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The bone battle: The attack on scientific freedom

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The Attack on Scientific Freedom

by Elizabeth Weiss

For the federal government, creation myths
take priority over scientific research.

Church and state are separated by the First Amendment of the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Native American Graves Protection and Repatriation Act (NAGPRA) is a major violation of the amendment.

NAGPRA (lovely acronym) is a federal law, passed in 1989, that requires agencies receiving federal support to allow federally recognized tribes to obtain "culturally affiliated" Native American human remains and artifacts — in other words, to reclaim bones, body parts, and burial objects from museums, research organizations, and other current owners. That may sound innocuous. But NAGPRA actually incorporates religious animism — traditional beliefs regarding spiritual forces active in nature, and the practices relating to these beliefs — into federal law.

Writing in the journal "Academic Questions," James Springer, an Illinois attorney, describes the problem in this way: "With the repatriationist movement . . . governmental policy has adopted and incorporated religious belief and practices. This situation is unique in modern American law, and the courts would not tolerate it in the context of enforcing the majority religion." He notes with surprise that academics who reject other religious intrusions into federally sanctioned

institutions often support repatriationism, which "attempts to substitute animistic religion for history, anthropology, and the natural sciences."

NAGPRA's uniting of church and state is not just implied. NAGPRA states that federally funded institutions must act "in consultation with . . . traditional religious leaders," and it stipulates that the review committee established by the act must include at least two "traditional Indian religious leaders." During the administration of George W. Bush, one of the highest offices established under NAGPRA went to Donna Augustine, a Thunderbird Turtle Native American from Maine, who according to a 2006 article in the *Native American Times* is "recognized as a traditional religious leader by Indian tribes in the United States." The quest to incorporate religious leaders into state functions is not surprising. The word "sacred" appears 12 times and "religious" appears five

times in NAGPRA, which also endorses the use of religious creation myths in deciding who owns what — or, to use federal language, who today is “culturally affiliated” with the remnants of the past.

Under the NAGPRA regime, cultural affiliation boils down to the acceptance of creation myths and oral traditions that allege geographic continuity for tribes from the beginning of time. For example, the Buhl burial, the skeleton of a woman more than 10,000 years old found in Idaho together with grave

NAGPRA unites church and state by mandating that federally funded institutions act “in consultation with . . . religious leaders.”

goods — one of the oldest human remains so far discovered in North America, and valuable evidence of the peopling of the continent — has been repatriated by the Shoshone-Bannock tribe and reburied. Why? Apparently because oral traditions held by the tribe claim that its ancestors have lived in the Americas since time immemorial.

Interestingly, however, the NAGPRA review committee does not have to make the reasons for its decisions known. One cannot know for certain how many reburials resulted from oral-traditional evidence, as opposed to scientific evidence. Yet nowhere does NAGPRA require scientific evidence of affiliation before remains are repatriated. Genetic testing, cranial comparisons, and other scientific methods are not considered more valid than oral traditions. These traditions usually embody origin myths suggesting that tribes were created in specific locations and have never migrated; thus, any remains found in that location must belong to the same ancestral line. In short, decisions will be made on the basis of religious belief, not a showing of fact.

The late Stephen Vincent, an investigative journalist, made it abundantly clear that NAGPRA is a religious law that destroys the separation of church and state. His article on the subject for Reason Online starts in this way:

Imagine an America where the federal government takes an active role in promoting the spiritual values of a certain cultural group. This group rarely documents its largely unknown religious practices and in fact considers many rituals too secret for public knowledge. Yet should outsiders violate its beliefs, the government can threaten them with lawsuits, fines, or prison sentences.

Vincent went on to show why this isn't imaginary: NAGPRA encourages the use of religious rationale to claim human remains and artifacts and provides for punishments of fines or imprisonment for up to a year for improperly selling or buying Native American remains and objects. A second violation brings additional fines, or a prison sentence of up to five years. Arizona art dealer Rodney Tidwell was sentenced to six months in prison for selling Native American masks. Another Arizonan, Richard Corrow, was arrested and sentenced to five years of probation and 100 hours of “community service” for trying to sell “sacred” objects that he had purchased years earlier from Native Americans. Courtney

Smith, Jr., was fined \$17,500 for selling Native American remains. The \$17,500 was ordered as a statutorily required cost for the reinterment of skulls and foot bones sold in interstate commerce. From 1996 to 2008, over 130 allegations of failure to comply with NAGPRA were filed against 42 museums. During 2008, three museums were found guilty of failing to comply with NAGPRA, and each was fined over \$5,000. Every year, new allegations of noncompliance arise.

But creation myths and the vexed concept of cultural affiliation become especially worrisome in regard to Paleo-Indian skeletal remains. The famous example is Kennewick Man. In 1996, a skeleton that had Caucasoid features was discovered eroding out of the Columbia River bank in Kennewick, Washington. X-rays revealed an arrowhead lodged in the hip bone and a radiocarbon dating of over 8,000 years ago. Soon after the discovery of Kennewick Man and the identification of his features, a coalition of Columbia River tribes headed by the Umatillas of northeastern Oregon filed a formal NAGPRA claim to the skeleton, even though there was no direct evidence linking them to him. They used their creation myth as the backbone for their claim. This myth can be paraphrased as “we know that our people have been part of this land from the beginning of time.”

After a decade-long legal battle between the Army Corps of Engineers, which planned to give the remains to the Umatillas using NAGPRA regulations, and eight scientists led by Douglas Owsley of the Smithsonian, Kennewick Man can finally be studied by scientists. The ruling by the 9th Circuit Court of Appeals states that examination of Kennewick Man is essential to determine whether the remains are related to modern Native Americans. During the period when Kennewick Man was in custody a leg bone was removed (likely when religious groups got access to the relic, while scientists were kept at bay), and even now access to Kennewick Man is difficult. The remains are stored at the Burke Museum in Seattle, but the Corps of Engineers retains guardianship and does not

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allow study that duplicates data collected by Owsley. It may be another couple of years before research on Kennewick Man is published in the scientific journals.

If scientific evidence of affiliation were required for repatriation, Paleo-Indians would likely be safe from reburial, especially when they differ significantly from modern Native Americans in cranial features. But NAGPRA requires no scientific evidence of affiliation, and the emphasis on sacred objects and traditional folklore militates against it. Although scientific methods are available to determine affiliation or lack of affiliation, these are used only in extreme circumstances, such as DNA tests and cranial metric comparisons. Most commonly location, and the myth that a tribe has always been in that location, are enough for the tribe to claim remains.

"How would you feel," it may be objected, "if your relatives were dug up and studied by scientists?" But of course, we all have relatives who died thousands of years ago, and whose remains have been found, preserved, and studied by scientists. But considering that evidence for biological relatedness isn't used in most NAGPRA cases, the question that ought to be put is "Would you attend the funeral of a stranger?"

NAGPRA's establishment of religion is not merely a question of sentiment. In 2006, NAGPRA grants, which were authorized by the Secretary of the Interior and dependent on funds secured through congressional appropriations, provided over \$2.4 million to Native American tribes to assist their religious endeavors. Some Native groups have been extremely successful in getting federal funding. Gordon Pang of the Honolulu Advertiser, for example, reported that the Hui Malama, a Native Hawaiian group formed in 1989 to rebury human remains, received over a million dollars in less than ten years, money that the group claims has been mainly used for travel. The government pays for ceremonies and supports the various rituals and methods that Native American groups insist upon for the treatment of remains, even though most Native Americans converted to Christianity, and many had previously sold so-called sacred objects.

Many academics deny the link between religion and repatriation by emphasizing that NAGPRA is really about respect, human rights, the need for more than one way to gain knowledge, and redressing the wrongs committed by past anthropologists. To cite just one instance of this common view: David Hurst Thomas, who is currently curator of anthropology at the American Museum of Natural History, has said that NAGPRA is an important human rights act that allows living Native Americans to practice their traditional religious responsibilities toward the dead.

But many Native people involved in the NAGPRA regime see a more direct link between repatriation and religion. A leading member of the Hui Malama says that he "firmly believes that the repatriation and reburials were a direct result of intervention by God and the ancestors to inspire and energize us." An email I received from Matthew King, chief of the Lakota Nation, states: "After the immigrants came into our country, they started digging for graves, I don't know why . . . They don't know God . . . It [the land] is, a burial ground and also a church for our Indian people."

In "The Future of the Past" (2001), Ronald Grimes, a professor of religion at Wilfred Laurier University in Canada, discusses religion's importance for Native Americans. He points out that one interesting aspect of the NAGPRA discussions before the act was passed was the continual declaration by the Native Americans themselves that the issue was essentially religious in nature. In a review of newspaper articles published from 1996 to 2008, I found that Native Americans always used religion as the reason for reburial, whereas non-Native academics made the same connection.

And it is not just Native Americans who clearly see that NAGPRA is a religious law. Support for NAGPRA has come from many religious organizations. C. Timothy McKeown and Sherry Hutt observe, in an article published in 2003, that a May 1990 letter to House and Senate members urging the passage of NAGPRA was signed by representatives of the American Baptist Churches, the Church of the

Brethren, Church Women United, the Evangelical Lutheran Church in America, the American Episcopal Church, Jesuit Social Ministries, the Mennonite Central Committee, the Presbyterian Church (USA), the United Church of Christ, and the United Methodist Church.

At the 2006 meeting of the American Association for the Advancement of Science, I reported on the consequences of NAGPRA for anthropological research. My findings were that osteological studies of Native American remains have decreased, that fewer sites are used, and that fewer geographical locations are examined. Additional consequences include losses of data, funding, time, and scientific freedom.

Since NAGPRA has been enacted no one knows for sure how many remains have been repatriated or reburied. Federally funded institutions are not required to keep this information, and neither is the federal government. But estimates have been published. According to an Associated

Genetic testing, cranial comparisons, and other scientific methods are considered no more valid than oral traditions.

Press article that appeared in 2004, the remains of more than 27,000 individuals have been repatriated since the passage of NAGPRA. In 2006, The New York Times ran an article by Edward Rothstein that suggested even higher numbers; Rothstein stated that "by 2005, remains of more than 30,000 individuals" had been repatriated. A Rocky Mountain News article by Jim Erickson about Pueblo reburials states that by 2006, when the article appeared, 32,052 individuals had been repatriated through NAGPRA. The Department of Interior's NAGPRA website estimates that over 34,000 individuals have been repatriated. Additionally, over half a million funerary objects have been returned to tribes.

Not surprisingly, some anthropologists are aghast at the prospect of the permanent loss of access to so much knowledge. Mike O'Brien at the University of Missouri has said that returning bones is like burning books. Yet each year, thousands of remains discovered through excavation are returned to Native Americans almost immediately and without any scientific study. Universities are continually approached by tribes that desire skeletal remains which are being held for research. A typical episode, reported by Gale Courey Toensing for "Indian Country Today" (June 24, 2009):

The University of Massachusetts at Amherst faces a complaint, which could result in loss of funding, fines, and other legal repercussions, by tribes that are not happy with anthropologists' classification of some remains as "unaffiliated." The tribes point to a historical connection to the area and the fact that the Springfield Science Museum repatriated similar remains to them. The University of Massachusetts attempted to stop the Springfield Science Museum's repatriation, knowing it would be used to argue that the university remains should also be repatriated. The chair of the anthropology department continues to maintain that the remains held at the university are not affiliated to the complaining tribes.

Claims and legal battles plague anthropology departments across the country. Not only have data been lost, but funding and research time too. It is impossible to calculate the impact of NAGPRA on museums and other institutions, which are forced to employ people on inventories and repatriations instead of research. Professional anthropologists have curtailed their own efforts to help people understand the past, in order to aid in repatriation. Amy Dansie of the Nevada State Museum wrote in a 1999 paper in the *Society for American Archaeology Bulletin* that efforts to abide by NAGPRA have "resulted in 10,000 hours spent over the past nine years of my life," and that NAGPRA work is "sucking day after day, year after year, out of our careers." These lost hours are spent on sincere but debilitating attempts to be in compliance — hours expended on inventories, consultations, and just trying to figure NAGPRA out.

But to me, the scariest aspect of repatriation and reburial is the loss of scientific freedom. Scientists should be able to investigate all sorts of questions about the world around them, a

In 2006 alone, NAGPRA granted over \$2.4 million in federal funds to Native American tribes to assist their religious endeavors.

world that includes the past; and the attempt to answer these questions should not be hampered by political or religious sentiments. Scientific freedom is lost when tribal consultation or supervision is required. Tribes are not likely to allow the study of remains if they judge that the questions that the remains might answer are controversial or conflict with their creation myths.

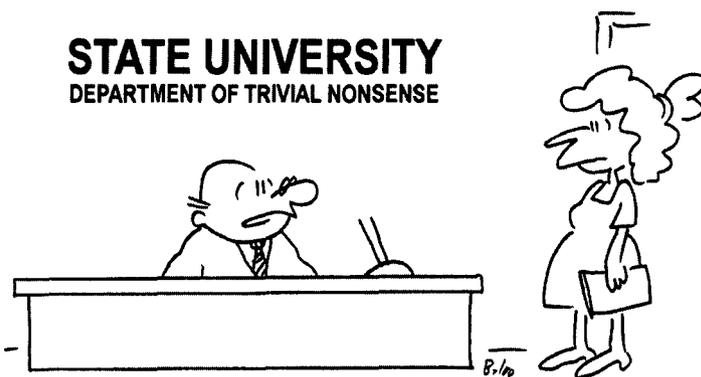
Amy Dansie and her colleague Donald Tuohy wrote in the 1997 issue of the *Anthropology Newsletter* that "despite the general assumption that science is free to inquire where it will, science is no longer free in the realm of human prehistory." In her 1999 paper, Dansie stated that in Nevada Native Americans attempted to stop studies on Spirit Cave Man and Wizards Beach Man (both Paleo-Indians with no affiliation to modern Native American populations), since studies could support the idea that modern Native Americans replaced earlier populations and thus are no "better" than the Europeans who came after them. Scientific evidence might also negate the validity of creation myths alleging that modern tribes have been here from the beginning of time. Dansie added that Paiute tribes denied anthropologists the right to finish studies on Paleo-Indian remains and display facial reconstructions, since these reconstructions would have revealed that Paleo-Indians did not resemble modern Native Americans and would again raise questions about the validity of oral traditions.

Another good example of scientific freedom under threat comes from the experience of Karl Reinhard, an anthropologist at the University of Nebraska. He conducted legitimate, high-quality scientific research on skeletal remains from

Nebraska Indians. He told of their lives at the point of contact with Europeans over 200 years ago. His work was published in the much-heralded book "In the Wake of Contact" (1994). The December 1998 issue of the *Ojibwe News* covered the story of Reinhard and reported that Native Americans who were dissatisfied with the research conclusions sent a complaint to the university demanding that Reinhard be fired. The Native American tribe requested repatriation of the remains and accused Reinhard of mishandling them. He flatly denied that he had, and filed a libel suit. In the end, charges against Reinhard were dropped, but the damage had been done. He ended up moving out of the hostile environment and has since been working on South American remains.

What was so offensive about Reinhard's research? He examined skeletal remains to determine diet and health in the pre-contact and post-contact eras of Nebraska and found that contact with Europeans had both good and bad effects. Good effects were the introduction of the horse and gun, which allowed for more efficient hunting, more nutritious food, and an increase in the distance available for gathering, which increased food variety. Data showed that Native Indians ate better after being contacted by the Europeans. On the downside, women seemed to have greater osteoarthritis in the post-contact era, perhaps as a result of preparing hides for the fur-trading economy. But the Native Americans who contended with Reinhard may have wanted to see nothing but bad effects from contact with Europeans.

Yet another example of a threat to scientific freedom comes from a graduate student who requested access to repatriated skeletal remains for study. Since not all remains handed to tribal members are reburied, some people believe that anthropologists may still be allowed to study them, if Native American tribes realize the importance of the studies. Yet it appears that once human remains have been repatriated, they are gone forever. The graduate student, who is interested in taking measurements of remains and does not conduct any destructive data collection, confided to me that he could not get access to remains that had been repatriated but not reburied; many tribes have a procedure for applying to study remains, but none of them actually grants access. He reported that there are no documented cases of a repatriated skeletal collection being studied by anthropologists. Once remains



"I'm worried — It's getting harder and harder to qualify for federal grants!"

are repatriated, they are no longer available for study regardless of the research questions or the methods that would be employed for the studies.

The other situation, that of bones that have been reburied, is far more dismal. Prehistoric skeletal remains are fragile; anthropologists are fortunate to be able to work with remains that have been carefully excavated and are in good condition. To keep them in good condition, universities and museums maintain them in non-acidic boxes, temperature controlled rooms, and vermin-free environments. As soon as they are placed back in the ground, they are lost. An anthropologist colleague of mine who works in the public sector of archaeology has described the horror of reburying remains. She said that once the boxes are put in the ground and dirt is put on top of them, you can hear the bones starting to break and crack. This is especially true for baby and child remains, which are of great value to anthropologists who want to understand the health of prehistoric populations.

Anthropologists study to be objective scientists and learn the true prehistory of the peoples they are examining; the loss of freedom to function in this way is an affront to our training and ethics. It is appalling when Native Americans — or any other people — express strongly anti-science feelings. Armand Minthorn, who was appointed by President Clinton to serve on NAGPRA's review committee has been quoted in the Pittsburgh Post-Gazette as saying, "We already know our history. It is passed on to us through our elders and through our religious practices"; and in the Nevada Journal as saying, "We didn't come across no land bridge. We have always been here." In the 2007 article "Rooted in Native Soil," a spokesman for Hui Malama says "We advocate against scientific study. In our view, such actions amount to desecration." Scientists are being asked to get permission to study human remains from religious people who are often vehemently anti-science.

A major theme in the repatriation literature concerns Native American questioning of the good that has come through the study of human remains. Devon Mihesuah, editor of "The Repatriation Reader: Who Owns American Indian Remains?" (2000), asks, "How has the study of Indian skeletal remains helped to alleviate the problems Indians face today?" The answer is that science and the search for knowledge should never be considered a luxury. The search for knowledge encourages people to think critically and to apply this skill to current problems. A society that sees science as a luxury or allows it to be attacked is opening the door to attacks on intellectual freedom across the board.

Is collaboration with Native American religious believers an option for scientists interested in learning the true prehistory of the Americas? Unfortunately, collaboration often means participation in religious rituals. I remember my first experience in field school through Cabrillo Community College, south of San Francisco. We were excavating a Native

American site at Big Sur on behalf of the state government, which wanted to improve parking and bathroom facilities on a gorgeous beach location. The college was hired by the government to excavate and make sure that the site was not a burial ground. The only things of interest we found were a couple of broken arrowheads. But what I remember most about the experience was the complete embarrassment I felt when the Native American who was required to be onsite led us into Native American rituals, such as circle dances and songs. I also remember his sermons on spirituality. His practices were a religious intrusion on scientific study, financed in part by the government.

In 2005, the American Journal of Physical Anthropology published an article by Stephen Ousley and colleagues, addressing many issues surrounding repatriation and

Anyone not troubled should substitute "Christianity" for "Native American religious practices," and see if he has the same reaction.

reburial. Ousley works with a large skeletal collection at the Smithsonian in Washington, DC. The article describes concessions made to Native Americans after consultation. Some of the concessions included "'feed[ing]' human remains by leaving pollen, tobacco, or foodstuffs nearby." Since museums usually try to avoid having food in curation facilities (to keep bugs and rodents out), curators have actually placed the offerings in plastic containers to meet the "spiritual need" for feeding the remains. Other unnecessary activities include handling warriors only in the early morning or facing all the skulls east. Some requests have involved separate rooms with special ventilation systems for ritual smudging or other forms of burning. These requests, whether they are easy or hard to follow, are religiously motivated. It is unfathomable to me that the U.S. government and some of the brightest minds in anthropology support and follow through with these religious intrusions.

More worrisome still is the way in which collaboration can shape research. I was sitting at a student competition watching two young people present their research on violence, using the prehistoric collection housed at the university, when a judge asked whether they had obtained permission to conduct this research from the affiliated tribe. No other presenters were asked whether they had obtained special permissions or had gone through an internal review process. But these particular students had actually had to ask the "affiliated" tribe for permission to conduct their research! It appears that this was

"Reburying the Past: The Effects of Repatriation and Reburial on Scientific Inquiry"

addresses the problem of separation of church and state in America's current treatment of Indian remains.

By Liberty author Elizabeth Weiss, available from Nova Science Publishers.
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the standard procedure. Does this mean that certain types of research questions cannot be asked?

Darby Stapp, an anthropologist working in Cultural Resource Management in Washington state, claims that the involvement of Native American tribes in anthropology has had good effects, one of which is dissemination of knowledge. This is right, of course. Getting knowledge to as many minds as possible is a highly valued ethic for me as a scientist. But the knowledge must be based on the scientific method and on analyses of data. It must not be tainted by political agendas, such as the ones revealed by the Native Americans who opposed Reinhard's findings. Stapp thinks that "archaeology has been infused with new ideas through its contact with tribes and exposure to tribal perspectives." I wonder which new ideas and what new perspectives Stapp is considering in his research. Do they include oral traditions that we know to be lacking in substance when they describe events of more than a few generations past?

Another example of collaboration comes from Kent Lightfoot, an archaeologist at University of California, Berkeley. In the Winter 2005–2006 issue of *News from Native California*, he talks of the importance of including Native Americans in research and fieldwork. His collaborative field school holds lectures in the evening on oral traditions and religion. Native Americans are consulted on the research plan; their religious observances are thus considered seriously. Again, there can be no objection to the diffusion of knowledge, or to the involvement of Native Americans in scientific work. But the guidance of scientific work by anything other than science is always disturbing. The Native Americans with whom Lightfoot works have strict taboos about the menstrual cycle. Women cannot do fieldwork or visit archeological sites while they are menstruating; they also cannot participate

in ceremonies, or prepare foods, since they are considered unclean during this time. Lightfoot has obliged this religion-driven discrimination against women, ensuring that menstruating women did not work with the other people at the site or touch their food, even though field schools are run in part with government funding. He jokes about how the Native Americans had a lockdown because he accidentally put his wife's dishes with others while she was menstruating: "The Kashaya elders were not amused. The word on the North Coast is that Lightfoot has a long way to go before he makes the transformation into a real man."

Is it obligatory to inform everyone in camp when one is menstruating? What other forms of discrimination are accepted or will be accepted? What if a Native American group happens to have religious rules about homosexuals? Lightfoot refers to his experiences in a light-hearted manner, but underneath is the cold truth that the Native Americans he works with are apparently not accepting of cultural variation. Lightfoot claims that Native American elders can provide a "sensitivity training for both non-Indians and young Natives raised off the reservation." But field school should focus on scientific (or at least methodological) training, not on conformity to religious sensitivities.

Anyone who is not troubled by what is said here should simply substitute "Christians" and "Christianity" for "Native American groups" and "Native American religious ideas and practices," and see whether he or she has the same reaction. The point isn't who is joining religion with science, and religion with the state, but the simple wrong of doing so. If fundamentalist Christians insisted that their belief in the story of Adam and Eve should have consequences for scientific study, there would be no doubt that both the First Amendment and the canons of scientific inquiry were under attack. □

Killing the Big Three, *from page 26*

are far more generous than in any other American industry. For every UAW member working at a U.S. car factory, three retirees were collecting benefits. At GM, the ratio was 4.6 to one. Professor Robinson says the auto industry was not capable of dealing effectively with the UAW.

How did the UAW acquire such power? Not through the free market. It's the transplants that operate under free-market principles. The UAW acquired its power from FDR's New Deal, specifically, the 1935 National Labor Relations Act, better known as the Wagner Act.

According to Hans Sennholz, who received his Ph.D. in economics under Ludwig von Mises:

This law revolutionized American labor relations. It took labor disputes out of the courts of law and brought them under a newly created Federal agency, the National Labor Relations Board, which became prosecutor, judge, and jury, all in one. Labor union sympathizers on the Board further perverted this law, which already afforded legal immunities and privileges to labor unions. The United States thereby abandoned a great achievement of Western civilization, equality under the law.

The Wagner Act was passed in response to the Supreme Court's voidance of NRA and its labor codes. It aimed at crushing all employer resistance to labor unions. Anything an

employer might do in self-defense became an "unfair labor practice" punishable by the Board. The law obliged employers to deal and bargain with the unions designated as the employees' representative; later Board decisions also made it unlawful to resist the demands of labor union leaders.

Dr. Lawrence W. Reed, president of the Foundation for Economic Education, has written:

Armed with these sweeping new powers, labor unions went on a militant organizing frenzy. Threats, boycotts, strikes, seizures of plants, and widespread violence pushed productivity down sharply and unemployment up dramatically. Membership in the nation's labor unions soared: By 1941, there were two and a half times as many Americans in unions as had been the case in 1935. Historian William E. Leuchtenburg, himself no friend of free enterprise, observed, "Property-minded citizens were scared by the seizure of factories, incensed when strikers interfered with the mails, vexed by the intimidation of non-unionists, and alarmed by flying squadrons of workers who marched, or threatened to march, from city to city."

Obama has adopted FDR's economic policies and said he intends to strengthen the union movement, just as FDR did. He said he will sign a "card check" bill if Congress passes it, which will eliminate the secret ballot for workers in voting

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