# *Dead End Street Blues*[*]

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Back in the nineteen-seventies, inflation and unemployment were rapidly increasing together in the Western world, although according to the then ruling Keynesian priesthood they would never do so. By the end of the decade, the proudly proclaimed ability of the Keynesians to fine-tune the economy was shown to be a sham. Their performance records varied from country to country but the overall picture was bleak. Their technocratic macroeconomic management had delivered high levels of public spending, taxation, public debt, inflation, unemployment and bureaucracy and little else.[1] As the size of government expanded, the productive sectors of the economy contracted. It became clear to almost everybody that the Keynesian orthodoxy was if not a road to serfdom then certainly a dead end street.

Yet, now, in the wake of the spectacular crisis following the bursting of the housing bubble in the U.S.A., people from all over the political spectrum are clamoring for the return of Keynes. On all sides, greed is denounced as the motive

[*] This is an edited and expanded version of a text prepared for a lecture in Ghent on Monday, January 12, 2009. Although I had primarily the Belgian experience in mind, I trust that most of what follows is relevant, *mutatis mutandis*, to readers in other parts of the Western world.

[1] From 1971 to 1985, Belgian GNP (in 1980 prices) increased on average 2.3% per year. The average rate of inflation per year was 7.3%. Over the same period, unemployment increased from 2.5% to 16%, most of the increase occurring in 1973-1982 and mainly among women (from less than 4% to nearly 25%). From 1973 to 1985 private sector employment (including the self-employed) went down from nearly 3 to 2.7 million, while public sector employment rose from 0.74 to 0.95 million. As public expenditures rose from 30.3% of GNP (1960) to 55.4% (1984), the average tax burden went from 30.1% of GNP (1960-1967), 35.2% (1968-1973), 40.9% (1974-1979), and finally to 44.6 (1980-1984). From 1973 to 1986 gross public debt increased from 54% to 123.2% of GNP. (K. Matthijs, *Belgoscopie*, Tielt, 1988, p.243sqq.) Although the Belgian economy was then in some ways (especially with respect to the public debt) in an exceptionally bad condition, most of the Western economies (Europe, North America) were afflicted with “stagflation”.

that the market fosters and that drives it to self-destruction, but few remember the denunciations of envy[2] as the destructive motive in the Keynesian era.

With or without reluctance, people now claim that the market has failed. Almost all of the critics simply assume that the free market is to blame, but they do not go beyond pointing the finger at deregulation, as if that is enough to make their case. It is not—and assumptions do not prove anything. Nor do sweeping references to scandals, or to Keynes or Marx. For a series of events to demonstrate the failure of the free market, it is necessary to that there is a free market. To verify that proposition, one must have, on the one hand, a coherent, theoretically relevant conception of free markets and, on the other hand, an informed grasp of the opportunities and constraints defined by the actual legal and institutional context within which consumers, producers and intermediaries have to act.

While it is easy to cite instances of deregulation in recent years, these are more than matched by numerous instances of new regulation and re-regulation. The argument that a few modifications of the regulatory regime of one industry (the banks) prove the failure of the free market is a non-starter. It amounts to saying that only a handful among many thousands of regulations prevents the market from being free. Specifically, banking and other financial services, which were at the center of the 2008 collapse, are still among the most heavily regulated activities, although many regulations amount to privileges and immunities rather than restrictions. After all, the banking system is now well integrated into the fiscal and policing machinery of the state. Legal fictions notwithstanding, banks are not, and have not been for a long time, *private* (i.e., separate-from-government) companies—this the government responses to the crisis make abundantly clear.

Moreover, all over the Western world, legislation has linked banks into national banking systems under the guidance of a central bank enjoying a legally imposed monetary monopoly and coordinating its policies with similar monopolist institutions elsewhere, in particular with the American Federal Reserve System (the

[2] Helmut Schoeck, *Envy, A Theory of Social Behavior* (1966) was the main scholarly reference. The Belgian liberal economist Marcel van Meerhaeghe bundled a number of his columns on economic and social affairs under the title *The Envy Society* (De afgunstmaatschappij, 1977).

U.S. dollar having been *de facto* the world's reserve currency since the nineteen-twenties). Such legislation has buttressed the inherently inflationary institution of fractional-reserve banking, provoked spurts of credit-expansion not backed up by increases in real savings, and thereby created the moral hazards and systemic risks that now haunt economies worldwide. For governments, the present critical condition is an opportunity for claiming that they have to do something and then doing what comes naturally to them (namely, fleecing taxpayers and money users, now at projected rates that are unheard of in peacetime). In addition, the Keynesians and neo-liberal monetarists' shared addiction to "controlled inflation" has driven savers onto a market for investment vehicles with substantial counter-party risks, thereby exposing them even more to the instability of the state-sponsored financial systems.

The crisis of 2008, then, illustrates the failure of political attempts to manage the economy and stimulate growth, whether these attempts are made from the left, the right or the center of the political spectrum. Partisan myopia may lead commentators to overlook this, to focus exclusively on the disagreements between Keynesians and neo-liberals. Such myopia keeps the dismal experience of the previous Keynesian episode[3] out of sight, but a short memory span is not an argument. Moreover, partisan bickering focuses on what separates the parties involved in a dispute. It glides over the things on which they agree. Their differences may explain the peculiarities of their respective failures but we cannot exclude that the explanation of the fact that both of them failed lies in the many beliefs and presuppositions to which both of them subscribe.

It is worth our while to step back a bit and look at the entire cycle of significant policy-failures since the Second World War. My focus is on the mindsets and intellectual presuppositions that have guided policy, including economic and financial policy, throughout the Keynesian period and the neo-liberal era that followed it. My hypothesis is that these intellectual roots have not changed much

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[3] I am referring here to the European experience from the late nineteen-forties to the early nineteen-eighties. I leave aside the Japanese experience in the nineteen-nineties to the present, when Keynesian policies turned a once vibrant economy into a "zombie" and made a massive yen-based carry-trade not the least factor in the rush to build the highest pyramid of debt the world has ever seen.

from the one period to the other. They are also relevant explanations of *why* both periods ended in crisis, although they admittedly do not explain how, by what sequence of events and policy-mistakes, each crisis came about. I shall merely try to clarify some of the salient intellectual elements to which the hypothesis refers. Proving the hypothesis itself would be the subject of a substantial book.

### *The Hayekian moment*

As the Keynesian debacle of the seventies unfolded, a seemingly happy alliance of liberals emerged to sing the praises of the free market. It proved successful to the extent that some politicians, notably Margaret Thatcher in the U.K. and Ronald Reagan in the U.S.A., adopted the free-market rhetoric to gain power on the promise of renewed economic growth. In Belgium, Guy Verhofstadt rose to political prominence with wide-ranging proposals for neo-liberal reform.[4]

The alliance comprised, on the one hand, a classical liberal faction of Austrian economists, natural law libertarians and principled minimal-government liberals, and on the other hand, a neo-liberal faction of neo-classical *freemarketeers,* Chicago-style monetarist economists, and political (i.e., policy-oriented) liberals and ditto libertarians. The main dividing line emerged in argumentation, where those committed to empiricism, pragmatism and utilitarianism, and steeped in the then fashionable abhorrence for philosophical foundations and justifications showed intense embarrassment at the references to principles of law and morality and natural (but not empirically established) laws of economics that laced the arguments on the opposite side.[5] At bottom, the question was whether appeals to

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[4] Appointed minister of the budget in 1985, Verhofstadt gained a large following with his efforts to get the budget under control. However, he had to move far to the left with promises to rescue the welfare state, revitalize democracy by means of referenda, legalize abortion and implement other items on the "progressive" ethical agenda before he became the prime minister of a coalition of neo-liberals, neo-socialists and, for a while, greens. Luckily for him, his terms (1999-2003, 2003-2007) coincided with the second half of the long economic boom of the nineteen-nineties and the early years of the twenty-first century.

[5] Despite his professed utilitarianism, Mises's aprioristic methodology was hardly taken seriously. Rothbard's insistence that only property and rights justified in the light of objective principles ("natural law)" could serve in an argument for the free market was similarly dismissed as cranky, outside the empiricist pale of "science".

self-interest and calculating "rationality" were sufficient to generate commitment to freedom in general and free markets in particular. The neo-liberal faction was inclined to believe in the cliché that crime does not pay, hence that the mere removal of obstacles to self-interested pursuits would bring about freedom and prosperity. The classical liberal faction would argue that self-interest not disciplined by ethical principles was as likely to perfect crime as it was likely to oppose it. After all, unprincipled self-interest was commonly cited as a motive of those who participated in efforts to expand the powers of the state, which are a significant source of wealth and freedom from moral constraints and liability for many people. The force of the objection was largely lost on those who subscribed to the comforting notion that all of mankind ultimately wants the same thing, hence that conflicts are never really about ends, only about means, and therefore to be resolved by technical arguments about efficiency.

Both sides had their radicals and moderates, all of whom could and did refer to aspects of Friedrich Hayek's vast corpus of writings on economics[6], politics, and the evolution of legal institutions, which were presented but did not quite make it as a comprehensive theory of "the free society". Those who liked his economics did not necessarily like his politics, and vice versa.[7] Yet, the period from the mid-seventies to the mid-eighties was undoubtedly "the Hayekian moment" of the liberal reaction to the Keynesian disappointments.

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[6] Of particular importance were Hayek's numerous and widely publicized writings on money and inflation, which directly challenged the prescriptions associated with Keynes and the Keynesians. In 1974, the year in which he received the prize of the Swedish national bank in honor of Alfred Nobel (the so-called Nobel prize in economics), Hayek had written in a long newspaper article that Keynes and his followers were fully and entirely responsible for the current worldwide inflation. (Daily Telegraph, October 15-16, 1974, "Inflation's Path to Unemployment"). Over the next few years, he pursued this theme with vigor and daring proposals of monetary reform (choice in currency, de-nationalization of money).

[7] Mainstream economists, accustomed to static equilibrium analysis, did not care for Hayek's "Austrian" economics, despite his efforts to mitigate the radical, uncompromising tone of his erstwhile teacher, Ludwig von Mises (who died in 1973). Libertarians were generally put off by Hayek's politics, which combined the rhetoric of "the free society" with significant concessions concerning the need for a strong and alert state to provide legislative "corrections" to judge-made law, adequate policy-responses to market failures, centrally managed social safety-nets, and the like.

The alliance was united in its opposition to the parasitical forces (trade unions and protected industries) that had created the stalemate in connivance with the state and its bureaucracy. However, because of the diversity of intellectual foundations, it appealed to a variety of motives. It was not to last long. The Hayekian moment passed. Libertarians and classical liberals remained in the margin while the far more numerous neo-liberal monetarists surged ahead as "mainstream economists" and spokesmen for the free market without demonstrating any understanding of the real-world conditions—i.e., the laws—of freedom.[8]

### *Classical liberals versus neo-liberals*

For libertarians and classical liberals,[9] the free market was the pattern of exchanges that emerges where relations between individuals and associations conform to objective principles of law that establish ownership and liability as two sides of the same coin and thereby keep competitive actions within the realm of prudence. They held these principles to be justified philosophically by reality-based

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[8] Arguably, their rapid rise was helped by the increasing dependency of academic work on government contracts. The warning in President Eisenhower's 1961 Farewell Address went unheeded: "A steadily increasing share [of research] is conducted for, by, or at the direction of, the Federal government. [… T]he free university, historically the fountainhead of free ideas and scientific discovery, has experienced a revolution in the conduct of research. Partly because of the huge costs involved, a government contract becomes virtually a substitute for intellectual curiosity." This development went hand-in-hand with the growing role of the mass media in bestowing prestige on individual researchers, institutions and research programs. A disenchanted experimental psychologist, Liam Hudson, remarked, "The media […] are now the standard means whereby one academic finds out what his neighbour is doing. Increasingly, we read not the technical literature, but the gloss put upon it by science correspondents, allowing them to sieve for us the important from the more trivial. [… For young researchers,] the media provide a sense of existential approval." (*The Cult of the Fact*, 1973, p.60)

[9] Hayek's *The Constitution of Liberty* (1960) was still influential and more accessible than the three volumes of *Law, Legislation and Liberty* (1973). The influence of writers such as Wilhelm Röpke and others associated with the renaissance of liberalism in Germany after the war was waning, as the younger generation increasingly turned to the United States and Great Britain for inspiration. Murray Rothbard's *For a New Liberty* (1973, 1978) galvanized a far more radical libertarian movement in the United States of America, but remained virtually unknown in Europe. By 1982, when his *The Ethics of Liberty* appeared, the situation had changed somewhat, although the few Europeans who had heard of it still associated libertarianism primarily with Robert Nozick's spirited invocation of invisible-hand explanations in *Anarchy, State and Utopia* (1974) in response to John Rawls's constructivist apology for the democratic welfare state (*A Theory of Justice*, 1971).

reasoning and to some extent historically by a detailed interpretation of the development of European and North American civilization.[10] In addition, they were acutely aware of the differences between, on the one hand, voluntary, consensual exchanges on the market, and on the other hand, the state's coercive execution of unilateral takings, re-distributions and regulations.

For them, the task was to roll back the state to the point where it was concerned only with enforcing the law, a set of valid principles or, at least, general legal rules of conduct aiming at no particular end-state. Some wanted to roll it back to the point where it did not claim any right for itself that could not lawfully be claimed by any person as being founded in justified principles. They certainly did not accept that positive legality was a fair proxy for the principles of law when it came to defining concepts such as freedom, free markets and free-market capitalism. While they conceded that the positive legal systems of Western societies still showed some influence of those principles, they were well aware of the profound changes made by legislation and the doctrines adopted by state-appointed judges and prosecutors as employees of a state-organized monopoly, the "judicial system" of the state. On both theoretical and historical grounds, they held that monopolies of legislation, adjudication and enforcement were unlikely to do a decent job with respect to determining the implications of principles of law with respect to particular cases or classes of cases. Such determinations were best left to open competition, understood in the Hayekian sense as a process of discovery governed by just law. This meant, among other things, that markets could only be judged in the light of their history, for it takes time and perhaps many trials and errors to discover solutions and develop organizational and institutional forms that satisfy the demands of freedom and justice.

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[10] Such interpretations might, of course, involve economic theory. However, they did not reduce historiography to applied economics. They were not like the attempts that by the early nineteen-seventies had come into vogue (as "the new economic history" or "cliometrics" of Fogel and Engerman, Douglas North and others) to use economic theory as a tool for generating empirically testable hypotheses from whatever statistical data might be available. They were also unlike the later attempts (by Douglas North and his "new school of institutional history") to see history as a succession of here successful, there failed attempts to reduce some supposedly objective "costs" (transaction costs, information costs, rents).

For the neo-liberal economists and policy advocates[11], the classical liberal idea of the free market was not empirical enough; it was too philosophical, too academic, too far removed from the market they read about in the business sections of their newspapers. Their "market" was something that could be represented in signed numbers, its history in graphs, maybe with the dates of relevant events and policy changes on the x-axis. As far as they considered it as depending on institutional arrangements, their market comprised any part of the economy in which private parties can act and interact on their own initiative within an established legal framework. The nature of that framework was not of particular interest to them, as long as it more or less unambiguously assigned rights to private parties that the government would generally respect and enforce. Their enthusiasm for "competition" (not Hayek's process of discovery governed by a rigid ownership-liability nexus but an abstract structure permitting utility-maximizing units to reach a socially optimal equilibrium condition) blinded them to the dangers of systemic calamities in a setting where risk-taking is or seems to be rewarded for its own sake. For a while, some of them talked about competitive governments, competition within the government, and government as a business, as if lack of "competition" and effective cost management were the main differences between state and market.

For them the task was to get the government to implement policies that would create or improve markets within the established legal system. No philosophy of law entered into their arguments, only the notion that politics rules the legal

[11] Together with Hayek's political writings, Milton Friedman's *Capitalism and Freedom* (1962) was probably the main intellectual source. However, his columns in Newsweek (1966-1984) and his popular book and television series *Free to Choose* (1980, the beginning of the Reagan presidency) were more effective in converting great numbers to the neo-liberal point of view. Other Chicago school economists, such as George Stigler and Gary Becker, were less known to the public in Europe but soon had a significant influence on the way economics was thought at the universities, where a prestigious American degree was considered an important asset. "Economic imperialism" became a hot topic. It stood for the claim that price-theoretical models could be generalized to analyze and explain every aspect of human life (crime, pollution, marriage, education, lifestyle choices, adjudication, regulation, bureaucracy, political constitutions) and to suggest ways to make them, or policy, legislation and regulation regarding them, more efficient. Henri Lepage's successful *Demain le capitalisme* (1978) helped to acquaint European readers with these ideas.

system, and that economics is capable of making politics efficient. They thought they were liberal when they advocated tax cuts, efficiency in government or shifting the tax burden from production to consumption, but gave little thought to the question of institutionalizing ways of limiting the effective taxing and spending powers of the state. Answering that question requires taking the long view, but like the Keyesians the neo-liberals were above all interested in quick fixes.

For the neo-liberal monetarists no less than for the Keynesians, "the economy" was a closed system best left to specialists in modeling "macroeconomic behavior", to which other segments of the social system would have to adjust as circumstances demanded. In what may have seemed at the time "radical opposition" to the Keynesian management of aggregate demand, the neo-liberals advanced the notion of stimulating aggregate supply. They emphasized monetary policy, which was supposedly far more removed from political meddling than the fiscal policies of the Keynesians were, and therefore, according to the neo-liberal logic, in itself a pro-market, capitalism-enhancing innovation. After all, monetary policy was the preserve of "independent" central banks, not subject to partisan electioneering. Besides, after the collapse of the Bretton Woods system in 1971, the problems of a pure fiat money regime rose high on political and academic agendas and many believed that "monetarism" provided the tools necessary for dealing with them.

It was left to the Austro-libertarians to explain that statistical abstractions such as "aggregate demand" or "aggregate supply" have little if any economic significance and that central banking is fundamentally incompatible with the free market.[12] That explanation got, however, little attention from a public reared on Keynesian dogmas and as accustomed to central banks as it was to the other monopolies of the welfare state. The neo-liberals, in contrast, were in basic agreement with the

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[12] Apart from issues of the central bank's legal monopoly and other privileges and immunities, the Austrians (Mises, Hayek, Rothbard) emphasized its role in money creation and credit expansion, and hence in generating boom-bust business cycles. Rothbard's *America's Great Depression* (1963, reissued in 1972 and 1975) was a direct challenge to both Keynesian and monetarist interpretations of the causes of the downturn and dismal performance of the U.S. economy in the nineteen-thirties. Together with the advocacy of a return to a commodity standard for money, the Austrian business cycle theory remains a major obstacle to the mainstream's acceptance of the Austrian analysis of macroeconomic phenomena.

Keynesians on the mechanics of prosperity: it was just a matter of devising the right policy mix, one that would stimulate investment rather than capital consumption and reward entrepreneurship rather than the expectation that income would be forthcoming no matter what. Finding the best means and methods to reach "given ends", that was the task before them. Although they had their disagreements with the ruling Keynesians on the appropriate means and methods, they shared with them their views on the nature of those ends and on the outline of the logic of determining the best course of action. Not prone to philosophical reflection, both Keynesians and neo-liberals casually accepted the apparent consensus in popular culture on ultimate goals, and in the economic departments on the logic of choice. Let us take a closer look at their common means-ends framework, which is, I submit, at the root of the problems they visit on all of us.

### *The paradigm of the unconditioned life*

It is important to remember that the stagflation of the seventies produced pervasive uneasiness among young people, who were just then entering the labor market in great numbers as the first cohorts of the baby-boom generation. They had been indoctrinated in the fifties and sixties with the belief that the economic problem, i.e., scarcity, would soon be overcome. Nuclear and other technologies developed during the Second World War would be perfected and yield unlimited progress. Science and technology would begin to provide ever-cheaper energy and ever-more rational systems of production in all branches of industry. Social technology too would improve as the vast administrative machine of the warfare state was re-directed to serve the needs of reconstruction and then social progress. Judicious political distribution of ever-increasing wealth ("the miracle of compounding interest", as Paul Samuelson explained it) would realize the Marxist utopia where everybody can do what he wants while society takes care of production.

This was the ideal of the "unconditioned life", the essence of the then fashionable "libertarianism of the left": freedom from want, freedom from fear, and for the rest, anything goes.[13] It was a truly revolutionary "liberating" ideal, as it swept away most of the received wisdom and common sense, and most of the religious and moral caution that had until then shaped our understanding of the conditions of freedom and prosperity. The idea of liberation affected all the corners of intellectual, cultural and religious life. Regardless of its nature or provenance, every constraint on doing what one wants could be indicted as an injustice, and made into a target for the forces of emancipation.

"Liberation" or "emancipation" was however primarily a political notion, the focus of an ideology designed to consolidate and extend the role of politics (and the state, although its role was not always emphasized) as the pre-eminent agent of social change and progress. After two world wars and an extended period of economic depression, the state could do with a new basis of legitimacy. Global military and political alliances formed during and in the wake of the Second World War provided an ideal framework for achieving that goal. Under the auspices of the United Nations, a new list of human rights was prepared that seemed to build on the tradition of earlier declarations of rights. The similarity was spurious. Most of the "new" human rights were such that only extensive state-run, preferably internationally coordinated programs could realize them—if they were realizable at all. The traditional distinction between the rights of human beings ("natural rights" of natural persons) and the rights of citizens ("legal rights" for artificial persons defined by the state's legal system) fell by the wayside. For example, a nationality and citizenship in a state that accepted the new vision were themselves elevated to the status of human rights.

The charter of the World Health Organization[14] spelled out the utopian spirit of the new politics of human rights and its requirement that no private rights should be permitted to stand in the way of any political action it motivated:

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[13] I remember my philosophy teacher, Prof. Leo Apostel, wondering why I was not a Marxist: "You know that Marx too was a libertarian: he wanted the state to whither away and people to be free from its constraints."

[14] The driving force behind and first Secretary-General of the WHO was the Canadian psychiatrist Dr. Brock Chisholm, who had laid out his program in an article in *Psychiatry* (February 1946): "If the [human] race is to be freed from its crippling burden of good and evil it must be psychiatrists who take the original responsibility. […] With the other human sciences, psychiatry must now decide what is to be

- Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Keep this all-encompassing definition (i.e., non-definition) of health in mind when reading the rest:

- The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
- The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.
- The achievement of any State in the promotion and protection of health is of value to all.
- Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.
- Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.
- The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.
- Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.
- Governments have a responsibility for the health of their peoples, which can be fulfilled only by the provision of adequate health and social measures.

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the future of the human race. No one else can." "Science" was to replace morality and religion to achieve "the eventual eradication of the concept of right and wrong which has been the basis of child training". (Note the word 'training'!) The famous psychologist and exponent of behaviorism B.F. Skinner presented a similar view in his essay *Beyond Freedom and Dignity* (1971). Such views agreed with positivist dogma, "What *we* (scientists) cannot see does not exist *and therefore has no being*." If value-free science cannot replace morality and religion as inquiries into what is right or wrong, it can only deny that such inquiries are meaningful. Dismissals of the meta-physical, meta-empirical roots of civilized life have arguably become more widespread since then. Whereas, for example, older forms of atheism were aware of theological and philosophical arguments on the other side, the present neo-atheism (Daniel Dennett, Richard Dawkins, Sam Harris, Christopher Hitchens and others) prefers to ignore them. Its best-selling status is perhaps telling evidence of the degree to which the transformation of scientific skepticism into a cult of "science and nothing but science" has infected popular intellectual culture. Genetics (Dawkins) and neuroscience (Harris) may have replaced Chisholm's psychiatry as the source of "liberating knowledge", but that is hardly a decisive difference. If, as Hitchens avers, the concept of God is a totalitarian belief that destroys individual freedom, what are we to make of the scientism that seeks to take its place? Should we not recognize that in many theist religions the concept of God serves to limit what any person, even or especially one with political (or indeed, religious) authority, might do to another? What restriction did the "science" of the likes of Chisholm and Skinner impose on their ambitions to "decide what is to be the future of the human race"? If politicized and politicizing religion is a real danger to individual freedom, politicized and politicizing science is an even greater one. Chisholm and Skinner could not have cared less; the neo-atheists prefer to keep silent on the matter.

In short, governments are charged with the production of a condition of complete well-being for their subjects, for whom it is a fundamental right. Apart from the obligation to co-operate with the government in its lofty task, the subjects' role is merely to enjoy what the state delivers.

On one level, the WHO charter was only a wordy rephrasing of the Marxian promise of Utopia, the progressives' promise of an unconditioned life. On another level, it was a call for mobilizing industry in support of large-scale government programs. It did not, however, specify the form that mobilization should take. That was a matter of national policy, but "complete well-being" as the ultimate goal of all public policy was not.

Many "baby-boomers" continued to clamor for socialist policies (outright nationalizations and expropriations, central planning, and the like) as necessary means for achieving their aspirations. They redefined the discredited Keynesian doctrine as just another shill for exploitative capitalism. Others were beginning to move towards environmentalism, a combination of Malthusian bugaboos and a pseudo-morality of collective guilt and penitence for crimes against fragile Nature. In its core, the environmental ideology was still a variant of Marxism, although it would not be easy to recognize it as such if one knew Marx only as a "social thinker" or "critic of the capitalist mode of production". It bypassed his resolution of class conflict, the classless society of the first stages of the communist revolution, and jumped straight ahead to its ultimate phase, when the last antagonism, between Man and Nature, would be overcome. Then Man would be re-absorbed in Nature in atonement for his Promethean rise, during which he himself had absorbed Nature and made it the servant of his wants. Of course, just as its ideological parent prospered only as vulgar Marxism, only crass, easily politicized and commercialized forms of environmentalism were eventually to gain track in the real world of politics, mass media, public schooling, and business. Nevertheless, the idea that complete well-being could only be gained in a harmonious community of Man and Nature seamlessly fitted the aspirations of the age.

Despite the presence of such alternatives, a significant number of "baby-boomers" was receptive to the subversive message of the advocates of the free market, viz., that the vested interests and authoritarianism of the parasitical establishment would not be able to withstand the competition of the creative imagination of the new generation that was itching to make its mark.

### *The lure of no-nonsense utilitarianism and pragmatism*

Those who invoked the free market in opposition to socialist central planning and Keynesian interventionism rallied around the flag of a revitalized classical liberalism, but an overwhelming majority did so without realizing the extent to which classical liberalism had in the mean time been replaced by a neo-liberal ideology of the state as a force of progress and emancipation.

The original impetus of classical liberalism, which had been to define constitutional limits to the power of the state in order to confine it to the role of "defensor pacis", i.e., the impartial guarantor of equal justice and freedom for all, had been almost forgotten. It had given way to the utilitarian belief that freedom and justice were not values in their own right but means to achieve prosperity. Consequently, the neo-liberal advocates of the free market pinned their hopes on a powerful government that would effectively and efficiently implement "liberal" pro-growth policies and so generate the prosperity that the baby-boomers had come to see as their birthright. They were ready to man the command posts of the state and the economy and to advise the government on how to deliver the goods by skilful use of the "incredible bread machine" that they imagined the free market to be. Of course, the market is not a machine; it is people acting and interacting within an order of law. It is not a means at the disposal of any person or organization, and it is nobody's ultimate end. However, in a utilitarian means-ends scheme of things, it has to be either the one or the other.

Utilitarianism and pragmatism were the neo-liberals' pat excuses for not considering anything other than one ad hoc system of "incentives" after another, usually one that was based on a textbook model of price theory or game theory. These "philosophies" entered the political culture in the West in the nineteenth century, long before Keynes, and have continued to exert enormous influence in academia and on public discourse. Applying Bentham's popularization of reductionist, materialistic ethics (the utilitarian "calculus of pleasures and pains"), radical reformers such as James Mill and Edwin Chadwick pioneered programs of scientific social management. In the budding democratic age, these were supposedly no longer tied to the king's *raison d'état* but to the welfare of the people: the greatest happiness (complete well-being) of the greatest number (all people). While sympathetic to free markets in some areas, the focus of the reforms shifted soon towards devising policies for municipal and, later, national governments.

In its popular form, pragmatism elevated "what works" to the sole standard of judgment but remained vague about the ends and people for which things are supposed to work. Applied to questions of truth finding, pragmatism stressed the "consensus of the experts", which is not too bad a criterion as long as expertise itself is not defined on merely pragmatic grounds. However, the pragmatic mindset quickly moved to such a definition, especially in the fields of ethics, politics and economics. This led to a sociological definition of truth—truth is what conforms to the ruling opinion—which nicely fitted the meritocratic and democratic ethos of the age.

Utilitarianism and pragmatism are but academic labels for saying that the end justifies the means. Neither amounts to a consistent philosophy of freedom and justice for all. In earlier times, it had been readily accepted that man's ultimate end was not to be found in this world. It was recognized that a common ultimate end in the hereafter did not by any means guarantee the compatibility of all human ends in this world. Therefore, as conflicting, incompatible ends cannot justify anything as *a means* to the achievement of all of them, it was thought essential that utilitarian and pragmatic considerations be constrained by respect for the law, i.e., the conditions of peaceful co-existence among many, diverse, purpose-driven agents in a world of scarce resources. Relocation of the ultimate end to the earthly realm, which is the hallmark of utopianism, eliminated the need for such constraints. Talk about complete well-being as an achievable end shifted the political imagination from "constitutional matters"—institutionalizing respect for objective principles of law at all levels of human action—towards "policy matters"—mobilizing all material *and human* resources in an effort to secure a more or less distant utopian result.[15]

[15] The vague, indeed incoherent concept of rule utilitarianism was often invoked to put a liberal (at least Humean) veneer on this shift of focus.

Utilitarianism in particular adopts the perspective of a single decision-maker who is in a position to tally up all the utilities and disutilities, all the benefits and costs, expected from each possible course of action, and to implement the policy promising the best net-results. That may make some sense in microeconomics, where every individual person or private entity is assumed to be constrained by the framework of law that defines the scope of the market, and is free to act, to succeed or to fail, on his own estimations. However, in public affairs, where the single decision-maker is likely to be some organ or agent of government, utilitarianism claims itself capable of instructing him on choosing the best framework of legal and administrative rules and institutions. The claim is spurious. It implies, among other things, that the government should re-interpret its inherently subjective valuations of *expected* utility as if they are objective "data". Otherwise, the government would merely be imposing its own valuations on other people—and it would do so because it happens to be the government, not because its valuations, estimations and guesses are inherently or provably superior to those of any or all of its subjects.

Of course, the idea that utilitarian decision-making can be based on empirical data is nonsensical in all but the most simple and routine real-life situations. At the moment of decision, no data are available on the consequences of implementing any of the proposed courses of action, and after that, there are data only on the course that was actually chosen. For the courses of action that were not chosen, no data will ever be available. There is no way to check if the choice made was indeed the best that could be made *on utilitarian grounds*. As a theoretical or blackboard model of subjective practical deliberation, utilitarianism may have some merit; as a guide to rational decision-making in politics, where some decide for others and their actions affect many more, it is sheer bluff.

The English professor and Member of Parliament Hugh Dalton gave an almost comical presentation of the utilitarian, pragmatic approach to policy making in his often-reprinted textbook, Public Finance (1922):

"[It] is sometimes thought to be a good argument against a protective tariff that it has other effects besides raising revenue. But this is, in fact, a very bad argument. For what opponents of a protective tariff need to prove is, not that it has other effects, for that is obvious, but that those effects are worse than those of some alternative method of raising an equal revenue. To this simple but comprehensive doctrine we continually return. Take account of all the probable effects, which can be reasonably foreseen, of any financial proposal which is under discussion; strike a balance of probable gain and loss to the community; compare this balance with that of alternative proposals, and act upon the results of this comparison. Those who are oppressed by a sense of the difficulty of this calculus, should console themselves with the saying of the ancient Greeks that 'it is not the easy things, but the difficult things, that are beautiful.'" (Op.cit., 15-16)

At best, the last sentence ignores that almost all of the difficulties involved in "taking account of all probable effects", determining what can be "reasonably foreseen" or even what is "under discussion", and "striking a balance of probable gain and loss to the community" are, in fact, impossibilities. Self-referential appeals to the ruling opinion of the experts on these matters may obfuscate the impossibilities but they do not turn them into mere difficulties. In textbooks and on blackboards, one can easily pretend to have numbers where in the real world there are only uncertainty and an occasional more or less informed guess—but textbooks and classrooms are not the places where decisions about policy are made. The only hard condition in the whole of Dalton's description of the decision-making process is that the government should reach its revenue target. We might as well say that the government decides what to do, comes up with numbers that make its decision look good and stands prepared to dismiss the validity of the numbers advanced in behalf of the opposition's proposals. *That* is not a difficult thing to do and it is not something beautiful. With the institutionalization of that kind of approach to policymaking, is it any wonder that the government and its departments proved to be an employment bonanza for economists and other numbers-producing empirical social scientists?

### *Neo-liberal team players*

Selling policy illusions to the government proved a lucrative business for the neo-liberals. Chastened by the experience of stagflation, governments and the interests that thrived on their support were willing to try new ways of maintaining their positions and achieving their objectives that were supposedly more effective and more efficient than the failed Keynesian policies. Moreover, despite their rhetoric about "government failures", the neo-liberals were not about to rock the government boat as much as their Keynesian opponents had predicted. They embraced the rhetoric of "market failure" with equal verve. In the utilitarian perspective of the single decision-maker, the combination of the two kinds of possible failures implies that the government has always to consider which is the better thing to do: "leave it to the market" or "intervene and take charge". This is the belief that "state" and "market" are like the left and right motors which a pilot can rev up or slow down to steer his airplane. It betrays the degree to which the neo-liberals subscribed to the Keynesian illusion of effective control.

With few exceptions, the neo-liberals were ready to acknowledge that most of the big government programs, social security, incomes policy, health care, formal schooling and education, research and development, intellectual property rights, and of course, central banking, defense, policing and adjudication were legitimate responses to textbook examples of "market failure". The programs were not perfect, hence could do with some reforms—that was about as far as the neo-liberals were prepared to go, as far as they could go, for they were not operating in a political and institutional vacuum.

Promising innovative systems of incentives to reduce demand here and stimulate supply there, or the other way around, gained the neo-liberals liberal access to positions in many government departments, where they would initiate, implement, and supervise all sorts of programs and reforms. The general theme was to mimic "the market" to some extent, but not to the extent that the programmed activities would be left to private parties operating under the laws of the market. From the point of view of the ruling politicians, the neo-liberals were excellent team players, always ready to make the existing system more efficient, never eager to question its *raison d'être* or its self-assigned legal privileges and immunities.

"Privatization", "public-private partnerships" and "deregulation" were the main items on the neo-liberal agenda. Often enough, privatization merely meant turning a government monopoly into a private monopoly or a well-regulated cartel, or even merely contracting out particular tasks to private firms. Contracting out had the drawback of diluting responsibility and liability, as in many cases consumers had no easy way of knowing whether the principal supplier or some obscure subcontractor was responsible for a particular mishap, or which legal regime applied to the one or the other.

The neo-liberal call for privatization did not question the "separate entity" status of the modern business corporation, which is an immensely important factor in shaping what the media, the public and academia perceive as "the market". Nevertheless, that status sets the corporation apart from any free-market compatible business entity in that it allows a corporation to own property while limiting liability for damages caused by the property to the assets of the corporation itself.[16] The personal assets of the individuals who control the corporation are protected against liability: it is, after all, a *separate* entity. That kind of ownership sits ill with the principles of law on which the free market relies. The ownership-liability nexus provides a vital motive for self-interested decision-makers to internalize costs and hence to contribute to the co-coordinating, harmonizing tendency of the market. However, the separate-entity status of the corporation allows natural persons to shift some, if perhaps not quite all, of the obligations and liabilities of ownership to an artificial person of their own making. The goal of incorporation may be efficient management of a large pool of property but it does not follow that transferring ownership rights to artificial persons is a lawful way of achieving it.

Public-private partnerships, both in the for-profit and the non-profit sectors, were barely veiled subsidy-schemes and blunt repudiations of the principle of the separation of state and society that was the essence of the classical liberal political philosophy. Intertwining public and private interests, they were what classical liberals would surely have castigated as recipes for legalizing fraud and corruption.

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[16] This is a problem even if corporate *actions* could always be traced to particular employees, managers or directors of the corporation. Then liability for such actions *could* in principle be resolved into the personal liability of such persons. For accidents arising out of the behavior of property as such, the normal rule is that, say, the owner of a dog that injures a passerby is fully liable for the damages caused by his dog, and not just to the amount of the value of the animal—even if there was no negligence on his part. However, if the beast were the sole asset of a corporation, the victim could at most sue *the corporation* to the full amount of its assets (i.e., the dog).

Deregulation usually took the form of lifting some regulations without there being any assurance that the state's court system would be willing to handle complaints and be capable of doing so on the basis of general principles of the law of property, contract and personal liability. In practice, deregulation often meant re-regulation in another form, either self-regulation by the industry concerned or regulation, at a more abstract level than had been customary before, by agencies, boards and other watchdog committees. These typically relied on a mixture of voluntary and required reporting of vital information and acceptance of "ethical codes" and "standards of governance". Although they might make recommendations for granting or revoking licenses, insist on burdensome inspections and issue guidelines for correcting one thing or another, they were not in the business of rigorously enforcing either laws or strict controls. After all, their role was not to stand in the way of private initiatives and creative practices.

As is almost inevitably the case, the relation of these regulatory authorities to the industries under their supervision was often close and cozy,[17] unlike the adversarial relation in an ordinary court, where the party that is found guilty of wronging another is bound to set things right by actually paying compensation or making restitution. They were supposed to protect the public interest but did little if anything to subject the industries to the true market discipline, which is the application of the principles of law to every exchange. Indeed, their only relation to the public was that they were created or authorized by the government and therefore, theoretically at least, under the control of the people's political representatives. Practically, this meant that the political representatives only took an interest when a scandal hit the headlines or a lobbyist pressed his case. Then they would, or would not, respond by changing the rules, the statutory authority, or the composition of the supervisory body. The new forms of regulation and

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[17] George Stigler's "The Theory of Economic Regulation" (*Bell Journal of Economics and Management Science*, Spring 1971) was an important source of criticism of the then reigning Keynesian orthodoxy. Twenty-one years later, his "Law or Economics?" (*Journal of Law and Economics*, October 1992) posited, "every durable institution or practice is efficient, or it would not persist over time." Apparently, the "capture" of regulatory authority by the special interest groups targeted for regulation must be efficient—not just for those interests but for "society as a whole".

supervision were as effective as their Keynesian predecessors had once been in keeping up the illusion that everything was under control. "No need to worry, we'll do it for you. Trust us!"

"Unleashing" the supply-side of the economy created winners and losers. No longer looking at government from the outside, the neo-liberals needed to accommodate all sorts of demands from consumers, users of public services and special interests. As most of these were also voters, it was not wise to antagonize them. Like the Keynesians before them, the neo-liberals soon learned that the law of unintended consequences made no exceptions for their pro-market, pro-growth interventions. As time passed, they became pre-occupied with the minutiae of "corrective" legislation and regulation.

None of this came close to a rigorous application of the general principles of law by a system of courts that is sufficiently equipped, intellectually or otherwise, to deal with the forms of organization and practices that had arisen in the context of the Keynesian "mixed economy". Not surprisingly, the neo-liberals had little appreciation for that fact. They paid no attention to principles of law and they did not instigate reforms that would have enabled the "live and learn" process of discovery-by-competition to develop—to try and test on a case-by-case basis—adequate institutional and jurisprudential responses to emerging practices and uncertainties. They were trapped in the policy-maker's mindset, which prefers to deal with abstract groups and statistics and sees people mainly as human resources of the economy, as means to officially accepted ends. Policy, after all, implies manipulating people and their property.

### *Eroding the barrier between public and private affairs*

The opportunistic approach to privatization, public-private partnerships and deregulation as well as their unintended consequences was to be expected in a regime where "the law" is considered a means for attaining politically determined ends, not an objective principle of order valid for legislators, judges and policy-makers no less than ordinary mortals. To criticize politically sanctioned ends was beneath the "scientific" dignity of the neo-liberal "counselors of the Prince". That sort of criticism required going beyond the data and the theory embodied in textbook models. It might be acceptable as a subjective "private opinion" but not as an argument in a discussion among experts.

Obsessed with data, the neo-liberals habitually disregarded the facts—in particular the fact that, in common parlance and in contrast to the etymology of the terms, "data" (from *dare*, to give) refers not to what is objectively given but to research artifacts, while "facts" (from *facere*, to make) refers not to "things made" but to the way things are. Rather than studying the real world, the neo-liberal economists preferred to process the numbers (*data*) produced by various, mainly governmental organizations. The fact that we all have to live our own lives as purposeful rational creatures was hidden behind a veil of statistics, correlations and lists of policy targets attained or missed. Yet, that fact is the foundation of all laws of human action, in economics no less than in the fields of jurisprudence and ethics.

The neo-liberal intellectual toolbox contained methods and formulae that for all their sophistication were nevertheless largely oblivious to the obvious differences between political and non-political institutions. In this respect too, it was an heir of the naïve utilitarianism of earlier times. As Hugh Dalton, whom I have quoted before, insisted, "[W]e need to scrutinise more closely than usual the expenditure of private individuals, no less than of public authorities." Maybe this was intended as an expression of scientific impartiality; it was in any case an expression of ignorance or neglect of the facts of life. Apparently, it escaped the "we" who were to do the scrutinizing that they too were only human earthlings, and therefore either on the side of "the public authorities" or on the side of "private individuals". They were not part of an Olympian meta-government that might intervene evenhandedly in the affairs of both sides without altering the relations of power between the one and the other.

The neo-liberals' utilitarian-pragmatic framework did not provide a principle for distinguishing between private persons and public authorities, between buying votes and buying widgets, between corrupting the law and making rules and regulations as expediency required. Before long, they began to condone and suggest all sorts of subversions of traditional principles of law and procedural safeguards to reach policy targets or comply with budgetary constraints.[18] A colleague, a member of the tribe, once chided me for not understanding the philosophy of freedom; "Freedom under the law means to be permitted to do whatever is not explicitly forbidden; therefore, the government is at liberty to do what it wants unless it is explicitly denied the authority to do it. If you have the right to do something then so has the government." This implies that what the government should not do, e.g., discriminate, no private person should be permitted to do. Others argued that once a policy goal has been declared legitimate for the government, private persons and organizations have an obligation to adopt it in the conduct of their own affairs. After all, if the ultimate criterion is complete well-being for all then what is utility-maximizing sauce for the goose is utility-maximizing sauce for the gander. If it is legitimate policy for the government to combat recession with increased public expenditures then everybody should spend, spend, spend. It would then be good policy to coax or force individuals into spending more of their incomes or even reducing their savings. In a similar vein, if one or another "human right" legitimizes government policy then every person or organization should respect that "right". Paraphrasing Andy Warhol's definition of art, we might say that utilitarian policy is what you can get away with.

Of course, such ideas encapsulate all that is abhorrent to the classical liberal notion of the rule of law and the separation of state and society it presupposes. Whatever the classical liberals may have meant when they argued for equality under the law, it certainly was not that the law of private persons ("private law") and the law of public persons ("public law") were the same. Indeed, for the classical liberals "public law" was a means to safeguard the integrity of the basic law of private persons, and justified only to the extent that it actually served that goal.

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[18] Ronald Coase's "The Problem of Social Cost" (1960) became immensely influential and was often interpreted as proof of the thesis that considerations of "efficiency" are a sufficient basis for assigning (and, if need be, re-assigning) property rights—hence, that legislators and judges, rightly advised by efficiency-maximizing economists, should be free to disregard other considerations. In truth, the so-called *Coase theorem* was no more than a tautological consequence of its own unrealistic assumptions (such as the absence of transaction costs). Its application to questions of legislation and adjudication moreover assumed that the advising economists somehow knew that only high transaction costs had prevented their proposed "efficient solution" from emerging spontaneously.

*Keeping up the appearance of control in the face of intellectual failure*

Now that they too are stuck in a dead end street of their own making, the neo-liberals appear eager to gain a share in Keynes's absurd reputation as the man who saved capitalism and the market by putting them under the high protection of a government not bound by any principle of law or ethics. One prominent Belgian neo-liberal monetarist economist, Paul de Grauwe (Catholic University of Leuven), answered the question how the crisis of 2008 had changed his views in this way: "A year ago I could not have imagined that I would propose to nationalize the banks. [...] Nationalizing a company is undesirable, I thought then. The events of the year have taught me that it is sometimes the best solution."[19]

Almost every comment on the crisis written by a neo-liberal economist, whether employed by the government, a university, an industry, a bank or a fund, expresses a similar attitude of resignation and surrender. The authors can only express their bewilderment and withdraw to their rhetorical high ground: "There are government failures and there are market failures, and in the recent past the latter have received too little attention. Now we need to redress the balance."

With apparent relief, neo-liberals resurrect the Keynesian paradigm they had so enthusiastically denounced when *its* failures made the daily news bulletins. None of them has any idea to offer on the conditions that made the crisis possible or on how it could have been avoided without sacrificing freedom and the rule of law. After all, they cannot see a crisis until it shows up in their data. Hindsight teaches them just enough to make them talk about low interest rates, imprudent lending and structured investment vehicles. It does not teach them enough to make them admit that, as specialists, they should perhaps have been aware of the moral hazard involved not only in such expansionary policies, practices and instruments but also in the framework of rules that had enabled these things to fester and drag down the entire economy. They paid a heavy price for using free-market rhetoric without

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[19] We should recognize, of course, that the crisis was "Made in the U.S.A" and that it would have served no practical purpose if the government of a small open economy such as Belgium had not gone along with the American, British and other major European governments. However, De Grauwe was not talking just about the Belgian "rescue plan". He had endorsed the actions of Bernanke, Paulson, and Gordon Brown from the start.

having a deep understanding of what constitutes freedom or what makes a market free. Unfortunately, the price they paid is mainly a loss of prestige. The real costs are borne by the public, which is still as much subject to the vagaries of supposedly enlightened economic, monetary and fiscal policy as it was in the hey-day of the Keynesians.

The main fallacy of the neo-liberal paradigm is the same as the fallacy of its Keynesian counterpart. It is the notion that the market is some kind of tool—a machine that the government can fire up or slow down as required to reach desired outcomes. Every crisis is to some extent an intellectual crisis. That was true for the long stagflation of the nineteen-seventies and it is equally true for the crisis that made headlines in the summer of 2008. Each of them brought to light the failure of a way of thinking that is at the root of both. The utilitarian-pragmatic cult of expediency and opportunistic decision making, its embrace of the single-decider means-ends framework, the belief in the existence of a political shortcut to "complete well-being"—they all betrayed utter disregard for the principles of law and justice, which, if understood aright and applied with vigor and consistency, provide a continuous reality check on human activity.

There is therefore no ground for hoping that Keynesian measures will clean up the present neo-liberal mess. For a while, a re-play of Keynesian errors may seem to some a welcome reprieve from the mistakes that until a year ago were hailed as harbingers of unlimited prosperity, but that is faint consolation. It is equally clear, however, that there is no way in which the present policy-mix can be kept in place. Certainly, the neo-liberal consensus is that while the Keynesian remedies are necessary right now, they should be seen as temporary. The Keynesians said the same concerning the neo-liberal policies when it became obvious that governments had had it with Keynes. Of course, everything human is temporary *sub specie aeternitatis*.

In every dead end street there is a point where one can only go from left to right and back and then right again, and so on and on. It is hardly helpful to call this the inevitable swing of the pendulum of history. It is going round in circles. The obvious solution is to recognize that the street is a dead end street and to abandon the illusions one had when entering it. Until the utilitarian-pragmatic cult loses its grip on education, the media, and the economics profession in particular, politics, but little else, will continue to thrive on the illusion that it can control the uncontrollable. Not equipped with the divine attribute of prescience, no government can predict, let alone determine, how over time multitudes of other people will react to its policies, exploit the opportunities they create and learn to avoid their burdens. In fact, no government can predict or determine even what the next government will do. How many governments look ahead to the day when they will be the previous government?

Until talking and thinking about real principles rather than expedient policies become widely accepted in public discourse, libertarians and classical liberals will not get a wide hearing and every succeeding generation will continue to have its share of major policy-induced crises.