Address Before the 2013 ABA Derivatives and Futures Committee Meeting

From the Pharaohs to Paul Volcker— A Short History of the War Against Speculation

January 25, 2013

By

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My presentation today is about the much-reviled speculator and the many unsuccessful efforts by government to curb their activities. To illustrate the view of many towards speculators, I quote from a recent biography on Paul Volcker:

> Speculators look like normal people, except they smoke big fat Cuban cigars. They try to buy something (anything) in anticipation of selling at a profit after the price goes up. Or they sell first and try to buy later at a lower price. Some speculators focus on stocks, others on bonds, and still others on Super Bowl Tickets. (Ticket scalpers are speculators by another name).[2]

Our disdain for speculators seems to be derived from the "just price" theory traceable to St. Thomas Aquinas. He preached that raising prices in response to increased demand was a form of theft.[3] That concept found its way to colonial America where, among others, Robert Keayne was fined 200£ (later reduced to 80£) in 1639 for selling nails above their "just price."[4]

This just price concept underlies a continuing suspicion and even distaste for speculators (and ticket scalpers) that spurs popular distrust of the commodity and stock traders as gamblers who distort prices.

This concept remains alive today.[5] Yet, history is strewn with unsuccessful efforts to

[1] Professor of Law, Florida International University at Miami.
[2] William L. Silber, *Volcker: The Triumph of Persistence* (2012).
[3] *Just price concept – Aquinas 1225 – 1274*, http://www.xtimeline. com/evt/view.aspx?id=46396 (visited Aug. 21, 2011). Of course, such action is now viewed to be merely rational and critical to modern society.
[4] *Robert F. Dalzell, Jr., The Good Rich and What They Cost Us* 15 (2013).
[5] As one author notes:

> One of the earlier theories for which the United States's political system demands respect is that which insists that there exists a 'just' price for goods and services and a 'just' wage for labor. This body of economic thought has its roots in medieval theology, but it contains powerful ideas that are very much alive today. This body of thought does not purport to 'explain' prices, but to specify conditions that prices 'ought' to satisfy.

Charles G. Stalon, *Conference Addendum: Regulating in Pursuit of Efficient and Just Prices, 8* ADMIN. L. J. *913, 914 (1995)*.

proscribe speculation in order to assure that prices are just. For example, regrating" and "forestalling" were prohibited by Roman law because such speculative practices were believed to interfere with grain supplies, and a check was "put upon their avarice both by imperial instructions and by enactments . . . . The penalties were banishment from trading or relegation to an island for merchants and forced labor for those of the 'lower orders.'"[6]

England also attacked such practices during medieval times. There, a *forestaller* was a speculator who sought to profit by purchasing goods on their way to a market, "or who attempted by any means to enhance the price of such goods, or who persuaded persons not to come to the market or not to bring goods to market." A *regrator* was a speculator who bought grain in one market and sold it in another market located within a radius of four miles. An *engrosser* was a speculator who bought up commodities for resale.[7]

These "crimes" of speculation were taken seriously in England and were enforced by the infamous Court of the Star Chamber, which operated in secrecy and from which there was no appeal from its sometimes arbitrary decisions.[8] "Indeed, for a ten-year period in the fourteenth century, forestalling was punishable by death, although it appears that no one was ever actually executed."[9] Efforts by the Star Chamber to order corn to be brought to the market at set prices was found to have actually worsened shortages by increasing the temptation to ship grain where higher prices could be obtained.[10]

These prohibitions proved to be unworkable and unenforceable. As Adam Smith wrote in *The Wealth of Nations* in 1776 fears of engrossing and forestalling may be compared to the "popular terrors and suspicions of witchcraft."[11] Nevertheless, George Washington blamed inflated commodity prices during the Revolution on "monopolizers, forestallers, and engrossers." He viewed such individuals to be "murders of our cause" who should be "hung in gibbets."[12] Washington also complained that "[v]irtue and patriotism are almost extinct. Stock-jobbing, speculating, engrossing seem to be the great business of the multitude."[13]

Our Supreme Court later noted that, because of:

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[6] Norman T. Braslow, *The Recognition and Enforcement of Common Law Punitive Damages in A Civil Law System: Some Reflections on the Japanese Experience*, 16 ARIZ. J. INT'L & COMP. L. 341-42, n. 287 (citations omitted).
[7] WILLIAM S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 375 (2d ed. 1937).
[8] *Reports of Cases of the Star Chamber and High Commission* 43 (1886). *See also* XXIII *The Publications of the Selden Society*, *Court of the Star Chamber* 290 (1908) (regrating of butter and cheese).
[9] Herbert Hovenkamp, *The Law of Vertical Integration and the Business Firm: 1880-1960*, 95 IOWA L. REV. 863, 878 (2010) (footnote and citation omitted).
[10] II *The Publications of the Selden Society, Select Cases Before the King's Council in the Star Chamber* (*A.D. 1509-1544*) 290 (1908). *See also I Selden Society, Select Cases Concerning the Law Merchant* (*A.D. 1270-1638)* 92-93 (1908) (William Kemp of Bury St. Edmunds is accused of being a "forestaller of woolfells, for that he lies in wait and intercepts such wares and merchandise at the end of the vill and elsewhere outside the fair. . . .").
[11] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 229 (Great Books ed. 1952) (1st ed. 1776).
[12] JAMES T. FLEXNER, GEORGE WASHINGTON: THE FORGE OF EXPERIENCE (1732-1775) 337-338 (1965).
[13] CHRISTOPHER HIBBERT, REDCOATS AND REBELS 258 (1990).

> development of more accurate economic conceptions and the changes in conditions of society, it came to be recognized that the acts prohibited by the engrossing, forestalling, etc., statutes did not have the harmful tendency which they were presumed to have when the legislation concerning them was enacted, and therefore did not justify the presumption which had previously been deduced from them, but, on the contrary, such acts tended to fructify and develop trade."[14]

In the event, speculation grew rapidly in America after the Revolution. One of this country's first great political battles turned on concerns over speculation. Treasury Secretary Alexander Hamilton recommended that the new federal government refund the Revolutionary War debt at par, but James Madison objected that this would discriminate against those who had bought the paper at par and would reward speculators who bought this debt for just a few cents on the dollar. A grand bargain was then struck between Hamilton, on the one hand and Thomas Jefferson and Madison on the other whereby the debt was refunded at par and the Capitol of the U.S. was moved south to the Virginia border.[15]

That event also gave us our first insider trading scandal as word leaked out of this bargain Congressmen and merchants tipped by insiders sent express coaches to every village and hamlet to buy the discounted paper before public announcement of its refunding at par.[16] Acting with unusual haste, some 220 years later, Congress passed the STOCK Act in 2012, which now prohibits such insider trading by members of Congress.[17]

Short Sellers-- Governments over the years have unsuccessfully sought to prohibit short selling by speculators. The Dutch government unsuccessfully tried to ban stock short sales in 1610 and again in 1689. As one author noted, Holland discovered that "no statute can destroy the irresistible laws of economics."[18]

Sir John Barnard's Act prohibited short sales on English stock markets in 1733, but that ban proved to be unenforceable and was repealed in 1860.[19] After a banking crisis in 1866, England prohibited short sales in bank stocks, but it too was unsuccessful in stopping speculation.[20] That lesson in economics went unlearned. The Financial Services Authority in London restricted short sales in the stocks of financial institutions during the

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[14] Standard Oil Company of New Jersey v. United States, 221 U.S. 1, 55 (1910). Nevertheless, a few remnants of these prohibitions remain. Statutes in Arkansas, Colorado, Montana and Nebraska still allow city councils to prohibit forestalling in public vegetable markets. Arkansas Code §14-140-101 (2010); Colorado C.R.S. §31-15-711 (2010); Montana Code Anno. §7-21-4202; Nebraska R.R.S. § 15-212. New Hampshire still allows its city councils to punish both forestalling and regrating. New Hampshire RSA §47:17 (2010).
[15] THOMAS K. MCCRAW, THE FOUNDERS AND FINANCE 100-109(2012).
[16] I JERRY W. MARKHAM, A FINANCIAL HISTORY OF THE UNITED STATES, FROM CHRISTOPHER COLUMBUS TO THE ROBBER BARONS (1492-1900) 80-81 (2002).
[17] Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), 112 P.L. 105; 126 Stat. 291.
[18] JAMES EDWARD MEEKER, SHORT SELLING 13 (1932).
[19] *Id.*
[20] *Id.*

Financial Crisis in 2008, with negative effects.[21]

The French prohibited short sales in 1724 and again in 1785, but those proscriptions were largely ignored. Napoleon prohibited short selling in 1802 but that decree proved to be unenforceable and was repealed in 1885.[22]

Germany banned short sales and futures in 1896. Germany subsequently changed its laws some ninety years later, allowing the creation of Eurex, the German exchange that competes globally with U.S. commodity exchanges.[23]

In the United States, New York prohibited short sales of stock in 1812, but that act was repealed in 1858.[24] During the Civil War, President Lincoln was heard to remark that the gold speculators in New York should have their "Devilish heads shot off" because they were undermining the Greenback.[25] Congress passed legislation in 1864 that prohibited short sales in gold. However, gold prices immediately rose by 30 percent, and that statute was repealed only two weeks after its passage.[26]

President Herbert Hoover publicly attacked short sellers of wheat during the Great Depression. He stated in 1931 that:

> It has come to my knowledge that certain persons are selling short in the commodity market, particularly in wheat. These transactions have been continuous over the past month. I do not refer to the ordinary hedging transactions, which are a sound part of our market system. I do not refer to legitimate grain trade. I refer to a limited number of speculators. I am not expressing my view upon the economics of short selling in normal times, but in these times this activity has one purpose and that is to depress prices. It tends to destroy the return of public confidence. The intention is to take a profit from the loss of other people, even though the effect may be directly depriving many farmers of their rightful income. If these gentlemen have that sense of patriotism which outruns immediate profit, and desire to see the country recover, they will close up these transactions and desist from their manipulations. The confidence imposed upon me by law as a public official does not permit me to expose their names to the public, otherwise I would do so.[27]

However, as noted by *Time Magazine*, President Hoover, "so often unlucky, picked a bad time on which to flay short wheat speculators as the cause of depressed prices."[28] On that same day, the Department of Agriculture reported a large increase over the prior year's

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[21] Financial Services Authority, *Short Selling*, Discussion Paper No. 09/1 (Feb. 2009).
[22] JAMES EDWARD MEEKER, SHORT SELLING 218-221(1932).
[23] III JERRY W. MARKHAM, A FINANCIAL HISTORY OF HISTORY OF THE UNITED STATES, FROM THE AGE OF DERIVATIVES TO THE NEW MILLENNIUM (1970-2001) 271 (2002).
[24] JAMES EDWARD MEEKER, SHORT SELLING 231-232 (1932).
[25] DAVID HERBERT DONALD, LINCOLN 502 (1995).
[26] 13 Stat. 132 (1864) and 13 Stat. 344 (1864).
[27] *Commodity Short Selling: Hearing Before the House Committee on Agriculture*, 72d Cong. 1st Sess. 109 (1932).
[28] *National Affairs: Hoover on Shorts*, TIME MAGAZINE, July 20, 1931.

bumper wheat crop, which pushed prices down even further.

The SEC adopted a short sale "tick test" after a market decline in 1937,[29] which it abandoned just in time for the Financial Crisis in 2008.[30] That event led to claims by financial services firms that their stock was facing unwarranted attacks from short sellers. Those protesting included Lehman Brothers, Bear Stearns and AIG.[31] Even, Jamie Dimon, the JPMorgan CEO of London Whale fame, claimed that this short selling was "even worse than insider trading," and that it was a "deliberate and malicious destruction of value and people's lives."[32]

On September 18, 2008, the SEC imposed a temporary ban on short selling the stocks of 799 financial services firms because it believed that "unbridled" short selling was contributing to the recent, sudden price declines in the securities of financial institutions "unrelated to true price valuation."[33] This was just another way of saying that these securities were not trading at their "just" price. That ban was widely criticized as being ineffective and even harmful. Nevertheless, after the Financial Crisis, the SEC adopted a new short sale price test restriction.[34]

Germany, France, Spain, Italy, Belgium and the European Union also imposed short sale restrictions after the crisis, with no positive effects.[35]

Clearly, history has taught us nothing about short selling.

Price Controls--Another historical effort to control speculation and thereby achieve a "just" price comes in the form of price controls. This too has a long history. The rulers of Egypt and those in the ancient cities of Athens and Rome fixed grain prices, as did the Zhou dynasty in China during the first millennium B.C.[36]

In America, price controls were tried in the colonies by pegging prices to set amounts of commodities. For example, in 1618, the colonial governor in Virginia issued an order that directed that "'tobacco be taken in payment at three shillings per pound, and not more or

[29] 17 C.F.R. § 240.10a-1.
[30] *Regulation SHO and Rule 10a-1*, 72 Fed. Reg. 36348 (July 3, 2007).
[31] JERRY W. MARKHAM, A FINANCIAL HISTORY OF THE U.S. FROM THE SUBPRIME CRISIS TO THE GREAT RECESSION (2006-2009) 511 (2011).
[32] Jenny Anderson, *S.E.C. Unveils Measures to Limit Short Selling*, N.Y. TIMES, July 16, 2008, at C1.
[33] *SEC Halts Short Selling of Financial Stocks to Protect Investors and Markets*, SEC News Digest, available at http://www.sec.gov/news/digest/2008/dig091908.htm.
[34] *Amendments to Regulation SHO*, 2010 WL 675942 (Feb. 26, 2010).
[35] Nina Mehta, *Shorting Bans Do Little to Help Europe Banks, Instinet Says*., Bloomberg, available at http://www.bloomberg.com/news/2011-10-03/short-sale-bans-doing-little-to-help-europe-banks-instinet-says.html (visited on March 23, 2012).
[36] Food and Agriculture Organization of the United Nations (ed. Adam Prakash), *Safeguarding Food Security in Volatile Global Markets* (2011) (citations omitted), available, http://www.fao.org/docrep/013/i2107e/i2107e13.pdf. (visited Sept. 14, 2011).

less, on the penalty of three years of servitude to the Colony.'"[37] These efforts proved to be unworkable.

The Confederacy during the Civil War found that price controls did not stop the debasement of its currency.[38] Price controls were imposed during World War I under the "Lever Act" in order to prevent "injurious speculation."[39] However, that act was declared unconstitutional by the Supreme Court because it did not give proper notice of what constituted the economic crime, in that case, charging an unreasonable price for sugar.[40]

President Richard Nixon sought to deal with inflation in the 1970s through price controls. In its first ninety days, the Cost of Living Council ("CLC") that administered those controls received 50,000 complaints and 750,000 requests for interpretation.[41] Among the compelling issues decided by the CLC was whether the University of Southern California could raise reserved seat prices by fifty cents for the 1971 football season. A special Temporary Emergency Court of Appeals ruled in favor of the CLC in barring that increase.[42] In any event, those controls did not stop inflation or long gas lines. They were also massively gamed by Marc Rich before their repeal.[43]

Excessive Speculation--Still another form of attack on speculators is to restrict something called "excessive speculation." This theme is found in the legislative history of both the federal securities laws and the Commodity Exchange Act of 1936.[44]

The CFTC was created in response to concerns over excessive speculation in the 1970s. However, excessive speculation continued, as demonstrated by the Maine potatoes futures default in 1976, the coffee price run up in 1976-1977, the Hunt soybean caper in 1977, the March 1979 wheat futures emergency, the Silver Crisis in 1980, the Stock Market Crash of 1987, the Ferruzzi soybean caper in 1989, and the Sumitomo copper affair in 1995, to name just a few.

We began this millennium with Enron's excessive speculation in the seriously flawed California electricity market through transactions variously dubbed "Fat Boy," "Get Shorty," "Death Star," "Russian Roulette," "Ping Pong" and "Donkey."[45] Other energy trading firms collectively paid hundreds of millions of dollars to settle charges over their

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[37] I JERRY W. MARKHAM, A FINANCIAL HISTORY OF THE UNITED STATES, FROM CHRISTOPHER COLUMBUS TO THE ROBBER BARONS (1492-1900) 44 (2002).
[38] *Id*. at 235.
[39] 40 Stat. 276 (1917).
[40] United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921).
[41] J. MASHAW, BUREAUCRATIC JUSTICE 10 (1983).
[42] University of Southern Cal. v. Cost of Living Council, 472 F.2d 1065 (Temp. Ct. Emerg. App. 1972), *cert. denied*, 410 U.S. 928 (1973).
[43] A. CRAIG COPETAS, METAL MEN (1985).
[44] *See* e.g., *Stock Exchange Regulation, Hearing Before the House Committee on Interstate and Foreign Commerce on H.R. 7852 and H.R. 8720*, 73d Cong. 2d Sess. 925 (1934) and *Regulation of Grain Exchanges: Hearing Before the House Committee on Agriculture on H.R. 8829*, 73d Cong. 2d Sess. 2 (1934).
[45] *See*, Jerry W. Markham & Lawrence H. Hunt Jr., *The California Energy Crisis—Enron's Gaming of Governor Gray's Imperfect Market,* 24 FUT. & DERV. L. REP. 1 (2004).

speculative energy trading practices in California and elsewhere. Among those settling was BP, which paid over $300 million to settle charges that were later thrown out by the Fifth Circuit when applied against the individual BP traders.[46]

A Senate subcommittee issued a bipartisan staff report in 2006, which claimed that speculators had made "tens and perhaps hundreds of millions of dollars in profits trading in energy commodities." The staff report found "substantial evidence" that these speculators had "significantly increased prices" and that the speculative purchases of oil futures have added as much as $20-$25 per barrel to the current price of crude oil.[47] Amaranth's giant losses of billions of dollars in a single week in 2007 trading natural gas raised other concerns.[48]

A *New York Times* columnist claimed in 2008 that "[h]igh oil prices have helped bring down the American economy and to devastate Detroit."[49] However, an interagency task force (CFTC, FTC, Dept. Energy, SEC, Fed, Treasury and SEC) formed in 2008 to investigate and determine what was driving up crude oil prices concluded that increases in oil prices between 2003 and 2008 were largely the result of fundamentals of supply and demand, rather than speculation.[50]

CFTC chairman Gary Gensler announced in July 2009 that the agency would be seeking curbs on excessive speculation.[51] This engendered a tart response from the *Wall Street Journal*, where an editorial charged that the CFTC was engaging in the age-old scapegoating of speculators "that our superstitious ancestors would have recognized."[52]

Congress responded to concerns over excessive speculation by enacting legislation that gave FERC, the Federal Trade Commission, and the CFTC new anti-manipulation powers. The so-called Volker rule was included in Dodd-Frank to limit speculation by the big banks. Position limits were expanded to include swap transactions, and the CFTC is attempting to expand application of position limits.

Attacks on speculators continued. President Obama stated in 2012 in a speech from the White House's Rose Garden that "we can't afford a situation where speculators artificially manipulate markets by buying up oil, creating the perception of a shortage,

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[46] CFTC Press Release No. 5405-07, *BP Agrees to Pay a Total of $303 Million in Sanctions to Settle Charges of Manipulation and Attempted Manipulation in the Propane Market* (Oct. 25, 2007), http://www.cftc.gov/pressroom/pressreleases/pr5405-07.html (visited May 23, 2011); United States v. Radley, 659 F. Supp.2d 803 (S.D. Tex. 2009), *aff'd*, 632 F.3d 177 (5th Cir. 2011).

[47] U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, Staff Report*: The Role of Market Speculation in Rising Oil and Gas Prices: A Need to Put the Cop Back on the Beat* S. Prt. No. 109-65, 109th Congress, 2nd Sess. 1 (June 27, 2006).

[48] U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, Staff Report*: Excessive Speculation in the Natural Gas Market* 1-3 (2007).

[49] Floyd Norris, *Sense And Reality On Energy*, N. Y. TIMES, Aug. 29, 2008, at C1.

[50] U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, Staff Report*: Excessive Speculation in the Natural Gas Market* 3 (2007).

[51] Sarah N. Lynch, *CFTC Chief Seeks Curbs On Oil Trade; Data Rift?* WALL ST. J., July 29, 2009, at C1.

[52] *The Politics of 'Speculation*,' WALL ST. J., July 29, 2009, at A14.

and driving prices higher — only to flip the oil for a quick profit."[53]

Bill O'Reilly, the populist Fox News commentator, called oil speculators "crooks" and wanted to increase their margin requirements to 50 percent. Another Fox news commentator John Stossel pointed out to O'Reilly that government efforts to control speculation usually fail. Pulling out an onion he just happened to in his pocket, Stossel noted that Congress had tried to stop volatility in onion prices by banning futures trading in that commodity in 1958. Onion prices became more volatile after that ban. There is still hope for onion futures, however, after all Japan repealed its 72-year ban on rice futures trading in 2011.

Attacks against oil speculators went global in 2009 when British Prime Minister Gordon Brown and French President Nicolas Sarkozy jointly warned about the dangers of "damaging speculation" and sought government supervision of oil prices.[54] Sarkozy later delivered a speech in which he urged that commodity price speculators be treated in the same fashion as the "mafia."[55]

In 2010, the Greek Prime Minister blamed his country's severe economic problems on speculators, an accusation echoed by his counterpart in Italy. The *Wall Street Journal* opined that their "view seems to be that their fiscal troubles are the result of insidious outside 'manipulation,' not years of wasteful spending and antigrowth policies."[56]

Wealth Disparity--Ongoing class warfare and concerns over wealth disparity have also pulled in the speculator. A report published in 2011 by the Food and Agriculture Organization of the United Nations charged that food prices were being inflated by speculators: "aided by an admiring 'celebrity conscious' media, speculators have ascended to a savvy venerable class, able to amass fortunes at the push of a button."[57]

The Sixteenth Century Sumptuary laws of England unsuccessfully sought to lessen class warfare by prohibiting ostentatious displays of wealth. For example, those laws ordained

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[53] *Obama's Seinfield Strategy*, WALL ST. J., April 19, 2012, at A12.

[54] Gordon Brown and Nicolas Sarkozy, *Oil Prices Need Government Supervision*, WALL ST. J., July 8, 2009, at A15.

[55] http://www.euractiv.com/cap/sarkozy-likens-commodity-specula-news-505624 (visited on Feb. 8, 2013).

[56] *Short on Solutions*, WALL ST. J., Aug. 16, 2011, at A12.

[57] This report also stated that:

> Throughout history, speculation has been strictly circumscribed or prohibited because of its market distorting effects and its disruption to the social order. For a variety of reasons, speculation and modern-day speculators have gained increasing respectability, particularly in the United States of America. An over abundance of food and dwindling numbers of agriculturalists have banished the millennial-old concerns of hoarding and shortages in the richer nations. Also, owing to the enormous profitability of commodity linked products, banks and other traders have waged a successful public relations campaign, surmounting criticism traditionally associated with speculative activities. The creed of free market orthodoxy, defining agricultural markets as just another set of institutional arrangements to be gainfully exploited, has also stifled any debate over the morality of food profiteering and the effects upon the poor.

Food and Agriculture Organization of the United Nations (ed. Adam Prakash), *Safeguarding Food Security in Volatile Global Markets* (2011) at p. 265 (citations omitted), available, http://www.fao.org/docrep/013/i2107e/i2107e13.pdf. (visited Sept. 14, 2011).

“that no man shall be served, at dinner or supper, with more than two courses; except upon some great holidays there specified, in which case he may be served with three.”[58]

This prohibition did not carry over to America. To illustrate, an advertisement by the Food Administration in the *New York Times* during World War I used the household of the then Assistant Secretary of the Navy Franklin D. Roosevelt as a model for showing Americans with large families how to conserve food for the war effort. The Roosevelt family consisted of seven members who were attended by 10 servants. Among other things, the Roosevelt family menu rules allowed two courses for lunch and three courses for supper even when there was no great holiday. It was also pointed out in the advertisement that the Roosevelt’s servants were encouraged “to make helpful suggestions in the use of leftovers.”[59]

I would be remiss if I did not mention the greatest experiment of all in seeking to eliminate speculation, equalize wealth and to assure “just” prices. There were 115 securities and commodity exchanges in Russia before the Revolution. The Soviet government closed all of them and prohibited speculation in any form and seized all private wealth. Millions of lives were lost in that failed experiment and those surviving lost their most basic civil liberties and remained mired in poverty in order to allow the government to mismanage the economy until it finally disintegrated.[60]

Why then do governments continue to attack speculation even after all of these and other failures? The answer is simple. Politics often do not permit the actions necessary to deal with fundamental factors that adversely affect prices. For example, economists agree that energy prices can be lowered by increasing production, but this truism conflicts with political concerns over the environmental effects of oil spills and nuclear plant meltdowns. In order to divert attention away from these messy fundamentals, those seeking to restrict production blame high prices on speculators, who are an easy scapegoat.

In that regard, Democratic congressional staff members recommended in 2011 that congressional focus should be “on countering the growing impact of excessive speculation, rather than pursuing the oil industry’s priorities of increasing domestic drilling or repealing safety measures put in place after the devastating BP oil spill.”[61]

Truly, history has taught us nothing about the role of the speculator or much about basic economics. Recognition should be given to the fact that speculators perform valuable economic functions. They increase price efficiency and ration scarce goods more effectively than any government. So, please be kind to speculators and please resist rushing to blame adverse price changes on those poor, wretched and unloved creatures.

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[58] IV WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW 124 (WAYNE MORRISON, Editor, 2001).
[59] *How to Save in Big Homes*, N.Y. TIMES, July 17, 1917, at 3.
[60] Alexander Belozertsev & Jerry W. Markham, C*ommodity Exchanges and the Privatization of the Agricultural Sector in the Commonwealth of Independent States -- Needed Steps in Creating a Market Economy*, 55 LAW & CONTEMP. PROBS.119 (1992) (describing the pre and post Soviet economy in Russia).
[61] Democratic Staff of the Committee on Oversight and Government Reform U.S. House of Representatives, *Real Help for American Consumers: Who’s Profiting at the Pump?* 3 (May 23, 2011).