Free Market Capitalism Is Good for Democracy, New Study Finds

Tyler O'Neil

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Liberal critics of free-market capitalism have argued that free markets are incompatible or at odds with democracy, but a new study from the Competitive Enterprise Institute (CEI) aims to show otherwise. Liberals act as though free-market reformers would destroy democracy, but capitalists are more likely the allies of constitutional representative government and the opponents of bureaucratic rule. Self-styled progressives, meanwhile, aim to strengthen an unaccountable bureaucracy that undermines the will of the people.

CEI's Iain Murray responds to Duke University historian Nancy MacLean's 2017 book *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America*. He presents two central points: That American democracy is constrained by design in ways that promote freedom and economic progress; and that there is a new bureaucratic system at odds with the Constitution which must be reversed in the interests of representative government and economic progress.

"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," Murray writes.

Limits on pure democracy are essential for true freedom. "The intellectual father of classical liberalism, John Stuart Mill, warned about the 'tyranny of the majority.' 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 oppress the out-group," the CEI scholar argues. "In other words, democracy itself can be totalitarian, unless it is implicitly or even explicitly enchained."

Murray defends economic freedom as 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. The first draft of the Declaration of Independence, following the philosopher John Locke, may have talked of 'life, liberty, and property' as inalienable rights."

Without property rights, human societies face the tragedy of the commons, where individuals hoard resources, depleting and wasting them. "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," he explains.

Murray suggests that MacLean and her allies define democracy in terms of "the unlimited power to abrogate or expropriate some property rights in the name of justice." Such a system already exists, thanks to the New Deal.

"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," the CEI scholar notes. While the New Deal faced some setbacks, this new system eventually prevailed, enhanced by Great Society legislation in the 1960s and environmental laws in the 1970s.

This system's threat to private property became abundantly clear in the Supreme Court case *Wickard v. Filburn* (1932). Ohio farmer Roscoe Filburn was growing wheat to feed animals on his own farm, but the Agricultural Adjustment Act of 1938 imposed federal caps on wheat production to stabilize prices. Filburn produced wheat beyond the caps, but for his own use. Even so, the Department of Agriculture fined him. The Court upheld the fine, claiming that the commerce clause in the 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," Murray explains. This precedent allowed the Supreme Court to rule that growing marijuana on private property for personal medicinal use had enough of an impact on interstate commerce for the government to regulate it (*Gonzales v. Raich*, 2005).

Besides this undermining of property rights, entrepreneurs face large hurdles. "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. Contributions to mandatory government programs reduce the amount an employer can pay a worker—and that is before we even mention health care."

MacLean's argument against capitalism involves a category error, Murray argues. "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."

When free-market capitalists support reforms like overturning *Wickard*, they do not pose a threat to representative government. "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," the CEI scholar explains.

This kind of systemic change "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." As an example, Murray points to *Janus v. AFSCME* (2018), in which the Supreme Court defended the free speech rights of a state employee over the claims of unions to exert "agency fees." Even this was a heavy lift, and "collective bargaining is not a constitutional right" while "freedom of speech is."

Ultimately, there are two constitutional orders in America today, the CEI scholar argues. "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."

The bureaucratic system weakens the rights Americans ostensibly enjoy under the Constitution. Courts offer deference to regulatory agencies, effectively depriving Americans of their right to a fair trial. "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," he explains.

"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," Murray adds. Yet courts have upheld this bureaucratic system.

"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." If the Supreme Court upholds the constitutionality of CFPB, Dodd-Frank could become a "super-statute," effectively more powerful than the Constitution's limits on administrative power.

Murray points to Wayne Crews' Unconstitutionality Index, which compares 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.

When unelected and unaccountable regulators make legal decisions over and above the laws passed by the people's representatives, it is actually the "progressives" who are "enchaining democracy."

"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?" Murray asks.

As for free markets, they promote flourishing better than this bureaucracy, the CEI scholar argues. He offers a personal anecdote — having grown up under democratic socialist Britain before Margaret Thatcher's reforms. Before Thatcher, Britain was plagued by "poor levels of service," "rampant inflation," long delays, and the dead lying unburied in the streets. Important political decisions were made in "smoke-filled rooms" between government and unions. Under Thatcher, each of these aspects of life changed, radically.

"Britain’s example shows that capitalism and democracy can exist side by side, and produce significant welfare gains," he notes.

Yet perhaps more important, "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."

Murray also cites an Archbridge Institute study showing 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.

In short, "a market system, other things being equal, will produce better welfare results than a non-market system."

"Virtuous capitalism strengthens democracy," Murray adds. "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."

Finally, the CEI scholar addresses the claim that free-market capitalist reformers are corrupt. "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," he writes.

Democracy, far from having been "shackled by a small cabal of free marketers," can best be restored to America's constitutional system through the very free-market reforms that liberals oppose. Free-market and limited-government reforms are a boon for representative government, not its enemy.