

# Lincoln Review

LETTER

## Editor's Comment

### **Despite Being the Hardest Hit by Recession, Black Americans Remain Confident About Their Financial Futures**

Despite severe losses during the current recession, the majority of black Americans see the economy improving and are confident that their financial prospects will improve.

That optimism, shared to a lesser degree by Hispanics, is in stark contrast to the deeper pessimism expressed by a majority of whites.

These are among the findings of a recent Washington Post-Kaiser Family Foundation-Harvard University poll that probed attitudes in the wake of a downturn that more than doubled unemployment and wiped away nearly a fifth of Americans' net worth.

Blacks and Hispanics were more likely to be jobless and concerned that they lack the skills needed to shape their economic futures. But they also remained the most hopeful that the economy would soon right itself and allow them to prosper.

Nearly four in 10 black Americans said they adjusted their housing situations in the past three years to cope with the crisis and nearly one in three borrowed money from friends or relatives to get by. More than a

quarter lost their health insurance coverage or other benefits in the past year.

Hispanics reported being hit even harder. Nearly four in 10 said their families would be in real financial trouble within one month if their paychecks stopped. Despite the setbacks, Hispanics also remain optimistic. Two-thirds said people can still get ahead if they are willing to work hard. Just over half predicted that their family's financial situation will improve over the next year.

Despite recent setbacks, a substantial majority of black Americans are optimistic about the future. More than half say they are better off than their parents were at the

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## Despite Being Hardest Hit

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same age, and six in 10 are confident that their children will be even more prosperous.

Analysts who study black prosperity say the optimism is rooted in long experience with hard times. They say that now many black Americans sense attention to their struggles at the highest levels of government, something that was not evident before the depression. Other surveys have found that blacks were encouraged by the election of President Obama.

WASHINGTON POST columnist Michelle Singletary, who is black, notes that, "The confidence level of blacks in the race and recession survey is in stark contrast to the depressing economic data showing that the economic crisis is still plaguing the African-

American community. The black unemployment rate is 15.7 per cent compared with 9 per cent for the country overall. More than half of older blacks (59.1 per cent) depend on Social Security for more than 80 per cent of their family income, as compared with 46 per cent of whites...The foreclosure crisis has disproportionately impacted black homeowners. The Center for Responsible Lending estimated that between 2007 and 2009 nearly 8 per cent of recent African American borrowers lost their homes to foreclosures, compared with 4.5 per cent of whites, and more than one in five black homeowners is in imminent danger of foreclosure."

Discussing the optimism so many blacks have about the future,

Singletary writes that, "Blacks are increasingly creating their own employment opportunities.

From 2002 to 2007, the number of black-owned businesses grew by 60.5 per cent to 1.9 million, more than triple the national rate of 18 per cent, according to the Census Bureau. When asked how large a role religion or faith in God plays in helping them get through tough financial times, 91 per cent of blacks said an important role, the Post-Kaiser-Harvard survey found. Over the course of the next year, 62 per cent of blacks said they think their family's financial situation will improve. In the black community, despite being battered by the latest recession, hope is still alive."

## “Flash Mobs” in the Summer of 2011: A Result of Growing Family Breakdown

The summer of 2011 saw a proliferation of a phenomenon which has come to be known as "flash mobs." Organized largely through text messages and via Facebook and Twitter, the gangs of unruly youths, in most cases members of minority groups, have beaten and robbed citizens in Philadelphia, disrupted a fireworks display outside Cleveland, attacked fairgoers in Wisconsin and looted a 7-Eleven in Germantown, Maryland. This, unfortunately, is only a partial list.

Riots in England during the summer mirror some of the worst uprisings in modern U.S. history. Hundreds of stores across

London, Manchester, Birmingham and other British cities were torched or ransacked in four nights of mayhem after the police killing of a north Londoner named Mark Duggan, whose death was quickly overshadowed by the wave of recreational violence. "This is criminality, pure and simple," said Prime Minister David Cameron.

The looting was more than simply a race riot. While Duggan was black, and there are strong correlations between race and class in Britain, some of the worst violence happened in majority-white neighborhoods like Croydon. "This is much broader than race," says Caryl Phillips, a

British writer with Afro-Caribbean roots. "This is about a whole group -- black, white and brown -- who live just outside the law."

In the U.S., notes Jerry Ratcliffe, chairman of the department of criminal justice at Temple University, and a former London police officer, "This is an old crime being organized with new tools. There's nothing new about groups of people assaulting people and robbing, but what's new is the technology. There's a fascination with the speed by which this can now take place. You can go from nothing happening to something happening in a matter of moments. Flash mobs

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## “Flash Mobs”

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take advantage of opportunities. Those opportunities are that the victims are outnumbered by the group and that there is an absence of law enforcement.”

In Philadelphia, Mayor Michael Nutter, who is back, told marauding black youths, “You have damaged your own race.” After imposing a strict curfew, Nutter told young people: “Take those God-darn hoodies down, especially in the summer. Pull your pants up and use a belt ‘cause no one wants to see your underwear...”

Mayor Nutter declared to those teenagers that, “You have damaged your own race.” He moved up the weekend curfew for minors to 9 p.m. and told parents that they would face increased fines for each time their child is caught violating the curfew.

The head of the Philadelphia chapter of the NAACP, J. Whyatt Mondesire, said it “took courage” for Mr. Nutter to deliver the message. “These are majority African-American youths and they need to be called on it.”

In the past two years, Philadelphia has been the scene of a number of flash mobs in which youths meet at planned locations by texting one another and then commit assorted mayhem. In one episode, teens knocked down passersby on a Center City street and entered an upscale department store where they assaulted shoppers. In another incident, about 20 to 30 youths descended on Center City after dark, then punched, beat and robbed bystanders. One man was kicked so savagely that he was hospitalized with a fractured skull. Police arrested four people, including an 11-year-old.

Speaking from the pulpit of his Baptist church, Mayor Nutter delivered a 30-minute sermon on black families taking responsibility for the behavior. He said: “The Immaculate Conception of our Lord Jesus Christ took place a long time ago, and it didn’t happen in Philadelphia. So every one of these kids has two parents who were around and participating at the time. They need to be around now.”

The mayor told parents: “If you’re just hanging out there, maybe you’re sending them a check or bringing cash by. That’s not being a father. You’re just a human ATM. And if you’re not providing the guidance and you’re not sending any money, you’re just a sperm donor.”

Columnist Gregory Kane, who is black, writes: “What is particularly instructive in this instance is where the 11-year-old (arrested in Philadelphia) ended up: in the custody of his grandmother. We don’t know what the boy’s mother and father are doing right about now, but we know what they aren’t doing: parenting their son. Excuses for the flash mobbers -- many of whom are black, with some attacking whites at random . . . have been coming fast and furious. They need jobs, the excuse makers tell us. They need recreational facilities. What they

need are parents who don’t hesitate to put a foot squarely in their derriere when a foot in that spot is needed.”

In Mayor Nutter’s view, the collapse of the black family is a key element in the problems we face. In the U.S. at the present time, out-of-wedlock births are now 41 per cent of overall births, but there is a wide variation in illegitimate births by race. Such births are the norm in the black community (72 per cent). Nutter declares: “Let me speak plainer: That’s part of the problem in the black community. We have too many men making too many babies they don’t want to take care of, and then we end up dealing with your children.”

It is clear that there has been a racial component in the flash mob events this past summer. Columnist Gregory Kane states: “I don’t know what else to call it when mobs of blacks single out whites to attack. But there still exists this notion that blacks can’t be racists. Racism requires power, the thinking goes, Since blacks have no power, they can’t be racists. This is nonsense.”

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**J.A. (Jay) Parker, Editor & Publisher**  
ASSOCIATE EDITORS

**Allan C. Brownfeld**

**John Fulton Lewis (1922-2006)**

**Darin J. Waters**

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## **“Flash Mobs”**

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The respected economist Thomas Sowell disputes the idea that the violence of flash mobs can be explained by disparities in income. In his view, “Today’s politically correct intelligentsia will tell you that the reason for this alienation and lashing out is that there are great disparities and inequities that need to be addressed. But such barbarism was not nearly as widespread two generations ago, in the middle of the 20th century. Were there no disparities or inequities then? Actually there were more.”

Sowell writes that, “What is different today is that there has been

-- for decades -- a steady drumbeat of media and political hype about differences in income, education and other outcomes, blaming these differences on oppression against those with fewer achievements or lesser prosperity. Moreover, there has been a growing tolerance of lawlessness and a growing intolerance toward the idea that people who are lagging need to take steps to raise themselves up, instead of trying to pull others down. All this exalts those who talk such lofty talk. But others pay the price -- and ultimately that includes even

those who take the road toward barbarism.”

The fact that so many black voices are now being heard about the decline of the black family - following in the footsteps of Bill Cosby, Juan Williams and others -- and the manner in which that decline has led to such events as the flash mobs of this past summer is a hopeful sign. No problem can be resolved unless it is properly understood. Hopefully, that understanding will grow and the real problems we face can be addressed.

## **Nation Should Follow Texas’s Example and Make Losers Pay for Frivolous Lawsuits**

Many Americans -- individuals and businesses -- are subject each year to frivolous lawsuits. Even if they win, the expense of fighting the suit often bankrupts the innocent party.

The traditional rule is that each side bears its own attorneys’ fees. Under this system, writes Kurt Schlichter, a civil trial attorney defending companies in California, “...it’s no fun explaining to a small (or large) business client that there is no way to recover the money they paid me to beat a frivolous lawsuit. Plaintiffs’ lawyers usually end up fronting thousands in litigation costs for their clients, while taking no fees unless they recover money -- usually 33 per cent to 50 per cent of the haul. Litigants who are not paying their own freight have little

incentive not to sue on weak cases. They have no skin in the game. But the idea that at the end of trial a winning defendant might present them with a hefty bill concentrates their minds wonderfully.”

Under the rule in England, which has now been adopted by virtually every other legal system in the Western world, the responsibility for attorneys’ fees can be summed up as: Loser pays.

Patrick Gleason, director of state affairs at Americans for Tax Reform, and Jason Russell, the group’s state affairs associate, note that, “When two sides enter into litigation, the losing side must pay the winning side any damages awarded, as well as compensation for legal fees incurred by the victor. The appeal of loser pays is that

it mitigates unjustified lawsuits against individuals and businesses. Empirically, it has been shown that the loser-pays system incentivizes two conflicting parties to settle outside of court, meaning savings on attorneys’ fees for both sides as well as reduced costs for taxpayers caused by a less congested court system for the state and plaintiffs who have warranted cases.”

On May 30, Governor Rick Perry of Texas signed the 2011 Omnibus Tort Reform Act which includes a “loser-pays” provision requiring plaintiffs to pay the winners’ legal costs in civil suits seeking punitive damages.

Editorially, THE WASHINGTON EXAMINER states that, “Because such litigation is

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## Frivolous Lawsuits

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controlled at the state level, the United States is unique among the industrialized nations in not having a national loser-pays law. The fact is likely among the key reasons why the American media so frequently report new examples of people suing for the most outrageous of reasons.”

One such case, reports THE EXAMINER, is that of Mark S. Gold, a Miami traffic court lawyer who got drunk at a local strip club last November, then woke up the next morning with a tab of nearly \$19,000. He promptly sued the strip club’s corporate owner, claiming he should not be held responsible for the bill because the bar “continuously served plaintiff alcoholic beverages to the extent that he was rendered intoxicated, partially or temporarily unconscious, and further to the extent that he had a complete loss of judgment, rational thought, or ability to enter into lawful contracts or agreements.”

In THE EXAMINER’s view, “odds are Gold will walk away with most, if not all, of his bar tab forgiven since the defendants know they could lose big-time if he convinces a jury to award him punitive damages. As things now stand, plaintiffs like Gold have nothing to lose and everything to gain by clogging the courts with frivolous litigation. How many

such suits would be filed if losing plaintiffs everywhere knew that they would have to pay the defendant’s legal fees?”

According to Ryan Brannan, policy analyst for the Texas Public Policy Foundation, loser-pays makes the legal system more objective and legitimate. “The procedural protections . . . go a long way toward ensuring that our judicial system dispenses justice according to the merits of the case rather than the size of the wallet,” he states.

While more constrained than English style loser-pays -- it does not apply to class action suits or actions by or against the government -- the Texas version allows an impartial judge to determine when a lawsuit has, according to the language of the law, “no basis in law or fact on motion and without evidence,” giving the judge the authority to declare an early dismissal when appropriate.

The implementation of loser-pays in Texas comes on the heels of the landmark 2003 medical liability reforms, which established a burden of proof for punitive damages similar to criminal law by requiring a unanimous jury verdict and capped noneconomic damages at \$750,000. A 2008 report by the Perryman Group found those reforms to be directly responsible for an immediate first-year influx of

almost 2,000 new physicians into Texas as well as a 70 per cent drop in lawsuits against hospitals.

The Texas Public Policy Foundation estimates that the state has gained more than 25,000 doctors since 2003. Following the 2003 reforms, Texas doctors saw medical liability insurance rates decline by an average of more than 21 per cent, with some seeing a nearly 50 per cent cut. These savings enabled hospitals to expand charity care by 24 per cent. Three years after the lawsuit reforms, Texas became the first state ever removed from the American Medical Association’s list of states experiencing a liability crisis.

The only ones apparently disturbed by the loser-pays legislation are the trial lawyers. According to Open Secrets, lawyers contributed \$234 million into federal campaign coffers in the 2008 cycle, with 76 per cent going to Democrats. They spent about \$13 million against Governor Perry when he ran for re-election in 2010.

The loser-pays legislation adopted in Texas surely makes that state’s legal system more fair and equitable. Other states would do well to follow Texas’s example and move toward adopting similar legislation. All of us -- and the economy -- will be the winners if they do.

# In Contemporary American Society, Truth is in Increasingly Short Supply

Truth seems to be an increasingly rare commodity in the contemporary American society.

In our political life, the lies are legion. In June, after ten days of adamant denials, Rep. Anthony Weiner (D-NY) finally admitted to having sent sexually explicit photographs to various young women. After telling the nation that he “did not have sexual relations with that woman,” former President Bill Clinton finally admitted the truth. Former Senator John Ensign (R-NV) denied the facts of his relationship with a married staff member and the payoff by his parents to the woman’s husband. Former Senator John Edwards (D-NC) had a staff member claim to be the father of his mistresses’ child.

But lack of truth goes far beyond the personal lives of our politicians. Where were the weapons of mass destruction we were told Saddam Husein possessed -- and which were used as a justification for launching the war in Iraq? We now know that the Gulf of Tonkin incident, the precipitating event which led to President Lyndon Johnson’s launching the Vietnam War, did not really happen. Sadly, the list is a long one.

And it is not only in our political life that truth is hard to find. In an important new book, “Tangled Webs, How False Statements Undermine America: From Martha Stewart to Bernie Madoff,” James B. Stewart warns of the risks from an epidemic of perjury that has “infected nearly every aspect of society.”

Citing prosecutors who speak of a recent surge of deliberate lying by sophisticated individuals, often represented by the best lawyers, he focuses on four cases involving well-known people: business executive and lifestyle guru Martha Stewart, convicted of lying to investigators about the reasons her Imclone stock was sold; former Dick Cheney adviser Lewis “Scooter” Libby, found guilty of perjury in conjunction with the leak of CIA operative Valerie Plame’s identity; baseball star Barry Bonds, indicted for perjury related to illegal use of steroid drugs; and Bernard Madoff, who while conducting the greatest Ponzi scheme in history, and lying to investors and investigators, was never actually indicted for perjury.

Stewart is particularly outraged when it comes to the failure to indict Madoff for perjury. It was clear to Securities and Exchange Commission investigators in 2005 that he was lying about his investment business, but their superiors decided not to press the issue: “At the time of his sworn testimony in 2006, Madoff purported to have approximately \$20 billion under management. By the time his scheme collapsed, he had \$65 billion. Failing to pursue his lies cost innocent victims another \$45 billion.”

Stewart believes that lying is on the rise, threatening to swamp the legal system, and sow cynicism nationwide. In the end, he argues, “it undermines civilization itself.”

Consider the case of Greg Mortenson. His best-selling books,

“Three Cups Of Tea,” and “Stones Into Schools” are full of lies and evasions. He tells the story of how in 1993, he stumbled into the tiny Pakistani village of Korphe after a failed attempt on climbing the mountain K2. He explains how the kind villagers nursed him back to health with many cups of tea and how, as payment for their generosity, he returned to build a school. That school then became hundreds of schools across Pakistan and Afghanistan. Millions were inspired by the idea that a man could make such a profound difference in a desperate part of the world. Mortenson was nominated three times for the Nobel Prize. He was called a secular saint.

In April, as a result of an investigative report by bestselling author Jon Krakauer and a “60 Minutes” expose, we learned that Mortensen may very well be a charlatan. The significant passages in the book seem to be fictitious, including the whole story about his recovery in Korphe. The “Taliban abductors” described in “Three Cups of Tea” were supposedly friendly villagers protecting him as a guest of honor. It was reported that his charity is apparently badly mismanaged and that many of its schools stand empty, some of them serving as storage sheds for hay.

In 2009, only 41 per cent of donations to Mortenson’s charity went to its work in Afghanistan and Pakistan. Much of the rest, charge Krakauer and “60 Minutes,”

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## Truth in Short Supply

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went to Mortenson himself -- to chartered jets, massive purchases of his books (at retail, so he would get the royalties and keep them on the bestseller list) and advertisements for them in *THE NEW YORKER* at more than \$100,000 each time.

More and more Americans are also claiming to have military honors they never earned. Joseph Brian Cryer, for example, is a former candidate for City Council in Ocean City, Maryland. He claimed to be an elite U.S. Navy SEAL and bragged online about having "77 confirmed kills" in 102 hours during a Libyan operation in 1986. To prove his bona fides, he showed a government ID card that shows him to be 100 per cent disabled and a Navy commander.

But Cryer is a fraud, said Don Shipley, a retired SEAL who makes it his business to expose false ones. Shipley has access to a database of all Navy SEALs since 1947. Since Navy SEAL Team 6 took out Osama bin Laden in April, he said, he has received about 50 requests each day to investigate people who claim to be SEALs.

The list of those criminally charged for falsifying their military service is a long one. In one case, Command Sgt. Maj. Stoney Crump, the senior enlisted man at Walter Reed Army medical Center, was fired for faking his record and wearing numerous unauthorized awards and decorations. He was sentenced to six months in prison.

In another case, former Marine Corps Sgt. David Budwah was sentenced in 2009 to 18 months

confinement and fined \$25,000 for pretending to be an injured war hero to get free seats to rock concerts and professional sporting events.

"Every society in history, since the caveman days, has revered its warriors," said B.G. Burkett, author of "Stolen Valor." He has uncovered thousands of suspected fakes and says most lie out of lack of self-esteem. "They haven't done anything in their lives," he said. "But the second they say they're a warrior, everybody sees them in a different light."

Congress passed the Stolen Valor Act in 2006. The law makes it illegal for someone to falsely claim to hold military honors or decorations. But some of those who have faced criminal charges claim the law is unconstitutional, arguing that it violates the First Amendment. The law "has every good intention behind it," said Ken Paulson, president of the First Amendment Center. "But courts have been reluctant to outlaw lying in America. It's just too prevalent to legislate."

Thus far, federal courts have split on the law's constitutionality. A federal judge in Virginia ruled this year that the First Amendment doesn't protect the false claims the act makes illegal. But the California-based 9th Circuit Court of Appeals found the law unconstitutional last year.

In May, Rep. Joe Heck (R-NV) introduced a revised Stolen Valor Act that would make it a crime of fraud to benefit, or intend to benefit, from lying about military awards.

"It's not O.K. to misrepresent yourself as a physician and practice medicine," Mr. Heck said. "It's not O.K. to misrepresent yourself as a police officer. Why should you be able to misrepresent yourself as a member of the military, specifically if you're trying to gain something of value?"

The widespread telling of untruths -- and the claim that people have a legal right to engage in lying about basic credentials -- is an indication of our society's current moral standards. In the end, more is involved than simply immoral behavior. Such behavior is, in fact, a threat to democratic self-government.

Edmund Burke, in his letter to a member of the French National Assembly in 1791, made a point we might well ponder today: "Men are qualified for civil liberty in exact proportion to their disposition to put chains upon their own appetites in proportion as their love of justice is above their rapacity; in proportion as their soundness and honesty of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsels of the wise and good in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less there is of it within, the more of it there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters."

# How America Goes to War: Rediscovering the Dangers of an All-Powerful Executive

In recent days, our country has been embroiled in three wars -- Iraq, Afghanistan and Libya.

Article I, Section 8 of the U.S. Constitution clearly gives Congress -- not the executive -- the power to declare war. Since the Constitution was signed in 1787, Congress has declared war five times: the War of 1812, the Mexican War, the Spanish-American War and World Wars I and II. Yet, since 1787, the U.S. has been involved in numerous military conflicts without a declaration.

In the case of the Korean War, President Truman sent some 1.8 million soldiers, sailors and airmen over a period of just three years and 36,000 lost their lives -- but never sought or received a congressional declaration of war. Congress has not declared war since World War II, despite dozens of conflicts since then.

In 1973, Congress passed the War Powers Resolution, which was meant to counteract what Presidents Nixon and Johnson had done in Vietnam. Congress felt deceived, particularly since it was later discovered that the Gulf of Tonkin incident that precipitated a larger war had never, in fact, taken place.

The law, however, hardly reasserts Congress's very clear Constitutional power to declare war. Instead, it simply asks for an authorization letter and then gives the President a three-month deadline. It requires the President to withdraw U.S. forces from armed hostilities if Congress has not given its approval within 60 days.

Even fulfilling the requirements of the War Powers Resolution

appears to be too much for the Obama Administration. In fact, the President rejected the views of top lawyers at the Pentagon and the Justice Department when he decided that he had the legal authority to continue American military participation in the air war in Libya without Congressional authorization.

Jeh C. Johnson, the Pentagon general counsel, and Caroline D. Krass, the acting head of the Justice Department's Office of Legal Counsel, told the White House that they believed that the U.S. military's activities in the NATO-led air war amounted to "hostilities" under the War Powers Resolution, that would require Mr. Obama to terminate or scale back the mission after May 20.

The President, however, adopted the legal analysis of the White House counsel, Robert Bauer, and several others who argued that the military's activities in Libya fell short of "hostilities." Under that view, Obama needed no permission from Congress to continue the mission unchanged.

Late in June, the House rejected a bill to authorize U.S. military operations in Libya. The resolution to support the mission failed 295 to 123, with 70 Democrats joining Republicans in a rebuff to the President. Still, the House also defeated a measure that would have limited financing to support those efforts.

Rep. Jason Chaffetz (R-UT) said: "It didn't go far enough. Under that resolution, the president is still going to be engaged in the war.

We've been inept and irrelevant on the war actions. We have not lived up to our constitutional duty."

In Libya, the goal of our mission appears to have changed from month to month. In March, the President said that U.S. intervention would be confined to implementing a no-fly zone. He declared that, "Broadening our mission to include regime change would be a mistake." By May, the mission was to make Libyans "finally free of 40 years of tyranny." By June, after more than 10,000 sorties, including those by attack helicopters, the strategy seems to boil down to an effort to eliminate Gaddafi himself.

While some have charged that opponents of the conflict in Libya are "isolationists," conservative columnist George Will notes that, "Disgust with this debacle has been darkly described as a recrudescence of 'isolationism,' as though people opposing this absurdly disproportionate and patently illegal war are akin to those who, after 1938, opposed resisting Germany and Japan. Such slovenly thinking is a byproduct of shabby behavior."

While men and women of good will may disagree about the merits of U.S. intervention in Libya -- or Afghanistan and Iraq -- the larger question is whether one man, the President, can take the country to war without a Congressional declaration, as clearly called for in the Constitution.

What we are dealing with is the dangerous growth of executive power. During the years of the

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## How America Goes to War

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New Deal, when the power of the president was dramatically expanded, Republicans, who were in opposition, objected to the growth of such power as a threat to freedom. Later, when Republicans held the power

If you hold power, you expand it. No one in power has an incentive to cede back the power which has been assumed.

Even at the beginning of the Republic, perceptive men such as John Calhoun predicted that government would inevitably grow, and those in power would always advocate a “broad” use of power, and those out of power would always argue for a “narrow” use of power, and that no one would ever turn back government authority which has once been embraced.

Calhoun was all too prophetic when he wrote the following in “A Disquisition On American Government”:

“... Being the party in possession of government, they will . . . be in favor of the powers granted by the Constitution and opposed to the restrictions intended to limit them. As the major and dominant parties, they will have no need of these

restrictions for their protection. The minor or weaker party, on the contrary, would take the opposite direction and regard them as essential to their protection against the dominant party....But where there are no means by which they could compel the major party to observe the restrictions, the only resort left them would be a strict construction of the Constitution. To this the major party would oppose a liberal construction . . . one which would give to the words of the grant the broadest meaning of which they were susceptible.”

Calhoun continued: “It would then be construction against construction -- the one to contract and the other to enlarge the powers of the government to the utmost. But of what possible avail could the strict construction of the minor party be, against the liberal interpretation of the major party, when the one and the other be deprived of all means of enforcing its construction? In a contest so unequal, the result would not be doubtful. The party in favor of the restrictions would be overpowered. The end of the contest would be the subversion of the Constitution . . . the restrictions

would ultimately be annulled and the government be converted into one of unlimited powers.”

Our history shows that this is true. Republicans opposed big government when Democrats were in power, but spoke of concepts such as “executive privilege” when their own party held positions of authority. The Democrats have done exactly the same thing. The growth of government power has been a steady process, regardless of who was in office.

Those who want to restore limits to government power, to return to the federal system set forth in our Constitution, with its clearly defined separation of powers and checks and balances, would do well to turn their attention to the question of who has the power to take America to war. The Constitution did not give one man that power, although events in Afghanistan, Iraq and Libya show us that this seems no longer to be the case. Concern over developments in Libya are a healthy sign that more and more Americans seem to be paying attention to the question of the war-making power.

## Crony Capitalism: A Growing Threat to Economic Freedom

Crony capitalism -- the close alliance of big business with government -- leads not to free enterprise but to its opposite, in which government, not the market, chooses winners and losers through subsidies and other forms of government largesse. Adam Smith, the great philosopher of capitalism,

understood that businessmen want to maximize profits, and how it is done is of secondary interest. Indeed, he once said that when two businessmen get together, the subject of discussion is how to keep the third out of the market. Adam Smith -- and more recent philosophers of the free market such as Hayek, Ludwig

von Mises and Milton Friedman -- believed deeply in capitalism. Many businessmen, and many on Wall Street, do not.

Consider some of the recent manifestations of this phenomenon.

The U.S. Government guaranteed a \$535 million loan for  
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## Crony Capitalism

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Solyndra, LLC, the now bankrupt California company that was the centerpiece of President Obama's "clean energy" future. There are at least 16 more such loan guarantees worth in excess of \$10 billion.

From e-mails made public in mid-September by the House Energy and Commerce subcommittee on Oversight and Investigation, it is clear that key Solyndra loan decisions were guided primarily by political considerations.

President Obama was not in the White House when the proposal to back the company initially appeared in Washington, but two weeks before President George W. Bush left office, an Energy Department review panel unanimously recommended against making the loan. Even after Obama decided to support the proposal, career employees at the Office of Management and Budget cautioned against doing so. One predicted that Solyndra would run out of money and file for bankruptcy by September 2011. A Government Accountability Office report said that the Energy Department had circumvented its own rules at least five times to make the loan. The leading investor in Solyndra were two investment funds with ties to George B. Kaiser, a major fundraising "bundler" for Obama.

Both Republicans and Democrats supported the loan-guarantee program, which was approved by the Republican-controlled Congress in 2005. The loan guarantee program for alternative energy companies was created as part of the Energy Policy Act of 2005, sponsored by Rep. Joe Barton (R-TX), who has been a leader in the congressional probe

of Solyndra's ties with the Obama administration.

Similarly, Senator Jim DeMint (R-SC) said in the Senate that the Solyndra case exposed the "unintended results when our government tries to pick winners and losers." This, of course, is quite true. Yet DeMint himself had been a supporter of the loan-guarantee legislation in 2005.

The fact is that solar companies are not the only energy companies getting federal loan guarantees. The power giant Southern Co. won a \$3.4 billion loan guarantee from the Energy Department last summer. Yet, even some Republican critics of big government have supported this huge expenditure. Rep. Phil Gingrey (R-GA) declared that it was wrong to compare Southern to Solyndra because, "Southern Co. owns Mississippi Power, Alabama Power, Georgia Power, among others, and employs literally thousands of people."

WASHINGTON EXAMINER columnist Timothy Carney notes that, "The implication was clear: Federal subsidies to big, established companies are fine. It's the handouts to these upstarts that are objectionable. So Gingrey is embracing the heart of Obamanomics -- the proposition that government ought to be an active partner in shaping the economy and helping business. If Republicans were willing to broaden their attack beyond criticizing this one (Solyndra) deal, they could indict the whole practice of government-business collusion."

Or consider the Export-Import Bank, supported by both Republicans and Democrats,

which is a government agency that subsidizes U.S. exporters. Recently, it broke its record for the most subsidy dollars provided in a single year, primarily to Boeing.

Members of both parties have voted to bail-out failed banks, auto companies and other enterprises considered "too big to fail." Now, business interests are lining up to influence the work of the new congressional "supercommittee" that will help decide whether to impose massive cuts in spending for defense, health-care, and other areas. Nearly 100 registered lobbyists for big corporations used to work for members of the committee and will be able to lobby their former employers to limit the effect of any reductions. They are representing defense companies, health-care conglomerates, Wall Street banks, and others with a vested interest in the outcome of the panel's work. Three Democrats and three Republicans on the panel also employ former lobbyists on their staff.

The 12-member committee is tasked with identifying \$1.5 trillion in spending reductions over a decade. "When the committee sits down to do its work, it's not like they're in an idealized platonic debating committee," said Bill Allison, editorial director of the Sunlight Foundation, which is tracking ties between lobbyists and the panel. "They're going to have in mind the interests of those they are most familiar with, including their big donors and former advisers."

General Electric, for example, has been awarded nearly \$32

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## **Crony Capitalism**

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billion in federal contracts over the past decade, with much of that business going to lucrative defense and health-care subsidiaries. General Electric's chief executive, Jeffrey Imelt, also heads President Obama's Council on Jobs and Competitiveness. At least 8 GE lobbyists used to work for members of the supercommittee.

Recent political contributions include: General Electric, \$452,999, American Bankers Association, \$421,883, Citigroup, \$443,006, National Association of Realtors, \$418,000. Needless to say, they contribute to both parties.

A study last year from the London School of Economics found 1,113 lobbyists who had formerly worked in the personal offices of lawmakers. At least nine members of the 12-member supercommittee

have scheduled fundraisers this fall, putting them in a position to take money from industry donors at the same time they are helping to decide what to cut from government spending. The most active fundraiser on the panel appears to be Rep. James Clyburn (D-SC) who has at least five donor events scheduled before the panel's Thanksgiving deadline. According to the Sunlight Foundation, contributions given during the time the supercommittee is meeting will not be disclosed to the Federal Election Committee until January -- well after the final decision is made.

Sadly, free markets are genuinely embraced more often by intellectuals than businessmen. All too often, businessmen seek government subsidy, bailout and intervention to keep competitors out of the market.

When Congress acted to eliminate the Civil Aeronautics Board and the Interstate Commerce Commission and open up the airline and trucking industries to real competition, it was the industries themselves that opposed deregulation, for they had found a way to control the government agencies involved in their own behalf.

The old warning by the economist Friedrich Hayek that socialism in its radical form was not nearly as dangerous as socialism in its conservative form is worthy of serious reconsideration. When the advocates of state power and the advocates of corporate bigness become allies, government involvement in the economy -- a form of socialism -- is inevitable. The result is the crony capitalism we now face.