

The Dark Lessons of Utopia

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While I was at UCLA in the late '60s and early '70s, *tout le monde* was a collectivist of one stripe or another. It was the height of the Vietnam War, a time when, in the words of Justice Douglas, we were bombing innocent peasants “whose only ‘sin’ [was] a desire for socialized medicine to alleviate the suffering of their families and neighbors.”¹ It was a time when every self-respecting college campus had its spring demonstrations and sit-ins promoting a cornucopia of causes, and when capitalism was a synonym for fascism. The cure for what ailed us, everyone seemed to agree, was greater, deeper, more extensive government involvement in our lives. And the sooner the better.

Having left the popular vision of Utopia—a country whose government attempted to solve everyone’s problems—only a few years earlier, I found this naive, or worse. And I said so, often and forcefully, to the dismay of my colleagues and professors who thought I was much too smart to hold such troglodyte views. When I confronted them with the hard reality of what life was like behind the Iron Curtain, I received various evasive or glib answers: “You have to give collectivism a chance to work,” or “there are different forms of collectivism,” or “Romania and the other Eastern bloc countries would do better if they were more like Sweden.” “You’re exaggerating,” still others would argue, “at least they don’t have crime, racism, pollution and huge disparities in wealth, the way we do.” And so on. In the years I spent at UCLA, I doubt I managed to wean even three people away from the sweet morphia of collectivism. Faith in the power of benevolent government is very difficult to shake.

Events in Eastern Europe over the last couple of years should prove an embarrassment to many. People in this country should be reconsidering their fundamental assumptions about what govern-

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¹ *Holtzman v Schlesinger*, 414 US 1316, 1317 (Douglas on reapplication to vacate stay), nullified, 414 US 1321 (1973).

ment can and should do, and what it should not. Surprisingly, this has not happened. Government at all levels grows bigger and more powerful, it absorbs more of our productive resources than ever before, and its involvement in our daily lives increases unabated. Even as the peoples of Eastern Europe strive to establish free market economies, implement private property rights and diminish the role of government, the United States continues on a path headed in the opposite direction. We have been so busy gloating over the triumph of our system, and so anxious to offer the Eastern Europeans advice on how to run their new lives, that we have hardly paused to consider what we might learn from their bitter experience.

In all likelihood, the people of Eastern Europe will do just fine, despite some of the bad advice that may come from the West.² Having lived through the dreary hopelessness of collectivism, they will eventually and unavoidably turn to free markets and private property. The transition to capitalism may take time, it may be painful, but it is inexorable.

The more pressing question is: How about us? Are we to learn anything at all from the disaster that befell hundreds of millions of people for so many decades? I posed this question to a friend of mine, a committed statist. Her answer was simple and not particularly encouraging: "What we have learned from the experience of Eastern Europe and the Soviet Union," she told me, "is that you need capitalism to make socialism work." In other words, capitalism must produce what socialism is to distribute. That, in essence, is the lesson many of our policymakers draw from the cracking of the Iron Curtain and the wasteland we have discovered behind it: so long as you leave production in private hands, more or less, you can let the government do whatever meddling it cares to. The idea that things may be improved by decreasing government involvement in the economy—and in every other aspect of our lives—is still viewed as a quaint eccentricity, a pre-New Deal anachronism.

It is tempting to say that I am describing a phenomenon limited to a tiny liberal elite—a view popular only inside the Washington Beltway, in a few state capitals and on college campuses.

² When Vaclav Klaus, Czechoslovakia's new Minister of Finance, visited New York early last year, a leader of a leftist group gave him the group's book about corporate America. His response was appropriately cool: "If this is another effort to make a third way between capitalism and communism, we have tried this. We wanted to create a New Man, with only unselfish thoughts. I am afraid it is not possible." John H. Fund, *Czechoslovakia's Free-Market Minister*, Wall St J A12 (Mar 2, 1990).

It's tempting but it's not true. We, no less than any other nation, have the government we deserve. The fact is, the vocabulary of political dialogue in the United States is undergirded by a variety of statist assumptions: solutions to social problems begin with government appropriations and the establishment of blue-ribbon government task forces, new agencies are needed to handle new problems or oversee new industries, and budgets of existing agencies cannot be cut without jeopardizing their missions. Based on these assumptions, we believe that a successful president is one who gets most of his legislative program passed, a successful legislator is one who authors bills that reach the statute books and a landmark Congress is one that passes a lot of laws. No one gets elected on a promise to do nothing; few incumbents campaign by listing laws they have managed to get repealed. When a problem arises—whether economic dislocation, a natural disaster, a dreaded disease, an infestation of rodents or a water shortage—politicians fall all over themselves to get on television and explain how they plan to spend taxpayers' money to solve it. I can't remember a single time when a journalist or constituent asked a public official about a problem, no matter how trivial, and the politician answered that handling it wasn't in his job description.

In a society that prides itself on individualism, self-reliance, personal initiative and independence, we consistently elect officials whose instinct is to solve our problems through government programs. Few people, it seems, have acknowledged a connection between what's happening in Eastern Europe and what's going on here. Perhaps it's time to state the obvious.

I. COLLECTIVISM AND FREEDOM: NATURAL ENEMIES

The lifting of the Iron Curtain has revealed societies that are the very antithesis of what Marxist ideology and its American apologists had predicted. The theory of collectivism, in one of its many variants, posits that people are naturally hardworking and productive, regardless of economic reward. If the government assures that people receive a decent living and if it allows them total freedom to choose their vocations, everything will get done through volunteer labor and, as the slogan goes, the fruits of production will go "[f]rom each according to his ability, to each according to his needs."³

³ Karl Marx (Saul K. Padover, trans), *Critique of the Gotha Program*, in Robert C. Tucker, ed, *The Marx-Engels Reader* 531 (Norton, 2d ed 1978).

In light of recent events—or even simple common sense—it is difficult to understand how educated, supposedly intelligent human beings could cling to this notion. You don't need clairvoyance to realize that a system of total free choice divorced from economic incentives would produce a vast overabundance of restaurant critics, movie stars, and surfing instructors, but a drastic shortage of rendering plant workers, highway button layers, and septic tank cleaners. On the consumption side, one would expect people to eat filet mignon instead of Spam, to drive Cadillacs instead of riding buses, and to shop at I. Magnin instead of K Mart. Without a price system to allocate resources and create incentives, there is no way to match up supply and demand, talent and job requirements.⁴ Even if one assumes a central authority with the efficiency of a computer and a superhuman ability to perceive everyone's abilities and preferences, there is no way to make it all work because things just can't be matched up.

And, of course, they weren't. The Fabian notion that the state would wither away as everyone went about doing what they were supposed to and consumed no more than what they "needed" gave way in collectivist economies to perpetual shortages, mandatory 50-, 60- or 70-hour work weeks, appalling medical care and a police state of monstrous proportions. Massive resource misallocations, shoddy workmanship and allocation of goods by favoritism, graft and queuing became the hallmarks of the collectivist state.⁵ Collec-

⁴ One of the most serious problems facing Eastern European policymakers may be grasping the fundamental role of the pricing system in spurring supply and tempering demand. Just how little they understand the workings of the invisible hand was demonstrated to me in a conversation I had with an economist during my visit to post-revolutionary Romania. I suggested that the most important thing would be for the government to get resources into private hands by sale, gift or lottery—the initial allocation mechanisms mattered little. He agreed in theory, but was concerned over what would happen if all the land were in the hands of private farmers and one year they happened to grow too much rice and too little wheat to sustain the population. He concluded that this was a risk Romania could not take.

⁵ See, for example, Paul Craig Roberts and Karen LaFollette, *Meltdown: Inside the Soviet Economy* 7-74 (Cato Institute, 1990). Discussing the chronic struggle to obtain food in the Soviet Union, Roberts and LaFollette state:

Even the homeless on the streets of urban America, if they wished, could readily obtain edible cabbages, potatoes, bread, animal fat, sugar, salt, the occasional soup bone, and dairy products—the basic Soviet diet—from the garbage bins of grocery stores. Indeed, the American poor eat much better than this.

Id at 44. The housing situation faced by Soviet citizens is not much better. The government-supplied housing is notoriously shoddy and, according to Soviet statistics, per capita living space is about 97 square feet in Moscow (a two-room apartment to house four people) and 75 square feet in the rest of the country. Based on reports from the Soviet Union, the authors believe the situation is actually worse than the official statistics suggest. Id at 52.

tivist agriculture has been termed a “disaster” due to chronic labor and capital equipment shortages.⁶ And while government officials attempted to control all aspects of the economy, they neglected the harm that industry and agriculture inflicted on the environment.⁷

But, in the words of Joe E. Brown, nobody’s perfect.⁸ Even if collectivist economies did not perform up to par, the tradeoff might have been acceptable if they achieved some of socialism’s other goals. Collectivism, after all, promised brotherhood first and abundance only second.⁹ All might have been forgiven if collectivism had brought about a happier, more tranquil, less harried existence. It is better to be poor and happy than rich and miserable, although admittedly it’s a close call. But it is precisely in this respect that collectivism had its most stunning failures. By every conceivable standard, collectivist states fell short of their expectations, failing to provide even a minimally acceptable quality of life for their citizens.

Consider the promise of equality. Collectivist theory teaches that differences in wealth and power must be leveled so that everyone stands on an equal footing: the janitor and the company president, the peasant and the commissar, the septic tank cleaner and the Secretary General. All citizens would call each other comrade because they would each be considered equally important in carrying out the glorious mission of the collectivist state.

To articulate the proposition, however, is to ridicule it. Few modern societies have been as stratified as those under collectivist rule. In the Eastern European countries that were under such rule, the same people controlled both the political and the economic power. This powerful elite demanded and enjoyed a high standard of living, leaving the rest of society with a standard of living that was appallingly low. In the Soviet Union, for example, members of the party elite were and continue to be entitled to a variety of privileges, among them better food, schools and housing, in addi-

⁶ Id at 45.

⁷ Id at 32-37. Roberts and LaFollette report that all major seas and lakes in the Soviet Union are dying and that drinking water is scarce in many regions. Id at 33. While U.S. industries discharge about 2.7 billion pounds of toxic chemicals into the atmosphere each year, industries in the Ukraine alone emitted 22 billion pounds of toxic substances into the air in 1988. Id at 32.

⁸ Billy Wilder, *Some Like it Hot* (United Artists, 1959).

⁹ Although the ordering is not absolute. Recognition that a minimum level of economic well-being was a prerequisite for the success of the true Marxist state was Lenin’s hallmark modification of Marx’s doctrine. Of course, this principle has served as a convenient excuse for the rulers in the Soviet Union and other Eastern European countries.

tion to the use of servants, cars and party-owned vacation homes.¹⁰ They shop in special stores that stock higher-quality food, scarce consumer goods and luxury items. The higher the official's rank, the higher quality special store he can enter.¹¹ The Soviet model is a typical arrangement in collectivist economies.

No less striking were the inequities perpetrated on the basis of immutable characteristics such as ethnicity, religion and gender. Stories about the official Romanian persecution of ethnic Hungarians are now commonplace.¹² Less well documented, but far more pervasive, was the harassment by straw bosses at all levels of employees under their control. An individual's job in a collectivist economy is often that person's only opportunity for earning a livelihood. Because a state-controlled economy does not allow for competition among enterprises in the same industry, an employee cannot just switch to working the same job for a competitor; a job change often requires a change in industry and the acquisition of new job skills. Because employees were largely immobile under the collectivist regimes, they were at the mercy of their supervisors' demands, reasonable or unreasonable. In most cases, the collectivist state reenforced the boss's tyrannical authority by making unemployment an economic crime against the state, often labeled "parasitism," which carried significant penalties. While employees had a right to fair treatment, at least in theory, the universal practice was to the contrary. Ethnic and religious discrimination was a well-known reality; sexual harassment a fact of life.

I recall vividly how I first learned the extent of this problem. During a trip back to Romania in the early '70s, I struck up a conversation with a man in a small town near Timisoara. He had two

¹⁰ Roberts and LaFollette, *Meltdown* at 67-74 (cited in note 5). The formal structure of the elite ruling classes in various Eastern European countries even spawned authoritative secondary sources cataloging the various privileges available to different ranks and listing the members of the elite. See, for example, Albert Loren Weeks, *The Soviet Nomenklatura: A Comprehensive Roster of Soviet Civilian and Military Officials* (Washington Institute, 1987); Michael S. Voslenskii (Eric Mosbacher, trans), *Nomenklatura: The Soviet Ruling Class* (Doubleday, 1984).

¹¹ Roberts and LaFollette, *Meltdown* at 70 (cited in note 5).

¹² See, for example, Robert Cullen, *Report from Romania: Down with the Tyrant*, *The New Yorker* 94, 94-95 (Apr 2, 1990); Celestine Bohlen, *Evolution in Europe: Ethnic Rivalries Revive in East Europe*, *NY Times* A1 (Nov 12, 1990). On the "notoriously difficult" life of Gypsies in Romania under Ceausescu, see Jesse Bryant Wilder, *For Roms: old ills, new riches*, *The Plain Dealer* 7-B (Dec 27, 1990). Wilder reports that Gypsies have fared better under the new government, both politically and economically. They have formed their own political parties and have taken advantage of the open borders to bring Western goods into Romania to sell on the black market. They often thrive in the unregulated markets, which allow them to avoid the discrimination they encountered as factory workers.

grown children, a son and a daughter. I asked whether they were going to the university. He said yes as to the daughter, but no as to the son. I asked whether his daughter was a lot smarter than his son. He said no, but added that it's far better to step with your boot into cow manure than to take off your boot and fill it with manure. I must have looked baffled because he explained: the son would take care of himself, but the daughter, unless she was armed with a superior education, would be constantly harassed for sexual favors by her supervisors. I asked him how he knew. He responded that he was himself a supervisor.

Collectivist societies, as we are now well aware, largely obliterated the liberties and privileges we consider essential in a civilized society: speech, religion, assembly, access to the courts, privacy of body and place of abode. This all-encompassing repression was a direct consequence of the collectivist economic systems. The governments gained complete and pervasive control over their citizens largely because they controlled all production processes, all channels of commerce and all means of transportation. Every citizen knew that his job, food, home, medical care and means of transportation—everything he needed to survive—were provided, and could be cut off, by the government. These societies perfectly illustrated the idea that freedom is an indivisible concept: economic freedom is intimately related to, and is a prerequisite for, other types of freedom. Political and intellectual freedom cannot be achieved without economic freedom.¹³

In Romania, for example, the economic system made it virtually impossible for an individual to publish or broadcast his views. Private citizens did not have access to printing presses and could not obtain sufficient paper or ink. The government even outlawed private ownership of photocopiers and required registration of typewriters. And individuals certainly did not have access to broadcast facilities.¹⁴

¹³ For a detailed and lucid explication of this idea, see Milton Friedman, *Capitalism and Freedom* (Chicago, 1982).

¹⁴ A Romanian union representative described the difficulty of undertaking a serious organizing effort:

We have no office, no telephone, no staff, and no means to acquire any of this. Also our country is without the infrastructure that could facilitate an organizing effort. For example, the television and radio are run by the government.

...

We want a newspaper for our union, but consider the obstacles. First of all, there is a paper shortage. We would likely have to receive paper from overseas. Second, all publication facilities are owned by the state. An opposition organization would need its own typesetting and printing equipment. And then we would need a van to deliver the

Similarly, the Romanian people could not practice their religions—even clandestinely—because the government made sure they lacked the necessary texts and ceremonial articles. A further impediment to any semblance of religious life was the lack of leisure time. Between long work hours and the time spent scrambling for the rudiments of survival, laboring for the state on weekends and attending political rallies, Romanians rarely had time for anything else.

The economic deprivation and lack of free markets under the collectivist regimes also interfered with personal privacy in ways that would shock Americans. In our society, individuals demand their own space and consider their homes to be their castles. But how much can personal privacy mean in Romania and other Eastern European countries, where several families often live in one apartment and share one toilet (which may or may not work)? In Romania under Ceausescu, the citizens never really knew when their phone lines were tapped, whether their workplaces and homes were bugged, or whether their mail had been read by government officials.¹⁵ Fundamental decisions regarding reproduction and sexuality simply couldn't be matters of individual choice because modern means of contraception were unavailable, even where permitted by law.¹⁶ In short, state control permeated virtually every aspect of personal, family and community life.

Far worse than the individual effects of these measures was the total loss of dignity visited upon the population. Life in a col-

newspapers.

Interview of Catalin Croitoru, president of the newly formed Union of Pre-University Educators of Romania, by Ruth Wattenberg, *Ceausescu's Schools*, *American Educator* 12, 22-23 (Fall 1990).

¹⁵ I learned the extent of this type of intrusion when I corresponded with friends in Romania during the early '70s. One day I received a letter written in Romania but post-marked in Germany. Not signed, the letter directed me to discontinue writing to friends in Romania because the correspondence was placing them in danger. I was baffled by the request because it did not specify *which* friends I should stop writing to. It was not until some years later, when I next visited Romania, that I learned what had happened: each person I had been writing to had been questioned by the police about the correspondence. One friend became so concerned that he gave my address to people who were planning to visit Germany so they could tell me to stop writing. Even though the letter was to be sent from outside of Romania, he was reluctant to give his name.

¹⁶ The Ceausescu regime explicitly coerced reproductive choices by essentially forcing Romanians to have children in an effort to supply abundant cheap labor:

First, you were fined if you did not have a child by a certain age. And if you had three children or more, you received a pay bonus.

...

And there were actually policies to encourage high school girls to have children. Croitoru Interview, *Ceausescu's Schools* at 15 (cited in note 14).

lectivist economy was one long struggle for survival. For the millions who were not members of the ruling elite, day-to-day existence meant long hours of menial work at low pay, followed by more long hours waiting in lines for such luxuries as bread, fresh meat and toilet paper.¹⁷ Weekends were often spent doing "volunteer" work, repairing roads or clearing corn fields for the government.

At every turn, the individual was confronted with powerful, mean-spirited representatives of the state who threatened abuse if they weren't paid off in money or black market luxuries such as coffee or Western cigarettes. Medical care, which was supposedly everybody's right, often could not be obtained at all, and never without greasing the palm of the dispensing physician or paramedic.¹⁸ Such power could only be wielded because all channels of authority originated in the state. There were no private alternatives, no way to circumvent the state-established and maintained power structure.

Another of the monumental failures of the collectivist system was education. While, in theory, collectivism assured everyone the right to pursue whatever career their talents warranted, the reality was much different. As part of the central planning process, the state determined each year how many doctors, lawyers, engineers, mathematicians and architects would be needed. The number was usually far less than the number of young people wishing to enter the field.

The chokepoint for a young person's career hopes usually came in the summer following graduation from high school. Those students hoping for a college education applied for the few available university positions; admission decisions were ostensibly made by use of standardized test scores. In practice, many university slots, like everything else, were allocated to those whose parents had connections or were willing and able to bribe university officials with large sums of money or exotic luxuries. The few remaining spots went to the very ablest of the large group of applicants.

¹⁷ I was reminded of the precariousness of most Romanians' lives during my last visit. I was introduced to a woman who is my counterpart in Romania, a judge for the national court system; her husband is a lawyer. Although not part of the ruling elite, their family income no doubt is in the upper five percent of the population. During the conversation I learned she had a daughter about the same age as one of my children. I asked her if she planned to expand her family and she said that she didn't think so; she did not see how she could face the stress of the daily struggle to obtain milk or baby formula for an infant, not to mention the myriad of other things a child needs to prosper.

¹⁸ See Roberts and LaFollette, *Meltdown* at 56-63 (cited in note 5).

The government denied the multitude who were not lucky enough to get into the university any opportunity to work in their chosen field. For them, all possibility of professional development was cut off; they were relegated to life on an assembly line or some other unskilled or semi-skilled work.¹⁹ Every summer, tens of thousands of aspiring high school graduates saw their lives literally crumble before their eyes, any hope for a fulfilling career and economic improvement snatched away from them forever.

Examples of major and minor ways in which collectivist societies frustrated individual development could easily fill several volumes. The degree of frustration, personal humiliation and economic deprivation suffered by the many millions of people imprisoned behind the Iron Curtain is difficult to comprehend by those who have never lived under that system. Suffice to say that the reality of the system in operation crushed with a vengeance any idealistic aspirations collectivist planners may have had in establishing and promoting centrally planned societies.

II. IT COULDN'T HAPPEN HERE. OR COULD IT?

In surveying the rubble left by decades of collectivist rule in Eastern Europe, it is easy to forget that the system was built on a high-minded and idealistic premise, namely, that by taking power away from individuals and by placing it in the hands of the state, one would achieve a more just, more prosperous, better-ordered society. Going at least as far back as Thomas More, there has been a pervasive and hardy notion that what individuals can do separately, by pursuing their own individual interests, the state can do much better if only it has the resources and the authority to make the same decisions in a centralized fashion.²⁰ Many of the individuals who supported collectivism in Eastern Europe, and who worked and fought for its implementation, were firmly convinced that they were helping to found Utopia. How, then, did things go so wrong so quickly? One could dismiss the entire collectivist experiment as a poor job of implementation, a good idea badly carried out. To do

¹⁹ This result may have been completely in line with the society Ceausescu sought to build. Catalin Croitoru stated that the dismal condition of the Romanian education system reflected "the Communists' aversion to intellectuals and intellectual life." Croitoru Interview, *Ceausescu's School's* at 16 (cited in note 14). He explained that the main purpose of the government "was to have cheap labor . . . as fast as possible" for both agriculture and factory work. *Id.* at 14. The regime's low opinion of intellectual work "was conveyed by the dilapidated school buildings, the lack of textbooks, the displacement of academics by propaganda, and by the very low salaries paid to teachers." *Id.* at 16.

²⁰ Sir Thomas More (Robert M. Adams, trans), *Utopia* (Norton, 1975).

so, however, is to sell short the idealism and good will with which many collectivist societies were founded, and to shut one's eyes to what happened once the state took it upon itself to run every aspect of the social order.

The problem lay not with the implementation of collectivism, but with its central premise. Quite simply, the state cannot take on the job of making all, or even a substantial number, of the important decisions in a society. The government can make and enforce laws, it can police, it can adjudicate, but it cannot decide what is in everybody's best interests. People's talents, needs, aspirations, goals and limitations are too diverse and conflicting for any central authority to take account of.

And even if it could, that power would carry the seeds of its own destruction. An essential aspect of life as a human being is the right and the power to make decisions about one's existence, to succeed or fail on one's own. Utopia carried its own resounding refutation. Even if one shared More's assumptions about what constitutes an ideal society, who would want to live there? A system that does not allow for failure also does not allow for the self-fulfillment that comes from striving; failure on one's own terms can be far more satisfying than bland security. What purpose is there in living if all essential decisions from cradle to grave are made by someone else?

Concentrating power in one central authority carries with it more palpable dangers as well. As should be clear by now, the state cannot repeal the laws of economics; there is no fixed demand for shoes, bread, automobiles, leisure or any other resource, and no fixed supply of people willing and able to engage in particular occupations. The only satisfactory way of matching up supply and demand for goods and services is through a pricing mechanism that allows individuals to take account of opportunity costs when making decisions.

Finally, there is grave danger in placing too much power in the hands of a few individuals. Honesty and good will can only go so far in preventing abuses of power. The sad experience of the collectivist economies proves what should have been obvious all along: unless a society has competing sources of power, those in control will take advantage of their authority to promote themselves and their friends at the expense of everyone else.

These lessons appear remote and irrelevant because we are a long way from a collectivist society. We rely, for the most part, on capitalism to furnish goods and provide employment; we have a system of limited government, with a Constitution and laws to con-

strain our public officials; and the government power that does exist is balanced in many respects by the power of private entities, civic and commercial. We seem to be far indeed from the type of societies that we have seen crumbling in Eastern Europe.

Unfortunately, however, we appear to be headed in that general direction. We may be safe for some time and, indeed, our system may have enough safeguards to keep us from ever getting there completely. But to the extent we seem to be adopting some of the operating assumptions of collectivist societies, we risk making some of the same mistakes—mistakes that may cost us dearly in the long run.

The architects of collectivism sought to achieve goals that are not all that different from those most people consider desirable. Collectivism promised prosperity and sought to achieve it by avoiding the “chaos” of capitalism and substituting the more orderly—and hence more “efficient”—system of government planning. Collectivism promised greater individual self-fulfillment by freeing persons of the economic pressures of a market society. Equality in wealth, status and power among individuals is another goal central to a collectivist system; so is the right to be free from hunger, homelessness or inadequate medical care. While one may reasonably dispute whether all of these goals are the proper objects of government control, few would disagree that they are desirable attributes of a modern society.

There is only a very small step, however, between recognizing a goal as desirable and concluding that it is one that government should promote. And it is only a very tiny step further to say that, if the goal is so desirable, perhaps we can shift the cost of achieving it to someone else in society. The two small steps are so simple, and by now, so reflexive, that most policymakers hardly bother to articulate them. Yet they are a prescription for a limitless expansion of government authority. There is an endless supply of problems we would love to have solved at the other fellow's expense. And the other fellow, of course, feels the same way.

The simple fact we should have discovered from our experience, and should have no remaining doubt about upon examining the shambles left by the collectivist societies, is that there is a limit to what government can accomplish. Even a government as powerful and intrusive as Ceausescu's Romania can control only a small fraction of the decisions in a society; individuals make many millions of decisions each day, adjusting their behavior in light of the government's actions. The more policymakers seek to accomplish and the more heavy-handed their actions, the more likely they are

to change existing incentives, triggering a series of behavioral adjustments. Every purported solution creates a ripple effect which, in turn, creates a new set of problems, sometimes more serious than those it attempted to solve.

Examples of this phenomenon in the United States are far too numerous to catalogue; a few will suffice. Occupational licensing is one of the most widespread and universally accepted forms of government regulation. After all, who could possibly object to having the state certify that the guy who removes your appendix didn't get his training from Oscar Mayer? Following this logic, some 800 occupations and professions are licensed by one or more states.²¹ A recent study by the FTC Bureau of Economics concludes that much of this licensing is unnecessary and counterproductive. Some occupational licensing schemes do not achieve the goal of raising professional standards, yet they increase prices to consumers.²² Even when the licensing achieves the goal of increasing competence among providers of the service, consumers are not necessarily better off. "Price increases due to licensing may cause some consumers to 'do without' the service, or to 'do it themselves.'"²³ The costs to consumers—implicit and explicit—can be staggering. In the dental profession, for example, the out-of-pocket cost to consumers of restrictions on the use of dental auxiliaries such as hygienists—restrictions that do not enhance the quality of services—is estimated to have been as much as \$700 million in a single year.²⁴

The consumer welfare effect of occupational licensing only tells part of the story, of course. Denial of a professional license, even temporarily, can have a devastating effect upon the career of an aspiring professional. Imposing such burdens on individuals might be legitimate if we were convinced that it would increase consumer welfare; such imposition is wholly unacceptable, however, when it results in a net decrease in consumer welfare. In the latter situation, of which there appear to be many, the attempt to do one right results in two wrongs.

²¹ Carolyn Cox and Susan Foster, *The Costs and Benefits of Occupational Regulation v* (FTC Bureau of Economics, 1990). This logic seems to be rather attenuated in some cases. Some states require licensing of boxers, horticulturists, butter makers and falconers. *Id.* at 3. California licenses 132 occupations, including auctioneers, repossessioners, pest controllers and funeral directors. Cal Bus & Prof Code §§ 5730, 7502, 8505.2 and 7617 (West, 1990).

²² Cox and Foster, *Occupational Regulation v* at v (cited in note 21).

²³ *Id.* at viii.

²⁴ *Id.* at 30.

Rent control, which has been imposed in a large number of communities, is another example of how well-intentioned regulation can have perverse effects. Despite some cynical suggestions to the contrary, I assume that most rent control schemes are passed in a good faith effort to even the balance of economic power between landlords and tenants so as to achieve rentals that are fair to both parties. But good intentions cannot repeal the laws of economics. Rents are usually high for a reason: they represent the market-clearing prices for housing. Rent control does nothing to ameliorate the underlying supply and demand conditions, and often exacerbates the problem by decreasing the market incentive to increase the housing stock. At the same time, tenants in rent-controlled apartments are less likely to move out or switch to smaller units, thus overusing the limited supply of housing. The perverse effects of rent control are too well-documented by now to require much elaboration.²⁵

A scheme with similarly perverse outcomes was the odd/even gas rationing adopted by several states, including California, during the oil crisis of the mid-'70s. The scheme was simple: if your license plate ended with an odd number, you could buy gas only on odd-numbered days; if you had even-numbered plates, you could only fill up on even-numbered days. The goal was to decrease lines at the gas pumps. No one was really sure how or why it would work, unless one accepted the naive notion that the lines would be half as long because only half the cars could buy gas on any one day.

Odd/even rationing made planning ahead more difficult because one could not be entirely sure how much driving one might have to do on a no-gas day. Consequently, most drivers were reluctant to let their gas gauges go too low and tanked up more frequently—precisely the opposite effect from that intended. In addition, being able to buy gas on half as many days roughly doubled a

²⁵ See, for example, Anthony Downs, *Residential Rent Controls: An Evaluation* (Urban Land Institute, 1988); Richard J. Devine, *Who Benefits from Rent Control?* (Center for Community Change, 1986). Devine examined the effects of California rent control statutes, particularly those enacted by the cities of Berkeley and Santa Monica. He found that rent control had failed on its own terms: “[R]ent control has done little to alleviate the affordability problems faced by one out of every three renters. But it has just about guaranteed that those who could easily pay more will never have to.” *Id.* at 74. Rent control had also exacerbated the tight housing markets in these cities because it “discouraged for-profit housing developers and mortgagees from investing in those communities” and “stimulated the conversion of rental units to owner-occupancy.” *Id.* at 66. Devine ultimately concluded that rent control had largely backfired: “[A]lthough protection of the poor was advanced as the primary justification for controls, it is the middle and upper-middle classes who have reaped the major benefits of this legislation.” *Id.* at 2.

driver's demand for gasoline on the days he was permitted to buy gas, resulting in a change in the make-up of the lines at the pumps but no decrease in waiting time. That government regulators did not predict this result reflects a lack of understanding of the fundamentals of economics evocative of the crumbling economies in Eastern Europe. Odd/even gas rationing is perhaps the quintessential example of government action taken simply because everyone expected the government to "do something" about the problem.

One could go on and on, but perhaps the most stunning example of the dangers of government intervention in the economy and of the failure of government officials to understand the consequences of their actions is the recent collapse of the savings and loan industry. No doubt it will take many years to identify the culprits in this debacle; perhaps we shall never know who they all were. But the one thing we do know is that this national disaster is the direct result of massive regulatory blunders.

At the heart of the regulatory scheme was a system of federal deposit insurance which, as of 1980, insured deposits up to \$100,000. Deposit insurance seems like one of those great regulatory ideas that could have few, if any, detractors. Congress established the FDIC in 1933 in response to a wave of bank failures during the Depression. Bank failures, the rationale went, often were precipitated by loss of public confidence in otherwise sound institutions, resulting in bank runs—rushes by clients to withdraw their funds. Banks, of course, cannot pay off all of their depositors at once, as they keep only a fraction of deposited funds on hand; they invest most of their money in loans and other illiquid assets. Bank runs are thus often fatal, even when institutions are financially sound. Deposit insurance was meant to assure depositors that they would always be able to get their money back, thereby preventing bank runs and promoting the stability of financial institutions.

Deposit insurance, of course, was only meant to protect financial institutions from false runs by depositors—runs that are precipitated by panic rather than legitimate concerns regarding a bank's soundness. It was never meant to insure against normal business risks such as bad investments or dishonest managers. But, as with all insurance systems, deposit insurance created a moral hazard problem because it allowed S & L executives to spend other people's money without any downside risk. When the government created the insurance system, it thus took on a correlative duty to guard against this moral hazard by overseeing and monitoring the industry to make sure that S & Ls invested responsibly. The S & L

crisis was the proximate result of a massive failure of such oversight. The reasons for this failure are complex. As we are beginning to learn, it was due, in part at least, to political pressure from elected officials seeking to protect troubled financial institutions in their states.²⁶

More generally, it was a failure of regulation. Having concentrated oversight over an entire industry—one holding hundreds of billions of dollars of other people's money—in a single agency that did not have the personnel or resources to monitor its activities, the government created the risk that a mistake could have disastrous consequences. It is not necessary to argue that this type of debacle was inevitable or even very likely; it is enough to point out that it could not have occurred had deposit insurance been left in the private sector.

These regulatory blunders provide their lessons at a very dear price. Estimates of the S & L bailout run as high as \$500 billion, but like others, I believe "there will be higher estimates in coming months."²⁷ To put this amount in perspective, the entire cost of World War II, adjusted for inflation, was only \$460 billion. Indeed, \$500 billion is greater than the total budget of all of the 50 states (using fiscal 1987 figures, the latest available), about four times the 1988 profits of all of the Fortune 500 companies, and several hundred times the \$1.3 billion the National Cancer Institute spent on cancer research in 1989.²⁸ What a colossal and tragic waste.

These domestic regulatory failures reflect our misguided faith in the government's ability to protect society from economic harm, a premise different in magnitude, but not in character, from that which provides the impetus for collectivist societies. Such debacles remind me of the traditional illustration of the mathematical concept of geometric progression—a lake that is slowly being covered by algae. The lake's owner notices that the algae grows by doubling in area every day. The owner decides he has plenty of time to deal with the problem and takes it up when the lake is half covered—only to discover that he has one day left before the lake is completely suffocated by the algae.

²⁶ See, for example, Richard L. Berke, *Ethics Unit Singles Out Cranston, Chides 4 Others in S. & L. Inquiry*, NY Times A1 (Feb 28, 1991); *Excerpts of Statement by Senate Ethics Panel*, NY Times A20 (Feb 28, 1991); Jill Abramson, *Cranston is Only 'Keating Five' Member Who is Charged with Ethical Misconduct*, Wall St J A12 (Feb 28, 1991).

²⁷ Michael Gartner, *Biggest Robbery in History—You're the Victim*, Wall St J A9 (Aug 9, 1990).

²⁸ *Id.*

It may seem to us that our system is far from those recently discarded by the Eastern European nations, but our complacency may be no better justified than that of the lake owner. Governmental intervention into all aspects of our lives—and particularly into economic matters—is now so pervasive and so readily accepted that there is really very little that government does not get involved in. At the federal level, there are now 51 major regulatory agencies; before 1900 there were fewer than ten.²⁹ Even after the New Deal there were less than 30.³⁰ Until as late as the 1960s, the industries directly regulated by federal and state agencies accounted for only one-tenth of the GNP.³¹ Since then, a number of agencies have been created to pursue certain policy lines and regulate across all industries, for example, the OSHA, EPA and CPSC. These agencies constrain American businesses at every turn. All American firms must comply with a confusing array of regulations relating to their personnel and compensation policies, production processes and facilities, and products or services.³² The recent increase in environmental regulation has been particularly dramatic. The EPA now accounts for nearly one-third of federal regulatory agency spending.³³ Its staffing has increased from 3,900 in 1970 to 15,300 in 1990, and its budget has increased accordingly.³⁴

The courts too have done their share of regulating business by means of the tort liability system. This method of shaping business behavior—settlements and damage awards in tort suits—is particularly pernicious because it is often at odds with regulations of other government agencies,³⁵ is unpredictable in its application and can impose burdens on society that far outweigh the benefits to consumers. The number of useful products or services that have been driven out of the market or made prohibitively expensive because of the risk of staggering tort liability verdicts is far from de

²⁹ Murray L. Weidenbaum, *Business, Government, and the Public* 20-21 (Prentice Hall, 4th ed 1990).

³⁰ *Id.* at 21.

³¹ *Id.* at 37.

³² For an illustration of the regulatory problems that might confront a typical American corporation during a typical board meeting, see *id.* at 1-3. A rough but revealing measure of the increase in federal regulation is provided by the growth of the Code of Federal Regulations. In 1965, the entire set of CFR volumes took up about three feet of shelf space. It took up nine feet by 1975 and thirteen feet by 1985. One of my law clerks measured the current set at over seventeen feet. In other words, the CFR has increased nearly six-fold in the last 25 years.

³³ Melinda Warren and Kenneth Chilton, *Regulation's Rebound: Bush Budget Gives Regulation a Boost 2* (Center for the Study of American Business, 1990).

³⁴ *Id.*

³⁵ See Peter W. Huber, *Liability* 45-61 (Basic, 1988).

minimis.³⁶ The drag of our tort liability system on American businesses also may place them at a competitive disadvantage in both domestic and international markets.³⁷

Although our government is a far cry from the all-encompassing state monoliths that have crumbled in Eastern Europe, one might be surprised at how much of our national wealth passes through the government's hands. Federal, state and local governments together spend more than 40 percent of our national income; at the turn of the century they spent less than 10 percent.³⁸ Federal spending on economic and social regulation has increased dramatically over the past two decades. In constant dollars, spending on both economic and social regulation tripled during this time.³⁹ Our federal government has become the world's largest landlord and tenant, as well as its largest bank, with a loan portfolio equal to the combined portfolios of the nation's 70 largest banks.⁴⁰ It also runs hundreds of hospitals, the world's largest data processing system and the world's largest civilian fleet of cars, trucks and buses.⁴¹

Some of what government does is good, and most of it is well-intentioned. But our ability to predict the full effects of governmental actions—much less the synergistic effects of hundreds of thousands of simultaneous government interventions—is very limited. Far too often there are unanticipated results and costs, de-

³⁶ These include contraceptives, prescription drugs, vehicles, sporting goods, transportation services and obstetrical and gynecological services. *Id.* at 3-5. Worse still, the threat of devastating liability prevents many potential products from ever coming to the market. Huber reports that potential innovators and inventors have "adjusted to the threat of liability by doing less. *Not* innovating is a remarkably easy thing to do." *Id.* at 155. He reports that research expenditures on new contraceptives and vaccines, for example, have plummeted. *Id.* at 155-56. For other consequences of overdeterrence, see Walter Olson, *Overdeterrence and the Problem of Comparative Risk*, in Walter Olson, ed., *New Directions in Liability Law* 42-53 (The Academy of Political Science, 1988).

³⁷ Huber, *Liability* at 229-30 (cited in note 35); Douglas J. Besharov, *Forum-Shopping, Forum-Skipping, and the Problem of International Competition*, in Olson, ed., *New Directions in Liability Law* at 139-48 (cited in note 36).

³⁸ Milton Friedman and Rose Friedman, *Tyranny of the Status Quo* 15 (Harcourt Brace Jovanovich, 1983).

³⁹ Warren and Chilton, *Regulation's Rebound* at 4 (cited in note 33). The authors report that in constant 1982 dollars, spending on social regulation (consumer safety and health, job safety, energy, and the environment) increased from \$2,394 million in 1970 to \$7,174 million in 1991 (projected); spending on economic regulation (finance and banking, industry-specific, and general business) increased from \$3,023 million in 1970 to \$8,919 in 1991 (projected).

⁴⁰ Randall Fitzgerald and Gerald Lipson, *Pork Barrel* xxxiii (Cato Institute, 1984). The federal government owns one-third of the total land area of the United States. *Id.* at 47.

⁴¹ *Id.*

spite the most careful efforts of government officials.⁴² And the costs add up: \$700 million lost annually on dental care, \$500 billion on account of the S & L crisis and who knows what amount for each of the other numerous governmental intrusions and interventions into the economy. Assuming we are able to clean up the S & L mess without severe injury to our economy—something yet to be seen—how many more such shocks can we sustain without precipitating an economic catastrophe?⁴³

And what about the smaller, more subtle burdens on our economic structure as a result of layer upon layer of regulation? How long can we continue to be competitive in world markets when we are slowly asphyxiating our productive resources with an endless stream of laws and regulations at the federal, state and local levels?

It is possible, of course, to exaggerate the problem. After all, we continue to have one of the world's most productive economies, although our lead over many other industrialized nations has dwindled significantly in recent years. And there are surely many legitimate areas of government regulation; if parsimoniously applied, government oversight may often achieve a net improvement in overall social welfare. What is alarming, however, is the widely accepted attitude that government can or must or will have answers for every problem. This very faith in the omniscience and omnipotence of government led to the establishment of the collectivist experiments we have seen crumble in Eastern Europe. Once this assumption is made, there are few logical stopping points short of total government control; inexorably, the tendency is to move in that direction. The sad experience of the hundreds of millions of human beings trapped behind the Iron Curtain until recently

⁴² The recent distress in the junk bond market is an example of how government intervention in one area may have unfortunate and unanticipated repercussions in other market sectors. In its efforts to increase oversight of thrifts, mutual funds and insurance companies, Congress passed new legislation essentially forcing these institutions to get rid of their junk bonds. This occurred when the junk bond market was suffering a decline. As a result, "thrifts, insurance companies and mutual funds were saddled instantly with losses, creating a snowball effect . . ." Glenn Yago, *Regulators, Not Junk Bonds, Sank First Executive*, Wall St J A18 (Apr 16, 1991). Even worse were the effects in the market. The government's response "turned a market correction into a regulatory rout," virtually "dismantl[ing] the junk bond market." Id.

⁴³ Some already warn about other sectors of the American financial system, including commercial banking. One writer blames the "antiquated regulatory structure" and the "massive failure by policy makers to grapple with the problems that have bedeviled the financial industry for over a decade." Ron Chernow, *Political Cowardice, Financial Panic*, Wall St J A10 (Jan 9, 1991).

ought to give us pause. It ought to make us take a hard look at that assumption.

CONCLUSION

In the current spate of constitution-writing, we can only hope that Eastern Europeans will profit from the dark lessons of Utopia. For better or for worse, the people of Eastern Europe will reform their economies and reexamine the assumptions underlying their systems of government. Although the transition from collectivism to market democracy will not be easy, they have their own history and ours to look to for pitfalls and paradigms.

But to paraphrase President Kennedy, we should ask not what Eastern Europe can learn from us, but what we can learn from Eastern Europe. Once burned, the people of Eastern Europe are not likely to fall prey to the notion that all things can be achieved if only government gets involved. The question is, are we going to pay heed, or are we destined to make some of the same mistakes with some of the same consequences?