

# **What Economic Freedom Indexes Leave Out**

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In a syndicated column last October, television journalist John Stossel lamented the downgrading from sixth to eighth place—“behind Canada!”—of the United States on the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom. The Index is based on several metrics, including freedom of movement of capital, the degree of business regulation, and levels of taxes and spending. Apparently increased government spending, coupled with the bailouts and/or purchases of banks and auto companies, was the primary cause of the U.S. decline.

For the first time in 16 years the U.S. economy was reclassified from “totally free” to “mostly free.” But wait: The United States was *totally free* economically until 2010? That’s enough to suggest that the Index focuses on quite a narrow range of “economic freedom” criteria, rather than looking critically at the forms of State intervention most structurally important to the survival of big business and corporate power.

For example, by any valid measure of economic freedom, the passage of the WIPO Copyright Treaty, the Uruguay Round TRIPS (Trade-Related Aspects of Intellectual Property Rights) Accord, and the Digital Millennium Copyright Act would have been considered an upward surge in statism and protectionism unequaled since (at least) the Smoot-Hawley Tariff. “Intellectual property” is every bit as much a form of protectionism as are tariffs. Patents and copyrights serve exactly the same protectionist function for transnational corporations that tariffs did for the old national industrial corporations; in both cases they restrict who is permitted to compete in offering a given good to a given population.

But among the inside-the-Beltway “free market community,” Heritage is one of the staunchest advocates of global “intellectual property” enforcement expansion. Indeed, two lines out of six in its summary concerning its metric for “Property Rights” in the United States are taken up by this: “A well-developed licensing system protects patents, trademarks, and copyrights, and laws protecting intellectual property rights are strictly enforced.”

## One-Sided Index

There are other suggestions of the one-sided nature of the Index, as well. For example, under “Labor Freedom” it simply states that “dismissing an employee is not burdensome.” Never mind for the moment that, from the standpoint of an employee, a bit of contractual security might be a good thing. (I doubt if the people at Heritage would generalize this disdain for contracts to all their other commercial dealings.) What’s important is what the article *doesn’t* say: “Quitting without notice is not burdensome.” In fact it is not burdensome; workers in most states are at-will employees unless a union contract specifies otherwise. But Heritage doesn’t consider the contractual burden on the worker or lack thereof a sufficiently important issue even to bear commenting on—and this in a section titled, mind you, *Labor Freedom*, not *Employer Freedom*.

The problem is that an index, ostensibly put forward as a general survey of economic freedom as such, is really a survey of economic freedom primarily as it affects the minority of the population that owns considerable amounts of capital and employs others. The idea that being employed is an economic activity, and that those who are employed have economic interests as much as those who do the employing, doesn’t even appear on the radar.

Yet another example of the Index’s bias is its “concerns” regarding bailouts of automakers over “expropriation and violation of the contractual rights of shareholders and bondholders.” Bill Beach, director of the Heritage Foundation’s Center for Data Analysis, laments that “the rule of

law declined when the Obama administration declared some contracts to be null and void. For example, bondholders in the auto industry were forced to the back of the creditor line during bankruptcy.”

But note the glaring lack of concern for contractual rights guaranteed under GM’s contracts with the UAW. This one-sided concern with impairment of the obligation of contracts is fairly widespread on the “free market” right. The same people who protested the loudest about bailout “blackmail” in interfering with CEO salaries and benefits, oddly enough, were by and large also the source of the most strenuous calls for using Washington bailout money as a hammer to “impose discipline” on auto workers. So apparently, for a certain breed of “free market” advocate, the differential between a GM and Toyota assembly line worker is problematic—but the differential between a GM and Toyota CEO isn’t. What’s that thing I was saying before? Contractual security is a good thing—for everybody but workers.

This shortcoming is compounded by Heritage’s endorsement of Bush Treasury Secretary Henry Paulson’s original TARP program. Stuart Butler and Edwin Meese, in a 2008 article titled “The Bailout Package: Vital and Acceptable,” did express concerns lest the bailout take the form of a blank check—to the government, that is.

So they favored TARP, as such—a Hamiltonian program of using taxpayer money to prop up the bubble-inflated value of financial assets and preventing them from being marked down to market value. They just objected to any conditions on how the free money could be spent once the banksters got hold of it. I wonder how they feel about workfare. I understand that it was probably different people composing the different passages in question, but still it would be nice if the right hand knew what the further-right hand was doing.

## **Ignoring Primary Interventions**

The Index fails to distinguish between the primary, structural forms of government intervention that prop up corporate power and the secondary, ameliorative forms of intervention that attempt to moderate its side effects. The State enforces a whole host of artificial property rights and artificial scarcities that serve as sources of economic rent to privileged firms, and maintains all sorts of regulatory cartels. The cumulative effect of these privileges, artificial scarcities, and cartels is to sustain corporate power on a global scale and create vast disparities in wealth.

These forms of intervention, these primary grants of privilege, don’t show up very prominently on the Index of Economic Freedom. What *does* show up is mainly the kinds of fiscal and welfare-state interventions that serve to *limit* the exercise of State-granted privileges and make corporate power less galling to average people. Is it only “statism” when it benefits someone besides the rich?

In fairness, while Heritage supports many of the legal privileges that serve as entry barriers at the national level, the Index does at least acknowledge barriers to small business formation at the state and local levels, comparing them favorably to other places: “The overall freedom to start, operate, and close a business, regulated primarily at the state level, is still strongly protected [in the United States]. Starting a business takes six days, compared to the world average of 35 days. Obtaining a business license takes less than the world average of 218 days. . . .”

The same critique applies to other indices of “economic freedom,” as well. For example, like Heritage, the Economic Freedom of the World Index (Fraser and Cato institutes) treats voting for

anything called a “free trade agreement” as a proxy for supporting free trade. [Editor’s note: See comments for correction.] Economist Dean Baker ridicules mainstream journalists for taking the “free trade” label at face value when the primary purpose of such agreements is to boost “intellectual property” protectionism rather than to reduce tariff protectionism. In the introduction to *The Conservative Nanny State*, Baker writes:

[N]ews reports routinely refer to bilateral trade agreements, such as NAFTA or CAFTA, as “free trade” agreements. This is in spite of the fact that one of the main purposes of these agreements is to increase patent protection in developing countries, effectively increasing the length and force of government-imposed monopolies. Whether or not increasing patent protection is desirable policy, it clearly is not “free trade.”

It is clever policy for proponents of these agreements to label them as “free trade” agreements (everyone likes freedom), but that is not an excuse for neutral commentators to accept this definition.

Nicholas Hildyard had a pretty good handle on what’s actually entailed in the neoliberal “free market” agenda promoted by these indices. The effect of the agenda “has not, in most cases, been to diminish either the state’s institutional power or its spending. Instead, it has redirected them elsewhere. It has also strengthened the power of many Northern nations to intervene in the economic affairs of other countries. . . .”

Of the kind of “privatization” that prevailed, for example, under Chile’s Pinochet and has since been promoted by assorted “structural adjustment” programs, Hildyard wrote:

While the privatisation of state industries and assets has certainly cut down the direct involvement of the state in the production and distribution of many goods and services, the process has been accompanied by new state regulations, subsidies and institutions aimed at introducing and entrenching a “favourable environment” for the newly-privatised industries. [“The Myth of the Minimalist State,” *The Corner House*, March 1998]

In practice, such “privatization” involves, first of all, spending taxpayer money on upgrades of State property to entice corporate buyers to take it off their hands—with the new outlays to make the property salable frequently exceeding the purchase price. The bidding process itself for State-owned industries and utilities has usually been governed by what Joseph Stromberg calls “funny auctions, that amounted to new expropriations by domestic and foreign investors” (“Experimental Economics, Indeed,” Mises.org, Jan. 7, 2004). The first order of business, subsequently, is massive asset stripping by the new corporate owners. And as Hildyard suggested, the newly “privatized” functions are carried out within a web of special regulations and protections to make sure the “private” firms are insulated from anything resembling genuine market competition.

A genuinely libertarian privatization policy, as recommended by Murray Rothbard in “Confiscation and the Homestead Principle” (*Libertarian Forum*, June 15, 1969), would treat State-owned utilities as the homesteads of those working them.

The same is true of so-called “deregulation,” which (as Hildyard pointed out) can more accurately be called reregulation. The nature of most so-called utility deregulation can be illustrated

by the mid-1990s electrical “deregulation” in Texas, home of “free market” champions like Dick Arme and Tom DeLay. Writing at Mises.org, Tim Swanson stated:

[I]n the mid-90s, regulators, consumers and energy producers began to rearrange the market for “deregulation” in Texas. Incumbent providers such as TXU and Reliant were restructured in the name of free markets, but when the dust cleared, the only winners were members of the political class and corporations that had been State-sanctioned monopolies prior to the “deregulation.”

TXU was separated into two companies, Oncor and TXU Energy. Oncor was given the monopoly on all services including meter reading, energy delivery, etc. Additionally they own all of the poles and wires and are protected by law from competition. TXU Energy became a billing company (and owner of power plants), merely forwarding all of the customer service questions and problems to Oncor, and therefore providing no services themselves.

This is akin to the following: splitting AT&T into two separate companies, one (Nexis) that owns all of the cables, wires, PBXs, switching stations, call centers, etc. and provides all of the services, repairs, installations, etc., and the other company (Willy) whom [sic] simply sends you a bill at the end of the month, providing no value-added service.

Not only is it not deregulation (the same players exist with State protection) but more overhead is created through the creation of another billing company. [“Texas Sized Tomfoolery,” Sept. 9, 2003]

When the mainstream press and mainstream politics identify the narrow analysis associated with the indices as “economic freedom,” it’s no wonder that most people are wary of “free markets.” If I didn’t know better—if I didn’t know that real free markets were like kryptonite to corporate power—I’d hate them myself.

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