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# From “Porous” to “Ruthless” Conscription, 1776–1917

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DAVID R. HENDERSON

**W**hat caused the United States to abandon its long tradition of a volunteer military, with some conscription by local and state governments, and to impose a harsh, federally run draft for almost forty years of the twentieth century? There were three major causes: (1) the existence of a much stronger central government, (2) a change in the political philosophy held by the elite, and (3) the Civil War draft. In this article, I document how each of these causes helped to bring about a harsh, ruthless draft in 1917, during the first year of U.S. participation in World War I.

## The Shift

Many people believe that the United States moved from manning its armed forces solely with volunteers in 1776 to using primarily conscription in 1917. Martin Anderson (1982), for example, draws a time line showing that the United States had no draft during the American Revolution, but the truth is that the thirteen newly independent colonies did not rely purely on volunteer militias. State governments used the draft during the War of Independence not only to man local militias, but also to fill their required quotas in George Washington’s Continental army

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*The Independent Review*, v. 14, n. 4, Spring 2010, ISSN 1086-1653, Copyright © 2010, pp. 587-598.

(Chambers 1987; Hummel 2001). In short, no shift occurred from complete volunteerism to conscription. Instead, a shift occurred from conscription run by state governments to a much harsher conscription run by the federal government.

When the thirteen colonies fought the War of Independence, they did so with professionals, nonprofessional volunteers,<sup>1</sup> draftees, and men who were hired as substitutes by draftees. But the draft of that time, though onerous, was in two main ways less harsh than future drafts. First, draftees were allowed to hire substitutes. Second, they were not drafted for years at a time. Moreover, state governments conducted all of the drafts; the national government (supposing that one even existed under the prevailing arrangements) had no power to draft men. Even the national government's main army, the Continental army, reached a peak strength of only 16,800 in 1778; most of the 200,000 Americans who served as soldiers during the war served in the local militia (Chambers 1987, 20–23).<sup>2</sup>

Conscription for the state militias that fought in the War of 1812 also relied on state drafts, not on a national draft. Indeed, although Secretary of War James Monroe tried to implement national conscription, he failed utterly. It was in response to this proposed draft that Daniel Webster made his famous speech denouncing conscription as “a horrible lottery” based on the throw of the “dice of blood” (qtd. in Chambers 1987, 33–34). One might argue that the United States was moving away from conscription at that time. The Mexican War of 1846–48 was the first declared U.S. war fought exclusively with volunteers.

During World War I, however, the U.S. government never gave volunteerism or the state militias a chance, even though army officers estimated that 1.5 million men could easily have been recruited in 1917 alone. Shortly after the United States entered the war, the government initiated a massive draft for which 24 million men registered. Of the 3.5 million soldiers who served during the war, 72 percent were conscripts (Chambers 1987, 171, 211, 73).

What happened to shift the United States so radically from reliance on volunteers and porous state drafts during the late 1770s through the mid-1800s to reliance on coercion by the federal government?

## A Strong Central Government

Imposition of a federal draft requires, obviously, a federal government. During the War of Independence, virtually no such government existed. The thirteen former colonies, with the support of their citizens, held on to their powers jealously. They did not cede to a central government the power to tax, much less the power to

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1. Military historians and sociologists often refer to these nonprofessional soldiers as “citizen-soldiers.” I decline to use this term because it implies a false differentiation between nonprofessional and professional soldiers. The vast majority of both groups was and remains citizens.

2. I owe an enormous debt to Chambers for many of the ideas and details presented in this article.

conscript. Even after the war had ended and the Constitution was being written, advocates of conscription “understood that an attempt to give the new central government such authority would have been unprecedented and might well have led to popular rejection of the Constitution” (Chambers 1987, 26). By 1917, however, the central government was much stronger. It had successfully asserted its power during the Civil War, and in the postbellum years it had regulated competition using the Sherman Act (1890) and the Clayton Act (1914), regulated railroad rates with the Interstate Commerce Act (1887) and subsequent laws (1903, 1906, and 1910), imposed an income tax (1913), intervened deeply in the banking system with the Federal Reserve Act (1913), and restricted cocaine, heroin, and other drugs with the Harrison Narcotics Act (1914). Although still tiny by modern standards, the federal government had become much larger and more powerful by an order of magnitude than it was in 1776.

The National Defense Act of 1916 gave the president the power to compel factory owners, by threat of criminal sanctions, to produce munitions for the government at whatever prices the government might choose to pay. Nationalizing men’s bodies was the next logical step (Higgs 1987, 128–29).

## The Change in Political Philosophy

As Robert Higgs insists, beliefs matter in social affairs (1987, 38). Although this idea should go without saying, a wide swath of economists unfortunately seems to believe that people pursue only their own narrowly defined interest and that the only “belief” they act on is that they should pursue this interest. In criticizing this view, Amartya Sen asserts strongly: “The purely economic man is close to being a social moron” (1977, qtd. in Higgs 1987, 41). Even a little introspection should persuade us that we often act on the basis of ideas, especially in the political realm.

Until almost the end of the nineteenth century, the dominant political philosophy in the United States was individualism. James Bryce, the keen British observer of U.S. society in the late nineteenth century, pointed to “certain dogmas or maxims” the Americans held, including the belief that individual rights such as the “right to the enjoyment of what he has earned . . . are primordial and sacred.” Also important were the beliefs that government authorities “ought to be strictly limited” and that “the less of government the better. . . . The functions of government must be kept at their minimum” (1895, qtd. in Higgs 1987, 83).

Nor were these the kinds of beliefs people held only when convenient. In 1887, President Grover Cleveland, who believed strongly in limited government, was presented with the Texas Seed Bill, which would have distributed seed grain to drought-devastated farmers in Texas. The amount appropriated in the bill was only \$10,000, the equivalent of about \$230,000 in 2009. Cleveland vetoed this bill. He could, he said, “find no warrant for such an appropriation in the Constitution” (qtd. in Higgs 1987, 83–84). In 1894, when the unemployment rate reached 18 percent and

Cleveland was pressured to spend money on public-works programs, he resisted again. Senator James Berry of Arkansas, voicing the dominant view of the day, declared: “each individual citizen should look to himself, and it is not the purpose of this Government to give work to individuals throughout the United States by appropriating money which belongs to other people and does not belong to the Senate” (qtd. in Higgs 1987, 86).

By 1917, however, the views of the elite, especially among the upper middle class, the news media, and the intellectuals, had changed dramatically. In the two decades before 1917, the so-called Progressive Era, large segments of people in these three groups had rejected individualism in favor of “progressivism.”

Progressivism is, in part, the belief that citizens owe a duty to the state and that the state has the right to use coercion to exact the payment owed. As the Progressive economists who founded the American Economic Association in 1884 stated, “We regard the state as an educational and ethical agency whose positive aid is an indispensable condition of human progress. While we recognize the necessity of individual initiative in industrial life, we hold that the doctrine of laissez-faire is unsafe in politics and unsound in morals; and that it suggests an inadequate explanation of the relations between the state and the citizens” (qtd. in Ekirch 1966, 183–84).

Herbert Croly, who wrote *The Promise of American Life* and helped to found *The New Republic* magazine in 1914, was one of the leading figures in this new ideological movement. He put the Progressive view more bluntly: “A democracy organized into a nation, and imbued with the national spirit, will seek by means of experimentation and discipline to reach the object which Tolstoy would reach by an immediate and miraculous act of faith. The exigencies of such schooling frequently demand severe coercive measures, but what schooling does not?” ([1909] 1965, 282–83).

Croly emphasized the fundamental importance of coercion, comparing the government to a stern schoolteacher:

The modern nation . . . really teaches men how they must feel, what they must think, and what they must do, in order that they may live together amicably and profitably. The value of this school for its present purposes is increased by its very imperfections, because its imperfections issue inevitably from the imperfections of human nature. Men being as unregenerative as they are, all worthy human endeavor involves consequences of battle and risk. The heroes of the struggle must maintain their achievements and at times even promote their objects by compulsion. The policeman and the soldier will continue for an indefinite period to be guardians of the national schools. ([1909] 1965, 284)

Croly would not countenance protest against these coercive measures on terms other than his own: “The nation may, however, on its own part demand that these protests,

in order to be heeded and respected, must conform to certain conditions. They must not be carried to the point of refusing obedience. When private interests are injured by the national policy, the protestants must be able to show either that such injuries are unnecessary, or else that they involve harm to an essential public interest (286).

What is the public interest? Is it necessarily connected with what the public is interested in? Not in Croly's mind: "The people are not Sovereign as individuals. They are not Sovereign in reason and morals even when united into a majority. They become Sovereign only in so far as they succeed in reaching and expressing a collective purpose" ([1909] 1965, 280).

Croly was not a fringe writer to whom no one paid attention. He was expressing the view held by the elite at the time, a view that he had no small part in creating. Theodore Roosevelt, one of the most nationalist Progressives, called Croly's book "the most profound and illuminating study of our national conditions which has appeared in many years" (qtd. in Ekirch 1966, 190). Progressive Felix Frankfurter, later a Supreme Court justice, wrote that Croly's book "became a reservoir for all political writing after its publication. Roosevelt's *New Nationalism* was countered by Wilson's *New Freedom*, but both derived from Croly" (Frankfurter 1930). In short, Croly's progressivism was a strong force in pre–World War I politics.

Progressivism was a major factor in the shift to conscription by the federal government, for three reasons. First, once one accepts the Progressive view that "severe coercive measures" are justified for achieving a "collective purpose," one can certainly justify a draft. Indeed, in justifying U.S. entry into World War I, Croly said, "The American nation needs the tonic of a serious moral adventure" (qtd. in Ekirch 1966, 202). Second, many key Progressives—Theodore Roosevelt, Henry L. Stimson, Secretary of War Newton Baker, John Dewey, and Walter Lippmann, for example—favored the draft (Chambers 1987, 99, 126, 128). Moreover, in the 1916 election campaign for the presidency, the Progressive platform was the only one that contained a plank calling for universal compulsory military training.

One way to detect the power of certain ideas in causing a change in policy is to examine the extent to which the language of those ideas and other ideas contained in the same ideological package are used to advocate and discuss that policy. The reasons that advocates gave for conscription and even the words they used to justify it derived from the Progressives. Doctors and public-health workers who wanted universal military training liked it because it might involve the federal government in nationalized health care, a Progressive goal. Cardinal James Gibbons, the senior Roman Catholic prelate in the United States, who also wanted universal military training, stated in words reminiscent of a statement made by Progressive philosopher William James, who wanted to "get the childness knocked out of" young conscripts, "[universal military training will] instill into them the spirit of obedience to lawful authority, a virtue too often disregarded in our land of freedom. It will teach them the dignity of obedience, which they will regard not as an act of servility to man, but

as a homage rendered to God since they will consider their superiors as His representatives” (qtd. in Chambers 1987, 120).

The *New York Tribune* editorialized a few days after Congress voted for conscription: “The idea that one may serve the State or not, as he pleases, had taken deep root in our easy-going American individualism. . . . But in a country . . . where economic and industrial conditions are complex, volunteering handicaps efficiency. It hampers national effort, because it prevents unification and scientific selection. It is a policy of muddling and waste” (qtd. in Chambers 1987, 176).

Terms such as *scientific* and *efficiency* were Progressive favorites. President Woodrow Wilson, in a speech given after passage of the draft law, used language similar to Croly’s: “It is not an army that we must shape and train for war; it is a nation. The whole nation must be a team in which each man shall play the part for which he is best fitted. Each man shall be classified for service in the place to which it shall best serve the general good to call him. It is in no sense a conscription of the unwilling. It is rather selection from a nation which has volunteered in mass” (qtd. in Chambers 1987, 170).

Note the extreme collectivism in Wilson’s statement that the nation “has volunteered in mass.” Of course, no such thing had happened. Rather, Wilson was a Progressive who viewed society as an organism in which the government constituted the brains. The Progressive mindset is evident also in the decision to ban volunteers from the military. The Selective Service System, after prohibiting draft-eligible men from enlisting in the navy or the marines, later prohibited voluntarism altogether. The draft officials saw voluntary enlistment as inefficient and disruptive. Secretary of War Baker even referred to “promiscuous volunteering” (qtd. in Chambers 1987, 142).

## Civil War Drafts

“Natura non facit saltum,” meaning “Nature makes no leaps,” is the epigraph of economist Alfred Marshall’s *Principles of Economics* (1890). Changes that appear radical and dramatic are actually incremental. Although the assumption is not correct—a major earthquake, for example, exemplifies a leap of nature—the adage reminds us that most changes are incremental. Moreover, as William Graham Sumner observed, “[I]t is not possible to experiment with a society and just drop the experiment whenever we choose. The experiment enters into the life of the society and never can be got out again” (qtd. in Higgs 1987, 58). The World War I draft exemplifies this truth. One cannot understand it without first knowing the steps taken in that direction by both the Union and the Confederacy during the Civil War.

The Confederacy’s conscription was by far the harsher of the two Civil War drafts. The Confederate Conscription Act of April 16, 1862, violated fixed-term enlistment contracts and compelled those who had already volunteered to stay for the rest of the war. Of the one million Confederate soldiers, 79 percent were

volunteers who were retained involuntarily, and the remaining 21 percent were drafted under the 1862 act. Although at first the Confederacy allowed draftees to hire substitutes, by the end of 1863 the price of a substitute had soared to \$600 in gold. In response, the Confederate government outlawed substitution and replaced it with a list of occupational exemptions (Chambers 1987, 45–46). The seeds of the 1917 draft are clear: first, the draft itself, and, second, the prohibition of substitutes and the stipulation of occupational exemptions.

The Union draft was an intermediate step between the tamer state militia drafts during the War of Independence and the much harsher national draft of 1917. The federal government administered it—an important step—and violation of the law was punishable by up to two years in prison. However, avoiding the draft was relatively easy. Under the Union draft law of 1863, draftees might pay a “commutation fee” of \$300 or hire substitutes to take their place (Chambers 1987, 52). Even many poor people bought their way out: sympathetic state and local governments gave them financial support to do so (Chambers 1987, 61). Moreover, governments at various levels continued to pay enlistment bonuses to get volunteers, and by 1864 enlistment bounties were as high as \$1,000—equivalent to twice the annual earnings of a blue-collar worker. By the end of the war, the Union had paid approximately \$500 million in enlistment bounties (equivalent to approximately \$7 billion in 2009 dollars).<sup>3</sup> As a result, only 46,000 conscripts (about 2 percent of the army’s personnel) and 118,000 substitutes (about 6 percent) served in the Union army (Chambers 1987, 62). The rest were volunteers.

The Union and Confederate drafts paved the way to the Selective Draft Act of 1917 in three main ways: (1) both drafts set a precedent; (2) citizens learned from the Union draft that the federal government would take extreme measures to enforce its will; (3) draft authorities learned from the Union draft and based the 1917 draft on that learning.

### *The Precedent*

Simply by having been, if only for a short time, part of the status quo, any law becomes easier to enact again. Sumner makes that point in the passage quoted earlier, and Higgs (1987) makes it again and again. The various government intrusions during World War I, even though repealed, became easier to implement during the Great Depression simply because they were no longer “unthinkable.” This tendency prevails even if the law is touted originally as a temporary measure. Many now permanent sales and income taxes, for example, were originally “temporary.” The draft law is no exception. The Civil War drafts set a precedent. The Union draft was harsher than any draft that preceded it in U.S. history, and the Confederate draft was

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3. This estimate relies on price indexes available at [http://www.minneapolisfed.org/community\\_education/teacher/calc/hist1800.cfm](http://www.minneapolisfed.org/community_education/teacher/calc/hist1800.cfm), accessed December 30, 2009.



even harsher. Because these drafts became part of the American tradition, imposing a draft afterward became much easier.

### *Citizen Learning*

During the Civil War, the draft imposed in the North in 1863 set off the worst rioting in U.S. history to that point. Armed resistance broke out in New York City (approximately 120 killed), Albany, Boston, and Rochester. President Abraham Lincoln did not flinch; he sent federal troops directly from their recent battle at Gettysburg to quell the riots (Chambers 1987, 53).

Moreover, Lincoln demonstrated a steely resolve to enforce the draft law. By suspending the use of the writ of habeas corpus, he was able to keep draft resisters, advocates of draft resistance, and editors of antiwar newspapers in military prisons (Chambers 1987, 56). At least thirteen thousand civilians are estimated to have been held in military prisons, often without trial or after only cursory hearings before military tribunals (Ekirch 1966, 125). Sanctions against aliens who declared their intent to become citizens were especially severe. An 1864 amendment to the draft law provided that declarent aliens might be deprived of their political rights and even deported if they refused to be conscripted (Chambers 1987, 59).

In short, Lincoln made clear that the federal government was willing to take coercive measures to enforce a draft and to suppress opposition to it. Potential resisters and draft opponents in 1917 had not forgotten this lesson.

### *Lessons for Draft Authorities*

Whom did draft officials during World War I proclaim “the father of the modern selective service”? Not General Enoch H. Crowder, one of the principal authors of the 1917 draft law and the first head of the Selective Service, but General James Oakes, the head of the draft in Illinois during the Civil War (Chambers 1987, 297). He was given credit because of an 1866 report he wrote in which, drawing lessons from the Union draft, he recommended ways of making future drafts more politically acceptable. Among the recommendations noted by historians is that instead of having military officers track down and enroll draft-age men, the government should require draft-age men to register. Oakes’s thinking was (correctly) that a strictly enforced requirement to register would yield more compliance at a lower cost to the government. Another recommendation was that people not be allowed to buy their way out, either with commutation fees or by hiring substitutes (Oakes 1974). Of significance is the fact that, in 1889, while a young cavalry officer, Crowder had read Oakes’s report.

When the Wilson administration decided on March 28, 1917, to implement conscription, Crowder dusted off Oakes’s fifty-one-year-old report and adopted both proposals. He decided to have draft-age men seek out places of registration, and he



went Oakes one better by having all registrations take place on one day, June 5, 1917 (Chambers 1987, 180, 184). He aimed to focus public attention. As a result, 10 million men registered on the first registration day.

Another way the Union draft experience helped to create a palatable draft later was simply by reminding Crowder and his staff that they had to plan if they wanted to avoid the riots that greeted the earlier draft. And plan Crowder did. Aware that Americans would be suspicious of and hostile to a centralized draft agency, he established a network of local draft boards, one in each county and one for every thirty thousand people in large cities. The members of these boards were prominent local citizens unconnected with the military so that registrants would be signed up by, in Crowder's words, "friends and neighbors" (Chambers 1987, 172–73, 181).

This plan was a stroke of warped genius. It succeeded in enmeshing local citizens in the federal government's scheme. Imagine the conflicting tugs pulling on a prominent draft foe who was asked to be a member of his local draft board. On the one hand, he would feel twangs of conscience in accepting the position. On the other hand, he would see possibilities for making the draft less onerous or fairer. Chances are that all but the most outspoken opponents of the draft would say yes. And then Crowder would have them.

Consider also a potential draftee's situation. Facing a group of military officers employed by a distant federal government, he could plausibly imagine that if he wanted to resist the draft, he would receive support from at least some prominent local citizens. But facing a draft board of local citizens, some of whom he might otherwise have imagined to be antidraft, would quickly disarm him by convincing him that he was in his fix alone and would receive no support if he asserted his right to dispose of his own body.

Crowder was remarkably candid about his motive for using draft boards. The boards, he wrote, served as

buffers between the individual citizen and the Federal government, and thus they attracted and diverted, like local grounding wires in an electric coil, such resentment or discontent as might have proved a serious obstacle to war measures, had it been focussed on the central authorities. Its diversion and grounding at 5000 local points dissipated its force, and enabled the central war machine to function smoothly without the disturbance that might have been caused by the concentrated total of dissatisfaction. (*Second Report* 1919, 277)

Added to this enmeshment was a calculated corruption of the draft language. Secretary of War Baker, the former Progressive mayor of Cleveland, explained to Congress that the administration was avoiding negative terms such as *conscript* and *draft* and was emphasizing positive terms such as *public service*. Thus was born the term still in use today: *servicemen* (Chambers 1987, 182).

Oakes's original 1866 report had emphasized that penalties against nonregistrants should be "stern." The federal government readily took his advice in 1918. It organized so-called slacker raids, rounding up draft delinquents in massive sweeps. The largest such raid took place in New York City one week before the draft registration of September 12, 1918. Federal agents, local police, and 2,000 armed soldiers and sailors stopped tens of thousands of military-age men and forced them to show their draft cards. These enforcers were aided by members of the American Protective League, a 250,000-strong citizens' group organized to spy on and arrest their friends and neighbors who avoided or resisted the draft. During the war, the league made 40,000 citizens' arrests and investigated about 3 million suspected subversives (Chambers 1987, 209, 213–14, 148).

Oakes is generally given credit for the two earlier mentioned changes in the draft machinery, but they were not his only contribution. In colorful language, he had blamed newspapers for fueling draft resistance: "But the grand cause—the only really guilty and formidable source of dangers through which Illinois has passed—is to be found in the steady streams of political poison and arrant treason which have been permitted to flow from the wicked, reckless and debauched newspaper press of the State. But for this, enrolment and draft would have passed off with scarcely a ripple of disturbance" (Oakes 1974, 100).

In other words, the press was free, and it used its freedom to articulate views different from Oakes's, and he did not like it. His solution, which he denied advocating even while advocating it, was censorship. He wrote: "In my opinion, without desiring in the least to abridge the regulated liberty of the press, it is as much the duty of the government to suppress such newspapers in time of public danger and war, as it is to storm the fortresses, sink the navies, and destroy the armies of the common enemy; and should war break out I would urge the prompt adoption of that policy" (Oakes 1974, 100–101).

Whether because Oakes recommended censorship or because the Wilson administration thought of it independently, the latter did resort to censorship. The federal and local governments effectively outlawed the Socialist Party of America, which was mounting the major organized opposition to the draft. Postmaster Albert S. Burleson, for example, censored by denying mailing "privileges" to "more than a dozen socialist publications" (Kennedy 1980, 27).

The government went even farther. Under the Espionage Act of 1917, anyone who obstructed the draft process was punishable by a fine of up to \$10,000 and imprisonment of up to twenty years. The law was also used against those who simply spoke out against the draft. Local police and goons broke up meetings of the Socialist Party of America, and many Socialists were arrested for violating the Draft and Espionage acts. In April 1919, after the war had ended, former presidential candidate Eugene V. Debs was sent to prison for violating the Espionage Act.<sup>4</sup>

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4. From <http://www.eugenevdebs.com/pages/history.html>, accessed September 22, 2008.

An ironic aside: In *Schenck v. United States*, the first World War I case on free speech to reach the Supreme Court, the court cooperated in violating free speech. In that case, two Socialists were charged under the Espionage Act. Their crime: printing and distributing to draftees pamphlets that contained the text of the Thirteenth Amendment (which forbids slavery and involuntary servitude) and a harangue on why young men should not submit to the involuntary servitude of the draft simply to benefit Wall Street. The Supreme Court decided that the two Socialists' freedom of speech was not protected by the First Amendment. The decision, written by Justice Oliver Wendell Holmes Jr., contains two famous passages that give both a test for when free speech may be suppressed and a justification for the suppression. The test: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to present a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." The justification: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."<sup>5</sup> How ironic that these two famous passages turn out to have no connection with the facts, unless asserting a constitutionally protected right—the right to avoid involuntary servitude—and testing whether the court will protect it present a "clear and present danger" and unless speaking out about these rights is analogous to misleading one's fellow theater-goers about a fire in the building.

## Conclusion

The United States shifted from a relatively porous state draft in the nation's early years to a harsh federal draft in 1917 for three major reasons: the existence of a strong federal government, the dominant elite's ideological change from individualism to progressivism, and the precedent provided by the Civil War drafts.

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5. From [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0249\\_0047\\_ZO.html](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0249_0047_ZO.html), accessed September 22, 2008.

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**Acknowledgments:** I am grateful to Jeffrey Rogers Hummel, the late Joan Kennedy Taylor, and an anonymous referee for helpful comments.

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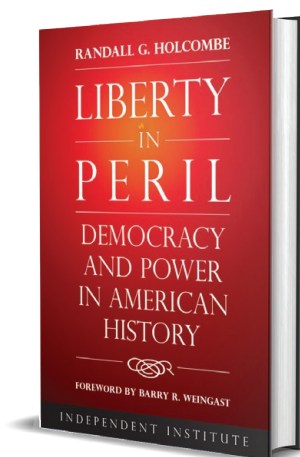
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