: The Unknown Ideal* (New American Library, 1967); see also “Best Case for Capitalism,” *The Capitalist Standard*, October 10, 2017; “The Greatest Story Ever Told,” *The Capitalist Advisor*, October 10, 2007; and “Capitalism’s Greatest Champion,” *The Capitalist Advisor*, February 2, 2005.

<sup>27</sup> See Carl Snyder, *Capitalism the Creator* (1940); Ludwig Mises, *Human Action: A Treatise on Economics* (Yale University Press, 1949); and George Reisman, *Capitalism: A Treatise on Economics* (Jameson, 1994).

<sup>28</sup> James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (1975).





to have more capitalism or less, will be unfit and unprepared to achieve his ends, whether personal or fiduciary.

Capitalism survives and thrives due to liberty, not tyranny or anarchy.<sup>28</sup> It succeeds where other systems (whether less-than-capitalist or anti-capitalist) fail because it ensures law and order, voluntary exchange, free markets, the sanctity of contract, and the rule of law.<sup>29</sup> Capitalism necessarily erodes and perishes either under *total* government (tyranny) or *no* government (anarchy). It requires a government that preserves, protects, and defends individual rights—to life, liberty, property, and the pursuit of happiness. Government defaults on this obligation in two principal ways: by itself violating rights or by allowing private citizens and gangs to violate rights. That is, government can impose tyranny or condone anarchy to varying degrees. Worst of all is when it does *both*, simultaneously.

In his *Politics*, Aristotle (384-322 B.C.) taught that “the law is reason, free from passion.”<sup>30</sup> He considered pas-

sion (emotion) as either non-rational or irrational. Humans, he said, should be guided by the one faculty (reason) which distinguishes them from other animals. The humanistic approach is to face and discern the facts of reality, apply the laws of logic, eschew fallacies, rely on persuasion, and practice reciprocity—never coercing others. Feelings are not tools of cognition, nor is force a human means of relating. The rule of law being the rule of reason in political-legal affairs, the rule of lawlessness is, in contrast, the rule of passion, capriciousness, prejudice, bias, hatred, and envy.

How does lawlessness become the norm in a nation—the rule instead of the exception? Generations of youths must be taught to doubt the validity and humanity of reason; they must be urged to abandon their reason and indulge their whims. Whence comes today’s spectacle: hordes of large infants—whether thugs in the streets or occupants of faculty lounges, political chambers, and corporate suites—set loose to inflict their ignorance and viciousness on decent, moral, and productive innocents.

“The end of law is not to abolish or restrain, but to preserve and enlarge freedom, for in all states of created beings capable of laws, **where there is no law, there is no freedom**, for liberty is to be free from restraint and violence from others, which cannot be where there is no law.”

John Locke (1632-1704), *SECOND TREATISE OF GOVERNMENT* (1689), Chapter VI, par. 57

<sup>28</sup> See Adam Smith, *The Wealth of Nations* (1776), Hernando De Soto, *The Mystery of Capital: Why Capitalism Succeeds in the West and Fails Everywhere Else* (Basic Books 2000) and Kenneth W. Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* (Brookings Institution Press, 2007). See a , 2020.

<sup>30</sup> Aristotle, *Politics* (350B.C.).

## Jean-Baptiste Say on Law and Lawlessness

*A Treatise on Political Economy* [1803]

“One malady to which political bodies are liable is the excessive accumulation of laws. Their number soon prevents the citizen from knowing what they are—hence the need for lawyers. Some laws soon provide the means for eluding others; and hence comes chicanery.” (cited in Palmer, p. 26.)  
 “Arbitrary regulations are extremely flattering to the vanity of men in power, as giving them an air of wisdom and foresight, and confirming their authority, which seems to derive additional importance from the frequency of its exercise.” (*Treatise*)

“Whenever legislation is too complicated . . . the study of law, becoming more intricate and tedious, occupies more persons whose labor must likewise be better paid. What does society gain by this? Are the respective rights of its members better protected? Undoubtedly not. The intricacy of the law, on the contrary, holds out a greater encouragement to fraud, by multiplying the chances of evasion and very rarely adds to the solidity of title or of right. The only advantage is the greater frequency and duration of lawsuits.” (*Treatise*)

“Nothing is more dangerous than views that lead to [political] regulation of the use made of properties. To do so is as bold as trying to regulate the innocent use that a man might make of his own hands and faculties, which are also a form of property . . . With such a system, slavery reappears. [Some people argue that] it is the task of the legislature to adopt laws requiring the employer to guarantee the subsistence of the worker he employs . . . [That] would paralyze the spirit of enterprise. The mere fear that public power might intervene in private agreements is a scourge that damages the prosperity of a nation.” (cited in Palmer<sup>31</sup>)



“There is no act of government but what has some influence upon production. . . . The object of governments, in their attempts to influence production, is either to prescribe the raising of particular kinds of produce which they judge more advantageous than others, or to prescribe methods of production, which they imagine preferable to other methods. . . . The grand mischiefs of authoritative interference proceed not from occasional exceptions to establish maxims, but from false ideas of the nature of things, and the false maxims built upon them. It is then that mischief is done by wholesale, and evil pursued upon system . . . When authority throws itself in the way of this natural course of things, and says, the product you are about to create, that which yields the greatest profit, and is consequently the most in request, is by no means the most suitable to your circumstances, you must undertake some other, it evidently directs a portion of the productive energies of the nation towards an object of less desire, at the expense of another of more urgent desire.” (*Treatise*).

“If the measures of authority, leveled against the free disposition of each man’s respective talents and capital, are criminal in the eye of sound policy, it is still more difficult to justify them upon the principles of natural right.” (*Treatise*)

<sup>31</sup> R.R. Palmer, *J-B. Say: An Economist in Troubled Times* (Princeton University Press, 1997).

## Jean-Baptiste Say on Security of Property Rights as a Foundation for Prosperity

*A Treatise on Political Economy* [1803]

“The interference of [government] authority is not the road to affluence, which results from the activity of production, seconded by the spirit of frugality, and of a frugality tending to the accumulation of capital.” (*Treatise*) “Violations of property, with all their usual accompaniments of inquisitorial search, personal violence and injustice, have never afforded any considerable resource to the government employing them. In politics as well as morality, the grand secret is, not to constrain the actions, but to awaken the [selfish] inclinations of mankind. Markets are not to be supplied by the terror of the bayonet or the sabre.” (*Treatise*)

“Political economy recognizes the right of property solely as the most powerful of all encouragements to the multiplication of wealth and is satisfied with its actual stability . . . The legal inviolability of property is obviously a mere mockery where the sovereign power is unable to make the laws respected, where it either practices robbery itself or is impotent to repress it in others; or where possession is rendered perpetually insecure, by the intricacy of the legislative enactments and the subtleties of technical nicety. Nor can property be said to exist where it is not a matter of reality as well as of right. Then, and then only, can the sources of production, namely land, capital and industry, attain their utmost degree of fecundity. . . . For who will attempt to deny that the certainty of enjoying the fruits of one’s land, capital and industry is the most powerful inducement to render them productive? Or who is dull enough to doubt that no one knows so well as the proprietor how to make the best use of his property? . . . There is no security of property where a despotic authority can possess itself of the property of the subject against his consent. Neither is there such security when the consent is merely nominal and delusive.” (*Treatise*)



“Capital naturally flows to those places that hold out security and lucrative employment, and gradually retires from countries offering no such advantages.” (*Treatise*) “Value or wealth, is by nature fugitive and independent. Incapable of all restraint, it is sure to vanish from the fetters that are contrived to confine it, and to expand and flourish under the influence of liberty.” (*Treatise*) “In times of political confusion and under arbitrary government, many will prefer to keep their capital inactive, concealed and unproductive, either of profit or gratification, rather than run the risk of its display. This latter evil is never felt under good government.” (*Treatise*) “Of all the ways a government can stimulate production there is none so powerful as the perfect security of person and property, especially from the aggression of arbitrary power. This security is of itself a source of public prosperity that more than counteracts all the restrictions hitherto invented for checking its progress.” (*Treatise*)

“Whatever renders the condition of the producer, the essential party in every society, more painful, tends to destroy the vital principle of the social body; to reduce a civilized people to a savage state; to introduce a state of things in which less is produced and less is consumed; to destroy civilization, which is extended in proportion to the increases of the quantity of production and consumption.” (*Letters to Malthus*)

“The temporary dread of taxation, arbitrary exaction, or violence will deter numbers from exposing their persons or their property. Undertakings, however promising and well-planned, become too hazardous; new ones are altogether discouraged; old ones feel a diminution of profit; merchants contract their operations and consumption in general falls off, in consequence of the decline and the uncertainty of individual revenue.” (*Treatise*)

“The change in values which take from a man that property which he did not deserve to lose to give it to another who did not deserve to gain, are nevertheless mischievous to the general prosperity. They inflict more evil on him who loses than they confer benefit on him who gains; they disappoint the wisest calculations; they discourage the most useful speculations; they divert capitals which were in full productive activity.” “When we seize upon goods created by others, we rob them at the same time of the means of contributing to create new ones and we can only enjoy them once, as when we cut down a tree to get at its fruit.” (*Catechism of Political Economy*).