

# Hayek versus Trump: The Radical Right's Road to Serfdom

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Hayek's *The Road to Serfdom* has been interpreted as a general warning against state intervention in the economy.<sup>1</sup> We review this argument in conjunction with Hayek's later work and discern an institutional thesis about which forms of state intervention and economic institutions could threaten personal and political freedom. Economic institutions pose a threat if they allow for coercive interventions, as described by Hayek in *The Constitution of Liberty*: by giving someone the power to force others to serve one's will by threatening to inflict harm, in the absence of general rules of conduct. According to the logic of the argument, welfare-state provisions are not coercive insofar as they do not allow the identification and discriminatory treatment of individuals. By contrast, we claim that a structure of coercion is likely to emerge from the command-and-control nature of protectionist institutions and immigration restrictions currently advocated by the radical right.

Keywords: Hayek, *Road to Serfdom*, state intervention, rule of law, radical right, economic freedom and democracy

**H**ayek's *The Road to Serfdom* is a compelling but imperfectly understood intellectual statement about the relationship between economic institutions and personal and political freedom. Hayek's original thesis is that the fully planned economy can set a society on a path to totalitarianism. What makes Hayek's description unique is that the initial stages of this path require no malicious intent on behalf of statesmen seeking power but result from the epistemic challenges they

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1. Friedrich A. von Hayek, *The Road to Serfdom: Text and Documents* (Chicago: University of Chicago Press, 2007).

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face when replacing the market with a political process.<sup>2</sup> This has sparked controversy over Hayek's position on mixed economies, which differ significantly from the socialist planned economy he originally had in mind. Is he making a gloomy prediction about the political prospects of the welfare state too? Is his work a calumny aimed at discrediting any form of regulatory intervention? If Hayek is indeed attacking welfare states in general, then his thesis appears to be refuted by the fact that contemporary mixed economies have maintained political liberty.

In this article, we aim to show that the key problem of interpretation stems from a reading of *Serfdom* based on isolated passages. A combined reading of Hayek's *Serfdom* and his *The Constitution of Liberty* establishes a more coherent argument, which applies to today's shifting political and economic landscape and is relevant to contemporary debates about the role of the state and the prospects of liberal democracy. In *Constitution*, Hayek introduces the notion of coercion as a state in which "one man's actions are made to serve another man's will, not for his own but for the other's purpose," . . . when "the alternatives are so manipulated that one is compelled to choose what the coercer wants as the least painful choice."<sup>3</sup> This occurs when a person controls the environment or circumstances of another person and poses options so manipulated that the coercer forces the other person to choose a path of action that is the least painful for him and serves the coercer's purpose.<sup>4</sup> Personal freedom (the "state of liberty") is thus "independence from the arbitrary will of another" and depends on general rules delineating a wide range of choice in shaping one's course of behavior according to one's own will.<sup>5</sup>

We posit that the notion of coercion holds the key to reconstructing a coherent argument by addressing two interpretative gaps. First, we link the notion of coercion to Hayek's core theme, the epistemic properties of institutions, which underpins *Serfdom*. Second, we establish a link between coercion that limits personal freedom and limitations on political freedom. Hayek associated coercion with

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2. Peter J. Boettke, "Information and Knowledge: Austrian Economics in Search of Its Uniqueness," *Review of Austrian Economics* 15 (2002): 263–74, at 264; Dan Greenwood, "Facing Complexity: Democracy, Expertise and the Discovery Process," *Political Studies* 58 (2010): 769–88, at 771–72; Dan Greenwood, "The Problem of Coordination in Politics: What Critics of Neoliberalism Might Draw from Its Advocates," *Polity* 43 (2011): 36–57, at 42; and K. Sabeel Rahman, "Conceptualizing the Economic Role of the State: Laissez-Faire, Technocracy, and the Democratic Alternative," *Polity* 43 (2011): 264–86, at 272.

3. Friedrich A. von Hayek, *The Constitution of Liberty: The Definitive Edition*, ed. Ronald Hamowy, The Collected Works of F. A. Hayek, vol. 17 (Chicago: University of Chicago Press, 2011), 199.

4. *Ibid.*, 133.

5. *Ibid.*, 59; see also Chandran Kukathas, *Hayek and Modern Liberalism* (Oxford, U.K.: Oxford University Press, 1989), 132; and Theodore L. Putterman, "Berlin's Two Concepts of Liberty: A Reassessment and Revision," *Polity* 38 (2006): 416–46, at 419.

personal freedom, which he distinguished from “political liberty” or “political freedom,” concepts he identified with democracy.<sup>6</sup> As a result, in *Constitution* Hayek made no system-level generalizations about how arbitrary state intervention can unleash a path to authoritarianism, as he did in his critique of the planned economy in *Serfdom*.<sup>7</sup>

Bringing together Hayek’s ideas about the epistemic properties of institutions, coercion, and democracy allows us to suggest what types of state intervention other than central planning are likely to have a negative impact on political freedom. Hayek’s *Serfdom* thesis should neither be read as a general indictment of the mixed economy nor as a statement exclusively limited to the case of central planning in a socialist economy. We argue instead that Hayek offers a general warning aimed at discriminatory state interventions in economic life that undermine the competitive market process with coercive commands.

Based on this argument, we examine aspects of the mixed economy in order to address the question: Which economic agendas are more likely to lead to illiberal political outcomes? This reading of Hayek allows us to assess current policy trends and institutional settings. We revisit the protectionist policies propounded by the radical right, a political movement defined by an economic ideology that professes respect for private property and capitalism but advocates extensive protectionism and tight immigration controls. The radical right has made significant electoral gains in Western Europe and the United States. Its influence is increasingly felt by mainstream parties too, such as the Republican Party in the United States and the Conservative Party in the United Kingdom, which have shifted toward acceptance of protectionism and stricter immigration controls. This policy direction, we explain, entails risks that can be associated with the Hayekian warning.

## Hayek’s Institutional Thesis

### *The Epistemic-Institutional Foundations of The Road to Serfdom*

Hayek’s popular book has been interpreted as a prediction about the catastrophic effects of large-scale state economic interventions that depart from the classical liberal ideals of “laissez-faire.”<sup>8</sup> This reading comes in two distinct forms. The first one

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6. Hayek, *The Constitution of Liberty*, 58, 168, and 61–62, respectively (see note 2 above). See also Sean Irving, “Limiting Democracy and Framing the Economy: Hayek, Schmitt and Ordoliberalism,” *History of European Ideas* 44 (2018): 113–27, at 118.

7. See Andrew Farrant and Edward McPhail, “Hayek, Samuelson, and the Logic of the Mixed Economy?,” *Journal of Economic Behavior & Organization* 69 (2009): 5–16, at 13.

8. Elsewhere Hayek repudiated dogmatic support for laissez-faire, suggesting that the intuition behind the phrase only offered a “rule of thumb” about what government regulation was

can be labelled the “expansionary interpretation.” It claims that Hayek’s logic of state economic intervention can also be observed in a mixed economy and, hence, building a mixed economy carries the risk of creating a slippery slope to a fully planned economy and totalitarianism.<sup>9</sup> This interpretation is popular among committed advocates of free markets as a general warning against the impact of state intervention on political freedom. Critics of Hayek’s prediction follow this interpretation and emphasize that Hayek’s predictions in *Serfdom* have not materialized in the context of mixed economies.<sup>10</sup>

The second interpretation suggests that there is a quantifiable *threshold* after which this slippery slope effect will materialize: a path to authoritarianism will be unleashed after state intervention in the economy reaches a certain degree. Hayek’s argument has been presented as quantifiable and, therefore, falsifiable. Rosser as well as Meadowcroft and Alves deduce that the proportion of GDP made up of public expenditure is a reasonable measure of the intensity of economic intervention. Meadowcroft and Alves take their cue from Hayek’s reference in *Serfdom* to the German economy in the 1930s:

Where, as was, for example, true in Germany as early as 1928, the central and local authorities directly control the use of more than half the national income (according to an official German estimate then, 53 per cent), they control indirectly almost the whole economic life of the nation.<sup>11</sup>

In that view, if Hayek was correct, mixed economies in the West with relatively high state expenditures should have already unleashed the slippery slope to totalitarianism, but empirical reality disconfirms this prediction. Hayek’s thesis, therefore,

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appropriate. See Friedrich A. von Hayek, *Law, Legislation, and Liberty: Rules and Order*, vol. 1 (London: Routledge & Kegan Paul, 1993 [1937]), 62.

9. Paul A. Samuelson, “Personal Freedoms and Economic Freedoms, in the Mixed Economy,” in *The Business Environment*, ed. E. F. Cheit (New York: Wiley, 1964): 193–227, at 226–27; Paul A. Samuelson, *Economics*, 12th ed. (New York: McGraw-Hill, 1985); and Paul A. Samuelson, “Economic History and Mainstream Economic Analysis,” *Rivista Di Storia Economica* (2001): 271–89, at 305. See also Farrant and McPhail, “Hayek, Samuelson, and the Logic of the Mixed Economy?” (see note 7 above); and Andrew Farrant and Edward McPhail, “Does F. A. Hayek’s *Road to Serfdom* Deserve to Make a Comeback?,” *Challenge* 53 (July 2010): 96–120, at 102.

10. Stavros Ioannides, “Austrian Economics, Socialism, and Impure Forms of Economic Organisation,” *Review of Political Economy* 12 (2000): 45–71, at 46.

11. Hayek, *The Road to Serfdom*, 103 (see note 1 above); also see André Azevedo Alves and John Meadowcroft, “Hayek’s Slippery Slope, the Stability of the Mixed Economy and the Dynamics of Rent Seeking,” *Political Studies* 62 (2014): 843–61, at 846; and J. Barkley Rosser, “The Road to Serfdom and the World Economy: 60 Years Later,” *European Journal of Political Economy* 21 (2005): 1012–25, at 1017.

is disproven by the personal liberties and stable democratic institutions observed in advanced mixed economies with relatively high state expenditures.

Boettke and Candela challenge this interpretation by placing *Serfdom* within the broader epistemic program launched by Mises and developed by Hayek as part of the socialist calculation debate.<sup>12</sup> They argue that Hayek makes an institutional argument about the association between state intervention and authoritarianism. Focusing on the institutional infrastructure within which economic activity takes place, they discern that the organizational logic of planning and the situational logic of a move towards a planned economy bring instability to liberal institutions:

The logic of the situation and the logic of organization under socialist planning are such that democracy and the rule of law are unsustainable in substantive content, and the system, if pursued to its logical end, would result in the concentration of political power in the hands of the men least capable of constraining the abuse of power.<sup>13</sup>

Boettke and Candela also put forward an epistemic-institutionalist interpretation of *Serfdom*. We develop their argument by highlighting that in *Serfdom* central planning has negative effects on political liberty because the epistemic deficiencies of that system generate conflicts as well as demands in society for strong leadership, which then enables the rise of an authoritarian leader who claims it is necessary to address these problems. This point allows us to further advance Hayek's argument in the following sections in two ways. Focusing on the relationship between commands and personal liberty, we revisit Hayek's *Constitution* and develop a broader institutional argument explaining why, besides planning, economic regimes that are characterized by political commands and administrative discretion pose a threat to political liberty. On that basis, we will explain why the economic agenda of protectionism, as espoused by the radical right in the policy fields of international trade, industrial development, and immigration, constitutes such a threat.

Hayek aims to dispel the belief that socialism can be achieved and maintained by democratic means and to promote the idea that efforts to organize a planned economy would have unintended political consequences that no socialist would endorse.<sup>14</sup> Hayek defined socialism as the replacement of private ownership of the means of production with a planned economy where a central planning body

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12. Peter J. Boettke and Rosolino A. Candela, "The Intellectual Context of F. A. Hayek's *The Road to Serfdom*," *Journal of Private Enterprise* 32 (2017): 29–44.

13. *Ibid.*, 36.

14. Hayek, *The Road to Serfdom*, 79, 82 (see note 1 above).

displaces the entrepreneur working for profit.<sup>15</sup> In this type of economy the impersonal mechanism of the market is replaced by the “collective and ‘conscious’ direction of all social forces to deliberately chosen goals.”<sup>16</sup> In his view, a move to a planned economy would risk an outcome different from the intended aims of socialists: “instead of freedom and prosperity, bondage and misery.”<sup>17</sup> This outcome can be initially unforeseen and unintended, and so Hayek reminded socialists of the classical liberal postulate that personal and political freedom had never existed in the past without freedom in economic affairs.<sup>18</sup>

The organizational dimension resonates with Hayek’s epistemological thesis, as presented in “The Use of Knowledge in Society” and “The Counter-Revolution of Science,” on social cooperation among strangers in conditions of dispersed and limited knowledge.<sup>19</sup> The main tenet is that competition among entrepreneurs better addresses this fundamental problem of knowledge.<sup>20</sup> For Hayek and Mises, dispersed knowledge renders socialist planning impossible.<sup>21</sup> Central planning stifles the competitive process that allows effective use of dispersed knowledge in the economy.<sup>22</sup> But the inefficiency of planning will also have serious political implications if the pathway to a fully-planned economy entails the gradual expansion and entrenchment of a command system that displaces the open-ended competitive market altogether.<sup>23</sup>

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15. *Ibid.*, 83.

16. *Ibid.*, 73.

17. *Ibid.*, 65.

18. *Ibid.*, 67; see also David Schmidtz, “History and Pattern,” *Social Philosophy and Policy* 22 (2005): 148–77, at 156; and Robert S. Taylor, “Illiberal Socialism,” *Social Theory and Practice* 40 (2014): 433–60, at 435.

19. Friedrich A. von Hayek, “The Use of Knowledge in Society,” *American Economic Review* 35 (1945): 519–30, at 526; and *The Counter-Revolution of Science: Studies on the Abuse of Reason*, 2nd ed. (Indianapolis, Ind.: Liberty Press, 1979). See also Peter J. Boettke, “On Reading Hayek: Choice, Consequences and The Road to Serfdom,” *European Journal of Political Economy* 21 (2005): 1042–53, at 1043; and Bruce Caldwell, *Hayek’s Challenge: An Intellectual Biography of F. A. Hayek* (Chicago: University of Chicago Press, 2004), 241.

20. Peter J. Boettke and Kyle W. O’Donnell, “The Failed Appropriation of F. A. Hayek by Formalist Economics,” *Critical Review* 25 (2013): 305–41; and Jeffrey Friedman, “Hayek’s Two Epistemologies and the Paradoxes of His Thought,” *Critical Review* 25 (2013): 277–304, at 288.

21. Peter J. Boettke, “Hayek’s *The Road to Serfdom* Revisited: Government Failure in the Argument against Socialism,” in *Calculation and Coordination: Essays on Socialism and Transitional Political Economy* (New York: Routledge, 2001), 47–65, at 49; Mark Pennington, “Hayekian Political Economy and the Limits of Deliberative Democracy,” *Political Studies* 51 (2003): 722–39, at 727; and Morris M. Wilhelm, “The Political Thought of Friedrich A. Hayek,” *Political Studies* 20 (1972): 169–84, at 170.

22. Boettke, “Hayek’s *The Road to Serfdom* Revisited,” 49 (see previous note).

23. Hayek, *The Road to Serfdom*, 88 (see note 21 above).

On this account, planning makes it impossible to achieve consensus or a stable majority to tackle the distributional conflicts that will revolve around the ends of numerous planning processes. Comprehensive planning requires adjudicating among countless conflicting values and expectations, which is beyond the capacity of democracy.<sup>24</sup> Distributional clashes in the planned economy will create stronger demands for greater and more authoritative powers for government to act on its own responsibility.<sup>25</sup> Ultimately, there *can* be a popular cry for a strong leader to fully plan and coordinate economic activity.<sup>26</sup> While the public will not anticipate such a political development, once a command economy is established, it will degenerate into political authoritarianism by the nature of the power it will assume to address its own inefficiencies and inner conflicts. Hayek writes, “just as the democratic statesman who sets out to plan economic life will soon be confronted with the alternative of either assuming dictatorial powers or abandoning his plans, so the totalitarian dictator would soon have to choose between disregard of ordinary morals and failure.”<sup>27</sup> *Serfdom* describes the two interrelated processes—epistemic and institutional: taking steps towards a *planned economy* that may progressively and stealthily lead to an institutional state of affairs in which planning replaces competition and there is popular demand for strong leadership to take tough decisions in face of the failures of central planning. What is unique about this account is that it starts with a benevolent yet epistemically unwarranted effort to build a planned economy and leads to authoritarianism because of the coercive nature of the powers concentrated by the government’s strong leadership of economic affairs. Planning produces this outcome through the combined effect of the organizational nature of command government interventions and the situational problems of this type of planning. Both the epistemic deficiencies of a command economy and the coercive

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24. Peter J. Boettke, Vlad Tarko, and Paul Aligica, “Why Hayek Matters: The Epistemic Dimension of Comparative Institutional Analysis,” in *Advances in Austrian Economics*, vol. 21, ed. Peter J. Boettke and Virgil Henry Storr (Bingley, U.K.: Emerald Group Publishing Limited, 2016), 163–85, at 177; Peter J. Boettke and Peter T. Leeson, “Hayek, Arrow, and the Problems of Democratic Decision-Making,” *Journal of Public Finance and Public Choice* 20 (2002): 9–21, at 12; Samuel De Canio, “Democracy, the Market, and the Logic of Social Choice,” *American Journal of Political Science* 58 (2014): 637–52, at 639; Gerald F. Gaus, “Self-Organizing Moral Systems: Beyond Social Contract Theory,” *Politics, Philosophy & Economics* 17 (2018): 119–47, at 140; and Pennington, “Hayekian Political Economy” (see note 21 above).

25. Hayek, *The Road to Serfdom*, 108 (see note 1 above).

26. *Ibid.*, 99.

27. *Ibid.*, 158; see also 126.

properties inherent in the commands themselves combine to produce negative consequences for personal and political freedom. Hayek's take on the logic of command and control looks at these interventions not simply as the cause of failure, frustration, and popular unrest that could lead to a popular cry for an economic dictator, but also as components of an economic structure which by their own nature lead to increasing coercion.

*The Institutional Thesis on Coercion in The Constitution of Liberty*

We now move beyond the epistemic deficiencies of central planning that Boettke and Candela have defended as central to Hayek's argument in *Serfdom*.<sup>28</sup> We emphasize that the epistemic deficiencies of planning and the conflicts it generates are not the only conditions at work that pave the way to authoritarianism. To that end, we focus on the notion of coercion that Hayek's later work on the rule of law elaborated. We also establish a more general account of the coercive potential of institutions that obstruct the competitive market process even in the absence of central planning. This potential does not merely emerge from the inefficiencies and distributional conflicts that planning creates—a reality that modern democracies often face—but is also associated with the nature of the interventions such that, when applied on a large scale, the interventions can effectuate an encompassing command structure of economic and political relations.

Our starting point of this interpretation is Hayek's definition of illiberal coercion in *Constitution* as the power to force other people to serve one's will by the threat of inflicting harm.<sup>29</sup> Hayek's account of coercion is inspired by neo-Roman scholars as submission to the arbitrary will of another person, and it has remarkably close parallels with contemporary liberal republican theorists.<sup>30</sup> Illiberal coercion

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28. Boettke and Candela, "The Intellectual Context of F. A. Hayek's *The Road to Serfdom*," 41 (see note 12 above).

29. Hayek, *The Constitution of Liberty*, 212 (see note 2 above); and Peter Lindsay, "Exposing the Invisible Hand: The Roots of Laissez-Faire's Hidden Influence," *Polity* 37 (2005): 295–314, at 304.

30. Harrison P. Frye, "Freedom without Law," *Politics, Philosophy & Economics* 17 (2018): 298–316, at 301; Sean Irving, "Hayek's Neo-Roman Liberalism," *European Journal of Political Theory*, July 17, 2017, at <https://doi.org/10.1177/1474885117718370>; see also Robert S. Taylor, "Market Freedom as Antipower," *American Political Science Review* 107 (2013): 593–602, at 597; and Robert S. Taylor, *Exit Left: Markets and Mobility in Republican Thought*, first ed. (Oxford, U.K.: Oxford University Press, 2017), 92. There are other republican theorists who share the same concern with non-domination but are more skeptical of the capacity of market institutions to contribute to protecting political liberty. See Steven Klein, "Fictitious Freedom: A Polanyian Critique of the Republican Revival," *American Journal of Political Science* 61 (2017): 852–63, at 857; and



is unleashed when the institutional environment is one in which *an authority decides what the individual does and how they do it* through commands that entail arbitrary discrimination.<sup>31</sup> For Hayek, this requires someone else's control of one's environment and circumstances, while personal freedom presupposes the protection of a private sphere in which individuals can determine their own actions of choice free from such interference.<sup>32</sup> This protection is offered by the rule of law, which is defined in *Constitution* as a permanent framework that secures the private sphere in which individuals can make their own decisions by means of rules formulated in *abstract and general terms to secure equality to all persons*.<sup>33</sup> Hayek distinguishes this notion of coercion from coercion under the rule of law, which is legitimate "only if it is applied in the enforcement of universal rules of just conduct equally applicable to all citizens."<sup>34</sup> In this article, we use the term coercion in the sense of illiberal coercion.

In addition, Hayek uses an Aristotelian postulate of isonomy, stating that equality before the law is "the only kind of equality conducive to liberty."<sup>35</sup> A free society presupposes the limitation of coercion by equality before the law. Rules must be impersonal, general, and abstract, allowing individuals to plan their own course of action in a protected private sphere.<sup>36</sup> In Hayek's conception of the rule of law, state economic planning is an infringement of personal freedom insofar as it is not confined to setting fixed rules under which individuals can decide how to make use of available resources. Each instance of coercive planning involves momentary decision making that must address various claims and interests and will inevitably privilege some at the expense of others on an unpredictable basis. The planning authority can thus discriminate between persons.<sup>37</sup> Hayek's conception of personal liberty precludes distribution *on an individual basis* by a single source of authority, as this can permit coercive manipulation and is "bound to create further demands for

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John P. McCormick, "Contain the Wealthy and Patrol the Magistrates: Restoring Elite Accountability to Popular Government," *American Political Science Review* 100 (2006): 147–63, at 159.

31. Hayek, *The Constitution of Liberty*, 164, 217–18 (see note 2 above).

32. *Ibid.*, 71, 206, 21–12; see also Friedrich A. von Hayek, *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1998), 55.

33. Hayek, *The Constitution of Liberty*, 239 (see note 2 above).

34. Hayek, *Law, Legislation and Liberty*, 50 (see note 8 above).

35. Hayek, *The Constitution of Liberty*, 149 and 286 (see note 2 above); see also Irving, "Hayek's Neo-Roman Liberalism" (see note 30 above).

36. Hayek, *The Constitution of Liberty*, 72 (see note 2 above).

37. Hayek, *The Road to Serfdom*, 127–28 (see note 1 above).

new controls,” pushing towards a direction in which the whole society will be organized in accordance to this principle.<sup>38</sup>

The institutionalist interpretation that we have refined here brings coherence to Hayek’s seemingly ambivalent stance towards the mixed economy: on the one hand, his rejection of “social justice” as a coherent and attractive goal for governments and, on the other hand, his acceptance of several forms of state intervention.<sup>39</sup> Hayek’s position rejects policies that follow the same logic of intervention he described in *Serfdom*.<sup>40</sup> It is on this basis that Hayek rejected certain types of state intervention while accepting others, indeed against the way he has frequently been characterized both by his critics and supporters. Potentially legitimate interventions include counter-cyclical policies to replace lost credit during a recession (in today’s terms, expanding the money supply), which Hayek supported beginning in 1933,<sup>41</sup> and some welfare state functions that he endorsed in *Constitution* in 1960 as “security against severe physical privation, the assurance of given minimum sustenance for all.”<sup>42</sup> In 1973, in *Law, Legislation and Liberty*, Hayek clarified the compatibility of his principles with government provision of services for a minority of those unable to look after themselves; his position was justified by moral reasons shared broadly among citizens and as part of social insurance against misfortune for the whole population:

Although the provision of such services increases the necessity of levying taxes, these can be raised according to uniform principles; and the duty to contribute to the costs of such agreed common aims could be brought under the conception of general rules of conduct. It would not make the private citizen in any way the object of administration; he would still be free to use his

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38. Hayek, *The Constitution of Liberty*, 164 (see note 2 above).

39. See Peter Lindsay, “Polanyi, Hayek, and the Impossibility of Libertarian Ideal Theory,” *Polity* 47 (2015): 376–96, at 381; Andrew Lister, “The ‘Mirage’ of Social Justice: Hayek Against (and For) Rawls,” *Critical Review* 25 (2013): 409–44; Andrew Lister, “Markets, Desert, and Reciprocity,” *Politics, Philosophy & Economics* 16 (2017): 47–69; Jeff Spinner-Halev, “Liberalism, Markets, and Responsibility,” *Journal of Politics* 79 (2017): 1329–41, at 1339; Adam James Tebble, “Hayek and Social Justice: A Critique,” *Critical Review of International Social and Political Philosophy* 12 (December 2009): 581–604; and John Tomasi, *Free Market Fairness* (Princeton, N.J.: Princeton University Press, 2012), 123.

40. Farrant and McPhail, “Hayek, Samuelson, and the Logic of the Mixed Economy?” (see note 7 above).

41. Hayek, “Saving,” in *Profits, Interest and Investment* (London: George Routledge & Sons Ltd., 1939), 157–70, at 164–65; and K. Sabeel Rahman, *Democracy against Domination* (New York: Oxford University Press, 2017), 8.

42. Hayek, *The Constitution of Liberty*, 376 (see note 2 above).

own knowledge for his purposes and not have to serve the purposes of an organization.<sup>43</sup>

Hayek accepts that welfare distributions to classes of people formed on the basis of shared demographic characteristics are not arbitrary insofar as “they are equally recognized as justified by those inside and outside the group.”<sup>44</sup> This involves provisions for the weak and the vulnerable or policies offering protection against risks, provided that the rules governing these provisions are general and abstract.<sup>45</sup> A welfare system differs from the command economy Hayek had in mind when he wrote *Serfdom*, not necessarily because welfare policies, regulation, taxation and redistribution are free from epistemic challenges, but because they are far from being functions of a command economy.<sup>46</sup> While Hayek grew skeptical about whether governments can confine themselves to principles preventing coercive uses of state power,<sup>47</sup> mixed economies differ from Hayek’s structure of coercion, which was articulated in *Constitution* in 1960, at a time when Western democracies had developed their welfare and redistributive policies.

Hayek’s political thought can be understood as postulating a qualitatively nuanced position on the structure of mixed economies. Depending on the type and the scale of intervention, political coercion is possible. The threshold after which authoritarianism is a probable outcome is not simply a certain level of government’s share of GDP, but a type of structural transformation of the economy towards a prevalent nature of intervention that permits coercive manipulation. Hayek rejects the notion of “social justice” as a normative principle governing distributive politics, because policy applications in the name of social justice will be coercive and attempts to build an economy that would embody a notion of social justice will tend towards command-and-control planning.<sup>48</sup> This is an economic institutional system of the type of the German economy that Hayek describes in *Serfdom* and is reminiscent of Mises’s *Zwangswirtschaft*, a social system emerging from the continuous expansion of political intervention in which the allocation of resources is

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43. Hayek, *Law, Legislation and Liberty*, 142 (see note 8 above).

44. Hayek, *The Constitution of Liberty*, 222 (see note 2 above).

45. *Ibid.*, 165.

46. François Godard, “The Road to Serfdom’s Economistic Worldview,” *Critical Review* 25 (2013): 364–85, at 377.

47. Hayek, *Law, Legislation and Liberty*, 142–43 (see note 8 above).

48. Farrant and McPhail, “Hayek, Samuelson, and the Logic of the Mixed Economy?,” 12–13 (see note 7 above).

decided by arbitrary political decision making despite the fact that a façade of the market system is preserved.<sup>49</sup>

In sorting out a general structural-institutional argument, in this and the following two subsections, we develop Hayek's distinction between an economy governed by the rule of law, which reduces arbitrariness and therefore the scope for coercion, and an economy that, by increasing the range and intensity of discriminatory interventions, becomes illiberal in the Hayekian sense. Arbitrariness becomes a serious problem when it engulfs the whole economy, as is the case in *Serfdom* and its centrally planned system:

The consequence is that, *as planning extends*, the delegation of legislative powers to diverse boards and authorities becomes increasingly common . . . Constantly the broadest powers are conferred on new authorities which, *without being bound by fixed rules*, have almost unlimited discretion in regulating this or that activity of the people.<sup>50</sup>

There will be no economic or social questions that would not be political questions in the sense that their solution will depend exclusively on who wields the coercive power, on whose are the views that will prevail on all occasions.<sup>51</sup>

Combining Hayek's epistemic argument with this conception of coercion allows us to reconstruct a general argument applicable to other economic structures. We posit that *depending on the coercive capacity of the interventions they entail*, economic institutions can undermine liberal democratic institutions.<sup>52</sup> This allows us to make an addendum to the organizational and situational logic developed in *Serfdom* and to discern a generalizable Hayekian warning. In particular, the notion of coercion in *Constitution* clarifies the mechanism by which commands can foster political authoritarianism and enables us to answer the question of which economic regimes besides central planning could limit political liberties to such an extent that the actual character of a political regime shifts to authoritarianism.<sup>53</sup> The

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49. Ludwig von Mises, *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane (New Haven, Conn.: Yale University Press, 1951), 533; John Hagel and Walter E. Grinder, "From Laissez-Faire to Zwangswirtschaft: The Dynamics of Interventionism," in *The Dynamics of Intervention: Regulation and Redistribution in the Mixed Economy*, ed. Peter Kurrild-Klitgaard (London: Elsevier, 2005), 59–86.

50. Hayek, *The Road to Serfdom*, 120 (see note 1 above); emphasis added.

51. *Ibid.*, 138.

52. See Boettke, "On Reading Hayek," 1046–47 (see note 19 above).

53. Robert A. Lawson and J. R. Clark, "Examining the Hayek–Friedman Hypothesis on Economic and Political Freedom," *Journal of Economic Behavior & Organization* 74 (2010): 230–39.

institutional argument is that state interventions that work in coercive ways analogous to planning threaten personal liberty. Political coercion becomes possible when these interventions make up an institutional structure similar to the planning structure envisaged by Hayek, allowing political authority to issue commands that result in society's increasing subjection to the arbitrary will of the rulers.

The nature of this system is inextricably linked to de facto restrictions of property rights.<sup>54</sup> As we discuss in the next section, the notion of de facto restrictions of property rights enables us to assess interventions enacted by economic institutions and rules which, while professing respect for property rights, nevertheless seek to determine the use of property rights on an ad hoc basis.

### *De Facto Restrictions of Property Rights and Actual Coercion*

Is the recognition of private property sufficient to protect one's private sphere from coercive interventions? To better illustrate the relation between coercion and property rights, we propose two conceptual additions to Hayek's account. First, rather than focusing on the presence or absence of property rights, we propose treating property as a bundle of rights that together effectuate a private sphere for autonomous, non-coercive action.<sup>55</sup> Classical liberal theorists have sometimes failed to appreciate the conceptual dimensions of property rights,<sup>56</sup> leaving classical liberals to defend an archaic unitary notion of full liberal ownership almost by default as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe."<sup>57</sup> However, the traditional notion of property as full liberal ownership includes a bundle of related rights over incidents (i.e., various activities that legal rights permit or prohibit): to possess, use, manage, derive income and capital from, and destroy or transfer an asset.<sup>58</sup> Two features of these incidents that define the content (rather than the form) of private property rights are income and control,

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54. Boettke, "On Reading Hayek," 1048 (see note 19 above).

55. A. M. Honoré, "Ownership," in *Oxford Essays in Jurisprudence: A Collaborative Work*, ed. Klitgaard (see note 49 above), 107–26; Daniel Attas, "Fragmenting Property," *Law and Philosophy* 25 (2006): 119–49; and Gerald F. Gaus, "Property," in *The Oxford Handbook of Political Philosophy*, ed. David M. Estlund (New York: Oxford University Press, 2012): 93–112.

56. Gaus, "Property," 94 (see previous note).

57. William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 (Philadelphia, Pa.: J. P. Lippincott Company, 1893), 393, at [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=2140&layout=html](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2140&layout=html).

58. Honoré, "Ownership" (see note 55 above).

which can be independent features.<sup>59</sup> One can have robust rights of control—possession and use of an asset—while having limited rights over the income. In other cases, citizens may have the right to own a factory (possession), but they may be frequently subject to many interventions concerning how they exercise control over this asset (use).

This view of multiple instances of rights that constitute one's private sphere enables us to scrutinize different forms of state intervention in the economy in light of Hayek's notion of coercion. We will clarify the implications of diverse institutional settings of government intervention, including the coercive potential of economic agendas that respect property rights in principle but nevertheless propose ever-increasing restrictions on those rights. These restrictions vary; they may affect the *income* derived from property through taxation and redistribution; or the *control* of property through regulation or protectionist measures.

Second, rather than assessing the typical form or source of the rule authorizing intervention, we assess the nature of interventions as they are actually implemented. This distinguishes our approach from Hayek's distinction in *Law, Legislation and Liberty* between general law as *nomos* that limits and delineates a range of permissible action and *thesis* that takes the form of commands that instruct someone to do something. Here we seek to address the problem that we identified when rules take the form of general and abstract provisions but still enable commands and administrative or judicial discretion at the stage of implementation: their implementation and enforcement can be ad hoc and largely dependent on the discretion of the enforcing authority. We thus consider the applicability of state interventions at all stages of implementation and enforcement, regardless of whether their authorizing source takes the form of a Hayekian *nomos* or *thesis*. Even when the law-giver does not know the cases to which the rule applies, both the administrators and the judges—who are situated in and accountable to political networks—may be able to isolate particular cases and decide to interpret the law differently according to who is under judgment or to enforce it on an arbitrary basis.<sup>60</sup>

### Impersonal and Partial-Discriminatory Intervention

Bringing these two additions together, we distinguish between *impersonal* and *partial-discriminatory* applications of state intervention on the basis of their coercive capacity.

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59. Attas, "Fragmenting Property," 120 (see note 55 above).

60. Hayek, *The Constitution of Liberty*, 227 (see note 2 above).

We define *partial-discriminatory* applications of state intervention as those that identify individuals prior to the act of intervention (thereby allowing for the intervener to reward or punish individual persons) and include Hayek's planning commands.<sup>61</sup> Moreover, this type of intervention includes rules that formally conform to the generality principle of the rule of law—setting out abstract, predictable, and equal terms for behavior—but whose applicability can be discretionary, allowing for discrimination at the stage of enforcement. For instance, expropriation of property, the regulation of production, the seizure of existing profits or products, or any form of adjudication by an authority may be determined by fixed rules, but actual decisions may not be independent of arbitrary selection if the affected actors can still be identified ahead of time (*ex ante*). Because there is personal identification in these cases, partial-discriminatory application of state authority can be used for the purpose of coercion in the sense described above.

*Impersonal* applications of state intervention, on the other hand, are impartial in the sense that they do not enact discrimination on the individual level. These can include laws that are explicitly designed to favor a large group of beneficiaries (the unemployed or the retired) or an open group of beneficiaries (people suffering from a rare disease) even if they convey a privilege at the expense of others (whether unfairly or not in any given actor's judgment). A policy or a law is uniformly applied to a group when it is configured in a way that is still impartial *at the individual level*: its inclusion and exclusion criteria apply to everyone and its treatment of individuals is impersonal, in the sense that it does not entail *ex ante* identification of individual members either for inclusion or exclusion. Consider, for example, welfare distributions to groups, such as people with special educational needs, farmers, local constituents, or pensioners. Although such policies allow for the distribution of privileges to a group, these allocations are not partial-discriminatory in the sense described above, because the privileges are delivered automatically to all eligible members of the group regardless of personal identity. Even the particularized benefits, for example, that U.S. congressmen may win for their constituents in order to seek campaign support and re-election can count as impersonal if the group of beneficiaries is, in principle, open and not individually fixed.<sup>62</sup> Likewise, under a welfare state, transfer payments that offer services to latent beneficiary groups are not partial-discriminatory types of state intervention, since individuals are less likely to

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61. We introduce the term *partial-discriminatory* to distinguish it from discrimination that can be either personal or impersonal.

62. See David R. Mayhew, *Congress: The Electoral Connection*, 2nd ed. (New Haven, Conn.: Yale University Press, 2004), 114.

be identified prior to the act of intervention insofar as the rule precludes that they will be selected in a discriminatory way.

Impersonal applications can be a matter of either policy design or the method of implementation. Our conception of generality here concerns the rule's applicability: the capacity for each intervention to apply discretionary treatment upon the identification of the individual recipients can be more or less likely than general application. The risk from partial-discriminatory applications resonates with Hayek's definition of coercion as one's individual dependence on the approval of another person stemming from prior manipulation of one's alternatives.<sup>63</sup> It differs from the strictest "generality principle" conceived of by Buchanan and Congleton as the standard in which political actions must "apply to all persons independently of membership in a dominant coalition or effective interest group."<sup>64</sup> That would preclude any distribution to a group unless it is neutral in the sense that everyone has an equal chance of qualifying for it.

One can differentiate between the two types of government interventions on a case-by-case basis by examining actual implementations, and on a theoretical level, by examining the *capacity* that each policy type offers to a government for partial-discriminatory treatment, that is, the relative ease by which a government can apply a type of policy in the form of Hayekian commands targeting individuals and can do so in a way that does not necessarily violate any formal constitutional restrictions on government discretion. Given the rule-of-law limitations of contemporary liberal democracies, such as the United States, the type of policy agenda that is more likely to expose citizens to the kind of arbitrary power that Hayek warns against in *Constitution* and *Serfdom* is a policy agenda whose discretionary and ad hoc applications have already been practiced and accepted as compatible with existing rules and norms.

For example, interventions into the income dimension of property are usually not partial-discriminatory at the individual level. States can easily tax income by using non-discretionary and non-discriminatory rules, such as tax brackets and income levels. Higher taxes in a mixed economy mean only that a greater proportion of income is claimed from everyone who falls within predetermined categories of taxpayers. This reduces (but does not eliminate) the risk of discrimination at the stage of enforcement. At times, owners of capital can be treated partially if the general rules allow bureaucratic discretion at the stage of tax law enforcement. Similarly,

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63. Hayek, *The Constitution of Liberty*, 223 (see note 2 above).

64. James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (New York: Cambridge University Press, 1998), xi.



a welfare entitlement system in a democracy is less likely to permit selective enforcement and discrimination in terms of who is eligible for treatment under Medicare and Medicaid, or for participation in pension schemes based on retirement age and prior contributions.

Partial-discriminatory interventions rely on rules that allow for wide discretion in interventions in the use or management of others' property and activity in an ad hoc fashion, as well as on a wide scope for interpretation at the stage of enforcement. The property owners may still retain formal control and supervision over their property but can be subjected to ad hoc applications of state intervention at the enforcement stage and face active penalties should they fail to meet policy-related targets or quotas. In addition, they are more easily identified prior to the enactment of a rule imposing what is seemingly a general restriction. In these instances, individuals are more exposed to coercion by the arbitrary will of the political authority in the sense that the threat of intervention forces them to act according not to a preferred course of action but to a plan serving the ends of the political authority.<sup>65</sup>

Both the type and scale of these interventions define the nature of the institutional environment. On our account, economic structures characterized by the widespread application of partial-discriminatory interventions risk unleashing a path to political coercion because the institutional setting and the actual practices that take place within it allow for the identification and targeting of substantial numbers of individuals. The institutional threshold here is the link between the nature of intervention and the range of its application.<sup>66</sup> Coercion becomes systemic in an environment where exit is severely limited. This state of affairs describes the situation in which "the alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one."<sup>67</sup> Without room for exit, people find themselves subjected to the orders and the arbitrary will of the coercive political force.<sup>68</sup>

We transpose Hayek's conception of coercion into a political thesis: Political coercion is a state of affairs in which one's choice of political behavior depends on the approval of a political authority.<sup>69</sup> This state authority deprives the individual of a sphere of choice among alternatives bringing them to a situation in which they are compelled to choose what the political actor wants them to choose as the least costly

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65. See Hayek, *The Constitution of Liberty*, 71 (see note 2 above).

66. See Sanford Ikeda, "The Dynamics of Interventionism," in *Dynamics of Intervention*, ed. Kitgaard, 21–57, at 41 (see note 49 above).

67. Hayek, *The Constitution of Liberty*, 200 and 207 (see note 2 above).

68. *Ibid.*, 182–83.

69. *Ibid.*, 71.

option.<sup>70</sup> Due to the fear of arbitrary treatment and the threat of penalties assessed against that individual's economic and social activities, their social and political actions can be made to serve the desires of that political actor.

Finally, the conceptual distinction between the capacity for partial-discriminatory and impersonal applications of state intervention helps us clarify why contemporary mixed economies have high levels of income claims and significant regulatory power over sectors of the economy but retain a substantial degree of personal and political liberty; this is due to the limited presence of partial-discriminatory applications of state interventionism. The welfare and regulatory systems of advanced democracies mostly offer impersonal entitlements to distributions and enact generally applicable regulations. Institutional changes that expand the scope for partial-discriminatory applications of state intervention increase the risk for political coercion.

Policies vary in the ease with which they can be used in a partial discriminatory way at the phases of both enactment and implementation according to how easy it is to isolate who is affected by the policy. Observing policy implementation in the United States, Lowi distinguishes between policies that allow for the highest degree of "disintegration," which he calls distributive or individualized conflict and provision, and "redistributive" policies, which, in his classification, affect broad categories, such as the business class, the working class, or the "have-nots."<sup>71</sup> Regulatory policies—which comprise Lowi's intermediate category—invoke general rules, but their impact can be disaggregated at the sectoral level. As Lowi observes, protectionist tariff policies can exhibit the highest degree of disintegration on an individual basis and, as a result, they can be prone to patronage. Tariff policies favor the propagation of particular demands from special interests, but the structure of competition for favorable policies also includes ideological debates and discussions.<sup>72</sup> Tariff policy in the hands of different administrations in the United States after 1962 assumed the character of a regulatory policy, but questions on quotas and subsidies for specific commodities became part of distributive politics.<sup>73</sup> Lowi's observation of the changing nature of tariff policy suggests that this policy type has a high *capacity* for partial-discriminatory application depending on what use those in office decide to make of it and for what purpose.

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70. *Ibid.*, 199.

71. Theodore J. Lowi, "American Business, Public Policy, Case-Studies, and Political Theory," *World Politics* 16 (1964): 677–715, at 691.

72. *Ibid.*, 711.

73. *Ibid.*, 701–04.

The specific area of anti-dumping policies illustrates this capacity for discrimination in trade policy. Blonigen finds that the U.S. Department of Commerce has enjoyed a wide scope for discretion in this policy area, despite the availability of appeals courts and dispute settlement procedures available to investigated parties, and even in the presence of general principles such as those provided by the Uruguay Round Agreements and U.S. law.<sup>74</sup> Other scholars have criticized the substantive and procedural requirements for the calculation of margin of dumping<sup>75</sup> and export subsidization, and have identified a bias toward the identification of higher margins and higher import duties.<sup>76</sup> Hansen argues that this bias leads specific industries to seek protection when they think the U.S. International Trade Commission is likely to grant them protection.<sup>77</sup> Goldstein finds that the likelihood that an industry which has filed an application to the commission will be granted protection depends less on economic need and more on the ability to apply political pressure on decision makers.<sup>78</sup>

However, scholars have yet to link these applications of particularism and favoritism in trade policy to an agenda aiming at political coercion. Why political coercion in economic life did not become predominant in the United States can be explained by the structure of political power and interest-group competition in U.S. politics. Mashaw describes how the early republic used much administrative discretion for purposes of economic development and nation-building.<sup>79</sup> This involved tasks such as land distribution, currency management, and establishing trade and transport infrastructure, which stood in dissonance with the ideology of the time, which stressed limited national power and localism. Administrative structures were devised to address the demands for government throughout the Jeffersonian and Jacksonian periods; these consisted of a localized and fragmented system of administration subject to common law rules of accountability sanctioned by

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74. Bruce A. Blonigen, "Evolving Discretionary Practices of U.S. Antidumping Activity," *Canadian Journal of Economics* 39 (2006): 874–900, at 875–78.

75. The latter is defined as the alleged difference between the foreign market value of a good and its price in the U.S. market.

76. Richard Boltuck and Robert E. Litan, eds., *Down in the Dumps: Administration of the Unfair Trade Laws* (Washington, D.C.: Brookings Institution, 1991).

77. Wendy L. Hansen, "The International Trade Commission and the Politics of Protectionism," *American Political Science Review* 84 (1990): 21–46.

78. Judith Goldstein, "The Political Economy of Trade: Institutions of Protection," *American Political Science Review* 80 (1986): 161–84.

79. Jerry L. Mashaw, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law* (New Haven, Conn.: Yale University Press, 2012), 82.

courts. This was an evolving environment characterized by dispersed patterns of bargaining between state governments and different national agencies under the shadow of possible judicial remedies.

Hayek's warning about a central authority assuming widespread planning power over the whole of society does not apply to decentralized bargaining over specific administrative outcomes. Instead, early American state building evolved into what Dahl describes as a pluralist stage in U.S. politics. Dahl describes American interest group politics as consisting of fields for competition, mostly in local settings, in which each policy creates and invites a separate group of stakeholders: ". . . the vast apparatus that grew up to administer the affairs of the American welfare state is a decentralized bargaining bureaucracy."<sup>80</sup> McCormick adds that experimentation with bureaucratic planning in sectors such as transport and infrastructure was ultimately captured by rivalry among sectors and interest group competition.<sup>81</sup> The decentralized nature of competition for favorable policies across different economic sectors has given shape to the United States' arena of particularistic politics, which so far has avoided a single political force coming to hold sway over a wide range of economic sectors.

There is an important distinction between particularistic politics as a generalized practice in liberal democracies<sup>82</sup> and a widespread application of partial-discriminatory politics that takes the form of command-and-control management. Protectionist trade policy poses a heightened risk for partial-discriminatory treatment, but such risk may not materialize in the absence of a political agency willing to unleash the coercive capacity of the policy tools it has available and in the absence of political and ideological conditions enabling it to do so. Refining Dahl's analysis by pointing out that policy outcomes are not merely the result of group conflict, Lowi notes that "the relations among the interests and between them and government vary, and the nature of and conditions for this variation are what our political analyses should be concerned with."<sup>83</sup> In turn, Arnold makes the important observation that members of Congress have some degree of autonomy

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80. Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 145.

81. Richard L. McCormick, *The Party Period and Public Policy: American Politics from the Age of Jackson to the Progressive Era* (New York: Oxford University Press, 1986), 209–12.

82. John W. Kingdon, *Congressmen's Voting Decisions*, 3rd ed. (Ann Arbor: University of Michigan Press, 1989), 35–38; and Douglas L. Kriner and Andrew Reeves, "The Influence of Federal Spending on Presidential Elections," *American Political Science Review* 106 (2012): 348–66, at 350–51.

83. Lowi, "American Business," 709 (see note 71 above).

against powerful interest groups, and that they instrumentally exercise their autonomy when it is in their electoral interest to do so.<sup>84</sup>

The question, therefore, is which political force has the agenda and the ideology to support such a shift in power relations from particularistic politics towards partial-discriminatory politics. The ideology would need to be tailored to justify a command-and-control modality of policy making and implementation on a large scale. Not all political ideologies offer a justification that would allow a political force to change the character of economic policy and transform the economic structure into an overarching discriminatory regime.

### Hayek and the Radical Right

We come to our final question. Does the radical right pose such a threat to liberty? We are concerned with the degree to which its economic agenda can create an economic structure enabling command-and-control applications that resemble Hayek's central planning decisions.

The radical right refers to a range of political movements and parties characterized by a combination of populism, ethno-nationalism, and authoritarianism.<sup>85</sup> Populism describes a discourse or thin ideology that claims there is an inherently antagonistic relationship between "the people" and "the elites,"<sup>86</sup> with the latter attacked as corrupt and the former venerated as the legitimate source of political power.<sup>87</sup> Authoritarianism describes the preference of the radical right for security and strong authority, its attacks on political pluralism, and its reference to the will of the people as justifying political power with little regard to formal procedures and institutional checks.<sup>88</sup> Nationalism refers to the fundamental ideological position of radical right parties that the nation takes normative precedence over all other values: democracy, pluralism, an autonomous civil society, and personal and

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84. R. Douglas Arnold, *Logic of Congressional Action* (New Haven, Conn.: Yale University Press, 1992), 4.

85. Bart Bonikowski, "Ethno-Nationalist Populism and the Mobilization of Collective Resentment," *British Journal of Sociology* 68 (2017): S181–S213; and Cas Mudde, *Populist Radical Right Parties in Europe* (Cambridge, U.K.: Cambridge University Press, 2007).

86. Paris Aslanidis, "Is Populism an Ideology? A Refutation and a New Perspective," *Political Studies* 64 (April 2016): 88–104, at 96; and Cas Mudde, "The Populist Zeitgeist," *Governance and Opposition* 3 (2004): 542–63, at 545.

87. Hanspeter Kriesi and Takis S. Pappas, "Populism in Europe During Crisis: An Introduction," in *European Populism in the Shadow of the Great Recession*, ed. Kriesi and Pappas (Colchester, U.K.: ECPR Press, 2016), 1–19, at 4.

88. Juan J. Linz, *Totalitarian and Authoritarian Regimes* (Boulder, Colo.: Lynne Rienner Publishers, 2000), 255.

economic liberty. These values are subordinated to the definition of a national interest, which radical right parties claim they authentically represent. While specific radical right parties and movements have adopted diverse interpretations of what the “national interest” is, they concur on an ideology characterized by hostility to immigration and multiculturalism, populist opposition to what they see as “globalist” elites and global institutions, and a preference for assertive and charismatic leadership to transform the economic and political status quo by means of decisive commands.

The economic agenda of the radical right is an extension of political nationalism in the sphere of economic policy. While most radical right parties rhetorically acknowledge what can be broadly described as a neoliberal ethos—supporting fiscal stability, currency stability, and a reduction of government regulation—they put forward a prominent agenda for economic protectionism that justifies departures from neoliberal postulates regarding thinner and uniform regulations and generally lower spending.<sup>89</sup> These departures are justified as serving the national interest, which takes precedence over any other set of values and considerations, such as individual freedom, social justice, gender equality, class solidarity, or environmental protection, which may drive economic policy in other political parties. Rather than a principled stance on government intervention along the traditional left-right spectrum, the radical right’s economic agenda can be described as mixing nativist, populist, and authoritarian features.<sup>90</sup> It seemingly respects property and professes a commitment to economic liberty, but it subordinates economic policy to the ideal of national sovereignty.

An example of a radical right party is the Front National in France, which has an agenda critical of global capitalism and has proposed measures such as re-establishing import tariffs and other border controls, the re-nationalization of agricultural policy, taking control of tax policies from the European Union, and state control and responsibility for the prices of essential goods.<sup>91</sup> To justify a range of

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89. Alexandre Afonso, “Whose Interests Do Radical Right Parties Really Represent? The Migration Policy Agenda of the Swiss People’s Party between Nativism and Neoliberalism,” in *The Discourses and Politics of Migration in Europe*, ed. Umut Korkut et al. (New York: Palgrave Macmillan, 2013), 17–35, at 21; and Leonce Röth, Alexandre Afonso, and Dennis C. Spies, “The Impact of Populist Radical Right Parties on Socio-economic Policies,” *European Political Science Review* 10 (2018): 325–50.

90. Simon Otjes et al., “It’s Not Economic Interventionism, Stupid! Reassessing the Political Economy of Radical Right-Wing Populist Parties,” *Swiss Political Science Review* 24 (2018): 270–90, at 273.

91. Daniel Stockemer and Abdelkarim Amengay, “The Voters of the FN under Jean-Marie Le Pen and Marine Le Pen: Continuity or Change?,” *French Politics* 13 (2015): 370–90, at 376;

protectionist measures, this party has invoked the principle of “national preference” and has inextricably linked it with the notion of national sovereignty. Likewise, the Freedom Party in Austria has emphasized national control, particularly over the movement of labor, and a commitment to protect Austrian workers against immigrants. In Germany, the Alternative for Germany has adopted an agenda proposing re-establishing national control over the economy against supranational institutions.<sup>92</sup> In the United States, President Trump has emerged to lead a radical faction from inside the traditional right-wing Republican Party on a strident platform opposing immigration, global institutions, and current international trade arrangements, which he has portrayed as antagonistic to American economic interests.<sup>93</sup>

The key question is whether this type of agenda can unleash a wider wave of partial-discriminatory state interventions. Is economic nationalism likely to include the type of command-and-control economic policies that we fear as coercive? Economic nationalism can be applied through tariffs, import quotas, and immigration restrictions, all justified by appeals to the “national interest.” This approach to economic management allows authorities to treat property as an object of administration in a way similar to the directions of private activity that Hayek feared would take place in the pursuit of “social justice.”<sup>94</sup> It can take the form of discriminatory decisions and commands that have a capacity to coerce even though their authorization may come from generally worded rules. Protectionism can be effectuated by expedient decisions and flexible discretion in the selection of beneficiaries and the exclusion of others; hence it entails a strong potential for discrimination. The government will enjoy wide discretion in identifying the sectors of the economy or even particular companies that enjoy such a protection, such as national champions that need to be strengthened and weaker industries that need to be protected. The radical right potentially could exploit protectionism’s highest capacity for partial-discriminatory applications.

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and Gilles Ivaldi, “Towards the Median Economic Crisis Voter? The New Leftist Economic Agenda of the Front National in France,” *French Politics* 13 (2015): 346–69, at 358.

92. Kai Arzheimer, “The AfD: Finally a Successful Right-Wing Populist Eurosceptic Party for Germany?,” *West European Politics* 38 (2015): 535–56, at 545–46.

93. Matthew C. MacWilliams, “Who Decides When the Party Doesn’t? Authoritarian Voters and the Rise of Donald Trump,” *PS: Political Science & Politics* 49 (2016): 716–21, at 717; and Ronald Inglehart and Pippa Norris, “Trump and the Populist Authoritarian Parties: The Silent Revolution in Reverse,” *Perspectives on Politics* 15 (2017): 443–54, at 446.

94. Hayek, *Law, Legislation and Liberty*, 142 (see note 8 above); indeed, Hayek saw twentieth-century nationalisms as partly motivated by an underlying desire for social justice among their adherents, at 134 (see note 8 above).

The political rhetoric of the radical right and their political tactics suggest that this development is possible. The radical right has employed tactics of attacking opponents as unpatriotic and scapegoating them for any failures the nation has suffered. Its attitude suggests that the kind of economic nationalism and protectionism that it prefers would likely be arbitrary, ad hoc, and applied to manipulate economic and political behavior. This is perhaps most tragically demonstrated in the case of immigration restrictions and deportation practices. These may appear to coerce exclusively foreign residents, but ultimately they harm citizens who are unable to prove their status and citizens who choose to associate with foreign nationals.<sup>95</sup>

Evidence of the discretionary features of this agenda can be found in Trump's tactics of targeting some businesses while accommodating others in his personal circle of special interests.<sup>96</sup> In April 2017, Trump ordered a comprehensive review of steel imports with an eye to adopting protectionist measures, invoking "national security" as the criterion upon which he would base his judgment, on the basis of a rarely used law, Section 232 of the Trade Expansion Act of 1962.<sup>97</sup> Trump vowed to impose tariffs ranging from 15% to 35% to protect American jobs. This gave him leverage over sectors and specific firms, illustrated by his threat to impose a tariff on the Ford Motor Company in retaliation for outsourcing some factory jobs.<sup>98</sup> Likewise, Trump's deal with United Technologies regarding its Carrier Corporation brand, providing tax incentives in order to save approximately a thousand jobs in Indiana, could set a precedent that reshapes the relationship between government and business.<sup>99</sup> Trump has also criticized Apple Inc.'s policy on encryption and its reliance on China for its international production.<sup>100</sup>

In addition, in March 2018, Trump gathered steel and aluminum industry representatives to gauge their views and to show that his decisions would depend on

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95. Chandran Kukathas, "On David Miller on Immigration Control," *Critical Review of International Social and Political Philosophy* 20 (2017): 712–18, at 716.

96. Nicholas Fandos, "Corporations Open the Cash Spigot for Trump's Inauguration," *New York Times*, January 15, 2017, at <https://www.nytimes.com/2017/01/15/us/politics/trump-inauguration-donations-corporations.html>.

97. Mark Landler, "Trump Roars Again on Trade, Reviewing Steel and Chiding Canada," *New York Times*, April 20, 2017, at <https://www.nytimes.com/2017/04/20/business/trade-canada-trump-steel.html?ref=business&r=0>.

98. Kirsten Korosec, "Trump Targets Ford Ahead of Michigan Primary," *Fortune*, March 7, 2016, at <https://fortune.com/2016/03/07/trump-targets-ford-michigan-primary/>.

99. "Read Donald Trump's Remarks at Carrier Plant in Indiana," *Time*, December 1, 2016, at <https://time.com/4588349/donald-trump-carrier-jobs-speech/>.

100. Lindsey J. Smith, "Donald Trump on Apple Encryption Battle: 'Who Do They Think They Are?'," *Verge*, February 17, 2016, at <https://www.theverge.com/2016/2/17/11031910/donald-trump-apple-encryption-backdoor-statement>.



personal interactions.<sup>101</sup> Trump presents himself as a dealmaker-in-chief. His professed style of government is that of a business manager, which involves fixing things:

Congress . . . has been deadlocked for years and [is] virtually unable to deal with any of our most pressing domestic problems, or even the most basic ones, such as passing a budget. Think of it: a little thing like passing the budget. They don't even have a clue.<sup>102</sup>

Finally, I realized that America doesn't need more "all talk, no-action" politicians running things. It needs smart businesspeople who understand how to manage. We don't need more political rhetoric—we need more common sense. "If it ain't broke, don't fix it"—but if it is broke, let's stop talking about it and fix it. I know how to fix it.<sup>103</sup>

Trump presents his economic policy as flexible management in which the choice of the target for sanction or subsidy is driven by the pursuit of the national interest. In this light, it is plausible that the radical right can introduce an economic regime which, by virtue of its greater capacity for discretionary—and, therefore, discriminatory—application offers sufficient scope for coercive interventions in the sense that individual winners and losers can be identified *ex ante* and actors are given a choice between political loyalty rewarded with benefits, or retaliation in the form of economic penalties with the specific target already in mind.

Finally, the dynamics of such a discriminatory system exhibit similarities with the terms of the Hayekian analysis. For Hayek, the tendency for further expansion of government control over the economy simultaneously exacerbates distributional conflicts and leads to a fully planned economy. Unless societies opt for a return to competition, this will unleash a popular cry for a strongman to deliver more effective and comprehensive planning. Once an economic system of centralized command is established, it will easily degenerate into authoritarianism.<sup>104</sup> The path

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101. "Remarks by President Trump in Listening Session with Representatives from the Steel and Aluminum Industry," March 1, 2018, at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-representatives-steel-aluminum-industry/>.

102. Donald Trump, *Crippled America: How to Make America Great Again* (New York: Threshold Editions, 2015), xiii.

103. *Ibid.*, 4.

104. Hayek, *The Road to Serfdom*, 107 (see note 1 above).

to economic dictatorship would involve “further agreement that planning is necessary” and “stronger demands that the government or some single individual should be given powers to act on their own responsibility.”<sup>105</sup>

Competition for privilege under such a protectionist system makes it less likely that the level of discriminatory interventions will remain stable. Given the nature of economic protectionism as a structure for partial-discriminatory interventions, the allocation of privileges and sanctions is susceptible to clientelist exchange, namely “the proffering of material goods in return for electoral support, where the criterion of distribution that the patron uses is simply: did you (will you) support me?”<sup>106</sup> Ad hoc protectionist decisions favoring a specific industry or company create incentives for actors to engage in rent seeking and for the government to exercise further discretion.<sup>107</sup> Protectionist policies can culminate in trade disputes and trade wars, in which the results of retaliation further expand the government’s scope for discretion. Countervailing duties and measures during a trade war are also at the discretion of national governments. The operation of this system is likely to intensify distributional tensions, due to the inchoate aims it seeks to achieve, potentially leading to an economic system ridden with conflicts over the personalized allocation of government privilege.

For this reason, it is alarming to observe Trump attacking what he sees as “unfair trade practices” and risking the onset of trade wars that increase uncertainty about “worrisome” remedies and methods that can be at his disposal.<sup>108</sup> They can involve a wider use of ad hoc applications of protectionism, threatening to overturn long-standing rules in a way that broadens the scope of threats and generates calls for retaliation. All of this bestows on the president more power and opportunities for partial-discriminatory decisions. Handley and Limão point out that “re-opening any agreement would replace a system built on long term policy commitments with a regime where commitments change with the preferences of each newly elected government.”<sup>109</sup> This bolsters an agenda that asserts that a strong and centralized political authority should assume the responsibility of effectively managing this

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105. *Ibid.*, 108.

106. Susan Carol Stokes, “Political Clientelism,” in *Oxford Handbook of Comparative Politics*, ed. Carles Boix and Susan Carol Stokes (Oxford, U.K.: Oxford University Press, 2007), 604–05.

107. Gordon Tullock, *The Rent-Seeking Society* (Indianapolis, Ind.: Liberty Fund, 2005), 9–10.

108. Kyle Handley and Nuno Limão, “Trade under T.R.U.M.P. Policies,” in *Economics and Policy in the Age of Trump*, ed. Chad P. Bown (London: CEPR Press, 2017), 141–52, at 142–43.

109. *Ibid.*, 149.

system in a logic similar to that described in *Serfdom*.<sup>110</sup> Competition for government-granted protection is likely to expand the scope for favors and sanctions and reduce the space where economic actors can find refuge from partial-discriminatory interventions.

Such an economic agenda, by the nature of the type of applications it requires, is more likely to alter the economic structure to that of an “an attenuated property rights system”<sup>111</sup> and to forge a system that will sustain society’s dependence on political authority. In such circumstances, the same mechanisms that currently ensure that the bureaucracy is aligned with the elected government’s political goals will be used to impose partial-discriminatory treatment justified in the name of the national interest.<sup>112</sup> It is then possible to envisage a political authority positioned to identify winners, reward them in return for their loyalty, and threaten dissenters with exclusion and discrimination. This state of affairs can become so dominant that it eliminates exit for economic actors to spheres of economic activity relatively protected from partial-discriminatory interventions.

If partial-discriminatory allocations become typical, economic actors may find it impossible to operate outside the reach of the politicized economy and to avoid the exercise of coercion that it entails.<sup>113</sup> At that point, partial-discriminatory interventions generate not simply a state-controlled economy, but a politically controlled society where economic actors can be identified, targeted, rewarded, or discriminated against on political grounds. If the allocation of opportunities is systematically controlled by a single political force that determines how the government distributes resources,<sup>114</sup> social groups find themselves tied into a relationship of

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110. See also Mises, *Socialism: An Economic and Sociological Analysis* (see note 49 above).

111. Boettke, “On Reading Hayek,” 1048 (see note 19 above).

112. Mathew McCubbins, Roger G. Noll, and Barry R. Weingast, “Administrative Procedures as Instruments of Political Control,” *Journal of Law, Economics, and Organization* 3 (1987): 243–77; B. Dan Wood and Richard W. Waterman, “The Dynamics of Political Control of the Bureaucracy,” *American Political Science Review* 85 (1991): 801–28; Terry M. Moe, “Control and Feedback in Economic Regulation: The Case of the NLRB,” *American Political Science Review* 79 (1985): 1094–1116; and Richard P. Nathan, *The Administrative Presidency* (New York: MacMillan, 1983), 81.

113. Aris Trantidis, “Clientelism and the Classification of Dominant Party Systems,” *Democratization* 22 (2015): 113–33, at 126.

114. Kenneth F. Greene, “A Resource-Theory of Single-Party Dominance: The PRI in Mexico,” in *Dominant Political Parties and Democracy: Concepts, Measures, Cases, and Comparisons*, ed. Matthijs Bogaards and Françoise Boucek (New York: Routledge, 2010), 155–74; Steven Levitsky and Lucan Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York: Cambridge University Press, 2010), 10; Beatriz Magaloni, *Voting for Autocracy: Hegemonic Party Survival and Its Demise in Mexico* (New York: Cambridge University Press, 2008), 9; Luis Fernando Medina and Susan Carol Stokes, “Monopoly and Monitoring: An Approach to Political

dependency which, instead of violence, uses partial-discriminatory allocations as socioeconomic sanctions that force citizens to show political loyalty and to abstain from strong demonstrations of dissent.<sup>115</sup>

## Conclusion

Drawing from Hayek's notion of coercion, we have offered an extension of Hayek's argument about the relationship between economic structure and political liberty. Hayek does not make a gloomy prediction about the democratic prospects of mixed economies, nor does he solely warn about socialist planning. Instead, his account of coercion in *Constitution* offers the basis for a refined argument about which institutional settings pose a potential threat to liberty. Our institutional argument is based on the combined effect of economic commands as incursions into the sphere of personal freedoms (private property and economic freedom), the presence of an authority that applies discretionary economic power (an economic dictator), and the consequences of that system for personal and political liberty.

We then examined the radical right's agenda in order to answer the question of whether its policy agenda is likely to expose citizens to the kind of arbitrary power that Hayek warns us against in *Constitution* and *Serfdom*. Is the radical right's preference for economic nationalism and protectionism a threat in light of Hayek's writings?

Our analysis in the section on "Impersonal and Partial-Discriminatory Intervention" develops Hayek's notions of coercion and personal liberty in *Constitution*. Partial-discriminatory interventions allow for *ex ante* identification of individuals and *ad hoc* discrimination that can become politically coercive even if the rule underpinning it appears to be general. On that basis, we extend Hayek's political thought. First, we emphasize the capacity for the actual application of rules and policies in a coercive manner, and less so the typical form of the rule itself. Although form and applicability are interrelated, general rules of conduct can become coercive at the stage of implementation and enforcement. Second, we argue that the mere appeal to social justice will not necessarily lead to coercive applications of state power, despite the conflicts that various policies invoking social justice

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Clientelism," in *Patrons, Clients, and Policies: Patterns of Democratic Accountability and Political Competition*, ed. Herbert Kitschelt and Steven Wilkinson (New York: Cambridge University Press, 2007), 68–83, at 69; and Aris Trantidis, "Reforms and Collective Action in a Clientelist System: Greece during the Mitsotakis Administration (1990–93)," *South European Society and Politics* 19 (2014): 215–34, at 216.

115. See Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven, Conn.: Yale University Press, 1971), 49.

may generate. Ideologies invoking the concept of social justice have driven the development of welfare systems, but these systems have largely implemented impersonal entitlements that do not readily facilitate personal and discretionary allocations.

By contrast, the radical right's combined political and economic agenda generates an increased risk of coercion as understood by Hayek. The Radical Right brings an ideology that encourages discretionary policies on a large scale under a system of protections and subsidies controlled by a single agency (in the U.S. case, the presidency). This threatens to expose economic actors to the coercive power that Hayek condemns in *Constitution* and to transform society into a rent-seeking economy prone to authoritarian manipulation, as he describes in *Serfdom*.

The radical right's nationalist agenda and political strategy can unlock a large scope for partial-discriminatory treatment. It claims to represent a nation against corrupt elites, and it reveres authority in a way that justifies a disregard for procedural checks and permits partial-discriminatory applications of state power. The radical right's economic principle of the putative national interest is a specific, exclusionary configuration of "social justice," as Hayek would understand it, that elicits policies that increase the scope for government command of private activity. Economic protectionism in the service of the "national interest" is governed by rules that allow for a wider range of discretionary decisions justified by expediency. Protectionism is ripe for discrimination with tariff policies, national subsidies, government contracts, and other financial instruments enough to cover most sections of economic activity.

Partial-discriminatory policies could emerge from any branch of government, depending on the institutions of each country. In the U.S. case, the executive can exercise discretion through its control over bureaucratic departments. There are reasons to be optimistic about the stability of democracy in the United States. It has a large private sector and civil society, boisterous news media, and an independent judiciary that frequently countermands executive commands. However, there are reasons to be alarmed. Part of the radical right's agenda is to control the Republican Party and build a network across formal institutional veto points, such as Congress and the Supreme Court. It aims at control over the administration and the removal of processes and norms that impede policies that they present to be in the national interest.

The argument we put forward here is not mainly about a particular government in which the radical right has gained power, but also about the institutional infrastructure that the radical right can introduce into the economic system, possibly in subsequent rounds over time, which would enable those in power to

increase their capacity for infringements on personal and political freedom. The radical right's ideology offers a nationalist line of defense for the establishment of a far-reaching partial-discriminatory economic regime starting with government-firm or government-industry agreements, the treatment of business in relation to production, policies on imports and exports, and the treatment of immigrants and their families. On the aggregate level, such an economic regime carries a higher risk for increased levels of political coercion through practices that help the government to reward loyalists and punish dissenters. Democracies can survive distributional conflicts, withstand recurrent policy failure, and even endure the rise and fall of individual demagogues, but they can hardly survive a structure allowing large-scale coercion.

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