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THE SLOW AND HIDDEN ROAD TO SERFDOM

PETER BERNHOLZ¹

It is seldom that liberty of any kind is lost all at once.
David Hume

Freedom and the rule of law

Without the rule of law limiting the discretionary powers of government agencies, but also of other organizations and individuals, no individual freedom is possible. If government representatives or private persons can order individuals to behave in certain ways at their discretion, no individual liberty is guaranteed. In the words of Immanuel Kant, “Man is free if he needs to obey no person but solely the law”. And even if individuals are only obliged to follow the law, their freedom is always threatened if the law can be changed arbitrarily by any individual or government authority. This even holds for democracies in which duly elected parliamentary majorities (that is minorities) are allowed to introduce new laws or change old ones relating to any sphere of human activities.

The problem is clearly stated by Alexis de Tocqueville (1945, vol. I, 270): “when I see that the right and the means of absolute command are conferred on any power whatever, be it called a people or a king, an aristocracy or a democracy, a monarchy or a republic, I say there is the germ of tyranny, and I seek to live elsewhere, under other laws”.

Similar ideas are expressed by Friedrich v. Hayek (1944, 62): “the Rule of Law thus implies limits to the scope of legislation: it restricts it to the kind of general rules known as formal law, and excludes legisla-

¹ University of Basel. I am grateful to Christoph Bauer for helpful critical comments.

tion either directly aimed at particular people, or at enabling anybody to use the coercive power of the state for the purpose of such discrimination”.

Nobody is allowed to be punished except on the basis of a law that existed before the time of his/her action. All individual activities that are not forbidden are allowed. In such a system of a free society individuals can calculate the consequences of their decisions in advance and conclude agreements with others that do not contradict the legal framework.

However, as pointed out by de Tocqueville, this is not sufficient. The majority even in a democracy (including majorities in referendums and popular initiatives) should not be permitted to pass general laws forbidding everybody to become fat or to smoke, as long as they do not damage others by doing so. Similarly, nobody should be forced to take up sporting activities to preserve his/her health.

Although such regulations by patriarchal states are dangerous, they look trivial compared to problems in other countries. Many in the West hoped that the so-called Arabian revolutions in Tunisia, Egypt and Libya in the first decade of the 21st century would lead to the establishment of democracies with the rule of law. However, they overlooked the fact that the majority of decisions can be an existential danger for the minorities suppressed by them. Moreover, it was obvious from the outset that more or less radical Muslims constituted a majority of the population in these countries. So the Muslim Brotherhood won a majority in the Egyptian parliamentary elections and Tunisia saw a similar outcome. Now the secular and Christian minorities in both countries are rightly concerned that they may be subjected to general laws following the commands of the Sharia, and fresh demonstrations by protestors are raging on the streets of Cairo and Tunis.

It is important not to confuse the rule of law with legality. Even an order that is only directed at an individual or a specific group of persons can be put into a legal form.



But why is freedom so important? Aren't other principles like justice, equality and personal safety equally or even more important? And how can freedom and the rule of law be secured, when the same state also has to provide an institutional framework? Let us first briefly discuss the last of these questions. As stressed by Thomas Hobbes in his *Leviathan*, it is impossible to fully remove the problem of unlimited discretionary rule whenever a sovereign or state exists with a monopoly of power in the form of an army or police. And anarchy is usually even worse than despotism. But since the publication of Hobbes' book several institutional inventions and proposals of how, at least partly, to solve this problem have been made by John Locke and others. As an important example let me quote James Madison (The *Federalist* 47, 313): "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny".

Thus Madison proposes a separation of powers into the legislative, the executive and the judicial branches of government, a proposal which found its application in the constitution of the United States. The executive branch only has the right to implement the laws passed by the legislative branch. The judiciary has to check whether the laws are executed according to their meaning and are consistent with the constitutional rules. It has to do so even at the request of any citizen, group or member state. Besides the separation of powers, federalism and direct democracy have been important measures to limit the abuse of government power.

However, even all these institutional innovations are admittedly still limited in their effectiveness to secure individual freedom and to check the power of rulers. Thus the Supreme Court of the United States itself has even been instrumental in extending the domain of the central government beyond the limits foreseen in the American Constitution. Interestingly, when the Swiss largely adopted the US model for their own constitution in 1848, they did not want to grant their highest court the right to check whether the Swiss Federal Constitution were violated by federal laws, referenda or initiatives as they deemed it unacceptable that the court might decide against a popular majority. This 'solution', however, also had its disadvantages, as shown by several cases in which a clear violation of the federal constitution by the government occurred.

It follows that even the best institutions presently available cannot prevent the loss of individual freedom in the long run. As a consequence, people must repeatedly be made aware of dangerous developments in the hope of bringing about a turnaround. The subsequent sections of this paper describe developments that have steadily eroded individual freedom in recent decades. Hayek warned in his *Road to Serfdom* of the dangers threatening liberty mainly because of the vain hopes pinned at that time to government planning of the economy. Meanwhile the so-called planned economies have clearly demonstrated their inferiority not only in supplying goods and services, but also because of their despotic suppression of freedom and human dignity. The communist system did not collapse in 1989 without grave reasons. Systems with mostly free markets, safe private property rights, relatively stable money and freedom of contract between individuals, business firms and organizations have proved far superior to any attempt at collective planning and property. But other, more subtle obnoxious developments are again threatening freedom, human dignity and well-being.

Shrinking share of disposable private income

What has always made the state a hell on earth has been precisely that man has tried to make it his heaven.

Friedrich Hölderlin

One of the most widely ignored developments during the last decades has been the shrinking share of the income earned by private individuals, which they are able to spend at their own discretion. This means that an increasing part of their gross incomes has to be paid in the form of taxes or other obligatory contributions, imposed by government law or decree. The latter comprise so-called social security premiums, like those financing unemployment contributions and old age pension systems. In all these cases it is not the earners, but the collective bodies that decide on the use of the income collected.

Two questions merit consideration in the context of these developments: firstly, why have they been accepted with so little resistance even in most democracies; even those allowing popular referendums and initiatives like Switzerland? Secondly, do they

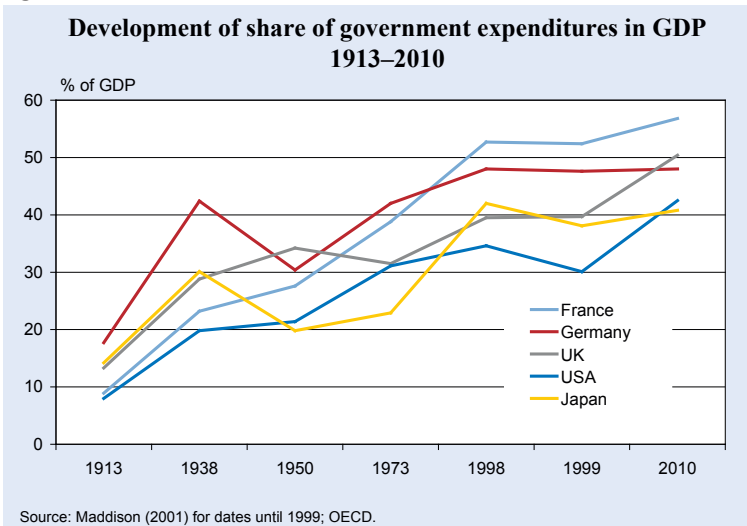
endanger individual freedom, and if so, why? To answer these questions we must first consider the facts.

As shown for five countries in Figure 1, the government's share in gross domestic product (GDP), that is in the values of all goods and services produced, has risen inexorably over the last century (see also Tanzi and Schuknecht 2000). This is true for about all developed countries, even for Switzerland, despite its traits of direct democracy. Why has this development been tolerated by the populations of these countries? It is true that Germany and Japan were not democracies for part of the period considered. It is therefore unsurprising that the graph shows a first peak around 1938 due to the rearmament for World War II. However, the increase in government expenditure as a share of GDP resumes during the

60 years that follow 1950 and there looks to be no end to this trend in sight.

Moreover, it is most disturbing that the rise in government expenditure is not only financed by an increasing the burden of taxes and other obligatory contributions shouldered by the population, but also by financing government deficits *via* borrowing (Figure 2). In fact, the official figures given are only the explicit debts of governments. If their promises relating, for instance, to future pensions in an age of a population with ever rising life expectancies and low birth rates are taken into account, the implied government debts are much higher. At present, except for massive further tax increases or a substantial reduction of outlays, these debts can only be reduced either by government bankruptcies, inflation or a combination of both.

Figure 1



Given that the growing share of government expenditures in GDP has been steadily extending the power of rulers and diminishing the relative freedom of individuals, we have to ask ourselves why such a development is accepted by the population in democracies in which voters have still the power to remove the rulers. Here several explanations come to mind. Firstly, voters are uninformed for rational reasons. Since their vote is only one among millions, it would be irrational for them to inform themselves about matters that are not of immediate concern to themselves, namely their disposable incomes, their job security and major expenditure related, for instance, to housing and cars. They may also feel some sympathy for the similar situation of near relatives and friends. Secondly, governments tend to distribute the tax burden in a way that only a minority of the population has to carry most of it. Thirdly, to make the situation look better, governments prefer to incur debts instead of raising taxes further, which re-

Figure 2

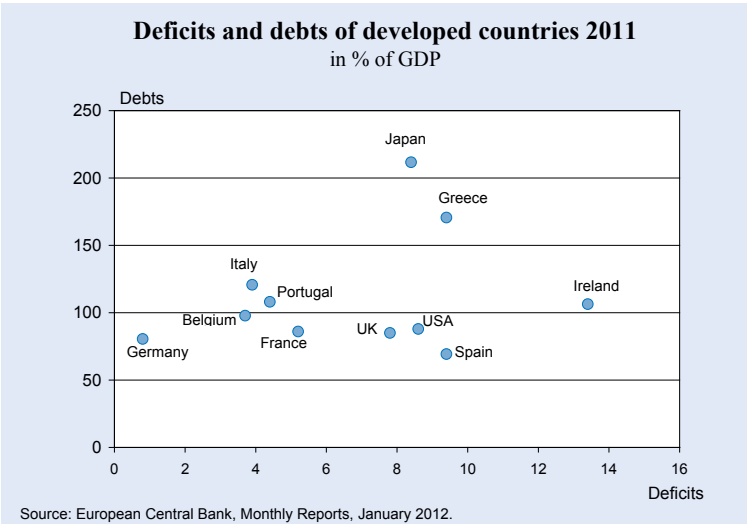
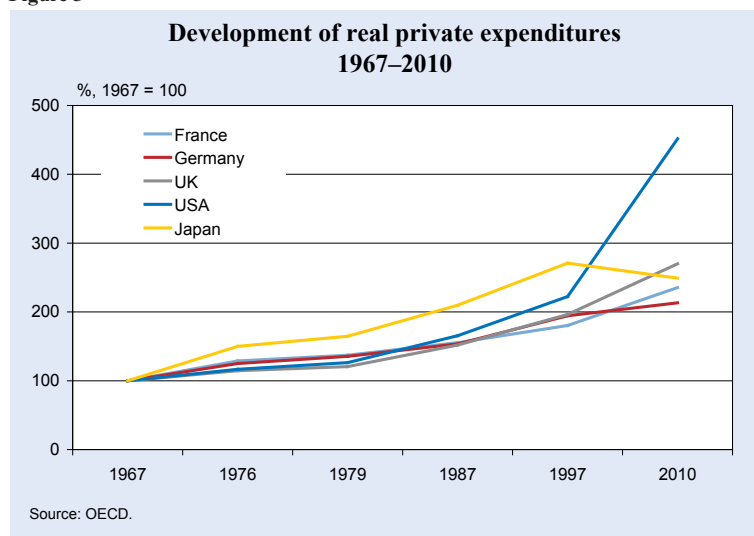


Figure 3



sults in untenable promises for the future. Finally, and most importantly, the economy, which is still mainly organized along the lines of free markets, has been able to increase GDP per capita to date in a way that still allows for growth in real private consumption, despite an ever higher share of government expenditure (Figure 3).

As can be seen, private individuals have been able to steadily increase their real expenditure in developed countries since 1967, in spite of growing tax burdens. The surge in US figures after 1997 is due to ever higher private indebtedness, one of the main reasons for the bursting of the bubble in property prices in 2007. This growth rate was obviously not maintainable. In the decades before 1967 a similar growth in real private expenditure occurred, except during the two World Wars and the Great Depression. Only Japan has seen a fall in real private expenditure since 1997. This is, of course, a warning. Indeed, many empirical studies show that the rate of growth of GDP diminishes with a growing share of government expenditure, and rising government debts, at least beyond a certain threshold (Bergh and Karlsson 2010; Bernholz 1986; Romer and Romer 2010; Weede 1991). After having studied the experience of 44 countries over two centuries Reinhart and Rogoff (2011, 33; see also Baum, Westphal and Rother 2012) conclude: “our main finding is that across both advanced countries and emerging markets, high debt/GDP levels (90 percent and above) are associated with notably lower growth outcomes. Much lower levels of external debt/GDP (60 percent) are associ-

ated with adverse outcomes for emerging-market growth”.

A final reason for the complacency of the population in democracies regarding the rising share of government expenditure as a share of GDP has to do with the way additional revenues are spent. Much of the growth of the tax burden and expenditure has been used for transfers or redistributions. In Germany the upper 40 percent of the population paid 89.3 percent of income taxes in 2011, and the up-most 10 percent 54.6 percent, whereas the majority bore

only a negligible part (IW 2012). The greatest part of the redistribution is also effected by progressive income taxes, although there is empirical evidence that it is precisely these taxes, together with those on firms, that are most detrimental to economic growth (Arnold 2008). Moreover, the redistribution of burdens is also pronounced in the old age pension systems, for unemployment benefits and support for health expenditures of the poorer segments of the population. Even in the United States, which lags behind the European welfare states, the share of the richest 1 percent paying US federal taxes rose from 14.2 percent to 27.7 percent from 1980 to 2005 (Lipford and Yandle 2012). Now, since the wealthy persons bearing the burden of these redistributions form only a minority, they can easily be outvoted. Moreover, a bias exists in voting outcomes because employees of the government will always vote against any reduction of government outlays as they are afraid to receive lower incomes or be fired.

Moreover, many may argue that it is only an act of ‘social justice’ that the rich are forced, if they are not willing, to help their poorer compatriots to afford a decent life, to have access to adequate health services and to enjoy their old age without suffering from poverty. Is it not a great sign of progress that all citizens are secured against unemployment and bad health? And consequently, is it not a blessing that government expenditure is growing more strongly than GDP, enabling it to provide all these benefits? And don’t the wealthy wholeheartedly agree with this handling of public affairs?

Unfortunately, the picture outlined above is grossly misleading, not only in terms of individual freedom, but also with regard to the long-term economic outlook. As already mentioned, growing tax burdens and government debts beyond certain levels, levels which have long been reached in welfare states, stifle the efficiency and innovative capacity of the relatively shrinking free market economy over time, meaning that the real economy is no longer able to allow a better life for most citizens in the future. Excessive welfare benefits also attract immigrants with lower capabilities and motivation to work, a fact that is also detrimental to economic development (Sinn 2004).

The same negative influences are exerted if the growth of welfare expenditure leads to a relative shrinking of expenditure on the educational system.

Wrong and excessive welfare policies have already ruined more than one state in history. A prominent example is Argentina, the fourth richest country in the world in 1930, which misguided policies turned into an under-developed country and which culminated in hyperinflation in the early 1990s. Another example is Uruguay, which took a similar path (without hyperinflation, but civil war instead). President Chavez seemingly led Venezuela in the same direction right up until his death in 2013. A counter-example is provided by Sweden, which was able to return to higher economic growth by reducing government expenditure as a share of GDP from 67 percent in 1993 to 49 percent in 2012. At the same time, it succeeded in reducing state debt from 70 percent to 37 percent of GDP by 2012 (The Economist, issue 3, 2013) through drastic reforms of selected tax rates.

It should also be a warning that in the former Communist Bloc nations, where the state dominated the whole so-called planned economy, economic progress was negligible and the population suffered deeply and was heavily suppressed. As early as 1971 the well-known Hungarian economist Janos Kornai asked why about all revolutionary new products had been invented and introduced in Western market economies during the last fifty years (Kornai 1971).

Indeed, the economic freedom of individuals competing in markets is a necessary condition for furthering invention, innovation and efficiency (Weede 2012). Individuals in and outside of firms or organizations are lured not only by their own curiosity, but

also by possible profits to be gained from inventing, introducing and selling new products and services wanted in the market. Moreover, if firms do not innovate, they are soon driven into bankruptcy by their more successful competitors. Inventors, however, can borrow money to develop their ideas if they can convince creditors of their value. Moreover, if they are not able or willing to become entrepreneurs themselves, they are able to sell their inventions. All this presupposes, of course, free markets, safe property rights, relatively stable money and moderate taxes. However, the motivation to take corresponding efforts and let children enjoy an adequate education is weakened, the lower the percentage of the fruits of their labour that people can expect to keep. In addition to a stable and rational institutional framework, 'economic freedom' is thus a prerequisite for efficient and innovative development. It is no accident that all of the countries that have introduced free market institutions, including many Asian countries like China, have made good progress along the path of economic development. Indeed, the success of market economies requiring at least economic freedom are the best allies of individual liberty, although the latter may not yet extend to political freedom with safe human rights. Moreover, one should never forget that a result of economic growth has also been longer education, lower child mortality and rising life-expectancy.

What, however, are the implications of the rising share of government expenditure outlined above for our 'free' societies? Even the 'patriarchal caring' of the government for our health, old age pensions and unemployment benefits increases our dependency on the state. To what extent are citizens prepared to vote against the plans of a government to steadily extend its domain and power, if they are dependent on the latter for the payment of their health expenses, their unemployment and old age retirement incomes? Even here, however, differences caused by institutional structures persist. For the dependence on government is certainly higher, if all these payments flow from a central state like, for instance, in France, than if they are obligatory, but provided by different private and decentralized public agencies, like the cantons in Switzerland. In all events, it is important to recall that the major share of the increase in government expenditure in recent decades has been caused by the extension of such patriarchal 'insurance' systems. Moreover these systems, although they are often called 'insurances', do

not really constitute proper insurances, since they are usually combined with substantive redistributions. In Germany this is the case because part of the expenses is financed out of progressive income tax. In Switzerland, on the other hand, the basic old age pension system AHV (a pay-as-you-go system) is managed by the central government, and higher income-earners have to pay the highest contributions, although pensions after retirement are capped to a maximum amount for everybody. In spite of these facts, Social Democrats in Switzerland are vehemently opposed to any increase in the retirement age (for women to 65 years, for example), and have instead launched a popular initiative for a national inheritance tax of 20 percent on all fortunes worth two billion Swiss francs or more to finance the AHV for some time; and this though some cantons have already heavy wealth and a few inheritance taxes. In Britain health expenses are fully covered by ordinary tax revenues.

A second disadvantage of these patriarchal welfare systems for a free society are that individuals are not allowed to opt out and care for themselves, or manage their savings at their own discretion, an option that may, in many cases, produce better results than those achieved by the obligatory pension funds. Although it has to be admitted that many people lack the discipline or ability to accumulate adequate savings and manage them independently, the state's patriarchal role means that they are even less likely to acquire these skills. The good shepherd looks after his sheep who are kept in ignorance. As the British sociologist Herbert Spencer expressed it drastically (1891, 354): "the ultimate result of shielding men from the effects of folly, is to fill the world with fools".

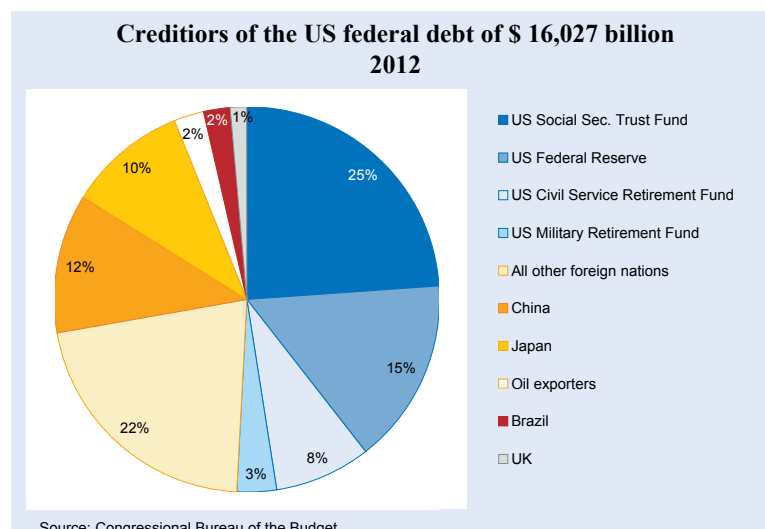
Moreover, it remains questionable whether the shepherd is really fulfilling his task. It is revealing that in the United States the Federal Government is presently covering part of its budget deficit by 'borrowing' from social security funds (Figure 4). As can be seen, nearly 25 percent of US Federal debt is held as a claim by federal pension funds. How safe are these 'assets'? And in countries like Germany the

old age pensions are 'covered' mostly by a pay-as-you-go system in which current pensions are funded using the present contributions of the working population. This system is currently threatened by low birth rates, leading to a shrinking population and working force. This means that the promises of future pensions are not covered by present contribution rates and thus imply an implicit debt of the government not contained in the official debt figures. Although some governments, like Germany's, have implemented several reform like raising the pension age, reducing the promised public payments to retired people and asking people in employment to save privately for their old age, these measures are not sufficient, and are sadly lacking in several other nations (Börsch-Supan 2012).

In short, the stealthy growth of government expenditure as a share of GDP has reduced the relative freedom of individuals over the decades without being noticed by the majority. This has largely been possible thanks to the rise in private real expenditure, placing most of the burden on a minority of tax payers; and by imposed redistribution via the welfare state that provides unemployment benefits, health payments and old age pension systems.

This, in turn, has made the broad majority of the population increasingly dependent on the government, which is probably eroding the autonomy of citizens in their voting decisions. Moreover, paradoxically they are asked to decide as voters questions which they are deemed to be unable to decide for themselves privately. Individuals are no longer

Figure 4



educated to save and to invest for their own future. They are cared for by the good will of their shepherds. Moreover, the bureaucracy handling the welfare state is costly and swallows a sizable part of resources available for this purpose. Politicians are tempted to hide the costs of the system by incurring debts and making uncovered promises for the future. Finally, empirical studies and the facts presented above suggest that a further development of the welfare state will bring about a crisis because the relatively shrinking market economy and the vanishing motivation of individuals to work efficiently, to invent and to innovate will no longer be able to carry the rising burden of government 'care'.

The ever-increasing burden of regulations dominating individual life

It is more difficult to find meaningful measures for the growing flood of regulations limiting the freedom of individuals and the creative activities of businesses. As a first possible measure we may select the number of people employed by governments or government agencies as a share of total employment (Figure 5). This share has been increasing steadily until the 1970s, but has since fallen or stabilized in three of the five countries considered. It had, however, risen strongly prior to the 1960s. The German figures were, for instance, 3.45 and 5.53 percent for 1933 and 1950 respectively. Thus the change since 1970 is probably the result of economic problems stemming from the rising share. That the share has increased further in France since 1970 may be one of the reasons that this country is presently (2013) lag-

ging economically behind Germany and suffering from a higher unemployment rate.

Other indicators of government regulations are more disturbing, especially the rising flood of new laws and executive orders. In response to an inquiry by Adriano Cavadini, a member of the lower house of the Swiss parliament (the *Nationalrat*) of 21 March 1997, the Swiss Federal Government (the *Bundesrat*) admitted on 16 June 1997: "the increasing production of legal norms, even if the underlying reasons may be understandable, is leading to a feeling of citizens and business firms that they have lost the control of the legal framework within which they have to move, and are facing insurmountable obstacles. The ever increasing change of the law and its rising differentiation require such a capability to adapt and such expenditure which not all can afford. This can especially lead to problems for small and medium-sized firms and lower private initiative" (author's translation).

For the United States a prominent legal scholar (Epstein 1995, IX, 14) complained: "there is too much law and too many lawyers. [...] We try to solve more and more problems through legal intervention, and fewer through voluntary accommodation and informal practices".

Indeed, the rising flood of new laws and executive orders is appalling. This can be demonstrated by looking at a few other countries (Figures 6 and 7). According to Sweet & Maxwell's Westlaw UK and Lawtel online legal information, the annual average legislation introduced amounted to 1,724 new pieces of legislation under Margaret Thatcher, 2,402 under John Major and 2,663 under Tony Blair as Prime Ministers.

A similar picture emerges for other developed nations. According to a report by the Mercatus Center (George Mason University, Fairfax, Virginia) of 18 October 2012, the number of instances of the words 'may not', 'must', 'prohibited' and 'required' and 'shall' in US Federal Regulatory Restrictions rose steadily from 834,949 in 1997 to 1,001,153

Figure 5

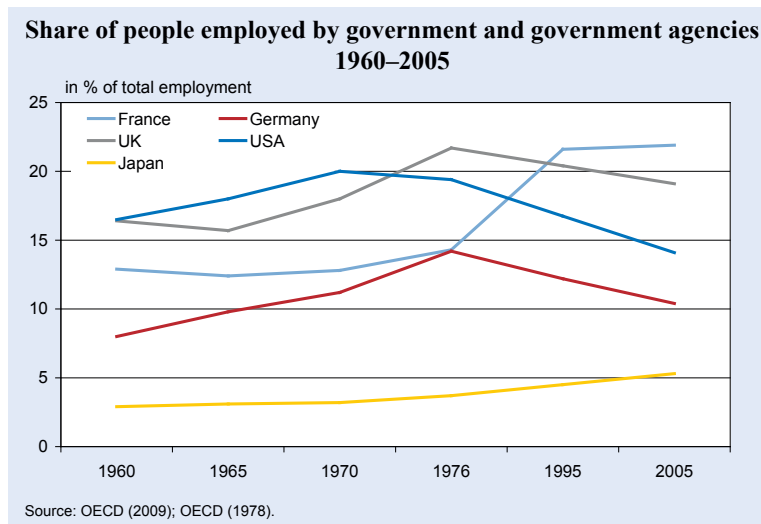


Figure 6

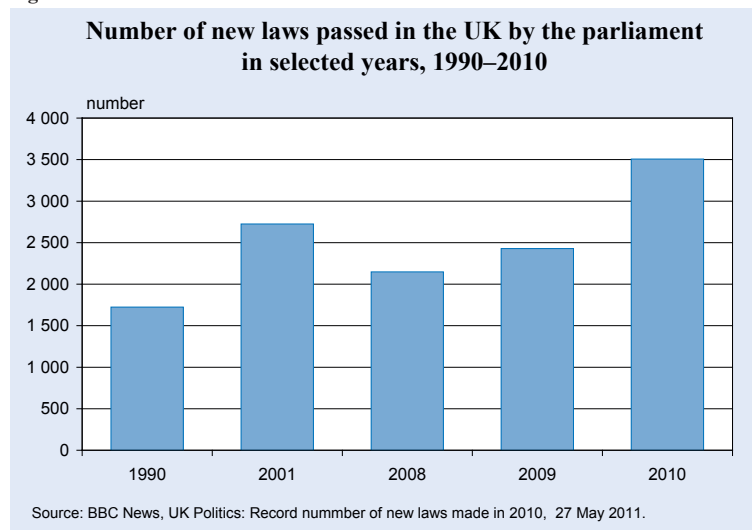
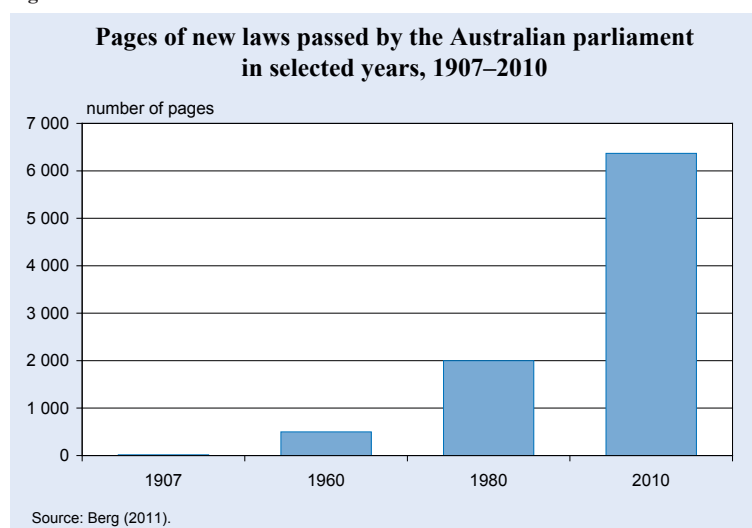


Figure 7



in 2010. This represents an increase of 12,808 per year, whereas the average annual growth of regulations had been only 4,013 per year during the preceding 208 years since 1789. In a testimony of 15 March 2013, to a committee of the US House of Representatives James L. Gattuso (2013) argued that during President Obama's first four years in office, over 130 major rules increasing regulatory burdens (roughly defined as costing 100 million US dollars or more each year) were adopted by agencies, while about 50 such rules were imposed during George W. Bush's first term.

One can easily imagine what this means for overburdened citizens and business firms. The rule of law is severely weakened, since individuals are no longer able to even know all the laws, orders and regula-

tions that severely restrict their freedom to take decisions. At the same time, they are often in danger of committing 'criminal' acts without even being aware of them. Even if small firms could shoulder the burden of the time required and the rising expenses of complying with laws, orders and regulations, their resources have to be misdirected and are no longer available for innovation. Moreover, ever fewer citizens will be prepared to found and to lead new enterprises.

Part of the rising flood of laws and regulations is certainly caused by the growing complexity resulting from population booms and economic development. While the former does not apply in developed nations, the latter may be far more important. Economic growth is largely supported by the constant introduction of new products, the production, transportation and use of which can involve new risks for safety and health. The number of accidents increases with the number of cars used, new chemicals and pharmaceutical drugs may be dangerous to produce or to use, or may be connected with risky side-effects. The volume of waste-products has increased with industrial production, as has air and water pollution. A growing number of plant and animal species are threatened by extinction. Thus new laws and regulations, as well as market-imitating mechanisms, may be required to limit or reduce these dangers and risks. Speed limits for driving and safety rules for producing chemicals may be necessary. Agencies have to be created to control the effects and side-effects of drugs before they are approved for production and general application.

But how important are these factors in explaining the rising flood of laws and regulations? One possible, but crude approach to measure this influence would be to analyse whether growth in the number

of laws and regulations has been smaller or greater than that of GDP. If this method is applied to the numbers cited in Figures 6 and 7 by dividing them by the respective development of real GDP, the new figures still show substantial growth. This means that the growing complexity of life only partly explains the rising number of laws and regulations.

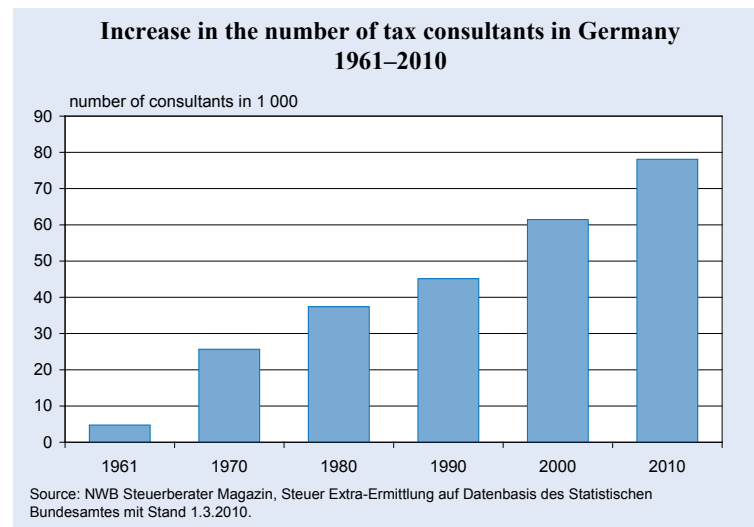
There is also some direct evidence of an overextension of the regulation for chemicals in the European Union (EU). The new REACH legislation (Regulation, Evaluation, Authorization and Registration of Chemicals) created the new agency ECHA (European Chemical Agency) in Helsinki in 2007. ECHA already employs 500 people, and its staff is expected to increase to 600. It is important to realize that this number should be added to the staff already employed by the respective national agencies of the member states of the EU. The implementation of the REACH legislation has meant a gigantic effort by the firms concerned. The well-known German chemical producer BASF, for example, has spent 250 million euros on compliance.²

Another problem with the power of the respective agencies not to approve the use of pharmaceutical drugs because of negative side-effects, although they have a positive influence on the specific ailment is that this policy prevents suffering patients from using helpful drugs in full knowledge of their negative side-effects. Moreover, the high costs connected with evaluation may prevent the development of new important drugs. Many small innovative companies are already unable to bear these expenses. As a result, they have to either licence their new products or sell their inventions to big businesses, or be acquired by the latter.

The problems for the rule of law are clearly illustrated by the perversities of tax laws. Everybody with some kind of revenue from property and or other income sources is obliged to witness by his signature under the completeness and veracity of his/her

² I owe this information to Christoph Bauer, who formerly worked on these problems for the pharmaceutical firm Novartis.

Figure 8



wealth and income tax declaration with his/her signature. Yet in countries like Germany, for example, even tax consultants are scarcely able to remain familiar with all of the relevant articles of the laws and decisions of courts.

The increasing number of tax consultants is highly indicative of this development (see Figure 8 for Germany). Similarly, it would be interesting to know to what extent citizens' freely disposable time is reduced by the same development. The same questions regarding the time and resources spent on compliance with tax laws can be raised for business firms, tax consultants and the administration of the state.

Although the situation is especially bad in Germany, developments in other nations are following along similar lines, as the author can testify for Switzerland.

However, in spite of this situation, it seems impossible to simplify tax laws in countries like Germany. A well-designed proposal by the tax specialist and former judge at the Federal Constitutional Court, Kirchhof (2011), to radically simplify the body of tax law was met with silence by all parties of the *Bundestag* (the lower house of parliament). The reasons for such policies are probably twofold: firstly, benefits and loopholes for special interests have to be hidden from the eyes of voters. Secondly, with the high level of taxes some exceptions have to be granted to prevent an earlier breakdown of economic growth. A simplification of the tax system would mean the removal of all exceptions, which

usually benefit special interest groups and are thus resisted vehemently by those concerned. All of these exceptions are veiled with slogans of ‘equality of living conditions’, ‘social justice’, and special aims like helping the environment by specific subsidies, etc.

Another important field of regulation is scarcely perceived by the population. Since the introduction of compulsory schooling the state usually runs schools and universities in most countries. However, this reduces or prevents the beneficial influences of competition, especially in countries where the respective systems and the obligatory rules and standards are highly centralized. The reasons given for this system are the following: every child should have the same chances, and equality is destroyed by private schools, as poorer people cannot afford the fees. Moreover, the standards of education should be the same everywhere in a country, so that parents and their children find the same conditions if they move to a new area. The first of these arguments has been rejected by Milton Friedman who proposed the issue of education vouchers to all parents, financed by the government decades ago. A realization of this proposal would also allow children from low income families to attend private schools, and presumably raise the level of education in public schools by competition. The second argument loses much of its force when one considers the question: how good are unified standards if they are of a low level, as is presently the case in many schools run by the government in several countries?

A danger of the rising flood of regulations is not only the breaking of promises and of treaties among states, but also the latter’s tendency to question the validity or even invalidate contracts among private citizens, firms and other organizations. The numerous changes to laws and administrative orders ill-adapted to practical needs are leading to flood complaints in the courts.

We have already mentioned the one-sided change of pension promises by governments. In the European Monetary Union the rules that stipulate a limitation of government deficits and debts to 3 and 60 percent of GDP were not been respected by France and Germany within just a few years of their introduction. Meanwhile, far worse events have occurred: not only has the article in the Maastricht and Lisbon Treaties forbidding the bail-out of bankrupt members by other EU states been broken several times

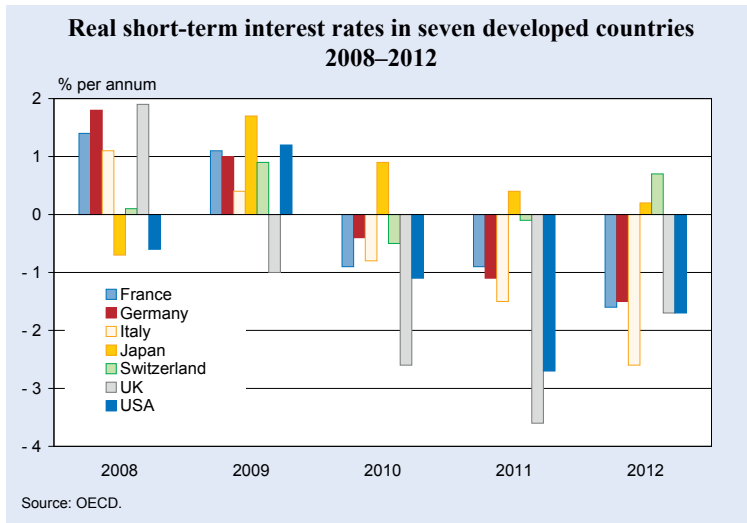
since 2010, but the ECB has also violated the rules featured in these treaties not to buy the debts of governments and banks on the verge of bankruptcy. Moreover, during the debt crisis of Cyprus in 2013 governments did not shy away from directly confiscating bank deposits of above 100,000 euros. Although this is certainly better than asking the taxpayers of other countries to carry the burden of financial mismanagement by banks, since their depositors were ultimately responsible for monitoring the soundness of their banks, the confiscation of deposits in Cyprus raises another question. How can individuals protect themselves against such measures at a time when they are not allowed to carry more than 10,000 euros in banknotes across national borders? After such events, how can citizens trust in the rule of law and the protection of their freedom and wealth against the despotism of rulers any longer?

Financial repression of citizens

Since the beginning of the last financial crisis in 2007/08, followed by government debt crises, leading central banks have reacted, led by the US Federal Reserve System (Fed), by reducing interest rates to nearly 0 percent. Governments, who had already increased their debts substantially before the beginning of the crisis, not surprisingly, by assisting several of the national banks threatened by bankruptcy, entered an even more precarious financial situation (Figure 3). Indeed, several Southern nations in the euro area were only saved from government bankruptcy by billions of euros in bail-out funds from the other member states (although this is forbidden by the Maastricht Treaty) and the IMF. Besides, the ECB granted help by softening conditions for credit, buying government bonds and allowing huge transfer obligations (Target 2 balances) to be accumulated by Southern Central Banks in the European Monetary System (Sinn 2013). The first of these countries facing bankruptcy was Greece, which has a long history of bankruptcies. But instead of allowing open bankruptcy again, it received dramatic and escalating financial help, and a veiled bankruptcy was allowed by forcing private creditors to write-off a significant part of their claims.

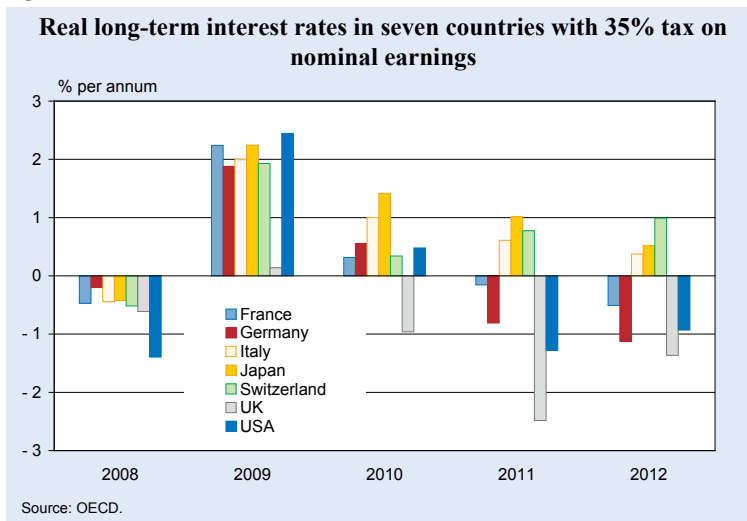
What do these events mean for the savings of individuals and their pension funds, even in nations not yet threatened by government bankruptcies? As a matter of fact, these events led to a creeping confiscation especially for the poorer part of the population (Figure 9).

Figure 9



As can be seen, the real earnings from assets bearing short-term interest have become negative for most countries in recent years. Exceptions to this rule are Japan, due to its deflation, and Switzerland in 2012. However, these are only gross earnings, i.e. nominal interest rates minus the rise of the consumer price index. The situation looks worse if the taxes on nominal earnings are taken into account. For real long-term interest rates, the picture is more favorable. Here only Switzerland, Britain and the United States show negative real gross rates during 2011 and 2012. But to get an impression of the net real long-term interest earnings after taxes, I have deducted a 35 percent tax on nominal interest earnings (Figure 10). In this case the earnings in all countries become negative in 2008, and for four of the seven in 2011 and 2012. It is important to realize that not only private

Figure 10



individuals, but also insurance firms and pension funds (which have historically also often been forced to buy government debt at low interest rates) are suffering from the low interest rates brought about by the policies of central banks.

Moreover, as shown by Reinhart and Rogoff (2011), such events are not an exception limited to the financial and government debt crisis since 2008. They explain: “it is worth noting that the real *ex post* interest rate on public debt (appropriately weighted by the type of debt instrument)

was negative for US debt for 25 percent of the years during 1945-80, while the comparable share for the United Kingdom was nearly 50 percent, [...]” (Reinhart and Rogoff 2011, 31).

Drugs, terrorism, ‘money-laundering’ and the transparent citizen

Citizens have long since been suspected of ‘money-laundering’ whenever they do not declare to the border controls that they are carrying more than 10,000 euros or Swiss francs with them. The US regulations are even more rigorous. And if they declare that they are carrying, for example, 15,000 euros across the border, the usual burden of proof is reversed. For citizens then have to prove that the money is their legal property and has been legally acquired. If they cannot prove this or fail to declare the amount, their property is confiscated.

To carry one’s own money was not a crime in earlier decades. It was artificially made a crime following pressure by the United States after the American authorities failed to win the ‘war’ against drug providers that they initiated by forbidding the production, sale and use of drugs. Making the production and use of drugs a crime pushed up drug prices dramatically and turned their production and distribu-

tion into a flourishing business. High drug prices led to secondary criminality by drug users, who had to try to get enough money to pay for them. Moreover, since it became rewarding for farmers to produce drugs, several nations trying to suppress drug production with the financial and military help of the United States, entered a long-lasting fight against their own farmers and the drug barons, supporting them, who started smuggling their product into those countries with the highest demand.

It quickly became clear that the laws against money-laundering did not help to win the war against drugs. On the contrary: several countries like Colombia, Bolivia and Afghanistan were soon at least partly dominated by the 'drug barons', who were making big profits because of high drug prices. The drug war is currently raging in Mexico, where the number of deaths because of the fights of drug barons with each other and the police has been steadily increasing during the last years.

While the drug industry and money-laundering are undoubtedly serious problems, the government measures taken to counter them constitute disquieting attacks on the freedom of the majority of citizens who have nothing to do with the drug business or terrorism, and who regularly pay their taxes. It is also important to remember that banknotes are the only form of legal tender in existence and their value as a means of payment depends partly on their nature as a bearer's note. Moreover, banknotes of relatively stable currencies are not only a last safeguard against the confiscation of bank deposits like in Cyprus in 2013, but also against high inflation rates in many nations. Measures opposing payment with banknotes are nevertheless proliferating at an alarming rate. It seems that France and Italy are currently considering prohibiting the use of cash for payments of more than 1,000 euros. And recently (February 2013) the Swiss government proposed the prohibition of domestic payments of over 100,000 Swiss francs in banknotes. Moreover, rumors are circulating now (i.e. 2013) that the United States is exerting pressure on Swiss authorities to abolish the 1,000 franc banknote. All this would be quite consistent with US policies to force all banks that do business with the United States to become a kind of police for its tax authorities, obliged to report all American residents' holdings with them (by the so-called FATCA legislation). This again means that all US residents with foreign bank accounts are

now suspected of tax fraud. Several Swiss banks have already decided not to accept any deposits from US residents. This is of special concern to Swiss citizens living in America who need a Swiss account for the ordinary payments that they still need to make and receive in Switzerland.

The ultimate cost of steps to counter money-laundering, namely the loss of freedom experienced by citizens, is immeasurable. The extension of the rules against money-laundering to apply to everybody essentially throws all citizens under suspicion of involvement in drugs, terrorist activities and tax evasion. In time it will utterly destroy the privacy of ordinary citizens, making their lives completely transparent to government agencies, including the police, the secret services and the tax authorities, whose access to information cannot be adequately controlled by the legislature. Moreover, this makes citizens reluctant to oppose problematic or illegal acts by government authorities for fear that these agencies can access information on some trivial or unintentional transgression of laws that they themselves have committed and use this information against them.

Control of private information flows under the pretext of protecting the people or the state

The privacy of citizens is increasingly threatened by government access to information covering all their private messages. In some cases this access may be illegally acquired by the secret services, which often transgress the rights granted to them by the law. Even in Switzerland it was revealed in the late 1980s that the federal public prosecution acting for the *Staatsschutz* (the agency responsible for protecting the state) had illegally gathered information about 900,000 out of about 7 million Swiss inhabitants. This prompted to a public outcry, leading to the destruction of this information and the severe restriction of the agency's rights of access. In recent years governments have even granted legal rights not only to secret services, but also to the police to monitor all private contacts and (or) information flows. At the moment the Swiss secret service is 'only' allowed to register all contacts by telephone, computer and mail among persons and to store them for one year. The contents of the information are, however, not stored. Yet in March 2013 the government proposed legalizing the opening of mail, the listening to telephone conversations and the spying out of com-

puters by the *Bundesnachrichtendienst* (the Federal Information Service). But this is ‘only to be allowed’ if one of the following five dangers is present: terrorism, foreign espionage, assembling of dangerous weapons, and threatening attacks on communication, energy and other critical infrastructure. Moreover, first the Federal Administrative Court (*Bundesverwaltungsgericht*) would have to agree to corresponding measures, then the Minister of Defense and, finally, a group of three federal ministers. On the other hand, no restrictions are planned to espionage in foreign countries, where the federal government “can use the services of the Federal Information Service in other specific situations for safeguarding other important interests of the country”. According to the proposal this includes “the protection of the Swiss workplace, its economy and financial institutions” (*Neue Zürcher Zeitung*, 9 March 2013). It remains to be seen whether this bill will indeed be approved by Switzerland’s federal parliament. There is a strong possibility that its politicians will accept the proposal without many changes, since recently the parliament agreed that the federal agency responsible for the gathering of information on money-laundering should be allowed to pass on this information to foreign agencies (*Neue Zürcher Zeitung*, 22 March 2013). Similarly, the Swiss parliament passed a motion (14 March 2013) to allow the police to obtain information from the data bank used to assemble vital information for issuing new passports. It passed this motion despite the fact that when the extension of the information required for the new set of passports was introduced, it was promised that this information would not be used for policing purposes.

Given that such developments are possible in peaceful and neutral Switzerland, it should come as no surprise that the secret services of countries like the United States have recently been proven of spying on their own compatriots.

Abolishment of *habeas corpus* and incarceration and killing of people without due process of law

It should be clear to everybody that wars pose the greatest of all threats to human liberty. Aggressive wars which are not justified by purposes of defense against other nations have brought death and misery not only to the members of fighting armies, but also to millions of civilians. The secondary consequences

of wars, however, are even more dangerous. I have already mentioned increased border controls and the strengthening of laws against money-laundering.

Worryingly, however, human rights are also being violated in other ways. On 13 December 2012 the European Court in Strasbourg decided that Macedonia had violated the rights of kidnapping victim Khaled al-Masri and had to pay him compensation totaling 60,000 euros. The government of Macedonia was found responsible for the torture and maltreatment of this German-Lebanese citizen on its territory, as well as his extradition to the US CIA. The court deemed the maltreatment of the victim at Skopje airport as a kind of torture.

A similar case was decided by the Court of Appeal in Milan on 8 January 2013. In this case the court condemned the former head of the Italian Secret Service, Nicolo Pollari, and his deputy, Marco Mancini, to 10 and 9 years in prison respectively, for their collaboration in the abduction of the Egyptian Imam Abu Omar by the American CIA in Milan on 17 February 2003. The Court of Appeal also condemned three other members of the Italian Secret Service and two dozen agents of the CIA in absentia to prison sentences. Moreover, it granted the former Imam compensation totaling one million euros.

Another decision of the European Court in Strasbourg throws more light on the practices of the CIA of kidnapping suspected, but sometimes innocent victims. In this case the court decided to begin public legal proceedings concerning an alleged former secret and illegal CIA prison in Northeast Poland. The proceedings relate to the Saudi-Arabian Abderrahim an-Nashiri, who complains of being imprisoned and tortured in Poland for some time.

A further characteristic of the American ‘war on terror’ is the expansion by Obama of George W. Bush’s drone war, i.e. of unmanned airplanes to commit targeted assassinations. This strategy may be warranted to a certain degree as long as it is selectively directed against high-ranking enemies, by the argument that it saves US soldiers’ lives and limits collateral damages. It is precisely this higher selectivity, however, which makes it tempting to extend the use of drones to areas of lesser threat, even at the risk of many innocent civilians being killed. However, even if the earlier attacks were justified to eliminate highly dangerous top-level al-Qaeda terrorists trying to

attack the United States, this no longer appears to be the case, prompting the US Congress to look into the matter.

I would like to conclude by citing Jonathan Turley, professor of law at George Washington University: “an authoritarian nation is defined not just by the use of authoritarian powers, but by the ability to use them. If a president can take away your freedom or your life on his own authority, all rights become little more than a discretionary grant subject to executive will. [...] Since 9/11, we have created the very government the framers feared: a government with sweeping and largely unchecked powers resting on the hope that they will be used wisely”.

In the light of the facts discussed above, Turley’s words are chilling, and should surely strike an alarm bell in any enlightened and civilized democracy.

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