

Charting the Right Path Between the Government and the Market: Comment on Owen Fiss’s “The Education of George Priest”

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This essay examines the critical challenge of balancing government intervention and market freedom, drawing insights from the intellectual collaboration and contestation between Owen Fiss and George Priest. Comparing the United States and Europe, the analysis reveals that while America achieves superior economic performance through market-oriented policies, Europe demonstrates better health outcomes, lower inequality, and more effective climate policies. Argentina's century-long decline illustrates the catastrophic consequences of poor institutional choices. The paper argues that America's emphasis on wealth creation over distribution has generated GDP growth and greater innovation substantially outpacing Europe while contributing to rising inequality and democratic instability. Finding the optimal balance between government and market mechanisms will require a clear assessment of costs and benefits that often eludes those on the ideological extremes.

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Introduction

Owen Fiss begins his interesting and insightful essay in the fall of 1969, when he was teaching Property to the new law student George Priest at the University of Chicago. Despite Owen's best efforts, George was captivated by the emerging law and economics movement, and the essay documents how former Professor and Student reconnected at Yale and developed a wonderful intellectual and personal collaboration that delighted, entertained, and enriched students and participants in their various seminars and roadshows across many decades and around the world. Owen and George provided a model of polite and respectful—while intellectually challenging and forceful—dialogue among competing viewpoints. Their topic is among the most important to the advancement of human societies: what is the most socially beneficial combination of the size and structure of the domains of the government and the market.

I. Argentina as an Example of the Dangers of Not Finding the Right Balance of Policies

The stakes for a society in making these judgments have always been apparent to me from the personal story of my mother's grandfather and his four brothers in the Basilicata region of Southern Italy. At the beginning of the twentieth century, these five young men were embroiled in a debate that gripped many in their community who decided they needed to leave Italy to pursue a higher standard of living: should they emigrate to the United States or to Argentina?

At the time, both countries were quite prosperous by world standards, and in the ten years following 1900, Argentina had both “the highest immigration to population ratio in the world—an unequivocal sign of high hopes”—and the world's highest per capita growth rate.¹ These two countries attracted millions of Italians, as the controversy raged over which would provide the best future for those leaving Italy. Two of the brothers—including my great-grandfather—thought the best prospects would come by heading to New York City and the other three were convinced Buenos Aires would be the better destination. This divergence meant the two sets of brothers never saw each other again, but of course history has provided a clear answer of who was right.

As much as I would like to think my then-youthful great-grandfather was unusually perceptive in choosing the United States, there was obviously a big element of luck involved. Indeed, even forty years later, the great Paul Samuelson—during his fifth year as an MIT economics

1. Edward L. Glaeser, Rafael Di Tella & Lucas Llach, *Introduction to Argentine Exceptionalism*, 27 *LATIN AM. ECON. REV.* 1, 4 (2018).

professor, at age thirty—thought Argentina would be a good bet, as he later described:

In 1945 I was a young talented economist. I was at the height of my abilities. If someone had asked me what part of the earth would develop the fastest in the next 39 years, I would have said: Latin America—Argentina or Chile. There is a moderate climate there and a population with European roots . . . I was completely off the mark.²

Instead of prospering like the United States and other rich countries, Argentina's unfortunate century combining bad institutions with bad policies kept it relatively poor. Indeed, "no other country of major economic significance took so long to double its per capita GDP," meanwhile the United States more than quadrupled its per capita GDP.³ Rampant inflation, debt defaults, and political instability have plagued Argentina over the last century. Military coups occurred in 1930, 1943, 1955, 1962, 1966, and 1976. In fact, 1989 was the first time in more than 60 years that a civilian president was succeeded by an elected replacement.⁴

To give a sense of the relative economic instability even in recent years, one need only consider that Argentina's customary level of inflation has dwarfed the levels recently observed—and widely decried—in the United States. After holding steady at roughly 50% for several years, the rate of inflation in Argentina began to climb in early 2022, reaching 115% in mid-2023 before skyrocketing to nearly 300% over the next 12 months.⁵ This level of economic disfunction has ushered in the radical libertarian President Javier Milei, who has proclaimed that his "contempt for the state is infinite."⁶ The one incontrovertible conclusion is that institutions, policies, and the rule of law play a powerful role in the well-being of a society and its citizens—as Owen and George well understood.

2. *Id.* at 6 n.8. When Samuelson was making his prediction in 1945, no country in the world without European roots had a high GDP per capita. This picture has changed over the last eighty years with the economic rise of the Gulf states, Israel, and the Asian tigers. ERIC JONES, *THE EUROPEAN MIRACLE* (Cambridge Univ. Press, 3d Edition, 2003).

3. Glaeser, Di Tella & Llach, *supra* note 1 at 4.

4. *A Century of Decline*, *ECONOMIST* (Feb. 17, 2014), <https://www.economist.com/briefing/2014/02/17/a-century-of-decline> [<https://perma.cc/F676-MQP7>].

5. Instituto Nacional de Estadística y Censos (Argentina), *Inflation Rate in Argentina from January 2018 to December 2024*, *STATISTA* (2025), <https://www.statista.com/statistics/1320016/monthly-inflation-rate-argentina/> [<https://perma.cc/QV8U-53Y4>].

6. *Javier Milei: My contempt for the state is infinite*, *ECONOMIST* (Nov. 28, 2024), <https://www.economist.com/leaders/2024/11/28/javier-milei-my-contempt-for-the-state-is-infinite> [<https://perma.cc/L27G-N2SZ>].

Figure 1. The inflation rate in Argentina, 2018-2024⁷

Owen and George took their traveling roadshow to troubled spots at troubled times across the globe: Argentina after the junta, Peru in the wake of Fujimori's defeat of the Shining Path, the Soviet Union amid the collapse of the Berlin Wall, and more recently the Middle East, always confronting an array of wrenching problems. On location, this dueling duo debated some of the most important questions with brave and brilliant local academics, judges, lawyers, and politicians. Because the stakes were so high and so evident to the local participants, these events carried an intensity that often could not be matched in debates with the relatively comfortable students in the United States.

II. Comparing the United States and Europe

Today, the sense of peril that accompanied the Fiss-Priest conversations abroad has seeped into the domestic sphere. Although the United States has had contentious political debates over the half-century since Fiss came to Yale in 1976, political debates in the United States now have much of the same air of seriousness and apprehension that characterized the Fiss-Priest exchanges in more troubled lands. One might characterize the differences of our two protagonists as boiling down to the longstanding question of law and politics: should we shift left toward more government control or right toward more market freedom? Speaking in very broad terms,

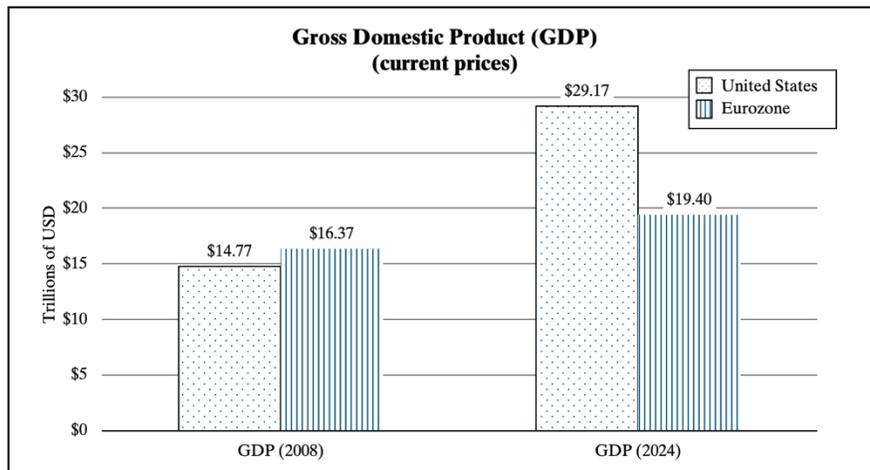
7. Instituto Nacional de Estadística y Censos (Argentina), *Inflation Rate in Argentina from January 2018 to December 2024*, STATISTA (2025), <https://www.statista.com/statistics/1320016/monthly-inflation-rate-argentina/> [<https://perma.cc/QV8U-53Y4>].

one might think of western Europe as having been more influenced by Fiss’s concerns, while the United States has been more focused on the market-oriented policies that Priest has supported.

A. Economic Measures

On one dimension, the Priest approach seems to have paid very big dividends: economic growth has been substantially greater in the United States than in western Europe. Fareed Zakaria has recently argued that the United States has left Europe behind economically: whereas the United States and Europe had about the same GDP of somewhat over \$14 trillion in 2008, today, U.S. GDP has doubled to \$28.8 trillion while Europe is only at \$16.1 trillion.⁸

Figure 2: GDP in United States and the Eurozone from 2008 to 2024⁹



But these figures need to be qualified, since these dollar-based comparisons are unduly beneficial to the United States, highlighting the difficulty of international economic comparisons. A better metric would adjust the GDP figures in a way that reflects the substantial differences in the price of housing and non-tradeable goods and services, using purchasing-power parity (PPP).¹⁰ This adjustment for differences in affordability

8. CNN, *Fareed’s Take: Europe is Unable to Keep Pace with America* (Jun. 16, 2024), <https://www.cnn.com/videos/world/2024/06/16/fareeds-take-europe-america-pace-gps-digvid.cnn> [https://perma.cc/3M39-SK89].

9. *World Economic Outlook Database*, INT’L MONETARY FUND, <https://www.imf.org/en/Publications/WEO/weo-database/2024/October> (last visited Sept. 11, 2025) (using the 2008 and 2024 GDP in current prices for the E.U. and U.S.).

10. For example, in 2023, the United States had a GDP per capita of roughly \$80,000. For France, that corresponding number was \$47,000 based on market exchange rates, but almost \$56,000 adjusting for PPP.

substantially closes the eighty percent GDP gap between the United States and Europe observed in Figure 2 above.

In addition, the U.S. population has grown faster than that of Europe, so per capita GDP is preferable to overall GDP. Using PPP comparisons, the *Economist* indicated that the GDP per capita in the United States in 2022 was only 32 percent higher than in Europe.¹¹ Indeed, if one compared per capita GDP with controls for hours worked, the gap would further shrink because not only did the United States have greater population growth than Europe, but Americans also worked longer hours than Europeans.¹² So, the United States is clearly more prosperous than Europe, but looking only at overall GDP tends to exaggerate the size of the gap.

Returning to the choice my great-grandfather confronted in roughly 1913, one can see from Table 1 that Italy was substantially poorer than Argentina and the United States at that point, so it made sense for poor Italians to look to those countries for a better life. But the misguided policies of Argentina over the next century badly damaged the prospects of the descendants of the three brothers of my great-grandfather who made the bet that their arrival in Buenos Aires would launch a prosperous future. By 2024, Argentina was far poorer than Italy—although again we see that looking at nominal GDP per capita (column 2) as opposed to PPP-adjusted figures (column 3) somewhat exaggerates the weakness of Argentina’s position in 2024. Italy’s nominal GDP per capita in 2024 was more than three times that of Argentina, but with the PPP adjustment, Italy had only twice the per capita GDP.

Table 1. Per-Capita GDP in 1913 and 2024¹³

Country/ Region	Per Capita GDP PPP (1913)	Per Capita GDP (2024)	Per Capita GDP PPP (2024)
Argentina	\$6,052	\$12,667	\$30,176
European Union	\$3,457	\$43,145	\$62,434
United States	\$5,301	\$85,810	\$85,810
Italy	\$2,564	\$40,226	\$60,847

All values estimated and reported in 2024 dollars.

11. *America’s Economic Outperformance Is a Marvel to Behold*, *ECONOMIST* (Apr. 13, 2023), <https://www.economist.com/briefing/2023/04/13/from-strength-to-strength> [https://perma.cc/VV8E-MLE8].

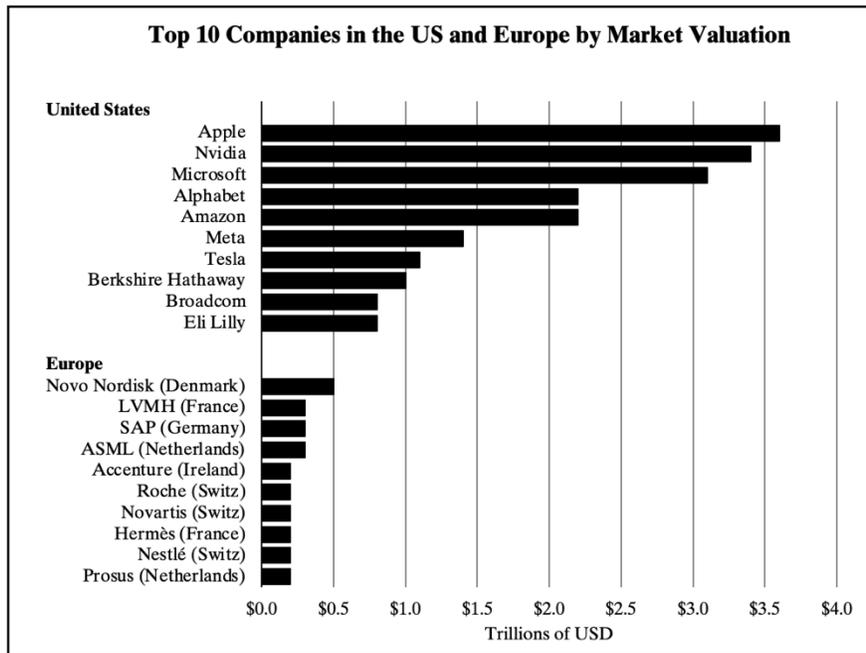
12. *Productivity Has Grown Faster in Western Europe than in America*, *ECONOMIST* (Oct. 4, 2024), <https://www.economist.com/graphic-detail/2023/10/04/productivity-has-grown-faster-in-western-europe-than-in-america> [https://perma.cc/UKC4-NXEQ].

13. The 1913 GDP data comes from the 2023 Maddison Project Database. Jutta Bolt & Jan Luiten van Zanden, *Maddison Style Estimates of the Evolution of the World Economy: A New 2023 Update*, 39 *J. ECON. SURVEYS* 631 (2023). The 2024 data comes from the World Bank. Data-bank, World Development Indicators (WDI), available at <https://databank.worldbank.org/indicator/NY.GDP.PCAP.CD/1ff4a498/Popular-Indicators> (last visited Nov. 2, 2025) (using indicator NY.GDP.PCAP.CD for column 2 and indicator NY.GDP.PCAP.PP.CD for column 3).

Of course, an understanding of the complexity of the world teaches us to be cautious in concluding that statistical measures of the economy are accurate and sophisticated enough to provide unassailable answers, given the many choices that must be made in their creation.

But Martin Wolf makes a compelling case in the *Financial Times* that “the US economy . . . remains far more innovative than other large high-income economies. Just look at its leading companies. These are not only far more valuable than those in Europe, but far more concentrated in the digital economy.”¹⁴ As Figure 3 reveals, one more measure of the dynamism of the U.S. economy compared to Europe is the nature of its industry: the ten largest companies in the United States dwarf the ten largest in Europe, with Apple alone having a higher market cap than the top ten companies from Europe combined.¹⁵

Figure 3: Market Valuation of Largest US and European Companies¹⁶



Since both adjusted GDP figures and valuation of our companies offer a similar picture, it seems fair to conclude that the United States outperforms Europe in terms of wealth creation—with some of that advantage generated by our longer working hours and growing population. Indeed,

14. Martin Wolf, *What Makes the US Truly Exceptional?*, FIN. TIMES (Dec. 3, 2024), <https://on.ft.com/4aVn2Rz> [<https://perma.cc/33CV-QQDM>].

15. *Id.*

16. *Id.*

this is the conclusion of the September 2024 report by former Italian prime minister Mario Draghi, which stated:

Across different metrics, a wide gap in GDP has opened up between the EU and the US, driven mainly by a more pronounced slowdown in productivity growth in Europe. Europe's households have paid the price in foregone living standards. On a per capita basis, real disposable income has grown almost twice as much in the US as in the EU since 2000.¹⁷

But this raises the question of why there is such a high level of apprehension about the economy in the current U.S. environment, leading two-thirds of Americans to believe the country is on the wrong track.¹⁸ By some aggregate fiscal measures, we are doing well: unemployment is relatively low, inflation is now under control, and the stock market is at an all-time high. Yet, as traced by a recent riveting and painful *Frontline* documentary,¹⁹ the thirty-year decline in manufacturing jobs has killed the American dream for many low-skilled workers, jeopardized the stability of working families, and exacerbated wealth inequality.

B. Inequality of Wealth and Income

The loss of millions of manufacturing jobs contributed to a problematic feature of the U.S. economy: increasing inequality. From the 1960s through 1980, the Gini index—a standard measure of inequality—indicated that income distribution in the United States was becoming more equal. After 1980, however, there was a sharp reversal in trend with the Gini coefficient rising from about 35 in 1980 to 40, where it has remained since the mid-90s (albeit with somewhat of a drop during the COVID-19 pandemic).²⁰

One's first thought might be that changing technology and globalization were the forces driving this trend. But that view is challenged by the fact that in the E.U. and the Eurozone alike, the Gini coefficient has been substantially lower than in the United States—ranging around 30—with a

17. Mario Draghi, *The Future of European Competitiveness*, EUROPEAN COMMISSION 5 (2024), https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en; see also Fredrik Erixon, Oscar Guinea & Oscar du Roy, *If the EU was a State in the United States: Comparing Economic Growth Between EU and US States*, EUR. CTR. FOR INT'L ECON. (July 2023), <https://ecipe.org/publications/comparing-economic-growth-between-eu-and-us-states/> [<https://perma.cc/YD3L-NR78>].

18. Bridget Bowman, *Two-thirds of Voters Say the Country is on the Wrong Track Ahead of the 2024 Election*, NBC NEWS (Sept. 26, 2024, 1:45 PM), <https://www.nbcnews.com/politics/2024-election/two-thirds-voters-say-country-wrong-track-ahead-2024-election-rcna172873> [<https://perma.cc/2XAQ-5X7W>].

19. Frontline PBS, *Two American Families: 1991-2024*, YOUTUBE (July 23, 2024), https://www.youtube.com/watch?v=VCIQ_TIXT2U [<https://perma.cc/J7SS-FX2U>].

20. Federal Reserve Bank of St. Louis, *GINI Index for the United States*, FRED (Aug. 16, 2024), <https://fred.stlouisfed.org/series/SIPOVGINIUSA> [<https://perma.cc/8QHR-H3BW>].

slight downward trend over the last decade.²¹ This evidence at least raises the question whether the pro-market rightward shift in the country during the Reagan years, the lowering of the tax rates on high-income earners, and the greater hostility to unions—in other words, more U.S.-specific events—better explain this measured increase in inequality.

UBS's Global Wealth Report for 2025 found that the mean wealth per adult in the United States was *higher* than that of any European country except Switzerland.²² But the extent of inequality was underscored by the fact that median wealth per adult in the United States was behind ten European countries (in addition to Australia, Hong Kong, New Zealand, and Canada) including, in order of median wealth, the United Kingdom, France, Spain, and Italy.²³ These disparities in wealth and income between the United States and Europe are not surprising. Europeans are broadly given the right to free or highly subsidized healthcare and education through college and also have stronger labor unions and greater worker protection through their more heavily regulated labor markets.²⁴

To summarize, the United States' greater focus on markets and de-emphasis on distribution relative to European countries has generated both higher incomes and wealth, but at the cost of greater inequality of both. But income and wealth are not the only measures of well-being of a society. We are also interested in the health of the citizenry.

C. Longevity and Mortality Rates

One measure of quality of life for a society is the longevity of its citizens. Here, the United States does not compare well to other affluent nations. Over the last fifty years, there has been a significant improvement in life expectancy and a tendency towards greater health expenditures in all countries.²⁵ But since about 1980, the United States has diverged sharply from the health outcome trajectories of peer countries, which now manage to live two to four years longer on average, while only spending 30-50% as much per capita on healthcare.²⁶ In other words, Europe dominates the

21. Eurostat, *Gini Coefficient of Equivalized Disposable Income for The European Union and The Euro Currency Area from 2011 to 2023*, STATISTA (July 18, 2024), <https://www.statista.com/statistics/1417444/inequality-in-europe-gini-coefficient-eu-eurozone/> [https://perma.cc/2BR2-ZY3Z].

22. Iqbal Khan & Robert Karofsky, *The U.S. Global Wealth Report* 18 (2025), <https://www.ubs.com/us/en/wealth-management/insights/global-wealth-report.html> [https://perma.cc/K9NF-XBCC].

23. *Id.*

24. Thomas Blanchet, Lucas Chancel & Amory Gethin, *The US-EU Gap: Redistribution Plays a Key Role in Moderating Income Inequality*, LONDON SCH. ECON. & POL. SCI. (Nov. 29, 2022), <https://blogs.lse.ac.uk/businessreview/2022/11/29/the-us-eu-gap-predistribution-plays-a-key-role-in-moderating-income-inequality/> [https://perma.cc/2ZN9-RMNV].

25. *Life Expectancy v. Health Spending, 2024*, OUR WORLD IN DATA (2024), <https://ourworldindata.org/grapher/life-expectancy-vs-health-expenditure> [https://perma.cc/TDG3-3JUV].

26. *Id.*

United States in providing longer life to its citizens, while the United States dominates in making its citizens pay far more for their poorer health outcomes.

An illuminating study has examined the intersection of mortality and race: how white and black Americans fare relative to Europeans and how these comparisons have changed over time.²⁷ In 1990, the mortality rates of white Americans living in the most affluent counties rivaled those of the similarly situated Europeans, but in poorer counties, white Americans had higher mortality rates than Europeans.²⁸ Black Americans had the highest mortality rates of all three groups by a substantial margin.²⁹

By 2018, however, white Americans in the *most affluent* counties were only doing as well as Europeans living in the *poorest* regions.³⁰ Black Americans still had a higher overall mortality rate, but had experienced a significant decline (improvement) in mortality rates since 1990, while their white neighbors' health had mostly stagnated since 2005.³¹ Moreover, the health gains of Black Americans were substantial enough that those in the richest half of the counties now had equal or lower mortality rates than white Americans in the poorest counties.

The comparison between the United States and Europe has revealed the somewhat greater income and wealth of Americans, but also the greater inequality in America. We also see that Europe has a far better record of longevity for its citizens, which it provides at far lower cost on health expenditures, which suggests that income and wealth may be less important than their distribution in influencing mortality rates.³²

D. Addressing Climate Change

We might also consider a comparison between environmental health in the United States and Europe by considering their respective policies addressing climate change. Baumol and Faulhaber once famously wrote, “[t]he market usually gets it approximately right—eventually.”³³ A Coasean solution of bargaining to eliminate the harm from greenhouse

27. Hannes Schwandt et al., *Inequality in Mortality Between Black and White Americans by Age, Place, and Cause and in Comparison to Europe, 1990 to 2018*, 118 PNAS 1 (2021).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. It is also possible that European health and safety regulations could be contributing to their better health performance, as some have maintained. See e.g., *Is RFK Junior Right to Say America Allows More Toxins than the EU?*, ECONOMIST (Nov. 22, 2024), <https://www.economist.com/the-economist-explains/2024/11/22/is-rfk-junior-right-to-say-america-allows-more-toxins-than-the-eu> [https://perma.cc/4DG8-6QAT]. I just note that resolving such questions requires enormously careful empirical evaluation, and are part of the larger question of the optimal level of regulatory intrusion into market transactions.

33. Gerald R. Faulhaber & William J. Baumol, *Economists as Innovators: Practical Products of Theoretical Research*, 26 J. OF ECON. LITERATURE 577 (1988).

gases is not available because of the enormous transaction costs that would entail, but virtually every economist would agree that the best solution to the problem of climate change would be a tax on greenhouse gases. But this academic consensus has not moved the U.S. political system to adopt a carbon tax. Given the magnitude of the costs of abatement of greenhouse gases, the inability to enact the most efficient solution may make effective abatement impossible, thereby imposing enormous costs on the public.

Is this then a failure of law and economics? The academic discipline embraces a remedy for a potentially existential problem, and yet it cannot persuade the political world that this remedy must be implemented. Every economist would acknowledge that without a carbon tax, prices would not reflect social costs, which is a necessary condition for a market economy to generate socially beneficial outcomes. Yet Republican politicians who often champion the market remain adamantly opposed. Is this because they don't believe there is an externality that needs to be corrected? Or because they have little confidence that a complex carbon tax could be sufficiently well-administered by government?³⁴

Some at the conference replied that law and economics is not a failure because it explains *why* we don't have a carbon tax: those with special interests have greater sway over policy than those with smaller and more diffuse interests. Others suggested that the United States can't enforce a carbon tax on India and China, so our efforts to act alone would be costly and ineffectual.

But again, the evidence from Europe at least raises questions as to whether these collective choice explanations are sufficient. Unlike the United States, European countries have implemented a wide range of carbon tax policies, albeit with considerable diversity in both the rate and base.³⁵ Sweden currently levies the highest carbon tax at €134.06 (\$130.81) per ton of emissions, and Switzerland and Norway also have high levels of taxation.³⁶ While Liechtenstein imposes taxes on more than 81% of its greenhouse gas emissions, Spain focuses only on fluorinated gases, which make up just 2% of the country's total emissions.³⁷ If the collective choice problem explained the United States' failure to adopt a carbon tax, one would have to explain why the collective choice explanation fails in Europe. Indeed, given the vastly larger size of the American economy, the collective choice explanation would seem to predict Sweden would be least

34. Do they fear it will only generate more revenues for the government to waste? This potential counter argument seems without merit given the fact that increased carbon tax revenues could readily be offset by reducing other taxes that impose greater deadweight losses on the economy. Thus, a carbon tax coupled with a comparable reduction in other high-deadweight-loss taxes need not elevate overall tax rates and should be a pro-growth policy.

35. Alex Mengden & Andrea Nieder, *Carbon Taxes in Europe, 2025*, Tax Foundation Europe (Jul. 1, 2025), <https://taxfoundation.org/data/all/eu/carbon-taxes-europe/> [<https://perma.cc/3MYU-MNED>].

36. *Id.*

37. *Id.*

likely to have a carbon tax since a dent in Swedish emissions will have little impact on worldwide levels of carbon.

We have noted that the Coasean, non-governmental solution to climate change is not feasible, and our government has resisted the conceptually fruitful solution of a carbon tax. But the market-government debate is still not resolved. Some pro-market policymakers champion a technological solution coming from the private sector, such as large-scale carbon sequestration or the construction of some gigantic shading mechanism. These techno-optimists would doubtless contend that such solutions would be more feasible if the United States maintains a single-minded focus on getting wealthier.

Conclusion

A. Democratic Crisis and Its Causes

Priest and Fiss, in their roadshow conversations, might be thought of as mirroring the contrasts between the ideas of Friedrich Hayek and Karl Polanyi on the meaning of the market, and whether market outcomes must conform to notions of social justice. While Priest emphasized the value of markets in creating wealth and adjudicating the diverse values of different citizens, Fiss feared that the inequalities inevitably generated by the market would impair the operation of the democratic political system.

There can be little argument on the value of markets in creating wealth. The experience of China in massively eliminating the most dire poverty and building its economy only when it shifted to a more market-oriented regime speaks loudly. This is exactly what free-market economists such as Milton Friedman predicted. Unfortunately, Friedman's attendant prediction in *Capitalism and Freedom* that the greater market orientation and wealth would promote democracy there has proven to be largely incorrect.

Of course, Friedman is not the only brilliant Nobel Prize winner to be wrong in commenting on aspects of the government-market divide. Joseph Stiglitz praised Hugo Chávez's economic plan in Venezuela in 2006, and regardless of whether Chávez's intentions were initially benign, the impact of his failure to find the right balance between the government and the market ultimately had a devastating impact on his country despite initial gains.³⁸

38. Zeeshan Aleem, *How Venezuela Went from a Rich Democracy to a Dictatorship on the Brink of Collapse*, Vox (Sept. 19, 2017, 9:10 AM), <https://www.vox.com/world/2017/9/19/16189742/venezuela-maduro-dictator-chavez-collapse> [https://perma.cc/KB9Q-TFFG]. Stiglitz has more recently written:

It is evident today that free and unfettered markets advocated by Hayek and Friedman and so many on the Right have set us on the road to fascism, to a twenty-first-century version of authoritarianism made all the worse by advances in science and

When we reflect on the checkered paths of Argentina, China, and Venezuela, it is the mistakes of government that have played the dominant role in generating either economic stagnation or tyranny. But the modern problems that beset America at least raise the concern posed by Joseph Schumpeter in his influential 1942 book *Capitalism, Socialism and Democracy*, that free market capitalism would ultimately undermine democracy. As we have seen, the United States conforms to the Schumpeterian prediction that capitalism would be highly productive economically. At the same time, Schumpeter predicted that unrestrained capitalism would create social and political tensions that would weaken the traditional values that supported democratic systems. Interestingly, Schumpeter thought that capitalism would foster a critical intellectual class that would constantly criticize the system, thereby undermining public confidence in it.

With public confidence in U.S. institutions at a very low level, the broad Schumpeterian prediction seems correct, but his proffered mechanism seems inaccurate. Doubtless the excesses of the far left within the intellectual class created an opportunity to inveigh against a liberal elite. But I suspect that the undermining of the public's confidence in institutions came from a different source than a critical intellectual class.

Instead, the wellsprings of discontent came most powerfully from the consequences of the relentless push for free markets and the attendant ideology of the conservative legal movement, which led to a number of institutional and economic changes that have unleashed a powerful grievance narrative that resonates with a large segment of the American population. The decline in manufacturing employment and union jobs and the attendant increase in inequality was the downside of the drive for greater free trade and economic efficiency.³⁹ The great wealth creation that was unleashed was then harnessed by those at the top to arrest any effort to reverse the growing inequality or increase tax progressivity (with current top marginal rates dramatically below what they had been prior to 1980). The combination of free market-generated affluence and ideology led to the end of the fairness doctrine and gave us the populist excesses of Fox

technology, an Orwellian authoritarianism where surveillance is the order of the day and truth has been sacrificed to power.

JOSEPH STIGLITZ, *THE ROAD TO FREEDOM: ECONOMICS AND THE GOOD SOCIETY* 290 (2024). In his view, the right balance of government and market “is something along the lines of a rejuvenated European social democracy or a new American Progressive Capitalism, a twenty-first century version of social democracy or of the Scandinavian welfare state.” *Id.*

39. As Ed Leamer has written:

My personal view is that the United States built the middle class and our democracy in our factories. The decline in the manufacturing job share from 32 percent in 1952 to 8 percent today has destroyed the value of a high school degree and left many working class neighborhoods in agony. The disappearance of manufacturing jobs also destroyed the first rung up the ladder of opportunity for our low-educated immigrants.

Ed Leamer, *Pinelopi Koujianou Goldberg, The Unequal Effects of Globalization*, 62 J. OF ECON. LITERATURE 327 (2024) (reviewing PINELOPI KOUJIANOU GOLDBERG, *THE UNEQUAL EFFECTS OF GLOBALIZATION* (2023)).

News, talk radio, and social media—combined with *Citizens United*'s unleashing of unlimited “independent expenditures” not coordinated with candidates and the rise of super PACs.

These developments have facilitated the greater and rising inequality in the United States and are at least to some degree responsible for the current threats to U.S. democracy, our relatively poor record in maintaining the health of the population, and our unique inability among the most affluent countries to address climate change. The United States is now facing a democratic crisis with no clear place to start looking for a remedy.⁴⁰ Is the problem that rich and powerful special interests warp our political process? Or has the increase in inequality created a class of individuals who are angry and easily manipulated through the media by anger and fear? Certainly, the public's endorsement of Donald Trump in the 2024 election as more likely to create more jobs is at odds with the record showing that the last three Republican administrations have left office with the country in recession while the last three Democratic administrations have enjoyed substantial job growth.⁴¹ Indeed, when one looks at job growth during the administrations of the last six Presidents, Trump alone suffered negative job growth when his tenure ended in 2021.⁴²

B. *The Challenging Path Forward*

Finding the path to sustainable growth that can address our current democratic crisis and economic uncertainty, in addition to our challenges with inequality, health, and climate, will not be easy. The divisions within the country are intense. Almost half of the country is disgusted by the re-election of Trump, and he and many members of his administration return the sentiment.

For example, Defense Secretary Pete Hegseth has written that Democratic electoral success will lead to “some form of civil war.” He has called for a crusade to “mock, humiliate, intimidate, and crush our leftist opponents . . . in order to defeat America's internal enemies.”⁴³

40. When the conservative Republican General John Kelly—the longest-serving White House Chief of Staff during the Trump Administration—announces prior to the 2024 election that Donald Trump is a fascist with no understanding of the Constitution and the rule of law, it suggests that democracy is under threat in America right now.

41. Alan S. Blinder & Mark W. Watson, *Presidents and the US Economy: An Econometric Exploration*, 106 AM. ECON. R. 1015 (2016); Josh Bivens, *Economic Performance is Stronger When Democrats Hold the White House*, ECON. POLICY INSTITUTE (Apr. 2, 2024), [https://epiaction.org/2024/04/02/economic-performance-is-stronger-when-democrats-hold-the-white-house/#full-report] [https://perma.cc/C2WK-CMLE].

42. Author's calculations from the Federal Reserve Bank of St. Louis (FRED), *All Employees, Total Nonfarm [PAYEMS]*, https://fred.stlouisfed.org/series/PAYEMS [https://perma.cc/C8VB-NRRC] (Sept. 26, 2025) (Data from the U.S. Bureau of Labor Statistics).

43. Jason Wilson, *Trump's Pentagon Pick Hegseth Wrote of US Military Taking Sides in "Civil War"*, THE GUARDIAN (Nov. 22, 2024), https://www.theguardian.com/us-news/2024/nov/22/trump-defense-secretary-pete-hegseth-book [https://perma.cc/BVB2-V8BJ].

Charting the Right Path

To whom can we turn for answers? We need the type of “sound and well-informed judgement” that Fiss and Priest offered to many nations at crucial junctures to help us find the right balance between government and the market. As Hamilton wrote in the *Federalist No. 1*:

[T]he vigor of government is essential to the security of liberty; . . . in the contemplation of a sound and well-informed judgment, their interests can never be separated; and . . . a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government.

History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues and ending tyrants.⁴⁴

44. THE FEDERALIST NO. 1 at 35 (Alexander Hamilton) (Clinton Rossiter ed., 1961)..