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# **RACIAL EXCLUSION IN THE MIRROR OF NEW DEAL RESPONSES TO THE GREAT CRASH**

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**RACIAL EXCLUSION IN THE MIRROR OF NEW DEAL RESPONSES  
TO THE GREAT CRASH**

Harry G. Hutchison\* ©

REVIEW ESSAY

*LIBERAL FASCISM: THE SECRET HISTORY OF THE AMERICAN LEFT:  
FROM MUSSOLINI TO THE POLITICS OF MEANING*

by Jonah Goldberg  
New York: Doubleday, 2007.

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**I. INTRODUCTION**

The economic and financial collapse of 2008<sup>1</sup> is one of the most alarming events since the Great Depression. Although President Obama is working overtime to save American capitalism, evidence mounts that his “recovery plans and proposed new programs would leave government permanently bigger, more costly, and more intrusive.”<sup>2</sup> President Obama’s approach to the current crisis recalls his predecessor and model, Franklin D. Roosevelt.<sup>3</sup> FDR also worked to save capitalism, and many observers believe that FDR succeeded.<sup>4</sup> But this largely unreflective view ignores the past and current consequences the New Deal imposed on African Americans and others.<sup>5</sup>

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<sup>1</sup> Early signs of financial and economic collapse arose during the summer of 2008. For example, the loss of manufacturing jobs pulled Ohio’s unemployment rate to a 16-year high. See, *The Story of the Economic Collapse from Main Street*, WORKPLACE PROF BLOG available at [http://lawprofessors.typepad.com/laborprof\\_blog/2008/09/the-story-of-th.html](http://lawprofessors.typepad.com/laborprof_blog/2008/09/the-story-of-th.html). Signs of economic strain started to appear in the summer of 2007. See Simon Johnson, *The Quiet Coup*, THE ATLANTIC ONLINE, May 2009 available at <http://www.theatlantic.com/doc/print200905/imf-advice>.

<sup>2</sup> Charles R. Kesler, *The New New Deal*, 9 CLAREMONT REVIEW OF BOOKS 3(Spring 2009).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Harry G. Hutchison, *Employee Free Choice or Employee Forged Choice? Race in the Mirror of Exclusionary Hierarchy* (unpublished manuscript on file with the author) at 38-52 (describing the human costs of New Deal labor initiatives, particularly for African Americans).

Jonah Goldberg's book explains how the Great Crash of 1929 provoked a progressive response by the federal government. This progressive response led to a series of initiatives that culminated in FDR's New Deal. Though the current financial and economic crisis has aroused memories of the extraordinary accomplishments at the very outset of Roosevelt's administration, which some see as an inspiration for the Obama administration,<sup>6</sup> it should be noted that Roosevelt was merely following a largely progressive pattern first developed by Woodrow Wilson and furthered by President Hoover. For example, reflecting a bipartisan consensus, the Hoover administration produced the Davis-Bacon Act that was advanced by exclusionary rhetoric and persists in excluding African Americans from employment today.<sup>7</sup>

Among the difficulties that the current administration faces include rising unemployment, accelerating uncertainty and the absence of a consensus about the way forward. This picture is worsened by virtue of the need to coordinate policies across national boundaries because of an ongoing implosion of the global economy. This picture becomes even murkier when analysts consider the effectiveness or lack thereof of government policies during the 1930s. *LIBERAL FASCISM* shows how a progressive consensus provided a road map that ultimately led to a catastrophe. Prominent among the casualties of the New Deal were African Americans who were compelled to endure disproportionate levels of unemployment and "virtual slavery."<sup>8</sup> These effects were spurred by leaders committed to Progressivism, which ushered in a long era of "heavy-handed government regulation of the economy"<sup>9</sup> that included the passage of the legislation regulating services such as dry cleaning, and selling meat as well farmers who produced grain. Additional regulation created cartels within the labor markets. Labor cartels created through the National Industrial Recovery Act (NIRA) and then through the National Labor Relations Act (NLRA) "marked the culmination of a systematic effort of the Progressive movement that dominated so much of American intellectual life during

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<sup>6</sup> RICHARD POSNER, *THE FAILURE OF CAPITALISM: THE CRISIS OF '08* 189 (2009).

<sup>7</sup> JONAH GOLDBERG, *LIBERAL FASCISM: THE SECRET HISTORY OF THE AMERICAN LEFT FROM MUSSOLINI TO THE POLITICS OF MEANING* 269 (2007) (explaining that the Davis-Bacon act still hurts low-wage blacks today).

<sup>8</sup> RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 1-2 (2007) (describing the virtual slavery in Florida sugar camps during FDR's administration).

<sup>9</sup> POSNER, *supra* note \_\_ at 234.

the first third of the twentieth century.”<sup>10</sup> Today amidst new calls to expand the role of the federal government, Americans would do well to heed the implicit and explicit warnings that Jonah Goldberg provides in his rather comprehensive book.

Part II of this Review Essay examines the Progressive Era, which spawned authoritarian and racist arguments in support of New Deal policies. Drawing parallels from the French Revolution as well as the experimentation of Mussolini, Lenin and Hitler, Goldberg shows how American Progressivism represented the flowering of a romantic movement tied to nationalism, pseudo-scientism and eugenics that was transmuted into social Darwinism.<sup>11</sup> These developments, taken together, gave rise to collectivism led by autocratic elites.<sup>12</sup> Representing an incandescent effort to centralize government power in the hands of hierarchs, the New Deal advanced arbitrary regulation and disadvantaged members of racially and politically marginalized groups. By contrast, too often trapped by the halo-glow of FDR’s hagiography, many of today’s progressives take shelter in the unpersuasive contention that the New Deal successfully reduced inequality<sup>13</sup> and created the conditions necessary for social justice.<sup>14</sup> To the extent that such arguments are accepted, the probability surfaces suggesting that contemporary policies mimicking the New Deal will expose Americans to authoritarianism and inflict adversity on African Americans and members of other politically marginalized groups.

## **II. RACE AND DISASTER IN THE MIRROR OF PROGRESSIVE RESPONSES TO THE GREAT CRASH**

Puzzlement has greeted the failure of the financial, economic and regulatory reforms enacted during the 1930s to stave off the economic collapse of 2008 that appears to be morphing into a catastrophe. This possibility may soon mean that the

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<sup>10</sup> RICHARD A. EPSTEIN, *THE CASE AGAINST THE EMPLOYEE FREE CHOICE ACT* (forthcoming Hoover Press 2009), University of Chicago Working Paper, *available* at <http://ssrn.com/abstract=1337185> at 7 (January, 2009).

<sup>11</sup> GOLDBERG, *supra* note \_\_\_\_ at 12.

<sup>12</sup> *Id.*

<sup>13</sup> *See e.g.*, EMMA COLEMAN JORDAN & ANGELA P. HARRIS, *BEYOND RATIONAL CHOICE: ALTERNATIVE PERSPECTIVES ON ECONOMICS* 397 (2005) (quoting Paul Krugman).

<sup>14</sup> DAVID E. BERNSTEIN, *ONLY ONE PLACE OF REDRESS: AFRICAN AMERICAN, LABOR REGULATIONS, & THE COURTS FROM RECONSTRUCTION TO THE NEW DEAL* 106 (2001) (disputing Bruce Ackerman portrayal of New Deal federal interventionism as part of an encouraging pursuit of social equality).

unemployment rate may exceed 11 percent,<sup>15</sup> a rate America has not seen since the Great Depression.<sup>16</sup> Judge Richard Posner contends that the lesson of the financial collapse of 2008 is that we need a more active and intelligent government to keep our model of a capitalist economy from running off the rails.<sup>17</sup> Posner's intuition, bolstered by the persistence of ongoing evidence of collapse, suggests the need for greater regulation. Others favor smarter regulation. Still, others favor less regulatory innovation. What is less frequently considered is the possibility that government regulation, far from working to prevent disaster, may actually produce one. An important part of Jonah Goldberg's thesis concentrates on two disheartening possibilities: (A) government failure often precedes market failure,<sup>18</sup> and (B) government policy leads to authoritarianism that fails to favor marginalized individuals and groups. Taken as a whole, Goldberg's thesis sustains a paradox: the attempt to attain social justice through government planning may produce the opposite. Goldberg's intuition is that this paradox has become more salient because the American character is not inclined to look to the state for meaning and direction (except during wartime) and liberals, including contemporary members of the progressive movement have responded to this by constantly searching for new crises as the moral equivalents of war.<sup>19</sup>

Providing a comprehensive analysis of the political and ideological currents that percolated within Western countries from the later part of the 18<sup>th</sup> century through the early part of the twenty-first century, *LIBERAL FASCISM* confirms the inherent authoritarian tendency of modern democracies.<sup>20</sup> Providing a thorough background, Goldberg reveals how the Progressive Era beliefs, following Jean-Jacques Rousseau and other revolutionaries, turned politics into a religion of humanity that divinized the people,

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<sup>15</sup> Buffett: *Unemployment likely to hit 11 percent*, the PITTSBURGH TRIBUNE-REVIEW, July 10, 2009 available at [http://www.pittsburghlive.com/x/pittsburghtrib/business/print\\_633001.html](http://www.pittsburghlive.com/x/pittsburghtrib/business/print_633001.html).

<sup>16</sup> See e.g., RICHARD K. VEDDER & LOWELL E. GALLAWAY, *OUT OF WORK: UNEMPLOYMENT AND GOVERNMENT IN TWENTIETH-CENTURY AMERICA* 77 (1993) (unemployment reached 14.4 percent of the workforce by the end of 1930 and then rose and fell back to 14.4% by the end of 1939).

<sup>17</sup> POSNER, *supra* note \_\_\_ at xii.

<sup>18</sup> *Id.* at 192 (One possibility is that the economic depression that followed the stock market crash in 1929 was the result of government policy in the form of the Federal Reserve Bank's decision to allow the money supply to contract.).

<sup>19</sup> GOLDBERG, *supra* note \_\_ at 160.

<sup>20</sup> Richard H. Pildes, *The Inherent Authoritarianism in Democratic Regimes*, in *OUT OF AND INTO AUTHORITARIANISM*, 125-151 (Andras Sajo ed. 2002).

while often rendering the person an afterthought.<sup>21</sup> Goldberg shows that American Progressivism from which today's liberalism descended at one time had a rather nasty edge—a kind of racism that infused the progressive eugenics of Margaret Sanger and others—that has largely melted away.<sup>22</sup> He illustrates how FDR's New Deal closely followed an initial blueprint created by Woodrow Wilson that was premised on the tenets of war socialism, which promised human progress.<sup>23</sup> Taking the stage as America's new national commander during the Great Depression, FDR promised to seek the “power to wage a war against the emergency, as great as the power that would be given to if we were in fact invaded by a foreign foe.”<sup>24</sup> Still it is clear that effects of Progressive policies instantiated by FDR to deal with the fallout from the Great Crash continue to have had an adverse impact on African Americans and others today.

Driven to remake the world of labor and advance social justice, Goldberg shows that Roosevelt claimed to act on behalf of lower-middle class people who had just enough to fear losing it.<sup>25</sup> Premised on collectivist assumptions maintained by progressive elites, FDR became frustrated by the capability of the doctrine of federalism to thwart his attempts to expand power. FDR and other New Deal reformers scrapped their earlier states' right views in favor of federal regulation of the market including the labor market.<sup>26</sup> The question of whether the constitutional order should be altered in order to give FDR's Progressives plenary regulatory power over the economy despite strong public opposition was “one of almost immeasurable importance. If political elites could go against majority opinion on such a fundamental far-reaching question, it is hard to conceive of a situation, whether in normal politics or otherwise, where they would be substantially less constrained than this.”<sup>27</sup> Still, FDR believed in America and respected its system of governance despite his attempt to castrate the Supreme Court, and accordingly, Goldberg argues that Roosevelt was not a tyrant despite his willingness to

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<sup>21</sup> GOLDBERG, *supra* note \_\_\_ at 12-13.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> *Id.* at 78-121.

<sup>24</sup> *Id.* at 121.

<sup>25</sup> *Id.* at 146.

<sup>26</sup> DAVID B. WALKER, *THE REBIRTH OF FEDERALISM: SLOUCHING TOWARD WASHINGTON* 94 (1995).

<sup>27</sup> Ilya Somin, *Voter Knowledge and Constitutional Change: Assessing the New Deal Experience*, 45 WM. & MARY L. REV. 595, 628 (2003) (discussing FDR's attempt to pack the Supreme Court).

put over a hundred thousand citizens into camps on the grounds that their race could not be trusted.<sup>28</sup>

Goldberg's wide-ranging analysis shines through when he explains the ascendancy of liberal/progressive thought first nurtured by the Theodore Roosevelt wing of the Republican Party,<sup>29</sup> then instantiated by Woodrow Wilson and reaching its apex during FDR's administration. Believing the principle that all just governments derive their authority from the consent of the governed only applies to those who are capable of self-government,<sup>30</sup> animated, in part, by conclusion that giving blacks the right to vote was the foundation of every evil in this country<sup>31</sup> and premised in part on the innovations that sparked Otto von Bismarck's top-down socialism, Goldberg persuasively maintains that American Progressives insisted that society should be bent to the will of social planners.<sup>32</sup> Progressivism, as a governing theory submits to the view that "every nook and cranny of society should work together in spiritual union toward the same goals overseen by the state."<sup>33</sup> Committed to social Darwinism and eugenics<sup>34</sup> and driven by the belief that the ever-expanding power of the state was entirely natural, as an outgrowth of an inevitable evolutionary process,<sup>35</sup> many progressives maintained that the solution to chaotic individualism was a regeneration led by a hero-saint who could overthrow the tired doctrines of liberal democracy in favor of a restored and heroic nation.<sup>36</sup> Providing numerous domestic and international examples, Goldberg confirms that the heart of Progressivism was simply an ideology of power.<sup>37</sup> Consistent with this account, Woodrow Wilson saw no reason to limit the coercive power of the state and suggested that the President "is at liberty, both in law and in conscience to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution . . . but only because the President has the nation

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<sup>28</sup> GOLDBERG, *supra* note \_\_ 160.

<sup>29</sup> *Id.* at 91.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 84.

<sup>32</sup> *Id.* at 95.

<sup>33</sup> *Id.* at 80.

<sup>34</sup> *Id.* at 78.

<sup>35</sup> *Id.* at 86.

<sup>36</sup> *Id.* at 99.

<sup>37</sup> *Id.* at 158.

behind him and Congress [does] not.”<sup>38</sup> Goldberg verifies that a nation that is captured by Wilson’s chilling commitment to elite-led majoritarianism, personified by the “great man,” who exercises unchecked power on behalf of the masses, will threaten the present and future of members of minority groups as well as all seen as incapable of self-government.<sup>39</sup> This constitutes an implicit warning about following hero-saints who lead efforts to expand the power of the state, no matter how appealing their rhetoric may be.

Goldberg substantiates his bracing claim that American progressives saw three events as “admirable experiments: the Bolshevik Revolution, the Fascist takeover in Italy, and the American ‘experiment’ in war socialism under Wilson.”<sup>40</sup> Goldberg clearly demonstrates that both big business and labor union leaders saw the early Depression period as an opportunity to implement cartelization schemes for product prices and labor markets.<sup>41</sup> Enacted in 1933, the NIRA, the flagship program of the New Deal, created the National Recovery Administration (NRA), which provided an opportunity for industry and labor to write codes under which they could be regulated.<sup>42</sup> The NRA approved 557 basic and 189 supplementary codes, covering roughly 95 percent of all industrial workers.<sup>43</sup> This corporatist process benefited large economic entities by destroying their smaller and less politically influential competition.<sup>44</sup> This process was a “massive public policy disaster.”<sup>45</sup> FDR’s attempt to supply centrally-planned price controls and production limits caused a massive six to eleven percent decline in the United States’ Gross National Product in an already depressed economy.<sup>46</sup> At the same time, evidence surfaced confirming that labor unions thrive when the government invades the marketplace through bureaucratic laws and regulation<sup>47</sup> while imposing costs on the overall economy that disproportionately disfavor members of marginalized groups.<sup>48</sup>

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<sup>38</sup> *Id.* at 86.

<sup>39</sup> *Id.* at 91 & 78-162.

<sup>40</sup> *Id.* at 132-133.

<sup>41</sup> Somin, *supra* note \_\_\_ at 651.

<sup>42</sup> GOLDBERG, *supra* note \_\_\_ at 293.

<sup>43</sup> *Id.* at 293.

<sup>44</sup> *Id.* at 293-294.

<sup>45</sup> Somin, *supra* note \_\_\_ at 650.

<sup>46</sup> *Id.*

<sup>47</sup> *See generally*, Hutchison, *supra* note \_\_\_ at 40-47.

<sup>48</sup> *Id.* at 38-49.

Though the costs to the economy became apparent, the costs to the marginalized were often hidden from view. A few examples will suffice. The NRA gave extraordinary powers to its leader, Hugh Johnson, who threatened to enforce the New Deal with violence, Johnson ordered the American people to purchase goods and services displaying the Blue Eagle a symbol of compliance with New Deal ideals.<sup>49</sup> “Not surprisingly, victims of the Blue Eagle received little sympathy.”<sup>50</sup> Jacob Maged, an immigrant dry cleaner spent three months in jail in 1934 because he charged thirty-five cents to press a suit when the NRA insisted that all loyal Americans must charge at least forty cents.<sup>51</sup> White “farmers were paid not to work their land (which meant that many black tenant farmers went hungry).”<sup>52</sup> In urban areas, “the plight of blacks was little better.”<sup>53</sup> By granting new collective bargaining powers to unions, the New Deal gave them the power to lock blacks out of the labor force.<sup>54</sup> For many Americans, the NRA stood for the Negro Removal Act.<sup>55</sup> Taking advantage of the monopoly power granted by the NIRA, trade unions displaced black workers and reified social stratification.<sup>56</sup> The NIRA codified wage differentials in such a way that even when a black employee performed more important tasks than a white employee, he would frequently have a lower job classification and hence a lower wage than his white counterpart.<sup>57</sup> Confirming Goldberg’s excellent research one commentator shows that the minimum wage provisions of NIRA statute destroyed the jobs of half a million blacks.<sup>58</sup> Building on this grim record, the NLRA removed a clause in the original draft of the statute that prohibited unions from discriminating against Africans or excluding them from labor organizations<sup>59</sup> and the Fair Labor Standards Act (FLSA), passed in 1938, mirrored the results from a similarly disastrous policy in apartheid era South Africa.<sup>60</sup> The Labor Department determined that the FLSA caused between 30,000 and 50,000 workers,

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<sup>49</sup> GOLDBERG, *supra* note \_\_\_ at 153-155.

<sup>50</sup> *Id.* at 155.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 155-156.

<sup>55</sup> *Id.* at 156.

<sup>56</sup> BERNSTEIN, *supra* note \_\_\_\_ at 89-94.

<sup>57</sup> *Id.*

<sup>58</sup> David T. Beito, *Review of Only One Place of Redress*, 10 Geo. Mason L. Rev. 293, 296 (2001).

<sup>59</sup> BERNSTEIN, *supra* note \_\_\_\_ at 94-95.

<sup>60</sup> Hutchison, *supra* note \_\_\_ at 41-42.

mostly Southern blacks to lose their jobs within two weeks.<sup>61</sup> This statute, along with other New Deal legislation,<sup>62</sup> contributed to a persistent increase in African American unemployment because democratic governments give the greatest benefits to those who are the best organized, have the most influence and are the least disenfranchised<sup>63</sup>—categories that include few blacks.<sup>64</sup> Far from being a countermajoritarian force for inclusive social change, labor cartels sheltered by progressive politicians, rhetoric and the law have often been tied to an ideology that decisively conceives of blacks and other minorities as inferior outsiders,<sup>65</sup> giving rise to an intentional or unintentional effort to exclude them from employment. This underscores William Hazlitt’s great observation: “The love of liberty is the love of others; the love of power is the love of ourselves.”<sup>66</sup> If Hazlitt is correct, politicians and labor organizations that retain a “progressive” sensibility are unlikely to be interested in others (particularly the marginalized) because they are too interested in themselves.

### III. CONCLUSION

Jonah Goldberg explains how the progressives took charge of the economy following the Great Crash. Offering an analysis that is multifaceted and pluriform, Goldberg demonstrates how Progressive Democrats and Republicans, emphasizing the benefits of centralized power led by elites, strove to incorporate labor and corporations into a corporatist structure favoring large economic entities at the expense of smaller, less influential ones. But this move is not without costs. “As the size and scope of government have grown, so have the numbers of businesses petitioning the government.”<sup>67</sup> The persistence of this development has been reinforced in contemporary times by the claim

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<sup>61</sup> BERNSTEIN, *supra* note \_\_\_ at 101.

<sup>62</sup> *Id.* at 94-107 (describing the passage of the NLRA and showing that the Agricultural Adjustment Acts reimbursed white planters for taking land out of production, causing many owners to evict African American tenant farmers from their land).

<sup>63</sup> *Id.* at 103.

<sup>64</sup> Hutchison, *supra* note \_\_\_ at 41.

<sup>65</sup> *Id.*

<sup>66</sup> Alan Jacobs, *The English Montaigne*, in BOOKS & CULTURE 24, 25(July/August 2009) (quoting William Hazlitt).

<sup>67</sup> GOLDBERG, *supra* note \_\_\_ at 305.

that certain business are too big to fail.<sup>68</sup> Succumbing to the implicit logic of this move, the current administration has aided this development by increasing the number of government Czars, the contemporary manifestation of New Deal hierarchs, which have the power to decide who succeeds and who fails. Why were the UAW and other stakeholders treated more favorably in Chrysler's recent bankruptcy than police officers and teachers, the beneficiaries of the State of Indiana's pension fund?<sup>69</sup> Evidently, this is because government intervention does not favor individuals and groups that lack political and economic influence. Taken together, Americans who are politically and economically marginalized today ought to note the warnings that Goldberg provides. Emphasizing this point, Goldberg notes that the ghosts of the Progressive Era continue to subjugate African Americans today. He states:

[The] relevant repercussions of Progressive Era ideas have escaped the light of scrutiny. The architects of the New, the Fair Deal, and the Great Society all inherited and built upon the progressive welfare state. And they did this in explicit terms, citing such prominent race builders as Theodore Roosevelt and Woodrow Wilson as their inspirations. Obviously, the deliberate racist intent in many of these policies was not shared by subsequent generations of liberals. But that didn't erase the racial content of the policies themselves. The Davis-Bacon Act still hurts low-wage blacks, for example. FDR's labor and agricultural policies threw millions of blacks out of work and off their land.<sup>70</sup>

And the widening unemployment gap between white and black Americans that commenced during the Great Depression remains with us today. Government intervention often has permanent, if not irreversible consequences. Goldberg's conclusions echo the intuition of philosopher Alasdair MacIntyre: as the government becomes more scientific and accepts the possibility that it can manipulate human action, government itself becomes a hierarchy of bureaucratic managers, and the primary

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<sup>68</sup> Peter S. Goodman, *Too Big to Fail?*, THE NEW YORK TIMES, July 20, 2008, nytimes.com available at [http://www.nytimes.com/2008/7/20/weekinreview/20goodman.html?\\_r=&fta=y&pagew...](http://www.nytimes.com/2008/7/20/weekinreview/20goodman.html?_r=&fta=y&pagew...)

<sup>69</sup> Larry P. Vellequette, *Analysis: Indiana pension funds' loss tiny compared to Chrysler's*, TOLEDOBLADE.COM, available at <http://www.toledoblade.com/apps/pbcs.dll/article?Date=20090610&Category=BUSINESS...>

<sup>70</sup> GOLDBERG, *supra* note \_\_\_\_ at 268-69.

justification advanced for intervention is the claim that government has resources of competence which most citizens do not possess.<sup>71</sup> The dismal record of responses to the Great Crash underscores the intelligence of this claim. Hence, Americans should conclude that past government interventions constitute a prelude to future policy failures. When politicians assert that the only way to avert disaster or solve the current one, is to subordinate human freedom and members of marginalized groups to centralized power, reduced economic growth, exclusion and subjugation appear to be the inevitable long-term consequences of such a policy.

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<sup>71</sup> ALASDAIR MACINTYRE, *AFTER VIRTUE* 85 (1984).