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# FUTURE OF FREEDOM

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VOLUME 35 | NUMBER 12

DECEMBER 2023

*No nation was ever ruined by trade.*

— *Benjamin Franklin*

# FUTURE OF FREEDOM

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# America's Forever Immigration Morass

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by *Jacob G. Hornberger*



All my life I have witnessed America's ongoing, never-ending, perpetual immigration morass, along with the endless laments, anguish, anxiety, and depression among American statisticians that have accompanied it. All of this mental anguish has caused immigration-control advocates for the last several decades to ceaselessly cry out for Congress to enact "comprehensive immigration reform" designed to finally — finally! — bring an end to this permanent morass in American life.

It's never going to happen. "Comprehensive immigration reform" is nothing but a pipe dream. If there were a way to fix this morass, they would have done it by now. What these people simply do not understand is that there is no

possible way to fix this system. That's because this system is not "broken," as statisticians always assert. It's because this system is inherently defective and, therefore, cannot possibly be fixed no matter what "comprehensive immigration reform" is adopted.

One could put the top 100 immigration experts and the top 100 best Border Patrol agents in a room for six months with 100 of the fastest computers in the world with the assigned task of coming up with a "comprehensive immigration reform" plan that would finally — finally! — bring an end to America's permanent immigration crisis, but it wouldn't make any difference whatsoever. At the end of that six months, the immigration crisis would continue even if the Congress adopted the recommended reform plan in its entirety.

This is what I've been saying for some 40 years. America's immigration system will never be made to work. If only that point would sink into the heads of the American people. If it did, so many of them would no longer spend their time, effort, or money trying to come up with a "comprehensive immigration reform" plan that would finally — finally! — bring an end to this perpetual crisis. They would realize

that all such efforts are futile and simply resign themselves to the perpetual crisis and chaos that comes with this system.

### Immigration socialism

Why is it impossible to come up with a “comprehensive immigration reform” plan that will work? The answer is simple: America’s immigration system is a socialist system. It is based on the core socialist principle of central planning. Government officials plan, in a top-down, command-and-control manner, the movements of millions of people in one of the most complex labor markets in history.

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**Central planners actually think that they possess the requisite knowledge to centrally plan complex economic activity.**

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It simply cannot be done. As the libertarian Nobel Prize-winning Austrian economist Friedrich Hayek observed, central planners have a “fatal conceit.” They actually think that they possess the requisite knowledge to centrally plan complex economic activity.

The result of central planning is, and always has been, what the Austrian economist Ludwig von Mises called “planned chaos.” What better

term to describe America’s decades-long immigration crisis than “planned chaos?” I certainly can’t think of a better term. Planned chaos and perpetual crisis come with immigration socialism.

But chaos and crisis are not the only things that come with immigration socialism. Death and suffering also come with this dysfunctional system. Every year, decade after decade, people die from drowning in the Rio Grande, thirst in the deserts in the American Southwest, asphyxiation in the backs of tractor-trailers, or bullets fired into them by Border Patrol agents. All of these deaths are a direct result of America’s system of immigration socialism.

Death and suffering are not the only consequences of immigration socialism. There are also the rapes and robberies of people at the hands of people who operate in the black market by ostensibly helping people to enter the United States in violation of its immigration laws.

### Open borders

There is but one solution to America’s forever immigration morass. Let me repeat that for emphasis: There is but one solution to America’s forever immigration morass. That solution is open borders

— genuine open borders, not the perverted “open borders” used today in the context of America’s failed socialist immigration system.

Genuine open borders means the abolition of the Border Patrol, the Immigration and Customs Enforcement agency, and all restrictions on the free movements of goods, services, and people across borders. The adoption of genuine open borders would bring an immediate end to America’s perpetual, ongoing, never-ending immigration chaos and crisis along the border, along with an end to the death, rapes, robberies, and suffering that come with immigration socialism.

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### The United States has the largest open-border system in history.

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The United States has the largest open-border system in history. People can travel thousands of miles within the United States without encountering any immigration official or customs official. It is truly a remarkable system, one that we all take for granted because we have all been born and raised under it.

It didn’t have it to be that way. Let’s assume that the Framers had decided that each state would have the power to control the movements of people into the state. In

other words, each state would have the same immigration system that the U.S. government has with respect to foreign citizens.

The state of Texas, for example, could decide how many people from other states would be allowed to enter the state each year. Quotas would be assigned to each state. No more floods of people moving from California into Austin. The number of people that would be permitted to enter from other states would be tightly managed and controlled. Credentials would be set by the state, with priority given to people with education and money. Texas could prohibit any person from moving into the state for the purpose of getting on welfare.

There obviously would have to be an enforcement of this system. There would be immigration stations wherever a highway crossed the border into a state. Of course, that would not be sufficient because people seeking jobs or seeking to visit family or friends could easily circumvent those stations by simply trespassing on people’s private property. Thus, there would have to be a state Border Patrol that would have the authority to travel the highways and roads near the state border and to enter onto people’s private property along or near the

border to look for people who were illegally entering the state.

What would have been the result of this central-planning-style domestic immigration system? The result would be the same as the result we have with America's socialist system of immigration controls today: chaos, crisis, death, and suffering, along with a domestic immigration police state.

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**One day the Border Patrol entered onto our property without a search warrant and busted our workers.**

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Moreover, we would have the same incessant anxiety and mental depression that has accompanied our national immigration crisis. People would be ceaselessly calling for "comprehensive immigration reform" within our nation to deal with the never-ending interstate immigration crisis. They would be pleading with Congress to fix our "broken" domestic immigration system.

Then imagine that a libertarian were to come along and say: "Let's have open borders between the states. Let's abolish all the state immigration controls, departments, and agencies, and just have free movements of goods, services, and people across the states. This is the

only solution to this never-ending, 200-year-old domestic immigration crisis."

It is not difficult to predict the response. "Are you crazy? Open borders between the states? Why, you would let any number of people move from California to Texas? You would let any number of people from Mississippi move to California to get on welfare? You libertarians are so impractical. Get your heads out of the clouds and help us to come up with a 'comprehensive immigration reform' plan that will finally resolve this 200-year-old domestic crisis."

### **An immigration police state**

I grew up on a farm outside Laredo, Texas, that was situated on the Rio Grande. We hired illegal immigrants. I worked out in the fields with them bailing hay. They were the hardest-working people I have ever seen. They lived with us there on our farm. They were also buddies to my brothers and me.

One day the Border Patrol entered onto our property without a search warrant and busted our workers, carting them away for arrest and deportation. That was a difficult experience for my brothers and me, who witnessed the whole thing.

What good did it do to bust our workers? Did it “secure” the border? That, of course, is laughable. It did no good at all. It accomplished nothing but inflict suffering on innocent people who clearly wanted those jobs. After all, let’s not forget that was more than 50 years ago. The war to “secure” the border is still going on today.

But there is something important to note about that experience: With America’s socialist immigration system comes an immigration police state. Just think: Those Border Patrol agents entered onto our private property. They had no permission to do so. They had no search warrant. If we had put a lock on our gate, they would shoot it off.

That’s what life is like under a police state. Immigration agents don’t need search warrants. They have the authority to enter onto any property they want and search without a warrant, so long as the property is within 100 miles of the border. Just think about that: warrantless searches of any private property located within 100 miles of the border. Try reconciling that with the Fourth Amendment!

That’s not all. Our immigration police state also comes with highway checkpoints at which travelers are required to stop, respond to

questions from immigration officials, show their papers, and have their persons and vehicles searched — all without a warrant. Keep in mind: This is for people traveling America’s highways — not people who are returning from Mexico. If a traveler refuses to roll down his window and be subjected to this type of totalitarian treatment, immigration officials bash in his car window, pull him from his vehicle, charge him with a crime, and cart him away to jail.

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**With America’s socialist immigration system comes an immigration police state.**

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This is what life is like under an immigration police state. As an aside, many years ago, I traveled to Cuba, which has a totalitarian communist system. They have these same types of highway checkpoints there.

There are also roving Border Patrol checkpoints along the border. These consist of Border Patrol agents simply stopping whatever vehicle they want that is traveling on highways several miles away from the border. No broken tail-light violation. No speeding violation. The agents just turn on the flashing lights on their vehicle and



direct the driver of a vehicle to pull over to the side of the road to be searched without a warrant. I was a victim of one of these types of searches when I was in high school.

Keep in mind something important: These are all “comprehensive immigration reforms” that have been adopted over the years to finally — finally! — bring an end to America’s permanent immigration morass. None of them have succeeded in doing so. But rather than remove or dismantle them, they remain part of our permanent immigration police state. Then, more such reforms are adopted to deal with the continued failure of the system to work, thereby making the police state even more fortified.

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**Did turning American employers into immigration criminals bring an end to America’s permanent immigration crisis?**

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One of the biggest reforms they adopted was to make it a criminal offense for American employers to hire illegal immigrants. The assumption was that if there were no job opportunities, immigrants would no longer be willing to come to the United States illegally.

Sounds logical, right? Did turning American employers into im-

migration criminals bring an end to America’s permanent immigration crisis? Of course it didn’t. The crisis continued, but they left that particular reform on the books, thereby making it another permanent part of America’s immigration police state.

The same thing happened when they made it a felony to transport or harbor immigrants who were here illegally. That, too, accomplished nothing, but it was left on the books to serve as a police-state hammer that could be used against anyone who was caught violating these laws.

There is also their Berlin Wall along the border. Clearly, that hasn’t worked either. But have they dismantled their wall and given back the property they stole from landowners through the power of eminent domain? Of course not. The wall remains, along with all the other reforms that have produced America’s immigration police state along the border.

Advocates of America’s socialist system of immigration controls sometimes decry certain aspects of our immigration police state. They might say, “We oppose the separation of children from their parents!” or “We oppose the wall” or “We condemn the boarding of buses to

check people's papers." But their cries are meaningless. The fact is that an immigration police state inevitably comes with a socialist immigration system, just as thunder comes with lightning. Imagine someone saying, "I am a firm supporter of lightning but I want to make it clear that I also firmly oppose thunder."

### Economic liberty and free markets

Would a system of open borders work? It's the only thing that works. That's because it is based on the principles of economic liberty, free markets, free enterprise, freedom of association, freedom of travel, and liberty of contract. Freedom works! It always works. It is socialism that doesn't work.

America had a system of open immigration for more than 100 years. That's because our American ancestors rejected socialism. That system was a major positive factor in the phenomenal increase in the standard of living of the American people, especially in the period from 1870 to 1910.

There is something important to note about that period of open immigration: There was no immigration crisis. Moreover, there were no deaths, rapes, robberies, and suffering arising from a socialist im-

migration system. That's because such things don't come with a system based on the principles of liberty. Freedom really does work.

### A case study of open borders

When I was growing up in Laredo, the city had a system of open borders. No, not all year long but only for a short period of time each year.

Laredo was the only city in the United States that had a big celebration in honor of George Washington's birthday. The celebration would last several days around February 22 every year. It consisted of a big downtown parade with big floats on which Laredo debutantes would be featured in their beautiful debutante gowns. The parade would be led by Pocahontas riding a horse and included school marching bands and drill teams and other participants.

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**America had a system  
of open immigration for more  
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The celebration also included a big debutant's ball, a carnival, fireworks, mariachi bands playing in Laredo's major downtown plaza, St. Augustin Plaza, which was built during the time that Laredo was

part of Mexico and the Spanish empire. It later included a jalapeño festival,

In the beginning and then later, it also included a big Noche Mexicana, which was introduced in 1925 by my grandfather, Matias de Llano, a Mexican citizen who had moved to Laredo during America's system of open immigration and who was serving as acting president of the Washington Birthday Celebration Association.

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**Nobody cared who was an American citizen and who was a Mexican citizen.**

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According to a new book entitled *Listening to Laredo* by Mehnaaz Momen, San Agustin Plaza “was decorated like the floating gardens of Mexico City. Mexican music and dances were showcased to evoke a very different cultural identity. It drew record crowds from both cities, as it was held in a public setting for everyone to attend. People would meander around the plaza at night from food stand to food stand, socializing with each other and strolling to the churches.”

The reason people from both cities — Laredo, Texas, and Nuevo Laredo, Mexico — participated in the celebrations is one that would

shock and frighten people today: During the Washington's Birthday celebration every year, the border would be opened to the people of Nuevo Laredo. Yes, you read that right: a totally open border between the two cities. The Border Patrol and the Immigration Service would stand down, and Nuevo Laredoans could freely cross the international bridge and enter Laredo to participate in the festivities.

Did Laredo fall into the Rio Grande with that open-border policy? Did America disintegrate? Did the Rio Grande border disappear or dry up?

Actually, none of the above occurred. Instead, open borders made it a fantastic, fun, and harmonious celebration.

Was there a crisis? Nope. That's because no one could tell who was from Laredo and who was from Nuevo Laredo. After all, keep in mind that Laredoans were about 95 percent of Mexican origin. Nobody cared who was an American citizen and who was a Mexican citizen. Everyone just walked around and enjoyed the festivities regardless of national origin.

**Ending the crisis, chaos, and morass**

And that is precisely what would happen if America's socialist system

of immigration controls was dismantled today. Tomorrow, there would no longer be an immigration crisis. People would simply be free to cross the border, back and forth. Foreigners would retain their citizenship, unless they desired to apply for U.S. citizenship. No one, except election officials, would know who was a citizen and who wasn't, and no one would care. People would simply be dealing with each other as human beings, without regard to one's citizenship, as they do today in their everyday dealings.

As long as we continue to maintain a socialist immigration system, we will continue to experience permanent immigration morass and an immigration police state. There is no possible reform that can fix this inherently defective system.

There is but one solution: open borders — genuine open borders — the elimination of the Border Patrol, the Immigration and Customs Enforcement agency, and all restrictions on the free movements of goods, services, and people across borders. The sooner everyone comes to that realization, the better off everyone will be.

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*Jacob G. Hornberger is founder and president of The Future of Freedom Foundation.*

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**NEXT MONTH:**  
**“Why Drug Prohibition?”**  
*by Jacob G. Hornberger*

*The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written.*

— John Marshall

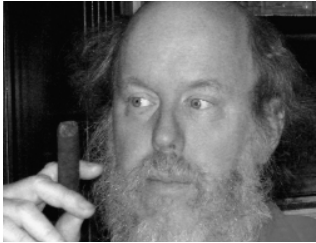
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# Is Free Speech a Relic in America?

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by James Bovard



Is the First Amendment becoming a historic relic? On July 4, 2023, federal judge Terry Doughty condemned the Biden administration for potentially “the most massive attack against free speech in United States history.” That verdict was ratified by a federal appeals court decision in September 2023 that concluded that Biden administration “officials have engaged in a broad pressure campaign designed to coerce social-media companies into suppressing speakers, viewpoints, and content disfavored by the government.”

In earlier times in America, such policies would have faced sweeping condemnation from across the political spectrum. But major media outlets like the *Washington Post* have rushed to the bar-

ricades to defend the Biden war on “misinformation.” Almost half of Democrats surveyed in September 2023 affirmed that free speech should be legal “only under certain circumstances.” Fifty-five percent of American adults support government suppression of “false information” — even though only 20 percent trust the government.

## Biden’s war on free speech

The broad support for federal censorship is perplexing considering that courts have vividly laid out the government’s First Amendment violations. Doughty delivered 155 pages of damning details of federal browbeating, jawboning, and coercion of social-media companies. Doughty ruled that federal agencies and the White House “engaged in coercion of social media companies” to delete Americans’ comments on Afghanistan, Ukraine, election procedures, and other subjects. He issued an injunction blocking the feds from “encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech.”

Censors reigned from the start of the Biden era. Barely two weeks after Biden’s inauguration, White House Digital Director Rob Fla-

Flaherty demanded that Twitter “immediately” remove a parody account of Biden’s relatives. Twitter officials suspended the account within 45 minutes but complained they were already “bombarded” by White House censorship requests at that point.

Biden White House officials ordered Facebook to delete humorous memes, including a parody of a future television ad: “Did you or a loved one take the COVID vaccine? You may be entitled...” The White House continually denounced Facebook for failing to suppress more posts and videos that could inspire “vaccine hesitancy” — even if the posts were true. Facebook decided that the word “liberty” was too hazardous in the Biden era; to placate the White House, the company suppressed posts “discussing the choice to vaccinate in terms of personal or civil liberties.”

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**Almost all the targets of federal censorship during the Biden era have been Americans.**

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Flaherty was still unsatisfied and raged at Facebook officials in a July 15, 2021, email: “Are you guys f—king serious?” The following day, President Biden accused social-media companies of “killing people”

by failing to suppress all criticism of COVID vaccines.

### Federal censorship

Censorship multiplied thanks to an epic bureaucratic bait-and-switch. After allegations of Russian interference in the 2016 election, the Cybersecurity and Infrastructure Security Act was created to protect against foreign meddling. Prior to Biden taking office, CISA had a “Countering Foreign Influence Task Force.” In 2021, that was renamed the “Mis-, Dis- and Mal-information Team (‘MDM Team’).”

But almost all the targets of federal censorship during the Biden era have been Americans. Federal censorship tainted the 2020 and 2022 elections, spurring the suppression of millions of social-media posts (almost all from conservatives). During the 2020 election, CISA targeted for suppression assertions such as “mail-in voting is insecure” — despite the long history of absentee ballot fraud.

CISA aims to control Americans’ minds: A CISA advisory committee last year issued a report that “broadened” what it targeted to include “the spread of false and misleading information because it poses a significant risk to critical function, like elections, public

health, financial services and emergency responses.” Thus, any idea that government officials label as “misleading” is a “significant risk” that can be suppressed.

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**Biden policymakers  
presumed that Americans are  
idiots who believe whatever they  
see on Facebook.**

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Where did CISA find the absolute truths it used to censor American citizens? CISA simply asked government officials and “apparently always assumed the government official was a reliable source,” the court decision noted. Any assertion by officialdom was close enough to a Delphic oracle to use to “debunk postings” by private citizens. Judge Doughty observed that the free-speech clause was enacted to prohibit agencies like CISA from picking “what is true and what is false.”

### **COVID-inspired censorship**

“Government = truth” is the premise for the Biden censorship regime. In June 2022, Flaherty declared that he “wanted to monitor Facebook’s suppression of COVID-19 misinformation ‘as we start to ramp up [vaccines for children under the age of 5].” The FDA had al-

most zero safety data on COVID vaccines for infants and toddlers. But Biden announced the vaccines were safe for those target groups, so any assertion to the contrary automatically became false or misleading.

Biden policymakers presumed that Americans are idiots who believe whatever they see on Facebook. In an April 5, 2021, phone call with Facebook staffers, White House Strategy Communication chief Courtney Rowe said, “If someone in rural Arkansas sees something on FB [Facebook], it’s the truth.”

In the same call, a Facebook official mentioned nose bleeds as an example of a feared COVID vaccine side effect. Flaherty wanted Facebook to intervene in purportedly private conversations on vaccines and “Direct them to CDC.” A Facebook employee told Flaherty that “an immediate generated message about nose bleeds might give users ‘the Big Brother feel.’” At least the Biden White House didn’t compel Facebook to send form notices every 90 seconds to any private discussion on COVID: “The Department of Homeland Security wishes to remind you that there is no surveillance. Have a nice day.” Flaherty also called for Facebook to crack-

down on WhatsApp exchanges (private messages) between individuals.

Federal agencies responded to legal challenges by portraying themselves as the same “pitiful, helpless giants” that President Richard Nixon invoked to describe the U.S. government when he started bombing Cambodia. Judge Doughty wrote that federal agencies “blame the Russians, COVID-19 and capitalism for any suppression of free speech by social-media companies.” But that defense fails the laugh test.

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**Federal agencies, according to the court rulings, strong-armed Twitter to arbitrarily suspend 400,000 accounts.**

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Federal agencies pirouetted as a “Ministry of Truth,” according to the court rulings, strong-arming Twitter to arbitrarily suspend 400,000 accounts, including journalists and diplomats.

The Biden administration rushed to sway the appeals court to postpone enforcement of the injunction and then sought to redefine all its closed-door shenanigans as public service. In its briefs to the court, the Justice Department declared, “There is a categorical, well-

settled distinction between persuasion and coercion,” and castigated Judge Doughty for having “equated legitimate efforts at persuasion with illicit efforts to coerce.”

Biden’s Justice Department denied that federal agencies bullied social-media companies to suppress any information. Instead, there were simply requests for “content moderation,” especially regarding COVID. Actually, there were tens of thousands of “requests” that resulted in the suppression of millions of posts and comments by Americans.

Team Biden champions a “no corpse, no delicta” definition of censorship. Since federal SWAT teams did not assail the headquarters of social-media firms, the feds are blameless. Or, as Justice Department lawyer Daniel Tenny told the judges, “There was a back and forth. Sometimes it was more friendly, sometimes people got more testy. There were circumstances in which everyone saw eye to eye, there were circumstances in which they disagreed.”

It’s irrelevant that President Joe Biden publicly accused social-media companies of murder for not censoring far more material and that Biden appointees publicly threatened to destroy the compa-



nies via legislation or prosecution. Nope: It was just neighborly discussions between good folks.

### The courts strike back

At the appeals court hearing, Judge Don Willett, one of the most principled and penetrating judges in the nation, had no problem with federal agencies publicly criticizing what they judged false or dangerous ideas. But that wasn't how Team Biden compelled submission: "Here you have government in secret, in private, out of the public eye, relying on ... subtle strong-arming and veiled or not-so-veiled threats." Willett vivified how the feds played the game: "That's a really nice social-media platform you've got there, it would be a shame if something happened to it."

Judge Jennifer Elrod compared the Biden censorship regime to the Mafia: "We see with the mob ... they have these ongoing relationships. They never actually say, 'Go do this or else you're going to have this consequence.' But everybody just knows."

Yet the Biden administration was supposedly innocent because the feds never explicitly spelled out "or else," according to the Justice Department lawyer. This is on par with redefining armed robbery as a

consensual activity unless the robber specifically points his gun at the victim's head. As economist Joseph Schumpeter aptly observed, "Power wins, not by being used, but by being there."

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**"Here you have government in secret, in private, out of the public eye, relying on ... subtle strong-arming and veiled or not-so-veiled threats."**

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In its September decision, the appeals court concluded that the White House, FBI, Centers for Disease Control and Prevention (CDC), and the U.S. Surgeon General's office trampled the First Amendment by coercing social media companies and likely "had the intended result of suppressing millions of protected free speech postings by American citizens."

The court unanimously declared that federal

officials made express threats.... But, beyond express threats, there was always [italic in original] an "unspoken or else." The officials made clear that the platforms would [italic in original] suffer adverse consequences if they failed to comply, through express or

implied threats, and thus the requests were not optional.

The appeals court also took a “real world” view of the nation’s most feared law enforcement agency: “Although the FBI’s communications did not plainly reference adverse consequences, an actor need not express a threat aloud so long as, given the circumstances, the message intimates that some form of punishment will follow noncompliance.” The federal appeals court upheld part of the injunction while excluding some federal agencies from anticensorship restrictions. The Biden administration quickly appealed the partial injunction to the Supreme Court, telling the court: “Of course, the government cannot punish people for expressing different views.... But there is a fundamental distinction between persuasion and coercion. And courts must take care to maintain that distinction because of the drastic consequences resulting from a finding of coercion.”

The Biden brief bewailed that the appeals court found that “officials from the White House, the Surgeon General’s office and the FBI coerced social-media platforms to remove content despite the absence of even a single instance in

which an official paired a request to remove content with a threat of adverse action.” But both the federal district court and the appeals court decisions offered plenty of examples of federal threats.

The New Civil Liberties Alliance, one of the plaintiffs, scoffed: “The Government argues that the injunction interferes with the government’s ability to speak. The Government has a wide latitude to speak on matters of public concern, but it cannot stifle the protected speech of ordinary Americans.” And the injunction impedes federal officials from secretly coercing private companies to satisfy White House demands.

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**The injunction impedes federal officials from secretly coercing private companies to satisfy White House demands.**

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As the Biden administration pressured the Supreme Court, the anticensorship lawyers on September 25 secured an en banc rehearing of their case, which consists of a panel of all 17 active Fifth Circuit judges. The plaintiffs were especially concerned that the Cybersecurity and Infrastructure Security Act was excluded from the injunction. CISA and its array of federal censorship

contractors have sowed far too much mischief in recent years. The appeals court modified the injunction to put a leash on CISA.

Censorship could cast the deciding vote in the 2024 presidential election. Judge Doughty issued his injunction in part because federal agencies “could use their power over millions of people to suppress alternative views or moderate content they do not agree with in the upcoming 2024 national election.”

Much of the mainstream media is horrified at the prospect of reduced federal censorship. The *Washington Post* article on Doughty’s decision fretted, “For more than a decade, the federal government has attempted to work with social media companies to address criminal activity, including child sexual abuse images and terrorism.” The Post did not mention the Biden crusade to banish cynicism from the Internet. Journalist Glenn Greenwald scoffed, “The most surreal fact of U.S. political life is that the leading advocates for unified state/corporate censorship are large media corporations.”

Fifty years ago, philosopher Hannah Arendt wrote of the “most essential political freedom, the right to unmanipulated factual informa-

tion without which all freedom of opinion becomes a cruel hoax.” The battle over federal censorship will determine whether Americans can have more than a passing whiff of that political freedom. Ohio Attorney General Dave Yost joined the lawsuit against censorship and commented in September: “The federal government doesn’t get to play referee on the field of public discourse. If you let them decide what speech is OK, one day yours might not be.”

On October 20, the Supreme Court announced that it would rule on this case, with a decision expected within a few months. Stay tuned for plenty of legal fireworks and maybe even good news for freedom.

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*James Bovard is a policy advisor to The Future of Freedom Foundation and the author of the ebook Freedom Frauds: Hard Lessons in American Liberty, published by FFF, Public Policy Hooligan, Attention Deficit Democracy, and eight other books.*

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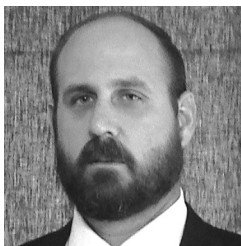
**NEXT MONTH:**  
“Will TSA Steal Your Mug?”  
*by James Bovard*

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# Conservatives, Hate Crimes, and Victimless Crimes

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by *Laurence M. Vance*



**L**ibertarianism and conservatism have been described as “uneasy cousins.” There are some issues where they can unite in opposition to the terrible policies of progressives: the green new deal, universal health care, free college tuition, gun-control laws, taxpayer-funded abortions, defunding the police, etc. But even when they seem to agree on something — like hate-crimes laws — the inconsistency of conservatives is apparent because they lack the firm philosophical foundation of libertarianism.

## Hate crimes

The concept of a “hate crime” is a recent invention, going back to

about the mid-1980s. According to the U.S. Department of Justice, “In the simplest terms, a hate crime must include both ‘hate’ and a ‘crime.’” In hate-crime law, “the word ‘hate’ does not mean rage, anger, or general dislike.” Rather, in this context, “‘hate’ means bias against people or groups with specific characteristics that are defined by the law.”

At the federal level, “Hate crime laws include crimes committed on the basis of the victim’s perceived or actual race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.”

This is in addition to hate-crime laws on the state level, which “include crimes committed on the basis of race, color, and religion; many also include crimes committed on the basis of sexual orientation, gender, gender identity, and disability.”

In hate-crime law, “Crime is often a violent crime, such as assault, murder, arson, vandalism, or threats to commit such crimes,” but it “may also cover conspiring or asking another person to commit such crimes, even if the crime was never carried out.” According to the FBI’s 2021 hate-crime statistics submitted by 11,834 law enforcement agencies, “there were 7,262 hate crime incidents involving 8,673 offenses.”

Hate-crime laws are expanding on the state level. A case in point is Michigan, where a series of hate-crime bills passed the Democratic-controlled state house earlier this year. According to the official legislative analysis,

House Bills 4474 and 4476 would amend the Michigan Penal Code to revise provisions that prohibit hate crimes and to define and prohibit institutional desecration, respectively. The bills would provide for enhanced penalties based on factors such as prior convictions, allow a court to impose alternative sentences under certain conditions, and respectively modify or allow for a civil cause of action. House Bills 4475 and 4477 would make complementary changes to the sentencing guidelines in the Code of Criminal Procedure.

The most egregious bill, House Bill 4474, “would provide that a person is guilty of a hate crime if they maliciously and intentionally do any of the following to another individual based in whole or in part on an actual or perceived characteristic of that individual, regardless of

the existence of any other motivating factors”:

- Use force or violence on the other individual
- Cause bodily injury to the other individual
- Intimidate the other individual
- Damage, destroy, or deface any real, personal, digital, or online property of the other individual without that individual’s consent
- Threaten, by word or act, to do any of the above

Actual or perceived characteristics include any of the following: race or color, religion, sex, sexual orientation, gender identity or expression, physical or mental disability, age, ethnicity, national origin, or association or affiliation with an individual or group of individuals in whole or in part based on one of these characteristics.

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**Hate-crime laws are expanding on the state level.**

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Only two Republicans in the Michigan House voted for the bill. “It’s a bill that intends to bring prosecution for hurt feelings,” said Rep. Brad Paquette. “The bill is founded

in pure narcissism and victim mentality that's built upon gender theory. It's one that seeks to force others who adamantly disagree with gender theory to live in another's delusion." Other Republicans viewed the bill as part of a larger effort from the Left to "control how we talk." According to Rep. Gina Johnsen, the bill will "crush people's ability to have a political opinion, to have a religious opinion, to have a moral opinion, or an immoral opinion." She even predicted a "huge migration of people leaving Michigan" if the bill became law. This Republican opposition to the bill comes as no surprise.

### Conservatives and hate crimes

It was 10 years ago in the progressive magazine *The Nation* that the observation was made that "the groups who are most vehemently against hate-crime legislation are highly conservative, often overtly homophobic groups, such as Focus on the Family and Concerned Women of America, who fear that such legislation would impede conservative religious people from voicing their beliefs and upholding what they see as 'traditional values.'" Nothing has changed. Conservatives still generally oppose hate-crimes laws. *Psychology Today*

recently reported on a study "examining the interconnectedness of political views, prejudice, and support for hate crime laws." The study found that "political beliefs strongly correlate with support for hate-crime laws, or its lack, with individuals leaning toward conservative ideologies less likely to back such laws" and concluded that "resistance to hate crime laws among conservative-leaning individuals might be partly due to underlying biases."

It has been pointed out that high-profile cases often drive hate-crime laws. Republicans in Congress, although they may tout their conservative credentials come reelection time, are not immune from public pressure when it comes to such cases. The Emmett Till Antilynching Act (H.R.55), which makes lynching a federal hate-crime offense, passed in 2022 by unanimous consent in the Senate. In the House, only three Republicans voted against it. The COVID-19 Hate Crimes Act (S.937), which facilitates the expedited review of hate crimes and reports of hate crimes, was passed in response to violence targeting Asian Americans during the pandemic. Only one Republican (Josh Hawley) in the Senate voted against it. Sixty-

two conservative Republicans voted against it in the House, but this was not enough to overcome the 147 Republicans who voted in favor of the legislation. (It should be pointed out that in 2023, Sen. Hawley called on the FBI to open a federal hate-crime investigation into the shooting of children at a school in Nashville — ah, the consistency of conservatives.) Nevertheless, at the state and grassroots level, conservative resistance to hate-crime legislation remains solid. These conservatives would join with libertarians in opposing hate-crime legislation.

There are two main reasons for this. First, if someone commits a crime of violence — murder, rape, assault, etc., or a crime against property — vandalism, arson, theft, etc., then he should be arrested, tried, and sentenced because he committed the crime. His reason, motivation, or justification for committing the crime is irrelevant. And there is no way to know for certain what was in the mind of the criminal at the time the crime was committed. Even in the case where someone claims that he committed a crime against someone else because he hated that person’s race, color, sexual orientation, religion, gender identity, or ethnicity, there should not be any additional pen-

alty. This is because to punish someone for hating someone else based on some characteristic they possess is to punish freedom of thought. It is not illegal in the United States, nor should it be, to dislike, despise, or even hate people who belong, many times through no choice of their own, to some group — not as long as one does not act on those impulses.

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**His reason, motivation, or justification for committing the crime is irrelevant.**

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And second, what constitutes a hate crime is not only extremely arbitrary but often depends on some characteristic of the perpetrator, not the victim. For example, although blacks are overrepresented among perpetrators of hate crimes, it is rare to hear black-on-white violence described as a hate crime. As conservative researcher Heather MacDonald of the Manhattan Institute pointed out a few years ago using Bureau of Justice statistics: “There were 593,598 interracial violent victimizations ... between blacks and whites last year, including white-on-black and black-on-white attacks. Blacks committed 537,204 of those interracial felonies, or 90 percent, and whites

committed 56,394 of them, or less than 10 percent.” Hate-crime laws don’t deter hate or crime any more than gun-control laws deter gun violence.

### Victimless crimes

Because freedom of thought — no matter how vile, wicked, or hateful — is not in and of itself illegal, a hate crime needs a real crime before someone can be charged with committing one. This means that hate crimes are worse than victimless crimes, where no real crime is committed. This includes things price gouging, ticket scalping, usurious interest rates, selling alcohol on Sunday, providing a service without a license, discrimination, prostitution, illegal drug use, and gambling (without the state’s permission). The fact that a fine will be paid to the state and not the “injured party” when a victimless crime occurs shows that no real crime against anyone has been committed.

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**Only actions that cause harm to others or their property without their consent should be crimes.**

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Every real crime needs a victim of the crime — not a potential victim or a possible victim but a tangible and identifiable victim who

has suffered measurable harm to his person or measurable damages to his property. There can be no crime without a victim, which is why hate crimes, that is, thought crimes, are in and of themselves not real crimes. There should be, as far as the law is concerned, no such things as nebulous crimes against God, religion, nature, society, humanity, civilization, the greater good, the public interest, or the state. Only actions that cause harm to others or their property without their consent should be crimes. What is immoral or imprudent should not necessarily be illegal or criminal. Engaging in risky behavior, participating in dangerous activities, performing immoral actions, and partaking of substances that are harmful may be vices, but they are not, in and of themselves, crimes. Writing in “Vices Are Not Crimes: A Vindication of Moral Liberty” (1875), the classical-liberal political philosopher Lysander Spooner (1808–1887) explained it this way:

Vices are those acts by which a man harms himself or his property. Crimes are those acts by which one man harms the person or property of another. Vices are simply the er-



rors which a man makes in his search after his own happiness. Unlike crimes, they imply no malice toward others, and no interference with their persons or property.

Unless this clear distinction between vices and crimes be made and recognized by the laws, there can be on earth no such thing as individual right, liberty, or property, and the corresponding and co-equal rights of another man to the control of his own person and property.

That does not mean that certain victimless crimes are not immoral, unhealthy, or harmful, nor does it mean that some victimless crimes don't have any negative consequences.

But just because someone *directly* engaging in a vice may indirectly affect someone else does not mean that a victimless crime can have a victim. The case of someone high on marijuana who neglects his child, who then wanders out into the street and gets hit by a car, does not “prove” that smoking marijuana is not a victimless crime. The “crime” here is child neglect resulting in death, not smoking marijuana. No one would say that because

someone drunk on alcohol neglects his child, who then wanders out into the street and gets hit by a car, that drinking alcohol should be criminalized. There is such a double standard when it comes to alcohol and marijuana and cigarette smoking and marijuana. Drinking alcohol and smoking cigarettes leads to all kinds of health issues, but how many Americans want it to be against the law to drink alcohol or smoke cigarettes in the privacy of one's home? And speaking of children, a child in the home of a cigarette smoker is suffering much more damage to his health than being in the home of some who occasionally snorts cocaine. How many Americans want it to be against the law to smoke a cigarette in a home with children in it? Divorce has negative consequences for children, yet how many Americans want it to be against the law to get a divorce? A contemporary of Spooner, John Stuart Mill (1806–1873), said it best in *On Liberty* (1859):

The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper

guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

Individual liberty is the only victim in a victimless crime.

### Conservatives and victimless crimes

Since hate crimes are worse than victimless crimes, and victimless crimes are no crimes at all, surely conservatives are united with libertarians in opposing both hate crimes and victimless crimes? On the contrary, conservatives are some of the most vocal proponents of certain victimless-crime laws. They are really quite inconsistent, not only in rejecting hate crimes while favoring victimless crimes but also in wholeheartedly rejecting some victimless crimes while readily embracing others. Some conservatives scoff at laws against economic activities like price gouging and ticket scalping. When it comes to the subjects of gambling, occupational licensing, and discrimination, conservatives are typically of two minds. They support government-regulated gambling, like state

lotteries, but oppose letting you organize a neighborhood blackjack tournament. They support the licensing of some occupations, but then reject the licensing of others. They support antidiscrimination laws when it comes to race, sex, national origin, and religion but reject them when it comes to sexual orientation and gender identity. Conservatives almost unanimously champion victimless-crime laws against prostitution and drug use.

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**Conservatives are some of the most vocal proponents of certain victimless-crime laws.**

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None of this should come as any surprise. Conservatives never seem to have an issue with a law or government program unless the law or program goes against some conservative position. They oppose federal funding for Planned Parenthood because the organization performs abortions but not because the federal government shouldn't be funding private organizations to begin with. They criticize NPR for having a liberal bias but not because the federal government has no business being involved in broadcasting. They condemn the National Endowment for the Arts (NEA) for funding pornographic art, but not

because the federal government has no business funding the arts. They disparage public schools for promoting political correctness but not because the federal government has no business funding education.

How can conservatives be so inconsistent? The answer is really quite simple. They lack the firm philosophical foundation of libertarianism. They don't accept the freedom of individuals to do anything that's peaceful as long as they don't violate the personal or property rights of others. They consider it the job of government to prevent people from, or punish people for, harming themselves with actions or substances. They believe that people should be fined or imprisoned for engaging in private, peaceful, consensual behavior or peaceful activity that doesn't violate anyone's personal or property rights.

Although they may admire him as an economist, conservatives should heed the advice of Ludwig

von Mises (1881–1973) when it comes to the question of individual liberty: “A free man must be able to endure it when his fellow men act and live otherwise than he considers proper. He must free himself from the habit, just as soon as something does not please him, of calling for the police.”

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**NEXT MONTH:**  
**“America Has a Uniparty System”**  
*by Laurence M. Vance*

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# The Beginnings of a Reborn Austrian School of Economics

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by Richard M. Ebeling



Fifty years ago, on October 10, 1973, one of the leading members of the Austrian School of Economics, Ludwig von Mises (1881–1973), passed away at the age of 92. There was little notice of Mises’s death in the mainstream of the economics profession, even though he had been one of the most widely recognized economists in Europe during the interwar years of the 1920s and 1930s. At the time of Mises’s passing, it was difficult to even refer to an existing Austrian School of Economics. Except for a small handful of individuals, the Austrian School, for all intents and purposes, had been relegated to being a closed chapter in the history of economic ideas.

The Keynesian Revolution in macroeconomics had swept away all the competing approaches for understanding inflations and recessions. This included the Austrian theory of money and the business cycle that had been developed by Mises before and after the First World War. It was then reformulated and given international recognition by Mises’s protégé, Friedrich A. Hayek (1899–1992) during the 1930s as part of his debates and controversies with John Maynard Keynes (1883–1946) over the causes of the Great Depression and the policies most appropriate to restore full employment and sustainable long-term growth and prosperity. As one writer suggested, the Austrian School had been swept away in the Keynesian avalanche.

In the field of microeconomics, circumstances were no better. From the founding of the Austrian School in 1871 with Carl Menger’s (1840–1921) *Principles of Economics*, a particular characteristic in the writings of many members of the school had been a focus on the nature and workings of the market process — the determination of prices through the competitive interactions of suppliers and demanders. This was especially the case in the contributions of Mises and Hayek in the

1930s and 1940s. The market was seen as an entrepreneurially driven, dynamic competitive process in which the decentralized and ever-changing knowledge of the interdependent market participants determined prices.

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**“Perfect competition” was intended to ensure some of the assumptions considered crucial for a unique equilibrium to exist.**

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However, beginning at the same time in the 1930s and 1940s, and coming to dominate economics in the 1950s and 1960s and after, there was an increasingly arid mathematical formalism in which everything going on the market was part of a series of simultaneous mathematical equations that measured and promoted the stability of the economy’s general equilibrium among all the individual suppliers and demanders for all the goods and services and factors of production offered for purchase and sale. The origin of the general equilibrium approach began in the 1870s by a French economist, Leon Walras (1834–1910), who, like Carl Menger, had developed a version of the theory of marginal utility. But it was only in the middle decades of the twentieth century that it came to be

the primary focus of those specializing in microeconomic theory.

### **The peculiar assumptions of perfect competition**

Central to this dominant economic approach was the concept of “perfect competition,” which was intended to ensure some of the assumptions considered crucial for a unique equilibrium to exist. First, all consumers and producers are individually too small, relative to the overall market in which they participate, to influence the market price by increasing or decreasing the amount they, respectively, buy or sell. Hence, each is a “price taker,” adjusting how much they find it desirable or profitable to buy or sell at the given market price. Second, on the supply-side, every seller in their particular market offers for sale a product that is perfectly interchangeable for the product their rivals also offer for sale in that same market. Thus, no seller can or does attempt to differentiate their version of the product from that of their competitors, and as such, none of them can sell their product at a price different from what other sellers in that same market are receiving.

Finally, buyers and sellers are presumed to have perfect or suffi-

cient knowledge of all relevant market circumstances and therefore never make the mistake of buying a product at a price higher than someone else may be offering it or selling a product at a price less than they need to. Logically, therefore, all markets meeting the conditions of perfect competition are in a perfect long-run equilibrium since all buyers and sellers know the “objective” circumstances prevailing in and across markets. Hence, they never make the mistake of missing out on a profit opportunity that could have been theirs or suffering a loss that might have been avoided if only they had known all the correct information about all market circumstances that they face.

The mathematical general equilibrium approach had already been challenged by Carl Menger in an exchange of letters he had had with Leon Walras in the 1880s. In 1932, Hans Mayer (1879–1955), a prominent member of the Austrian School who taught at the University of Vienna, published a 100-page monograph, “The Cognitive Value of Functional Theories of Price,” in which he offered a critique of several of the leading general equilibrium theorists for narrowly limiting their analysis to merely describing the conditions for and the configura-

tion of a final economic equilibrium state. He contrasted this with what he referred to as the “causal-genetic” approach of the Austrian School that focused on the origin of market prices in the subjective valuations of individuals and the competitive process through which prices were formed and adjusted through time, leading to a possible equilibrium outcome.

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Ludwig von Mises also emphasized, most especially in his treatise *Human Action* (1949), the dynamic nature of the market process.

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Ludwig von Mises also emphasized, most especially in his treatise, *Human Action* (1949), the dynamic nature of the market process in which rival entrepreneurs attempt to do better than each other in anticipating and estimating the consumer demands of the future and devising ways of organizing, directing, and producing ever better new and less expensive goods to earn profits and avoid losses. Price competition and product differentiation were essential hallmarks of a vibrant, functioning, and ever-improving market economy and society. Mises insisted that the “market is a process” rather than a never-at-

tained hypothetical final equilibrium state in which all change would come to an end.

### Mises and Hayek criticized the central-planning idea

In the 1920s, Mises had challenged the socialist idea of central economic planning by arguing against its realistic workability, first in an essay on “Economic Calculation in the Socialist Commonwealth” (1920) and then in, *Socialism: An Economic and Sociological Analysis* (1922; revised ed., 1932). He argued that by doing away with the institutional foundations of a functioning market economy — that is, private property in the means of production; an open competitive process through which prices for consumer goods and the factors of production (land, resources, labor, capital) could be formed; and a market-based medium of exchange (money) — the socialist central planners would not be able to undertake any rational form of economic calculation for purposes of determining profitable versus loss-making lines of production in the most cost-efficient ways. He refined his critical analysis of socialism in his book *Human Action* in the context of his broader exposition of the entrepreneurial-

guided market process for satisfaction of consumer demands.

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As a professor at the London School of Economics in the 1930s and 1940s, Hayek took up Mises’s arguments in debating advocates of socialist central planning. He first offered his own critique in the opening and closing chapters of a book he edited on *Collectivist Economic Planning* (1935). But his own unique contribution came in three articles: “Economics and Knowledge,” (1937), “The Use of Knowledge in Society” (1945), and “The Meaning of Competition” (1946), all of which were reprinted in Hayek’s *Individualism and Economic Order* (1948).

The essential nature of “the economic problem,” Hayek argued, was the division of knowledge that accompanies the division of labor in society. The knowledge of the world is decentralized and dispersed in the minds of all people around the globe. The question was, how shall that knowledge, possessed and most fully appreciated

only in the minds of each particular person, be effectively brought to bear in ways that benefit and improve the conditions of others, as well as the person possessing that knowledge, in the interconnected system of division of labor?

Hayek's answer was the market system of competitively formed prices. Prices are a communication network through which consumers and producers, suppliers and demanders can inform each other about what it is they respectively want or might be able to do in the arenas of exchange, without anyone needing to know all the knowledge that, in fact, no one could ever successfully master. Prices help generate a coordinated system of mutual association and benefit encompassing, in principle, everyone in the world without any one person or few having to guide, direct, or command it. In Hayek's view, this was a primary reason why a system of comprehensive socialist central planning was an unworkable substitute for a functioning market economy.

### The importance of the competitive process

Part of the error on the part of socialists and too many economists in general when they conceived of

an economic system was to do so in the context of the perfect competition model, Hayek said. It was presumed that "somehow" it was possible to have a "perfect knowledge" of market circumstances to ensure a perfect equilibrium of supply and demand. Then, when anything falls short in the real world from the benchmark of the perfect-competition assumptions, it is claimed to be an instance of "market failure." Government regulatory and interventionist policies are called for to correct them, under the presumption that those in political power could or do know and understand enough to ensure that actors in the real world conform to the perfect competition postulates, resulting in perfect equilibrium outcomes.

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**Hayek's answer was the market system of competitively formed prices.**

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Hayek insisted that the purpose and role of real competition, that is, rivalrous competition among sellers in the marketplace and competition as a dynamic process of discovery, is to find out who could do what, and how they might be able to do it better than others who are attempting to market the same goods and services.



If we already knew ahead of time what people wanted, how best to produce it, and which methods of production and combinations of resources, capital, and labor that would do the job in the most cost-effective way, society would have the most economically optimal set of relationships and resource uses. The economy would be and could remain in a perfect, long-run general equilibrium. It is precisely because we do not know all these things ahead of time, however, due to the fact that people's knowledge is imperfect and dispersed among all in society, that competition in the marketplace is socially desirable and beneficially.

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**Hayek insisted that the purpose of real competition is to find out who could do what and how they might be able do it better.**

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It is only in the dynamic process of competition that people find out what they can do and how they might do it better compared to others in the social system of division of labor. Thus, in Hayek's view, far too many economists used and judged the market economy by a hypothetical, perfectly planned socialist system or perfectly regulated economy by a government pre-

sumed, again, to be able to know and understand more than any of those in government can ever have the capacity to know.

### **Mainstream economists ignored the Austrian challenges**

But rather than confront and reply to the types of arguments that Mises and Hayek had articulated in the 1930s and 1940s about the competitive market economy, or the impossibilities of central planning, or the unworkability of the regulatory interventionist state, the mainstream of the economics profession just blissfully played on with their mathematical models of general equilibrium and with how wisely introduced planning or regulation could correct all the ills in society created by the presumed market failures due to unregulated free markets in the imaginary world of the theory of perfect competition.

In other words, for the mainstream economics profession, the Austrian School was a closed chapter in the history of economic ideas. It was irrelevant to "modern" economic theory and policy considerations precisely because the "Austrians" had been of an earlier generation not educated in and wise enough to understand and appreciate the "true scientific

method” of hyper-mathematization combined with aggregated statistical analysis to manage and manipulate the macroeconomics of total output, total employment, and the general price level.

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**Ludwig M. Lachmann earned an MA degree under Hayek’s supervision at the London School of Economics.**

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After coming to America during the Second World War, Mises taught graduate seminars as a “visiting professor” at New York University until 1969, when he was almost 89 years old. Most of his more scholarly writings in the post-war period had turned to questions of the methodology of the social sciences, such as his books *Theory and History* (1957) and *The Ultimate Foundations of Economic Science* (1962). Hayek also had moved away from the narrower questions of economic theory and policy after the war. His interests turned to the social and political philosophy of the liberal free society, as reflected in his works *The Constitution of Liberty* (1962) and *Law, Legislation, and Liberty*, 3-vols. (1973–1979).

Ludwig M. Lachmann (1906–1990), who had left Germany in 1933 and earned an MA degree un-

der Hayek’s supervision at the London School of Economics, taught for decades at the University of Witwatersrand in Johannesburg, South Africa. He wrote mostly on the *Austrian Theory of Capital and Its Structure* (1956) and *Macroeconomic Theory and the Market Economy* (1973), as well as on the methods of the social science, including *The Legacy of Max Weber* (1971). In conversation in later years, he would say that in the 1950s and 1960s, he feared that he would be “the last” Austrian economist.

### **New beginnings of the Austrian School: Rothbard and Sennholz**

But there were the seeds of a new generation of Austrian economists, mostly surrounding Ludwig von Mises at New York University. Mises seemed to have an uncanny ability and talent for attracting interested and bright students. He had done so at the University of Vienna between the two world wars, where he taught as a part-time unsalaried lecturer and as a full-time senior economic policy analyst for the Vienna Chamber of Commerce, Crafts, and Industry.

He did so again at NYU, where his two leading so-inspired students were Murray N. Rothbard (1926–1995) and Israel M. Kirzner

(b. 1930). In the late 1940s, Rothbard was told that there was this economist teaching at NYU who would soon be publishing a book that was about “everything.” When recalling this, Rothbard said that he replied, “How can one book be about ‘everything?’” But when *Human Action* was published in September 1949 and Rothbard read it, he would then say, “It was about ‘everything!’”

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*Man, Economy, and State*  
presented a clear, logical,  
and comprehensive exposition  
of the “Austrian” view of  
economics.

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While finishing his own PhD at Columbia University, Rothbard regularly attended Mises’s NYU seminar. The result of Mises’s influence on him led to the writing of Rothbard’s two-volume work, *Man, Economy, and State: A Treatise on Economics* (1962), followed by his “Austrian” analysis of *The Great Depression* (1963) and *Power and Market: Government and the Economy* (1974). The significance of *Man, Economy, and State* was that it presented a clear, logical, and comprehensive exposition of the “Austrian” view of economics from the starting elements of human action and

the logic of choice to the complexities of exchange, markets and prices, the time structure of production, capital and interest, and the intricacies of money, monetary transactions, the purchasing power of money, and the political economy of the business cycle, along with a critique of socialist central planning and the contradictions of the interventionist state. It was a lucid and readable guidebook to the Austrian perspective on the nature, concepts, and theory of economics from A to Z.

In addition, Rothbard also drew around him a group of young libertarians who were introduced both to the ideas of liberty and the insightfulness of the Austrian approach for understanding the potentials of a free market for both liberty and prosperity in comparison to any form of government control and command. A good number of these young people, then in their teens or twenties, helped bring about the revival of the Austrian School during the remaining decades of the twentieth century as they followed their own careers, many of them as academic economists. .

Also attending Mises’s NYU seminar was Hans Sennholz (1922–2007), who had earned a doctorate

in political science in Germany after the war and came to New York precisely to study for a PhD under Mises. Sennholz's expertise was not only a detailed knowledge of both Austrian and mainstream economics but also a unique capacity to articulate both economic theory and policy matters with great ease and clarity for a wider popular audience through articles and the spoken word. This included a decades-long professorship in economics at Grove City College in Pennsylvania, through which he influenced a good number of students who went on to prominent academic careers in economics and the Austrian tradition.

### Israel Kirzner on acting man and the market process

The other leading protégé of Ludwig von Mises at New York University was Israel M. Kirzner. Born in London, Kirzner was at New York University working on an MBA when he took Mises's graduate seminar. The first evening of the course, Kirzner recalled, Mises began by saying that "the market is a process." Figuring out what that fully meant became Kirzner's lifelong intellectual pursuit. He wrote his dissertation under Mises on *The Economic Point of View* (1960), a

doctrinal investigation on the subject matter of economics, from the classical economists to the Austrians. This was followed by *Market Theory and the Price System* (1963), a textbook exposition of the core concepts of microeconomics from a clearly defined market-process approach. Not meant to be as comprehensive as Rothbard's *Man, Economy, and State*, Kirzner offered a theory of market adaptation to changing circumstances that included an emphasis on the role and significance of time in the processes of adjustment to conditions of market coordination.

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**Sennholz's expertise was to articulate both economic theory and policy matters with great ease and clarity for a wider popular audience.**

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With little doubt, Kirzner's most important and influential work from this period was *Competition and Entrepreneurship* (1973), which was published a few months before the death of Ludwig von Mises. This year marked the 50th anniversary of the publication of Kirzner's book. Kirzner blends Mises's idea of the market as an entrepreneurial process with Hayek's conception of competition as a discovery process

that coordinates the activities of all the participants in the social order through the price system.

Kirzner's starting point is Mises's conception of "human action." Man is a purposeful and active being who is open and alert to new and previously unthought of opportunities and avenues to improve his circumstances. He imagines and selects among the ends that might be desirable to attain, and he intentionally looks for means and methods to pursue them. In this sense, the individual actively chooses his ends and purposely searches for means to better his life.

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**Kirzner blends  
Mises's idea of the market as an  
entrepreneurial process with  
Hayek's conception of  
competition.**

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This is significantly different from the mainstream microeconomic premises, Kirzner said, in which the analysis assumes from the start that each and every agent already has a clear and delineated set of "given" ends and means. The "economic problem" is merely a mathematical exercise in "constrained maximization," that is, given his "given" and ranked ends and given the known means avail-

able, how does he logically apply those means in such a way to achieve the greatest number of his ends? Where and how the individual decides upon the ends to pursue, and where and how he discovers and decides on which things might be useful as well as useable means to pursue them, is never explained or explored.

"Austrian" man, if we may use such a phrase, creates the "given" ends and means taken for granted in the mainstream microeconomic framework. Indeed, if we do not at least attempt to understand the preceding active and alert acts by individuals in discovering ends worth pursuing and deciding upon what might be useful means to try to attain them, it becomes impossible to ever explain how and why people's chosen ends and selected means ever change. In other words, how would today ever be different from yesterday, or tomorrow from today, if the economic agents merely keep acting within the "given" ends-means framework they begin with? The only changes would come from some change in the "objective" physical circumstances, to which individuals would merely react, given their "given" ends and known means.

### Kirzner on entrepreneurial alertness and competitive discovery

In taking up Hayek's ideas of competition as a discovery process in comparison to the assumptions of the mainstream perfect competition theory, Kirzner then asked, if sellers in the market are prohibited from offering lower prices than their rivals, and if they are not allowed to differentiate their product by innovatively devising ways to make them new, better, and improved in comparison to their competitors, how do any new and better quality products ever come on the market?

Mainstream microeconomics had constructed a theoretical edifice claiming to "explain" how markets work but that did so on a set of peculiar assumptions and premises that prevented any understanding of actual markets in a real world that is populated by real people who, in fact, are alert, purposeful human beings constantly open to and trying to find new and better ends and means.

This alertness, Kirzner said, building on Mises's work, was the nature and essence of entrepreneurship. The entrepreneur is always looking out for and attempting to take advantage of discoverable profit opportunities. Part of Mises's point

is that, fundamentally, each and every one of us is an "entrepreneur" trying to find profitable opportunities to better our life in all that we do. An entrepreneurial element, therefore, is inseparable from human action and the human condition.

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**Part of Mises's point is that each of us is an "entrepreneur" trying to find profitable opportunities to better our life.**

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In the marketplace division of labor, there are those who specialize in this task and combine it with the decision-making of what products to produce; how, when, and where to produce them; and with what combination of inputs, based on their expectations of what products consumers may want and the prices they might be willing to pay some time in the future when the production processes have been completed. Real competition in the marketplace is a competition between rival entrepreneurial visions of the discoverable and the possible, the reality of which will be found out when their competing goods are offered to consumers and they earn either hoped-for profits or suffer unfortunate losses.

The resulting outcomes of experienced profits or losses bring about

adjustments and adaptive changes that move modified productions and supplies into a more consistent coordination with consumer demands. However, in this Austrian understanding of the on-going and never-ending competitive market process, a “perfect” equilibrium is never attained because there are always new entrepreneurial discoveries, products, and price offerings before the market has fully adjusted to the earlier supply and demand conditions. There is a constant tendency toward equilibrating coordination in the marketplace, but it is a continuously “moving target.”

### Kirzner on misguided government interventions

This Austrian market-process view also leads to radically different economic policy conclusions in comparison to the “perfect-competition” presumptions in mainstream microeconomics. As we saw, within the mainstream microeconomic framework, any seller’s attempt to competitively change his price to offer consumers better terms of trade than his rivals or to differentiate his product, including by offering a better or different version of it, can be considered instances of anti-competitive “market failure.” This leads to proposals for a variety of

government interventions to “correct” the unregulated market.

An instance of this, which Kirzner discusses, is business advertising. From the perfect competition perspective, advertising is viewed as wasteful and undesirable since it is one competitor trying to create an impression in the minds of consumers that his product is different than his rivals. But within the Austrian market process approach, advertising is a logical and useful means by which entrepreneurs attempt to inform consumers about product opportunities they may not and often do not know about.

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**Real competition in the marketplace is a competition between rival entrepreneurial visions of the discoverable and the possible.**

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In fact, those entrepreneurs are creatively devising ways to make those new and better products and frequently offering them at better prices than those in the past. Only in the la-la land assumptions of perfect competition, under which every buyer and seller start with perfect or sufficient knowledge to never make a buying or selling mistake, can informing people about things they may not know about in

ways that get people's attention in a world with many distractions, can business advertising be considered a "failure" of the unregulated capitalist system.

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**"Government controls constrain and constrict; they rearrange and repattern the structure of incentives."**

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A few years after the publication of *Competition and Entrepreneurship*, Kirzner delivered a lecture entitled "The Perils of Regulation: A Market-Process Approach" (1979). He reiterated and extended his critique of mainstream microeconomic policy views. He explained some of the negative effects from various forms of government intervention:

Government controls constrain and constrict; they rearrange and repattern the structure of incentives; they redistribute incomes and wealth, and sharply modify both the processes of production and the composition of consumption.... The most serious impact of government regulation on the market discovery process well might be the likelihood that regulation, in a variety of ways, may dis-

courage, hamper, or even completely stifle the discovery process of the unregulated market.... Regulatory constraints, that is, are likely to bar *the discovery* of pure profit opportunities....

The beneficent aspect of competition in the sense of a rivalrous process ... arises out of *freedom of entry*. What government regulations so often erect, are *regulatory barriers to entry*. Freedom of "entry," for the Austrian approach, refers to the freedom of potential competitors to discover and to move to exploit opportunities for pure profit. If entry is blocked, such opportunities simply may never be discovered, either by existing firms in the industry, or by regulatory authorities, or for that matter by outside entrepreneurs who *might* have discovered such opportunities, were they allowed to be exploited when found.

This is the danger and undesirability of antitrust regulations that prevent market-based mergers and acquisitions and prevent existing firms from simply gaining larger market shares resulting from their



ability to attract more customers due to better products or more attractive prices. Drug-testing regulations, Kirzner warned, “not only reduce the flow of new pharmaceutical drugs where successful research might have been more or less predictable, but also discourage the entrepreneurial discovery of wholly unknown research procedures.” As Kirzner concluded:

The basic insight underlying these conclusions, in sum, is a simple one. The competitive-entrepreneurial process, being a process of discovery of the as-yet-unknown, can hardly be predicted in any but the broadest terms. The imposition of regulatory constraints necessarily results, therefore, in a pattern of consequences different from and most plausibly, distinctly less desirable than, that which would have occurred in the unregulated market.

The year 1974 saw two momentous events for the rebirth and revival of an active and vibrant Austrian School: a conference on Austrian Economics organized by the Institute for Humane Studies, held in South Royalton, Vermont,

that brought together about 40 students and young professors to hear a series of lectures by Israel Kirzner, Ludwig Lachmann, and Murray Rothbard. They were published soon after as *The Modern Foundations of Austrian Economics* (1976). And certainly, most unexpectedly, there was the awarding of the Nobel Prize in Economics to Friedrich A. Hayek in October of 1974.

These two events will be celebrating their 50th anniversary in 2024, and it will be a notable time to appreciate the half-century of the reborn and revitalized Austrian School that is so actively contributing to economic understanding today.

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**NEXT MONTH:**  
“Franklin Roosevelt’s Bogus  
Economic Bill of Rights”  
by Richard M. Ebeling

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*Unlimited power is in itself a bad and dangerous thing. Human beings are not competent to exercise it with discretion. God alone can be omnipotent, because his wisdom and his justice are always equal to his power. There is no power on earth so worthy of honor in itself, or clothed with rights so sacred, that I would admit its uncontrolled and all-predominant authority. 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 republic, I say there is the germ of tyranny, and I seek to live elsewhere, under other laws.*

*— Alexis de Tocqueville*

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