

Book Reviews

Over Ruled: The Human Toll of Too Much Law, by Neil Gorsuch and Janie Nitze, 304 pp, hardcover, \$20.73, ISBN-10: 0063238470, Harper, 2024.

Neil Gorsuch has been an associate justice of the U.S. Supreme Court since 2017. He previously served on the Tenth Federal Circuit Court of Appeals. Ms. Nitze is an accomplished attorney. Justice Gorsuch's previous books are *A Republic, If You Can Keep It*,¹ which was a New York Times bestseller, and *The Future of Assisted Suicide and Euthanasia*.²

Over Ruled has two objectives. First is to recount a number of cases in which regular people get swept into the American legal system of rules, statutes, and regulations, in which government agencies and prosecutors have unlimited resources. Second is to educate the reader on how the legal and regulatory system has evolved into an unconstitutional tyranny.

In just a few decades the number of laws and regulations created by local but particularly federal entities has exploded, aggravating the citizen's risk of noncompliance. And so have complexity, obscurity, and failure to give adequate notice. For example, the regulations or rules with criminal provisions are not in one place. Punishments and penalties can be found in many places in government publications. Many violations are prosecuted without showing criminal intent (*mens rea*). And penalties have been inappropriately amplified in many cases by enthusiastic agency officials, prosecutors, or overzealous legislators.

Many activities are regulated for the benefit of certain interest groups, for example, the guild-like licensure systems that create entry or participation tests or fees that are prohibitive. The result is to create a monopoly or prevent or interfere with economic competitors.

The authors tell the stories of Americans who suffered from the expanded legal and regulatory maze, including fishermen, farmers, religious minorities, a computer genius, hair braiders, and monks making caskets. Lives and businesses are destroyed by unelected bureaucrats.

In the area of criminal law and prosecutions, the authors discuss the problems Harvey Silverglate and Sidney Powell have also written about: the fact that an innocent unknowing citizen could be guilty of three felonies a day and the many unchecked problems of prosecutorial abuse.³

These include:-

1. Charging with more offenses and more serious offenses than warranted;
2. Withholding or delaying the release of exculpatory evidence;
3. Deliberately mishandling, mistreating, or destroying evidence;
4. Allowing witnesses they know are not truthful to testify;
5. Pressuring defense witnesses not to testify;
6. Relying on fraudulent forensic experts;
7. During plea negotiations, overstating the strength of the evidence;
8. Making statements to the media that are designed to arouse public indignation;
9. Making improper or misleading statements to the jury; and
10. Failing to report prosecutor misconduct when it is discovered.

Prosecutors have a great opportunity to do evil. They have the discretion to choose the targets and use methods with little accountability for unethical behavior.

The power of an agency in matters related to regulated businesses or professions is almost unchecked, and the potential for malign actions is similar to that of prosecutors. Internal agency "process" is not constitutional due process. It is "in house" and conflicted, and is not provided by a fair and impartial tribunal or decision maker. The agency has its own investigators, prosecutors, and hearing officers, and hires experts to support its prosecutions. Often, hearing officials are members of the board of the agency, but in any event they are paid by the agency and expected to support agency actions—openly or by implication and expectation.

Only at a point when an independent judge and or jury is in charge of the case in dispute is the targeted industry or professional provided with due process, and that is at the price of insisting on an administrative law judge out of the panel of judges created by the State or insisting on a trial by state court if that option is available after agency processes are exhausted. There is no administrative judge pool at the federal level. One must wait to get a trial by a federal judge or magistrate. In recent times courts have deferred to agencies on issues of interpretation of regulations and penalties, but the recent decisions by the U.S. Supreme Court have forced judges to do the assessment and interpretation work. We shall see how that works out.

The Administrative Procedure Act does not stop agencies from arbitrary and capri-

cious actions. Tyrannical and unlawful actions can only be stopped by a courageous judge upholding the 5th and 14th amendment guarantees of due process and equal protection. The price of that kind of treatment is legal fees far beyond the resources of the average citizen. Tyrants of the government have lots of advantages and nothing to lose. An inappropriate regulatory action or prosecution never results in dismissal of the government miscreants; bureaucracies do not work that way.

Gorsuch and Nitze provide a lesson late in the book with the fascinating story of James Landis, well-connected and celebrated Harvard lawyer and advocate of the administrative bureaucratic state. As an official in the administration of Franklin Roosevelt, he was the designer of federal commissions and regulatory regimes that became the executive branch political and legal hegemon that continued to grow until the present. Landis is reported to be a genius of the law, a Harvard graduate, law faculty member, and Dean of Harvard Law. After a long and very influential period pushing the rule-by-experts administrative law system for decades beginning in the 1930s, late in his career he practiced law before the commissions he had invented, in the regulatory system he had helped create. He was stunned—his grand ideas had produced a dysfunctional system. His conclusion based on his experience as a practicing lawyer was articulated in the Landis Report⁴ to President-elect Kennedy in 1960. He admitted he was wrong and regretted his successes in a remarkable turnaround. Kennedy and others in his administration embraced some of the suggestions and implemented them, but their fixes were not adequate. We still have a dysfunctional administrative state apparatus that is unconstitutional in its legal structure and processes.

The book's discussion on the growth of the administrative/regulatory state is based on good research that includes reference to a hero of the battle to take down the growth of agency power and unelected bureaucrats, Phillip Hamburger, Professor of Law at Columbia. Hamburger has written eloquently⁵ that the administrative state as it now exists violates the U.S. Constitution. Executive agencies do not have legislative and judicial powers, only executive branch Article I constitutional authority. Today, however, executive agency bureaucrats write rules that enable and specify the bureaucrats' idea of what the Congress intended. Then the prosecutors and administrative law judges

who interpret and apply statutes are both employees of the agency.

Over Ruled offers a bright-light examination of the growth of the destructive forces of the legal/administrative state and expands on the warnings of the late great Angelo Codevilla.⁶

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Wealth, Poverty and Politics, 2nd ed., by Thomas Sowell, 576 pp, hardcover, \$22.99, ISBN-10: 046509676X, Basic Books, 2016

Thomas Sowell is the author of dozens of remarkably insightful and informative books on race, migrations, socialism/Marxism, economics, education, sociology, and political science. He has received numerous awards for his work, including the National Humanities Medal, presented by the President of the United States in 2003.

Born into grinding poverty, he lived first in North Carolina and then Harlem. After a somewhat tumultuous adolescence, he joined the U.S. Marines, where he became a firearms instructor. After discharge, he began an academic career that included Howard, Harvard, and a Ph.D. in economics from the University of Chicago. He taught at Cornell, Rutgers, Amherst, Brandeis, and UCLA, and has been a long-time fellow at the Hoover Institution of Stanford. In his early years he was a socialist but became a convert to classical liberal free-market economics. He is the author of 49 books and thousands of essays and columns beginning in the 1970s and continuing with his latest book *Social Justice Fallacies* (2023).

At 90, Sowell remains active. When I was working on this book review, I watched him on television in an interview by Mark Levin. His interviews have attracted more than 10

million views on YouTube. His Twitter (now X) account passes along an aphorism a day from the many well-crafted aphorisms that are a product of his erudition and insights.

Wealth, Poverty and Politics is "a true gem in terms of exposing the demagoguery and sheer ignorance of politicians and intellectuals in their claims about wealth and poverty, writes Walter Williams." [It] tosses a monkey wrench into most of the things said about income by politicians, intellectuals and assorted hustlers, plus it's a fun read."

The book is a study of cultures and societies, the realities of economics that are, as the founding liberal Austrian economist Ludwig Von Mises asserted in his book *Human Action*, all about human activity and human motivations and conduct. Von Mises and Sowell share the same attitude: economics is sociological discipline. It studies how society and human conduct produces wealth, and the factors that result in inequalities of wealth and uneven distributions of wealth in nations and the world.

The book focuses on the influence of these key factors:

- Geographic and environmental—rivers, harborage, land and soil conditions, and the impact of mountainous terrain versus plains along with climate and rainfall;
- Cultural and social factors in populations that impact productivity;
- Population education and values systems; and
- Political systems and societal structures and conflicts, such as the impact of welfare statism and central government bureaucratic controls.

In each section Sowell shows why acquisition and achievement are never equal and why simple, uninformed explanations for inequalities result in proposed solutions that never work. Sowell eviscerates the wrong-headed notion that racial inequalities in economic success are due to racial discrimination. To support his views, he provides wide-ranging and substantial historical evidence. The book has 96 pages of notes to substantiate the arguments.

Socialist critics of the book rely on their "established" theories about inequality, which fall well short of the scholarship, erudition, and analysis displayed by Dr. Sowell. They retreat to name-calling and snarky polemics that are bereft of good research. Marxism has propagandized the oppressed/oppressor theme and built a movement that has resulted in many socialist welfare states claimed to be created to eliminate inequities. The imposition of supposed equality in an effort to eliminate oppression has created totalitarian tyrannies that impose equal oppression.

Sowell convincingly shows the value of free markets and the dangers of centrally planned economies, based on his command of the research.

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The Dancer and the Devil: Stalin, Pavlova, and the Road to the Great Pandemic, by John E. O'Neill and Sarah C. Wynne, hardcover, 272 pp, \$16.39, ISBN-13:978-1684512546, Regnery History, 2022.

The dancer, Anna Pavlova, was possibly the greatest dancer in world history, said by some to have "God-given wings and feet that never touched the ground. Lacking the raw power and strength of other famous ballerinas, she had the unique ability to portray profound emotional and spiritual feelings. She was surely the most beloved. Her charitable works benefited many, including refugees and aspiring ballerinas.

Pavlova was an evangelist for dance, performing for all throughout the world, not just for the elite of great cities like Paris. She even danced in a Mexican bull ring.

As she was the embodiment of Russian tradition, culture, and faith, the devil had to destroy her, just as he destroy the magnificent Russian architectural expression, the Cathedral of Christ the Saviour in Moscow. The devil, Stalin, who had a great interest in music from an early age, aimed to control all music and all culture in order to have ultimate power. For example, he wiped out centuries of a storytelling musical culture from Ukraine by luring 150 Kobzars to their massacre in Moscow. He then forbade their musical instruments.

Since classical ballet romanticized the old Russia, Stalin wanted to obliterate it and replace it with Marxist ballet. The courageous Anna Pavlova simply defied him.

Just before her first performance on a tour in Europe, Pavlova died mysteriously. She said herself that she thought she had been poisoned by something she ate on the train from Paris. The cause of her death has never been fully elucidated. This book makes the case that it was one of a long series of individual assassinations ordered by Stalin.

The tools for carrying out the secret murders were developed in a laboratory connected to the Lubyanka prison, called Laboratory One among various other names. Another laboratory in the Ural Mountains developed bacteriological poisons such as ricin. These labs produced a large repertoire of poisons and infections causing what were called "staged natural deaths."

Though an uninterrupted direct connection with communist China's biowarfare activities may be impossible to establish, Stalin's tradition of assassinations apparently carries on. The book comments on the Wuhan labs and the virus believed to cause COVID: "The Wuhan Cover-up," "The Wet Market Theory," "The Mystical Pangolin and Frozen Food Theory," and "The WHO Investigation." There are many references but unfortunately no index.

Pavlova's signature performance *The Dying Swan* reflects the continuing sorrows in the world. Yet Pavlova's Old Mariinsky Theater in St. Petersburg has been restored, and the golden dome of the rebuilt Cathedral of Christ

the Saviour is seen again in Moscow.

The authors conclude their dismal account with a message of hope: "But the ashes and seeds of burned flowers and blackened forests leave seeds long after the fire is forgotten."

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Stalin's War: A New History of World War II, by Sean McMeekin, 880 pp, hardcover, \$40.00, ISBN-13: 978-1-5416-7279-6, New York, N.Y., Basic Books, 2021.

Americans like to think of World War II, the most unfathomably horrible war in world history, as the "good war" because valorous America unselfishly saved the world from the horrors of Hitler and Naziism and Japanese imperialism, even though the continental United States was not realistically threatened by either.

American soldiers were indeed valorous, and American technology and industry were phenomenal, yet it really was Stalin's war, and Stalin was clearly the winner, according to this book. Though Hitler was indubitably evil, Stalin was even worse, having probably killed ten times as many Jews and Poles as Hitler did. Yet he is for some reason never vilified in the same way.

Author Sean McMeekin, a professor of history at Bard College, bases his often shocking revisionist conclusions on monumental research, including diaries and memoirs that he translated from French, German, Russian, Bulgarian, and Turkish.

The Soviet Union, with the Ribbentrop-Molotov Pact, clearly played a major role in instigating the conflict. Resource-poor Germany was heavily dependent on Soviet aid. The Soviet Union literally fueled Hitler's conquest of western Europe. The U.S.S.R. supplied the Reich with 163,000 tons of petroleum and 243,000 tons of Ukrainian wheat during May and June of 1940, the period of the invasion of France and the low countries. Meanwhile, the U.S.S.R. was occupying the Baltics and moving into eastern Europe and the Balkans.

When Germany launched Operation Barbarossa and invaded the Soviet Union, the situation of course changed dramatically. Germany could no longer have access to the U.S.S.R.'s raw materials, and the U.S.S.R. was cut off from Germany's critical finished products.

At first, the Wehrmacht was amazingly successful. Ultimately, it failed, owing to Soviet resistance and the Russian winter, but also because Stalin was massively supported by American aid—probably about a trillion dollars' worth. This was essentially given away for free; in contrast, the British were expected to pay for their aid, with interest, and they ultimately did.

With Stalin's escalating demands, Americans more than doubled their cargo ship carrying capacity. Monthly shipments of American Lend-Lease aid to the U.S.S.R. included

50,000 tons of metals, chemicals, and other heavy materials; 20,000 tons of petroleum products; 10,000 trucks; 550 tanks; 144 pursuit planes; and 133 bombers. Additionally, there were 10 cargo ships full of American foodstuffs.

As American antiwar sentiment was very strong, the Roosevelt Administration was deceiving Congress every day about the amount of aid going to the U.S.S.R. American war policy was apparently being dictated by FDR together with Harry Hopkins and other pro-communist officials throughout the U.S. government. Although he was treated with contempt by Stalin, FDR tried to please him.

"Before meeting Roosevelt, the habitually paranoid Stalin had expected the two capitalist statesmen to gang up on him. Hearing Roosevelt disparage Churchill before the summit began, Stalin could scarcely believe his luck," McMeekin writes. "The stunner was that unprompted by Stalin, Roosevelt volunteered that India too should be detached from Britain." He did explain to Stalin that he thought it was better to discuss the question of India with Mr. Churchill.

Despite Americans' professed belief in democracy and self-determination, this book shows how two world leaders were making decisions affecting millions of people, as in redrawing boundaries and deciding how millions of people were to be displaced from their homes.

Stalin was evidently responsible for the tremendous American casualties from Operation Overlord, the invasion through France. This occurred at Stalin's behest despite Churchill's heated efforts to promote the strategy of invading from Italy. This would have interfered with Stalin's objectives for eastern Europe.

American losses were Stalin's gain. It looked as though Nazi Germany would be defeated, and there might have been hopes that the Germans would have surrendered to the Allies rather than to the Soviet Union. However, German resistance became twice as fierce when the Roosevelt Administration's plan to deal with postwar Germany leaked out. The Morgenthau plan by U.S. Secretary of the Treasury Henry Morgenthau would have basically turned Germany into a vast potato field with the starvation of a large percentage of Germans and the total and irreparable destruction of its mines and industrial capacity. In the Battle of the Bulge, the costliest battle of the entire war for U.S. troops, there were 100,000 casualties, mostly American, including 19,246 dead, 62,849 wounded or crippled, and 26,612 captured or missing.

Perhaps the most shocking Lend-Lease requisition of all was the one placed on Feb 1, 1943, for enriched uranium, which helped kick-start the Soviet atomic bomb program. By war's end, the United States had shipped to Stalin, in at least three known installments, three-quarters of a ton of uranium-235, 1,100 grams of deuterium oxide (heavy water), 835,000 pounds of cadmium metal (used to

control the intensity of an atomic pile), 25,000 pounds of thorium, and 13.8 million pounds of refined aluminum tubes of the kind used to cook uranium into plutonium. According to the Lend-Lease air liaison officer stationed in Great Falls, Major George Racey Jordan, Harry Hopkins phoned him personally in April 1943, as the first of these sensitive packages were being prepared for Stalin, to request that he expedite "a certain shipment of chemicals" to the Soviet Union—something "very special." "It is not to go on the records," Hopkins told Jordan. "Don't make a big production of it, but just send it through quietly, in a hurry."

The epilogue to the book summarizes a very grim picture indeed. There may have been V.E. Day celebrations in Europe, but the aftermath of the war was the triumph of communism in both eastern Europe and in China. The author notes that Harry Hopkins, then certainly an enthusiastic supporter of U.S.S.R., almost singlehandedly oversaw the Soviet Lend-Lease program that fed, armed, and provisioned the Red Army and Soviet war industry for four years, arguably contributing more than any of Stalin's generals to the Soviet victories over Germany and Japan.

"Of course, we cannot know what would have happened if Roosevelt had listened to American majority opinion and congressional critics in 1941 and let Hitler and Stalin fight it out without Lend-Lease aid tilting the balance on the eastern front," McMeekin writes. "It is hard to imagine, however, that it could have been all that much worse than what did happen."

The three Axis powers were crushed, but France was a withered wreck, and Britain was bankrupt and moribund. The U.S. was in a strong position, but the proto-Keynesian argument that the war brought the world out of the Depression rests on the broken-window fallacy identified by Frederic Bastiat. The "butcher's bill" was unthinkably horrendous.

The ultimate price of victory, McMeekin states, was paid by the tens of millions of victims of Stalin's expanding empire. In the words of a secret policeman stationed in Budapest, "While for some people, possibly, the war is over, for us Chekists the real war, to bring about the final destruction of the capitalist world, has only just begun." Decades of oppression and new forms of terror lay ahead.

The book has nearly 140 pages of notes and references and an extensive index. It is essential for any serious student of history and foreign policy, and is a page-turning read. It explodes many myths, including the assumption that the totality of Evil is named Hitler or fascism.

It also raises in my mind the question of whether the war against the "capitalist world" continues by other means, possibly from a different or dispersed headquarters, despite the collapse of the Soviet Empire.

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