Democratic Capitalism

Why Political and Economic Freedom Need Each Other

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EXECUTIVE SUMMARY

Is capitalism destroying democracy? It is an old question that political thinkers have long wrestled with. Yet, it gained recent prominence with the publication of Duke University historian Nancy MacLean's widely discussed book, *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*, which unleashed heated debate over its claim that libertarian economists, funded by capitalist billionaires, have worked to subvert American democracy over the past four decades.

Critics of the free market contend that democracy, as they conceive it, should not be constrained. Yet, it turns out that American democracy is already enchained—by design. We have explicitly rejected the idea of "unfettered democracy." We accept limitations on the democratic will of the majority in all sorts of areas. We do not allow a democratic majority to use its power to ban any form of political speech, to segregate their communities on the basis of race, or to impose religious views or obligations on others.

These constraints on government are the political expression of rights. They embed liberal and even progressive ideals into the system of governance. They secure and protect what are known as negative rights—declarations that the government shall not do certain things to individuals living under it. They stand in contrast to positive rights—declarations that the government shall do certain things, such as provide a job, home, or health care to people under its jurisdiction.

The critics have turned the actual operation of American democracy on its head. The free market, far from being "unfettered," is actually shackled—and it has been shackled by a system that has grown up despite the democratic framework of the American Constitution. America today is governed by a system of "super-statutes" and "administrative constitutionalism" that often ignores the requirements of the Constitution to the detriment of the rights it purports to guarantee. Moreover, this system is becoming increasingly less democratic and less accountable.

There is a long and noble classical liberal philosophical tradition that the tyranny of the majority is to be feared. The American system of government is not one of majority rule, but a liberal democracy that recognizes rights as constraints on government. Despite this tradition, a supplementary system of government has emerged that has very little to do with democracy. By contrast, economic freedom, which that system seeks to constrain, has significant benefits and can even be regarded as virtuous.

From this we can conclude that many of the progressives' complaints have very little basis in fact. Democracy has not been shackled by a small cabal of free marketers. If they are doing anything, it is trying to restore the constitutional system of democracy and rights that was derailed during the New Deal.

INTRODUCTION

This essay is based on a speech delivered at the American Society for Competitiveness Conference, Tysons Corner, Virginia, October 26, 2018.

Is capitalism destroying democracy? It is an old question that political thinkers have long wrestled with. Yet, it gained recent prominence with the publication of Duke University historian Nancy MacLean's widely discussed book, *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*, which unleashed heated debate over its claim that libertarian economists, funded by capitalist billionaires, have worked to subvert American democracy over the past four decades.

Progressive environmental writer and columnist George Monbiot, for example, said that Nobel prize-winner James Buchanan, the primary subject of MacLean's book, "sought to break the links between people and government, and demolish trust in public institutions. He aimed, in short, to save capitalism from democracy."[1] Monbiot concluded: "In one respect, Buchanan was right: there is an inherent conflict between what he called 'economic freedom' and political liberty. Complete freedom for billionaires means poverty, insecurity, pollution and collapsing public services for everyone else. Because we will not vote for this, it can be delivered only through deception and authoritarian control. The choice we face is between unfettered capitalism and democracy. You cannot have both."

These are serious charges and deserve a serious exploration.

The case made by MacLean and her progressive allies is based on two central claims. First, that a network of scholars funded by billionaires has engaged in a stealth campaign to destroy democracy. Second, that the

policies advanced by these scholars and adopted by politicians have had the effect of thwarting democratic decisions.

The argument, as Monbiot summarizes it, is that a series of laws, regulations, and court judgments that privilege economic freedom have resulted in *de facto* totalitarian control of people by ultra-rich capitalists. In a true democracy, people would be able to use the political process to put laws and regulations in place that would overturn those privileges and force the capitalists to contribute to providing wealth, security, public services, and environmental protection for everyone's benefit.

This is why MacLean, Monbiot, and other progressives talk about democracy as being "in chains." The people's democratic will, they claim, is shackled by a political game that is rigged against it, and we have Buchanan and free market economists to blame for that subversion of democracy.[2] Their implication appears to be that democracy needs to be "unfettered."

Yet, to determine whether democracy is being subverted, we first need to understand what democracy actually *is*. If MacLean, Monbiot, and their allies have misunderstood American democracy—or modern democracy in general—then they are likely making a category error. A category error is made when someone ascribes to an object characteristics that belong to one category when the object cannot have those characteristics.

Critics of the free market contend that democracy, as they conceive it, should not be constrained. Yet, it turns out that American democracy is already constrained—by design. We have explicitly rejected the idea of

"unfettered democracy." We accept limitations on the democratic will of the majority in all sorts of areas. We do not allow a democratic majority to use its power to ban any form of political speech, to segregate communities on the basis of race, or to impose religious views or obligations on others.

Constraints on government embed liberal and even progressive ideals into the system of governance.

These constraints on government are the political expression of *rights*. They embed liberal and even progressive ideals into the system of governance. They secure and protect what are known as negative rights—declarations that the government shall *not* do certain things to individuals living under it. They stand in contrast to positive rights—declarations that the government shall do certain things, such as provide a job, home, or health care to people under its jurisdiction.

It is here that the divergence between the structure of American democracy and MacLean's conception of it becomes apparent. American democracy is based on the protection of negative rights, not the provision of positive rights. Yet, MacLean et al would argue that it should be based around delivering positive rights.

ECONOMIC FREEDOM VS. MOB RULE

The intellectual father of classical liberalism, John Stuart Mill, warned about the "tyranny of the majority."[3] He posited that simple majority rule can result in a totalitarianism of its own, where, to use more modern terminology, the in-group can use majority rule to exploit and

In American democracy, negative rights are enshrined in the Bill of Rights. We do not get to vote on everything.

oppress the out-group. So, while "government of the people by the people for the people" still resounds, we often forget that the people can use government to define who "the people" are. They can choose to exclude women, Jews, Muslims, immigrants, or transgendered individuals. In other words, democracy itself can be totalitarian, unless it is implicitly or even explicitly enchained.

In American democracy, those negative rights to chain democracy are enshrined in the Bill of Rights. We do not get to vote on *everything*. We explicitly say that whatever the will of the people is, it cannot do certain things. To be sure, there is a process to change those constraints, but it is a heavy lift by design. Because American democracy recognizes these rights and freedoms, we can call it a liberal democracy.

Now MacLean and Monbiot might well recognize that, but then go on to argue that it is not the ability to infringe on human rights, but the inability of the political system to correct supposed mistakes in the working of the economy that result in winners and losers, and that those corrections should be regarded as exercises of human rights.

Yet, we maintain that "economic freedom" *is* a human right. That view is not new, and it is certainly not an invention of modern free market economists. Roman law recognized a sovereign right of property.[4] The first draft of the Declaration of Independence, following the philosopher John Locke, may have talked of "life, liberty, and property" as inalienable

rights.[5] Furthermore, the Virginia Declaration of Rights, which is credited with inspiring some of the language in the Declaration, proclaims, "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, *with the means of acquiring and possessing property*, and pursuing and obtaining happiness and safety."[6] [Emphasis added]

History suggests that societies without property rights do not fare well.

Of course, one can dispute that. The phrase "property is theft" is a familiar radical leftist trope. Yet it is not outside the mainstream to say that property rights are human rights and therefore should receive some degree of protection from the vagaries of majority rule, given the long legal and philosophical history of recognition of property rights.

Indeed, as the economist Armen Alchian noted:

> The definition, allocation, and protection of property rights comprise one of the most complex and difficult sets of issues that any society has to resolve, but one that must be resolved in some fashion.[7]

History suggests that societies without any property rights at all do not fare well. The phenomenon known as the tragedy of the commons afflicts them, and resources are depleted and wasted.[8] Free access to a resource usually means that the first person to get to the resource takes

as much of it as he or she can, without regard to the sustainability or preservation of the resource. Property rights originated as a solution to this problem.[9]

Elinor Ostrom won the economics Nobel Prize for pointing out that there are common ownership regimes with well-established rules and rights. These common property rights look more like private ownership than state ownership, however. They are highly tailored and local, are closely monitored, and include mutually agreed upon methods for dispute resolution.[10]

So important are property rights that the social critics of property rights generally do not want them abolished but transferred in some cases to public ownership or control. The rights still exist as a constraint on democracy.

So when MacLean and her allies tout democracy as their ideal, we have to ask: What sort of democracy are we talking about? Presumably, it will be a democracy that recognizes the constraints of human rights and of the necessity for some form of property rights. Yet it would have the unlimited power to abrogate or expropriate some property rights in the name of justice.

Such a democracy is certainly possible. I grew up in one. The Westminster system of democracy recognizes Parliament, made up of the people's representatives, as sovereign, unconstrained by any higher law. As a result, the British Parliament was able to expropriate property in the 1940s and 1950s in the name of the people by creating nationalized industries and services. The might of business was countered by the

might of labor unions. Although the creators of the system referred to it as democratic socialism, several conservative governments accepted the situation as settled.

Something similar happened in the United States. The New Deal, as originally established, gave government a large amount of control over the economy. Labor unions became very powerful. The federal government expropriated all gold in private possession, and a plethora of executive agencies imposed regulations that severely restricted the enjoyment of private property.

This system saw some setbacks. Some of the more far-reaching New Deal legislation was struck down by the Supreme Court.[11] Labor unions had some of their powers curtailed as early as 1947, thanks to the Taft-Hartley Act.[12] But in many ways, what remained of the New Deal was greatly enhanced by Great Society legislation in the 1960s and with the passage of a large number of environmental laws in the 1970s that further constrained the use of private property.

THE LONG AND STEADY EROSION OF PROPERTY RIGHTS

To a large extent, this system is still in place today. For all intents and purposes, property rights do not hold some privileged constitutional position. To the contrary, the decision of the United States Supreme Court in *Wickard v. Filburn* in 1942 established something akin to parliamentary supremacy in economic matters.[13]

The case involved an Ohio farmer, Roscoe Filburn, who was growing wheat to feed animals on his own farm. Under the terms of the

Agricultural Adjustment Act of 1938, the federal government had imposed caps on wheat production in an effort to stabilize prices. Filburn was producing above the caps, but for his own use, not for sale. Nevertheless, he was fined by the Department of Agriculture. The court upheld the fine, saying that the commerce clause of the U.S. Constitution allowed the federal government to regulate wheat production. While Filburn's own activity did not affect interstate commerce, the court found, the aggregation of many farmers doing the same would do so. The Commerce Clause of the Constitution effectively gave Congress the power to abrogate property rights.

This remains the case today. While court cases have found that the Commerce Clause would not apply in such matters as regulating the carrying of handguns, in economic matters it gives the federal government broad discretion in what it may do. The *Wickard* precedent allowed the Supreme Court, in 2005, to rule in *Gonzales v. Raich* that growing marijuana on private property for personal medicinal use had enough of an effect on interstate commerce for it to fall under federal jurisdiction under the Constitution's Commerce Clause.[14]

Indeed, the U.S. government still regulates most aspects of the nation's economic life, and state and local governments regulate much of the rest. Ask anyone who has tried to start a business whether they can do so free from an array of government requirements. The answer is a resounding no. Occupational licensing requirements plague the individual tradesman. The prospective employer faces a plethora of regulations she must comply with to hire her first employee. There are more for the fourth, then yet more for the 15th, and so on.[15] Contributions to mandatory

government programs reduce the amount an employer can pay a worker—and that is before we even mention health care.

So in reality, we are looking at a different form of category error. The system MacLean and Monbiot claim is being thwarted is the one we actually live under. Property rights are not guaranteed. Far from democracy being in chains, it is economic freedom that is shackled.

Far from democracy being in chains, it is economic freedom that is shackled.

Now MacLean et al recognize this to an extent. They claim that the secret cabal of free market economists—of which I presumably am a part—want to weaken the system of majority rule by instituting radical reforms that will enrich their hidden masters and oppress the poor.

This is where we must ask just how radical are these reforms and how will they result in oppression. To be sure, all of us in the supposed cabal would like to see the U.S. Supreme Court reverse its decision in *Wickard*. The Commerce Clause really has no business empowering Congress to regulate a private decision on a private farm. As *Raich* showed, that applies to marijuana as much as wheat.

Would restraining such use of the commerce clause be a radical change? Yes. Would it reduce the power of Congress? Yes. Would it lead to oppression? I struggle to see how. And is it easy get the Supreme Court to change its mind? No, manifestly not.

There is no secret process to effecting radical systemic change, whatever its ideological orientation—free market or progressive, nationalist or globalist. It requires either the enormously heavy lift of a constitutional

amendment or getting the Supreme Court to find something so important that it mandates ignoring the legal doctrine of *stare decisis*—stand by your decisions.

Moreover, some prominent free market economists have extended this cautious, incrementalist approach to their supposed nemesis, the welfare state. Many free marketers have expressed interest in a universal basic income. They are open to the idea that replacing the means-tested welfare state with a flat grant open to all might be necessary in a world of less certain work arrangements. None other than F.A. Hayek supported a welfare state of some form.[16] Milton Friedman supported a "negative income tax," which essentially provides a basic income to those too poor to pay tax.[17] Duke University economist Michael Munger has recommended a universal basic income in light of the economic revolution he foresees spearheaded by the sharing economy.[18]

THE CONSTITUTION VS. "SUPER STATUTES"

A radical change did occur recently in a case called *Janus v. AFSCME Council 31*, in which the Supreme Court reversed previous rulings that allowed labor unions to automatically deduct dues from a government workers' paychecks, supposedly to cover the costs of representation, but that it could then spend on political activities, if it so chose. The *Janus* ruling overturned a previous Supreme Court case, *Abood v. Detroit Board of Education*, in which the court had ruled that public sector unions could require employees to pay dues to cover expenses related to collective bargaining but not to support political activities, which

would constitute compelled speech in violation of the First Amendment to the Constitution.

However, as CEI and other organizations argued in amicus briefs submitted in *Janus*, public sector union activities are inherently political. In the public sector, collective bargaining often affects budget allocations and other policy decisions that should be reserved for elected representatives. Moreover, money is fungible; funds designated for one purpose frees up other funds for spending elsewhere.

One might argue that this was an example of democracy being overturned to the detriment of labor unions. Yet the reason why it was overturned was not an economic one. It was because the unions were effectively coercing the plaintiff, Mark Janus, to contribute to their political speech. Freedom of speech is an important right, so the decision is part of a long tradition of the institutions of liberal democracy upholding individual rights. There is no exploitation here.

So why were progressives so upset about the decision? It is a core progressive belief that collective action, expressed through labor unions, is a key check on the power of industry to suppress wages. To ensure this happens, labor unions are given special privileges in law. Therefore, overturning those democratic decisions to grant special privileges constitutes an attack on collective action and on democracy. The trouble here is that progressives have elevated collective action to a privileged position it does not really hold. Collective bargaining is not a constitutional right. Freedom of speech is. When it comes to a conflict between labor

union privileges and a constitutionally guaranteed right, the constitutionally guaranteed right is probably going to win.

Elevating labor unions to a constitutional position is possible, of course. In effect, the National Labor Relations Act (NLRA), which covers most private sector employment, enjoys a quasi-constitutional status.[19] It is one of what Yale law professor William Eskridge calls "super-statutes." These are statutes that outline new principles or policies in relation to law or regulation but that also achieve public recognition as being "foundational or axiomatic to our thinking" on the public policy concerned. As Eskridge notes, these statutes are built on by judges, and by administrators via regulation, with their work "subject to meaningful scrutiny and correction by the legislature."[20]

Those super-statutes point us toward something not immediately apparent when we talk about American democracy. There are in fact two constitutional orders in America today. One was established in 1787, subject to the constitutional amendment process. The other was created in the New Deal and established largely by court reinterpretations of the Constitution—*Wickard* being a case in point. It is the constitutional order of privileged labor unions, independent agencies free from executive control, and a code of federal regulations that vastly exceeds the length of the legal code. This is the constitution of positive rights that MacLean et al are desperate to defend.

Indeed, legal theorists such as Eskridge argue that statutes are the source of most of what Americans today think of as "rights." In a 2007 law review article, he posits:

> [T]he United States now enjoys, and has long enjoyed, a statutory constitution. That is, legislation and its regulations are, and long have been, the primary source of constitutional structures, rules, and rights in our polity.[21]

Much of administrative law now forms as much a part of our constitutional system as the written Constitution itself.

His argument is that "super-statutes" fill in the gaps left by the written Constitution to enable it to work effectively. Therefore, much of administrative law, such as the decisions of the National Labor Relations Board in administering the NLRA, now forms as much a part of our constitutional system as the written Constitution itself. This constitutes a reorganization of American principles of governance in ways seemingly at odds with the written Constitution.

In fact, constitutional scholars often talk about "administrative constitutionalism," which involves the "elaboration of new constitutional understandings by administrative actors," such as regulators.[22] Ernest Young of Duke Law School concludes that administrative officials, rather than courts, resolve many constitutional questions.[23] As David Bernstein of the Scalia Law School at George Mason University notes, "These administrators, in turn, may ignore not just Supreme Court precedent, but the text of the Constitution itself."[24]

Thus, this statutory/adminsistrative system often exists in tension with the constitutional system. For instance, every American knows

that he is entitled to his day in court. However, when administrative law is at issue, as Young suggests, he will find himself dragged through a punishing series of encounters in administrative courts and tribunals long before he gets a chance to present his case in the courts established by Article III of the Constitution.

When he finally gets there, he will discover that under judicial doctrines of deference, the courts are likely to side with the regulatory agency. Under the system of deference known as *Auer* deference, the court will defer in the interpretation of a regulation to the agency that wrote the regulation. Under *Chevron* deference, the court will defer in interpretation of a law to the agency charged by the law with administering it.[25] Unless there is clear evidence of an irrational basis for the interpretation, which is a high hurdle to clear, the deck is stacked against the challenger.

Again, this system lies in tension with the written Constitution. As explained in the *Federalist Papers*, the Framers recognized that there were no "angels" in government. Therefore, they set up a system of checks and balances to ensure that no one branch of government could become too powerful. Judicial deference empowers executive branch agencies to act exactly as the Framers feared—to seek to maximize their power.

Over the years, Congress has set up "independent agencies" led by officials who may not be fired by the president except "for cause," such as malfeasance. This conflicts with the executive's constitutional duty to see that the laws are faithfully executed.

Yet, courts have too often given the nod to this over-delegation to the executive by Congress. In the 1935 New Deal-era case *Humphrey's Executor v. United States*, the Supreme Court ruled that President Franklin Roosevelt could not fire a member of the Federal Trade Commission for being insufficiently supportive of the New Deal. However, it also ruled that Congress may establish bodies "to carry into effect legislative policies … and to perform other specified duties as a legislative or judicial aid." The court concluded that such quasi-legislative or quasi-judicial agencies "cannot in any proper sense be characterized as an arm or an eye of the executive."[26]

Unaccountable single-director agencies with enormous discretion could become the new constitutional norm.

Over the years, Congress has added features to these agencies. Initially, it kept the constitutional framework of checks and balances in place by setting them up as multi-member commissions, but eventually agencies such as the Social Security Administration came to be headed by a single director. In the case of the Consumer Financial Protection Bureau (CFPB), established by the Dodd-Frank Act in 2010, the director is not subject to either presidential oversight or Congress' "power of the purse." It is headed by a single director who may not be removed by the president, except "for cause," and its funding comes from the Federal Reserve. Although a case on the constitutionality of the CFPB has not yet reached the Supreme Court, if these powers are upheld, as they have been by lower courts, Dodd-Frank could well become a "super-statute" governing the financial industry in the United States.

Unaccountable single-director agencies with enormous discretion could become the new constitutional norm.

This quasi-constitutional system might have been passed in democratic fashion, and even have passed constitutional muster with the courts, but one has to ask whether it is in any way consistent with the constitutional system the Founders envisioned.

DEMOCRACY VS. THE RULE OF EXPERTS

Over the past three decades, we have seen *less* democratic involvement in this system. It relies on the judgment of experts proposing regulations on which the public can comment, rather than on the people's direct representatives debating the pros and cons. My colleague Wayne Crews has compiled what he calls the Unconstitutionality Index, comparing the number of regulations imposed by agencies against the number of laws passed by Congress. The average ratio over the past decade has been around 28 to one.[27]

Independent agencies, although free from the check of presidential authority, have traditionally been balanced internally by a commission structure, allowing for some form of debate over new regulations. Yet the new form best exemplified by the CFPB lacks even that fig leaf. It is as undemocratic a government office as can be imagined, being wholly unaccountable to the elected branches of government, yet its continued existence in its current form is a progressive priority. The progressive-leaning D.C. Circuit said that the structure is constitutional.[28]

So just who is actually enchaining democracy? The free marketers who support individual rights or the progressives who have established a shadow constitution that gives massive power to unelected bureaucrats?

All the evidence points toward liberal democracy performing better than democratic socialism.

Perhaps we should reassess the role of civil liberties, including property rights, in securing the benefits of our constitutional order. We should ask whether capitalism poses as much a threat to democracy as collectivism. We should ask whether the institutions of liberty promote the general welfare more than the rule of experts.

All the evidence points toward liberal democracy performing better than democratic socialism at securing benefits for the people. I experienced both systems myself. The democratic socialist Britain of my youth was a depressing place. Nationalized industries degraded infrastructure and provided poor levels of service. I shudder when I remember the British Rail sandwich—a thin and greasy slice of ham between two curling slices of stale bread.[29] Labor unions were constantly on strike for higher wages, which led to rampant inflation. Even grave diggers went on strike, with the dead lying unburied for weeks. It would take months to get a new phone installed. Because of the strength of the unions, important political decisions were taken not in the democratically elected Parliament, but in what were known as "smoke-filled rooms" over "beer and sandwiches" between the people's ministers and union leaders.

They were able to do this because the British constitution, famously unwritten, is in many ways made up of super-statutes. Laws that become

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"sticky," in Eskridge's words, have a staying power that can outlive their usefulness. The laws that nationalized British industry; gave significant power to labor unions; and imposed high tax rates, exchange controls, and overly generous welfare payments were seen as a settled part of the constitution. They were accepted by the Conservative Party as much as by the Labour Party for almost 40 years. Yet the negative effects were plain to see.

Eventually, the British people had had enough. In 1979 they elected a prime minister with a radical agenda—yes, one influenced by free market economists. Margaret Thatcher introduced radical change by passing laws, and won reelection twice. The Britain she set free is a far better place today than it was in the 1970s. Trains now serve edible food. Inflation has not been a problem for decades. While labor unions do still strike occasionally, the dead do get buried. Cell phones became common in the U.K. far earlier than in the U.S. The Labour Party ruled for over a decade without seriously challenging the free enterprise system (although it has recently lurched far to the left)—because the Thatcher pro-market approach had become "sticky."[30]

Britain's example shows that capitalism and democracy can exist side by side, and produce significant welfare gains. There is empirical evidence to support the connection between economic liberty and human welfare. Studies have repeatedly found that societies with greater economic freedom have higher standards of living and lower rates of crime. Since 1996 the annual *Economic Freedom of the World*

index, co-published by the Fraser Institute and the Cato Institute, has charted the relationship between economic freedom and indicators of social and economic welfare in countries around the world. The latest edition shows a strong correlation between increased economic freedom and lower infant mortality and both extreme and moderate poverty. Moreover, both gender and income inequality are at their lowest in the most economically free countries.[31]

Other studies have shown the connection between structural factors such as the rule of law and an entrepreneurial ecosystem and social mobility. For example, the Archbridge Institute found that "factors such as the rule of law, prevalence of corruption, opportunities for innovation, and a dynamic ecosystem for entrepreneurship" are indicators not just of economic freedom but of lowered inequality and increased social mobility.[32]

These factors reinforce trust between economic actors, lowering the costs of economic transactions and allowing more transactions to take place. Economic transactions are the basis of wealth creation. Again, a market system, other things being equal, will produce better welfare results than a non-market system.

In environmental areas such as fisheries, private property rights can help manage, sustain, and even help fisheries recover. The evidence is so strong that most major environmental groups support catch shares, a form of private property right in fisheries.[33] Property rights allow for long-term thinking and the avoidance of the tragedy of the commons. Fish stocks are allowed to refresh and reach sustainable levels as

If we believe in free association, we must respect the right of people to combine interests in a corporation.

opposed to being depleted, driven by the grim reality that any that are not taken by one fisherman will be taken by the next one to come along. Property rights-based catch shares have also been shown to be superior to non-market methods of protecting fish stocks.[34]

There is also an important moral dimension to capitalism. If we believe in the human right of free association, which is also the basis of labor union organizing, we must respect the right of people to combine their economic interests in the form of a corporation. At heart, the firm is an exercise in cooperation. It must consider the interests of all its participating parties—customers, workers, suppliers, managers, owners, and investors—to be successful. In this respect, capitalism is not just beneficial; it is virtuous.

Virtuous capitalism strengthens democracy. By providing a better standard of living for all, it takes the need for certain political decisions off the table. We are already seeing how Uber and other sharing economy firms are providing an alternative to unemployment assistance for people temporarily out of work. If by working a few extra hours via Lyft or TaskRabbit you can get enough money to pay the electric bill, you may not need to take out a payday loan, which means that regulation of payday loans becomes less important.

Taking these decisions out of the realm of politics means we are less likely to use the coercive power of government against particular groups, whether it be taxing people in certain occupations or small

towns extorting speeding fines from minority drivers—clear cases of the tyranny of the majority.

In fact, when democracy works the way public choice theorists such as James Buchanan suggest, progressives are often rightly outraged. Small, organized minorities can band together to usurp the rights of other groups and individuals. One prominent example is the *Kelo v. City of New London Supreme Court* case, in which special interests used the democratic process to expropriate private property for a supposed "public purpose." The special interests in this case were the pharmaceutical giant Pfizer and the City of New London, Connecticut. As part of the arrangement, which involved the city condemning people's houses and turning the land over to Pfizer, the company got land for a new plant at well below market rates, while the city got the promise of greater tax revenue. The losers were the people pushed out of their homes.

Both the AARP and the NAACP condemned the decision. Their joint brief of amicus curiae to the Supreme Court said, "Elimination of the requirement that any taking be for a true public use will disproportionately harm racial and ethnic minorities, the elderly, and the economically underprivileged." They explicitly noted that the decision would "fail to protect the rights of already disadvantaged groups from majoritarian pressures."[35]

Meanwhile, the governance arrangement that is often derisively called "neoliberalism" has helped achieve public ends through private means. It was free market economists who recognized that such things have

Economic freedom remains constrained even in the freest countries of the world.

occurred regularly throughout history. The economics Nobel laureate Ronald Coase detailed how lighthouses, long held up as clear examples of public goods, historically had been constructed using private funds and collected revenue in the form of port fees paid by private parties who benefited from the lighthouses' services.[36] The majority benefits from the commercial interests of the entrepreneur. As Adam Smith said, "It is not from the benevolence of the butcher, the brewer, or the baker, that we can expect our dinner, but from their regard to their own interest."[37]

Much remains to be done, but that is because economic freedom remains constrained to a great extent even in the freest countries of the world.

Now, a word about motive. There is no one I know in the free market academic movement who is in it for the pay! They believe strongly that free enterprise helps people—and may help the poorest the most. They believe that thieves and fraudsters should be punished—either by the market driving them out of business in its search for quality or, in the case of fraud, by the long-established processes of civil and criminal law. Most of them—not all, I admit—also recognize that their progressive critics generally have only the best of motives at heart. They do so from a position of epistemic humility. It is a central part of free market thought that no one can know everything.

CONCLUSION

There is a long and noble philosophical tradition that the tyranny of the majority is to be feared. The American system of government is not one of majority rule, but a liberal democracy that recognizes rights as constraints on government. Despite this tradition, a supplementary system of government has emerged that has very little to do with democracy. Economic freedom, which that system seeks to constrain, has significant benefits and can even be regarded as virtuous.

From this we can conclude that many of progressives' complaints have little basis in fact. Democracy has not been shackled by a small cabal of free marketers. If they are doing anything, it is trying to restore the constitutional system of democracy and rights that was derailed in the New Deal.

We firmly believe that securing the blessings of liberty for ourselves and our posterity, as the Founders sought to do, is the path toward greater prosperity and well-being for the vast majority of people. We recognize that opinions differ on this, and that in the end any such change will have to come about either through the ballot box or the established procedures of constitutional argument in the Supreme Court—in other words, through the institutions of democracy.

NOTES

1 George Monbiot, "A despot in disguise: one man's mission to rip up democracy," *The Guardian*, July 19 2017, https://www.theguardian.com/commentisfree/2017/jul/19/despot-disguise-democracy-james-mcgill-buchanan-totalitarian-capitalism.

2 As it happens, I am a free market economist. I even head something called the Center for Economic Freedom at the Competitive Enterprise Institute. Therefore, I am unsurprisingly skeptical of these claims. So when it comes to my objections, those sympathetic to MacLean et al might say, in the British expression, "He would say that, wouldn't he?" Others might go so far as to call me a "useful idiot," and I suppose they'd be half right. But I think I have good reason to dispute these claims. In many ways, my arguments rely on moral and political philosophy just as much as economics.

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