
Etceteras . . .

The Freedom to Cross a Border

WENDY MCELROY

One of the myriad benefits of knowing the late, great Murray Rothbard is being able to view political developments in economic terms. Thus, his model of power versus market came to mind when a friend vented to me over the phone a while back. I thought specifically of how the state is increasing the transaction costs of normal life choices.

My American friend used to cross the Canadian–U.S. border northward with ease in order to visit our farm and his family members in Toronto. However, new procedures came into force a few years back by which police and court records on American citizens are freely and easily accessed by Canadian customs agents and vice versa. And so two years ago my friend experienced a problem: an old driving-under-the-influence (DUI) charge, for which he was denied entry. It didn't matter how old the DUI was or that it was a one-time offense. He was summarily turned away.

A DUI is now one of the infractions that can cause a de facto iron curtain to fall across the Canadian–U.S. border, separating friends and family members. Other infractions include possession of marijuana (even if it was in the 1970s), possession of a medical-marijuana card, shoplifting, and an arrest for attending a peace rally.

Correction: I wrote, “A DUI is *now* one of the minor infractions,” but, to be more precise, I should say that although it has been a barrier to border crossing for about twenty years, it is only now that border agents possess the technology and information to enforce the restriction. The offending tool is the Smart Border

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The Independent Review, v. 16, n. 3, Winter 2012, ISSN 1086-1653, Copyright © 2011, pp. 475-477.

Declaration and Action Plan,¹ by which Canadian intelligence and the U.S. Department of Homeland Security information are comingled and made available to both governments.

What recourse does my friend have? Will he simply be cut off from family members—some of whom are too elderly to travel into the United States to get to him? Will he never again help to put in my garden?

He basically has two options.

First, the DUI is supposed to drop off his record in ten years; he could wait, trusting the benevolence of the customs officials and the competence of their computers. But a customs officer can turn him away for *any* reason at any time, and I am skeptical about the prospect of government agents voluntarily erasing *any* criminal data on individuals.

Second, according to the Canadian embassy, *if* the single offense happened outside of Canada, *if* it did not cause property or personal damage, and *if* five years have elapsed since the end of any sentence imposed, *then* my friend may apply for the ominous and Orwellian “Approval of Rehabilitation.” This approval will permanently remove the inadmissibility caused by his DUI conviction. Or he could apply on the spot for a “deemed rehabilitation” when he drives up to a point of entry.

My friend is one of the lucky scofflaws. He qualifies for what is called a “Streamlined Rehabilitation Application,” which allows him to clear his “name” at the border in advance, without having to wait ten years. So what has this lucky man had to do to visit my farm once more? He has had to submit an application at a designated center in the United States or at a Canadian port of entry. (Of course, a submission does not guarantee approval.) The submission must include:²

- A United States passport or birth certificate (with photo identification)
- A copy of court documents for the conviction and proof that any sentence was completed
- A recent FBI identification record
- Recent police certificate from the state where the conviction occurred and from any state in which he has lived for six months or longer in the past ten years
- And then, *of course*, a fee equivalent to \$200.00 Canadian

In short, he has had to jump through a series of intricate, time-consuming bureaucratic hoops—and then pay for the privilege of having done so. Meanwhile, attorneys are advising similar scofflaw clients of possible “processing problems.” The

1. For information on the Smart Border Declaration and Action Plan, see <http://www.publicsafety.gc.ca/prg/le/bs/sbdap-eng.aspx>.

2. For information on the application process, see http://www.1800duilaws.com/article/travel_to_canada.asp.

minimum processing time is supposed to be six months. My friend has been waiting for a year and a half.

As I wrote earlier, upon hearing of my friend's dilemma, the phrase that came to my mind was *transaction costs*. A fairly standard definition of this term is "a cost incurred in making an economic exchange."³ Consider buying an apple from a grocery store. The cost of doing so will be not only the price paid for the apple itself, but also the time and gas it takes to travel from your house and back as well as the time you spend waiting in line. These additional costs are the transaction costs of your purchase. Such costs can become more expensive than the apple itself. For example, if the nearest grocery store is ten miles away, the cost of gas may be far more significant than the price of fruit.

For years, I have been complaining to my husband that the transaction costs of being alive are soaring—and almost always because of increased government requirements and ensuing government inefficiency. Here's one example: a few years ago it took me eight months to get a replacement birth certificate that I needed for no other reason than to meet the requirements of another government form. I needed to fill out the *other* government form in order to engage legally in an activity the license for which had previously required only the production of a driver's license.

To perform a single act that should never require a license at all, I had to wait eight months and fill out two additional forms. For the privilege of going through this infuriating process, I paid two fees. And then insult was added to injury: the whole process was just a prelude to filling out yet another government form and paying yet another fee. The transaction costs of life are soaring.

I have never been arrested (as an anarchist, I have no excuse). The most legal attention I have gleaned has been a parking ticket. I am white, middle class, and innocuous in appearance. A clean slate and an unimposing persona put me in the enviable position: I will probably never be denied entrance at any border crossing in the world.

Nevertheless, my freedom of travel is being denied, and that denial comes in the form of transaction costs. Government regulations are making the exercise of my rights so expensive in terms of additional fees, time, inconvenience, and sheer unpleasantness that these considerations are beginning to outweigh the actual cost of exercising my rights.

When my friend weighed the transaction costs of venturing once more across the Canadian border, his friends and family won the contest. He swallowed his pride and his anger in order to maintain close contact with those for whom he cares.

But I cannot help believing that the true winners are government feemongers and heartless bureaucrats who cherish social control. They seem determined to burden the exercise of rights with transaction costs so heavy that the knees of the "free" will buckle under them.

3. See "Transaction Cost," *Wikipedia*, available at http://en.wikipedia.org/wiki/Transaction_cost.

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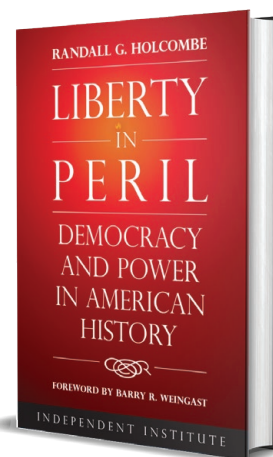
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