



# Independent

NEWSLETTER OF THE INDEPENDENT INSTITUTE

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## COVID-19 and the FDA: Lessons Learned

By Raymond J. March



The COVID-19 pandemic has laid bare the failures of regulatory bureaucracy. Perhaps the most harmful mishandlings have come from regulations put in place by the U.S. Food and Drug Administration and Centers for Disease Control and Prevention.

Before the virus reached the United States, private laboratories and hospitals were not allowed to test for the novel coronavirus without receiving approval from both the FDA and CDC. Becoming certified for testing took months. Consequently, only a few commercial labs provided testing, leaving many patients unable to get a diagnosis.

Policymakers were also left with little information to determine a course of action. When one private laboratory in Seattle reported evidence of community spread, the FDA ordered it to discontinue testing until the agency issued its approval. The CDC required laboratories to use testing kits developed by the World Health Organization, some of which were faulty, instead of designing their own.

As the virus spread across the globe, the FDA called home its international inspectors, thereby cutting off the U.S. supply of foreign drugs. Predictably, many hospitals have struggled to provide treatment for their COVID-19 patients. With drug imports highly restricted, by early April only 61 percent of orders for fentanyl (used to sedate patients needing ventilators) were filled.

Fortunately, both agencies have since allowed private laboratories to develop and offer their own testing kits. Since the reduction of their regulatory barriers, private labs have developed over 30 kinds of testing kits. By April, 85 percent of all COVID-19 testing came from private labs that performed over 100,000 tests daily. The FDA has also issued emergency approval for several medications that could help battle the virus.

But the pandemic is far from over, and regulation continues to stifle our recovery. As of mid-May, the FDA had not allowed medical masks imported from China, a significant exporter. Nor had the agency lifted its restrictions preventing drug providers from disseminating information about off-label drug uses to help treat COVID-19.

The barriers that have thwarted effective private responses to the coronavirus outbreak should be permanently dismantled. A sweeping reform effort, including allowing private labs to develop their own tests and slashing onerous barriers to importing medical devices, would significantly improve our ability to diagnose and treat patients quickly and inexpensively.

Going forward, let's flatten the curve by unleashing the market, not impeding it.

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**Raymond J. March** is a Research Fellow and Director of [FDAReview.org](http://FDAReview.org) at the Independent Institute; and Assistant Professor of Agribusiness and Applied Economics, and Faculty Fellow in the Center for the Study of Public Choice and Private Enterprise, at North Dakota State University.

## EXECUTIVE DIRECTOR'S LETTER

## The COVID Hobble



*Graham H. Walker*  
GRAHAM H. WALKER  
Executive Director

Bureaucratic controls hobbled America's response to the outbreak and made us more vulnerable when it hit. But some of those controls are getting rolled back—out of necessity.

The U.S. scrambled to produce enough testing kits as the virus hit. Why? Because government controls had been severely limiting private labs in their ability to develop them. When circumstances worsened, restrictions were loosened—as was already the case in South Korea and Taiwan—and mass development of tests by private labs finally started gearing up.

The story was the same with medical-grade masks. There weren't enough for healthcare workers, because CDC regula-

tory constraints did not allow N95 masks (like you find at Home Depot) to be repurposed. Congress lifted that constraint in mid-March. Ventilators also were scarce when the epidemic hit because, again, tight government controls limited what private manufacturers could do—until the limits were relaxed and market-responsive producers went to work. (In one case, a vacuum cleaner company shifted temporarily to ventilators.)

Medicare did not let providers use telemedicine. But with the shutdown and contagion, older Americans needed to get care while staying safe. So federal and many state regulators now allow Medicare more telemedicine.

Even California Governor Gavin Newsom, no friend to deregulation as a rule, pulled back medical practice restrictions to allow recently retired doctors, and nurses nearly done with training, to serve. Along with other states, he also lifted a longstanding prohibition on physicians practicing across state lines.

And the list goes on. Food trucks once blocked from highway rest stops have been allowed (good for social distancing!). Single-use grocery bags once banned were permitted again. Childcare regu-

lations were relaxed to accommodate the children of essential workers. K-12 education has been temporarily transformed as children stayed home and learned with Mom and Dad. Some of these de facto home schoolers may choose to continue, as local laws allow—and even those who welcome the reopening of public schools will have had a taste of parental choice that will hopefully not soon be forgotten.

Then there's the groundswell of opposition to California's recently enacted AB-5 law throttling freelance gig workers. Independent's *Open Letter to Suspend California AB-5* is gaining traction because people are seeing the harmful effects of restricting the freedom to work during the public health crisis. (Our recently filed amicus brief with the U.S. Ninth Circuit Court of Appeals to rescind AB-5 should help, too.)

It's all enough to make Independent's Research Fellow Adam Summer speculate in a recent column that COVID-19 might be "The Great Deregulator." After all, if government controls proved to be bad in a crisis, maybe they shouldn't be reinstated.

It is pitiful when the stallion of economic liberty is hobbled, especially when he has an urgent race. But he is fast when unshackled.

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POLICY OUTREACH

# Open Letter on Gig Workers Urges Economic Liberty



Can government actions meant to help workers end up hurting them? Indeed they can. One of the most recent examples is California’s Assembly Bill 5, a law that re-classified certain independent contractors as regular W-2 employees and thereby discouraged many employers from hiring them.

AB-5, which most famously targets rideshare drivers but also includes numerous freelance occupations, was counterproductive before Gov. Gavin Newsom issued his statewide shelter-in-place order on March 19. But the law made it even harder to cope with the lockdown, both by reducing gig-worker incomes and by discouraging critical services, such those provided by certified registered nurse anesthetologists.

In response to the unnecessary and unsafe hardships, the Independent Institute in April circulated and published its *Open Letter to Suspend California AB-5*, addressed to Gov. Newsom and all members of

the California State Legislature.

Signed by 153 economists and political scientists, the letter’s recommendations

would empower independent contractors to earn income and provide more in-demand services during trying economic times. Among the signatories are Nobel laureate **Vernon Smith** (Chapman U.), **John Taylor** (Stanford U.), **Lee Ohanian** (U.C.L.A.), **David Teece** (U.C. Berkeley), and other economists and political scientists, each affiliated with a California college, university, or think tank.

The project was initiated by Independent Institute Senior Fellow **Williamson M. Evers**, who doesn’t mince words about the folly of AB-5, especially when the economy is under such great stress and resources are stretched thin.

“By prohibiting the use of independent contractor drivers, health care professionals, and workers in other critical areas, AB-5 is doing substantial, and avoidable, harm to the very people who now have the fewest resources and the worst alternatives available to them,” Evers said.

“It doesn’t really matter how great the pay is, how predictable are the hours, nor how generous

the benefits may be, if the law prevents a job from existing in the first place.”

After providing background and analysis of AB-5, the *Open Letter* states:

A mountain of work needs to be done, deliveries made, and people stranded at home helped to receive groceries and medications. Meanwhile, furloughed Californians stand on the verge of being wiped out financially because the law prevents them from working part time in a variety of indispensable positions.

Blocking work that is needed and impoverishing workers laid-off from other jobs are not the intentions of AB-5, but the law is having these unintended consequences and needs to be suspended.

The *Open Letter* has generated 43 media mentions, including in the *Orange County Register*, *California Globe*, niche media such as *TalentWave* and *Staffing Industry Analysts*, radio/podcast interviews by Lars Larson, Andy Caldwell, and Carl DeMaio, and live discussion on Jordan Peterson’s thinkspot website featuring Evers, Independent Institute President **David J. Theroux**, and Executive Director **Graham H. Walker**.

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To see the *Open Letter*, its list of signatories, and media coverage, visit <https://www.independent.org/news/article.asp?id=13119>.

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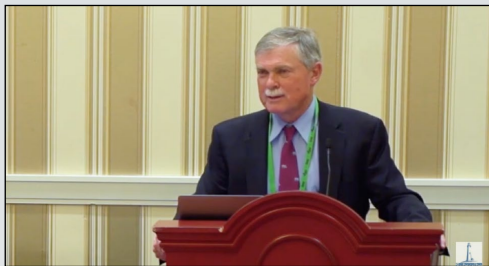
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## Independent Institute in the News



SENIOR FELLOW STEPHEN P. HALBROOK AT CPAC,  
3/12/20

### Center on Law and Justice

“Gun sales already had been skyrocketing from the ever-escalating threats of gun bans coming from Democrat presidential contenders. The fear of societal breakdown stemming from the coronavirus has added to the demand for firearms across the country.”

—**Stephen P. Halbrook** in *National Review*,  
3/31/20

“It would be a grave mistake to demand, or acquiesce to, expanded federal powers based on fear and panic. History teaches that authority claimed by the federal government in times of real or imagined emergency is seldom abandoned. What sort of country do we want when the coronavirus scare is over? One hopes it’s one that still respects the constitutional and practical benefits of a federal system that has served us well for 229 years.”

—**William J. Watkins Jr.** in *The American Spectator*, 3/20/20

### Center on Healthcare Choices

“One reason the country is doing as well as it is in defending against COVID-19 is that President Trump began deregulating the health care market early in his presidency. Those efforts have laid the groundwork for further deregulation. Donald Trump is the first president in over a century who has understood that in health care, government is not the solution; it is the problem”

—**John C. Goodman** in *Forbes*, 3/23/20

### Center on Educational Excellence

“The financial reality is this: colleges are going to have to change, for example by shedding massive

administrative bloat or by having some classes taught online very cheaply by foreign academics working for a fraction of American academic pay. COVID-19 may hasten the demise of a distinctive academic institution, tenure.”

—**Richard K. Vedder** in *Forbes*, 4/13/20

### Center on Entrepreneurial Innovation

“People working in the gig economy, or the shared economy, are provided flexibility to work when and where they want. California’s restrictive law AB-5 takes away that flexibility for freelance workers.”

—**Williamson M. Evers** on *The Lars Larson Show*,  
4/16/20

“California needs to enshrine in its state constitution the spirit of 1906 San Francisco by establishing an individual right to build residential housing. It would be the quickest way to escape the statewide regulatory quagmire that impedes housing development, inflates home and rental prices, and eliminates the bottom rungs of the housing ladder.”

—**Lawrence J. McQuillan** in *The San Francisco Business Times*, 3/9/20

### Center on Peace and Liberty

“The worst fear of the Eurocentrics is that Trump will, before leaving office, withdraw from the NATO alliance, much as he did with the Trans-Pacific Partnership trade pact, the international agreement on climate change, and the Intermediate Nuclear Forces treaty. Yet this is the proper, though radical, approach. It needs to be done immediately, so that it can’t be reversed by the next president.”

—**Ivan Eland** in *The American Conservative*,  
02/21/20



SENIOR FELLOW IVAN ELAND  
ON FOX NATION'S LIBERTY FILE, 2/7/20

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## THE INDEPENDENT REVIEW

## Mavericks of Political Economy

Classics of political economy have earned their venerated status because decades or even centuries after their original publication, they still inspire and compel readers to think deeply, often in ways foreign to current orthodoxy, as **Robert M. Whaples** explains in his introduction to our symposium in the Spring 2020 issue of *The Independent Review*, “Reconsidering the Classics of Political Economy.”

Leading the list is Adam Smith’s *The Wealth of Nations* (1776), a treatise that still challenges readers with its case for free trade, low taxes, and the “invisible hand” of the marketplace. As **Donald J. Boudreaux** explains, the book also resonates today for calling out, with insight and eloquence, the “folly and presumption” of anyone who believes themselves fit to direct other people’s affairs.

Contrary to widespread belief, Thomas Malthus’s *Essay on Population* (1798) didn’t predict a population crisis; it criticized a faulty assumption. Its enduring value is in warning that the utopian ideals behind the French Revolution would end up destroying the institutions of civil society, according to **J. Daniel Hammond**.

Karl Marx (1818–1883) has earned derision for his factual mistakes, theoretical errors, unfulfilled prophecies, and policy recommendations leading to disaster. Nevertheless, public choice economists might find value in Marx’s remarks about ironic political coalitions, collective action, rent seeking, and antitrust, according to **Michael C. Munger**.

Max Weber’s treatise *The Protestant Ethic and the Spirit of Capitalism* (1905) helps us think about the varieties of capitalism



THE INDEPENDENT REVIEW  
SPRING 2020

and the relationship between culture and the economy, according to **Solomon Stein** and **Virgil Henry Storr**.

Frank Knight’s *Risk, Uncertainty, and Profit* (1921) insightfully explains that profit is rooted in the way entrepreneurs respond to uncertainty, **Ross M. Emmett** explains.

The most influential economics book of the 20th century—John Maynard Keynes’s *General Theory of Employment, Interest, and Money* (1936)—won adherents not for any conceptual clarity (it’s clear as mud), but rather for giving New Dealers and their ilk a theoretical rationale for supporting more government spending as a remedy for recessions, argues **William N. Butos**.

Ludwig von Mises’s *Human Action* (1949) may be the 20th century’s greatest treatise of economics and political economy, but this wide-ranging masterwork is hardly the best understood. **Peter J. Boettke** argues that fans and critics alike have misconstrued its emphasis on logical reasoning in the social sciences and its stress on ideas as the prime mover of culture and politics.

Joseph Schumpeter’s *Capitalism, Socialism and Democracy*

(1942) has grown in influence due to its identification of “creative destruction” as a key trait of capitalism, its rigorous critique of Marxism, and its explanatory theory of democracy, explain **John T. Dalton** and **Andrew J. Logan**.

John Kenneth Galbraith’s *The Affluent Society* (1958) sold enough copies to put it on best-seller lists, but Americans didn’t really buy its claim that they were so rich that most derived no extra utility from consuming more goods and services, explains **Robert M. Whaples**.

James Buchanan and Gordon Tullock’s *The Calculus of Consent* (1962) inspired political economists to analyze democratic processes. Its insights are invaluable for understanding recent rule-changing proposals, such as abolishing the Electoral College or changing how its votes are allocated, explain **William F. Shughart II** and **Arthur R. Wardle**.

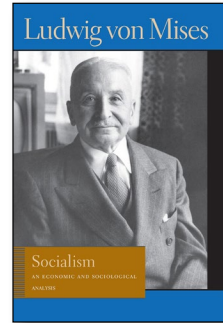
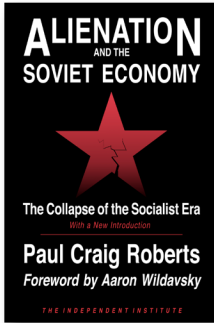
Jane Jacobs’s book *The Economy of Cities* (1969) offers enduring insights about how individual planning within a city’s division of labor contributes to innovation and economic development, explains **Sanford Ikeda**.

F. A. Hayek wrote his three-volume *Law, Legislation, and Liberty* (1973–1979) to provide a stronger bulwark against the growth of government than he offered in *The Constitution of Liberty* (1960), by couching his new defense in terms of rules, order, and evolution, explains **Leonidas Zelmanovitz**.

In *Governing the Commons* (1990), Elinor Ostrom inspired new ways to think about common pool resources, launching others on a quest for cooperative solutions to the “tragedy of the commons,” explains **Roberta Q. Herzberg**.

## EDUCATION

## Books on the Folly of Socialism



Support for socialism has been gaining ground in America, especially among the youth, but most people know less about it than they should.

To help readers young and old learn the truth, Independent Institute Senior Fellow **Williamson M. Evers** has compiled and annotated a list of both introductory and college-level recommended readings, “Best Books on the Folly of Socialism.”

The original list included about 30 publications, but more than three dozen items have since been added. “If you can read just one book on this list, then make it *Red Plenty*, by Francis Spufford,” Evers writes. “If you can read only two, make your second pick *Socialism: An Economic and Sociological Analysis*, by Ludwig von Mises.

Here, with Evers’s comments, is a sampling:

*Alienation and the Soviet Economy: The Collapse of the Socialist Era*, by Paul Craig Roberts. Roberts gives a valuable explanation of Marx’s theory of alienation. He then discusses Soviet “war communism” (1918–1922) as a failed attempt to faithfully put into effect the socialist utopia described by Marx. Roberts also provides an account of how the post-1922 Soviet economy actually worked, although extremely poorly.

*The Gulag Archipelago*, by Alexander I. Solzhenitsyn, foreword by Jordan B. Peterson. The classic account of the Soviet Union’s forced labor camps.

*The Moral Collapse of Communism: Poland as a Cautionary Tale*, by John Clark and Aaron B. Wildavsky. A detailed case study of Poland as an actually-existing socialist society. People at all levels had to rely on connections and networking to obtain goods and services. Benign use of such connections easily shaded over into corrupt uses and moral degradation. The country’s economic disorganization and shortages provided the basis of the ruling elite’s privileges.

*Red Plenty*, by Francis Spufford. A historical novel. Tom Palmer writes, “Spufford ... describes the period [under Nikita Khrushchev] when

many believed that the USSR would surpass the ‘capitalist west’ in the production of consumer goods ... Spufford does an admirable job of explaining the real functioning of the economic system that existed in the USSR, with a focus on the role of blat (the exchange of favors) and the *tolkachi* (the ‘pushers’ or ‘fixers’ who organized complex chains of indirect exchange to supply what was missing).

*The Road to Serfdom*, by F. A. Hayek. Hayek’s book is about the inevitable corruption of free institutions and sacrifice of human values if socialist practices are put into effect.

*Socialism: An Economic and Sociological Analysis*, by Ludwig von Mises. A thorough examination of socialism in its many aspects. Includes Mises’s classic argument that economic calculation under socialism is impossible. Henry Hazlitt: “The most devastating analysis of socialism ever penned.”

*Socialism Sucks: Two Economists Drink Their Way Through the Unfree World*, by Robert Lawson and Benjamin Powell. P. J. O’Rourke’s review of the book reads, “What is ‘socialism’? And do countries that overindulge in it wake up with bad hangovers? You bet they do. Robert Lawson and Benjamin Powell give you the hair-of-the-dog cure [with] a dose of political economy.”

Judging by the positive feedback it has garnered, the reading list is meeting an important need in the marketplace of ideas. As of this writing, it has racked up more than 9,900 shares on Independent Institute’s website and it’s won accolades from economists, scholars, journalists, and eighty think tanks around the world. It has also landed Evers numerous radio and podcast interviews.

“Best Books on the Folly of Socialism” is available on our website ([independent.org](http://independent.org)). We’ve also posted a Spanish translation on our companion website ([elindependent.org](http://elindependent.org)). A Portuguese version is on the website of the Brazilian think tank Instituto Liberal ([institutoliberal.org.br](http://institutoliberal.org.br)).

EVENTS

# Fixing Science



PRESIDENT DAVID J. THEROUX

Last August, a headline in the *Washington Post* revealed to its readers a problem that has plagued the research community for years: “Researchers replicate just 13 of 21 social science experiments published in top journals.” And, by no means is the replication problem confined to the social sciences.

No one knows exactly how often published research yields irreproducible results, but the problem is so worrisome that editors of the venerable journals *Nature* and *Science* felt compelled to respond by making their publication guidelines more stringent.

To shed light on the ailment and its cures, the Independent Institute and the National Association of Scholars (NAS) convened the conference, “Fixing Science: Practical Solutions for the Irreproducibility Crisis,” from February 7-8 at our conference center in Oakland, Calif.

The problem doesn’t have a single cause, as Independent Institute President **David J. Theroux** and NAS President **Peter Wood** noted in their opening remarks. Factors include the improper use of statistics, arbitrary research techniques, lack of accountability, political groupthink, and a scientific culture biased toward producing only “positive results.”

Whatever the origins, the troubling effects reach far beyond the ivory tower, invading government agencies, the business and nonprofit worlds, and even the courts. In his opening address, Columbia Law School lecturer and practicing attorney **Nathan A. Schachtman** said that despite Supreme Court decisions in the 1990s that

improved scientific fact-finding in court cases, judges are still routinely misled by unreliable and invalid scientific methods.

The conference examined myriad aspects of the crisis: incentive problems (**David M. Levy**, **Richard K. Vedder**); falsifiability (**Elliott D. Bloom**, **Deborah G. Mayo**, **Anastasios A. Tsonis**); financial meltdowns and the collapse of Lehman Brothers (**Barry Smith**); scientific misconduct (**Daniele Fanelli**); climate sciences (**Tim Edgell**, **Patrick J. Michaels**); environmental epidemiology and public health (**S. Stanely Young**, **James E. Enstrom**, **Louis Anthony Cox Jr.**); groupthink (**Lee Jussim**, **Mark Regnerus**, **Michael Shermer**); and the road to reform (**Yuri Lazebnik**, **David Trafimow**, **David Randall**).



PETER WOOD SPEAKING WITH RICHARD K. VEDDER

What could professional organizations do to improve the conduct and interpretation of quantitative science? In the final keynote address, **Ronald L. Wassertein** (Executive Director, American Statistical Association) noted that some groups should consider issuing an official statement of principles and guidelines. Speaking from experience with his own association, Wassertein offered pointers on when and how professional organizations should go about this potentially arduous undertaking.

“There is much to do, but I believe we now have a real sense of what should and can be done,” Theroux said in his closing remarks. “With the marvelous experience of this conference, let’s roll up our sleeves and get to work to rescuing and fixing science.”

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The Independent Institute hosts numerous events to encourage discussion and understanding of key issues in current affairs, public policy and political economy. At each event, distinguished scholars, policy experts and others speak about important issues. To learn more about past and future events, visit [www.independent.org/events/](http://www.independent.org/events/).



ANASTASIOS A. TSONIS

## MEMBER BENEFITS

## Independent's Pandemic Briefings Give Members Valuable Insights

Just as federal, state, and local governments began responding to the novel coronavirus, Independent Institute stepped up its program of live briefings for our **Lighthouse Society** members and other friends. We sharpened our focus on the COVID-19 crisis, switched from telephone to the Zoom conferencing platform, and quickened our pace from quarterly to weekly briefings—all so that key supporters could become very well-informed and more effective ambassadors of Independent's unique and timely message.

In the first of the revamped series (March 27), Senior Vice President **Mary L. G. Theroux** met with Research Fellow **Randall G. Holcombe** to discuss how the crisis has added pressure on government officials to wield powers beyond those authorized by the U.S. Constitution. Later briefings were hosted by Executive Director **Graham H. Walker**.

In the second installment (April 3), Research Fellow **Raymond J. March** (director of our **FDAReview.org** website) explained why Americans should trust private enterprise, rather than public health bureaucrats, to “flatten the curve.” In the next episode (April 10), investment management advisor

and Research Fellow **R. David Ranson** offered his outlook for the U.S. economy and explained why misguided government policies, not infectious diseases per se, create setbacks for economic growth.

Will higher education weather the lockdowns and recession? Senior Fellow **Richard K. Vedder** explained why 500 to 1,000 colleges are likely to go under or merge with others to survive (April 17). Will the Second Amendment survive? Gun-rights attorney and Senior Fellow **Stephen P. Halbrook**, one of the leading authorities on the issue, took his best shot at the answer (April 27).

What could be done to help workers get back on their feet? Senior Fellow **Williamson M. Evers** made the case for suspending California's AB-5 restrictions on the gig economy (May 1). And Senior Fellow **Christopher J. Coyne** discussed ways to limit the economic fallout from the government's harmful responses (May 8). Other briefings have followed.

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