

Exhibit 158a

in the case of:

**People of the Republic of Texas
and the
Sovereign Nation of the Republic of Texas**

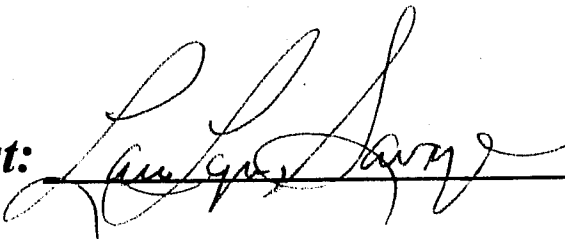
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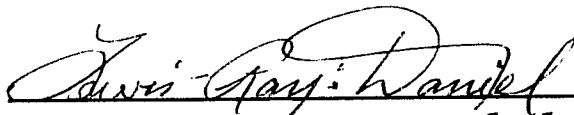
**UNITED NATIONS
(and all it's Political Subdivisions)
and
UNITED STATES
(and all it's Political Subdivisions)**

Under Pains and Penalties of perjury and the laws of the Almighty, and being sworn under a vow and oath, I attest that the attached pages are true and correct representations of the:

Historical & Constitutional Review from: Dr. Eugene Schroder & David Schechter, War, Central Planning and Corporations, Buffalo Creek Press (Texas).

This attestation is made on August 26, 1998.

Attest:  _____

 _____
Witness to source and above signature

 _____
Witness to above signatures



**War,
Central Planning
and Corporations**

The Corporate State

**Dr. Eugene Schroder
and David Schechter**

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Recommended background material
(Available from the same sources)

Constitution: Fact or Fiction
by Dr. Eugene Schroder with Micki Nellis
published by Buffalo Creek Press

War and Emergency Powers Special Report
by Dr. Eugene Schroder
available from Dr. Schroder

Federal Reserve Bank of Cleveland Working Paper 9405
by Dr. Walker F. Todd.

War, Central Planning and Corporations

The Corporate State

by Dr. Eugene Schroder
and David E. Schechter

editors Dr. Walker F. Todd and Micki Nellis



Buffalo Creek Press
Cleburne, Texas

Historical & Constitutional Review

The historical view that our forefathers had of central planning authority is perhaps best summed up in the first petition for redress of grievances sent to the King and Parliament of Great Britain in 1774, entitled *The Declaration of Rights*. It began with the words:

Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever, hath in some acts expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a country.²

The power to bind by statute in all cases whatsoever was an all-encompassing power, accommodating central planning authority of the highest degree, with which our forefathers violently disagreed. Our forefathers claimed that this enormous power, which we would call today administrative or regulatory law, (the power to affect private individuals' lives and fortunes in the sovereign's name outside the common law court and jury systems), was in violation of the British constitution, as reflected in Magna Charta (1215), for example, and urged the British government to curb its abuse.

The British failed to respond, resulting in a second petition for redress a year later, in 1775. The British again failed to respond (in fact, the King declared to Parliament that he considered the colonies in rebellion against his sovereign rule), and our forefathers subsequently declared independence in 1776. They successfully prosecuted the war for independence and eventually adopted a Constitution for our country that included some aspects of the British constitution while fashioning many others out of classical and Enlightenment ideas.

The AAM's preliminary review of the economic aspects of our

²The reference to the last war refers to the French and Indian War or Seven Years' War, which ended in 1763.

Constitution as the Framers intended it revealed a concept of government that was rhetorically inconsistent with total central planning authority. While delegating a degree of central planning to Congress or the Executive Branch in certain areas, such as coining money and regulating its value, the Constitution did not appear to delegate a power of total central planning or nationalization of private enterprise to the federal government. In fact, a review of the history of the causes of the separation of our forefathers from England would show that the entire foundation and fabric of our country was structured to alleviate the rule of a few over the many.³ For example, while Article I, section 1, granted all legislative power to the Congress, that power originally was intended to be limited by the specific enumeration of the purposes for which Congress might enact legislation.⁴ Article I, section 8, clause 1, of the Constitution delegated to Congress a power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Customs duties, tariffs on imports and exports, conceivably could lead indirectly to some degree of central planning, especially if imposed in such a

³ This was an issue hotly debated at the Constitutional Convention in Philadelphia, 1787, and in the Federalist and Anti-Federalist Papers and the state ratifying conventions subsequently. Two of the best-known discussions of this issue, whether the Constitution was intended to create a facility through which the few might govern the many, are Madison's Federalist No. 10 and Hamilton's Federalist No. 60.

⁴ This was the original intention as reflected in the writings of the Federalists, although the Anti-Federalists charged that a more expansive agenda awaited if the Constitution were adopted. Later, in 1791, Treasury Secretary Alexander Hamilton argued persuasively to President George Washington that the "necessary and proper" clause at the end of Article I could be construed to allow Congress to enact laws establishing economic regulatory mechanisms not specifically enumerated, in that instance the First Bank of the United States. Chief Justice John Marshall's opinion in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), reaffirmed Hamilton's interpretation of the expansive economic regulatory powers of Congress under the Constitution.

way as to provide advantage to one sectional interest over another. This clause, however, goes on to say, "but all duties, imposts and excises shall be uniform throughout the United States." Accordingly, this clause tends to negate any sectional interest or special interest power but leaves intact some general central planning authority.⁵

The President, in Article II, was granted the power to execute the laws passed by Congress, to be Commander in Chief of the Army and Navy, to make treaties with the advice and consent of two-thirds of the Congress, and several other lesser powers, none of which could be considered the power to centrally plan or nationalize.

When the limited central planning elements of the Constitution are viewed in light of the specific prohibition clauses, an even more restricted picture emerges. Foremost among these clauses is the Fifth Amendment, which provides that "No person shall be deprived of life, liberty, or property without the due process of the law." Should central planning powers authorized in the Constitution be used so as to cause injury to any person, the government's actions were to be subject to review by the people themselves through the jury system. However, through the judicial doctrine of sovereign immunity, the federal courts have allowed ever-increasing expansion of governmental central planning, especially since the 1930s. Sovereign immunity was pointedly ignored by the Framers and introduced into the Constitution initially as applying only to disputes regarding the states in the Eleventh Amendment (1798).⁶ For further discussion of the constitutional provisions potentially related to central planning, see Appendix 2.

When the latent or potential central planning powers of the federal government granted in the Constitution are viewed in light of historical precedents - the uniformity clauses, the specific

⁵ Other examples of what might be called "latent" or "potential" central planning authority in the Constitution are reproduced in Appendix 2.

⁶ One of the high water marks for federal governmental central planning measures in the courts was *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); see also, *Wickard v. Filburn*, 317 U.S. 111 (1942).

acquiescence." In fact, as one analyzes war powers, it becomes rather obvious that central planning is the essence of modern war.

Nations, like individuals, when faced with a life-or-death situation, react instinctively and do extraordinary things to preserve their very existence. All other issues fade into utter insignificance as long as the threat lurks. Nature provides extraordinary powers to man in such circumstances, and man in turn releases extraordinary powers to government when the nation's existence or safety is threatened. All resources will be inventoried and used in any manner deemed necessary. Anything short of this would be considered cautious stupidity. Thus, central planning becomes the essence of modern war.

Further analysis of the Constitution gives a picture that is entirely consistent with this conclusion. Article I, section 9, clause 2, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." Mere public unrest is insufficient to justify the suspension of the writ of habeas corpus; actual rebellion is required, and only then can the Great Writ be suspended. Similarly, even an actual state of war is insufficient to justify suspension of the Great Writ; actual invasion is required.

Article I, section 10, clause 3, prohibits the states against keeping troops in time of peace or engaging in war, "unless actually invaded, or in such imminent danger as will not admit of delay." But if a state is about to be invaded, it may raise an army and fight battles.

The 5th Amendment's generally prohibits the jurisdiction of martial law courts over individuals "except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger." Martial law over individuals is clearly allowed only on two explicit conditions: the individual must be within the military service; and that service must be in time of war or public danger.

The Supreme Court's opinion in the Russell case gives us, in other words, a constitutional and historical view that is consistent with Mr. Eizenstat's statement concerning central planning in

prohibition clauses, and the 5th, 9th, and 10th Amendments of the Constitution - we see a very limited power that must be applied uniformly. Extensive central planning, as contrasted to the classically liberal government envisioned by the Founding Fathers, appears to be a thesis and antithesis. Both cannot (or should not) occupy the same constitutional space at the same time.

Herein lies the dilemma arising from Eizenstat's statement to A.A.M. members. How can the federal government claim the power to centrally control and plan agricultural acreage, production quotas, and price supports, including the power to nationalize if so desired, under the authority of the originally intended or strictly construed, classical liberal view that underlay our constitution?

Because the historical perspective generated by A.A.M's constitutional review appeared to be inconsistent with the position taken by Mr. Eizenstat, a second review was initiated. Upon closer analysis of the first petition for redress of grievances in 1774, it was discovered that our forefathers did not entirely disagree with central planning, but that they violently disagreed with central planning during times of peace. The petition began with the words: "Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever . . ." Our forefathers did not argue against this power during the war, but claimed that it was an unconstitutional usurpation of power after the war ended, which was 11 years previously. Is it possible that the Constitution of the United States of 1787, as amended, contemplated such a significant power?

A.A.M's second in-depth examination of the Constitution revealed the following: At Article I, section 8, clause 11, Congress shall have the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." A new picture began to emerge.

If this article were viewed in light of the first petition for redress of 1774, only 13 years earlier, it would appear that the Constitution did indeed contemplate extensive central planning in time of war, but the Constitution also clearly contemplated that such war should be formally declared in the prescribed manner instead of being allowed to happen by way of "executive action" or "congressional

A Brief History of War and Emergency Powers in the United States

Our review of emergency powers in the United States immediately led AAM researchers to an extensive U.S. Senate study entitled, *Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency*.⁸

The foreword to that study begins as follows:

Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidential proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970, and August 15, 1971.

Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens.

An excerpt from the introduction reads thusly:

A majority of the people of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency. The problem of how a constitutional democracy reacts to great crises, however, far

⁸ Report of the Special Committee on Termination of the National Emergency. U.S. Senate, Nov. 19, 1973, 93rd Cong., 1st Sess., Sen. Rep. 93-549, page 1.

general and central planning over agriculture specifically.⁷ We in AAM then asked ourselves if an understanding of the history of war and emergency powers in the United States would prove our analysis correct.

⁷ The power to create a central planning regime in wartime is clearly expressed in the following excerpt from the 1871 case, *United States v. Russell*, 80 U.S. 623 (Wall.) 627-628: Private property, the Constitution provides, shall not be taken for public use without just compensation. . . . Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized or appropriated to the public use, or may even be destroyed without the consent of the owner. . . . Where such an extraordinary and unforeseen emergency occurs in the public service in time of war no doubt is entertained that the power of the government is ample to supply for the moment the public wants in that way to the extent of the immediate public exigency, but the public danger must be immediate, imminent, and impending, and the emergency in the public service must be extreme and imperative and such as will not admit of delay or a resort to any other source of supply. . . .

antedates the Great Depression. As a philosophical issue, its origins reach back to the Greek city-states and the Roman Republic. And, in the United States, actions taken by the Government in times of great crises have - from, at least, the Civil War - in important ways shaped the present phenomenon of a permanent state of national emergency.

The 1973 Senate Report indicated that the United States had in fact been under economic emergency rule since March 9, 1933, and that emergency rule, from at least the Civil War, had shaped the present phenomenon of a permanent state of national emergency.

In addition to the Senate Report, AAM researchers discovered a working paper prepared for the special Senate Committee on National Emergencies in 1974, entitled "A Brief History of the Emergency Powers in the United States," an extensive overview of this subject.⁹

On pages 10-11 the Senate Report quotes historian Clinton Rossiter's work, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, which states the contemporary view of crisis government as practiced by President Abraham Lincoln during the Civil War:

Mr. Lincoln subscribed to a theory that in the absence of Congress and in the presence of an emergency the President has the right and duty to adopt measures which would ordinarily be illegal, subject to the necessity of subsequent congressional approval. He did more than this; he seemed to assert that the war powers of the Constitution could upon occasion devolve completely upon the President, if their exercise was based upon public opinion and an inexorable necessity. They were then sufficient to embrace any action within the fields of executive or legislative or even judicial power essential to the preservation of the Union. [He] . . . implied that this government like all others, possessed an absolute power of self-defense, a power to be exerted by the President of the United States. And this power extended to the breaking of the fundamental laws of the nation, if such a step were unavoidable.

⁹ 93rd Congress, 2nd Session, Senate Report 93-549, July 1974, "A Brief History of Emergency Powers in the United States: A Working Paper."

On page 41 of the Senate Report, we find the following passage:

Like Lincoln, President Wilson acquired dictatorial powers during the period of American involvement in international hostilities. But the basis of Wilson's authority varied significantly from that of Lincoln's.

The most significant feature of the Wilsonian dictatorship is the way in which the President acquired his vast powers. The preponderance of his crisis authority was delegated to him by statutes of Congress. In brief, the most important single emergency device in the World War government was the delegatory statute. Confronted by the necessity of raising and equipping a huge army to fight overseas rather than by a sudden and violent threat to the Republic, Wilson chose to demand express legislative authority for almost every unusual step he felt impelled to take. Lincoln had shown what the office of President was equal to in crises calling for solitary executive actions. Now Wilson was to show its efficacy as a crisis instrument working along with the legislative branch of the government. The basis of Lincoln's power was the Constitution, and he operated in spite of Congress. The basis of Wilson's power was a group of statutes, and he cooperated with Congress.

With the passage of the Lever Act of August 10, 1917, President Wilson was authorized to establish new agencies or carry out emergency domestic functions through whatever established agency he devised.¹⁰

¹⁰ From Berdahl, Clarence A., *War Powers of the Executive in the United States*, Johnson Reprint Co., NY, 1970, c1921, pp. 204-206.] Control of Food and Fuel. From the first, it was recognized that the great contribution of the United States to the winning of the war must be the supplying of food for itself and the Allies. Hence a policy of food control was entered upon. . . . [204]

Finally, in August, 1917, Congress passed the Food and Fuel Control Act, vesting the President with complete control over the food and fuel resources of the nation. He was empowered, whenever he should deem it essential, to license the importation, exportation, manufacture, storage and distribution of food, feed, fertilizer, and fuel, and to prescribe regulations governing the businesses so licensed: to fix

into effect remedies of uniform national application.

TITLE

Section 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

Several important aspects of this Act immediately became apparent:

1. In the enabling portion of the Act the Congress did in fact declare a state of national emergency. Black's Law Dictionary (6th Edition) defines "national emergency" as: *National emergency. A state of national crisis; a situation demanding immediate and extraordinary national or federal action. Congress has made little or no distinction between a "state of national emergency" and a "state of war".*

2. Congress was going to implement "rules of uniform national application". Rules of uniform national application would be inconsistent with the peacetime Constitutional separation of State and Federal power as dictated in the 10th Amendment and in the uniformity clause (Art. I. sec. 8, cl. 1) but is entirely consistent with the state of affairs in a nation under war or emergency powers.

3. In section 1 of the 1933 Act, Congress retroactively approved all the actions, regulations, rules, licenses, orders, and proclamations of the President or Secretary of Treasury since March 4th, 1933, and automatically approved all actions, regulations, rules, licenses, orders, and proclamations of the President or Secretary of Treasury to be taken in the future. This is a rather broad, sweeping power, entirely consistent with the exercise of war or emergency powers. In fact, the authority cited by Congress for this delegation of broad power is the World War I Act of October 6, 1917, entitled the "Trading With the Enemy Act," as amended.

In light of subsequent events, the following passage from the U.S. Supreme Court case, *Stoehr v. Wallace*, 255 U.S. 239 decided

The picture portrayed in contemporary accounts is entirely consistent with that expected of a nation at war. However, the foreword to Senate Report 93-549 began by saying that the United States had been in a state of declared national emergency since March 9, 1933, a period in which there were no wars for at least the next eight years.

A closer look at the events of March 9, 1933, led AAM researchers to analyze the enactment of the "Emergency Banking Relief Act" that day (48 Stat. 1), whose text began as follows:

AN ACT

To provide relief in the existing national emergency in banking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put

prices of such food and fuel; to requisition such food, fuel, and other supplies, or factories or mines in which these are produced, "whenever he shall find it necessary;" to buy and sell wheat, flour, meal, beans, and potatoes, at prices to be fixed by him; to set a minimum guaranteed price for wheat (to be not less than \$2 per bushel); to regulate the operations of boards of trade; to limit, regulate, or prohibit the use of foodstuffs in the production of beverages, whether alcoholic or non-alcoholic; and, finally, "to make such essential [actions] effectively to carry out the provisions of this Act." [205]

Through a series of proclamations, the President required licenses of practically every sort of business connected with the production and distribution of food, including elevators and mills for the storage or distribution of wheat and rye; the importation, manufacture, and refining of sugar, syrups, and molasses; the importation, manufacture, storage, and distribution of more than twenty staple foods; the dealing in bread, bakery products, and green coffee; the arsenic, ammonia, and fertilizer industries; the trading in farm equipment; stockyards and connected businesses.

Besides inaugurating this system of regulation through licensing, the President empowered the Food Administrator to limit profits. . . . [206]

Feb. 28, 1921, is more than merely interesting:

The Trading With the Enemy Act, originally and as amended, is strictly a war measure, and finds its sanction in the provision empowering Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Const. Art. I, sec. 8, cl. 11.

The original 1917 version of the Trading With the Enemy Act identified, in section 2, the targeted enemies as German citizens and German corporations, or citizens or corporations of nations allied with Germany, but the act specifically exempted citizens of the United States from the definition of "enemy". Section 5(b), in its original version, provided as follows:

That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States).

Obviously, the original version of the act did not convey broad powers to the President over citizens of the United States and their domestic transactions, even in time of war. However, section 2 of the Act of March 9, 1933, amended the original 1917 act to read as follows:

Section 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export,

hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof. . . .

Regarding the 1933 amendment of the 1917 Trading With the Enemy Act, Senate Report 93-549, p. 186, has this to say:

Congress thus "spread its protective approval over executive acts the legality of which was uncertain." [citation omitted]. . . . Congress also amended Section 5(b) to provide, among other things, that "[during time of war or during any other period of national emergency declared by the President.] the President may . . . regulate, under such rules and regulations as he may prescribe . . . transfers of credit between or payments by banking institutions as defined by the President. In the enactment clause Congress declared "that a serious emergency exists. . . . The exclusion of domestic transactions, formerly found in the Act, was deleted from Sec. 5(b) at this time.

The overwrought Congress at that time was perhaps influenced by a host of constitutional scoundrels. They applied to United States Citizens and their commercial transactions the same treatment reserved for declared enemies of the United States during war.¹¹

On March 4, 1933, when President Franklin D. Roosevelt was inaugurated President of the United States, he said in his inaugural address:

I shall ask the Congress for the one remaining instrument to meet the crisis--broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.

¹¹ The retroactive approval by Congress of the President's actions went back to March 4, 1933, five days prior to the emergency enactment of March 9, in peacetime, despite the constitutional prohibition against ex post facto laws (Art. I, sec. 9, cl. 3).

Roosevelt obviously had a plan.¹²

The legality of using war powers in times of peace, with no congressional declaration of war, is highly suspect, to say the least. Some New Dealers were, in fact, at least mildly concerned that the appearances of constitutionality be maintained: others could have cared less. The "appearances matter" faction within the Roosevelt camp deemed it prudent for Roosevelt to obtain the consent of the states to proceed with his radical reform of the U.S. economy in peacetime, especially in light of the 10th Amendment's provisions on the reserved powers of the states.

In fact, Roosevelt already had called for a governors' conference to meet March 6, 1933, in Washington D.C. In that conference the Governors passed two important resolutions:

RESOLUTION PROPOSED BY GOVERNOR EHRINGHAUS

That this Conference desires to express its confidence in the leadership of the President and its desire that he be granted immediately by the Congress such broad powers as may be necessary to enable the Executive to meet the present challenging emergency and we, as Governors of the several States here assembled, hereby pledge to him our wholehearted and sincere cooperation and support in his efforts to rehabilitate the Nation and end the present terrible depression.

RESOLUTION PROPOSED BY GOVERNOR WHITE

Resolved, That we look approvingly upon the President's plan for

¹² For detailed analysis of this plan, see Walker F. Todd, *The Federal Reserve Board and the 1930s Banking Crisis*, in George Kaufman, ed., *Research in Financial Services: Private and Public Policy*, vol. 8 (1996), pp. 97-138. Greenwich, CT: JAI Press Inc. Also published in earlier versions as *From Constitutional Republic to Corporate State*, Committee on Monetary Reform and Education Monograph No. 51, October 1995, and originally as *The Federal Reserve Board Before Mariner Eccles, 1931-1934*, Federal Reserve Bank of Cleveland. Working Paper No. 9405 (April 1994). Roosevelt's emergency plan is described in the first article cited at pp. 111-112, and in the Working Paper at pp. 20-22.

better land utilization, as presented to us this morning, not only as a measure for the conservation of the Nation's natural resources but also as an effective step toward the relief of unemployment; and that we severally pledge ourselves to use our best efforts to ascertain, through proper surveys, the acreage that might be made available for such a program in our respective States.

A portion of Roosevelt's plan was unveiled a few minutes later. With the Governors' support, Roosevelt walked out of the conference and issued Proclamation No. 2039, seizing and closing all the banks in the country, citing section 5(b) of the Trading with the Enemy Act of October 6, 1917, as his authority.

Congress, in an attempt to legalize the actions, convened in emergency special session on March 9, 1933, declared a "state of national emergency", and passed the Emergency Banking Act bill, part of which amended section 5(b) of the Trading with the Enemy Act, without a copy for House members to read. A full-blown peacetime emergency government was born - a constitutional horror: Dire as the situation was, there was no declared war, no rebellion, and no invasion, which are the only constitutionally enumerated instances justifying military or other emergency rule. The House *Congressional Record*, March 9, 1933, p. 80, illustrates the problem:

Mr. McFadden. Mr. Speaker: I regret that the membership of the House has had no opportunity to consider or even read this bill [the Emergency Banking Act]. The first opportunity I had to know what this legislation is was when it was read from the Clerk's desk. It is an important banking bill. It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. . . . It is difficult under the circumstances to discuss this bill. The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917, with some slight amendments. The other gives supreme authority to the Secretary of the Treasury of the United States to impound all the gold in the United States. . . .

A few days later, this broad emergency power was to extend over more than just banking and finance. President Roosevelt's

Four days after my inauguration, Secretary of Agriculture Wallace at my request announced a meeting of representative farm leaders for March 10, 1933, in order to agree upon a farm program which would affect that year's crops. As I pointed out in the foregoing Message, speed was essential in order to avoid additional surpluses being accumulated by the 1933 crop. This conference of fifty farm leaders met on March 10, 1933. They agreed on recommendations for a bill, which were presented to me at the White House on March 11th by a committee of the conference, who requested me to call upon the Congress for the same broad powers to meet the emergency in agriculture as I had requested for solving the banking crisis.

Three days later I sent the proposed bill, which had been drafted in accordance with the recommendations of the conference, to the Congress, accompanied by the foregoing message. It was the most drastic and far-reaching piece of farm legislation ever proposed in time of peace. [This statement is rhetorically untrue, because Congress did in fact declare a general state of emergency on March 9, 1933, and a non-emergency/non-war-powers state of peace did not exist on March 10, 1933, the day in question.]

The war and emergency powers of government, as authorized in the amended section 5(b) of the Trading with the Enemy Act, was now going to be applied to agriculture, as well as banking. In the House *Congressional Record*, March 22, 1933, we find the following astute observations:

Mr. Fuller. A few days ago we gave the power of dictatorship to the president of this Nation over the banks of the country. Why should we refuse a dictatorship to the Secretary of Agriculture under the leadership of this same President for the farming industry of the country? [p. 759]

Mr. Lozier. I may confide to you that my business is farming. It is my only business. I will admit to you that it is not a particularly happy business at this time; but from my own experience and observation in the farming business

and then upon reading the provisions of this bill, literally I am staggered - I am staggered at the character of the proposals and the difficulties which will be encountered by the Government in endeavoring to carry them out. I am amazed that such a proposal with all its infinite ramifications should come from any administration for the exercise of the power or control, guidance, and compulsion over this huge industry. I visualize the immense bureaucracy that must be built up with its headquarters here in Washington, and its tentacles reaching all over this country, and as the gentleman from Kansas so well said a little while ago, reaching every back yard, endeavoring to control and to compel, Mr. Speaker, the citizens of this country in their millions. [p. 762]

Mr. Knutson. This legislation should be entitled "An act to Sovietize American agriculture", because that is just what it will do. [p. 762]

Mr. Beck. I think of all the damnable heresies that have ever been suggested in connection with the Constitution the doctrine of emergency is the worst. It means that when Congress declares an emergency there is no Constitution. This means its death.¹⁵ [p. 754]

On May 12, 1933, Congress passed the Agricultural Adjustment Act, of which the introduction follows:

AN ACT To relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

¹⁵ Appendix 3 contains the rest of Mr. Beck's speech on the peacetime emergency nationalization of agriculture.

Be it enacted

TITLE I-AGRICULTURAL ADJUSTMENT

Declaration of Emergency

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.¹⁴

On its face, it would appear that centralized emergency power over agriculture could be beneficial to farmers. However, when viewed in light of the Supreme Court's ruling in *United States v. Russell*,¹⁵ being "impressed into public service" can lead to property's "seizure or appropriation to the public use", or "may even be destroyed without the consent of the owner". This is "central planning" of the highest degree.

While the millions of acres of agricultural land and assets that support the national credit structure is a critical concept to understand when viewed in light of Title IV of the Emergency Banking Act of March 9, 1933, authorizing the issuance of new emergency currency, such an inquiry is beyond the scope of this paper.

Section 2 of the Agricultural Adjustment Act continued as

¹⁴ Except for the urban northeastern part of the United States, federal legislation on agriculture affected profoundly the economies on which state governments relied. The enactment of this bill had a far more profound effect on most states than any other federal economic emergency enactment could have had, except for the emergency banking act.

¹⁵ U. S. v. Russell, 80 U.S. 623 (Wall.) 627-628.

follows:

It is hereby declared to be the policy of Congress-

- (1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

- (2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

- (3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914.

The federal government now had blanket authority to set acreage allotments, production quotas, and fix prices for basic agricultural commodities. This is entirely consistent with the corporativist "central planning" policies espoused by President Carter's economic advisors.¹⁶

¹⁶ Title III of the Agricultural Adjustment Act also warrants study in connection with this push for central planning of the economy. In a section purportedly authorized by Article I, section 8, clause 5, of the

State Complicity

Having established a pretextual basis for federal economic emergency statutes and regulations, however dubious its constitutionality, a nagging question still remained for AAM researchers regarding the role and powers of the states. How can the federal government, in time of profound peace, assume and acquire such enormous power, especially in light of the Tenth Amendment? That Amendment, on its face, explicitly reserves all rights and powers not otherwise specifically delegated to Congress to the states or to the people.

In 1933, the states, despite the presumptive transfer of state powers to the federal government during the Civil War, still enjoyed a great deal of power to curtail the federal government. They could have elected to interpose themselves between the federal government and individual citizens of the states affected by the New Deal.¹⁹

The states, in some unanimous manner, must necessarily have abdicated their "States' Rights" to the federal government to allow the New Deal to be implemented within the states. Proceeding on this premise, the AAM initiated an investigation into state emergency powers and activities, with particular attention to state legislation and gubernatorial emergency proclamations in the period 1933-1935.²⁰

AAM's review of relevant state statutes began with the Colorado Session Laws of 1933, where a pattern emerged consistent with what one would expect of emergency government. On July 29, 1933, Governor Ed Johnson issued a proclamation calling for an extraordinary session of the General Assembly for August 2, 1933.

¹⁹ See discussion of the doctrine of interposition in *Black's Law Dictionary*, 4th ed., in Appendix 4.

²⁰ 1935 seemed to be an appropriate end date for the main part of AAM's investigation of state emergency economic activities because the centerpiece of the economic regulatory activities of the New Deal, the National Recovery Administration, was declared unconstitutional in *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

Congress cited Sections 43 of Title III of the Emergency Agricultural Adjustment Act coupled with the Emergency Banking Act of March 9, 1933, as its authority for the creation of the Exchange Stabilization Fund in the Gold Reserve Act of January 30, 1934, which in turn the Clinton Administration cited as the statutory basis for the January-March 1995 Mexican bailout. It also was purportedly under these same statutes that President Nixon issued Executive Order 11677, August 1, 1972, freezing agricultural prices, which set in motion the eventual formation of AAM.¹⁷

These statutes and events provide proof that an emergency government continued to operate in the private sector of the U.S. economy through at least 1972. The New York City and Chrysler Corporation loan guarantee programs of 1976 and 1980 and the Mexican bailout of 1995¹⁸ are examples that an emergency government continued to operate on a peacetime emergency basis, from time to time, at least into the mid-1990's.

Constitution, the coining money clause, the Act provides as follows: Section 43. Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion-

¹⁷ *Ibid*

¹⁸ The Mexican bailout program was announced in Washington, D.C., on January 31, 1995, and included up to \$20 billion of Treasury loans and loan guarantees. The maximum amount outstanding at any one time was \$12.5 billion, and the last \$3.5 billion outstanding were repaid to the Treasury in January 1997.

The "whereas" clauses of the governor's proclamation read as follows:

WHEREAS, the present nation-wide economic depression has created a serious emergency in this State due to widespread unemployment and consequent indigence and dependence of large portion of the people of this State; and

WHEREAS, because of the conditions aforesaid, distress and hunger exist among our people in such a degree that the public peace, order, tranquility and safety are seriously affected and endangered and the processes of orderly government itself imperiled. . . .²¹

A review of the first extraordinary session shows the passage of emergency acts in which the General Assembly granted the Governor nearly everything he asked for. However, many of these acts were in conflict with the Colorado Constitution. In fact, in *Re House Bill No. 6*,²² the Supreme Court of Colorado said:

We venture the assertion that no man, able to read and understand ordinary English, however otherwise educated or uneducated, wise or foolish, would question for a moment that this bill was a plain violation of the [state]

²¹ The listed purposes of the proclaimed emergency special session of the General Assembly included passage of legislation enabling the state to create an emergency relief administration, to enable counties and other political subdivisions to obtain federal loans for public works projects, to enable the state to cooperate with the federal government in establishing public employment agencies, to suspend the operation of the state's anti-trust laws, to enable public funds and fiduciary accounts to be invested in bonds of the new federal financial rescue corporations, and the like. The relevant portion of the text of the governor's proclamation is in Appendix 5.

²² Senate Journal of the 29th General Assembly of the State of Colorado, 2nd Extraordinary Session, 31st day, Wednesday, Jan. 3, 1934. Pages 102-104.

constitutional prohibition [which prohibited the state from contracting debts other than to defend itself], or find any reason to the contrary, save by a resort to profound legal learning and a doubtful application of judicial precedents. We think the bill contracts a debt by loan in one form.

Is that debt contracted to defend the state? On this question the declarations of the executive and legislative departments of the state government, while probably persuasive, are not binding here. If they were, the Constitution would cease to have even the force of a statute. If the people's "Thou shalt not" can be brushed aside by the simple *ipso dixit* of the public servants thus bound, the mandate is impotent. Such a construction, once adopted, breaks the barrier, and future legislatures, protected by the precedent, might pile up mountains of debt on future generations, resulting in inevitable impoverishment or ruthless repudiation.

Justice Adams commented in the case:

I am also unalterably persuaded that House Bill No. 6 is not a measure to defend the state when it needs no such defense. In witness, I point to the recent public utterances of the President of the United States and of the Governor of the State of Colorado, both of whom hail the dawn of prosperity. From whatever source economic improvement may have been derived, I cannot but feel that a subsidy of not to exceed \$10,000,000 with interest thereon, and which may equal that sum, is too big a price to pay to repel an enemy that does not exist. Beyond this I need not now express myself.

The Acts passed by the Colorado General Assembly in the extraordinary session, mostly on August 17, were those called for in Governor Johnson's proclamation. The governor obviously had foreknowledge of the acts he wanted passed at the time he issued the proclamation and almost certainly had pre-prepared copies in hand. It would have been virtually impossible for the state

time of prosperity with normal conditions may be too slow to meet adequately this dangerous emergency and stem the danger of an economic avalanche carrying all before it. . . . We a coalition of different groups and political and religious faiths respectfully request that you join the other governors of our country in the issuance of a proclamation on Wednesday March 8th in support of the President of the United States. . . .

The telegram was signed by Richard E. Byrd, chairman; Mrs. Calvin Coolidge; William Green, President of American Federation of Labor; Louis J. Taber, Master of Grange; Edward A. O'Neal, President, Federal Farm Bureau Federation; Dr. Nicholas Murray Butler, President Columbia University; H. G. Harriman, President U.S. Chamber of Commerce; Rabbi Stephen Wise; Dr. Harry Emerson Fosdick (pastor of Riverside Church in New York); Daniel Willard, President Baltimore and Ohio Railroad; and Walter Lippman, Publicist. On March 6, 1933, another telegram was received, adding the following names to "the petition": Cardinal Mundelein; Alfred E. Smith; Newton D. Baker; and omitting Mrs. Coolidge.

It must be remembered that a Governors' Conference was held in Washington D.C. on the same day that the governors received the telegram, March 6. This was three days before the scheduled emergency session of Congress. The governors on March 6 passed unanimous resolutions pledging their "wholehearted" support to the President and requested Congress to delegate broad executive powers, as broad as if we were invaded by a foreign foe. Governor Landon did not attend the conference in Washington D.C., but on March 7, at 8:23 p.m., he received the following telegram:

Most governors who were not in person at the governors' conference have individually wired intentions to issue proclamations - stop - This respectfully is a final checkup to insure unanimity of the proclamations to be issued by all governors of states on Wednesday, March 8 - stop - You will recall that the governors conference on my motion unanimously resolved to recommend such issuance by all

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legislators to have written these acts themselves on such short notice. This point is explored in some depth below.

In the proclamation itself, Governor Johnson alluded many times to the expectation that these acts were to be passed by the state in cooperation with federal government policies. This at least indicated that the federal government, or some entity acting in cooperation with it, had already prepared uniform acts for the states, which they were asking Governor Johnson to implement regardless of the peacetime constitutionality of the measures.

If AAM had guessed accurately about the existence of a larger, coordinated emergency plan involving more states than just Colorado, then examinations of the statutes and archives of other states should reveal similar emergency activities. In fact, a general examination of the statutes of the neighboring state of Kansas did reveal statutes written identically, in some cases verbatim. Other states had statutes substantively identical to those enacted at this time in Colorado. An examination of other states revealed essentially the same emergency legislation.

This discovery posed an interesting question. What foreknowledge of the coordinated effort did the governors have, and what influence did the governors have over the new emergency state legislation?

A search was begun in the state archives at Topeka of the personal papers of Alf Landon, Governor of Kansas during 1933-1937.²³

On the night of March 5, 1933, a telegram was sent to His Excellency Alfred M. Landon stating:

We respectfully submit to your consideration that the dire need of the hour calls for national unity in support of our president a unity even more complete and unselfish than that necessary in war. . . . Prompt and decisive action of a national scope in several directions is necessary to prevent economic collapse throughout the land the ordinary preparations of government that prevail and are suitable in

²³ David Schechter and Ed Petrowsky, researchers from Kansas, conducted the review of the Kansas state archives for AAM.

governors on March 8th appealing to their fellow citizens to support the President of the United States and our institutions etc. Kindly wire confirmation that you will issue such proclamation address room eight three eight Hotel Willard = Clyde L. Herring Gov of Iowa

Then on March 8, 1933, Governor Landon responded:

Proclamation has been issued Mailed copy last night to Richard E. Byrd Willard Hotel. . . . Now therefore I, Alf M. Landon, Governor of the State of Kansas, by virtue of the law vested in me, do convey this promise of cooperation to the President of the United States. . . .

At 6:24 a.m. on March 8, the following telegram was received by Governor Landon:

Complete success of program of simultaneous proclamations by all governors of states - stop - Please accept expression of deep appreciation - stop - Plans being made for reading your proclamation in every church in your state respectfully request immediate air mailing of your proclamation to me at Hotel Willard - stop - your patriotic and unselfish action in this emergency has supplied the leadership which will bring the nation to victory over every obstacle= Richard E. Byrd Chairman Coalition Committee

This telegram provides evidence that every governor of every state issued an emergency declaration simultaneously on March 8, 1933, the day before the federal Congress convened in emergency session. Further review of Governor Landon's papers disclosed a letter from the National Recovery Administration, dated August 5, 1933, signed by Hugh S. Johnson, the head of the NRA, to Mr. Franklin Corrick.

Some of the subjects and matters that may need consideration are set out below in five parts, viz: anti-trust laws, public works, national employment systems act,

Federal home owners' loan act, Federal Emergency Relief Act, and the Federal Banking Act of 1933. The acts or proposals which are of some length appear below in the form of synopsis. . . .

Frank Corrick, Kansas State reviser of statutes, organized these matters through the cooperation of the American Legislators' Association (ALA) in Chicago, Illinois. The public works act, the anti-trust act, the federal home owners' loan act, the federal emergency relief act, and the federal banking act of 1933 (Glass-Steagall Act), were passed in the first extraordinary session of the state of Colorado either verbatim or substantially identical to those proposed to the state of Kansas in NRA administrator Johnson's letter. In fact, the emergency legislation passed in every state was drafted to comply with these federal mandates organized by the ALA in Chicago, and was implemented by the general assemblies of the states in a uniform manner. This is highly consistent with the federal Emergency Banking Act of March 9, 1933, in which Congress declared that it was going to implement "remedies of uniform national application."

When state constitutional problems arose, we find telegrams of the following nature:

Hon Alf Landon November 25, 1933

Existing statutes of Kansas including legislation passed at present special session are in the judgment of our counsel inadequate to provide basis for revenue bonds either by the state or by municipalities within the state - stop - Fish and game act and highway commission act also inadequate to remedy deficiencies - stop - Unless substitute for house bill two seventeen senate bill one sixty nine now in house committee on state affairs which has been approved by our counsel is engaged at this session see no hope for success of public works program in Kansas - stop - Your cooperation in securing speedy passage of committee substitute will be of great value= Harold L. Ickes Administrator

Chas W. Eliot, second executive officer of the National Planning Board, Federal Emergency Administration of Public Works, issued a series of circular letters. The fifth circular letter, dated December 11, 1933, described the organization of state planning boards to meet the conditions which the national planning board had laid down for the states. Approaches and items for consideration of central planning were: public works programs; land use planning including "zoning" for the purpose of classifying and guiding the proper use of rural lands"; transportation systems including "growth and size of industrial areas, present and potential agricultural production, and ports, terminals, and markets for distribution of goods. He said that all methods of transportation should be regarded as part of a single system, to that end we must work out a practical method of integrating the different units so as to use each method in its most efficient and economic form". Also housing; population redistribution and social survey; conservation and planning of natural resources; recreation; distribution of industry; water resources; fiscal programming; and governmental reorganization were authorized. The letter went on to say "A full fledged state planning project will eventually include all of these items, and others as well, which are included in the 'suggested outline of basic materials of planning' contained in the second circular letter sent to the regional advisors."

We see unfolding before us a well-conceived mission to implement central planning on a grand scale within the United States in a time of "peace". The appendix written by Dr. Eliot to the fifth circular letter was "An Act to promote more economical and orderly development of the [state] commonwealth through the creation of an unpaid state planning commission." The minutes of the state planning commission for Kansas of April 10, 1934 began to address this "unpaid" problem. Mr. Wilson, the state planner and liaison to the national planning board, began the State Planning Board meeting discussing financing for the staff. He said:

As you know, a provision was made for furnishing a staff of the planning board under the CWA. Also, you will recall that an order came out terminating the work of the CWA on March 31st. . . . When we came up to the 31st of March,

the curtain was running down on the payroll of our staff. Fortunately, John Stutz, saw the relationship of the work of the planning board to the task which is on the shoulders of the Emergency Relief Organization, and also where, in the public works program, there is a direct relationship with the work of his organization in order to provide a work relief program. There is temporary assurance that the state planning board staff will be continued with its 75% cut. The salaries of the staff of the planning board will go into the cost of the overhead of the Emergency Relief Organization. . . . Someone is going to wonder how many employees the planning board should have. There is no limit to the number of employees that might be used.

It is interesting to note that the "state" planning commission had access to limited federal emergency money with which to pay a limited staff, but, on the other hand, there appears to be an unlimited fund to hire unlimited numbers of employees. This conundrum is clarified when we read the letter from Governor Landon to Chancellor E. H. Lindley, University of Kansas, on March 20, 1935, when the Kansas General Assembly failed to pass the State Planning Board Act, which would have provided state funding for the staff.

Dear Chancellor,

There may be some question in your mind with regard to the immediate future of the Kansas State Planning Board in view of the fact that the planning bill failed to pass the legislature. . . . We are of course dependent on the National Resources Board and the Spelman Fund for the continuance of effective work. Both have been advised of what occurred and a reply has been received from the Spelman Fund indicating that their attitude is unaffected by the action of the legislature.

If there had been a liberal appropriation available for the Planning Board at the outset of its work, I would not have expected it to accomplish more than it has. As it has had no

state appropriation and has had to depend entirely on outside resources, I think its accomplishments are reason for sincere commendation.

This review of Alf Landon's personal papers answered AAM's questions about state complicity (under federal direction) in the implementation of emergency government within the states. The states clearly were principal actors in implementing the central planning apparatus of the New Deal, using private funds for that purpose when needed. However, the answer to one question often leads to another question. The analysis of Governor Landon's papers certainly led to other questions.