

The Clearance: Where Liberty Goes When the State Writes Law as Code

Essay submitted to the Youth Liberty Prize 2026 — "When the State Writes the Code: How Does Digital Interventionism Impact the Prospect of Liberty?"

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The words “code” and “codex” share a single ancestor, the Latin *codex*, a wooden tablet on which law was written before it had parchment. For nearly two thousand years the word naming the writing surface also named the law: the Codex of Justinian, the Napoleonic Code, the civil code. In the twentieth century, passing through the language of cryptography, the same word came to name something else, a sequence of instructions executed by a machine, less an accidental homonymy than a word returning home, since what was once carved in wood as law is now written in silicon as program. Between the two codes, though, lies a difference that decides everything. Wood, parchment, the printed page are slow: a law written on them had to be copied, delivered, read, interpreted by a judge, contested in court, evaded by smuggling, ignored at the price of a fine. That slowness was a hidden virtue of legal technique, not a defect. Between norm and execution there was a clearance, room for human judgment, error, dissent, and ultimately freedom itself. When the codex becomes code, self-executing and instantaneous, requiring no judge, the clearance closes, and the scale of regulation matters less than what closes with it: the genuine danger of digital interventionism in 2026 is that it eliminates the very space in which liberty has historically been able to exist. This idea is no invention of modernity, still less a libertarian eccentricity. It is built into humanity's oldest legal traditions, often under the authority of religion itself. The Torah establishes cities of refuge for one who kills without intent (Numbers 35; Deuteronomy 19), granting room and time for a hearing before blood vengeance can reach him, and requires at least two witnesses for a capital sentence (Deuteronomy 17:6, 19:15); rabbinic thought later pushed the procedural bar so high that the Mishnah calls a court executing once in seven years “bloody” (Mishnah, Makkot 1:10), not because it is too severe but for exactly the opposite reason. Islamic law holds that prescribed punishments are averted by doubt, and an accusation of adultery requires four eyewitnesses (Qur'an 24:4), a threshold calibrated so the penalty remains almost unenforceable absent voluntary confession. The Gospels express the same impulse in the scene of the woman accused of adultery (John 8): the law is not annulled, but a pause is inserted between its letter and execution, and real judgment happens in that pause. Three traditions, independently, built the same engineering principle into their legal systems: the graver the consequence, the wider the clearance before it is carried out. This is not weakness in the law but wisdom accumulated over millennia, that instant, error-free enforcement is more dangerous than the norm itself; the Austrian school would give this intuition rigorous language only centuries later.

That rigor entered legal theory through Friedrich Hayek, who distinguished *nomos*, abstract norms of just conduct emerging spontaneously and applied by courts to an endless variety of cases, from *thesis*, the concrete commands of a legislator addressed to a specific situation (Hayek, 1973–1979). Traditional law, even when codified in statute, retains the clearance of *nomos*: the norm is general, applying it to a particular case requires judgment. A judge does not execute a rule mechanically; he applies it, matching a general formula to circumstances no one foresaw, and in that clearance the precedent is born, the mitigating circumstance, the jury's acquittal against the letter of the law. Code leaves no such clearance. A programmable central bank currency that declines a transaction does not apply a rule, it executes one, before the action occurs rather than after. A moderation algorithm does not adjudicate a case, it recognizes a pattern and acts so fast the subject often learns of the decision only after the fact, if at all. An identification system denying access to a service offers no account of its motive, it checks a status. What changes is the ontological status of intervention itself: it stops being an act that can be recorded and appealed and becomes a property of the environment, rendering an action possible or impossible before the intention to perform it has formed. The four figures named by this year's theme, programmable currency, digital identification, algorithmic moderation, social credit scoring, look at first like different domains: money, access, speech, status. Logically they are the same construction repeated four times, and social credit exposes the mechanics most clearly, conditioning participation in exchange, in advance, on an aggregate compliance score, relocating the clearance of *nomos* from a single action into a continuously recalculated profile of the person, whose logic cannot be contested, since the score is the output of a computation rather than a decision. The root of the problem runs deeper than the disappearance of procedural clearance alone. In 1945 Hayek showed why centralized economic planning is doomed: the knowledge needed to coordinate economic life never exists in a form accessible to any single mind or agency, dispersed among millions of people, much of it inexplicit, consisting of knowledge of

particular circumstances of time and place that prices merely aggregate (Hayek, 1945). This argument is almost always applied to production and exchange, but it applies equally to law itself, and it is precisely here that digital interventionism repeats the error of central planning, in a different domain. The common law worked for centuries as a procedure of discovery rather than design: it accumulated case by case, absorbing knowledge no legislator could have anticipated, and a judge who tempers a norm for an unforeseen case performs a function akin to the entrepreneur noticing a discrepancy between price and value no one else has seen; both draw on local knowledge unavailable to any center. A programmable system must do what the common law never attempted: enumerate in advance which categories of expenditure are legitimate, which statements permissible, which statuses sufficient for participation, requiring knowledge of circumstances not yet arisen at the moment the code is written, identical to the central planner's task of knowing in advance all future needs of an economy. The impossibility has nothing to do with computing power and everything to do with the nature of dispersed knowledge: part of it arises only in the moment of action and does not exist before, so code written in advance cannot hold knowledge that has not yet been born.

If knowledge of law is dispersed, so is the information about the price of enforcing it, and an argument seldom made explicit, though it follows directly from the Austrian tradition, belongs here: coercion has historically had a price, performing an epistemic function akin to a market price. Smuggling, the black market, unpaid fines, jury verdicts acquitting against the letter of the law, capital flight, emigration as voting with one's feet, none of these were merely costs of enforcement; they were signals telling the state something it could not otherwise learn, that a rule cost more than it was worth, that society would not pay the price of compliance, that a norm had drifted so far from reality it was easier to ignore than obey. Rising enforcement cost functioned as a shadow price, disciplining the interventionist much as losses discipline a failed entrepreneur. Mises showed, in his analysis of interventionism, that each intervention generates a distortion subsequently used to justify the next, a spiral with no internal limit of its own (Mises, 1940), yet historically the spiral had an external limit: rising enforcement cost. A prohibition that could not be enforced for less than it was worth was, sooner or later, repealed or ignored. Digital infrastructure removes this limit almost entirely. Freezing an account through programmable currency requires no police, no court, no bureaucracy, only a line of code; moderating a billion messages a day does not scale with the cost of human oversight, its marginal cost tending toward zero; checking a digital credential needs no clerk behind a counter. Coercion, for the first time, becomes nearly free for the one who wields it, and the feedback loop that for centuries forced power to reckon with its decisions is severed, not through malice but an engineering fact: code does not tire, draw a salary, or need a court's sanction to act. Hans-Hermann Hoppe's typology distinguished interventions restricting the autistic use of one's own property from those prohibiting binding exchange, a voluntary transaction between parties, holding the latter graver, since it eliminates a mutually beneficial coordination altogether rather than merely taxing one action (Hoppe, 1989). A programmable currency declining a transaction belongs, by definition, to this graver class: a refusal to recognize an exchange both parties had voluntarily agreed to. A kindred mechanism appears in Philipp Bagus's *Tragedy of the Euro*: a shared currency without shared fiscal discipline eliminates the price signal, the cost of borrowing, that once forced a government to reckon with its own deficit (Bagus, 2010). The logic is identical: shared infrastructure eliminates the feedback that once disciplined the individual participant, so institutional design meant to secure order ends up destroying the mechanism by which order had maintained itself.

The same logic applies not only to the price of coercion but to the calculation of liberty itself. In the socialist calculation debate, Mises proved something subtler than is usually retold: the problem is not that planners are insufficiently clever but that, absent private ownership of the means of production and the market prices attaching to them, rational calculation of value is impossible in principle, since the information calculation requires is generated only in the act of voluntary exchange (Mises, 1949). The same move applies to liberty itself, and here, it seems, lies the least explored region of this year's theme. The value of a particular freedom, what its restriction actually costs, becomes known to a society not from a declaration of rights but from the attempt to exercise it and

the resistance that attempt encounters: a lawsuit, a protest, a refusal to comply, a report on abuse of power, all forming a kind of market in dissent, in which the true price of a restriction is discovered. When a system declines a transaction or removes a publication before the action has even occurred, that contest simply does not take place. There was no plaintiff, no defendant, no case, only an automatic non-event. Society does not learn a norm was excessive, because learning required a process, and the process required a clearance between rule and consequence, exactly what code eliminates by definition. A mirror symmetry results: just as a planned economy cannot rationally allocate resources without a market, planned law cannot calibrate its own boundaries without a market in dissent. The loss of that market has another, equally serious consequence: it kills entrepreneurship itself. Jesús Huerta de Soto distinguishes static efficiency, optimal allocation of known resources among known ends, from dynamic efficiency, a system's capacity to discover knowledge and combinations that did not previously exist (Huerta de Soto, 2009), and the entrepreneurial alertness Kirzner described operates precisely at the undefined margin, where no established category yet exists for a novel action (Kirzner, 1973). Programmed infrastructure is structurally hostile to this margin, not through malice but the logic of advance enumeration. A currency spendable only on pre-approved categories cannot fund a category that does not yet exist: a new kind of business, charity, or political initiative fitting no existing classifier. A moderation algorithm trained on past samples of permissible speech tends to mistake a new, not-yet-classified idea for an anomaly and suppress it at birth, precisely because the genuinely new resembles no mapped category, so neutral-looking filtering becomes systematic suppression of exactly the speech from which everything unexpected has historically grown: civic movements, new markets, dissident thought. Social credit systems carry this exclusion to its limit, closing off not a transaction but the precondition of entrepreneurship itself, the status of being a market participant at all. Kirzner's entrepreneur needs the right to risk being wrong, to offend established opinion, to propose what the majority will doubt until it proves its worth after the fact, yet an aggregate compliance score penalizes deviation from the average, precisely the quality from which entrepreneurial discovery has grown. A society optimized for stable compliance methodically washes out the type of person without whom a market ceases to discover and becomes mere execution of what is already known.

The regulation of artificial intelligence deserves a word of its own, carrying Hayek's argument to a further, more troubling level. A market solves the problem of allocating already-existing resources among already-formulated ends, a problem for which no center can ever possess all necessary knowledge, but producing new knowledge, what research, including AI research, consists of, is even less predictable: the scientist does not, by definition, know in advance what he will discover, or it would not be a discovery. Frameworks requiring prior approval of training runs, licensing of architectures, or certification of applications before a result is even known reproduce the error of central planning at a higher level of abstraction, attempting to plan not the distribution of knowledge but the process of its emergence. The danger is not bad intentions; safety language is, in most cases, sincere. It is that any body pre-approving research directions inevitably determines not only what is unsafe but what is worth studying at all, a decision requiring knowledge dispersed among thousands of researchers whose private hunches cannot be reduced to any single regulation. Centralizing control over research trajectories risks the failure central planning of production once risked, except the stake is not present wealth but the pace and direction of future knowledge.

None of these mechanisms tend to stay isolated, which is why this essay's epigraph deserves to be read not only as a moral claim but as an engineering fact. Programmable currency, digital identity, and algorithmic moderation are almost never built as single-purpose instruments; they are designed as shared infrastructure, a reusable rail on which banking, public benefits, voting, healthcare, and the right to publish are subsequently built, and the same identity protocol verifying age for a ticket can verify creditworthiness for a loan and good standing for a speech platform. A clearance closed in one domain thus closes simultaneously across every domain resting on the same infrastructure, and the indivisibility of freedom ceases to be a metaphor and becomes an architectural fact. Hayek called spontaneous order *kosmos* and deliberately designed organization *taxis*, warning that imposing *taxis* where

kosmos should prevail destroys the very knowledge taxis is supposedly created to exploit (Hayek, 1973–1979); code written by the state is taxis imposed not on the distribution of goods but on the architecture of rules by which the social kosmos exists, far more radical than any single regulatory measure, since it changes not the rules of the game but the construction of the board.

None of this implies digital infrastructure should be rejected; that conclusion would be naïve and unworkable. A different conclusion follows: the clearance technology can eliminate, it can equally preserve, if preserving it becomes a deliberate requirement of architecture rather than a side effect of imperfection. The denationalization of money Hayek once proposed finds an unexpected continuation in cryptographically secured payment protocols answerable to no single issuer, whose competition serves the discipline once served by competing private currencies (Hayek, 1976). Self-sovereign digital identity, untethered from any state registry, restores the clearance between verifying a fact and controlling a person's identity as a whole, and a right of appeal built into a protocol as a mandatory delay before execution returns to code what the old codex on parchment possessed: slow, inconvenient human judgment. Murray Rothbard insisted that the boundary between coercion and liberty always runs along the line of property and consent, not the content of any decision, a criterion that loses no force merely because the decision is now made by a function rather than an official (Rothbard, 1973); the alternative to digital interventionism lies not in finding a more virtuous architect for the code but in stripping any single architect of a monopoly over the protocol itself, dispersing infrastructure the way the knowledge it tries to replace is dispersed. Codex and code parted ways two thousand years ago and are converging again. In that convergence lies the genuine challenge of 2026, deeper than any particular currency or algorithm: whether law should exist as executable code is, by now, a fork already taken. The real question is whether code will inherit the one property of the old codex that made it compatible with liberty, slowness, clearance, room for dissent and error, or erase that property in the name of an efficiency that, as the Austrian tradition from Mises to Hayek teaches, and as the Torah, the Qur'an, and the Gospels knew long before it, is not efficiency at all, purchased at the cost of the very mechanism by which a society learns something has been done wrong. The clearance is not what remains of liberty once order has been subtracted from it. The clearance is the place where order learns how to be free.

Bibliography

1. Bagus, P. (2010). *The Tragedy of the Euro*. Ludwig von Mises Institute.
2. Hayek, F. A. (1945). The Use of Knowledge in Society. *American Economic Review*, 35(4), 519–530.
3. Hayek, F. A. (1973–1979). *Law, Legislation and Liberty* (Vols. 1–3). University of Chicago Press.
4. Hayek, F. A. (1976). *Denationalisation of Money*. Institute of Economic Affairs.
5. Hoppe, H.-H. (1989). *A Theory of Socialism and Capitalism*. Kluwer Academic Publishers.
6. Huerta de Soto, J. (2009). *The Theory of Dynamic Efficiency*. Routledge.
7. Kirzner, I. M. (1973). *Competition and Entrepreneurship*. University of Chicago Press.
8. Mises, L. von (1940). *Interventionism: An Economic Analysis*.
9. Mises, L. von (1949). *Human Action: A Treatise on Economics*. Yale University Press.
10. Rothbard, M. N. (1973). *For a New Liberty: The Libertarian Manifesto*.