

INEQUALITY, CORRUPTION, AND CLIMATE CHANGE: RETHINKING ELECTION LAW IN THE TWENTY-FIRST CENTURY

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ABSTRACT

This chapter argues for a fundamental restructuring of election law in order to address the political entrenchment of concentrated capital. That entrenchment arises from global trends in campaign and party finance, lobbying, conflicts of interest, and influence trading that systematically skew political ideology, elections, political appointments, mass media coverage, social media messaging, law-making, and policy-making. Particularly egregious effects of this undue political influence of private wealth include rising levels of economic inequality and ecological destruction. Reconceptualized as part of the struggle against inequality, corruption, and climate change, this chapter suggests that the abolition of private control over the means of political production should be the priority of any progressive agenda.

1. INTRODUCTION

From Thucydides’ writings in the fifth century, B.C., to English and American defenders of partial suffrage in the eighteenth to twentieth centuries, concerns over mob rule and wealth expropriation have determined democracy’s shape. This is somewhat evident in the elite bias in the political theory canon and in the prevalence of constitutional arrangements that insulate foundational matters from popular preferences. But it is even more evident in the consolidation of two patterns well beyond the developing world: the return to levels of economic inequality associated with feudalism, slavery, the Gilded Age, and the Belle Epoch; and the return to levels of political inequality associated with those same eras.¹

Though just as ancient and well-argued as concerns over mob rule and wealth expropriation, countervailing concerns over patrimonial and oligarchic forces have lost out in democracy’s long arc. Maximizing the political and economic freedoms of the strong, and espousing dubious narratives about property, entrepreneurship, and meritocracy,² democracies around the world have allowed the republican form of government to be subsumed within the ever-expanding marketplace.

Rather than ignoring today’s entanglements of economic and political power, I suggest that scholars and practitioners of election law recommit to safeguarding foundational

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¹ See Part Two, below. For a comparison between the levels of inequality found under slavery, the industrial era, and the neoliberal era in the United States, see Kuhner, “The Third Coming of American Plutocracy.”

² For an analysis of these narratives and their key justificatory function within inequality regimes, see Piketty, *Capital and Ideology*.

norms and values in the world we actually inhabit. Thinking in terms of popular sovereignty, political participation, political equality, representation, responsiveness, democratic integrity, and the public interest, we ought to ask: What does this historical period require of election law?

That question summons to mind urgent global findings by reputable organizations—including the dire levels of inequality exposed by the 2019 UN Human Development Report and the World Inequality Lab, the undue influence of big money on political systems condemned by Transparency International and International IDEA, the widening divide between political elites and electorates noted by the OECD and *The Economist*, the democratic backsliding and rising authoritarianism exposed by Freedom House, and the desperate state of international public opinion reported by IPSOS.³ Still, these are not the most worrisome findings of all.

The discipline of election law must also come to terms with the failure of elected governments, worldwide, to take the minimum steps required to avoid catastrophic climate change. The great preponderance of the scientific evidence suggests that mass extinctions, natural disasters, rising sea levels, food shortages, and mass migrations will soon plunge humanity into a long—and potentially fatal—state of emergency.⁴ Despite countless warnings to this effect, current power configurations are making dystopia the only feasible future. Indeed, the role of the fossil fuel related industries in subverting climate research, financing degenerate political candidates and parties, outspending the voices of reason on lobbying, and funding climate change denial efforts will almost certainly go down in history as the greatest case of corruption ever recorded. (Or perhaps, as the ultimate indication of its greatness, it will not be judged this way or not be recorded.)

Today's economic, political, and ecological crisis leaves no room for doubt: the next ten to thirty years represent a 'do or die' stage in the evolution of democracy. In order to rise to the challenge, I argue that scholars and practitioners of election law should expand our horizons in at least four respects.

First, we ought to conceive of election law more broadly—not only in terms of the rules, procedures, and institutions governing the pre-election, election, and post-election stages, but also in terms of power dynamics and democratic integrity.

Second, scholars and practitioners of election law ought to consider the major conclusions reached by other academic disciplines—including political science, economics, psychology, and climatology. The actual operation of political, economic, cognitive, and ecological systems ought to inform our analysis of legal frameworks.

Third, we ought to acknowledge not only the relationship between election law and other disciplines, but also the personal and professional implications of that relationship. If economic and environmental indicators suggest that a particular form of democracy has become untenable, then we need not confuse the necessity for basic justice and societal preservation with a betrayal of scholarly and professional commitments to neutrality.

³ For a discussion of these findings, see Part Three, below.

⁴ *E.g.*, NASA, "Climate Change: How Do We Know?"; UN Development Program, Human Development Report 2020, 3-14.

Fourth, scholars and practitioners of election law should engage with key questions of democratic theory. For instance, should democracy be a means by which people can develop and enjoy their human capacities, or simply a means by which people, as they are now, can register their wants as consumers in a political marketplace?⁵

As with every other area of law, the model of election law that is in force favors particular ideologies and particular agendas. In line with these, it then achieves certain effects, which reinforce or alter the distribution of power within society. But, unlike most other areas of law, election law plays a pivotal role in the formation, contestation, and choice of those ideologies and agendas; and it does so at regular intervals. The causal connection between worldview and reality reaches a high point within this area of law. Therefore, it is essential for scholars and practitioners to examine the ideas, value judgments, and discourses that justify the existing electoral regime and inspire its critics.

That kind of wholistic approach is nothing new, but between the 1980s and the general financial crisis of 2008-2009 it declined amongst academics, practitioners, and policy makers. Economic growth, the fall of the Soviet Union, the spread of elections around the globe, corporate political power, and the suppression of troubling ecological indicators combined to produce an uncritical acceptance of capitalist democracy. Competitive elections became just another ingredient in the recipe of austerity, deregulation, commodification, and privatization.

As neoliberalism drove the world towards a global crisis in political, economic, and ecological systems, election law dutifully provided for the formation of countless governments. Purged of critical concerns about property, power, and sustainability, it became a technical discipline, complicit in global catastrophe. During the first part of this new century, however, economic, political, and environmental indicators have ratcheted up to a day of reckoning. Election law must now return to its roots in the common good, political economy, and the dismantling of power structures.

To that end, this chapter highlights two components of a twenty-first century agenda for election law: substituting progressive and social-democratic understandings of election law for neoliberal ones; and strengthening democracy through robust norms on corruption and political finance. These components, Parts 2 and 3 of this Chapter, invite a foundational shift in understanding and a corresponding, architectural shift in the legal frameworks that govern the democratic process.

2. ELECTION LAW BROADLY CONCEIVED: POWER AND CLASS

Gardner and Charles define the discipline of election law by noting that a “society’s commitment to govern itself democratically can be effectuated only through law” and that democracy “exists only upon landscapes that have been deeply structured by legal rules.”⁶ That relationship must be circular or inter-causal, however, since legal rules are themselves the products of the political landscapes that predated them. And within those pre-existing landscapes, popular responsiveness and independent leadership cannot be presumed. They vary depending on a wide array of factors, soon to be discussed.

⁵ Macpherson, *Democratic Theory*, 79.

⁶ Gardner and Charles, *Election Law in the American Political System*, xxiii.

The existence of genuine popular preferences cannot be assumed either. They depend not just on independent media, whistleblower protections, a genuinely representative and pluralistic set of political parties, free speech and association, and the right to education (which are rarely robust), but also on effective measures (thus far non-existent) to combat fake news and deep fakes, disinformation campaigns and conspiracy theories, biased social media algorithms, trolls, and bots. Of the laws which structure democratic landscapes, Gardner and Charles specify that “in a democracy these rules themselves ultimately bear a democratic provenance.”⁷ But that is precisely what cannot be taken for granted.

The first edition of Lowenstein’s *Election Law* also showcases a certain optimism. Lowenstein describes a well formed legal professional as one with “the ability to understand the details of legal regulations as they affect and at least aspire to benefit the democratic political system.”⁸ But again, why should we presume that legal regulations aspire to benefit the democratic political system as a whole as opposed to a particular set of material and ideological interests?

Such rosy assumptions have been very much in doubt since Joseph Schumpeter’s devastating description of democracy in practice. Referencing “groups with an axe to grind”—including “professional politicians[,] exponents of an economic interest [and] idealists of one kind or another,” Schumpeter made a startling claim in 1942:

Human Nature in Politics being what it is, they are able to fashion and, within very wide limits, even to create the will of the people. What we are confronted with in the analysis of political processes is largely not a genuine but a manufactured will ... [T]he will of the people is the product and not the motive power of the political process. The ways in which issues and the popular will on any issue are being manufactured is exactly analogous to the ways of commercial advertising.⁹

Continuing the comparison to profit-maximizing firms in the economic sphere, Schumpeter posited that “the first and foremost aim of each political party is to prevail over the others in order to get into power or to stay in it.”¹⁰ (And beyond the techniques of commercial advertising, we must wrestle once more with the manipulative powers of fascism.)¹¹

The authors of election law casebooks are aware of these dynamics. For example, Gardner and Charles note that “raw power struggles against raw power” and they emphasize the role of law in mediating the process of political contestation. When the law dictates the terms of that process, then Gardner and Charles are surely correct that “political actors who wish to be effective must...act in the political arena in ways that help them succeed under the particular set of legal rules and constraints that happen to control.”¹²

But what about the times in which the causal arrow points the opposite direction? Is it not the case that the holders of certain forms of power (and the interests that correspond with

⁷ *Ibid.*

⁸ Lowenstein, Hays, Hasen, Tokaji, and Stephanopoulos, *Election Law*, xxv.

⁹ Schumpeter, *Capitalism, Socialism & Democracy*, 263.

¹⁰ *Ibid.*, 279.

¹¹ *E.g.*, Stanley, *How Fascism Works*.

¹² Gardner and Charles, *Election Law in the American Political System*, xxiii.

that power) have advantages in the lawmaking process because they already succeeded in structuring the terms of political contestation to best achieve their interests? Strategic, well-organized actors will strive to undermine unfavorable rules and constraints, and to produce more favorable ones. They will not simply wait around for the demos to structure democracy as it sees fit, and then dutifully follow the rules.

Dramatic examples of this chicken-or-egg problem can be seen at many points in the history of democracy: Athenian democracy, which confined direct democracy to a limited group of male citizens and retained slavery; the Roman Republic, which did the same and famously fell prey to systemic corruption; and the American Revolution and Constitution, which can be described in similar terms, all the way from slavery, partial suffrage, and an elite senate to potentially fatal levels of systemic corruption.¹³

In sum, democracy exists only upon landscapes structured by legal rules; but those rules have been influenced by pre-existing landscapes of an aristocratic, racist, and sexist variety, which were home to systems that dominated and impoverished the people. Critical thinkers have long observed that the relationship between property and politics can be structured in such a way that democracy continues fulfilling those same tyrannical functions.

2.1 Political Economy and Social Democracy

Domination results when the means of power from one social sphere (whether religion, the family, the military, or science and technology) determine outcomes in the political sphere—hence, the tyrannical nature of theocracy, monarchy and aristocracy, dictatorship, and technocracy or digital autocracy.¹⁴ Theocrats, absolute monarchs, dictators, and authoritarian one-party states all subjected the state and the economy to centralized control. But democracy and capitalism are thought to have emancipated the state and the economy from vertical compulsion.

Still, even as it evolved over the course of the eighteenth to twentieth centuries, political liberalism never determined conclusively which of these systems—democracy or capitalism—should prevail in the event of a conflict between their respective norms, values, and institutions.¹⁵ Such conflicts are inevitable and recurrent, as economic inequality grew under capitalism while political inequality shrank under democracy. As these conflicts were resolved in capitalism’s favor, political access and influence became commodities, people without the ability or willingness to pay became relatively powerless, and the economic sphere came to govern the political sphere—hence, the tyrannical nature of plutocracy.¹⁶

The authors of two of the most influential blueprints for capitalism and democracy owned up to this process at its outset. Consider this forgotten passage from Adam Smith’s 1776 book, *The Wealth of Nations*: “Our merchants and master-manufacturers complain much of the bad effects of high wages,” Smith noted, but “[t]hey are silent with regard to the pernicious effects of their own gains.”¹⁷ He described those who “employ the largest

¹³ Kuhner, *Tyranny of Greed*, 48-112.

¹⁴ Walzer, *Spheres of Justice*, 3-28.

¹⁵ E.g., Chua, “The Paradox of Free Market Democracy;” Kuhner, *Capitalism v. Democracy*.

¹⁶ Walzer, *Spheres of Justice*, 119-120 (discussing “market imperialism” and comparing a radically laissez-faire economy to a “totalitarian state.”)

¹⁷ Smith, *The Wealth of Nations*, 87-88, 231-232, Book I.

capitals” and “dealers in any particular branch of trade or manufacturers” as “an order of men whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.”¹⁸ Noting that these classes use their wealth to “draw[] to themselves the greatest share of public attention” and that they desire restraints upon competition and an increase in profits at the public’s expense, Smith recommended that proposed laws be “long and carefully examined, not only with the most scrupulous, but with the most suspicious attention.”¹⁹

The primary drafter of the U.S. Declaration of Independence expressed a similar concern. “I wish,” Thomas Jefferson wrote, “never to see all offices transferred to Washington, where, further withdrawn from the eyes of the people, they may more secretly be bought and sold as a market.”²⁰ Years earlier, Jefferson had objected to the “aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country.”²¹ The solution, he urged, was for citizens to “crush [it] in its birth.”²²

Smith and Jefferson cannot be neatly categorized as economists or political scientists. One was a moral philosopher, the other a lawyer and statesman. But more broadly understood, both belonged to the discipline of “political economy.” As Allan Drazen explains, “[t]his terminology...reflected the belief that economics was not really separable from politics...[and that] political factors are crucial in determining economic outcomes.”²³

Thomas Piketty is one of the most famous modern-day examples. In *Capital in the Twenty-First Century* he emphasizes that today’s extreme levels of economic inequality are the product of legal and political conditions:

[T]he two world wars, and the public policies that followed from them, played a central role in reducing inequalities in the twentieth century. There was nothing natural or spontaneous about this process... [I]nequality began to rise sharply again since the 1970s and 1980s, albeit with significant variation between countries, again suggesting that institutional and political differences played a key role.²⁴

In Piketty’s words, political economy is the systematic study of “the ideal role of the state in the economic and social organization of a country” and “the public policies and institutions [that will] bring us closer to an ideal society.”²⁵ These descriptions conform to Drazen’s causal direction—namely, that political factors determine economic outcomes.

But the reverse is also true. Economic factors are crucial in determining political outcomes, just as Smith and Jefferson warned. Those who possess greater capital often use it for political advantage, financing political candidates and parties as though in a marketplace,

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Jefferson, “Letter to William Johnson (1823),” 1476.

²¹ Jefferson, “Letter from Thomas Jefferson to Tom Logan (Nov. 12, 1816),” 69.

²² *Ibid.*

²³ Drazen, *Political Economy in Macroeconomics*, 3.

²⁴ Piketty, *Capital in the Twenty-First Century*, 297.

²⁵ *Ibid.*, 749.

obtaining access and influence as though laws and policies were commodities, and forming a financial aristocracy. The great voices of political economy understood that politics is not really separable from economics. At the far left of the spectrum, this school of political economy is still led by Karl Marx.

Marx posited that the development of productive forces determined the course of social, political and even spiritual development. And so, much the opposite of Gardner, Charles, and Lowenstein, when Marx states that the course of political society is “governed by laws,” he means the laws of human history, which are dictated by the development of productive forces—principally the stages and relationships of production. These are the foundation, while laws and institutions form part of the superstructure. Given the tremendous inequality between the bourgeoisie and the proletariat (owing to the state of economic production at the time), Marx considered parliamentary government a façade for class rule and violent revolution a necessity.

Social democracy emerged as a separate political system by revising Marxism in both of these respects. Social democrats denied historical materialism, that supposed inevitability of class conflict and capitalism’s collapse. They believed that universal suffrage could change history. The proletariat could participate in parliament, regulate the economy, and improve their lot. Social democrats also denied the need for revolutionary struggle. Over one hundred years ago, Eduard Bernstein wrote that democracy “is a weapon in the struggle for socialism” and “the form in which socialism will be realised.”²⁶ Like other types of socialists, Bernstein wholeheartedly agitated for “the transition from the modern social order to a higher one,” but he added the words “without compulsive upheavals.”²⁷ “Social democracy,” he emphasized, “has no enthusiasm for a violent revolution.”²⁸

This does not mean that social democrats denied the influence of concentrated capital over elections and lawmaking. For example, the influential theorist Karl Kautsky considered lawmaking bodies a tool of class domination. He insisted, however, that this need not be the case: “Whenever the proletariat engages in parliamentary activity as a self-conscious class, parliamentarism begins to change its character,” he wrote. Instead of “a mere tool in the hands of the bourgeoisie,” organized parliamentary activity could become “the most powerful lever...to raise the proletariat out of its economic, social and moral degradation.”²⁹

But why would Kautsky assume that the proletariat’s participation would have any effect? He believed legal changes would be required in order for parliamentary participation by the lower social classes to become a lever for emancipation. “The influence of a class within a parliament depends, in the first place, on the nature of the electoral law in force,”³⁰ he specified.

That 1892 understanding of election law as the causal variable behind power in a democracy was expanded upon by Eduard Bernstein in 1909. Bernstein described the task of the working classes as that of “changing society from the domain of a commercial land-holding oligarchy to a *real democracy*...guided by the interests of those who work and

²⁶ Bernstein, *The Preconditions of Socialism*, 142.

²⁷ *Ibid.*, 145.

²⁸ *Ibid.*, 158.

²⁹ Kautsky, *The Class Struggle*, 188.

³⁰ *Ibid.*, 186-7.

create.”³¹ A democracy guided by the interests of ordinary people would be one that is responsive to such people and composed of such people, at least proportionally so.

To articulate the sorts of changes that would require, Bernstein wrote of “the abolition of all laws which limit the universal equality of rights”³² and, more simply, the “abolition of class government.”³³ On this notion, social democrats hung their hopes for a collaborative society, free from domination.

2.2 Greeks and Chartists

To utter Bernstein’s powerful phrase, *the abolition of class government*, is to summon two ancient concerns. The first belongs in the category of tyranny of the majority; the second, tyranny of the minority.

These fault lines were delineated centuries before the birth of Christ. During the Athenian experiment with direct democracy, Thucydides famously criticized the demos for its lack of sound judgment (*euboulia* in Greek)³⁴ and irrational anger (*hupo orgēs*), defects which bring about rash decisions, violence, and—where applicable—expropriations of private property.³⁵ The demos could certainly act as a mob, and democracy as mob rule.

But ancient Greeks also warned of oligarchy. Given the importance Aristotle and Plato ascribed to the common good, rule by the few for purposes of moneymaking was a devastating threat.³⁶ The quality of government could suffer just as easily from elite greed and ambition as it could from popular passion, fear, and mood swings.³⁷ Plato took both sorts of dangers into account, immortalizing the ideal of guardians (or philosopher kings) who would have no property of their own.³⁸

Over time, election law became the battlefield—or the prize—for these competing concerns and the movements they inspired.

Even before the U.S. Constitution had been ratified and the French Revolution had begun, universal suffrage was widely considered to pose grave dangers for capital. Reflecting this view, the Federalist Papers fearfully described democracies as “spectacles of turbulence and contention ... incompatible with personal security or the rights of property.”³⁹ The French example soon lived up to that fear, while the American experiment was far milder. Although Alexis de Tocqueville began his first volume of *Democracy in America* by highlighting the impression that “the general equality of conditions” had made on him, John

³¹ Bernstein, “Preface to the English Edition,” xxii-xxiii.

³² Bernstein, *The Preconditions of Socialism*, 140.

³³ *Ibid.*, 143.

³⁴ Schofield, “*Euboulia* in the *Iliad*,” 6-31.

³⁵ Will, “Democracy without an Alternative,” 60-65.

³⁶ Doyle, *Aristocracy*, 1; Tabachnick and Koivukoski, “*Preface: Understanding Oligarchy*,” ix; Winters, *Oligarchy*, 3-7 (defining oligarchy partly in terms of “the politics of wealth defense by materially endowed actors”).

³⁷ Will, “Democracy without an Alternative,” 65.

³⁸ Plato’s philosopher kings would not even have the opportunity to touch gold and silver. Plato, *The Republic*, 110.

³⁹ Federalist No. 10 (James Madison).

Stuart Mill issued a counterpoint that same year. “In the American democracy,” wrote Mill in 1835, “the aristocracy of skin, and the aristocracy of sex, retain their privileges.”⁴⁰

Still, Tocqueville’s analysis troubled the upper classes in England, which feared the expansion of suffrage to the working class. Jacksonian democracy was indeed leveling power in the United States, approaching a universal right to white male suffrage around this time. The view from conservative England in 1841 was well expressed by Thomas Macaulay who predicted that working-class male suffrage would produce “the end of property and thus of all civilization.”⁴¹

England denied unpropertied males the vote far longer than the United States, but the Chartist movement mounted tremendous pressure for a social democratic election law in 1838. The People’s Charter demanded:

1. Equal electoral districts
2. Universal male suffrage
3. Annual elections for Parliament
4. Abolition of the property requirement for M.P.s
5. Votes by secret ballot
6. Payment of M.P.s⁴²

These demands distinguished the Chartists from the English Levellers and the French Jacobins. Rather than demanding economic changes outright, the Chartists pursued constitutional change, political power “commensurate to their numbers.”⁴³ They wagered that real democracy would be capable of producing economic policies consistent with the common good and that it could do so cooperatively.

Instead of characterizing the Chartists’ demands as constitutional in the legal sense, Home Secretary Lord John Russell characterized them as “complaints against the constitution of society.”⁴⁴ He thus implied that the unequal distribution of wealth was bound up with an underlying order, which the Chartists foolishly aimed to change.

On July 12, 1839, a petition to adopt the People’s Charter reached the House of Commons. Though it had attracted 1,280,959 signatures, it garnered only 46 votes in the Commons (with 235 votes against) and failed to produce any parliamentary debate over the question of universal suffrage.⁴⁵ Lord Russell explained the fear and power dynamics that produced such a lopsided outcome: a new state of society in which common men had greater wealth and support would “destroy[] the property and the means of the rich...and act still more fatally against the resources and welfare of the people.”⁴⁶

Framing the People’s Charter as an economic reversal, Lord Russell was right to suggest that Chartists were not giving up on radical economic change. Rather, they were expressing their awareness of the fact that widespread economic hardship is a policy

⁴⁰ Quoted by Prochaska, *Eminent Victorians on American Democracy*, 23.

⁴¹ Thomas Macaulay, 1842 speech quoted by Przeworski, “Self-Enforcing Democracy,” 313.

⁴² Beasley, *The Chartist General*, 131.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, 133

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, quoting Russell’s House of Commons speech, August 2, 1839.

decision. The Charter arose from a wise sense of political economy, stated most succinctly by James O'Brien in 1837:

Knaves will tell you, that it is because you have no property that you are unrepresented. I tell you, on the contrary, it is because you are unrepresented that you have no property.⁴⁷

So great was the conservative fear of this reasoning that the House of Commons and the House of Lords did not grant unpropertied males the vote until 1918—purportedly as payment for their sacrifice in World War I.⁴⁸ Surely the War highlighted the injustice of denying suffrage to those who made the greatest sacrifices for the nation; but the end of the War also coincided with economic changes. Industrialization had been cemented, and with it, a hierarchical form of productive relations—not just private ownership of the means of production, but a society of large corporations that had subjected workers to industrial discipline.

By 1918, conservative English lawmakers could look again to the United States for a sense of what to do. And this time, the effects of universal manhood suffrage appeared consistent with maintaining the property and the political power of the rich.

2.3 Progressives and New Dealers

In 1921, U.S. Senator Richard Pettigrew issued a damning report on the state of economic and political inequalities during the industrial era:

Within the past fifty years the wealth of the United States ... has been accumulated in the hands of a few, so that five per cent of the people own three-quarters of the nation's wealth, while two-thirds of the citizens—the workers—are practically without property ... [T]he few men who own nearly all the wealth have gained control of the machinery of public life. They have usurped the functions of government and established a plutocracy.⁴⁹

Pettigrew's book, *Triumphant Plutocracy*, contributed to an emerging consensus in the literature at the time.⁵⁰

Adopting a political economy approach like the Chartists, critics of economic injustice focused on the lack of working class representation in government, which was evident in the conditions that led to such a high concentration of wealth. As U.S. Congressman M.H. Howard put it in his 1895 book, *American Plutocracy*, the “laws are such” that a “vast army of people ... are compelled to labor and toil in poverty in order that the few... may lead lives of idleness and luxury.”⁵¹ Those laws included corporate consolidation (or trusts), inhumane labor conditions with bare minimum pay, child labor, low tax burdens, the lack of economic and social safety nets, provisions in law and law

⁴⁷ Quoted in Royle, *Revolutionary Britannia?*, 93.

⁴⁸ BBC, “How Democratic Britain Became, 1867-1928.”

⁴⁹ Pettigrew, *Triumphant Plutocracy*, 370-71.

⁵⁰ E.g., Farrar, “The Legal Remedy for Plutocracy;” Chase, *Plutocracy*; Beers, *The Dangers of Plutocracy*; Nearing, *The New Slavery*; and Nearing, *The American Empire*.

⁵¹ Howard, *American Plutocracy* 3.

enforcement for controlling unions and breaking up strikes, and a strong police power focused on keeping the poor in check.

Congressman Howard's causal analysis of such laws was identical to Pettigrew's a quarter century later:

[B]oth of the old parties are the friends of plutocracy. The leaders—a great many of them—are under plutocratic influence. Both of the old parties go to the money power for campaign funds, and put themselves under obligation to plutocracy at the very outset.⁵²

This was Howard's explanation of why 250,000 men, just 0.35% of the population, owned “almost or quite eighty percent of our total wealth.”⁵³ Similarly, Matthew Josephson's 1934 analysis of the Gilded Age explained that concentration of wealth in terms of political representation—representation of the wealthy that is. Josephson cited “Masters of Industry” sitting in the Senate and their associates becoming Representatives and governors. He concluded that “every industrial group and every great monopoly was almost directly represented in the political councils of the nation.”⁵⁴

One path to dealing with class government is to target economic inequality. Reducing economic disparities can reduce class government indirectly, by reducing the power imbalance between different social classes and interest groups. Though the economic approach does not get at the root cause of the problem, it can do significant good, especially for the integrity of the economic sphere.

In this vein, trusts and their monopoly power over the U.S. economy came under fire from Congress and Presidents Benjamin Harrison and Woodrow Wilson (in 1890 and 1914, respectively). The Sherman Antitrust Act addressed monopolies and other restraints on trade and competition. The Clayton Antitrust Act added specificity and additional coverage, targeting certain types of holding companies, certain mergers and acquisitions, interlocking directorates, and price discrimination. The Federal Trade Commission Act added a bipartisan federal agency dedicated to protecting consumers and promoting competition. Between Harrison and Wilson, Theodore Roosevelt's presidency deserves attention. Roosevelt prosecuted antitrust violations and broke up trusts, regulated the meat industry, urged inheritance and graduated income taxes, advocated fewer injunctions against labor unions, and empowered the Interstate Commerce Commission to control the railroads.

Beyond these economic measures, Theodore Roosevelt also began to address class government head on. In 1905 he implored Congress to “forbid any officer of a corporation from using the money of the corporation in or about any election [and] also forbid such use of money in connection with any legislation.”⁵⁵ Congress agreed in part, prohibiting contributions from corporations and national banks to federal candidates in the 1907 Tillman

⁵² *Ibid.*, 103.

⁵³ *Ibid.*, 12. Other estimates from the 1890s are not as extreme, but the data suggest that the industrial era was even more unequal than the antebellum era. *E.g.*, Gallman, “Trends in the Size Distribution Trends in the Nineteenth Century,” 15 (noting that the data “do suggest that the share of wealth held by the very rich was substantially higher in 1890 than in the few decades before the Civil War”).

⁵⁴ Josephson, *The Robber Barons*, 347-48.

⁵⁵ Roosevelt, “Fifth Annual Message.”

Act.⁵⁶ In 1910 and 1911, President Taft and Congress added disclosure requirements and spending limits for House and Senate campaigns.⁵⁷ Still, the Tillman Act, the Publicity Act, and their related amendments were hobbled by loopholes. A small class of citizens continued to exercise disproportionate political power on the basis of wealth.

Running as a third party candidate in 1912, Roosevelt took aim at government by and for the wealthy. “Behind the ostensible government sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people,” his platform stated. Roosevelt’s Progressive Party considered “the first task of the statesmanship of the day” to be the destruction of that invisible government, that “unholy alliance between corrupt business and corrupt politics.”⁵⁸ Despite registering the greatest performance ever by a third party candidate in our present-day system, Roosevelt lost. And the Progressive Party, which made campaign finance reform a priority, was reabsorbed into two-party politics.

The Great Depression and Franklin Delano Roosevelt’s presidency catalyzed a stronger regulatory response to the Industrial Plutocracy, which continued beyond the 1920s. Accepting the Democratic Party’s re-nomination in 1936, FDR laid out a breathtaking diagnosis:

The age of machinery, of railroads; of steam and electricity; the telegraph and the radio; mass production, mass distribution—all of these combined to bring forward a new civilization and with it a new problem for those who sought to remain free. For out of this modern civilization economic royalists carved new dynasties. New kingdoms were built upon concentration of control over material things. Through new uses of corporations, banks and securities, new machinery of industry and agriculture, of labor and capital—all undreamed of by the fathers—the whole structure of modern life was impressed into this royal service...It was natural and perhaps human that the privileged princes of these new economic dynasties, thirsting for power, reached out for control over Government itself.⁵⁹

References to royalists, princes, and kingdoms put wealth concentration and government by the few into a broad historical context: that of the monarchy that oppressed the American colonies. FDR described the undemocratic control of government visible in his day as “economic tyranny” and “a new despotism”—despotism and tyranny, precisely the Declaration of Independence’s words for King George III’s subjugation of the colonies. As though any doubt remained as to his meaning, FDR concluded that “the average man once more confronts the problem that faced the Minute Man.”⁶⁰

For an example of FDR’s intent to target economic control of government, we can look to the 1940 Amendments to the Hatch Act, which limited individual contributions and party committee expenditures.⁶¹ But on the whole, FDR’s legislative achievements speak more to the problem of wealth concentration itself, to an economic system which had become a form of domination. In his 1936 acceptance speech, FDR described the giants of industry as

⁵⁶ Corrado et. al., *Campaign Finance Reform*, 36.

⁵⁷ *Ibid.*, 37-41.

⁵⁸ The American Presidency Project, “Progressive Party Platform of 1912.”

⁵⁹ Roosevelt, “Acceptance Speech for the Renomination for the Presidency (June 27, 1936).”

⁶⁰ *Ibid.*

⁶¹ 1940 Amendments to the Hatch Act, 54 Stat. 767 (July 19, 1940).

having “concentrated into their own hands an almost complete control over other people’s property, other people’s money, other people’s labor—other people’s lives.”⁶² He ventured that the “collapse of 1929 [had] showed up the despotism for what it was [...] economic slavery.”⁶³ Under those circumstances, FDR questioned the value of the vote: “the political equality we once had won was meaningless in the face of economic inequality.”⁶⁴

Unemployment had recently stood around 25 percent and over three times that in some cities, banks had failed, mortgages went unpaid, and the federal government had insufficient programs in place to alleviate poverty and regulate the economy. FDR’s combination of reforms and new programs addressed banks, the gold standard, prohibition, securities, housing, trade, farms, public works, social security, labor unions, and economic competition, among other massive issues.⁶⁵ Followed up by gains for education, labor, and infrastructure in the post WWII era and by the host of measures in Lyndon B. Johnson’s Great Society, the New Deal succeeded in reducing economic inequality well below the levels that empowered the industrial plutocracy. Between the 1930s and 1970s, wealth concentration declined and “incomes across the [spectrum] grew at nearly the same pace.”⁶⁶

Still, FDR’s and Johnson’s programs failed to accomplish what Theodore Roosevelt sought to do in 1912 and what Eduard Bernstein had recommended earlier still. They never dissolved the unholy alliance between business and politics—*i.e.*, they never abolished class government. Accordingly, there was little reason to expect that social and economic gains would last; and, indeed, they did not.

3. DEMOCRACY REMAINS UNFINISHED

The post-War years featured rising equality in democracies across Europe as well as the United States. Indeed, social democracy enjoyed a golden age from 1945 to the early 1970s, before succumbing to neoliberalism.⁶⁷ The consolidation of that elite political movement from the 1980s to the 1990s coincided with the globalization of democracy after the fall of the Berlin Wall. That timing made all the difference. Between the mid-1980s and the turn of the century, the proportion of democracies relative to other forms of government soared from one-third to two-thirds.⁶⁸

With widespread ratification of the International Covenant on Civil and Political Rights (ICCPR), liberal democracy acquired a sort of normative hegemony. “Democracy,” Thomas Franck wrote in 1992, “is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes.”⁶⁹ The ICCPR established rights to free expression, peaceful assembly, and free association.⁷⁰ These rights formed part of a broader electoral context created by other rights that states parties undertook to guarantee and protect—including the right “to vote and to be elected at genuine

⁶² Roosevelt, “Acceptance Speech for the Renomination for the Presidency (June 27, 1936).”

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Findley & Rothney, *Twentieth-Century World*, 111.

⁶⁶ *E.g.*, Stone, Trisi, Sherman, & Horton, “A Guide to Statistics on Historical Trends in Income Inequality,” 15.

⁶⁷ Jackson, “Social Democracy,” 352–3.

⁶⁸ Crawford, “Democracy and the Body of International Law,” 95.

⁶⁹ Franck, “The Emerging Right to Democratic Governance,” 46.

⁷⁰ ICCPR, articles 19, 21, and 22.

periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot,” the right “to take part in the conduct of public affairs,” and the right “to have access, on general terms of equality, to public service” in one’s country.⁷¹

The socio-economic rights that would reduce inequalities in wages, bargaining power, education, housing, leisure time, and medical care did not achieve the same degree of implementation or enforcement, however.⁷² Emblematic of social democracy and disruptive to wealth concentration, they were squarely rejected by neoliberalism’s ongoing “economization of political life” for “capital enhancement.”⁷³

Besides their economic and social functions, socio-economic rights would transform politics by strengthening lower and middle class citizens’ capacities for participation. How else could sufficient time, health, and knowledge for empowered citizenship be guaranteed? As democracy reached that crucial two-thirds mark at the turn of the century, it became clear that political inequality hinged at least as much on wealth as it did on those other factors.

3.1 The Globalization of Plutocracy

A 2003 United States Agency for International Development (USAID) global report on democracy concluded that “[p]ayback of campaign debts in the form of political favors breeds a type of corruption that is commonly encountered around the world.”⁷⁴ Noting that disclosure requirements were commonly lacking or unenforced, it characterized 65 percent of the 118 democracies surveyed as having low or virtually no political transparency.⁷⁵ Herbert E. Alexander and Rei Shiratori had foreshadowed this problem, warning that the undue influence of concentrated wealth was not confined to new or developing democracies. “Whatever their stage of democratization,” they noted, most of the world’s major democracies “have witnessed the proliferation of scandals stemming from monetary contributions to gain political favors.”⁷⁶ Read together, these sources suggested that the globalization of election law brought the globalization of grand corruption in tow.

Academic commentary has fleshed out the causes and implications. After defining the human right to democratic governance in terms of popular participation and popular accountability, Bradley Roth asserted: “The universal franchise may allow all sectors of the society to select once every four years from among pre-packaged candidates of parties controlled by social elites, but this scarcely implies the rudiments of accountability, let alone genuine popular empowerment.”⁷⁷ The groundwork for this critique was laid nearly three decades earlier by Maurice Duverger’s observations on “elite parties”: parties focused on “enlisting the support of notable individuals [and] prominent citizens...sought out either because of their prestige...or because of their wealth, which enable[d] them to underwrite the expenditures of election campaigns.”⁷⁸

⁷¹ *Ibid.*, art. 25. On the implications of these rights for political finance and corruption, see Kuhner, “The Democracy to which We Are Entitled.”

⁷² Saul, Kinley, & Mowbray, *The International Covenant on Economic, Social and Cultural Rights*, 1.

⁷³ Brown, *Undoing the Demos*, 17 (“economization”) and 22 (“capital enhancement”); Blyth, *Austerity*; Mendoza, *The Demolition of the Welfare State and the Rise of the Zombie Economy*.

⁷⁴ U.S. Agency for International Development, “Money in Politics Handbook,” 7.

⁷⁵ *Ibid.*, 2-29.

⁷⁶ Alexander & Shiratori, “Introduction,” 3.

⁷⁷ Roth, “Evaluating Democratic Progress,” 502.

⁷⁸ Duverger, *Party Politics and Pressure Groups*, 6-7.

Together with USAID, Jan Black confirmed the prevalence of this kind of party, citing “campaign contributions routinely in the millions of dollars” and corruption becoming “institutionalized” around the globe.⁷⁹ Alexander and Shiratori concurred, noting that “incredibly large monetary contributions...have permeated the world of politics in most continents.”⁸⁰

To standard concerns over unequal political access and influence, Black added a warning about ideological shift, describing the purpose of money in politics in these terms:

[R]edefining electoral democracy, redrawing its parameters in such a way as to...equate free thinking with free markets...to such an extent that no matter how large a majority preferred that a function (e.g., campaign finance) be removed from the private realm or that a service (e.g., running water or health care) be offered in the public realm, such a policy would be seen as antidemocratic.⁸¹

Whether material or ideological in their immediate aims, political investments serve the same basic function in the end: to convert economic power into political power, thereby diminishing the power of civic and democratic inputs into the system which do not happen to be backed by capital.

Amy Chua described these dynamics in terms of “tensions...between markets and majoritarian politics.”⁸² The capitalist property regime (private control of the means of economic production) increases inequalities in wealth, while the democratic political regime (one person, one vote) levels political power. Economic and political power thus travel in opposite directions simultaneously, leading to what Chua termed “the paradox of free market democracy.”⁸³ Avenues for money in politics allow economic power to serve as a check on, or eventually a replacement for, the political power of ordinary citizens. What Roth and Black had observed, then, were mechanisms for resolving the paradox in favor of markets and against democracy.

Susan Marks explained the significance of this outcome. Observing “a great variety of practices and institutions... consistent with liberal democracy,” she noted that “little attention is drawn to the diversity of the values, ideas and principles that might animate those practices and institutions.”⁸⁴ In particular, Marks stressed the difference between the “liberal preoccupation with rights and freedom from government control, and the democratic preoccupation with equal participation in, and accountability of, public power.”⁸⁵ Agreeing that the liberal preoccupation won out over the democratic preoccupation, she lamented the “obvious failures of liberal democracy, its omissions with respect to the historic promise of self-rule on the basis of equality among citizens.”⁸⁶

⁷⁹ Black, “What Kind of Democracy Does the ‘Democratic Entitlement’ Entail?”, 527.

⁸⁰ Alexander & Shiratori, “Introduction,” 4.

⁸¹ Black, “What Kind of Democracy Does the ‘Democratic Entitlement’ Entail?”, 527.

⁸² Chua, “The Paradox of Free Market Democracy,” 339 and 290, n.17.

⁸³ *Ibid.*, 313.

⁸⁴ Marks, “International Law, Democracy and the End of History,” 557–58.

⁸⁵ *Ibid.*, 540–41

⁸⁶ *Ibid.*

Marks ended her turn-of-the-century analysis with a warning about the political economy of election law: “liberal democratic universalism” could end up subjecting democratic values and institutions to “rule by the market.”⁸⁷ To see how that played out, one only had to wait a couple decades.

3.2 Rising Inequalities—a Feedback Loop

A 27-country survey conducted by IPSOS in 2019 speaks to the general public’s experience of democracy. 70% of respondents agree their economies are “rigged to favour the rich and powerful” and 66% agree that “traditional parties and politicians don’t care about them.”⁸⁸ Similarly, a 2018 OECD report on Latin America and the Caribbean describes levels of distrust and dissatisfaction with political parties, courts, and legislatures as high enough to represent a weakening of the social contract.⁸⁹ The World Bank’s 2018 analysis of distributional tensions in Europe and Asia uses the same language: the “core of the social contract” is threatened by today’s highly unequal outcomes.⁹⁰

The 2017 Economist Intelligence Unit connects such deep disenchantment to a “broad-based deterioration in the practice of democracy in recent years.”⁹¹ Not even the best-performing democracies in the world are exempt from today’s democracy recession, which includes: “weaknesses in the functioning of government[,] dwindling appeal of mainstream representative parties, growing influence of unelected, unaccountable institutions and expert bodies, [and a] widening gap between political elites and electorates.”⁹² Declining trust and participation are only natural under such conditions.

Leading international organizations and scholars have found that corruption lies at the heart of this entire ordeal,⁹³ bringing us back to the word “rigged” in the IPSOS poll. On that wide spectrum from (1) abuse of power, embezzlement, extortion, and bribery, to (2) unregulated lobbying, plutocratic political financing, conflicts of interest, and trading in influence, corruption substitutes economic self-interest and financial power for legitimate criteria based on reason, deliberation, efficiency, need, desert, and the public interest.⁹⁴

Understood in this broad sense, corruption is synonymous with class government and rule by the market. It facilitates political victories for individuals, entities, and interest groups with the ability and willingness to pay. Those interests demand candidates, political party platforms, laws, and policies conducive to the private good (usually wealth defense and profit maximization). As they achieve these goals, inequality increases.

The last thirty to forty years suggest that we have entered a new stage in that process. Looking back to Scandinavian countries at the end of social democracy’s golden age (the 1970s to 1980s), Piketty notes that “the richest 10 percent own[ed] around 50 percent of national wealth or even a bit more.” In France, Germany, Britain and Italy as of 2010, Piketty

⁸⁷ *Ibid.*, 563.

⁸⁸ IPSOS Global Advisor, “Populist and Nativist Sentiment in 2019,” 3-11.

⁸⁹ OECD, “Integrity for Good Governance in Latin America and the Caribbean,” 16.

⁹⁰ Bussolo, *Toward a New Social Contract*, 24

⁹¹ Economist Intelligence Unit, “Democracy Index 2017,” 3.

⁹² *Ibid.*

⁹³ *E.g.*, International IDEA, “The Global State of Democracy 2019,” 48-51 (summarizing sources and ideas).

⁹⁴ Adapted from Rose-Ackerman, “Corruption: Greed, Culture, and the State,” 125-126 (outlining a “democratic legitimacy approach” to corruption).

finds a higher percentage—about 60 percent. By the same year in the United States, he finds that the top 10 percent owned 72 percent of national wealth and that the poorest 50 per cent owns just 2 percent of national wealth.⁹⁵

Inequality in capital ownership is generally higher than inequality in income from labor, but, at present-day levels, both types are assuredly political in origin.⁹⁶ The World Inequality Lab’s 2018 report elaborates on that causal relationship:

[I]ncome inequality has increased in nearly all world regions in recent decades, but at different speeds. The fact that inequality levels are so different among countries, even when countries share similar levels of development, highlights the important roles that national policies and institutions play in shaping inequality.⁹⁷

Finding a more significant increase in income inequality in North America, China, India, and Russia than in Europe, the report calls attention to “the end of a post-war egalitarian regime which took different forms in these regions.”⁹⁸

As political regimes and property regimes were restructured to maximize consumption, appropriation, and private profit, the wealthy achieved remarkable gains. The World Inequality Lab reports that between 1980 and 2016, “[t]he global top 1% earners has captured twice as much of that growth as the 50% poorest individuals [and] [t]he global middle class (which contains all of the poorest 90% income groups in the EU and the United States) has been squeezed.”⁹⁹ Second, “very large transfers of public to private wealth occurred in nearly all countries, whether rich or emerging.”¹⁰⁰ Third, public wealth “has declined in nearly all countries since the 1980s,” commonly reaching zero or even negative numbers.¹⁰¹ And fourth, this private enrichment and public impoverishment has left governments with a decreased ability to intervene in the economy, whether for purposes of economic stability, consumer and environmental protections, income redistribution, or the mitigation of inequalities on other fronts.¹⁰²

Despite the decreased ability of national authorities to act in the public interest, government action continues to represent the key lever for disrupting the feedback loop between economic and political inequalities. The World Inequality Report calls on states to tackle inequality through progressive tax policies, corporate governance reforms (including worker representation in corporate governance bodies), improved minimum wage rates, data transparency, a global financial register of financial assets, the elimination of tax havens, and larger public investments in education, health, and environmental protection.¹⁰³ Imagining these sorts of possibilities, the 2019 UN Human Development Report concludes that “[t]here is nothing inevitable in how...inequalities will evolve in the 21st century.”¹⁰⁴

⁹⁵ Piketty, *Capital in the Twenty-First Century*, 257; Saez, “Striking It Richer”.

⁹⁶ Piketty, *Capital in the Twenty-First Century*, 244.

⁹⁷ Alvaredo et. al, “World Inequality Report 2018: Executive Summary,” 5.

⁹⁸ *Ibid.*; Piketty, *Capital in the Twenty-First Century*, Kindle Location 4536-47 (comparing income inequality in egalitarian countries and inegalitarian countries).

⁹⁹ Alvaredo et. al, “World Inequality Report 2018,” 7

¹⁰⁰ *Ibid.*, 10

¹⁰¹ *Ibid.*, 10-12

¹⁰² *Ibid.*, 12

¹⁰³ *Ibid.*, 15-16

¹⁰⁴ UNDP, “Human Development Report 2019,” 245.

And yet, the exacerbation of present-day trends is inevitable, so long as inequalities in income and capital continue translating into political inequality. Democracies around the world would have to be transformed before they could be expected to adopt the progressive measures recommended above.

3.3 The Call to Complete Democracy

In its global analysis of domestic politics, the 2019 UN Human Development Report (“UN Report”) notes that well-funded interest groups “capture the system, moulding it to fit their preferences,” and produce “systematic exclusions or clientelism.”¹⁰⁵ This observation coincides with a key insight in the Electoral Integrity Project’s (EIP) 2019 report: “Elections are necessary for liberal democracies – but they are far from sufficient [for] facilitating genuine accountability and public choice.”¹⁰⁶

EIP’s 2019 and 2016 reports single out the campaign stage of elections—nestled between the pre-election and election day stages—as “the weakest stage of the electoral cycle in many countries.” In particular, its 2016 report claims that “campaign finance failed to meet international standards in two-thirds of all elections.”¹⁰⁷ This coincides with the wealth-based means for political leverage described in the UN Report: “lobbying, campaign financing and owning media and information.”¹⁰⁸

Political inequality on the basis of wealth solves part of the mystery highlighted by Piketty and the World Inequality Lab: Why would there be a general forty-year trend of rising inequality across the world? Because of political conditions favorable to wealth concentration, of course. But why would *democratic* governments produce and maintain such conditions? Because they have failed to ensure broad input in decision-making and to limit the ideological and substantive influence of wealthy citizens, interest groups, and corporations. Under those conditions, governments—even elected ones—will not pursue the public interest.

The UN Report offers a sobering thought in this regard: the concentration of economic power is far easier to curb before “its translation to political dominance.”¹⁰⁹ Indeed, the fifth and final “key message” of that entire 350-page document is that “We can redress inequalities if we act now, before imbalances in economic power are politically entrenched.”¹¹⁰ That would have been the perfect conclusion in the 1970s and 1980s, but the present era requires us to address the political entrenchment of economic power head-on.

That task is extraordinarily urgent in light of another sobering thought, expressed this time by Greta Thunberg at the 2019 UN Climate Summit: “People are dying. Entire ecosystems are collapsing. We are in the beginning of a mass extinction, and all you can talk about is money and fairy tales of eternal economic growth.”¹¹¹ That nearly suicidal prioritization of short-term economic goals is not a function of capitalism per se, but rather a

¹⁰⁵ *Ibid.*, 11.

¹⁰⁶ Pippa Norris & Max Grömping, “Electoral Integrity Worldwide,” 8.

¹⁰⁷ Pippa Norris *et. al.*, “Year in Elections Report.”

¹⁰⁸ UNDP, “Human Development Report 2019,” 63.

¹⁰⁹ *Ibid.*, 63.

¹¹⁰ *Ibid.*, 14.

¹¹¹ Greta Thunberg, “Speech at The U.N. Climate Action Summit.”

function of economic power becoming politically dominant. Here, we must look to the multinationals that stand to lose the most from climate change mitigation. In their relentless pursuit of profits, oil, gas, and coal interests finance political candidates and parties sympathetic to their interests;¹¹² they spend hundreds of millions of dollars on lobbying “to control, delay or block binding climate-motivated policy;”¹¹³ they achieve roughly \$5 trillion in government subsidies per year at tremendous fiscal, environmental, and human costs;¹¹⁴ and, perhaps worst of all, they fund the climate change denial movement.¹¹⁵

The first step in confronting the political dominance of concentrated capital is conceptual. How should we conceive of a system of elections, political parties, and political debate that welcomes such large political expenditures regardless of social and ecological indicators?

Thunberg’s point exposes the prioritization of economic gain ahead of public welfare, the planet, and posterity. In turn, reports on lobbying and political finance, examined above, establish that such ‘policy capture’ is obtained by converting democratic politics into an economic marketplace. Other manifestations of money in politics are less dramatic than unmitigated climate change, but they still involve the self-interested conversion of wealth into political access and influence. That process intentionally diminishes the effectiveness of democratic participation by others, especially others who lack the ability or willingness to pay, and undermines foundational democratic norms and mechanisms—including popular representation, responsiveness, sovereignty, and inclusive deliberation on the merits of policy issues. From the foregoing, we can derive a general description of means and ends: the abuse of power by political officeholders, wealthy citizens, and corporations for private gain at the expense of the public good.

When it comes to expressing this conceptual orientation, Transparency International’s (TI) 2019 Corruption Perceptions Index takes the key step. According to TI’s Chairperson, Delia Ferreira Rubio, “Governments must urgently address the corrupting role of big money in political party financing and the undue influence it exerts on our political systems.”¹¹⁶ Applying that broader definition of corruption, TI insists that “[p]ublic policies and resources should not be determined by economic power.”¹¹⁷ This condemnation of undue influence and state capture builds on statements by the OSCE Office for Democratic Institutions and Human Rights, the European Commission for Democracy through Law,¹¹⁸ and a number of high courts—including the European Court of Human Rights, the Supreme Court of Canada, the Supreme Federal Tribunal of Brazil, and the U.S. Supreme Court (although it later overruled itself).¹¹⁹

In their entirety, these sources expose and condemn government by and for the wealthy. The defeat of socialism and the establishment of private control of the means of

¹¹² E.g., Kirk, “Fossil fuel political giving outdistances renewables 13 to one;” Knaus, “Fossil-fuel industry doubles donations to major parties in four years, report shows.”

¹¹³ McCarthy, “Oil and Gas Giants Spend Millions Lobbying to Block Climate Change Policies.”

¹¹⁴ E.g., David Coady et. al, “Global Fossil Fuel Subsidies Remain Large.”

¹¹⁵ Klein, *This Changes Everything*, 31–63.

¹¹⁶ Transparency International, “Corruption Perceptions Index 2019,” 7.

¹¹⁷ *Ibid.*, 4

¹¹⁸ OSCE/ODIHR and Venice Commission, “Guidelines on Political Party Regulation,” 37, paragraphs 159 and 175.

¹¹⁹ Kuhner, “Plutocracy and Partyocracy,” 126-129; Kuhner, “The Market Metaphor, Radicalized,” 116-131, (describing the U.S. Supreme Court’s move from condemnation to celebration of undue influence).

economic production are bound up with political liberalism. But private control of the means of *political production* (including elections, political financing, and law and policy-making) is plutocracy, not political liberalism.¹²⁰

Following that conceptual re-orientation, the second step in confronting the political dominance of concentrated capital is pragmatic. What legal reforms are necessary to curb widespread and systemic corruption?

TI's 2019 report urges nations to control political financing, manage conflicts of interest, regulate lobbying activities, and tackle preferential treatment.¹²¹ International IDEA's 2019 report is highly complementary,¹²² while older comments and guidelines from the Venice Commission, OECD ODIHR, UN Human Rights Committee, and the UN Commission on Human Rights partially concur and offer support in principle.¹²³ If put into practice effectively, TI considers that such legal and institutional changes would guarantee "the integrity of political systems."¹²⁴ Or, to put it more directly, they would complete democracy.

It took centuries of social movements and constitutional reforms to end political exclusion and domination on the bases of religion, race, sex, and ethnicity. Before that, it took political revolutions to dismantle the legal and institutional structures bound up with monarchy, aristocracy, and theocracy. It will take similarly deep shifts in political awareness and mobilization to end political exclusion and domination on the basis of wealth and to dismantle plutocracy. From this standpoint, the data and reports examined above prove that democracy remains incomplete, not that democracy is a failed system of government.

4. CONCLUSION

At base, the causes of rising economic inequality, rising political inequality, and climate change can be traced back to a flawed ideological paradigm. CB Macpherson put his finger on it in the early 1970s:

We need to give up the myth of maximization [and] inquire soberly whether competitive, maximizing behaviour is any longer rational for us, in any ethical or expedient sense.¹²⁵

Macpherson urged political thinkers to transcend the seventeenth to early twentieth century understanding of man as a "consumer of utilities, infinite desirer and infinite appropriator."¹²⁶ Bound up with the development of capitalist market society prior to the incorporation of democratic principles and institutions, that worldview construed a good society as one that maximized overall utilities.

¹²⁰ Kuhner, "The Abolition of Class Government," 198 (describing the foundational principles of capitalist democracy as private control of the means of economic production and "private control of the means of political production").

¹²¹ Transparency International, "Corruption Perceptions Index 2019," 5.

¹²² International IDEA, "The Global State of Democracy 2019," 48-52.

¹²³ Kuhner, "The Democracy to which We Are Entitled," 56-61 and 66-72.

¹²⁴ Transparency International, "Corruption Perceptions Index 2019," 5.

¹²⁵ Macpherson, *Democratic Theory*, 184.

¹²⁶ *Ibid.*, 24.

Jeremy Bentham, whose work provided a foundation for this worldview, recognized a great range of utilities beyond economic ones; but, he believed non-economic utilities should not be allowed to disturb the incentives for capital accumulation and productivity.¹²⁷ Those incentives depended on security for unequal property and a general lack of social support for laborers, such that the drive for survival amidst precarity would maximize productivity. As the numerous reports discussed in this chapter suggest, this recipe has been applied to both capitalism and democracy. Political parties, elections, speech and association, and law and policy have all been transplanted into a marketplace in which individuals, interest groups, and corporations bring their unequal capital and industry into competition for the maximum realization of their own self-interest.

John Stuart Mill opposed the limited understandings of humankind and society at the heart of Bentham's design. Rejecting "the maximization of indifferent utilities" as the criterion for social good and substituting "the maximum development and use of human capacities," including moral, intellectual, and aesthetic capacities in addition to material ones, Mill's democratic sensibilities created a pathway for liberalism to evolve.¹²⁸ But even back then, during the mid to late nineteenth century, the economic marketplace had become ingrained as the key determinant of individual and social merit. Outlasting their questionable utility for progress and development,¹²⁹ notions of perpetual self-interest and profit-maximization helped produce and protect a system of power relations spanning the economic and political spheres.

That system is the wall that advocates of democratic integrity, ecological sustainability, and economic justice constantly run up against: an *inequality regime*, which Piketty defines as a "set of discourses and institutional arrangements [that] justify and structure the economic, social, and political inequalities of a given society."¹³⁰ Because this regime has become deeply entrenched and is causing such dire effects on social and ecological systems, a deep shift in discourses and institutional arrangements is now required. Many areas of law and society must be transformed—including, political and economic ideologies, education, knowledge sharing, property ownership, taxation, corporate law, the global economy, global political collaboration, and environmental justice. Naturally, the details of such wide-ranging changes have to be worked out over time through political mobilization and experimentation.¹³¹

This chapter has suggested, however, that a few key attributes of this twenty-first century transformation are already clear and that election law will play a key role:

First, this transformation must be accomplished through democratic means. Although the undue influence of concentrated capital has become the norm, critical masses of citizens can still achieve results if they share the same ideology and prioritize the same basic goals. Because the scope of changes outlined above is radical and unsettling to existing distributions of power, it is crucial that they be brought about in a transparent, deliberative, and participatory manner.

¹²⁷ *Ibid.*, 174.

¹²⁸ *Ibid.*

¹²⁹ Piketty, *Capital and Ideology*, 3 ("what made economic development and human progress possible was the struggle for equality and education and not the sanctification of property, stability, or inequality").

¹³⁰ *Ibid.*, 2.

¹³¹ *Ibid.*, 966-990.

Second, in terms of ideology, this process of political renewal will elevate humanistic, democratic, and ecological values above market values; or to put it more accurately, it will reconcile the latter with the former.

Third, although it will be positive and forward looking, this transformation will begin with remedial action to abolish the current plutocratic power structure.¹³² That has to be its first priority. Otherwise, the ideas, organizations, and movements bound up with needed change will achieve only sporadic or short-term gains. They will ultimately be ignored, co-opted, or destroyed by the undue influence of concentrated capital, as has happened already many times throughout history. It is both urgent and wise to finally confront plutocracy head-on. The political entrenchment of private wealth thrives on public ignorance, apathy, denial, and unconscious justification.¹³³ It cannot withstand exposure and critical examination. Moreover, participation in collective action against corruption increases when there are greater potential payoffs and growing signs of public outcry.¹³⁴ For these reasons, uncompromising remedial action addressing the underlying causes of economic and political dysfunction is not only necessary, but also potentially more viable than technical or incremental proposals. It should never be deterred by static feasibility assessments.

Third, the role of election law within that remedial action should be structured around a much broader concept of corruption and a much stronger commitment to the policies, laws, and institutions devoted to its prevention, monitoring, and elimination. When it comes to evaluating legal frameworks along these lines and developing suggestions for reform, scholars and practitioners could begin by asking a series of questions:

- Does the legal architecture guarantee meaningful and accessible avenues for popular participation? Does it ensure political representation and responsiveness to ordinary citizens, not only economic and social elites? Does it enable candidates and parties without wealthy donors or substantial financial means to mount viable campaigns and organizational structures? Does it create opportunities and incentives for genuine deliberation on the merits of policy issues by a wide range of stakeholders?
- Is the legal architecture vulnerable to corruption? That question can be asked first in relation to rudimentary forms of corruption, including bribery, extortion, embezzlement, nepotism, and vote buying. But it must also be asked in relation to more sophisticated phenomena, including money laundering, concealment of beneficial ownership, conflicts of interest, trading in influence, and, more generally, the undue influence of concentrated wealth over ideological, political, and economic production. Vulnerability includes the lack of civil and criminal penalties for offending conduct, and also the absence of robust measures (and institutions) aimed at education and prevention, monitoring, enforcement, and, as is often necessary, international cooperation.
- And if the relevant rules, procedures, and institutions were to fail in any of the respects above, are those failures likely to be discovered, publicized, and remedied?

Thanks to one of history's cruelest ironies, the list of questions does not stop there.

¹³² E.g., Kuhner, "The Abolition of Class Government."

¹³³ Jost, *A Theory of System Justification*.

¹³⁴ E.g., Yap, "When Do Citizens Take Costly Action Against Government Corruption?"

Instead of empowering progressive candidates and parties, rising inequality and insecurity have empowered illiberal populists and authoritarians.¹³⁵ Cultivating nationalistic and xenophobic sentiment, appealing to popular distrust of failing institutions, and highlighting legitimate problems of corruption, precarity, and global trade, candidates and parties on the far right have gained considerable power.¹³⁶ Meanwhile, parties on the left appear to have been coopted by an elite version of cosmopolitanism and to have lost touch with ordinary, working class constituents.¹³⁷ The trouble is, the candidates and parties that have stepped in to fill the void tend to be more corrupt than the elites and the “establishment” about which they complain.¹³⁸ They are prone to destroying liberal democracy’s achievements while failing to remedy its flaws.

Illiberal populists and authoritarians commonly align themselves with Russia, fossil fuels companies, conspiracy theorists, and the International Alternative Right.¹³⁹ Beyond triggering old questions about free and fair elections at regular intervals (including term limits), human rights, separation of powers (especially judicial independence), and freedom of the press, their tactics and unholy alliances raise another series of questions:

- Is the legal architecture well protected against hackers and foreign influence campaigns? Is it equipped to prevent, minimize, and respond to personal data theft, fake news, deep fakes, false and misleading campaign speech, conspiracy theories and disinformation campaigns, hate speech, voter intimidation, and incitements to violence?

Security, civility, reason, truthfulness and good faith, and peaceful coexistence have been undermined in India, Brazil, and the United States, and similar trends are visible in smaller democracies across the continents. Even nations with considerable commitments to enlightenment values, such as France, and with considerable constitutional protections against authoritarianism, such as Germany, are facing serious threats from populists on the far right.

So long as democracies fail to rule out the political entrenchment of concentrated wealth, they will continue to disintegrate under the weight of commercial and authoritarian pressures from above and popular dissatisfaction from below. Unless democracy is completed through comprehensive reforms to prevent political exclusion and domination on the basis of socio-economic status, it is unlikely to survive the current century. Since the political entrenchment of concentrated capital has also led to a rigged economic system, the future of capitalism also depends on the abolition of private control over the means of political production. And because today’s corrupt versions of democracy and capitalism systematically undervalue public goods, other species, posterity, and the planet, the stakes are even larger still. The fate of political, economic, and ecological systems all depend on a new political architecture, one capable of guaranteeing democratic legitimacy and integrity.

¹³⁵ Norris and Inglehart, *Cultural Backlash*, 454-455.

¹³⁶ Piketty, *Capital and Ideology*, 1033-1034.

¹³⁷ Strijbis, Teney, & Helbling, “Why Are Elites More Cosmopolitan than Masses?”, 37-64.

¹³⁸ Heinrich, “Corruption and Inequality.”

¹³⁹ Hermansson et. al, *The International Alt-Right*, 1-8.

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