

REDISCOVERING FDR'S LEGACY:
A RESPONSE TO AMITY SHLAES' *THE FORGOTTEN MAN*

ADAM SASIADEK
ST. JOHN'S UNIVERSITY SCHOOL OF LAW
Adam.Sasiadek06@stjohns.edu

Table of Contents

Abstract	2
Introduction	2
Forgotten Man: Genesis of An Idea	5
Shlaes' Argument	13
Economic Abundance in the 1920s	13
The Nadir of the Progressive Movement	17
The "Stimulus" of the New Deal: No Help the Nation	18
The Opposition to Roosevelt and the Erosion of Freedom	22
Who is the Forgotten Man?	25
Analysis	26
The Difficulties of an Economic Study	26
True Measure of Unemployment	27
The New Deal: A Failed "Stimulus" Package?	33
A Nation Preserved	39
The Weakening of the Supreme Court: Individual Versus Collective Rights	41
Conclusion: Lessons for Today	44

Abstract

Amity Shlaes' *The Forgotten Man* is one of the most significant revisionist works of American history ever written. It is frequently cited as evidence of why American policymakers should not allow the spirit of the New Deal to determine public policy in this time of economic crisis. Shlaes discusses how Franklin Roosevelt's domestic economic policies failed to provide a true economic recovery, and permanently changed American political dynamics in favor of interest groups, such as organized labor, at the expense of the "Forgotten Men" who have to bear the costs of the new legislation. And she places a strong emphasis on Roosevelt's inconsistent use and abuse of power, such as his "court packing" scheme. But her analytical first principles are not entirely consistent with the reality of America's experiences at that time. Roosevelt did much to alleviate the misery of the American people, and there is wisdom in the conventional wisdom concerning the New Deal. Perhaps most significantly, it preserved a political and economic stability in which the Constitution could continue to be a viable charter. The flaws found in Roosevelt and his administration should not distract us from the issue of whether the New Deal was good for the nation. Yet the influence of America's classical liberal devotion to individual rights also helped fight the Depression and preserve our political and legal system. Both the progressive and libertarian strains in America's political DNA were at work, and neither extreme prevailed. Rather, in the tension between individual and collective rights, there were developments that support classical liberalism and government interventionism.

I. Introduction

In *The Forgotten Man*, Amity Shlaes has provided a compelling case for re-evaluating Franklin Roosevelt's economic and political program and its intellectual underpinnings. The book traces the evolution of American political economy during the 1920s and 1930s, culminating with the presidential election of 1940. It is a more understated account of how the New Deal failed to achieve its putative goal of economic recovery than other conservative and

libertarian revisionist works on the Great Depression, Franklin Roosevelt, and the New Deal, works that usually wield a blunter and more polemical style.¹ Indeed, hers is not a single comprehensive revisionist argument as to the cause of America's economic collapse and its prolongation², but a critique based on a mélange of economic, historical, and legal free market economic theory and revisionism. Shlaes often appears on financial news programs on television, discussing, for example, the potential and probable economic impact of current fiscal stimulus legislation on the ailing economy.³ And her commentary therein and in print and Internet journalism is frequently an extrapolation of the main idea of her book: that the 1930s program of massive tax increases on the wealthy and the unprecedentedly high levels of peacetime spending by the Federal Government did not provide a lasting, satisfying, and truly restorative economic recovery.⁴ FDR's interventionist policies, as well as Hoover's, only prolonged and at certain times even exacerbated the economic downturn; a recession that began in late 1929 became an intractable and devastating Great Depression.

This idea is graphically illustrated in the book's opening, where she tells the story of a Brooklyn teenager, William Troeller, who committed suicide in order to ease the financial burden on his family. His father was unemployed due to a recent injury on the job. Two of William's five siblings were working to compensate for their father's lost income, but their efforts were not enough to prevent the gas from being turned off to their apartment for over six months at the time of his death. Out of concern for his family's welfare, and despairing of the

¹ See, for example, JOHN T. FLYNN, *THE ROOSEVELT MYTH* (Fox & Wilkes, 1998) (1948); GARET GARRETT, *SALVOS AGAINST THE NEW DEAL* (Caxton Press, 2002); JONAH GOLDBERG, *LIBERAL FASCISM* (Doubleday 2007); ROBERT MURPHY, *THE POLITICALLY INCORRECT GUIDE TO THE GREAT DEPRESSION* (Regnery 2009); JIM POWELL, *FDR'S FOLLY* (Three Rivers' Press 2004) (2003); MURRAY ROTHBARD, *AMERICA'S GREAT DEPRESSION* (Ludwig Von Mises Institute 1999) (1963).

² Unlike works that focus, for example, on the monetary genesis of the Depression, inter alia, MILTON FRIEDMAN & ANNA SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES 1867-1960* (Princeton University Press 1971) (1963).

³ See <http://amityshlaes.com> for a list of her media appearances (last visited April 27, 2009).

⁴ See, for example, Amity Shlaes, *Cheering for Obama Stimulus Buys Into 1930s Myth*, BLOOMBERG, FEB. 18, 2009 <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aPQDtpOebjKI>.

prospects of improvement, given the economic destruction that enveloped him, he became a self-destroyer. At the story's conclusion Shlaes reveals the year of this grim event: 1937.⁵ Her point is that despite the unprecedented efforts by the Federal Government to restore America's economic footing, including Herbert Hoover's interventions and four years of New Deal policies under Roosevelt, the nation was still mired in economic stagnation, high unemployment, and misery.

To solve the tragic mystery of why this malaise continued, on and on, despite the arduous and carefully planned attempts to cure it by every level of government, *The Forgotten Man* attempts to answer two important questions, among others. First, why was Roosevelt re-elected in 1936, despite the very high unemployment rate of 16.9 percent that year? The second question is why did the Depression last until World War II, despite the efforts by the Hoover and Roosevelt Administrations to end it? Shlaes states in the Introduction that she will avoid the standard rebuttal arguments against Roosevelt and the New Deal, and focus instead on those who "paid the price" for the enormous expansion of the Federal Government during that era, namely, the Forgotten Man. We lose sight of the Forgotten Men by focusing on the programs of the New Deal.⁶ Therefore this book pays particular attention to the *individual* actors within American society, ranging from the leaders of large corporations, professionals in small towns, or diligent workmen on the factory floor, who built the nation's massive economic edifice, and who opposed the re-orientation of American society toward economic collectivism and political centralization during the crisis of the 1930s. This focus is unsurprising, considering that the source of the book's title is the classical liberal sociologist and political philosopher, William Graham Sumner. While Shlaes makes an admirable effort to support her arguments, there are, nonetheless, flaws in her analysis. The relevance and validity of the arguments made in *The*

⁵ AMITY SHLAES, *THE FORGOTTEN MAN* 1 (Harper Collins 2007).

⁶ SHLAES, *supra* note 5, at 14.

Forgotten Man, along with its errors, inconsistencies, and conceptual gaps, will be identified and dissected in this paper.

The Forgotten Man: The Genesis of an Idea

William Graham Sumner is the originator of the Forgotten Man metaphor. He was born in 1840 in New Jersey to parents who had emigrated from England. He was raised in the city of Paterson, a bastion of industry in those years, and was surrounded by the workings of commerce from his earliest days, eventually spending two years in the dry-goods business before attending Yale.⁷ The beneficiary of a strong education in philosophy, theology, literature, and classical languages, Sumner became an Episcopalian clergyman and was sharply attuned to the social questions of his time; he had a deep interest in “life, its laws, conditions, and problems; and in living, its requirements, principles, and opportunities.”⁸ With his brilliant mind and sharp, unrelenting analysis of each issue he addressed, he became an influential social commentator on the economic and political questions of the day and a preeminent American sociologist. He was the author of many acclaimed essays, sermons, and books on these topics.⁹ His prominence led to his position as Yale University professor of political and social science from 1873 until his death in 1910. Sumner was a staunch proponent of a *laissez faire* political order, wherein the government’s role is strictly limited to the protection of life and property, with no other constraints on voluntary behavior in the commercial or individual spheres (and thus a promotion of free trade between peoples and nations), and with no grant of special privilege to business interests on one hand or to the laboring masses on the other.¹⁰

⁷ HARRIS E. STARR, WILLIAM GRAHAM SUMNER 29 (Henry Holt and Company 1925).

⁸ *Id.* at 162.

⁹ His works include revisionist biographies of Alexander Hamilton and Andrew Jackson, a history of the American Revolution, and analyses of American monetary policy, protectionism, and sociological theory. *See id.* at 305-323.

¹⁰ *Laissez faire* is the commonly used abbreviation for the expression *laissez faire et laissez passer*, which means, “let work and allow exchange.” The French merchant classes of the 19th century coined this phrase to express their demand for government non-interference with their work. *Laissez Faire*. 2 CYCLOPAEDIA OF POLITICAL SCIENCE, POLITICAL ECONOMY, AND OF THE POLITICAL HISTORY OF THE UNITED STATES, (John J. Lalor ed., Maynard, Merrill,

Sumner's 1883 essay, "The Forgotten Man," originally entitled, "On the Case of a Certain Man Who Is Never Thought Of," is a disquisition on classical liberal social theory. The "Forgotten Man" is the citizen identified by Sumner as the industrious, law-abiding citizen who is forced to bear the financial brunt of well-intentioned governmental actions on behalf of those whose poverty and misfortune force them to eke out an existence.¹¹ The noble citizen-activists who observe the destitution of the poor pressure government to alleviate this misery through a law, a tax, or a governmental program. The agitators for these government interventions will not have to make much of a sacrifice in liberty or wealth for the sake of implementing these new plans,¹² but the Forgotten Man, who lacks the political connections of both the activist-agitators and the beneficiaries of the government intervention, will bear the burden of this noble cause, whether through increased taxation, regulations, or other interferences with his person, property, business, or opportunities.¹³ This paradigm applies to attempts to help the poor and all other groups who seek governmental privilege at the expense of the rest of society.

Sumner propounds a distinctly nineteenth-century American conception of liberty, grounded in individual rights: "Civil liberty is the status of the man who is guaranteed by law and civil institutions the exclusive employment of all his own powers for his own welfare."¹⁴ A polity that orders its institutions according to such a creed will be based on free contract, not on status, "and leave to each man to run his career in life in his own way, only guaranteeing to him that whenever he does in the way of industry, economy, prudence, sound judgment, etc., shall

& Co., 1899).

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=970&chapter=29728&layout=html&Itemid=27

¹¹ SHLAES, *supra* note 5 at 467.

¹² WILLIAM GRAHAM SUMNER, *The Forgotten Man*, in 1 ESSAYS OF WILLIAM GRAHAM SUMNER 467 (Albert Galloway Keller and Maurice R. Davie, eds., 1969) (1911).

¹³ SUMNER, *supra* note 14 at 495.

¹⁴ *Id.* at 473.

redound to his own welfare and shall not be diverted to someone else's benefit."¹⁵ The result will be a society that enjoys the "highest possible development of independence, self-reliance, individual energy, and enterprise."¹⁶

Governmental efforts to assist the working classes violate their dignity as members of a free society. "One who takes a favor or submits to patronage demeans himself. He falls under an obligation. He cannot be free and he cannot assert a station of equality with the man who confers the favor on him."¹⁷ Furthermore, the liberty that is the wellspring of our prosperity is impaired by state regulation, and the weeds of government regulation are incessantly springing up in modern industrial society, especially in Europe.¹⁸ The regulation springs from a false notion of liberty, one that seeks to prevent the wealthy and powerful members of society from exercising their power to the detriment of the other classes.¹⁹ "The whole system of government inspectors is corrupting to free institutions,"²⁰ and this corruption is due, in part, to the fact that all government policy has a cost²¹, and the one who bears that cost is the Forgotten Man.²² Meanwhile, those who are negligent, lazy, or ignorant lose the opportunity to improve themselves and become productive members of society. The diminution of freedom is also the result of "the constantly apparent effort to win wealth, not by honest and independent production, but by some sort of a scheme for extorting other people's product from them. A large part of our legislation consists in making a job for somebody."²³ Public buildings and internal improvements are examples of the government helping a politically connected business interest,

¹⁵ *Id.* at 474.

¹⁶ *Id.* at 475.

¹⁷ *Id.* at 478.

¹⁸ *See id.* at 481-482.

¹⁹ *See id.* at 470.

²⁰ *Id.* at 483.

²¹ *See id.* at 472, "There is no such thing on this earth as something for nothing."

²² "Now, if we have state regulation, what is always forgotten is this: Who pays for it? Who is the victim of it? There is always a victim. The workmen who do not defend themselves have to pay for the inspectors who defend them." *Id.* at 483.

²³ *Id.* at 489.

because “they are not needed at all or are costly far beyond what is useful...or because they will serve the turn of some private interest,” not because they are truly needed by the community. But the protective tariff is the “the biggest job of all.” It teaches every citizen that he can “take his turn at plundering the rest.”²⁴ It is unsurprising that Sumner, the classical liberal, names the tariff as the worst governmental program of his day, because protectionism was the centerpiece of American industrial policy during the late 19th century and for the first thirty years of the 20th century. These tariffs have been described as “mountain-high,”²⁵ and were designed to protect American industries, especially manufacturing, from foreign competition, to the detriment of American consumers who, Sumner argued, were Forgotten Men, mulcted by the higher prices they had to pay for American-made goods. In this situation also the machinery of the political process was used, with the Republican Party from Lincoln through Hoover the main proponent of the protectionist program.²⁶

Regardless of the form they may take, all “jobs” result in waste, plunder, and loss; they are “the great plan of all living on each other.”²⁷ The classical liberals of all Western nations strive to end the patronage and corruption that comes from an activist, redistributive government, and instead “bring it about that each man and woman might live out his or her life according to his or her measure of his or her *own* virtue and wisdom.”²⁸

Sumner says that Forgotten Man is the “simple, honest laborer, ready to earn his living by productive work. We pass him by because he is independent, self-supporting, and asks no

²⁴ *Id.* at 490.

²⁵ SAMUEL ELIOT MORISON, HENRY STEELE COMMAGER, AND WILLIAM E. LEUCHTENBERG, A CONCISE HISTORY OF THE AMERICAN REPUBLIC 449 (Oxford University Press 1977) (1930). In 1883, when Sumner’s essay was published, the average tariff rate of the United States was close to 50 percent.

²⁶ The impact of these tariffs on America’s industrial development is discussed at great length by PATRICK BUCHANAN, THE GREAT BETRAYAL 246, 253 (Little, Brown 1998). Buchanan argues that although American consumers paid higher prices, the nation’s manufacturing industries experienced spectacular growth during this protectionist era.

²⁷ SUMNER, *supra* note 14 at 490-91.

²⁸ *Id.* at 472 (emphasis added).

favors. He does not appeal to the emotions or excite the sentiments. He only wants to make a contract and fulfill it.”²⁹ This man will not be found in the newspapers, his name will not be heard in the clamor of social and political discourse. He has no need for and no interest in the spotlight:

The Forgotten Man is delving away in patient industry, supporting his family, paying his taxes, casting his vote, supporting the church and the school, reading his newspaper, and cheering for the politician of admiration, but he is the only one for whom there is no provision in the great scramble and the big divide. Such is the Forgotten Man. He works, he votes, generally he prays—but he always pays—yes, above all, he pays. He does not want an office; his name never gets into the newspaper except when he gets married or dies. He keeps production going on... Consequently, he is forgotten. He is a commonplace man. He gives no trouble. He excites no admiration.³⁰

Indeed, policy-makers should direct their energies toward alleviating the burdens of the Forgotten Man, who “is the man who ought to be remembered first of all.”³¹ No one else in society “deserves to be remembered and considered by the legislator and statesman before this man.”³²

If it is desired to bring about social improvements, bring us a scheme for relieving the Forgotten Man of some of his burdens. He is our productive force which we are wasting...The Forgotten Man is weighted down with the cost and burden of the schemes for making everybody happy, with the cost of public beneficence, with the support of all the loafers, with the loss of all the economic quackery, with

²⁹ *Id.* at 477.

³⁰ *Id.* at 492.

³¹ *Id.* at 477.

³² *Id.* at 481.

the cost of all the jobs. Let us remember him a little while. Let us take some of the burdens off him.³³

“It is plain enough that the Forgotten Man and the Forgotten Woman are the very life and substance of society, ”³⁴ because their hard work is the lifeblood of the material progress we enjoy, and they provide a source of taxable revenue to pay for the “police, lights, sewers, public schools, public charity, state university, public prison, public park, and public library, and also for soldiers’ monuments, public celebrations, and all forms of occasional public expenditure.”³⁵ Alas, the Forgotten Man is “always forgotten by sentimentalists, philanthropists, reformers, enthusiasts, and every description of speculator in sociology, political economy, or political science.”³⁶ There are many examples of how the Forgotten Man is abused by well-intentioned political actors. With trade unions, for example, “people generally fix their minds on the beneficiaries.”³⁷ But the workers raise their wages by limiting the supply of labor in their trade, achieving their gains “at the expense of those persons in the same class in life who want to get into the trade but are forbidden.” Those who are kept out are Forgotten Men, the persons who have paid for the increase.³⁸

Clearly, Sumner’s essay on “The Forgotten Man” contains its share of wisdom and cogent social analysis, and the Forgotten Man metaphor is a very useful analytical tool in the study of political economy. But this work also shows how Sumner’s ideology was infected by a disturbing Social Darwinism that is shocking for an ordained minister of the Gospel to propound (but perhaps unsurprising from a nineteenth century evangelist for a strict laissez faire political

³³ *Id.* at 494.

³⁴ *Id.* at 493.

³⁵ WILLIAM GRAHAM SUMNER, *A Parable*, in 1 *ESSAYS OF WILLIAM GRAHAM SUMNER* 498 (Albert Galloway Keller and Maurice R. Davie, eds., 1969) (1911).

³⁶ *Id.* at 494.

³⁷ *Id.* at 487.

³⁸ *Id.* at 488.

order, during a time when Darwinism was ascendant).³⁹ American big business in that era, which were unimpeded by the regime of taxation and regulation that businesses face today, were unprecedentedly ubiquitous and influential, and fostered a Social Darwinist philosophy to “justify its acquisitiveness and power.” This philosophy taught that government which governs best governs least, emphasized the sanctity of private property, viewed the accumulation of wealth as a sign of Divine favor, and posited that the biological theory of “survival of the fittest” applied also to the social development of mankind.⁴⁰ This last, monstrous tenet was developed by the English laissez faire philosopher Herbert Spenser, who had a great influence on Sumner.⁴¹ Sumner not only opposes governmental encroachments into the marketplace, but rejects even voluntary charitable efforts to promote the common good, all to allow the “laws of nature” to run their course, improving society by allowing the fittest to survive. “Medieval theories” like the protection and dependence of the “petted classes” (such the poor) through charity will only result in wasted capital and consequently lower living standards for the rest of society. The Forgotten Man would have received that money in some direct or indirect way; instead, it is bestowed on a “worthless member” of society.⁴² That money should be put into a savings account, rather than handed out to those who do not produce, and the drunkard in the gutter should be left there, for that is “just where he ought to be...Nature is working away at him to get him out of the way.”⁴³ Destitution and destruction is nature’s punishment for such behavior, as well as its remedy. To direct state resources to the rescue of such men would only allow them to continue inebriating

³⁹ *But see* Murray Rothbard, who argues that the extermination of the unfit was not what Sumner and Spenser sought at all. *The Libertarian Heritage: The American Revolution and Classical Liberalism*, LEWROCKWELL.COM, <http://www.lewrockwell.com/rothbard/rothbard121.html>, and JONAH GOLDBERG, *supra* note 1, at 57-58.

⁴⁰ COMMAGER, ET AL., *supra* note 27, at 372.

⁴¹ Sumner credited Spenser “with having established the universality of the evolutionary principle by ample inductions in the experimental sciences and given it to sociology as a governing law.” STARR, *supra* note 7, at 387.

⁴² SUMNER, *supra* note 14, at 477.

⁴³ SUMNER, *supra* note 14, at 481.

themselves.⁴⁴ And to ban alcohol would punish the honest, hardworking, Forgotten Man who wants to moderately indulge in drink. The free market, therefore, is not only the most efficient and productive way to distribute scarce resources, it is the instrument that improves human behavior, destroys vice, and elevates mankind.

This paper has endeavored to provide a fair and thorough account of Sumner's work, as it is important to know what this man taught. Shades and echoes of his doctrine permeate the works of the libertarian advocates of our day, including *The Forgotten Man*, which not only takes Sumner's metaphor as its title but refracts the historical assessment and analysis of the Great Depression through the lens of classical liberal economic and political theory. Shlaes refers to Sumner as a "great philosopher."⁴⁵ Although Sumner does not speak for all liberals⁴⁶, we can better understand the uses of this metaphor that are chronicled in *The Forgotten Man*. Shlaes salts her account with Depression-era quotations from politicians and newspapers that reference the "Forgotten Man," although with a different meaning than that used by Sumner. First, a detailed discussion of the main themes of *The Forgotten Man* will be presented. With an understanding of the political and social theory from which the concept of the "Forgotten Man" emerged, those themes can be better understood and critiqued in a more informed way.

II. Shlaes' Argument

Economic Abundance in the 1920s

Shlaes begins the book with a discussion of the 1920s, and she constructs a historical narrative that presents the decade as a great time in the economic development of the American

⁴⁴ Perhaps echoes of this view, albeit in a milder form, are heard today from those who rail against social programs like welfare as subsidizing poverty, removing any incentive for self-improvement.

⁴⁵ SHLAES, *supra* at note 6, at 40.

⁴⁶ It is safe to assume that the very large majority of libertarians and other economic conservatives, then and now, are not opposed to private charitable efforts on behalf of the unfortunate members of society. The Social Darwinist strain that runs through Sumner's essay cannot, in fairness, be attributed to them or their plans for political and economic renewal, and I do not wish to imply such a connection. But perhaps this repellant doctrine shows what materialist laissez faire principles can lead to, when carried to their logical extreme.

nation. Indeed, there are many trends to celebrate. These include the sharp increase in industrial productivity, allowing industrialists like Henry Ford to produce more with less, which served to lower the price of his automobiles and increase the range of people who could afford them and who Ford could hire.⁴⁷ Unemployment levels were very low, and are all the more impressive when compared to America's economic performance throughout the 20th century. In 1926, for example, unemployment reached an astounding 1.9 percent of the workforce, a level of employment not experienced again until 1943⁴⁸ (and the latter was the result of the military conscription of 15 million men during World War II).⁴⁹ The performance of 1926 is therefore even more impressive than 1943, because it occurred during a time of peace. Never did unemployment reach 5 percent during the Coolidge years except for one, his first year in office.⁵⁰ After enduring the insanity and destruction of the First World War, the American people enjoyed a time of success and national unity; in that sense, the era was what President Warren Harding, elected in 1920, had hoped it to be: a "return to normalcy."⁵¹

Although the economic boom increased inequality between the classes,⁵² Shlaes provides examples of how a "rising tide lifts all boats." Jews and Italians in New York, two of the larger immigrant communities in the country, were prospering, and attaining political representation through leaders like Fiorello LaGuardia.⁵³ Even black Americans shared in the economic gains—their 1930 unemployment rate in this period was *lower* than the rate for white Americans, an achievement that was reversed by the Great Depression, and which has not been repeated

⁴⁷ SHLAES, *supra* note 5, at 39. And 26 million automobiles were in use by the end of the decade, up from 9 million in 1919. COMMANGER, ET AL., *supra* note 27, at 566.

⁴⁸ RONALD EHRENBERG AND ROBERT SMITH, LABOR ECONOMICS: THEORY AND PUBLIC POLICY, inside front cover (Addison Wesley 2003) (1982).

⁴⁹ COMMANGER, ET AL., *supra* note 27, at 632.

⁵⁰ SHLAES, *supra* note 5, at 39.

⁵¹ COMMANGER, ET AL., *supra* note 27, at 579.

⁵² 87 percent of the all families earning an annual income of \$2500, and only 3 percent of families earning over \$5000 annually. COMMANGER, ET AL., *supra* note 27, at 566.

⁵³ SHLAES, *supra* note 5, at 42.

since.⁵⁴ Black illiteracy and infant mortality were in decline.⁵⁵ But blacks still suffered from rampant lynchings in the South, and Coolidge was unable to muster Congressional action to fight this abominable practice. It was an era when the Forgotten Man was accorded great freedom and respect by lawmakers, and consequently it was a time of true economic progress.

Throughout the book, Shlaes focuses on the most influential and significant *individuals* of this interwar period, and she does an admirable job of providing useful biographical portraits of them. This approach presupposes that individuals, armed with their ideas, can alter society's course; they are important, and this focus is consistent with her commitment to look for the Forgotten Man. These men include the man who presided over this period of progress, Calvin Coolidge, the country squire from Massachusetts, who was perhaps the last president who came close to the *laissez faire* ideal.⁵⁶ In a 1927 interview, indicative of Coolidge's popularity, Thomas Edison favored four more years of Coolidge leadership. Edison was "the man who started the electrification boom,"⁵⁷ and his protégé Samuel Insull applied his entrepreneurial and organizational genius to provide Chicago with electricity. To finance his electrification projects, he used a new corporate organization, the holding company, which was a parent company that owned little local utilities companies, banded together into business "superpowers."⁵⁸ This form of corporate governance became especially prominent in the utilities industry, the fastest growing sector at the time.⁵⁹ Alfred Lee Loomis was a scientist and entrepreneur whose

⁵⁴ *Id.* at 397.

⁵⁵ *Id.* at 43.

⁵⁶ Coolidge once explained to an audience that "all liberty is individual," and that "The chief business of the American people is business." SHLAES, *supra* note 5, at 19-20. He implemented this philosophy by vetoing much legislation. *Id.* at 18. The spending of the federal government was only two percent of the gross domestic product in this era. *Id.* at 20.

⁵⁷ *Id.* at 21.

⁵⁸ *Id.* at 24.

⁵⁹ Six of these giant companies controlled the growth of the electric power industry during this decade. COMMANGER, ET AL., *supra* note 27, at 584.

company, Bonbright, also contributed to the electrification of the country.⁶⁰ Andrew Mellon is another significant figure in this chronicle, a Pittsburgh industrialist and the Secretary of the Treasury from 1921 to 1933, he was the architect of the pro-business economic policy and tax reductions implemented by the Harding and Coolidge Administrations.⁶¹ Although he did not seek the spotlight, his influence was so great that “three presidents served under him.” Finally, there was Herbert Hoover, one of the most successful and prominent mining engineers in the world at that time. He had led successful mining operations in Europe, Australia, Asia, and America, and he even organized and rehabilitated a mining operation in the Ural Mountains of Russia, making it a profitable enterprise that employed no fewer than 100,000 people.⁶² He led the post-World War I relief effort in Belgium.⁶³ Shlaes adopts the revisionist argument that Hoover was not laissez faire in his political orientation.⁶⁴ An astoundingly efficient administrator, Hoover applied his management techniques to his philosophy of government; the state would operate as the “Beneficent Hand,” which would guide and coordinate industry, opening up business opportunities while making it more efficient and socially responsible. Government would not, however, directly manage or enter into business for itself.⁶⁵ This philosophy drove him, while Secretary of Commerce, to coordinate a six-state dam-building effort on the Colorado River.⁶⁶ Coolidge did not like Hoover’s activist approach, and referred to him as the “Wonder Boy.”⁶⁷

⁶⁰ SHLAES, *supra* note 5, at 23.

⁶¹ *Id.* at 25.

⁶² *Id.* at 29.

⁶³ His efforts in post-war Europe, and his wise assessment of the Treaty of Versailles, deeply impressed the English economist John Maynard Keynes. *Id.* at 29.

⁶⁴ This is a strong argument for her to make, given Hoover’s own renunciation of free-market purism in his book *American Individualism*. *Id.* at 34.

⁶⁵ *See Id.* at 33.

⁶⁶ *Id.* at 33.

⁶⁷ Coolidge also said, “that man has offered me unsolicited advice, for six years, all of it bad.” *Id.* at 38.

Another prong of Shlaes' method is to trace the development of major governmental projects and governmental responses to socio-economic issues through the 1920s and 30s, as a proxy for the shifts in opinion caused by the Great Depression among American leaders and the people. In the 1920s, for example, the dams at Muscle Shoals on the Tennessee River that had been administered by the Federal Government during World War I. Coolidge vetoed a bill that would have provided for government operation of those dams.⁶⁸ And the Supreme Court's decision in *Adkins v. Children's Hospital*,⁶⁹ holding a Washington, D.C. minimum wage law unconstitutional, is another example, showing how the Supreme Court enforced a limited economic role for the government.⁷⁰ The success of these eight years of prosperity, from July, 1921 to July, 1929,⁷¹ and the men who crafted a political framework in which that success could flourish, are starkly juxtaposed with both the misery of the 1930s and the intellectuals who were the lonely progressive voices crying out in the desert of a laissez faire age.

The Nadir of the Progressive Movement

As Shlaes tells the reader at the start of her book, her focus is on both the progressive and on the forgotten man who paid for the programs that the progressive advocated.⁷² The noble, well-intentioned, but at times dangerously misguided actors in *The Forgotten Man* drama are the progressive intellectuals of the era. Shlaes demonstrates this by recounting the story of a July 1927 trip to the Soviet Union by a motley of American progressives and radicals who held influential positions in government and the academy. They included Rexford Tugwell (a Columbia University economist), Stuart Chase (a consumer advocate and economic philosopher), and the labor economist Paul Douglas, all of whom would become part of the

⁶⁸ COMMANGER, ET AL., *supra* note 27, at 585.

⁶⁹ 261 U.S. 525 (1923).

⁷⁰ COMMANGER, ET AL., *supra* note 27, at 582.

⁷¹ ROTHBARD, *supra* note 1, at 86.

⁷² SHLAES, *supra* note 5, at 13.

“Brain Trust” of the Roosevelt Administration.⁷³ The Soviet government took this group on a carefully orchestrated tour of the nation, to show its American guests the merits of the communist system. There were similar voyages to the Soviet Union made during this period by other progressives, like W.E.B. DuBois,⁷⁴ and Robert LaFollette.⁷⁵ The progressive movement, which worked for social reform amidst the rapid urbanization of the time⁷⁶ was divided, at this point, into two camps; the Teddy Roosevelt/Herbert Hoover branch that wanted to export American ideas to the rest of the world, and the cosmopolitan branch that wanted to import policies used by other nations, in order to correct American inequality, injustice, and poverty.⁷⁷

The progressives on this “junket,” as Shlaes refers to it, saw the Soviet Union as a force for good, a model of a new industrial order. Stuart Chase, for example, observed with glee how 16 men in Moscow planned the entire Russian economy, similar to the management of the American economy during World War I.⁷⁸

It was the nadir, not simply of the progressive movement’s political influence, but of its moral authority and vision, by lauding a monster like Stalin, while strenuously avoiding or refusing to acknowledge his crimes, the problems with the communist system, or any other developments that could hinder their utopian worldview.⁷⁹ Yet this set would soon attain great

⁷³ *Id.* at 47-84.

⁷⁴ *Id.* at 60.

⁷⁵ *Id.* at 51. But we are also told on page 49 that the leaders of organized labor in American were staunchly anti-Soviet, and the conservative nature of even the pre-New Deal American labor movement is a theme that Shlaes highlights. *Id.* at 93.

⁷⁶ COMMANGER, ET AL., *supra* note 27, at 499.

⁷⁷ *See Id.* at FM, 52, 62.

⁷⁸ The central planning reminded Chase of the Food Administration planners that he worked with during the Great War. SHLAES, *supra* note 5, at 73. World War I was America’s first experience with economic central planning—Wall Street financier Bernard Baruch was virtually the “economic dictator” of the country, so great were his powers as the leader of the War Industries Board. COMMANGER, ET AL., *supra* note 27, at 549. SEE ALSO MURRAY ROTHBARD, *WAR COLLECTIVISM IN WORLD WAR I*, in *A New History of Leviathan* (Ronald Radosh and Murray N. Rothbard, eds., New York: E.P. Dutton & Co. 1972).

⁷⁹ SHLAES, *supra* note 5, at 75.

influence over American political economy, called upon to rescue the American people from disaster.

The “Stimulus” of the New Deal: No Help to the Nation

A major theme of *The Forgotten Man* is that the New Deal was not successful in restoring the American economy to the levels of prosperity the nation enjoyed during the free-market 1920s. The New Deal formally began with Roosevelt, but the groundwork was laid by Hoover, who spurned Andrew Mellon’s advice of allowing the liquidation to occur, and instead responded through systematic and concerted governmental action.⁸⁰ Hoover pressured business leaders to avoid layoffs, raise wages, and expand production, signed the Smoot-Hawley tariff into law, continually attacked the short selling of equities and commodities, and encouraged an unprecedented level of public works spending, all in the hope that high wages would lead to more spending, which would boost the economy.⁸¹ When the economy only continued to deteriorate, with unemployment moving into the double digits and large banks failing, Hoover only pushed the interventionist policy even harder in 1932. He signed into law the Glass-Steagall Banking Act, which forced banks to split their investment banking and commercial banking operations.⁸² That year also the Reconstruction Finance Corporation was established, to lend money to businesses, farms, and local governments (the latter used those funds for the direct relief of the unemployed). Finally, under the Revenue Act of 1932, the top income tax rate was increased from 25 percent to 63 percent, to correct the record Federal Government budget deficit

⁸⁰ SHLAES, *supra* note 5, at 92.

⁸¹ *Id.* at 91-93.

⁸² *Id.* at 149; *see also* TOM LOTT & DEREK LOOSEVELT, VAULT CAREER GUIDE TO INVESTMENT BANKING 149 (Vault, Inc. 2005). As a result of Glass-Steagall, J.P. Morgan was forced to spin off its securities unit as Morgan Stanley. The Federal Reserve, meanwhile, hindered the necessary monetary adjustment by raising interest rates and allowing the money supply to shrink dramatically. As a result, communities started to improvise with “scrip,” their own currencies, locally accepted, to allow them to avoid a barter economy—a telling sign of the retrogression.

of \$2.2 billion in 1931.⁸³ Rexford Tugwell later wrote that “The New Deal owed much to what he [Hoover] had begun.”⁸⁴ These progressive initiatives did not stop the economic free-fall, yet the many policies enacted by FDR were also ineffective (or so she argues).

The first one hundred days of the Roosevelt Administration produced a flurry of legislative activity that imposed a collectivist program of economic regimentation and centralization on the country—leading to directives that would regulate the smallest, most local economic activity. No other mechanism more vigorously implemented this plan than the National Recovery Administration, which established codes for every industry that regulated wages, working hours and conditions, collective bargaining, prices, and methods of operating and production. If it remained in place, it would have cartelized the economic structure of the nation by regulating production practices and forbidding price-cutting, thus hindering competition and driving up prices, which would hopefully lead to economic recovery.⁸⁵ The other New Deal initiatives that Shlaes discusses or mentions include Roosevelt’s rejection of international monetary cooperation⁸⁶ and his random, ineffective tinkering with the price of the dollar⁸⁷; the Securities and Exchange Commission; the Agricultural Adjustment Act (which provided subsidies to farmers and encouraged the destruction of livestock and other agriculture—potential food sources to a starving nation—in order to raise food prices for farmers); the Resettlement Administration (which helped the rural poor, who lost their farms, to find new places to live and work); the Civilian Conservation Corps (to conserve natural resources), the Works Progress Administration (later called the Work Projects Administration),

⁸³ SHLAES, *supra* note 5, at 131. Shlaes describes this as Mellon’s worst moment.

⁸⁴ *Id.* at 149

⁸⁵ *See id.* at 151.

⁸⁶ *See id.* at 162.

⁸⁷ *See id.* at 146ff. FDR was tinkering with the price of the dollar in ounces of gold. Eventually \$35 an ounce was chosen.

and the Public Works Administration, all of which promoted public works in various forms to provide work for the unemployed; the Tennessee Valley Authority (the Muscle Shoals project was finally passed as part of the TVA, but on a much larger scale⁸⁸); the Public Utility Holding Company Act (PUHCA), which was an attack on private-ownership of utility holding companies⁸⁹ (Roosevelt, influenced by Felix Frankfurter, believed in the public ownership of utilities); the Federal Writers Project; and the National Youth Administration (led by a young Lyndon Johnson⁹⁰).

These programs were coupled with unprecedented levels of taxation in peacetime.⁹¹ Outside of work programs and plans for industrial re-organization, the two most significant laws passed were the National Labor Relations Act and the Social Security Act. Despite these unprecedented and strenuous efforts by the Federal Government, unemployment persisted, never moving below 13 percent during the 1930s Roosevelt Administration.⁹² And never did the official unemployment rate, as a percentage of the workforce, fall into the single digits.⁹³ Furthermore, private investment remained below 1929 levels and the stock market during this period never reached its 1929 levels. But for the first time in American history, Federal Government spending exceeded the combined spending of all the states.⁹⁴

To only add to the failures of the Roosevelt Administration to restore the nation's economy, in August 1937 the "depression within the depression" began, despite over four years of New Deal policies up to that point (in addition to over three full years of Hoover's

⁸⁸ Shlaes refers to the TVA as Roosevelt's "most dramatic project." *Id.* at 173.

⁸⁹ *See id.* at 256.

⁹⁰ *Id.* at 251.

⁹¹ The taxes included higher taxes on personal and corporate income, estates, capital gains, the introduction of the gift tax, and the elimination of tax deductions and loopholes. *Id.* at 256.

⁹² *Id.* at 283.

⁹³ RONALD EHRENBERG AND ROBERT SMITH, LABOR ECONOMICS: THEORY AND PUBLIC POLICY, inside front cover (Addison Wesley 2003) (1982).

⁹⁴ SHLAES, *supra* note 5, at 266.

unprecedented interventions). The unemployment rate shot up, reaching 19 percent in 1938. At this point, the nation was a less reliable place to invest.⁹⁵ Businesses operated in a climate of fear and uncertainty, due to FDR's vacillations, surprises, and frontal assaults on corporations and the wealthy.⁹⁶ Taxes also prevented business from having enough capital to expand production and employment.⁹⁷

But based on how Shlaes presents this saga, the reader is led to ask whether any more could be expected from such an FDR's approach. It was based on experimentation as an economic policy, a collection of governmental actions coming out of the cacophony of confused voices, a combination of pragmatism, political opportunism, faulty economic thinking, and the imitation of other nations' tactics. It was, in sum, a pastiche of ideas of a radical elite that, after all, happily visited the Soviet Union a few years before, and that probably did not support authoritarian regimes, but had sympathies for the forms of collectivism and governmental control that were quite alien to the American experience.⁹⁸ These programs, although politically popular, proved only to be incredibly wasteful⁹⁹ and inefficient in solving the underlying economic problems of the Depression. Even members of Roosevelt's Brain Trust came to see the failures of some these policies.¹⁰⁰

The Opposition to Roosevelt and the Erosion of Freedom

⁹⁵ *Id.* at 336.

⁹⁶ *See id.* at 311, describing how the Justice Department under Robert Jackson brought an anti-trust suit against Andrew Mellon's Aluminum Company of America, and a tax prosecution against Mellon himself.

⁹⁷ Profits, the seed corn of investment, were being drained by higher corporate taxes, such as the undistributed profits tax. *Id.* at 334.

⁹⁸ Rexford Tugwell, for example, stated that the jobless migrants given new homes and communities through the Resettlement Administration must also "be taught how to live." *Id.* at 256.

⁹⁹ The TVA, for example, resulted in the flooding of 153,000 acres, and the Federal Government pays cities to build public utilities, to buy power from the TVA. *Id.* at 281.

¹⁰⁰ The revelations of Stalin's atrocities in the late 1930s caused many New Dealers to question the wisdom of collectivist ideas, especially since the progressive movement had once looked with great hope to the outcome of the Soviet experiment. Incredibly, some of them, like Stuart Chase, still defended the Soviet system. *See id.* at 320. Additionally, some of the New Deal projects were not working as planned. For example, the Resettlement Administration was dissolved into the Department of Agriculture in 1937, as the free-standing farming communities established by the RA were not surviving. *Id.* at 322.

Opposition to the New Deal was not lacking, however, and the strongest challenge was provided by the U.S. Supreme Court. *The Forgotten Man* provides extensive background and analysis of the 1935 Supreme Court case, *A.L.A. Schechter Poultry Corp. v. United States*,¹⁰¹ which held the National Industrial Recovery Act (the law that created the National Recovery Administration) to be unconstitutional. Not only does the case show how the Court traditionally viewed such economic plans, but provides an example of how a government program that oppressed a group of Forgotten Men, the Schechter brothers, who were kosher butchers from Brooklyn. Their successful business was assailed by NRA bureaucrats who harassed (and drove away) customers, determined wage rates and working conditions, and dictated which chickens could be slaughtered.¹⁰² The Court held that the slaughter and purchase of the chickens in the Schechter’s butcher shop represented a break in the chain of commerce, and therefore lacked a direct connection to interstate commerce¹⁰³; the NRA went beyond the power granted to Congress in Article 1, Section 8 to “regulate Commerce...among the several States.” Furthermore, Congress impermissibly delegated legislative power by establishing extensive and minutely detailed regulations to implement the NRA program.¹⁰⁴ The Federal Government could not so directly impinge upon the choices of individual consumers.

Schechter Poultry is indicative of the Supreme Court’s initial response to the New Deal—thoroughly negative.¹⁰⁵ In cases like *Adkins v. Children’s Hospital*,¹⁰⁶ decided in 1923, the Court showed its hostility to the governmental interference in employment, declaring a Washington, D.C. minimum wage law unconstitutional. This interpretation persisted in

¹⁰¹ 295 U.S. 495 (1935).

¹⁰² SHLAES, *supra* note 5, at 217.

¹⁰³ *Id.* at 242.

¹⁰⁴ 295 U.S. at 530.

¹⁰⁵ Schechter was a unanimous decision of the Court. SHLAES, *supra* note 5, at 242. See also *Panama Refining Co. v. Ryan*, 293 U.S. 398 (1935), which invalidated a provision of the NIRA limiting the production and sale of petroleum products, also on delegation grounds.

¹⁰⁶ 261 U.S. 525 (1923).

Morehead v. New York,¹⁰⁷ where the Court held a New York minimum wage law to be violative of the due process guaranty of the 14th Amendment of the Constitution.¹⁰⁸ Although *Ashwander v. Tennessee Valley Auth.*¹⁰⁹ was an exception to this trend, allowing the TVA to sell electricity, *United States v. Belcher* invalidated the Agricultural Adjustment Act.¹¹⁰

FDR's aggressive response to the Court began with criticism aimed at exposing the its anachronistic views, mired as it was in a jurisprudential methodology of a bygone age—"a horse and buggy age."¹¹¹ After his reelection in 1936, Roosevelt placed direct political pressure on the Court through his "court-packing" scheme, to increase the number of Supreme Court justices from 9 to 15, all for the putative goal of improving the efficiency of the Court.¹¹² Although the Senate strongly disapproved of the plan¹¹³, the Court began to yield. *West Coast Hotel v. Parrish*¹¹⁴ was the turning point in the Court's New Deal jurisprudence, the "switch in time that saved nine."¹¹⁵ And in *NLRB v. Jones & Laughlin Steel*,¹¹⁶ the National Labor Relations Act was upheld, a great victory for organized labor. The Supreme Court's opposition to the New Deal—its adherence to the traditional interpretation of the Federal Government's power to intervene in the economy under the Commerce Clause—withered.

In addition to the Supreme Court, individual citizens resisted the New Deal and sought to prevent its implementation, or at least soften its impact on the private sector. One such person was Wendell Willkie, the Indiana corporate lawyer who ascended to the commanding heights of

¹⁰⁷ 298 U.S. 587 (1936).

¹⁰⁸ "The decision was so at odds with current thinking that national conventions of both political parties explicitly called for its repudiation. Within a year, the Court took a dramatic reversal of course." THE OYEZ PROJECT, http://www.oyez.org/cases/1901-1939/1935/1935_838.

¹⁰⁹ 297 U.S. 288 (1936)

¹¹⁰ 297 U.S. 1 (1936).

¹¹¹ SHLAES, *supra* note 5, at 244.

¹¹² MERLO PUSEY, THE SUPREME COURT CRISIS 11 (The Macmillan Company 1937).

¹¹³ See SHLAES, *supra* note 5, at 303.

¹¹⁴ 300 U.S. 379 (1937). The Court upheld a state minimum wage law that applied to female workers.

¹¹⁵ ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 256 (Aspen 2006).

¹¹⁶ 301 U.S. 1 (1937).

the utilities industry and became president of the holding company Commonwealth & Southern (C&S). Willkie's story is woven into *The Forgotten Man* from start to finish. He is presented as the Rooseveltian antipode, who publicly resisted the TVA's encroachments and endured the oppression of governmental programs when he was forced to sell C&S properties to the TVA.¹¹⁷ Continually hectorred by governmental regulators, information about his very high salary was revealed to the public, damaging his reputation at a time when the national income was greatly reduced.¹¹⁸ There was also the propaganda play, "Power," produced by the WPA, that portrayed how the private ownership of utilities led to ruthless exploitation.¹¹⁹ Willkie gradually rejected his progressive roots. Indicative of this turning of the worm was his abandonment of the Democratic Party and entrance into the Republican fold, and he publicly debated Attorney General Robert Jackson on issues of political economy.¹²⁰ Although his quest for the presidency in 1940 ended in failure, Shlaes portrays him as a particularly enlightened conservative who rejected the popular isolationist views of the day while still seeking a more classically liberal social order at home, and he won many converts to his cause, despite the popularity of collectivism in that era.¹²¹

Willkie was not the only victim of the wave of propaganda and other forms of direct and indirect government pressure. And concomitant with a muscular arm of governmental propaganda was the solidification and expansion of interest-group politics in America. FDR promoted the idea that Americans should identify themselves by the class or group they belong

¹¹⁷ Willkie referred to the PUHCA as "the death sentence act," and the private utility companies could not compete with the TVA's resources, viz., borrow tremendous sums of money from the Federal Government at very low rates. See SHLAES, *supra* note 5, at 237.

¹¹⁸ Willkie's 1935 salary was \$75,690, whereas the average earnings of a wage-earner were \$2,000 that year. *Id.* at 297.

¹¹⁹ *Id.* at 304.

¹²⁰ *Id.* at 345.

¹²¹ In the 1940 election, Willkie received five million more votes than did Republican presidential nominee Alf Landon in 1936. Foreign policy developments greatly strengthened Roosevelt's position. *Id.* at 380-382.

to; we receive our rights because we belong to a certain group, whether labor or farming, and FDR provided governmental programs to cater to their needs. Indeed, he built his political success on this approach.¹²²

Who is the Forgotten Man?

In *The Forgotten Man*, Amity Shlaes seeks to tell us who the Forgotten Man of the Great Depression era is. By attacking the Forgotten Men (on both the poorer and wealthier ends of the economic spectrum), the economy could not truly recover; attempts to spend and centrally control and plan the economy would not stimulate it, so as to restore it to its pre-Depression vitality. Concomitant with the new economic role of the Federal Government was a diminution of personal liberty, particularly of the economic freedom and independence of industrious and productive individuals. Yet individual freedom will always be the spirit that drives the development of American society, despite the growth of the state and the spirit of collective action that can often smother individual creativity, liberty, and success. The spirit of liberty was not quashed by even the Great Depression and Roosevelt's New Deal. Honest, hard-working individuals are the driving force of America, "the life and substance of society."¹²³

III. Analysis

The Difficulties of an Economic Study

There are many theories for the cause and prolongation of the Great Depression; economists are far from a consensus on these matters. The theories include underconsumption,¹²⁴ the monetary policy of the Federal Reserve before and after the stock market crash,¹²⁵ the effect of the Smoot-Hawley tariff, or a combination of these and other

¹²² *Id.* at 377.

¹²³ SUMNER, *supra* note 14, at 492-493.

¹²⁴ PETER TEMIN, DID MONETARY FORCES CAUSE THE GREAT DEPRESSION? (Norton 1976).

¹²⁵ See FRIEDMAN, MILTON AND ANNA SCHWARTZ, A MONETARY HISTORY OF THE UNITED STATES 1867-1960 (1963), Chapter 7, pp. 299-359, 391-99.

hypotheses. I agree with the historian Paul Johnson that the Great Depression is still, in many ways, a mystery to us.¹²⁶ Identifying the precise causes of a phenomenon (especially a phenomenon as long, complex and widespread as the Great Depression) is perhaps one of the most bedeviling aspects of the social sciences. But it is possible, in light of the many economic, political, and historical studies of this era, to evaluate Shlaes' attempt to meld the different revisionist understandings and interpretations into an explanation of the two questions she sets aside as particularly salient, namely, why the Depression lasted as long as it did, and why Roosevelt was re-elected in 1936.¹²⁷ Her arguments on the eclipse of individual freedom through the New Deal, the new regime of political economy established by Roosevelt, and her other observations, emanate from these inquiries.

True Measure of Unemployment

The very high unemployment rates that persisted throughout the 1930s are very important to Shlaes' argument that the New Deal did not restore the economy. At the beginning of each chapter, she includes the unemployment rate for the year discussed in that chapter. It is imperative to examine the facts Shlaes omits from her book regarding unemployment, in order to better understand the economic impact and political ramifications of the New Deal. The economist Michael Darby investigated how the unemployment levels for that period were determined, and he has re-calculated the annual unemployment rates from 1929 to 1943 according to modern methods.¹²⁸ He found that although the Bureau of Labor Statistics of the U.S. Department of Labor defines the unemployed as “[P]eople who are jobless, looking for

¹²⁶ Paul Johnson, *Paul Johnson on Rothbard*, MISES.ORG, May 15, 2000, <http://mises.org/article.aspx?Id=447>.

¹²⁷ SHLAES, *supra* note 5, at 9-10.

¹²⁸ Michael R. Darby, *Three-and-a-Half Million U.S. Employees Have Been Mislaid: Or, an Explanation of Unemployment, 1934-1941*, 84 *Journal of Political Economy* 1, 1 – 16 (1976) (discussing the true unemployment rate during the Great Depression).

jobs, and available for work are unemployed,”¹²⁹ those on federal, state, and local jobs programs were not counted as employed, to politically distinguish the unemployment methodology from the German and Soviet practice of counting those in labor camps as unemployed.¹³⁰ And although the state and local jobs only paid 13 percent, on average, of the average wage in all industries, the federal work paid competitive wages (and were substantially full-time), which is a good reason to include public-sector workers as “employed.”¹³¹ “In summary, the treatment of government work-relief employees as unemployed...is inconsistent with” the modern calculation method of unemployment.¹³²

When Darby counted all Americans working on federal, state, and local employment projects as employed, the unemployment trend of the 1930s does not seem so hopelessly beyond repair, despite the unprecedented attempts at all three levels of government to alleviate idleness. Taking the Darby recalibration into account, the 17 percent unemployment rate of 1936 was actually 10 percent, and *that* level is by no means unprecedented in this country; it was experienced as recently as the early 1980s, when unemployment reached 10.8 percent in 1983.¹³³ The failure to include governmental workers raised the official annual unemployment level by 5 to 7 percent throughout the 1930s.¹³⁴ The unemployment rate in November 1936 was 13.9 percent, the lowest level since 1931.¹³⁵ Shlaes acknowledges this low rate as a factor in Roosevelt’s reelection. But, assuming that the Darby-adjusted unemployment rate for that month is proportionate to the adjusted unemployment figure for the entire year of 1936, the true

¹²⁹ *How the Government Measures Unemployment*, Feb. 17, 2009, http://www.bls.gov/cps/cps_htgm.htm.

¹³⁰ Darby *supra* note 127, at 3.

¹³¹ *Id.* at 4.

¹³² *Id.* at 6.

¹³³ See *2009 Economic Report of the President*, MAIN PAGE, <http://www.gpoaccess.gov/eop/>.

¹³⁴ *Id.* at 14.

¹³⁵ SHLAES, *supra* note 5, at 283.

unemployment rate in November, 1936 was 6.9 percent. (Numbers that low were not experienced since 1930, when the average unemployment rate was 8.9 percent.¹³⁶)

These revised rates wreak havoc with Shlaes' argument that the Depression continued because of the New Deal's ineffective programs, which were based on incorrect economic theories. As Darby writes,

The extremely slow recovery from 1934 through 1941 is shown [by the revised rates] to be a fiction based on erroneous data. From 1933 to 1936 the corrected unemployment rate fell by 3.6 percentage points per year, and there is every reason to suppose that the natural rate of about 5 percent would have been reached by 1938 had the Fed not doubled [bank] reserve requirements between August 1936 and May 1937. Yet there was a substantial reduction from the unemployment rate in March, 1933, when Roosevelt took office...[T]he corrected data reveal a strong movement toward the natural unemployment rate after 1933.¹³⁷

This goes a long way in explaining Roosevelt's political success. The revised annual unemployment rates are as follows, and the official rates are in brackets: 22.9 percent in 1932 [24.1], 20.9 percent in 1933 [25.2], 16.2 percent in 1934 [22.0], 14.4 percent in 1935 [20.3], 10.0 percent in 1936 [17.0], 9.2 percent in 1937 [14.3], 12.5 percent in 1938 [19.1], 11.3 percent in 1939 [17.2], and 9.5 percent in 1940 [14.6].¹³⁸ In using only the official unemployment statistics, Shlaes perhaps has resorted to a form of argumentation condemned by William Graham Sumner, "[a familiar device in] setting up a definition to start with which would produce

¹³⁶ Robert VanGiezen and Albert E. Schwenk, *Compensation from before World War I through the Great Depression*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/opub/cwc/cm20030124ar03p1.htm>.

¹³⁷ Darby, *supra* note 129, at 14-15.

¹³⁸ *Id.* at 8.

the desired deduction at the end.”¹³⁹ For if Shlaes had even listed those revised numbers in an appendix, her argument that the New Deal made the economy worse¹⁴⁰ would have been undermined.

To understand the political success FDR experienced, especially in 1936, one must understand the depths of the misery the American people endured by 1932 and 1933, when the Depression was at its very worst.¹⁴¹ The gross domestic product had fallen by 50 percent from 1929 to 1933,¹⁴² and even when public works employees are counted as employed, the unemployment rate was 22.7 percent in 1932. The monetary system was pummeled by no less than three banking crises during that period (October 1930, March 1931, and January 1933), causing the number of the commercial banks and the money supply to fall by over 30 percent.¹⁴³ The third and final banking panic culminated in a nationwide banking holiday (so banks would not have to pay the claims of depositors), ordered by Roosevelt, from March 6 to March 13, 1933. “There was no precedent in U.S. history of a concerted closing of all banks for so extended a period over the entire country.”¹⁴⁴ Industrial production plummeted. Non-durable manufacturing declined by 30 percent from 1929 to 1933; durable manufacturing declined by 77 percent during that same period.¹⁴⁵

Without work, and their savings destroyed through bank closings, a very large segment of the population reaped the whirlwind of this unprecedented crisis. In Chicago, several hundred homeless unemployed women slept in the public parks each night.¹⁴⁶ Boy and girl tramps

¹³⁹ WILLIAM GRAHAM SUMNER, *The Forgotten Man*, in 1 ESSAYS OF WILLIAM GRAHAM SUMNER 470 (Albert Galloway Keller and Maurice R. Davie, eds., 1969) (1911).

¹⁴⁰ SHLAES, *supra* note 5, at 10.

¹⁴¹ FON BOARDMAN, *THE THIRTIES: AMERICA AND THE GREAT DEPRESSION* 46 (Henry Walck 1967).

¹⁴² *Id.* at 46.

¹⁴³ FRIEDMAN AND SCHWARTZ, *supra* note 2, at 299.

¹⁴⁴ ROTHBARD, *supra* note 1, at 299

¹⁴⁵ *Id.* at 290.

¹⁴⁶ DAVID SHANNON, *THE GREAT DEPRESSION* 12 (Prentice-Hall 1960).

roamed the country on railroad cars, going from mission to flop house to welfare agency in search of food.¹⁴⁷ Many of them were killed or maimed on the dangerous freight trains. “Hooverilles,” communities of the homeless who lived in ramshackle wooden, tin, or cloth structures, sprung up across the nation, including one in Central Park in New York City.¹⁴⁸ Desperate measures were taken. For example, many of the unemployed applied for jobs abroad...in the Soviet Union. When the Soviet trade representative Amtorg advertised to recruit 6,000 skilled American workers to work in various industrial concerns in Russia, over 100,000 applications were received by the Amtorg office in New York City in 1931.¹⁴⁹ Many sought food at garbage dumps, picking through discarded and rotten fruits and vegetables.¹⁵⁰ In 1933, the number of immigrants who entered the country fell to the lowest level in over a hundred years; for the first time in history, more people left the country than entered it.¹⁵¹ And those who managed to keep a job still shared in the hard times. Income from salaries and wages declined by almost half between 1929 and 1933. A 1931 survey in Detroit, for example, found that average weekly income fell by two-thirds since 1929.¹⁵² Farmers, who had struggled in the 1920s economy, suffered even more, with aggregate national farm income falling from \$6 billion to \$2 billion in 1929.¹⁵³

Indicative of the difficulties was a 24 percent increase in the suicide rate from 1929 to 1933.¹⁵⁴ In the words of historian Fon Boardman, “[S]ome gradually sank into apathy, defeated

¹⁴⁷ There were up to one million of them by 1933. BOARDMAN, *supra* note 142, at 30.

¹⁴⁸ *Id.* at 46. And this despite New York City’s relief program, which was the best in the nation. *Id.* at 49.

¹⁴⁹ *Id.* at 12.

¹⁵⁰ BOARDMAN, *supra* note 142, at 32; CASS SUNSTEIN, *THE SECOND BILL OF RIGHTS* 38 (Basic Books 2004).

¹⁵¹ VERNON M. BRIGGS, JR., *MASS IMMIGRATION AND THE NATIONAL INTEREST: POLICY DIRECTIONS FOR THE NEW CENTURY* 94 (M.E. Sharpe 2003) (1992).

¹⁵² SUNSTEIN, *supra* note 151, at 37.

¹⁵³ *Id.* at 37.

¹⁵⁴ *Id.* at 38.

by the world and ashamed of their condition.”¹⁵⁵ This despair was perhaps best captured by “Migrant Mother,” the famous Dorothea Lange photograph of an impoverished mother with her three poorly-clad, despondent young children, taken at a California farm.¹⁵⁶ FDR entered into this miserable situation promising “direct, vigorous action,”¹⁵⁷ and he delivered—no administration had ever done so much so fast as Roosevelt’s during the first Hundred Days in 1933.¹⁵⁸ As stated above, the unemployment levels *were* reduced during Roosevelt’s first term. The misery of idleness, of being without the meaningful and remunerative work that gives us identity and helps make us human,¹⁵⁹ was directly alleviated by the government jobs programs initiated during the New Deal. It is safe to assume that the hunger caused by widespread joblessness was also assuaged.

Shlaes does not give New Deal job creation enough emphasis—she does not give FDR full credit for this accomplishment. She acknowledges the ’36 recovery as the reason for FDR’s success that year,¹⁶⁰ but does not fully acknowledge the extent of the recovery, as reflected in the true unemployment rate (the rate if it were calculated today).

The drastically reduced unemployment levels of 1936 probably created a public perception that the worst of the crisis was over. To better understand the role of perception and context in politics, an analysis of the 1984 presidential election is in order. The American people had at that point endured a series of brutal inflationary recessions, starting with the 1969-1971 downturn, repeated again but with far greater ferocity from 1973-1975, and capped by a

¹⁵⁵ BOARDMAN, *supra* note 142, at 31.

¹⁵⁶ SHLAES, *supra* note 5, at 274,

¹⁵⁷ SUNSTEIN, *supra* note 151, at 40.

¹⁵⁸ ADAM COHEN, *NOTHING TO FEAR* 4 (The Penguin Press 2009).

¹⁵⁹ See David L. Gregory, *Catholic Labor Theory and the Transformation of Work*, 45 Wash. & Lee L.Rev. 119, 129-30 (1988) (discussing how work gives meaning to our lives). See also BOARDMAN, *supra* note 142, at 31: unemployed men traveled the same route each morning as when they had work.

¹⁶⁰ SHLAES, *supra* note 5, at 282.

“chronic” recession in two parts: 1979-1980 and, after a brief interlude, 1981-1983.¹⁶¹ The unemployment rate in 1984 was 7.5 percent, with a 4.3 percent inflation rate.¹⁶² Yet Ronald Reagan experienced a 49-state landslide reelection that year, even though those numbers are worse than the unemployment and inflation rates of 1992, (7.2 percent and 3.0 percent, respectively¹⁶³) when incumbent George H.W. Bush failed to be reelected. Reagan reaped the reward of bringing the inflation rate down to politically tolerable levels; the worst of the inflation crisis seemed to be over, thanks to his policies.¹⁶⁴ A similar dynamic helped FDR in 1936.

By the same token, even with the Darby revised rates, unemployment remained historically high throughout the 1930s, compared to the decades prior to and following the Great Depression. There was a revised rate of 9.5 percent unemployment in 1940, for example. And Shlaes does have a basis in using the official numbers, because the reliance on government jobs to alleviate the job shortage is a sign of ongoing economic weakness—the private sector (the taxation of which makes government jobs possible) was obviously hobbled throughout this era. But the Darby analysis proves that FDR did substantially reduce the level of misery the nation was experiencing by 1932 and 1933, and he should be given credit for that.

The New Deal: A Failed “Stimulus Package”?

Frequently, opponents of the New Deal point to the many examples of flagrant waste, inefficiency and failure of the particular government programs that comprised the New Deal.¹⁶⁵ Admirers of Roosevelt should concede the economic dislocations and the waste of scarce

¹⁶¹ ROTHBARD, *supra* note 1, at vii and xix.

¹⁶² Economic Report of the President, <http://www.gpoaccess.gov/eop/>.

¹⁶³ *Id.*

¹⁶⁴ JOHN KENNETH GALBRAITH, MONEY: WHENCE IT CAME, WHERE IT WENT 308-309 (Houghton Mifflin 1995) (1975).

¹⁶⁵ See JIM POWELL, FDR’S FOLLY (Three Rivers’ Press 2004) (2003).

resources caused by New Deal programs. But the effectiveness of the New Deal in alleviating the real index of human misery, including unemployment, should be conceded.¹⁶⁶

In March, 1933, the index of industrial production reached its lowest point in the Great Depression,¹⁶⁷ but by 1937, that gross national product (GNP) reached 1929 levels.¹⁶⁸ The economy began to recover in 1933, when Roosevelt took office. Indeed, Herbert Stein, who was Chairman of the President's Council of Economic Advisers during the Nixon Administration, writes that production reached 1929 levels by the end of 1936, prices were rising, and inventories were accumulating.¹⁶⁹ And the economist Robert Barro has written that a strong recovery began in 1933, and continued during the early 1940s, despite the 1937-38 depression,¹⁷⁰ which, as Michael Darby noted, was largely due to an increase of bank reserve requirements by the Federal Reserve.¹⁷¹ And as stated earlier, unemployment, while lower from the extreme levels of 1932-33, was still high.

The English economist John Maynard Keynes argued that a fall in an economy's "aggregate demand" should be remedied by public spending financed by borrowing.¹⁷² The government should therefore run deficits and avoid tax increases in depressions, and in severe

¹⁶⁶ This alleviation was acknowledged by many Americans, and they rewarded FDR and his party for it in 1934 and in 1936, in which the Democrats gained further control of Congress and Roosevelt won a landslide reelection victory. SHLAES, *supra* note 5, at 209.

The level of contemporary support for a politician and his policies, while not an iron-clad indicator, is here a reliable metric of the actual success of FDR's policies. Shlaes describes how Rooseveltian rhetoric against "concentrations of wealth" was in vogue during the 1936 Republican National Convention, and Alf Landon, the Republican candidate for president, adopted a platform similar to the Democrats'—an implicit recognition of Roosevelt's success and the people's recognition of it. SHLAES, *supra* note 5, at 277.

¹⁶⁷ BOARDMAN, *supra* note 142, at 64.

¹⁶⁸ Which was partially, at least, a victory. COHEN, *supra* note 159, at 288.

¹⁶⁹ HERBERT STEIN, *THE FISCAL REVOLUTION IN AMERICA* 91 (AEI Press 1996) (1969).

¹⁷⁰ Robert Barro, *Government Spending Is No Free Lunch*, WALL STREET JOURNAL ONLINE, January 22, 2009, http://online.wsj.com/article/SB123258618204604599.html?mod=todays_us_opinion.

¹⁷¹ Shlaes acknowledges the Federal Reserve's poor policies in causing the 1937-38 "depression within a depression," but she argues that the fear and uncertainty in the business community created by Roosevelt's high taxes, his penchant for surprise announcements of new policies, and the increase in the price of labor through the unionization fostered by the National Labor Relations Act, all contributed to a "strike" by capitalists at this time, which reduced investment levels and deepened the downturn. See SHLAES, *supra* note 5, chapter 13.

¹⁷² GALBRAITH, *supra* note 165, at 231.

depressions, expenditures should be increased. Balanced budgets are to be avoided when the economy declines.¹⁷³ This program will restore business profits to their normal levels, which will revive the private economy in turn.¹⁷⁴ But the public-works, fiscal aspect of the New Deal (as opposed to Roosevelt's monetary policy of leaving the gold standard) was not used to stimulate the economy according to Keynesian theory, which is why some economists argue that the endurance of the Depression in spite of the New Deal cannot be attributed to a flaw in Keynesian doctrine. In *Fiscal Policy in the 'Thirties: A Reappraisal*, the economist E. Cary Brown asserted that Keynesian fiscal policy was actually not tried during the 1930s.¹⁷⁵ Keynes advised Roosevelt to drastically increase public spending in order to raise the national income, but an economic history of the era concludes, "Keynesian policies as such were never meaningful in an operative sense."¹⁷⁶ FDR was hemmed in by traditional American notions of political economy, which included the economic and moral imperative of balanced budgets.¹⁷⁷ Keynesian policy *was* institutionalized in the 1930s, however, even if not fully implemented at that time. After the war, it would take a prominent place in our economic policymaking.¹⁷⁸ But during the Great Depression, the level of deficit spending was never as high as the Keynesian policy required, in part because of the small role of Federal Government expenditures in that era—only 6 percent of the GNP by 1940.¹⁷⁹ But the Keynesian gospel was implemented to the hilt in Germany and Japan, and both of those nations experienced rapid, vigorous recoveries during the early 1930s. The Germans engaged in large-scale borrowing for civilian public

¹⁷³ STEIN, *supra* note 170, at 131.

¹⁷⁴ STEIN, *supra* note 170, at 145.

¹⁷⁵ E. Cary Brown, *Fiscal Policy in the 'Thirties: A Reappraisal*, 863 *American Economic Review* 46 (1956) (the Roosevelt administration's deficits were not high enough to restore full employment and production).

¹⁷⁶ HUGH NORTON, *THE EMPLOYMENT ACT AND THE COUNCIL OF ECONOMIC ADVISORS, 1946-1976* 75 (University of South Carolina Press 1977).

¹⁷⁷ *Ibid.*

¹⁷⁸ STEIN, *supra* note 170, at 131.

¹⁷⁹ GALBRAITH, *supra* note 165, at 237.

works, like canals, railroads, and the Autobahn. Greater deficit-financing was part of the reason why the unemployment was no longer a major problem in Germany by 1935, German industries having been invigorated by the aggressive and creative government policies on trade, money, and industrial planning. In regard to Japan, the economic commentator Eamonn Fingleton explains that,

After Japan devalued the yen in the early 1930s, Japanese manufacturers flooded the world with cheap exports...In a move that brilliantly anticipated the revolutionary economic thinking of John Maynard Keynes, Japan in 1932 began running large budget deficits to stimulate the domestic economy. Thus in the five years to 1935, Japan's manufacturing and mining output jumped by 49.6 percent, versus a decline of 6.3 percent in the United States.¹⁸⁰

This view of World War II has been recently challenged by several economists, including Robert Barro, who argues that the war expenditures lowered growth in non-military sectors of the economy, rather than enhancing them from the "multiplier effects" of defense spending.¹⁸¹

Ironically, among all of America's presidents of the 20th century, Ronald Reagan was the true fiscal Keynesian, not Franklin Roosevelt. In 1983, Reagan presided over the largest peacetime federal budget deficits in the 20th century (6 percent of the GDP).¹⁸² Coincidentally, that was the final year of the worst recession America had faced since World War II. Shlaes recounts how FDR's advisers looked to the policies and practices of other nations, but she does not discuss how a Keynesian policy "helped" countries like Germany and Japan, and how such policy was actually not put in place here. Only half of the Keynesian fiscal program was implemented here. There were public works and jobs programs, but without massive deficits.

¹⁸⁰ EAMONN FINGLETON, *BLINDSIDE* 105 (Houghton Mifflin 1995).

¹⁸¹ Barro, *supra* note 171.

¹⁸² *See* GALBRAITH, *supra* note 165, at 308.

Instead, taxes were repeatedly increased by the Hoover and Roosevelt administrations, violating another tenet of the Keynesian prescription for an ailing economy.¹⁸³

If government programs, aimed at creating jobs (through public works projects) so as to boost the purchasing power of a nation's consumers (the nation's "aggregate demand," in economic parlance), are doomed to fail, then the true mystery is why World War II succeeded in restoring our nation's economy.¹⁸⁴ Although the cause and end of the Great Depression are not the focus of her book, it undermines her efforts to detail just how ineffective governmental policies were during the 1930s by assuming that World War II ended the Depression, as she implies in the Introduction.¹⁸⁵

But World War II was an era of the total state—the federal government was in greater control of the economy before or since. As the historian and economist John Kenneth Galbraith, who lived during that era and helped implement the war economic program, describes, it was an era of forced savings, price controls, a strict rationing of goods, and massive taxation.¹⁸⁶ My grandmother's experience during World War II reinforces Galbraith's description. She lived in New York City and worked in a government plant photographing letters sent home by the troops—a public sector job. She vividly remembered the economic hardships that those who lived in this country had to endure for the sake of the war effort. Sugar was not at all available, and butter was as nearly as scarce. The butcher shops had very little to offer customers, and what meat they did have to sell was of poor quality. The picture she described is reminiscent of the scenes of long lines of customers and the empty shelves of grocers in the Soviet Union shown on television during the 1980s. As a result, personal savings increased from 5.1 percent

¹⁸³ See ROBERT LEIGHNINGER, *LONG-RANGE PUBLIC INVESTMENT: THE FORGOTTEN LEGACY OF THE NEW DEAL*, 177 (The University of South Carolina Press 2007).

¹⁸⁴ GALBRAITH, *supra* note 165, at 238.

¹⁸⁵ SHLAES, *supra* note 5, at 9.

¹⁸⁶ GALBRAITH, *supra* note 165, at chp. 17.

of disposable income in 1940 to 25 percent in 1943 and 1944. These savings were channeled into heavy industries to build war materiel.¹⁸⁷

All this helped the American economy achieve its largest and most rapid expansion ever. Gross national product increased by 50 percent between 1941 and 1945 as output of steel doubled and production of ships and aircraft increased about tenfold...In a similar plan designed by John Maynard Keynes, the British also used suppressed consumption to win the war. The British government combined tight rationing of consumer goods with a system of compulsory saving.¹⁸⁸

Many argue that the failure of the massive increase in government spending during the 1930s to restore employment and production, yet the experience of World War II shows that production *can* be increased, with possible positive effects for the economy after the war.¹⁸⁹ But while the New Deal not only was reduced unemployment, useful work was done by the programs—an investment in the infrastructure of the nation. Bridges, dams, schools, courthouses, playgrounds, state parks, airports, sewers and other public buildings were erected, repaired, or improved.¹⁹⁰ Even the widely ridiculed shelterbelt project, which planted strips of trees in the plains states to improve conditions for farmers, resulted in substantial economic benefits by the 1950s, improving agricultural productivity.¹⁹¹

But a powerful argument that free-market revisionists offer is that the New Deal response to the Great Depression stands in bleak contrast with the Federal Government's response to the

¹⁸⁷ *Id.* at 252-253

¹⁸⁸ FINGLETON, *supra* note 181, at 192.

¹⁸⁹ See GALBRAITH, *supra* note 165, at 238.

¹⁹⁰ LEIGHNINGER, *supra* note 184, at 51.

¹⁹¹ Wilmon Droze, *The New Deal's Shelterbelt Project, 1934-1942*, in *ESSAYS ON THE NEW DEAL* 47 (Harold Hollingsworth and William Holmes, eds., 1969).

1920-21 depression. The Republican Administration that came to power in 1921, President Warren Harding and Vice President Calvin Coolidge, inherited a terrible recession. American gross domestic product had fallen 25 percent between 1920 and 1921, and unemployment increased from 2.1 million to 4.9 million in that time span.¹⁹² Harding and Coolidge had a minimalist view of their office; governmental central planning of and interventions in the economy were anathema (Harding ran on a platform of “[l]ess government in business”). Under the wise leadership of Andrew Mellon, taxation and spending were dramatically reduced (spending decreased by more than half, from \$6.3 billion in 1920 to \$3.2 billion in 1922)¹⁹³ and wages were allowed to fall freely and early-on in order to reduce labor costs, “long before business had reached a dangerous condition.”¹⁹⁴ The liquidation was sharp but short-lived, and recovery—the “Roaring Twenties”—began by 1922, “just a year and a half after Harding became president.”¹⁹⁵ All of this was done without extensive public works programs and other forms of government central planning; rather, the main positive action taken by the federal government was to reduce its role in the economy. One exception was the Fordney-McCumber Tariff Act of 1923, which double average tariff rates to 38 percent.¹⁹⁶ Perhaps if Hoover had taken a similar course in 1929, keeping taxes low, allowing business to cut wages (instead of encouraging high wages), and permitting the necessary economic liquidation to occur, as Mellon advised, the Great Depression would never have occurred. We will never know, but keeping the recession of the early 1920s in mind is certainly useful in evaluating the policies of the Great Depression. But by the time Roosevelt took office, the situation was so bad that taking a hands-off approach probably appeared too risky—what if it did not work? And the failure to take

¹⁹² Jim Powell, *Not So Great Depression*, NATIONAL REVIEW, Jan. 7, 2009.

<http://article.nationalreview.com/?q=MWI2OWUyOWE2NmZjMmQ2ZTg5YzIzZjczY2I2Mzg2N2Q=>.

¹⁹³ *Id.*

¹⁹⁴ SHANNON, *supra* note 147, at 7.

¹⁹⁵ Powell, *supra* note 193.

¹⁹⁶ BUCHANAN, *supra* note 28, at 239.

action was probably also associated with Hoover, incorrectly, and Roosevelt was not going to invite such a comparison through an economic austerity plan.

A Nation Preserved

Like other writers opposed to the New Deal, Shlaes discusses the cancer spots in a political-economic movement while ignoring the larger successes that transcend those ills, by placing particular focus on Brain Trust member Rexford Tugwell and the failure of his proposals (as well as his recognition of that failure). Tugwell has long been the “whipping boy” of the Roosevelt administration.¹⁹⁷ In the 1930s, with his writings often taken out of context, and because of his publicly-expressed sympathies for the governmental centralization and planning of the economy, as well as his openness to learn from the Soviet model (thus his presence on the 1927 “junket” to Russia) he was “a target for those who disapproved of the ‘brain trust’ and the whole administration.”¹⁹⁸ But he was not the only man of his time who looked fondly on the collectivized economies of Europe. There was the progressive movement, such as Tugwell’s fellow junketeers. And Winston Churchill praised Mussolini (“so great a man and so wise a leader”)¹⁹⁹ and Hitler, writing, “If our country were defeated I hope we should find a champion as indomitable [as Hitler] to restore our courage and lead us back to our place among the nations.”²⁰⁰ Fascism, Churchill wrote, “has rendered a service to the whole world.”²⁰¹ The Catholic Archbishop of Boston, Cardinal O’Connell, also expressed admiration for the progress in Italy under Mussolini in 1923.²⁰²

Therefore, a lengthy and dramatic exposition of the views held by members of the Roosevelt administration, like Tugwell or Chase, can only accomplish so much—perhaps the

¹⁹⁷ NORTON, *supra* note 177, at 66.

¹⁹⁸ *Id.*

¹⁹⁹ PATRICK BUCHANAN, CHURCHILL, HITLER, AND THE UNNECESSARY WAR 160 (Crown Publishing 2008).

²⁰⁰ *Id.* at 174.

²⁰¹ *Id.* at 160

²⁰² JOHN COONEY, THE AMERICAN POPE 46 (New York Times Books 1984).

sympathies of the Brain Trust for authoritarian regimes can account for many of the initiatives taken by FDR, such as the cartelization of the economy. But the taint of the sympathy some of the Brain Trust had for beastly regimes should not, and cannot, be used to discredit the New Deal, because such sympathy was widespread, from leftist utopians to sober-minded clerics to great statesmen. The sympathy for fascism and socialism was the error of the time, as was racial segregation in the United States. Focusing on the errors of the Brain Trusters can be a distraction, and even a smear; we must look at the results, and avoid guilt by association. The threat of radicalism to the American polity (in its fascist or communist forms), and the possible destruction of our society, was a very real one.²⁰³ In an age of authoritarianism and upheaval and war, our nation and our constitutional structure remained intact, and was ensured a solid foundation, because of an economic framework that ensured the Constitution would remain a viable document. (And prosperity was experienced in the post-World War II “in spite of” New Deal structures remaining in place, providing a stable government during the Cold War.) It is legitimate to give Roosevelt at least some credit for these accomplishments.

The Weakening of the Supreme Court: Individual Versus Collective Rights

But if the Constitution remained the law of the land, the balance of power between the branches of government shifted decisively as a result of Roosevelt’s actions; namely, the Supreme Court ceased to strictly scrutinize socio-economic legislation passed by the Federal Government. This shift was probably the result of the Court-packing scheme, but after the Court embraced a broad interpretation of the Commerce Clause in the 1930s, it did not invalidate a single piece of legislation (for going beyond the scope and reach of that clause) between 1935

²⁰³ See SUNSTEIN, *supra* note 151, at 40, and SHANNON *supra* note 147, chp. 8, on the widespread discontent with existing political structures among otherwise patriotic and conservative Americans.

and 1995.²⁰⁴ Congress has therefore wielded an “almost unlimited” power 1935²⁰⁵—the rule of men has replaced the rule of law. An example of the expansive new interpretation of the Commerce Clause is provided in *Wickard v. Fillburn*,²⁰⁶ in which the Court upheld the penalty provision of the Agricultural Adjustment Act against a farmer who grew 16 wheat bushels more than his government-mandated quota. The Court relied on the “aggregation principle”: a single farmer’s production, when combined with the production of all those like him, has a substantial effect on the wheat market. There seems to be no limit to what the government can regulate, no matter how local, under this new rule. The Court thus approved the federal government’s exercise of power over how much a single farmer can produce, a clear example of how the growth of federal government power has led to a concomitant reduction in personal liberty. Shlaes does not discuss this case, but it is an important product of Roosevelt’s “revolution” and his impact on American government.

Some may argue that the Supreme Court has shifted its position on what the Constitution allows and forbids on issues like segregation, sex discrimination, and the suppression of political dissent.²⁰⁷ But rarely have such dramatic changes been in the midst of such overweening pressure from the president, as the Court’s sudden and permanent shift on economic legislation. And besides from the harm done to our system of checks and balances, another negative consequence of the loss of the Supreme Court’s power is that its activist role was not necessarily harmful to the recovery. The NRA, for example, prolonged the stagnation of the economy.²⁰⁸ The economy was therefore helped by the Supreme Court’s ruling in *Schechter Poultry*. In this

²⁰⁴ CHERMERINSKY, *supra* note 116, at 243.

²⁰⁵ *Ibid.*

²⁰⁶ 317 U.S. 111 (1942).

²⁰⁷ SUNSTEIN, *supra* note 151, at 123.

²⁰⁸ Michael Weinstein, *Some Macroeconomic Impacts of the National Industrial Recovery Act, 1933-1935 in The Great Depression Revisited* 262-281 (Brunner, ed.,1981).

instance, the rigid, inflexible Supreme Court did the nation a service by taking an activist role in preserving the traditional understanding of the Constitution.

This theme is consistent with what the free-market economist Friedrich Hayek argued in his book, *The Road to Serfdom*: that *democratic* socialism is impossible, and governmental planning of the economy leads to planning of people's lives, and the loss of their freedom. The individual is smothered by the technocratic state.²⁰⁹ Sumner summed up Hayek's fear: "[W]henever we try to get paternalized we only succeed in getting policed."²¹⁰ And the result of individuals losing their freedom is that they learn to be dependent on the government; all members of society look to the federal government for help, and expect that help to be forthcoming, reducing their independence and desire to be truly free. The use of propaganda by the Roosevelt administration and its adjuncts, whether against industrialists like Willkie or against the Supreme Court, also highlights Hayek's theme, because it ultimately can lead to the loss of individual liberty as well. Furthermore, the development of interest-group politics is made possible without the firm rule of law. Everyone identifies with a certain group, and membership in that group provides certain rights and privileges that will be provided by the government.

The sad story of Argentina is a horrifying example of why the firm, enduring rule of law is so important to preserving freedom and prosperity.²¹¹ In 1914, Argentina was the tenth-largest economy in the world, and was expected to only continue rising. But after decades of collectivist economic policies, the middle class has been wiped out and the government is one of the most unstable in Latin America, continually defaulting on its debt, battling hyperinflation, and being captured by new regimes. The change began under the Argentine leader Juan Peron. During the

²⁰⁹ See FRIEDRICH HAYEK, *THE ROAD TO SERFDOM*, 91, 107 (University of Chicago Press 1944) (1969).

²¹⁰ STARR, *supra* note 7, at 320.

²¹¹ Philip Jenkins, *United States of Argentina: How Inflation Turned a Rising Power Into a Pauper*, *The American Conservative*, February 9, 2009 at 16.

1940s and 1950s he used aggressively populist rhetoric against the rich and middle class, identifying them as the enemy-oppressors of the poor who would be corrected by effective government action. The key sectors of the economy were nationalized and an extensive bureaucracy was created.

Government bought loyalty through a massive program of social spending while fostering the growth of labor unions, which became intimate allies of the governing party. Argentina came to be the most unionized nation in Latin America. Peron also ended any pretense of the independence of the judiciary, purging and intimidating judges about whom he had any doubts and replacing them with minions.²¹²

Argentina became a clientelist state, “an object for plunder and an instrument of plunder.”²¹³ While Roosevelt was not nearly so corrupt or extreme as Peron, there are eerie parallels with what occurred during in America the 1930s, from the increase in spending, to the new political rhetoric, to the establishment of a union class, to the castration of judicial power over the very legislation that can cause such harm to the economy and undermine freedom.

IV. Conclusion: Lessons for Today

Shlaes argues that ignoring the Forgotten Man (in the classically liberal sense of the term) was the cause of the perpetuation of the Great Depression, but who the Forgotten Man is changed with FDR, even though although Willkie tried to revive the old version. The Forgotten Man came to represent the member of the interest group who sought to obtain a share in the benefits conferred on that group. The election of 1936 therefore reflects a larger political shift in the country, the solidification of a new political arrangement of interest group politics. In the midst of this new political arrangement, what Sumner said has perhaps more relevance,

²¹² Ibid.

²¹³ Ibid.

politically and economically, today than in the 1930s. The political focus should be on those who do not benefit from the government program but have to pay the price for these noble, well-intentioned programs.

But Shlaes is also hindered by incorrect assumptions, like the incomplete and inaccurate metrics regarding the true unemployment rate, and the implication that World War II government spending in ending the Depression. When they are corrected, and whatever positive effects of the New Deal programs are accounted for, it is clear that there is much wisdom to the conventional wisdom regarding the New Deal; namely, that the New Deal did help improve the lives of so many who were suffering during that time. The Forgotten Man, and everyone else, will be worse off, if the nation completely collapses into chaos, culminating in a new, authoritarian government. Keynes' riposte to the status quo of his day, "in the long run, we are all dead,"²¹⁴ is a token of his enduring political wisdom. What are policymakers to do while we wait for the market to adjust? In the Great Depression, people were literally starving to death. There can be tension between a sociological/political/economic theory or ideal and the practical realities of human existence in modern industrial society. FDR's crusade was thoroughly practical and rooted in the exigencies of that moment in our history: "The absence of ideological content and the pragmatic innovations likewise contradicted another common criticism, that the New Deal was some kind of alien crusade." Rather, it was a "pragmatic attack on problems as they were, not as they may have been conceived by crusading prophets of reform."²¹⁵ (For example, in contrast to current neoliberal policy nostrums that determine the destinies of Third World countries seeking to develop economically, FDR embraced dollar nationalism and put American interests before the world's, when he declared that domestic recovery and reflation

²¹⁴ STEIN, *supra* note 170, at 155.

²¹⁵ George Wolfskill, *New Deal Critics: Did They Miss the Point?*, in *ESSAYS ON THE NEW DEAL* 55 (Harold Hollingsworth and William Holmes, eds., 1969).

must take priority over the stabilization of international exchange rates.²¹⁶) The UN Declaration of Human Rights asserts a moral duty of the government to ensure employment, the right to join a union, and “the right to a standard of living adequate for the health and well-being of himself and of his family.”²¹⁷ In this sense, therefore, the welfare state and the Forgotten Man are not necessarily incompatible. Coexistence is possible.

Yet, the arbitrariness of FDR’s policy decisions, without any theoretical foundation, was also a problem—his muddled, confused understanding of political economy and willingness to suddenly adopt new policy positions, all in the name of taking “effective action,” of taking political action for action’s sake was on balance probably bad politically and economically.²¹⁸ This book helps to prove the lack of an American or Rooseveltian exceptionalism. FDR proved, though not so disastrously and damagingly as Peron or the other totalitarians of the age, that the political foundations of America’s prosperity are capable of being toppled. Yet FDR could only take such actions because of the dire economic situation, which had disappeared by the end of World War II. In a sense, he corrected the potential dangers created by his policy. And in some ways, the adherence of our Supreme Court to the traditional legal order prevented greater damage than would have occurred to our nation through a permanent cartel system like the NRA. Therefore America enjoys an exceptionalism that flows, in part, from the classically liberal principles enshrined at the founding of this country, not from the schemes of far-removed politicians who wisely and nobly promote the common good during emergencies while abstaining from abuses of their power. The principles of liberty have diffused throughout the population, creating an individualist, conservative ethos at the core of the country, and very difficult to wipe out (although it is possible). The confluence of America’s political and

²¹⁶ STEIN, *supra* note 170, at 41.

²¹⁷ United Nations, Universal Declaration of Human Rights, Articles 23--25

²¹⁸ NORTON, *supra* note 177, at 86.

sociological institutions allowed the nation, in a time of extremism, to adhere to the perennial maxim *in medio stat virtus*—real virtue is always in the middle path.²¹⁹

²¹⁹ PAPAL PRONOUNCEMENTS ON THE POLITICAL ORDER 47 (Francis Powers, ed., The Newman Press 1952).