

DEMOCRATIC SOCIALISM AND THE
LAW

Ewan McGaughey

WP 550
June 2026

DEMOCRATIC SOCIALISM AND THE LAW

Centre for Business Research, University of Cambridge
Working Paper No 550

Ewan McGaughey

Professor of Law, King's College, London
Visiting Professor, Grantham Research Institute, London School of Economics
Research Associate, Centre for Business Research, University of Cambridge

Email: ewan.mcgaughey@kcl.ac.uk

June 2026

Abstract

Are democracy and socialism compatible? Does democratic socialism work? And what is its relation to the law? This paper shows that democratic socialism, by whatever name, is the dominant political model in wealthy democracies, popular among voters, and the chief driver of human progress. It explains how democratic socialism was built through the understanding of capitalism's failures, especially the shape-shifting legal forms of 'private' property in the means of production, 'freedom' of contract, and 'competitive' corporations. It identifies the three core features of 21st century democratic socialism: more public and common ownership, economic democracy on a floor of social rights, and fair taxes. These policies have been spreading, are the prevailing practice in most wealthy countries, and are highly popular among voters. It is a myth that the rules of capitalism lead to more innovation, productivity, less waste, or are good for democracy. The evidence suggests the reverse is true. Democratic socialism is humanity's greatest hope.

Keywords: Democracy, Socialism, Law, labour, public ownership, economic democracy, fair taxes, innovation, productivity

JEL Codes: K31, K10, K11, K20, K22

Acknowledgements:

This was given as an inaugural lecture in October 2025, and as well as all participants, I am especially grateful to Liv Jores, David Webber, Mauro Pucheta, Keith Ewing, Simon Deakin, Bren Albiston, and Thomas Piketty for comments.

Further information about the Centre for Business Research can be found at: <https://www.jbs.cam.ac.uk/centres/business-research-cbr>

1. Introduction

Fulfilling everyone's God-given potential is the true goal of government, something we can achieve in our lifetimes if we choose, and if we stop believing evidence-free theories of humanity. A 'society which is socialist cannot also be democratic, in the sense of guaranteeing individual freedom',¹ wrote Milton Friedman in 1962, soon to be president of the American Economic Association. There was 'no example', he went on, 'of a society that had been marked by a large measure of political freedom, and that has not also used something comparable to a free market to organize the bulk of economic activity'. Even if this were true in 1962, in most wealthy democracies today public sectors 'organise', produce or spend around half or more of their gross domestic product.² In most wealthy democracies, over half the population either works in the public sector, has a publicly funded retirement or income, or is in public education.³ And aside from this, the 'bulk of economic activity' is not organised by anything 'comparable' to Friedman's 'free market', because most markets are built with social rights and security: for employees, consumers, tenants and investors. 'Political freedom' in wealthy democracies is greater today than when Friedman wrote, a time before the US Voting Rights Act of 1965 or the Civil Rights Act of 1964, before much of the world won liberty from colonialism, and before the Iron Curtain was lifted from Europe. Hand in hand with political freedom, democratic socialism has advanced so successfully that liberals, conservatives, nearly everyone, accepts its tenets without realising - except on the far-right. 'We are all socialists now', said Sir William Harcourt, an international lawyer and UK Chancellor in 1880.⁴ And though today's socialism is still incomplete, Harcourt's aphorism is truer than ever in our democracies.

This paper's main argument is not only that democracy and socialism are compatible, but that these are the world's prime engines of human progress, and the ignition of change is the law. Democratic socialism is a political vision of human freedom, and it refuses to put economic and social freedom in second place. It achieves reform through law, to retune the distortions in inherited legal forms, especially property, contracts, and corporations. Its claim to success is that people live better, and are wealthier, more innovative, more equal, and more free, when they have more public services and common ownership, economic democracy on a floor of social rights, and taxes that are fair. These are the essential features of democratic socialism, and the institutions that will be perfected in the 21st century, if we want to live fulfilling lives, and if we want to make this Earth the paradise that it can be.

Part 2 sets out the goals of democratic socialism, starting with a vision of social justice where everyone can fulfil their potential, and where our duty as a society is to help. The movement usually began with criticism of the shape-shifting notion of 'capitalism'. This meant many things to many people, but at its core are still 19th century illusions of 'private property in the means of production', 'freedom of contract', and 'free competition'.⁵ The problem was, these phrases concealed reality.

Nearly all production is cooperative, not private, yet power and profit are not shared justly. Contracts are usually a product of need, not freedom, and the power to bargain is unequal between workers and employers, tenants and landlords, consumers and business, savers and financiers. Competition is managed, not free, and it is too often managed by massive corporations, many with monopoly power. Yet these basic institutions of property, contract, and corporations have been transformed from their 19th century archetypes, through crisis, revolution, and the slow, deliberative remaking of law. Democracy and socialism meant the infusion of fairness, voice and reason into the economy, to replace relations of power, subordination and greed. It did not matter whether political parties called themselves Social Democratic, Labour, Democratic, Liberal, Green, Progressive, or Conservative if they had the same goals of justice and human freedom.

Part 3 sets out three core features of 21st century democratic socialism. First, responding to the many failures of ‘private’ property in the means of production, democratic socialists build public services to replace the price system. This is especially so when private property has arbitrary results, warped by power and poverty, and it commodifies social life or it threatens our natural environment. Second, in response to the notion of ‘freedom of contract’, democratic socialists advance more voice for workers, savers and service-users, over corporate boardrooms that self-appoint, or are controlled by a financial elite of banks or asset managers. This democracy builds the structure of economic justice on a floor of social rights and security, that nobody should fall through. Third, against the concentration of wealth driven largely through corporate power, they pursue fair taxes, and do not redistribute wealth to the rich. Common ownership and a sound economic structure should ‘pre-distribute’ wealth fairly. But after decades where markets, corporations and taxes have escalated inequality, government must correct the balance through positive action. Beyond these three policy fields, democratic socialism’s approach to public, criminal, international and trade or immigration law is similar to universal human rights norms. But unlike liberalism, it focuses on socio-economic reasons why political or civil rights are still unfulfilled.

Part 4 tackles four myths of ‘capitalism’. It is often pretended that capitalism is innovative, productive, stops waste, or is synonymous with democracy. Reality differs. First, and far from Joseph Schumpeter’s theory of ‘creative destruction’,⁶ societies with fair taxes and universal social security have more innovation, because patient public capital and security give people the space to experiment. A Silicon Valley, for example, was only possible with government funding of GPS, touch screens, the internet,⁷ and Californian universities. Second, and far from Friedrich von Hayek’s assertion that a market is a ‘spontaneous order’ leading to ‘greater productivity’,⁸ societies with more democracy at work and in the economy are more productive, because fairly treated people are motivated to contribute more.⁹ Third, Richard Posner lionised free markets, said markets make justice, and that ‘justice... is - efficiency’ because ‘waste should be

regarded as immoral'.¹⁰ But the waste of humanity in unemployment, and of nature through pollution, are inherent to the monopoly capitalism that Posner adores,¹¹ where private companies profit without bearing the social costs. Fourth, the claim of Milton Friedman that capitalism is democracy is mistaken. The industrialists in the 'Circle of Economic Friends' bankrolled Hitler's 1933 power-grab with millions of Deutschmarks. The Pinochet government tortured and disappeared its rivals, at the very time Friedman supported it. Unlimited spending in US politics, propelled as corporate lawyers took control of the Supreme Court after 1976,¹² led America to the fascist-lite abyss that we stare into now.¹³ 'Democracy is protected by extending its boundaries',¹⁴ and is safe in politics only when there is democracy in the economy. That is the beating heart of socialism. Part 5 concludes.

2. Democratic socialism's nature and goals

Before we examine the core features of 21st century democratic socialism in detail, it makes sense to understand its nature and goals. Democracy and socialism are political movements. They move with, and create, history. They change the law, to fix social failures that people see. First, many of those failures have been grouped into the name 'capitalism', and so it is important to understand the basic critiques of capitalism, which launched democratic socialist theory. Second (among those who got past critique) democratic socialists offer a vision of justice as fulfilling human potential, with multiple human rights, but especially social and economic rights. Third, the important facts of democratic socialism are what is done politically, not definitional debates. It did not matter what political parties called themselves if they served the same goals of justice and human freedom.

(1) Theory of capitalism's failures

Democratic socialism is rooted in a positive theory of social justice, and yet it emerged from critique of the economic system's ills, which many called 'capitalism'. Nearly all of it is built through law.¹⁵ 'Capital', according to Adam Smith, is property used to make revenue,¹⁶ or property for production.¹⁷ However, the term 'capitalist' meant someone who owned capital privately. 'Capitalism' became the term - quite distinct from capital itself - for a system where most enterprise was private, not publicly or socially owned, there is 'freedom of contract' and competition.¹⁸ But reality and ideology were very different.

(a) Property

Private property in the means of production is often seen as central to capitalism, like a crooked backbone of an unnatural creature. In its 19th century vision, ‘property’ was argued by German jurist Carl von Savigny to be a relation between persons and things,¹⁹ an attempt to formalise the Roman law view of ‘private law’ as composed of persons, property, and obligations.²⁰ While property rights were supposed to equally bind the whole world, obligations like contracts were rights between persons, and voluntarily assumed. The closed list of property, the *numerus clausus*, was entirely invented by law, a category most people could not change.²¹

But within itself, ‘property’ is not all it pretends. Far from being an abstract right against a thing, property creates duties between people, just like any contract, tort, unjust enrichment or legal person.²² The law enforcing people’s claims to say ‘this is mine’ was a basic source of inequality.²³ It creates those who ‘have’ and those who ‘have not’, wealth and poverty. For those who win the ‘lottery of life’,²⁴ born into a wealthy country, a wealthy family, or both, private property can maintain their wealth, often without any need to work. Those born with little have only their labour to sell, and usually must work for others to exist. This creates hierarchy, subordination, and class. As Mary Wollstonecraft put in 1792:²⁵

‘From the respect paid to property flow, as from a poisoned fountain, most of the evils and vices which render this world such a dreary scene to the contemplative mind.... One class presses on another, for all are aiming to procure respect on account of their property; and property once gained will procure the respect due only to talents and virtue... There must be more equality established in this society, or morality will never gain ground...’

The central deceit that democratic socialists identified is that the same word ‘property’ might be used for personal possessions, or for production, which are mutually opposing things.²⁶ Food, clothing or shelter are basic human rights that everyone needs to live.²⁷ The industrial revolution and the formation of unions, plus the green revolution and modern state administration, moved humanity from a subsistence world of scarce resources to an abundant world, bounded only by nature itself.²⁸ Property for ‘consumption’ became plentiful.²⁹ Nobody needed to live in poverty any more, and indeed no democracy has ever had a famine.³⁰ Yet a distribution of resources to give everyone enough does not come from property - far from it. For then there is property in productive assets, like workshops, mines, factories, or infrastructure. These create more things, and they entail cooperative work, or buying and selling goods. Moreover ‘trade is social act’,³¹ not a private one. Thus ‘private’ property in the means of production was really social production, with social trade, yet with privatised profit. It meant that some held power, and they took from those they relied on, who did not.³²

'Property' has of course been completely transformed from the 19th century. Property over a human being is no longer possible.³³ Slavery was the notion of a 'person' becoming de-personified, so that the slave may not own 'property', and may only make 'personal' obligations at their master's behest.³⁴ However a contract does enable people to rent out their labour, even if they do not sell themselves. Property is also no longer the passport to politics, so that people's votes for a Parliament, Congress, President or legislature are not bound to how much property they have.³⁵ However votes in corporations, and so in the economy, are often still tied to property, in shares.³⁶ Thus contracts, and corporations, work as the chief 'auxiliaries' to private, productive property in the 'capitalist' parts of the economy.³⁷

(b) Contracts

If property is the backbone, 'contract is the lifeblood of capitalism',³⁸ and its infection begins with the contract of employment. Trade in goods (like pens or chairs) always involved contracts.³⁹ With any contract that lasts over time, a duty in future meant the creation of credit and debt.⁴⁰ And wherever property exists, and is unequally distributed, some will have more bargaining power. This is true for all contracts, but it matters especially when people must make an employment contract, without which they would have no income to live. Employers, who have stocks to fall back on, can 'hold out' longer in any negotiation than workers, who need food or shelter.⁴¹ This inequality grows if employers are corporations, and workers bargain as individuals.⁴² Inequality grows more still if employers hold information, data, or Artificial Intelligence systems, not to mention "armies of lawyers" contriving documents in their clients' interests which simply misrepresent the true rights and obligations on both sides',⁴³ which enable employers to bargain with power beyond any worker's means.⁴⁴

This inequality of bargaining power - from unequal distribution of property, organisation, and information - produces two standard norms, or 'implied terms' in an employment contract. First, the benefits that labour creates become an employer's property, not a worker's.⁴⁵ Every twist of a spanner, every stroke of a key, belongs to the employer. A worker might try to bargain for a vote at work, or a share of the profits (to be like a partner, not just a worker) but will usually be told 'no'. What is true for workers also goes for many consumers, whose data big tech companies rely upon. People who use Gmail or WhatsApp have their data taken for Google and Meta's targeted ads. People who post on Facebook, Insta, X, or YouTube, create data that fuels ads for them, and algorithms to keep others hooked on the platform. Everything anyone has written, designed or filmed, and put online, goes into OpenAI's data vaults, to train their large language models and sell premium ChatGPT, or whatever comes next. The contract rules that appropriate workers' labour are also the lifeblood of this 'surveillance capitalism'.⁴⁶

The second norm of employment is that the employer will have a right to direct the worker.⁴⁷ With this power the employer may change the work, or make work harder, within the contract's terms. It means employers can unilaterally alter the deal, the 'consideration' in the contract, but the worker usually cannot. These rights to appropriate and direct the worker mean employers as a group take most gains of production. In the 'higgling of the market',⁴⁸ unless workers have ways to constantly renegotiate, they lose the gains of growth.⁴⁹ So added together, and far from receiving the 'marginal value' of their product,⁵⁰ far from wages being set by supply and demand,⁵¹ the worker is separated from ownership of their labour, and separated from control, even over the benefits of science that they have invented.⁵² The bosses take it all, give back as little as they can, and call the difference 'profit'. Without positive rights, workers are alienated from the things they produced, and exploited because they get a pittance back.

Worse, many workers will be unemployed, especially if contracts are the 'gateway' to work,⁵³ and productive property is privately owned. This 'reserve army of the unemployed' benefits employers.⁵⁴ It increases competition among workers, many desperate to find jobs, and it leads to lower, stagnant or negative wage growth.⁵⁵ More could be produced if all of society's talents were used. Yet employers find the disciplining effect of unemployment useful.⁵⁶ Employers may dismiss workers, and by calibrating dismissals to changes in business,⁵⁷ employers externalise the risks of business onto workers, while they pocket the gains. A worker may also terminate a contract and quit. But the worker's cost in not transacting (the 'non-transaction cost'⁵⁸) is far higher than it is for the employer, and costs rise with the jobless rate. This exacerbates workers' unequal bargaining power. The same is just as true for consumers who need basic goods and services from a business, a tenant who needs shelter owned by a landlord, or a small investor who needs to save money with a financial institution. As Friedrich Kessler wrote:⁵⁹

'law, by protecting the unequal distribution of property, does nothing to prevent freedom of contract from becoming a one-sided privilege [enabling] enterprisers to legislate by contract... in a substantially authoritarian manner without using the appearance of authoritarian forms.'

Thus, so called 'freedom' of contract becomes a 'fearsome weapon in the fist of the strong, a blunted tool in the clutch of the weak'.⁶⁰ Even with rights to notice before a fair dismissal, redundancy pay, and jobseeker benefits,⁶¹ the gains in worker productivity go wholly, or mainly, to employers. Capital's share of income increases, and labour's share decreases. Poverty is entrenched. Economic growth becomes a figment of statistics, not a reality for most people.

Of course, workers might organise unions, to bargain collectively and take action for a fair day's wage and a fair day's work. This became a fundamental right in international law.⁶² But even if the law does not expressly restrict unions, suppress unions' ability to bargain and organise, or limit workers taking action in solidarity with each other,⁶³ workers' costs of collective action will usually be higher than they are for a corporate employer. Without positive state support for sector collective bargaining, or democracy at work and in capital, and a public guarantee of full employment and jobs, the 'main object of labour law... will always be a countervailing force to counteract the inequality of bargaining power which is inherent' in the law.⁶⁴ It fights a losing battle.

Employers have financial incentives to raise the costs of workers taking collective action. Like J.D. Rockefeller, they may find their 'best investment' is to fund theories to build pro-boss narratives.⁶⁵ These include the notions that unions impoverish workers, that rights kill jobs, that taxes decrease revenue, that a public sector harms the public, or that equal rights breed separation, whatever the evidence says.⁶⁶ They have an incentive to divide people, and instil mistrust: between black and white workers, men and women, straight and gay, parents and childless, citizens and migrants, or any possible axis. Democratic socialists recognised the essential commonality of humankind, and need for solidarity, regardless of identity, based on the content of our character.⁶⁷ But even if, against employers' desires, discrimination is outlawed at work,⁶⁸ prejudice is fostered in the media and politics, to shatter solidarity's ethos wherever it can, to divide and rule.

Many workers, of course, save for retirement, in a pension, a superannuation fund, or a "401(k)".⁶⁹ When they do, they transform their personal property to productive use. Often they invest in companies. The sheer volume of workers' savings in the stock market, if organised, could ensure that labour could control the economy, democratically.⁷⁰ However inequality in wages is usually magnified in the inequality of share ownership.⁷¹ Moreover, small investors in companies rarely have rights, let alone bargaining power, to influence how their money is used. Even if workers buy shares directly through 'High Street' banks, 'Main Street' brokers, or fintech apps, the standard contract terms usually say that firms will vote any shares on the customer's behalf.⁷² Most workers invest savings into collective funds, and pension or other trustees may be accountable to the workers.⁷³ Yet trustees' standard practice is to delegate investment functions to asset managers and banks, encouraged by the law which limits their responsibility when they do.⁷⁴ Asset managers routinely also take over shareholder voting rights. They take percentage fees on assets under management, so they are focused on short-term profits and price rises. Their voting policies invariably support managers that cut wages, cut or close pensions, oppose unions, and raise executive pay and bonuses.⁷⁵ In nearly any company, a tiny number of asset managers or banks can together control who directors are, what gets reinvested, and what revenue shareholders take.⁷⁶ The small investor is just as much separated from control over their money as the worker is from the product of their labour.⁷⁷ In this

way, even if workers are told they might be small capitalists too, their own money is used against them, incorporating their own exploitation.

(c) Corporations and competition

If private property and contract are the bones and infected blood, then the corporation is the slyly smiling face and artificial body of 21st century capitalism. In 1856, when Parliament first let corporations be freely registered, with limited liability for shareholders and directors, it was said they embodied ‘human liberty’,⁷⁸ part of a supposed system of free competition. The trouble, as Adam Smith knew, is that enterprise based on competitive partnerships is a world away from joint-stock corporations. Smith believed that with a market economy run via partnerships like the ‘butcher, the baker and the brewer’,⁷⁹ an ‘invisible hand’ might lead to a ‘distribution’ as if ‘the earth had been divided into equal portions among all its inhabitants’.⁸⁰ In stark contrast, Smith pointed out that corporate directors were prone to ‘negligence and profusion’, because they were always in charge of ‘other people’s money’.⁸¹ They profit from their office, not by doing useful work.⁸² Ever greater combinations of capital are the opposite of free competition, like a legal cartel.⁸³ The ‘separation of ownership and control’ that began with workers in the industrial revolution spread to investors in shares in the corporate revolution,⁸⁴ making corporations hardwired to favour private greed over the social good, if directors or shareholders monopolise their governance.

The greatest risk is that directors are unaccountable to anyone, enriching themselves by their office, not through useful work. In law, directors are delegated agents of a company, with legal powers to control and represent it.⁸⁵ This gives boardrooms great discretion. Under most laws they are entitled to pay themselves.⁸⁶ When this became the rule, without pay fixed by the constitution or by a vote of a company’s general meeting, executive pay skyrocketed.⁸⁷ Directors usually appoint each other, under the veneer of ‘independent’ nomination committees, which come from the same board. Directors are often a majority, or at least partly made up of so called ‘independent’ directors, but these ‘independents’ are chosen by the board. Thus, they are the group of people most *dependent* on the board for their jobs, ‘a self-perpetuating oligarchy’ that is ‘virtually unaccountable’.⁸⁸ Worse, whenever companies can issue non-voting or multiple voting shares, directors may usurp all control, issuing most votes to themselves. Accumulating other people’s money, they pursue whatever vain or insane projects they please - witnessed to the extreme in 1920s America, in Weimar Germany,⁸⁹ or from the ‘metaverse’, to space, to AI today.

Even where directors are accountable, the second greatest risk is they maximise profits for shareholders or bondholders, who feel ‘devoid of any responsibility’ for how that money is made.⁹⁰ The registered shareholders, far from the real investors, are usually asset managers and banks. They control votes, and have long done,⁹¹ because capital

has more bargaining power than labour, and asset managers and banks have more bargaining power than even major pension, insurance or mutual funds. The ultimate investor has none. By controlling shareholder votes, asset managers and banks can remove directors.⁹² They demand perpetual quarterly profits and stock price rises, driven by percentage fees they charge on assets under management. Because they nearly always get what they want, they nearly always support management.⁹³ This creates a focus on short-term gains, not sustainable enterprise.

The paradox is that the workers and real investors, who are often the same - those whose contributions actually make the corporation - do care about long-term goals like secure work, a decent retirement, and a living planet, yet they lack real influence. Most OECD countries do now require that workers elect directors on the board of large companies, but this is usually just a third of seats.⁹⁴ Several countries ensure that pension and capital funds are accountable through the vote to the ultimate investors, including workers saving for retirement.⁹⁵ But few laws make asset managers and banks follow these representatives' vote policies, whether on environmental, social or governance issues.⁹⁶ What is striking is less the 'varieties' of capitalism, but today's central commonality: that unaccountable asset managers and banks monopolise corporate governance nearly everywhere, taking other people's money.⁹⁷

Beyond the lack of internal accountability, today's corporations, far from being part of Friedman's 'competitive capitalism',⁹⁸ also often operate with impunity to the external world. By the 20th century, most countries had adopted the principle that 'property carries responsibility'.⁹⁹ However corporations may also carry the right of limited liability for their shareholders and directors - the very opposite. Legislatures may have intended limited liability to be a default rule, to stop trade creditors suing investors for more than they put in, and to save entrepreneurs from debt prison, or bankruptcy and pauperism.¹⁰⁰ Warned by an 'Ltd' suffix on the name of each company,¹⁰¹ trade creditors could (theoretically) adjust to limited liability by negotiating security for debts. But in many countries these rules were warped to mean that even tort victims - workers with crippling diseases,¹⁰² or pedestrians run down by cars¹⁰³ - could bring no legal action for compensation. In the worst cases of harm, facing armies of corporate lawyers, courts have failed so far to create any responsibility at all. Gas, oil and coal corporations that have driven mass climate damage have never yet been made to pay for the harm from global warming.¹⁰⁴ Even if a company is sued and goes insolvent, tort creditors would rank behind banks as 'unsecured' and be likely to recover nothing. The law has only rarely allowed tort victims to sue shareholders that profit from their wrongs.¹⁰⁵ Inevitably others are left to pick up the costs - the victims themselves, or governments that insure medical care or must rectify environmental damage.

Corporate and personal insolvency is the last vestige of property's privilege over (and supposed distinction from) contracts and obligations, though close to being finished by law reform. The claims of people who contract for a property right (a charge or a

mortgage) over a company's assets will rank more highly than those owed obligations (a worker owed wages or an accident victim owed compensation) with few exceptions.¹⁰⁶ Secured creditors are mainly banks, because few others have the bargaining power to negotiate security for debts. But while banks protect themselves, they offer no such security for their own customers' deposits. When you put your money in a bank, you get a contract debt, not property in your savings.¹⁰⁷ If the bank goes insolvent, depositors rank behind those with security - mostly other banks. Governments pick up the cost, insuring people's deposits,¹⁰⁸ and tacitly guaranteeing banks' solvency,¹⁰⁹ lest a wider crisis unfolds.

The risk of crises grows as capital concentrates, yet capital owners have good incentives to combine, compound systemic risk, and not compete in a plural economy. Winning an economic competition means harming competitors, and this is 'pure economic loss' that does not have to be compensated as other economic torts would.¹¹⁰ As losing competitors lose market share, some or all will go insolvent.¹¹¹ Unless their businesses can be rescued, investors lose their money, workers lose their jobs, and creditors lose their cash - except for secured banks. Even though many laws were repurposed to focus on restructuring or a rescue culture,¹¹² the waste of insolvency is the stone cold heart of 'competitive capitalism'. To avoid insolvency, corporations will simply aim to avoid competition, perhaps by making their products distinct, but also by merging with or taking over competitors. This is good for directors who want to build an empire. It is also good for institutional shareholders who invest across the whole stock market, and can profit more if markets are reduced from hundreds, to dozens, or to several companies.¹¹³ Antitrust laws that focus on banning cartels encourage mergers.¹¹⁴ And even if there are controls on mergers and monopoly power,¹¹⁵ their enforcement is often weak, not least because monopolies will aim to capture regulators, regulatory theory, and the courts.¹¹⁶ The result is that huge corporations redistribute ever more wealth from consumers to themselves.

Despite the tides of bankruptcy, people routinely speculate that businesses will do better than they do. This 'irrational exuberance' is fuelled whenever law lets corporate insiders conceal information.¹¹⁷ Speculation on the South Sea Company's slave trade in 1719 led to the world's first stock market crash, at a time where even the Lord Chancellor took bribes, and took money to speculate on a (barely operating) business.¹¹⁸ Speculation on the prospects of all kinds of companies led to the Wall Street crash in 1929, when millions of working Americans were given no proper information on what they were buying. Speculation on the value of derivatives, from Americans struggling to meet their mortgages, led to the Global Financial Crisis of 2007-2008, when controls on homebuyers being sold rip-off deals with variable and extortionate interest were scrapped. Shocks like these reveal something close to a 'whole system of swindling and cheating' and 'private production without the control of private property'.¹¹⁹ Although many profit privately, and handsomely, the costs are borne socially, in government bailouts, shutdown of economic activity, and

unemployment that persists till the state replaces private with public investment.¹²⁰ The greater the concentration of wealth, and inequality, the greater the risk, and depth of depression, all fostered by the corporation.¹²¹ ‘Such is the Frankenstein monster’, wrote Justice Louis Brandeis, which governments ‘have created by their corporation laws’.¹²²

To follow Justice Brandeis’ analogy, like Dr Frankenstein’s creature,¹²³ corporations wired to make boardroom, bank, and asset manager profit will not be content with that. They go on a spree of destruction. They pollute without paying. They slash wages and pensions. They hike CEO pay, like ‘inequality machines’.¹²⁴ They eliminate competition, to raise consumer prices ever more. Of course, legislatures can take companies into public ownership. They can buy the shares of companies at a fair value,¹²⁵ especially those with natural or network monopolies. They can re-orient the goals to the public interest, not private profit, or set fair prices and standards.

But privatised, shareholder monopolised corporations may do everything to halt public standards. Even if politics is democratic, when the economy is not, there is a perennial risk. To reverse public regulation, corporate insiders may seek to remake politics to match the hierarchy they know. In tentative first stages, corporate interests proclaim that the business executive is the ‘forgotten man’, and that they should press the case for the ‘free enterprise system’ in education, the media, and the courts,¹²⁶ to be unbridled from rules. University and think tank research is bankrolled, but selectively. Newspapers, TV, radio, and social media platforms are bought and their editorial lines or algorithms are re-purposed to fit the political preferences of the owners. If appointments are political, hand-picked judges refashion new laws to fit the corporate ideology. In the final analysis, if election spending is unlimited, like in the Weimar Republic,¹²⁷ or in the US since 1976,¹²⁸ or in India today, it is thought that ‘[p]rivate ownership of the means of production [can] be secure only when democracy [is] destroyed’.¹²⁹

Finally, despite the fiction of real competition, despite the monopolies, game rigging, or the booms and busts, the ideology of competition still reigns supreme. The people in the know say, ‘Competition is for losers’, and apply that maxim for the corporations they run.¹³⁰ And yet competition pervades every aspect of life for real people, from getting an education, to finding a job, to making a home. This acquisitive, rivalrous ethos leads to ‘the trampling, crushing, elbowing, and treading on each other’s heels, which form the existing type of social life’.¹³¹ It leads to a ‘crippling of the social consciousness of individuals’ and is, wrote Albert Einstein, ‘the worst evil of capitalism.’¹³²

(2) Goals and social justice

If these are the standard theories of capitalism's failures, democratic socialism also has a positive goal. Against the 'crushing' and 'crippling' of individuals, that goal is human liberation. Albert Einstein's favourite philosopher was a Dutch glass lens maker called Baruch Spinoza. Spinoza wrote that while most people pursued money, fame, and sensual pleasure, none of these things were inherently good or bad. They were all relative - some can be good, but too much can make you unhappy. Spinoza reasoned that if there were any true good in life it must not be relative, but objective. He concluded that trying to be a better person, develop a better content of one's 'character', and to 'lend a helping hand', was the one 'true good'.¹³³ It was not a relative good, but absolute.

This idea, so simple and powerful, came to the heart of progressive philosophy. The grand leading principle, the duty of all governments, wrote Wilhelm von Humboldt, is 'human development in its richest diversity.'¹³⁴ Sidney and Beatrice Webb in *Industrial Democracy* concluded the same: the goal of society was 'the utmost possible development of faculty in the individual human being'.¹³⁵ This is what was written into international law. Instead of accepting that 'labour is a commodity', or that humans are resources,¹³⁶ the keystone principle of the International Labour Organisation is that 'peace can be established only if it is based upon social justice.'¹³⁷ The 'real meaning of social justice' is that 'the economic system shall give direct available opportunity... to all individuals. Averages and statistical aggregates are no longer enough'.¹³⁸ And enshrined in the Universal Declaration of Human Rights is this very idea, that it is society's duty to help everyone develop their potential: 'Everyone has duties to the community in which alone the free and full development of his personality is possible.'¹³⁹

So social justice is a creative justice. It does not just correct wrongs, or distribute fairly what is already there - though it certainly does those things.¹⁴⁰ It also develops human potential.¹⁴¹ That is what we owe to each other in a good society, our duty and our due. It is the central goal of democratic socialists, from the Webbs, to the pioneers of the International Labour Organisation, to Einstein, to today.

Because social justice is the central goal of a social law, Friedrich von Hayek felt the need to denounce it as a 'mirage'. If economic outcomes appear unjust to you, you are making a 'category error', because (ostensibly) nobody directs markets. Markets are a 'spontaneous order', where nobody was responsible, so outcomes could not be unjust.¹⁴² All that matters, argued Hayek, is that the rules of the game are just: freedom of contract, and free competition. But Hayek is wrong because markets are not 'spontaneous'. All markets are created through social norms, and today primarily by the laws of contract, property, and corporations. People do direct markets, particularly the directors of corporations, who are insulated from real accountability to consumers,

workers, investors or the public. This notion that social justice is a mirage, that the economy should not be fair, or that international law has been wrong for over a century, is what democratic socialists reject.

High level goals of justice need steps to have meaning. Put simply, democratic socialists highlight the importance of achieving social and economic rights just as much as, and not less than, civil and political rights.¹⁴³ The Universal Declaration, and the International Covenants of 1966 that codified it, are an excellent guide. When it comes to the economy, these are that everyone, ‘as a member of society, has the right to social security’, the ‘right to work’, to ‘just and favourable remuneration’, ‘rest and leisure’, ‘health and well-being’, ‘including food, clothing, housing and medical care’, ‘education’, a ‘cultural life’ and ‘to share in scientific advancement and its benefits’.¹⁴⁴ All these rights articulate the basis for achieving a just society, the material needs for everyone to realise their potential. All these rights are measurable, and are the subject of detailed targets in the Sustainable Development Goals 2030.

However, governments are often distracted by another goal: growth in ‘Gross Domestic Product’. GDP growth can be a measure of improvement, but often it flatly contradicts social justice and rights, because it measures the value of production through contract exchanges, including profits, from corporate accounts in a country. Profit from polluting activity, even a climate crisis, is measured as positive, because if pollution is not sanctioned, this is not entered on a company’s accounts. Profits from prescribing sick people drugs that harm them will be measured as positive, because the costs of addiction and overdose are not entered on a company’s accounts. Profits from guns that kill people are counted as positive, because school shootings, suicides and domestic murders are not entered on a company accounts.¹⁴⁵ Indeed, GDP frequently must go down for welfare to go up, if that means fewer transactions occur. For instance, if more people own their own homes, and stay in the same place, there will be a lower GDP than if people are forced to rent or move home again, and again. If people organise cheaper, free, public healthcare outside the price system, abandoning costly profit-based insurance, this will lower GDP, even as life expectancy increases. If people organise free social media, running at the cost of production through voluntary funding, and forgo a multi-billion ad industry competing for every user’s attention, this will lower GDP, even as everyone’s mental health improves. The same is true for free public education, transport, food, water or energy.¹⁴⁶

Simon Kuznets, who devised the system of GDP accounts, said it was ‘dangerous’ to ‘simplify a complex situation’ down to one metric, that measuring national income was ‘subject to this type of illusion and resulting abuse’, and the ‘welfare of a nation can, therefore, scarcely be inferred from a measurement of national income’.¹⁴⁷ Moreover, GDP per capita tells us nothing about inequality, or which people truly share in GDP growth. So, GDP growth does not measure true economic growth, and contradicts law’s social goals.¹⁴⁸ Fortunately, there are answers. The law could amend the definition of

GDP, to discount polluting activity, or profit from harm, including by changing the rules on company accounts.¹⁴⁹ Its measure can be adjusted for inequality, and other metrics may be added. The Inequality-Adjusted Human Development Index goes some way, composing years in education, life expectancy, and GDP, adjusted by the Gini coefficient. However it is necessary to reform GDP, or replace it altogether with real income, to have any reliable guide to human welfare. This would remove distortions from corporate profit, and be a better metric of justice, on whether everyone can fulfil their potential.

(3) What does democratic socialism mean?

If the goal of social justice for democratic socialism is clear, the meaning of these words does not always seem so. It is easy enough to give definitions. ‘Democracy’ is where, as Pericles said, ‘the administration is in the hands of the many and not of the few’.¹⁵⁰ And a ‘democracy is based upon more than one person one vote. It is based on the view that each person has equal value.’¹⁵¹ This much is fairly clear. Then, in contrast to private ownership of capitalists, socialism means social ownership of capital, whether by the public sector, or workers in common, so long as enterprises are democratic. There are still markets, trade, and plurality in a socialist elements of economy, or an entirely socialist economy, so long as enterprise is democratic.¹⁵² So it is false, as Friedman wrote, that ‘in a socialist society... all jobs are under the direct control of political authorities’,¹⁵³ because worker cooperatives, or companies financed with workers’ and public capital, have and need no political control. ‘Democratic socialism’, then, is simply democracy and socialism in politics and the economy, together.

There is much more we could say, of course, because to most people socialism also embeds values of equality, solidarity, and justice. These values must be realised in multiple ways, not just changing who owns and controls production. Yet the key truth, and a strength, not a weakness, is that democratic socialism has worked carefully, through experiment, and experience, without professing to know every final answer. The best modes of socio-economic organisation are tested before they are secure. In this way, the meaning of democratic socialism is in its use.¹⁵⁴ ‘Socialism is directed towards a social-ethical end,’¹⁵⁵ and our understanding of how to achieve that end has evolved with evidence. It needs hard economic data, and ‘hard legal analysis allied to an alternative social vision’.¹⁵⁶ It is revolutionary, yet works through democratic means, not violent revolutions. It is transformative, yet it does not transgress justified norms, because the means are as important as the ends. It can also come under many names: social democratic, labour, democratic, liberal, centrist, conservative, progressive or green. What matters is not just what it says on the tin. It is what is inside that counts.

There are important distinctions from other political forces. While democratic socialism sees the conflicts between autocratic capital and labour as real, liberalism has historically imagined an economy where freedom prevails: of contract, and competition. Often liberalism was blind to the problems of corporate power.¹⁵⁷ In the UK, radical Liberals moved into Labour, while many from the gentry, like Winston Churchill, moved to the Conservatives. Conservatism, of course, may seem opposed to democratic socialism, but the reality is far from it. Psychologically, conservative voters are often among the most conscientious, and communitarian people, who value tradition, rules, order and stability.¹⁵⁸ This is why so many conservative governments, once change is brought through democratic socialism, do not tear up public schools, health, water, electricity, transport, labour rights, environmental standards or progressive taxes. They usually seek to conserve, more than destroy, when things work. The far-right differs. Fascists, backed by corporate money, understand the capital-labour conflict, but seek to win it for their elite class, not to end class. They are tempted by revolutions, violent if needed, because authoritarian power in the economy is steadily eroded in a conscious democracy. They will use any label for their party: ‘conservative’ when they are libertarian extremists, ‘republican’ when they rethroned a king, ‘Christian’ when they worship greed. This is why definitions of political movements matter less than what they do. And the three core features of what democratic socialism does in the 21st century is where we now turn.

3. Three core features of 21st century democratic socialism

Democratic socialism is a movement that reshapes the law, and because laws are themselves a moving target, its focus changed over time. In the 19th century, democratic socialists fought for the vote in politics, for labour freedom, and for public ownership of public services. In the 20th century, as they formed governments, democracy advanced, colonialism receded, public ownership spread, labour rights strengthened, social security was secured, and rights to equality were enshrined in law. Yet the growth of capital, indeed from workers’ own savings, fuelled a political backlash by corporate interests from 1979. This left much to rebuild. In the 21st century, the three core features of democratic socialism are focused on similar themes to before, yet sharper: more public services and common ownership, economic democracy above a floor of social rights, and fair taxes. These policies are overwhelmingly popular with voters. Voters see what works. Yet their advance faces immense opposition, because they confront the illegitimate power of boardrooms, finance, fossil fuels, and big tech, who fund politicians to cling on.

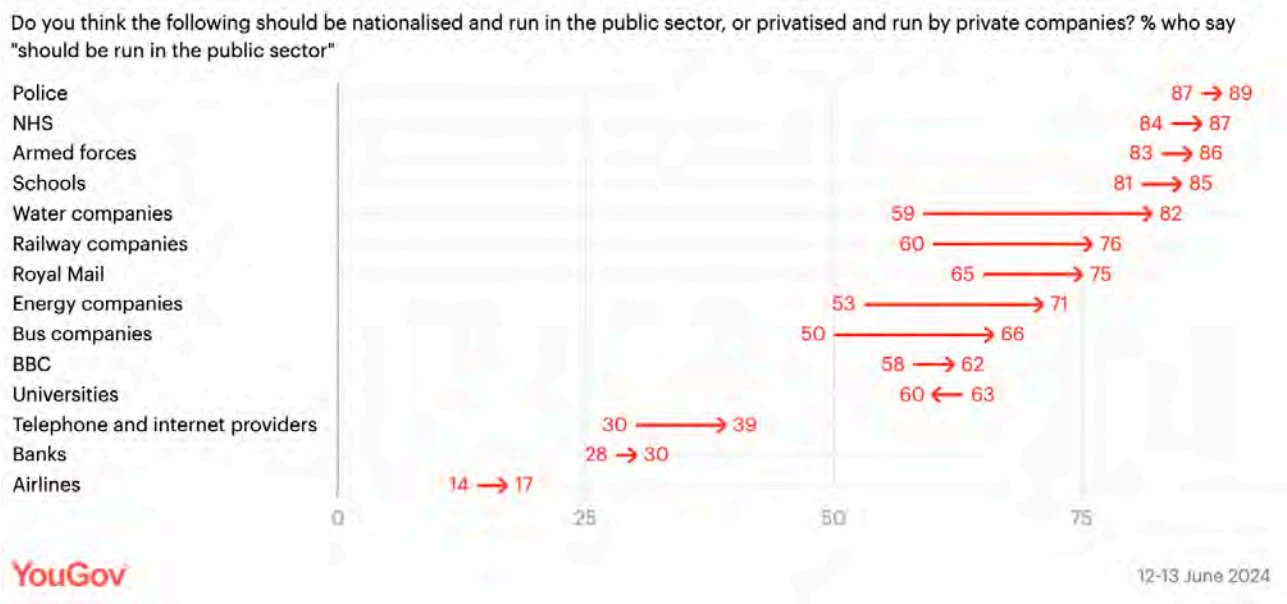
(1) Public and common ownership

Responding to the many failures of property, contract, and corporations, democratic socialists build public services to replace the price system, and expand common ownership. First, public ownership meant capital became owned by central, regional or local governments. This was done most where productive property cannot be easily accessed by start-up enterprises, so that competitive markets fail to protect the public interest.¹⁵⁹ Second, common ownership, a broader concept, also includes worker cooperatives that may compete in a plural market, and capital whose ownership and control has been socialised.¹⁶⁰ Capital became more socialised over the 20th century by combining workers' savings in democratically run pension funds, public funds, or mutual funds, that invest in company shares.¹⁶¹

Like a pendulum, ownership swung between public and private in the 20th century. For instance, before 1945, the British government had slowly socialised mail, telegraphs, schools, telephones, oil and gas, housing, broadcasting, buses, and air travel,¹⁶² not to mention common land since Magna Carta.¹⁶³ Then when Clement Attlee's Labour Party was elected, 10 major pieces of legislation brought water, coal, banking, health, rail and buses, electricity, planning, gas, iron and steel, under public ownership and funded universities and further education with grants.¹⁶⁴ The Curtin government in Australia, the Nehru government in India, and many more worldwide made similar moves. The pendulum swung again from 1979 in Britain. Thatcher's government passed 12 major pieces of legislation to re-privatise the public sector, even selling oil and gas just as the climate crisis was becoming evident.¹⁶⁵ Similar shifts of ideology in the US led to a so called 'Washington Consensus', for privatisation and deregulation, that was projected through the World Bank and International Monetary Fund. As well as to the global south, it succeeded in applying 'shock therapy' to post-Soviet Russia, usually by giving shares to employees, quickly bought up by the new oligarchs.¹⁶⁶ Today the pendulum is swinging again, with a wave of re-municipalisation around the world,¹⁶⁷ and a steady resumption of public ownership, even in Britain.¹⁶⁸ This is happening not least because we have more data and experience of what works than ever.

Democratic socialists know that public services in public hands are overwhelmingly popular, because people see what works. For instance, in the UK, where experiments in re-privatisation were among the most extreme, consistent polling shows 75 to 82% support for public ownership of rail, mail, energy and water, and support grows as privatisation's failures are ever more clear.¹⁶⁹ Health care is beyond doubt, as 87% support public ownership of the NHS, famously said to be the 'closest thing the English people have now to a religion'.¹⁷⁰ Around 70% of people support university being tuition free,¹⁷¹ a policy found in most wealthy democracies,¹⁷² that is required by international law.¹⁷³

Figure 1: UK support for public ownership, surveys by YouGov (2024)



Even in the US, despite its divisions, surprisingly huge majorities favour public services: 68% for a public option health insurer,¹⁷⁴ 63% for tuition free university,¹⁷⁵ 84% for government investing in water,¹⁷⁶ 68% for public energy utilities,¹⁷⁷ 81% for government to invest in passenger rail,¹⁷⁸ and 72% of New Yorkers want free public buses.¹⁷⁹ The US Postal Service is publicly owned by virtue of the Constitution, and 72% want more funding,¹⁸⁰ as do most for PBS and NPR.¹⁸¹ If the US Supreme Court did not strangle human rights and suffocate democracy with money,¹⁸² America would have been a beacon of democracy and socialism long ago.

Beyond the UK and US, public ownership in most wealthy democracies is extensive: it shows a 'Democratic Socialist Consensus'. The vast majority of OECD countries hold rail, electricity, water, and central banks in public ownership, and they also have a well-financed public option for broadcast media, retail or investment banking, and mail. Yet more surprising, a majority hold a significant ownership stake in internet infrastructure: broadband and telecom networks. Deviations, where these services are privatised, are essentially random. Figure 2 shows this data, with '1' for majority public ownership or a public option, 0.5 where ownership is under, and down to '0' where there is none. Countries are ranked by the Inequality-Adjusted Human Development Index, with wealthier, more equal countries first.

Figure 2: Public ownership in OECD members, applicants, and BRICS

IHDI '23	Country	Water	Electricity	Rail	Media	Banks	Mail	Internet
0.923	Iceland	1	1	0	0.75	1	1	0
0.909	Denmark	1	1	1	1	0.25	1	0
0.909	Norway	1	1	1	1	1	1	1
0.894	Switzerland	1	1	1	0.75	1	1	1
0.892	Netherlands	1	1	1	0.75	1	0	0
0.891	Belgium	1	0.5	1	0.75	1	1	1
0.891	Finland	1	1	1	1	0.25	1	0
0.89	Germany	0.8	0.5	1	0.75	1	0.25	0.25
0.886	Ireland	1	1	1	0.75	1	1	0
0.886	Sweden	1	1	1	1	0	1	0.5
0.885	Slovenia	1	1	1	0.75	0.25	1	1
0.873	Australia	1	0.5	0.75	1	0	1	0.5
0.869	UK	0.1	0.1	1	1	0	0.5	0
0.867	Canada	1	0.75	0	0.75	0.5	1	0.1
0.867	Czechia	0.5	1	1	0.75	0.5	1	0
0.861	Austria	1	1	1	0.75	0.5	1	0.25
0.857	Korea	0.75	1	1	0.75	1	1	0.25
0.853	New Zealand	1	1	1	0.75	0.5	1	0
0.845	Japan	1	0.5	0.5	1	0.75	0.5	0.5
0.843	Malta	1	1	0	0.75	1	1	0
0.841	Cyprus	1	1	0	0.75	0	1	1
0.841	Estonia	1	1	1	1	0	1	0
0.839	Hong Kong	1	0	1	1	0	1	0.25
0.838	Luxembourg	1	0.5	1	0.75	1	1	1
0.836	France	0.75	1	1	0.75	1	1	0.25
0.833	Slovakia	1	1	1	1	0.5	1	0
0.832	US	0.5	0	0.25	0.5	0	1	0
0.828	Croatia	1	1	1	0.75	1	1	0
0.825	Greece	1	1	0	1	0.25	1	0.25
0.823	Singapore	1	1	1	0.75	0.5	0.25	1
0.819	Hungary	1	0.75	1	0.75	0.5	1	0
0.819	Spain	0.75	0.25	1	1	0.5	1	0.25
0.817	Italy	0.75	0.75	1	0.75	1	1	0.25
0.817	Poland	1	1	1	0.75	0.5	1	0
0.813	Israel	1	1	1	1	0	1	0
0.812	Latvia	1	1	1	1	0.5	1	1
0.812	Lithuania	1	1	1	1	0.25	1	0
0.795	Portugal	1	0.5	1	1	1	0	0
0.761	Argentina	1	0	0.75	0.75	1	1	0
0.758	Romania	1	1	0	0.75	0.5	1	0
0.758	Russia	0.75	1	1	0.75	1	1	1
0.748	Bulgaria	1	0.75	1	0.75	0	1	0
0.723	Chile	0	0	1	0.75	1	1	0
0.715	Ukraine	1	0.75	1	0.75	1	1	0
0.708	Turkey	1	1	1	0.75	1	1	1
0.678	Costa Rica	1	1	1	0.75	1	1	1
0.677	Thailand	1	1	1	0.75	1	1	1
0.67	China	0.75	1	1	0.75	1	1	1
0.646	Mexico	0.75	1	0.5	0.75	0.5	1	0
0.633	Peru	1	1	0.5	0.75	1	1	0
0.608	Indonesia	1	1	1	0.75	1	1	1
0.594	Brazil	0.5	0.5	0.25	0.75	1	1	0.25
0.593	Colombia	0.75	0.5	0	0.75	1	1	0.5

0.476	South Africa	1	1	1	0.75	0.85	1	0.5
0.475	India	1	1	1	0.75	1	1	1

This legal reality reflects the credible theories of when competition and private ownership fails, and where public ownership is superior. This is in three main cases.¹⁸³ First, an industry may be a ‘natural monopoly’, where ‘it is cheaper for a single firm to produce the entire output than for each of several firms to produce part of it’.¹⁸⁴ For example, water and sewers, rail tracks and operators, electricity grids, mail, internet infrastructure, and central banking do not need duplication. Competition is likely to be inefficient, diminish rapidly, and leave a monopoly: best publicly owned, not private. Second, if a sector relies on a network, requires high capital costs, and the network risks being under-used, public options are common. This is true for electricity generation, retail and investment banking, or housing. Third, the people in an enterprise may hold a skill-based monopoly, where training or developing talent takes unusually long. This was Mill’s original meaning of ‘natural monopoly’,¹⁸⁵ and holds for doctors and healthcare, teachers and education, or lawyers and the court system. In situations like these, wealthier democracies chose public funding and options over the fiction of ‘competitive capitalism’.¹⁸⁶

The law has at least a five-fold role in public ownership. First, a statute will often authorise some or all of the share capital of a company to be held by a public body, whether private investors still hold shares or not.¹⁸⁷ Alternatively, whether an enterprise is bought, being established for the first time, or reorganised, a law may create the entity without shares, or set its constitution.¹⁸⁸ Second, unlike a company that fulfils shareholder wishes because shareholders monopolise votes,¹⁸⁹ a public enterprise is free to fulfil duties to the public, with statutory objects such as clean water, clean energy, improving health, or price stability, growth or employment.¹⁹⁰ Third, law may set standards, for instance to ensure universal service, or that particular quality levels are met.¹⁹¹ Standards can be set in law regardless of public ownership. But if a service is in public hands, government has the capacity to meet them through direct action, not rely on *ex post* legal action which often fails to change private conduct.¹⁹²

Fourth, rules may be set on whether services and goods are free at the point of use, or if charges are made and on what terms. For example, the NHS has a basic principle that ‘services must be free of charge’ unless there are specific exceptions provided by law.¹⁹³ This points to a typical choice of finance in public enterprise, between prices set according to a reasonable cost (whether or not the public service competes) or funded by taxes. The central difference is prices are usually regressive with high transaction costs, while taxes may follow progressive principles with lower collection costs.¹⁹⁴ It is vital to see that when the price system is abandoned, when profit is abandoned, in favour of a more efficient tax-funded system, or more efficient ownership, GDP frequently falls *because* the service improves. This is true for health care, schools, housing, water or free transport, because revenues and profits will no longer be entered into corporate accounts, and so raise GDP. In this way, despite the

view that rising GDP is a measure of economic performance, falling GDP is a measure of success where competition and private ownership fails.¹⁹⁵ Fifth, the law will set the governance rules of public enterprise, with a board selected by ministers, or stakeholders - the topic to which we return in the next section.

The term 'common ownership' includes public ownership, but also reaches worker cooperatives,¹⁹⁶ and socially held capital funds, so long as they are democratically governed: the principle of a symmetry between contribution and voice.¹⁹⁷ In 1381, during the Peasants' Revolt, a preacher named John Ball said 'matters goeth not well to pass in England, nor shall not do till everything be common', where 'the lords be no greater masters than we be'.¹⁹⁸ Today, nearly all production by companies involves people pooling their assets in 'common'. Yet the stakes are shared so unequally, and governance power excludes so many who contribute, that the idea of true common ownership may seem very far away.

A key step in theory was made in 1910 by Rudolf Hilferding, who wrote that instead of the public sector buying all industry, government could socialise financial institutions, which other businesses rely on for finance.¹⁹⁹ Hilferding was focused mainly on banks, rather than equity, and public control rather than workers. But in 1921, A.A. Berle wrote that 'labor could control' if workers could get stocks in their companies. He soon realised the limits of people being 'tied to the job' by owning shares in companies they work for, so he shifted to argue for diversified pension funds, encouraged by tax policy, that would hold shares across all markets.²⁰⁰ Indeed, workers' capital grew so much that in 1976, management theorist Peter Drucker predicted 'pension fund socialism', that by 1985 workers would own over half the US stock market.²⁰¹ This was indeed the trend, also in the UK, but it was reversed by the Reagan and Thatcher governments. First they limited unions' ability to bargain collectively for fair wages. Second they used tax to encourage individual pension accounts rather than collective funds in capital market investment.²⁰²

The changes in the law to promote common ownership are at least three-fold. First, the most effective strategy is to revive sector-wide collective bargaining with workers on boards, and boost collective pension funds on a sector-wide, multi-employer basis.²⁰³ Workers' capital grows with real wages. This needs workplace democracy, not wages unilaterally set by contract, and not pensions segregated into individual savings accounts. Second, there will be a shift in employer duties (such as automatic enrolment, and contribution matching) and tax rules, to reduce inequality in pension savings.²⁰⁴ Third, there are many examples of public option pension and wealth funds, such as the UK's National Employment Savings Trust.²⁰⁵ There is also a renewed interest in requiring companies transfer a fair share of profits to worker funds, first proposed by Rudolf Meidner and the Swedish Trade Union Confederation in 1975. A key issue for all fund types is ensuring that shareholder votes are controlled by elected representatives.

Restoring public enterprise, and common wealth, may seem like a daunting task, but requires small legal shifts to set big economic changes in motion. It means public control of natural monopolies, even if they span the globe. It means democratising pension and wealth funds that invest across global markets. Each entail bureaucracy, and power that could be abused. But a key difference today to the post-war period is that democratic socialists understand the question Albert Einstein posed in 1949: ‘How can the rights of the individual be protected and therewith a democratic counterweight to the power of bureaucracy be assured?’²⁰⁶ We know why old-style, top-down nationalised industry was unbeloved, and why there was support to privatise or dismantle it.²⁰⁷ The answer is to give people voice and a stake, with economic democracy on a floor of social rights.²⁰⁸

(2) Economic democracy and social rights

Economic democracy on a floor of social rights is an essential element of social justice, to give people autonomy and voice at work, in their savings, and in public services. Voice pre-empts the abuse of implied contract terms to appropriate and direct. It shifts relations from a mere contract to membership. As a whole, economic democracy means votes for who is on enterprise boards by the three main stakeholders: workers, investors, and service-users where competition fails.²⁰⁹ It is the crowning success of collective bargaining, which was never meant to be a ‘single channel’ for industrial democracy.²¹⁰ Only if workers take part in board decisions can they secure a fair distribution of a firm’s product - just as shareholders exercise influence in share markets, but also get votes in governance. A floor of social rights means terms that must be fulfilled in any contract, particularly by employers, landlords, or businesses, to pre-empt the excesses of ‘freedom of contract’ and ensure human dignity is not for sale. Economic democracy always builds on this minimum floor.²¹¹ Together, voice and rights transform people’s economic relations, from ones based on contract, to membership.²¹² Everyone is part of a ‘multi-stakeholder governance’.²¹³

Economic democracy is mainly a product of the 20th century, but has proceeded at different paces for workers, in capital, and in public services. Winning the vote in politics meant one-person, one vote in for the legislature, executive or both. But the fact of three stakeholders in the economy meant more choices. Before World War One, there were experiments with workers on boards in factories, mines, gasworks and ports,²¹⁴ and notably in the Universities of Oxford and Cambridge after staff revolted, saying university administration had been ‘reduced to a narrow oligarchy’.²¹⁵ But the biggest advance came through a collective agreement as the Kaiser abdicated, and the German trade unions collectively agreed to share power in the reconstruction after the war with a defeated business elite.²¹⁶ This ‘codetermination bargain’ was codified in the Weimar Constitution article 165, and the first law passed in 1922 for worker elected directors.²¹⁷ In Britain similar plans for the railways were close, but did not pass, while in the US a law passed in Massachusetts for worker votes in manufacturing companies,

but it was only voluntary.²¹⁸ Switzerland and Norway instituted worker directors in companies between the wars, while in Germany Hitler destroyed worker democracy, just as he destroyed unions. After World War Two, German unions again collectively bargained to elect directors on boards, and then it was codified into law. The same practices spread - to Austria, the Netherlands, Sweden, Denmark, Finland and more,²¹⁹ and in 1976, the Social Democratic led German government raised the threshold of worker directors to just under half of large companies' supervisory boards. There was no general law yet in an English speaking country, but many laws for specific sectors, such as post offices, health, transport, or in the public sector.²²⁰

Like public ownership of public services, economic democracy is overwhelmingly popular. The most widely available polling data, like legal models, concerns the right to vote at work. In the UK, 59% of people support directors elected by workers to large company boards, and just 10% are opposed.²²¹ In the US, 53% of people support worker directors, and just 22% are opposed.²²² In Germany, where worker directors have among the longest and strongest histories, workers also elect work councils with 13 types of binding right in management, including over working time, social facilities, and dismissal policies. The turnouts for these elections are illustrative to their real importance: 75.5% of eligible voters took part in the 2018 work council elections, and 68.6% in 2022.²²³ In Switzerland, the referendum (or people's initiative) that created duties on banks to follow voting policies of pension funds when casting votes on shares, achieved the second highest majority ever in Swiss history.²²⁴

This stable, and overwhelming popularity of economic democracy is reflected across the OECD. Laws for worker directors in large companies are now found in most countries. The standard practice is that around a third of a board must be elected by workers, as Figure 3 depicts (where '0.75' reflects a one-third requirement - no country yet requires half or more for large companies, a score of '1').

Figure 3: Worker directors in the OECD

Worker directors in the European Union

+ UK, Norway, Switzerland and Iceland

Source: CBR, Labour Regulation Index (2023) Variable D.30



It is notable that there is a growing political movement, and political commitment, for legislative reform for worker directors in Spain, Italy, Chile, the UK, and the US, to name just a few.

When it comes to democracy in workers' capital, there has been a similar, steady trend. Trade unions collectively bargained for their pension funds to be jointly managed since the 1920s.²²⁵ Unions were so successful in the US, that the business interests driving Taft-Hartley Act of 1947 blocked unions from having more than half the seats on a pension board.²²⁶ The practice of collective agreements was then often codified in law, in Australia requiring half-representation for unions in superannuation funds,²²⁷ and in the UK requiring at one-third representation, capable of being raised to half.²²⁸

Then there is democracy in public services. Where competition fails, and service-users could no longer 'vote with their feet', democratic socialists create votes for real. The experiments with votes in public services have been varied, but widespread. Alumni and students can vote for governing bodies in universities, residents are represented in health trusts, or bill-payers in water and energy.²²⁹ Notably, as many public services were brought back from privatisation, such as in Eau de Paris, or Berlin Waterworks, service-user voice was included, typically organised through local council democracy. It stands in sharp contrast to the 'Morrisonian model' of nationalised industry, where the former Labour Minister, Herbert Morrison, argued that workers and service-user groups might be consulted, but should not have votes. Those should be left to experts, said Morrison but inevitably these experts were chosen by a minister, (like

Morrison).²³⁰ This was a key weakness that left public services vulnerable to privatisation's advocates. Nobody believed public enterprise would be well 'run by "clever" people who make the arrogant assertion that they "know best" and that they are serving the "public interest",' wrote Margaret Thatcher, 'an interest which of course is determined by them.'²³¹ Yet Thatcher's solution has proven worse than the problem. Democratic socialists see the better answer is to guarantee people a voice and a vote.

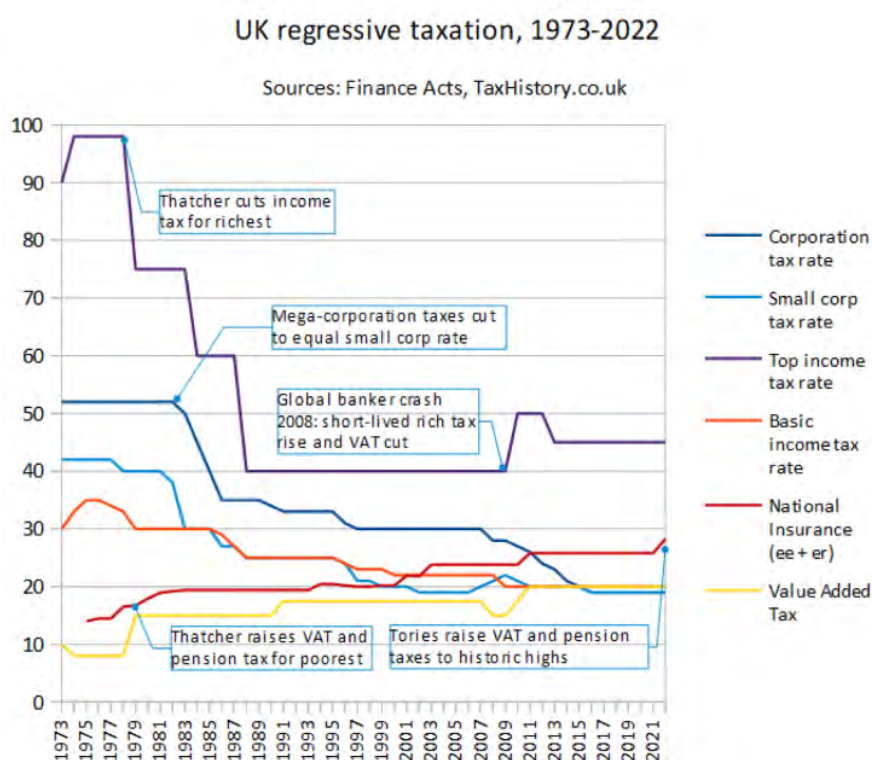
Finally, a floor of social rights must support economic democracy. To halt abuse of contractual power, this includes minimum standards in labour, tenant, investor, and consumer rights. Labour rights are codified in international law, particularly the right to a minimum wage, a maximum working day,²³² paid holidays, paid parental leave, safety, equal treatment, and job security, including notice, fair dismissal and redundancy.²³³ All of these rights - from wages to security - are extended by collective bargaining, and the subject of decisions by the board. For this reason the best method of protecting minimum standards is democracy at work: worker directors with sector collective bargaining.²³⁴ Tenancy rights are analogous, and common in most wealthy countries: fair rent regulation, standards for repair, water, heating and energy, equal treatment, and protection from unfair eviction.²³⁵ Investor rights have historically focused most on shareholders, who are seldom today the real investors, yet there is still a comprehensive set of rights: to vote, to prospectuses, to accounting information, and protections against minority oppression.²³⁶ Consumer rights include rights of information, fair terms, and remedies.²³⁷

This minimum floor of rights is essential whenever people have jobs, homes, savings, and money to spend. However jobs, homes, savings and money for many people would not exist without public action. As well as public services, there must be universal social security. In the Universal Declaration this means protection against 'unemployment, sickness, disability, widowhood, old age'.²³⁸ Democratic socialists understand the traditional tools to achieve full employment, which means 'at fair wages' and hours, and no more than 1-2% unemployment,²³⁹ not 4% jobless, more, or mass under-employment as we often see. Governments may use central bank monetary policy, but above all fiscal policy, to raise and stabilise investment in jobs, and ultimately provide a 'job guarantee' where an unstable private sector may not. Where people are not employed, social security should be universal, eliminate any gaps in the welfare state. The narrative of a 'basic income' is powerful for so many precisely because it could be part of universalising social security. However incomes must not be basic, but fair, and are not a replacement for public services, rather than a complement.²⁴⁰

(3) Fair taxes and principles

Democratic socialists are not the only people interested in fair taxes, yet their principles of fairness are more clear.²⁴¹ Adam Smith argued that the first maxim of taxation should be ‘equality’, so people are taxed ‘in proportion to the revenue they respectively enjoy under the protection of the state’, and ‘the rich should contribute... something more than in that proportion.’²⁴² From this progressive principle it follows that the rich should be taxed more than the poor, capital should be taxed more than labour, and unearned wealth should be taxed more than jobs. As Figure 4 depicts, taxes became more regressive since 1979 in the UK, like much of the world, and the balance needs to be restored.

Figure 4: UK regressive taxation, 1973-2022



Adam Smith also said that taxes should be certain, convenient to pay, and that tax collection should be efficient. Few disagree.²⁴³ But there is more to fair taxes than the progressive principle.

The second principle of fair tax is to fully fund public services and social security. This goes to its absolute level, not just relative levels, and informs the overall share of tax to GDP. This is a question of what is necessary to achieve the goals of all public services: expanding education, improvement of health and life expectancy, stable and low interest rates, clean energy, good food, clean water, fast and clean transport, fast internet, and media that is safe for people’s health and democracy. It needs to be enough

to guarantee full employment, insure people against unemployment or disability, and support a dignified retirement. Many services can be paid for by tax, while much social security can be funded through insurance contributions. Yet it is important to compare how the progressive principle of tax measures against the regressive nature of prices (usually) and contributions (often). Wherever the social cost of the price system exceeds the tax system, the tax system should fund services and goods.

The third principle of fair tax is that it should correct the failures of escalating inequality. Thomas Piketty identified that under our current institutions, inequality increases because the rate of return to capital (r) is greater than the rate of growth (g), or $r > g$.²⁴⁴ Public and common ownership plus economic democracy on a floor of social rights would 'pre-distribute' wealth fairly, so that $r < g$, if society began at square one.²⁴⁵ But in today's world, our institutions and taxes have been so warped that they enrich the rich to wild extremes, requiring correction through positive action. So a third goal of democratic socialists is to ensure monopoly wealth, and eye-watering corporate wealth, is given back to the people who made it. Taxes on unearned wealth are also particularly important to prevent assets being hoarded.

For democratic socialism, these principles of progressivity, full funding, and correcting inequality, are all summed up in a phrase: from each according to their means, to each according to our needs.²⁴⁶ As Martin Luther King Jr put it, 'Call it democracy, or call it democratic socialism,' said Martin Luther King Jr, 'but there must be a better distribution of wealth within this country for all God's children.'²⁴⁷

Fair taxation is overwhelmingly popular, just like public services and economic democracy. In the UK, 75% of people support a 2% wealth tax on assets above £10 million (that is £200,000 a year).²⁴⁸ Moreover, 82% of people support increasing income tax for the 'super rich', and 59% support increasing corporation tax.²⁴⁹ In the US, 72% of people support introducing a new tax on big tech,²⁵⁰ while in the EU 80% of people support multinationals paying a minimum level of tax in every country where they operate. Friedrich von Hayek argued (like social justice being a mirage) that if there was free movement of capital, then socialism would be impossible, because companies could escape tax.²⁵¹ The reality, however, is that ideas may move even faster than capital, and in the long run good ideas usually win.

(4) Public, criminal, international, trade and immigration laws

Democratic socialism focuses on socio-economic change, yet it affects all fields of policy, and clearly departs from liberal theory by refusing to accept that socio-economic rights are less important.²⁵² By contrast, in his *Theory of Justice*, John Rawls argued that civil and political 'rights' should be seen as 'prior' to economic and social 'good', on the ground that 'interests requiring the violation of justice have no value.'²⁵³ But the historical reality is that all human rights evolved hand in hand,²⁵⁴ and they are

‘indivisible’.²⁵⁵ For example, in the UK, universal suffrage was won as union rights to bargain for fair pay were won.²⁵⁶ In the US, the Civil Rights Act of 1964 was part of the same movement for the Voting Rights Act of 1965. Labour rights were the first human rights enshrined in an international treaty, ahead of the Universal Declaration’s codification of political and socio-economic rights alongside.²⁵⁷ Socio-economic rights do not threaten political rights with ‘violation’, as Rawls put it - they strengthen them. Without labour freedom, social security, fair pay, education, health, or housing, all other rights become ‘very unsafe, very insecure’.²⁵⁸ Here we consider democratic socialism’s approach to (a) public, (b) criminal, (c) international and trade and (d) immigration law, and why in these fields, political or civil rights often remain unfulfilled - not because socio-economic rights exist, but because they are lacking.

(a) Public law

Democratic socialism’s approach to public law is identical with human rights norms. In the three branches of government ‘everyone’ has the right to an equal vote for a legislature or a president, to ‘representative government’ with an executive bound by law, ‘to an effective remedy’ before an ‘independent’ judiciary.²⁵⁹ Moreover, all rights ‘necessary in a democratic society’ to support a democratic constitution must be upheld, including freedom of expression, association, one’s private life, home and correspondence, or liberty and security of the person.²⁶⁰ These rights - democracy, the rule of law over man, and courts of justice accessible to all - are in no small part the creations of the modern, democratic, social and welfare state, won by the chartists, the unions, the abolitionists, the suffragettes, the anti-imperialists, and those who cherished freedom everywhere.

However, democratic socialists well understand the limits of liberal constitutional theory. As Otto Kahn-Freund wrote, the ‘power to interpret... is the power to destroy’.²⁶¹ Judges are political actors, and far from providing ‘checks and balances’, they can be dominated by a political party, just like every other supposedly ‘separate’ branch of government. So courts must be bound by positive law.²⁶² The law must represent the will of a democratically organised populus, not one where political parties and movements may be dominated by money, or surrendered to some ‘iron law of oligarchy’.²⁶³ In the UK, courts have struck down everything from rules for equal pay,²⁶⁴ to the right to take action for fair pay,²⁶⁵ to compensation for serious workplace injuries,²⁶⁶ and have spent nearly half a century destroying employment rights for the most vulnerable workers.²⁶⁷ In the US, courts have held ‘unconstitutional’ all civil rights,²⁶⁸ bans on child labour, a safe working day,²⁶⁹ rights to social security, limits on election spending,²⁷⁰ and have nullified nearly every statutory employment or consumer right,²⁷¹ to name just a few of the worst decisions.²⁷² So, judicial power must be seen as legitimate for primary purpose of supporting democracy, the rule of law, and a social state.²⁷³ Democratic socialists are, and must be, wary of highly entrenched constitutions, because otherwise democracy and human rights risk being crushed.

As well as rejecting judicially managed democracy, democratic socialists want efficient legislators. A legislature must not require a supermajority to pass any legislation, such as the US Senate filibuster - because this creates an inherent conservative bias. Most democratic countries have abandoned 'first past the post' voting in favour of ranking preferences, or proportional representation, because this enables unpopular yet more organised corporate interests to hold power. Many favour Parliamentary systems, because if the legislature and executive is elected separately, or at different times, conflicting parties will often win different branches, and bring government to a standstill. Many favour unicameralism, because if there are two legislative houses this reduces the speed of legislation, and slows democratic preferences. Many favour federal government, because excessive centralisation stops decisions being taken at the level where people understand the issues closely. But also, federal governments should never pre-empt or ban socio-economic law-making by regional or local government. Democratic socialists understand that states and councils need to be free, to be the 'laboratories of democracy'.²⁷⁴

Most importantly democratic socialists know that the existing state of politics is temporary. Since the industrial revolution, in most countries there have been (broadly speaking) conservative factions representing capital, and progressive factions representing labour. But as democratic socialists achieve their goals - with more public and common ownership, economic democracy, and fair taxes, conservative factions transform. The interest groups seeking to end democracy - to adapt a phrase - wither away.

(b) Criminal law and policing

Democratic socialists' approach to crime or policing is no different, again, to basic human rights, such as the right to security, a fair trial, and due process,²⁷⁵ yet they emphasise the socio-economic reasons why crime remains so high. Being 'tough on crime, tough on the causes of crime' was not merely a slogan of the UK Labour Party in the 1990s,²⁷⁶ but a recognition of the statistically obvious fact that societies with more inequality and poverty (not to mention access to firearms) have more crime. Societies with greater gulfs between policing and communities leave citizens and police in the shadow of harm. So the purpose of the criminal justice system must be the same as social justice. Punishment is useful only if it will actually make people safer, and not entrench misery. The death penalty is never an answer, because it needlessly punishes the innocent families of the wrongdoer. Prisons are not primarily for punishment, but for community safety. Policing should make people safer in the streets, not less, and it must not substitute for welfare and rehabilitation of people with severe addiction or mental health problems. These modern approaches are guided by evidence, and cost benefit analysis, and slowly they are overturning centuries of failed policy driven by ideologies that criminalise the poor.

(c) International law and peace

Democratic socialists' approach to international law and peace begins with the founding principle of the International Labour Organisation, that 'peace can be established only if it is based upon social justice.'²⁷⁷ This was a decisive break with liberal theory, notably Max Weber's notion that the state has a 'legitimate monopoly on violence',²⁷⁸ because the state does not have a legitimate monopoly: the limits of its power are set by international human rights, and its use of force is bound by law, particularly the United Nations Charter. The post-WW2 order adopted most of the tenets argued for by Immanuel Kant, *On Perpetual Peace*, in 1795.²⁷⁹ This said we could achieve lasting peace by (1) disposing of materials for war; (2) ending colonisation;²⁸⁰ (3) abolishing standing armies; (4) ending international debts; (5) prohibiting violent interference in other states' affairs;²⁸¹ and (6) basic rules of war, such as prohibiting poisoners.²⁸² Further, all states should (i) uphold freedom, the rule of law, and equal treatment of citizens;²⁸³ (ii) acknowledge the basis of international law as a 'federation of free states';²⁸⁴ and (iii) guarantee universal rights of hospitality for all 'citizens of the world'.²⁸⁵ It is remarkable achievement that our modern international system has been successful in nearly all of these, except those central to what Dwight Eisenhower called 'the military industrial complex',²⁸⁶ namely (1) ending war production, (3) abolishing standing armies, and (4) ending international debt.²⁸⁷ The answer to these problems is simply the expansion of public ownership and accountability, in particular by ending for-profit military corporations, and re-writing the rules of international tax to ensure global banks fund development, instead of profiting from poverty.

(d) Immigration and trade

When it comes to immigration and trade, democratic socialists remember that the struggle for labour freedom included breaking down the old Master and Servant Acts, serfdom, and servitude, which criminalised leaving one's employer, lord, or master, and stopped free movement even within one's own country. The history of progressive societies has been to expand freed movement for working people as much was found for merchants in Magna Carta.²⁸⁸ Democratic socialists also distinguish between free and forced movement: they know that people should not have to uproot their families, and tear apart their community fabric, for economic necessity. Jobs with fair pay should be guaranteed to workers, through pro-active public investment in every region, so that workers do not have to move to survive. The best immigration policy, therefore, is international development, with controls on entry aiming to be temporary until living standards equalise.²⁸⁹ Unlike those who weaponise migration for political division, democratic socialists understand that border restrictions are not an end in themselves, but a phase. Across Europe, overgrown fences, and forested footpaths exist where border checks once were, a quiet miracle for countries that were once at war. The reality

is that the wealthy have always had global free movement, and this should be a right enjoyed by all. To accelerate it, everything needs to be done to raise living standards, and prosperity across the globe.

4. Four myths of capitalism

Unlike the goals of democratic socialism, we have seen that ‘capitalism’ is a shape-shifting set of norms, but usually taken to mean private ownership (instead of public and common ownership), director or shareholder monopolisation of power in enterprise governance (without worker directors, democratic capital funds, and service-user voice in public services), and taxes that are not fair (namely, progressive, to fully fund public services, and correct inequality). It is clear there is not one thing called ‘capitalism’, but each society has residual capitalist elements in its economy to a lesser or greater degree. Despite this, an extraordinary set of myths shroud what ‘capitalism’ achieves, namely that it is more innovative, more productive, that it stops waste, or that it is synonymous with democracy. This part explains why none of these claims are based in reality and the evidence shows quite the opposite: capitalism harms prosperity.

(1) Capitalism creates innovation

The first myth comes from Joseph Schumpeter, who argued in *Capitalism, Socialism and Democracy* that a ‘process of Creative Destruction is the essential fact about capitalism’, and that ‘what every capitalist concern has to live in’ is ‘the perennial gale of creative destruction.’²⁹⁰ There is no doubt that a system of privately owned production has ‘destruction’ at its core, because when private enterprises compete, some necessarily lose and go insolvent. Shareholders lose investments (even if their overall portfolios are diversified), creditors must often take a haircut (though not usually large banks with secured loans), workers lose jobs, and the public sector often foots the bill for social security and environmental damage. The problem with Schumpeter’s claim is that this destruction is somehow ‘creative’. It is true that people losing market share may encourage competitors to change their products and services to suit consumer demands, but for this to be sustainable, the shifts must be gradual.²⁹¹ Moreover, the very things that Schumpeter pointed to as ‘creative’, namely opening ‘new markets’ and ‘organizational development’, which ‘incessantly revolutionizes the economic structure from within’, is what is achieved by wealthy democracies that *limit* and *decrease* capitalist elements of the economy - namely through social and job security, and stable public enterprise, plus a rescue culture to prevent business insolvency.

First, societies with better social security, including job security have more innovation, because people experiment - they are more 'creative' - when they do not face material risks, or even rewards. For example, based on a comprehensive database of job security and codetermination laws, Acharya, Baghai and Subramanian found that the number of patent filings rose significantly when employment protection was improved. Workplace democracy rights, including 'dismissal laws can enhance employees' innovative efforts', wrote the authors, 'and encourage firms to invest in risky but potentially groundbreaking projects.'²⁹² The reverse is also true. Large rewards, such as banker bonuses, or 'performance-related' CEO pay, do not improve worker productivity: they distract from creative tasks, encourage rent-seeking behaviour, or outright cheating.²⁹³ People are more creative when they have stability and security (not sticks and carrots), because this lets people think, as is clear to most who have tried thinking before.

Second, in contrast to a 'capitalist' culture of frantic risk and frivolous reward in the private sector, patient public capital and public enterprise are better at creating innovation. As Mariana Mazzucato has explored, the iPhone's core features are the internet, touch screens, and use of the Global Positioning System, all of which were created by the US Department of Defense, not the private sector.²⁹⁴ The reason why Silicon Valley exists where it does is largely because of public funding of Californian universities. The same is true of research and innovation clusters around the world, notably in Cambridge and London in the UK, or Bangalore in India. The Covid-19 vaccine illustrated this again. The Pfizer vaccine was invented in Germany's Max Planck Institute, the AstraZeneca vaccine was invented at Oxford University, and the vast majority of funding came from public sources, not private.²⁹⁵ The private sector may capably roll out innovative technology once it is already there, but publicly funded institutions, and security - the opposite of Schumpeter's capitalist destruction - are stronger engines of creativity.

(2) Capitalism is productive

The second myth comes from Friedrich von Hayek's assertion that a market is a 'spontaneous order' that aggregates information efficiently, and it leads to 'greater productivity' resting on 'a division of labour extending far beyond the range any one person can survey'.²⁹⁶ Further, Hayek claimed that 'enhanc[ing] the productivity of labour' is 'a task in which governments notoriously fail'. 'Productivity', of course, means output per hour, yet this meaning conceals two things: production which is more creative, and production that is more mechanic. Already we have seen that innovation, creative production, comes from security and public institutions, the opposite of Friedman's 'competitive capitalism'. But it is also false to suggest that Hayek's version of free markets, without any meaningful labour rights, is anything but deeply harmful to all forms of productivity.

In terms of labour, there is clear evidence that when people are treated fairly at work, with fair pay, they are intrinsically motivated to contribute more.²⁹⁷ Put the other way, unequal pay for similar kinds of work damage production even more than a general cut to wages. There is also ‘a considerable body of evidence to support the participation hypothesis—the hypothesis that significant changes in human behavior can be brought about rapidly only if the persons who are expected to change participate in deciding what the change shall be and how it shall be made.’²⁹⁸

More ironically for the dwindling defenders of ‘capitalism’, it was already clear to John Stuart Mill that the ‘produce of the world could not attain anything approaching to its present amount’ without ‘abundant and costly machinery, buildings, and other instruments of production; and the power of undertaking long operations and waiting considerable time for their fruits’.²⁹⁹ That is, rising production needs capital accumulation and long-term investment. But the way that capital is accumulated is through more investment. The single best way to get more capital investment is by increasing the cost of labour, through rising wages led by voice and security at work, and another excellent method is through direct public sector investment. Hayek’s caricature of a modern economy foresees a wild west market system, where corporate governance is prone to short-termism, the opposite of patient, long-term capital, which more economic democracy, and public institutions provide.³⁰⁰

(3) Capitalism stops waste

The third myth is that capitalism reduces waste. This myth belongs to Richard Posner who argued in *Economic Analysis of Law* that ‘justice is... efficiency’ because ‘waste is immoral’.³⁰¹ If anyone were in doubt about what Posner meant, he also wrote that ‘labor law is... founded on a policy that is the opposite of the policies of competition and economic efficiency that most economists support’.³⁰² Since his writing in the 1980s, Posner has abandoned ‘competition’ as a value, arguing that ‘antitrust is dead’, and that nobody should be ‘concerned whether [Amazon, Microsoft and Google] have monopolies’.³⁰³ However he still appears to think that this monopoly capitalism is ‘efficient’ because it leads to less waste.

In reality, there are three main kinds of waste that are vastly greater without democratic socialist policies. First, unemployment will be far higher wherever government fails to create investment for full employment, including a job guarantee. For over a century, unemployment under Republican administrations has always gone up by the time they left office, and under Democratic presidents it has always gone down. Unemployment entails vast economic waste, and it crushes our ‘sense of pride’, drowns our spirits and leaves us feeling ‘as a disastrous failure’.³⁰⁴ Yet to narrow corporate interests and employers it may seem beneficial, because the social costs are outweighed by their perceived, short-term private gain in reducing labour’s bargaining power, and increasing their power to discipline workers.³⁰⁵

Second, there is a vast waste of capital, investment and resources on the pre-occupations of the rich and short-term shareholder interests, instead of directing them to things people need. Current examples include \$73 billion wasted on the ‘Metaverse’, trillions for data centres to train ‘AI’ and large language models, or billions on private jets, superyachts, grouse hunting, or Jeffrey Epstein’s paedophile island.³⁰⁶ All this waste in resources exists to far greater degree wherever the economy is undemocratic, where social wealth can be cornered by a few corporate insiders, and used for personal enrichment.

Third, there is the waste to the natural environment, particularly climate damage. Around 63% of all emissions in history were created by just 90 corporate entities.³⁰⁷ Corporations with governance monopolised by shareholders seek to make profit whatever the social cost, and it is core to the business model of every Exxon, Chevron, BP or Shell to externalise as many of the costs of production onto society, to be polluters who do not pay. This waste can only change by publicly owning or regulating companies for the public good.

(4) Capitalism is democracy

A fourth myth of capitalism is found in the claim of Milton Friedman that capitalism is democracy, a ‘central message’ of *Capitalism and Freedom*, underlined in Friedman’s endorsement of the idea that ‘an inescapable connection between capitalism and democracy has recently begun to seem plausible’.³⁰⁸ To give just three examples of why this is false, the industrialists in the ‘Circle of Economic Friends’ bankrolled Hitler’s 1933 power-grab with 1 million Deutschmarks,³⁰⁹ and without any limits on election spending in the Weimar Republic, the Nazis outspent every other political party to secure their final election victories, with corporate money.³¹⁰ Second, the coup and government of Auguste Pinochet displaced the democratically elected government, and embarked on a wild path of privatisation and deregulation in Chile, torturing and disappearing its rivals as it went. Third, unlimited spending in US politics was propelled when corporate lawyers took control of the Supreme Court, and in 1976 delivered the tragic judgment of *Buckley v Valeo*, asserting that spending money is the same as free speech and cannot be limited under the First Amendment. This almost severed American public opinion from public policy, which Gilens and Page have shown were unconnected since at least 1981.³¹¹ It has led America to the fascist-lite abyss that we stare into now.³¹²

If these three examples were not enough, modern data shows that the vast majority of dictatorships are dominated by private economic ownership (indeed those who own corporations and governments are often the same), they have few social rights, and taxes are unjust. Among the small minority of countries who pretended to be ‘socialist’, there was never any democracy in the economy or politics - free trade unions and political parties were suppressed as much in Lenin’s Soviet Union,³¹³ as by China’s

Communist Party today.³¹⁴ By contrast, wealthy economies are increasingly socialist and democratic, because these go hand in hand. Democracy in politics is safe only with democracy in the economy, and where there is a more equal distribution of wealth: that is the beating heart of socialism.

5. Conclusions

‘There is only one hope for mankind’, said Nye Bevan to the House of Commons in 1951, ‘and that is democratic Socialism.’³¹⁵ Humanity’s greatest threats are escalating inequality, climate damage, and war, and these threats are exacerbated a thousand times by our defective social system. With today’s technology we already have the means to create a paradise on Earth, where poverty and scarcity will be forgotten, and will be seen as no more than another ugly part of history. We can imagine a better world because it is within our reach, and the only thing preventing us is a fear of change, and a belief in wrong-headed theories. ‘Capitalism’ is no more the answer to our problems than despotism, because each places faith in a tiny number of people, whether bosses or boardrooms, bureaucrats or ‘Big Brother’,³¹⁶ to have better answers than an educated public. Education has given nearly every society the tools we need to be free, to have public and social ownership, to participate in an economic democracy, and to safeguard a system of fair tax and fair wealth distribution. ‘Democracy is not merely a pathway to the socialist goal’ wrote Karl Kautsky, but ‘an integral part of that goal’ which is ‘freedom and equality for all.’³¹⁷

And we will know when we have won democratic socialism, when we can look to the next chapter of history, not only by looking at our public services, looking at who has the votes in the economy, and looking at the level of taxes as a systemic whole. We will also see a reversal of inequality, when the rate of growth for everyone exceeds the returns on capital (or $r < g$), and then we reach a steady state.³¹⁸ We will see that greenhouse gases in our atmosphere fall and our global climate returns to its norm, while we act and nature helps to restore the beauty of planet Earth. We will see that violence and armed conflict dwindles into a sorry memory. We must have the courage to choose, to choose that ours is an age of equality, not power, an age of nature, not desolation, and an age of peace, not of war. Our lives will transform from work as a necessity to expanding our horizons, pursuing science and philosophy, art and music, gardening and cooking, sport and leisure. Once we choose, our imaginations are the limit.

Notes

- 1 M Friedman, *Capitalism and Freedom* (Chicago 1962) 8
- 2 OECD, *Government at a Glance 2025* (2025) [Figure 15.1](#)
- 3 e.g. in the UK in 2024, of 69.2m people, 12.95m received the state pension, 10m were in public sector schools, 7.9m received universal credit, and 6.12m worked in the public sector = 37.51m, or about 54% of the population.
- 4 Sir William Harcourt, Hansard HC Debs (11 August 1887) [col 140](#) on the Allotments Act 1887 [c 48](#)
- 5 cf Friedman (1962) ch 1, 4, who defines as follows: ‘competitive capitalism - the organization of the bulk of economic activity through private enterprise operating in a free market’. Yet on the ‘competitive’ part, he argued in ch 2, 28, that ‘private monopoly may be the least of evils’, compared to a publicly-owned monopoly or public regulation (not distinguishing a legal and economic monopoly). He later argued ‘antitrust laws do far more harm than good and that we would be better off if we didn’t have them at all, if we could get rid of them.’ ‘The Business Community’s Suicidal Impulse’ (1999) [Cato Policy Report, 6-7](#)
- 6 J Schumpeter, *Capitalism, Socialism and Democracy* (1942) ch VII
- 7 M Mazzucato, *The Entrepreneurial State* (2013)
- 8 FA Hayek, *Law, Legislation and Liberty* (1976) vol 2, ch 9, 88
- 9 A Cohn, E Fehr, B Herrmann and F Schneider, ‘Social Comparison in the Workplace: Evidence from a Field Experiment’ (2011) [IZA Discussion Paper No. 5550](#). E McGaughey, ‘Behavioural economics and labour law’ (2015) [LSE Law, Society and Economy Working Papers 20/2014](#)
- 10 R Posner, *Economic Analysis of Law* (2011) 37
- 11 ‘Judge Richard A. Posner in Conversation with Professor Luigi Zingales’ (2017) [YouTube at 5:04](#), ‘antitrust is dead, isn’t it? That was my impression... Amazon, Microsoft and Google [are] the three best companies in the world, so who’s concerned whether they have monopolies, right?. . . I don’t have any problem with prices, quality of the products. . . and neither does my cat who is an avid consumer of extremely expensive cat food, right? So we’re happy.’

- 12 *Buckley v Valeo*, [424 US 1](#) (1976), accelerated by *Citizens United v FEC*, 558 US 310 (2010).
- 13 E McGaughey, ‘Fascism-lite in America (or the Social Ideal of Donald Trump)’ (2018) [7\(2\) British Journal of American Legal Studies 291](#) (paper first drafted in 2015)
- 14 N Bevan, *In Place of Fear* (1952) 103-5
- 15 cf K Pistor, *The Law of Capitalism and How to Transform It* (2025) ch 2-3, focusing more on theories, rather than laws.
- 16 A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) [Book II, ch 1, 262-63](#), distinguishing property used to make ‘revenue’ (i.e. ‘capital’) from property used for ‘immediate consumption’.
- 17 AA Berle, ‘Property, Production and Revolution’ (1965) 65(1) *Columbia LR* 1, 4. In law the two most important types of ‘capital’ are share capital (contributed by equity investors) and debt (given by lenders), e.g. Companies Act 2006 [ss 10](#), 761 and 830 requires an initial statement of share capital when starting a company, public companies require a minimum investment of £50,000 (in theory to protect debt creditors), and dividends are not meant to be paid out below the ‘legal capital’ that is contributed. Debt capital of companies is regulated most in insolvency, e.g. *Re Nortel GmbH* [2013] UKSC 52, [39] and Insolvency Act 1986 ss 176ZA, 176, 175, 386 (setting priorities).
- 18 cf Friedman (1962) ch 1, 13, ‘a society organized through voluntary exchange is a free private enterprise exchange economy - what we have been calling competitive capitalism.’
- 19 FC Savigny, *System des heutigen Römischen Rechts* (1840) §56, or a *System of modern Roman law* (1840).
- 20 cf Gaius, *Institutes* (170 AD) translated by E Poste (1904) [Book I, II, §8](#), ‘The whole of the law by which we are governed relates either to persons, or to things, or to actions.’

21 cf *Keppell v Bailey* (1834) 2 My & K 517, 535-6, Lord Brougham LC, ‘it must not therefore be supposed that incidents of a novel kind can be devised and attached to property at the fancy or caprice of any owner. It is clearly inconvenient both to the science of the law and to the public weal that such a latitude should be given.’ *National Provincial Bank Ltd v Hastings Car Mart Ltd* [1965] AC 1175, Lord Wilberforce, ‘Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.’

22 WN Hohfeld, ‘Some fundamental legal conceptions as applied in judicial reasoning’ (1913) 23 Yale LJ 16. Also *Lumley v Gye* [1853] EWHC QB J73 showing an obligation (contract) bound third parties, or ‘the world’, in tort, without consent.

23 cf JJ Rousseau, *Discourse on the Origins of Inequality* (1755) [Part II](#), translated by GDH Cole (1913) ‘The first man who, having enclosed a piece of ground, bethought of saying ‘This is mine’ and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not anyone have saved mankind, by pulling up the stakes, or filling up the ditch and crying to his fellows: ‘Beware of listening to this impostor; you are all undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.’”

24 JS Mill, *Chapters on Socialism* (1879) ch 1

25 Mary Woolstonecroft, *A Vindication of the Rights of Woman* (1792) ch IX

26 O Kahn-Freund, ‘Hugo Sinzheimer 1875 – 1945’ in *Labour Law and Politics in the Weimar Republic* (1981) 102

27 Universal Declaration of Human Rights 1948 [arts 17 and 23](#). European Convention on Human Rights 1950 Prot 1, art 1. *Semayne’s Case* (1604) [5 Co Rep 91a](#), action on the case, report by AG Coke, ‘the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.’ *Armory v Delamirie* [1722] [EWHC J94](#), action in trover, Pratt CJ, ‘the finder of a jewel... has such a property as will enable him to keep it against all but the rightful owner’. *Entick v Carrington* [1765] [EWHC KB J98](#), action in trespass, Lord Camden, ‘The great end, for which men entered into society, was to secure their property.’

28 E McGaughey, *Principles of Enterprise Law* (2022) ch 1(3) on the industrial revolution, ch 13(1), on the green revolution.

- 29 JS Mill, *Chapters on Socialism* (1879) ch 4, 96
- 30 A Sen, *Development as Freedom* (1999) ch 7
- 31 JS Mill, *On Liberty* (1859) [ch 5](#)
- 32 J Froissart, *The Chronicles of Froissart* (1385) transl. GC Macaulay (1895) [250-52](#), ‘by that that cometh of our labours...’
- 33 ILO Forced Labour Convention 1930 [c 29](#) and Abolition of Forced Labour Convention 1957 [c 105](#). UDHR 1948 [art 4](#).
- 34 *Somerset v Stewart* (1772) 98 ER 499, and E McGaughey, *A Casebook on Labour Law* (2019) ch 1(1), 8-11
- 35 In the UK, the Representation of the People Act 1918 and Representation of the People (Equal Franchise) Act 1928.
- 36 e.g. Delaware, Title 8, Chapter 1, General Corporation Law [§211\(b\)](#). Companies Act 2006 [s 284\(1\)](#) presuming votes tied to shares (though this is changeable in any company), and Companies (Model Articles) Regulations 2008 [Sch 3, para 41](#), also presuming voting attached to shares. German Public Companies Act 1965, Aktiengesetz 1965 [§12](#). cf K Marx, ‘On the Jewish question’ (1844) ‘The property qualification for the suffrage is the last political form of giving recognition to private property.’ It seems odd to suggest that votes in the economy are not also ‘political’.
- 37 F Neumann, *Behemoth* (1942) [Part II, ch III, 210](#). JS Mill, *Principles of Political Economy* (1848) Book V, ch I, §2.
- 38 H Collins, *Lectures on Obligations* (2008-9) London School of Economics
- 39 e.g. Plato, *The Laws* (340 BC) Book XI, §23, Contracts, translated by TJ Saunders (Penguin 1970)
- 40 R Goode, *Principles of Corporate Insolvency Law* (4th edn 2011) 1-02, ‘without credit there can be no debt. A world without credit is impossible to imagine. Credit - that is, contractual deferment of debt - has existed from the earliest times, well before the advent of banking institutions.’

- 41 A Smith, *The Wealth of Nations* (1776) Book I, ch 8, §12. H Sinzheimer, *Grundzüge des Arbeitsrechts* (1926) ch 2, 22, on the dependence of labour: ‘The foundation is the relationship between work and property.’
- 42 National Labor Relations Act of 1935, [29 USC §151](#), ‘The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce...’ Mill (1848) Book V, ch 11, §12.
- 43 *Uber BV v Aslam* [2016] [Case 2202550/2015](#), [96]
- 44 WS Jevons, *Theory of Political Economy* (3rd edn 1888) ch 4, 124, ‘The power of reading another man’s thoughts is of high importance in business.’ Also Stiglitz and Rosengard (2015) ch 4, 91-92.
- 45 e.g. *Stevenson, Jordan & Harrison Ltd v MacDonald & Evans* [1952] 1 TLR 101. Bürgerliches Gesetzbuch 1900 §950, where a manufacturer (*Hersteller*) is interpreted by courts, quite against common sense, to mean the employer, not a worker.
- 46 S Zuboff, *The Age of Surveillance Capitalism* (2019). E McGaughey, *Principles of Enterprise Law* (2022) chs 16-18
- 47 *Lister v Romford Ice & Cold Storage Co Ltd* [1956] UKHL 6, per Lord Tucker. *Lawrie-Blum v Land Baden-Württemberg* (1986) Case 66/85, [17]. Limits were set by law in the duty of mutual respect: *Wilson v Racher* [1974] ICR 428.
- 48 S Webb and B Webb, *Industrial Democracy* (1890) Part III, ch 2, 671
- 49 OECD, ‘Decoupling of wages from productivity: what implications for public policies?’ [2018] [2 OECD Economic Outlook 51](#), 55, Figure 2.2.
- 50 e.g. JB Clark, ‘The possibility of a scientific law of wages’ (1889) 4 Publications of the American Economic Association 39, 62, ‘Under perfect competition the reward of each is virtually its own actual product.’
- 51 F Jenkin, *The Graphic Representation of the Laws of Supply and Demand and other Essays on Political Economy* (1887), who came up with the supply and demand chart argued labour was entirely different.

- 52 Berle and Means (1932) Book I, ch 4, 67. Marx (1893) vol III, ch 27. cf *Sterling Engineering Co Ltd v Patchett* [1955] AC 534, 543, Viscount Simonds, if an employee in the course of employment ‘makes an invention which it falls within his duty to make... he holds his interest in the invention, and in any resulting patent, as trustee for the employer unless he can show that he has a beneficial interest which the law recognises’.
- 53 J Prassl, *The Concept of the Employer* (2015) also reviewed in E McGaughey, ‘Social rights and the function of employing entities’ (2017) [38\(2\) Oxford Journal of Legal Studies 482](#)
- 54 T More, *Utopia* (1516) Book 1
- 55 e.g. D Autor, ‘Work of the past, work of the future’ (2019) [25588 NBER Working Paper](#)
- 56 M Kalecki, ‘Political Aspects of Full Employment’ (1943) [14\(4\) Political Quarterly 322](#)
- 57 e.g. Employment Rights Act 1996 s 139(1)(b) and *Murray v Foyle Meats Ltd* [1999] UKHL 30, on the test of making lawful redundancies as demand being ‘diminished’.
- 58 E McGaughey, *Participation in corporate governance* (2015) ch 2(3)(a). On the concept of transaction costs, see JR Commons, ‘Institutional Economics’ (1931) 21 *American Economic Review* 648, before Ronald Coase tried to strip bargaining power from its understanding in ‘The Nature of the Firm’ (1937) 4(16) *Economica* 386.
- 59 F Kessler, ‘Contracts of Adhesion – Some Thoughts About Freedom of Contract’ (1943) [43 Columbia LR 629](#), 640
- 60 O Gierke, ‘The Social Role of Private Law’ (1889) translated by E McGaughey (2018) [19\(4\) German LJ 1017](#)
- 61 ILO, Termination of Employment Convention, 1982 arts 4-13. Employment Rights Act 1996 ss 86, 94 and 135. Contrast the US, where unlike most countries most states have ‘at will employment’, *Cusano v. NLRB* 190 F 2d 898 (1951)
- 62 ILO Freedom of Association and Protection of the Right to Organise Convention 1948 c 87, and Right to Organise and Collective Bargaining Convention 1949 c 98. ICESCR 1966 [art 8](#).

63 *RMT v UK* [2014] [ECHR 366](#). In the UK, TULRCA 1992 [s 224](#). In the US, NLRA 1935 29 USC §158(b)(4)(B), from the Taft-Hartley Act of 1947

64 cf O Kahn Freund, *Labour and the Law* (Hamlyn, 1972) 7, suggesting it is always inherent. For why not, see part 3(2).

65 e.g. JD Rockefeller described the University of Chicago as ‘the best investment I ever made in my life’ in 1896: D Yergin, *The Prize: The Epic Quest for Oil, Money & Power* (2008) 33. ‘In April 1914, [Rockefeller’s] company guards machine-gunned twenty-five people, including eleven children, camped in tents.’ E McGaughey, ‘Democracy in America at Work’ (2019) [42 Seattle Uni LR 697](#), 709-710

66 e.g. M Friedman, ‘The Methodology of Positive Economics’ in *Essays in Positive Economics* (1953) ch 1. RA Posner, *Economic Analysis of Law* (1973) ch 11. G Becker, *The Economics of Discrimination* (1957). R Epstein, ‘In Defense of the Contract at Will’ (1984) 51(4) *University of Chicago Law Review* 947.

67 e.g. ML King Jr, ‘Speech to the Fourth Constitutional Convention AFL-CIO, Miami, Florida’ (11 December 1961). Trades Union Congress (1888) resolution that ‘it is desirable in the interest both of men and women that in trades where women do the same work as men they shall receive the same payment’.

68 Equal Remuneration Convention 1951 [c 100](#). Discrimination (Employment and Occupation) Convention 1958 [c 111](#). In the US, Equal Pay Act of 1963 and Civil Rights Act of 1964. In the UK Equal Pay Act 1970, Sex Discrimination Act 1975, Race Relations Act 1976, etc, now recast in the Equality Act 2010. In the EU, Equality Directive [2000/78/EC](#).

69 UK Pensions Act 2008 s 1. Australia’s Superannuation Industry (Supervision) Act 1993. Internal Revenue Code, 26 US Code §401(k).

70 AA Berle, ‘How Labor Could Control’ (7 September 1921) [New Republic 37](#), 38. ‘Property, Production and Revolution’ (1965) [65 Columbia Law Review 1](#), 17. R Hilferding, *Finance Capital* (1910) [ch 25](#), ‘The socializing function of finance capital...’ PF Drucker, *The unseen revolution: How pension fund socialism came to America* (1976) ch 1.

71 e.g. in the US, the top 1% of income earners take 21% of wages, but own 54% of stocks, and the top 10% take around 47% of income, but hold 93% of stocks: wid.world/data and C Collins (16 January 2024) Inequality.org. Q Curtis, LE Strine and D Webber, 'Rebalancing retirement: how 401(k) plans exacerbate inequality and what we can do about it' (2025) 30(2) *Stanford Journal of Law, Economics and Business* 401.

72 E McGaughey, 'Does Corporate Governance Exclude the Ultimate Investor?' (2016) [16\(1\) J of Corp Law Studies 221](#)

73 *Keech v Sandford* [1726] [EWHC J76](#)

74 e.g. Trustee Act 2000 [s 11](#), power of delegation, and Pensions Act 1995 [s 34\(4\)](#) limits responsibility of pension trustees when they delegate powers. Employee Retirement Income Security Act of 1974 §402(d)(1) precludes liability for negligence if a trustee delegates investment to an external manager, §404(c)(1) immunises the sponsor from claims if a plan permitted the beneficiary to exercise control over the account assets.

75 B Sanders, *Corporate Accountability and Democracy: Shareholder Democracy* (Presidential Platform, 2019)

76 e.g. Companies (Model Articles) Regulations 2008 Sch 3, [paras 20 and 70](#)

77 Berle and Means (1932) Book I, ch 4, 67.

78 Robert Lowe MP, Hansard HC Debs (1 February 1856) vol 140, [cols 131](#) and 137, on 'freedom to commerce'. Note limited liability was intended to be subject to the exception 'of giving the greatest publicity to the affairs of such companies, that everyone may know on what grounds he is **dealing**.' So Parliament intended no application to tort victims.

79 Smith (1776) Book I, ch 2

80 A Smith, *The Theory of Moral Sentiments* (1759) Part IV, ch 1

81 (1776) Book V, ch 1, §107

82 Berle (1932) Book I, ch VI, 114

83 cf Neumann (1942) Part Two, ch III, section 2, 233-4

- 84 Berle and Means (1932) Book I, ch 4, 67
- 85 e.g. Model Articles 2008 [Sch 3, para 3](#). *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480.
- 86 Model Articles 2008 [Sch 3, para 23](#)(2) ‘Directors are entitled to such remuneration as the directors determine...’ Delaware General Corporation Law [§141\(h\)](#) ‘Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors shall have the authority to fix the compensation of directors.’
- 87 E McGaughey, ‘Do corporations increase inequality?’ (2016) [TLI Think! Paper 32/2016](#)
- 88 *Norwest Holst Ltd v Secretary of State for Trade* [1978] Ch 201, Lord Denning MR. See also Paul Myners, adviser to Gordon Brown, quoted in ‘Plc boards must reform to shake ‘self-perpetuating oligarchies’ tag’ (22 February 2002) [Irish Times](#)
- 89 FA Mann, ‘The New German Company Law and Its Background’ (1937) 19 *Journal of Comparative Legislation and International Law* 220, 235 (1/40th of capital held 38.2% of voting rights). WHS Stevens, ‘Stockholders' Voting Rights and the Centralization of Voting Control’ (1926) 40(3) *Quarterly Journal of Economics* 353, 355 and 361 (documenting multiple voting share issues). E McGaughey, *Participation in Corporate Governance* (2015) ch 5
- 90 S Webb and B Webb, *Industrial Democracy* (1920) [Part III, ch 2, 691](#)
- 91 e.g. L Brandeis, *Other People’s Money And How the Bankers Use It* (1914). McGaughey (2015) ch 6.
- 92 Companies Act 2006 s 168. Delaware General Corporation Law [§141\(k\)](#). But note the multiple ways directors entrench themselves in power: McGaughey (2015) [chs 4 and 5](#).
- 93 e.g. ‘World’s largest asset managers block social and environmental progress with worst voting performance yet’ (18 February 2025) [ShareAction](#)
- 94 Cambridge Centre for Business Research, *Labour Regulation Index* (2023)
- 95 UK Pensions Act 2004 ss 214-3. Australian Superannuation Industry (Supervision) Act 1993 s 89.

- 96 But Switzerland did in the *Verordnung gegen übermäßige Vergütungen bei börsenkotierten Aktiengesellschaften 2013* ([in German](#))
- 97 E McGaughey, *Participation in Corporate Governance* (2015) [ch 2\(1\)\(d\), 17](#). cf P Hall and D Soskice (eds), *Varieties of Capitalism* (2001) ch 10
- 98 Friedman (1962) ix, 4, 9, 13
- 99 ‘Eigentum verpflichtet’ in the Weimar Constitution 1919 art 153(3) and Grundgesetz 1949 art 14(2). In tort, *sic utere tuo ut alienum non laedas*: *Vaughan v Menlove* (1837) 132 ER 490. *Munn v. Illinois*, 94 US 113 (1876). JS Mill, *On Liberty* (1859) [ch 1](#)
- 100 *Salomon v A Salomon & Co Ltd* [1896] [UKHL 1](#).
- 101 e.g. Companies Act 2006 [ss 58-59](#)
- 102 *Adams v Cape Industries plc* [1990] Ch 433
- 103 *Walkovszky v Carlton*, 223 NE2d 6 (NY 1966). Also *Berkey v Third Avenue Railway Co* 244 NY 84 (1926)
- 104 E McGaughey, *Principles of Enterprise Law* (2022) ch 11. *Lliuya v RWE AG* (2025) [Oberlandesgericht Hamm](#). *Smith v Fonterra Co-Operative Group Ltd* [2024] [NZSC 5](#) found there could be compensation for climate damage but not yet on the facts.
- 105 *Chandler v Cape plc* [2012] EWCA Civ 525. *US v Bestfoods*, 524 US 51 (1998). *Davis v Alexander*, 269 US 114 (1925)
- 106 Insolvency Act 1986 ss 175, 176, 176ZA, 386, Sch 6. Preference for employees’ wages over floating charge holders was first seen in the Preferential Payments in Bankruptcy Amendment Act 1897, after *Salomon’s* case.
- 107 e.g. *Foley v Hill* (1848) 9 ER 1002
- 108 Banking Act of 1933, 12 USC §1811ff. Financial Services and Markets Act 2000 ss 214-15. Deposit Guarantee Directive 2014/49/EU art 6.
- 109 e.g. Banking Act 2009 ss 1, 7-13

- 110 e.g. *Ultramares Corporation v Touche*, 174 NE 441 (NY 1931). *Spartan Steel & Alloys Ltd v Martin & Co Ltd* [1973] QB 27.
- 111 AO Hirschmann, *Exit, Voice and Loyalty* (1970) ch 2, 24-25
- 112 Cork Report (1982) Cmnd 8558, para 192. Also Bankruptcy Reform Act of 1978, ch 11.
- 113 e.g. J Furman and P Orszag, ‘A Firm-Level Perspective on the Role of Rents in the Rise in Inequality’, in M Guzman, *Toward A Just Society: Joseph Stiglitz and Twenty-First Century Economics* (2018) [ch 1](#)
- 114 Sherman Act of 1890
- 115 Clayton Antitrust Act of 1914
- 116 *Verizon Communications Inc. v Trinko*, 540 US 398 (2004) per Scalia J, arguing perversely that ‘monopoly power, and the concomitant charging of monopoly prices... is an important element of the free-market system’. R Bork, *The Antitrust Paradox: A Policy at War with Itself* (1978) 426–9. cf A Smith, *The Wealth of Nations* (1776) Book I, ch 11, monopoly is ‘a great enemy to good management’.
- 117 cf R Shiller, *Irrational Exuberance* (3rd edn 2015) chs 1–3.
- 118 *Bromfield v Wytherley* (1718) Prec Ch 505, Lord Macclesfield. Undone by *Keech v Sandford* [1726] [EWHC J76](#), Lord King.
- 119 K Marx, *Capital* (1894) vol III, ch 27
- 120 JM Keynes, *The General Theory of Employment, Interest and Money* (1936) chs 15 and 21
- 121 MS Eccles, *Beckoning Frontiers: Public and Personal Recollections* (1951) 75–7.
- 122 *Louis K. Liggett Co. v. Lee*, 288 US 517 (1933) Brandeis J
- 123 M Shelley, *Frankenstein* ([Revised edn 1831](#))
- 124 M Bodie and G Hayden, *Reconstructing the Corporation: From Shareholder Primacy to Shared Governance* (2021) ch 12, 184

- 125 *Lithgow v UK* [1986] ECHR 8, [120]-[121]
- 126 L Powell, ‘Confidential Memorandum: Attack on American Free Enterprise System’ (23 August 1971)
- 127 A Schweitzer, ‘Business Policy in a Dictatorship’ (1964) 38(4) *Business History Review* 413, 417, 423-424. E McGaughey, ‘The codetermination bargains’ (2016) [23\(1\) Columbia Journal of European Law 135](#)
- 128 McGaughey (2018) [7\(2\) British Journal of American Legal Studies 291](#). *Buckley v Valeo*, 424 U.S. 1, 261-66 (1976) per White J. *First National Bank of Boston v Bellotti*, 435 US 765 (1978) per White J ‘the special status of corporations has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process.’ *Citizens United v FEC*, 558 US 310 (2010).
- 129 A Schweitzer, *Big Business in the Third Reich* (Indiana University Press 1964) [ch 2, 105-6](#), citing Affidavit of Schacht in NI-406, the ‘I.G. Farben Case,’ Prosecution, Vol. II.
- 130 P Thiel, ‘Competition Is for Losers’ (12 September 2014) [Wall Street Journal](#)
- 131 JS Mill, *Principles of Political Economy* (1848) Book IV, ch 4, §2.
- 132 A Einstein, *Why Socialism* (1949) [Monthly Review](#)
- 133 B Spinoza, *On the improvement of the understanding* (1677) translated by RHM Ewles. As Einstein put it, the goal of promoting everyone’s ‘innate abilities’, and a ‘social consciousness’ with a ‘sense of responsibility’ for others: (1949) [Monthly Review](#)
- 134 W Humboldt, *Sphere and Duties of Government* (1854) quoted at the start of JS Mill, *On Liberty* (1859). Also T Paine, *The Rights of Man* (1792) Part II, ch 3, ‘the construction of government ought to be such as to bring forward... all that extent of capacity...’
- 135 S Webb and B Webb, *Industrial Democracy* (1920) [Part III, ch 4, 847](#)
- 136 E McGaughey, ‘A human is not a resource’ (2020) [31\(2\) King’s Law Journal 1](#)
- 137 Treaty of Versailles 1919, [Part XIII](#), Section I

138 AA Berle, *Power without Property: A New Development in American Political Economy* (1959) 133. AA Berle, 'Property, Production and Revolution' (1965) 65 Columbia LR 1

139 UDHR 1948 [art 29\(1\)](#)

140 cf Aristotle, *Nicomachean Ethics*, [Book V](#), who appeared to think justice was reducible to arithmetic (for corrective or commutative justice) or geometric equations (for distributive justice).

141 Thus the opposite of Plato, *The Republic*, Book IV, Part V, 139, translated by D Lee, 'the worst of evils' that 'spells destruction to our state' is 'interchange of jobs'. When each class 'does its own job and minds its own business, that is justice and makes our state just.'

142 F Hayek, *Law, Legislation and Liberty* (1976) vol II, 'The Mirage of Social Justice'

143 KD Ewing, 'Democratic socialism and labour law' (1995) 24(2) Industrial LJ 103

144 Universal Declaration of Human Rights 1948 [arts 22-27](#). International Covenant of Economic, Social and Cultural Rights 1966 [arts 6-15](#)

145 RF Kennedy, 'Remarks at the University of Kansas' (18 March 1968)

146 McGaughey (2022) [ch 20\(1\)](#)

147 S Kuznets, 'National Income, 1929–32: Letter from the Acting Secretary of Commerce Transmitting in Response to Senate Resolution No. 220 (72d Cong.) 'A Report on National Income, 1929–32' (4 January 1934) 1–7.

148 For instance, it is incompatible with the Treaty on European Union art 3(3) 'balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress', not least because 'economic growth' is frequently the opposite of GDP growth.

149 cf Gross National Income Regulation (EU) [2019/516](#) art 1

150 Thucydides, *History of the Peloponnesian War* (404 BC) Book 2, translated by B Jowett ([1881](#))

- 151 *R (Animal Defenders International) v Secretary of State for Culture Media and Sport* [2008] UKHL 15, [48] per Baroness Hale
- 152 cf JS Mill, *Principles of Political Economy* (1848) [Book V, ch XI, 569](#), favouring a ‘democratic constitution... supported by democratic institutions in detail...’
- 153 Friedman (1962) ch 1, 16
- 154 cf L Wittgenstein, *Philosophical Investigations* (1951) §43, ‘the meaning of a word is its use in the language’.
- 155 Einstein ([1949](#))
- 156 KW Wedderburn, *Labour Law and Freedom* (1992) Preface
- 157 e.g. G Dangerfield, *Strange Death of Liberal England* (1935) which unwittingly illustrates why this was not that strange at all.
- 158 e.g. J Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (2012)
- 159 E McGaughey, ‘Is public ownership or privatisation better? Law, economic theories, and how data helps’ in *Cambridge Handbook on Networks, Platforms and Utilities* (2026) on [ssrn.com](#)
- 160 cf S Webb and B Webb, *A History of Trade Unionism* (1920) Appendix VIII, calling for worker directors. Sidney Webb wrote the Labour Party’s first constitution, where clause IV called for ‘common ownership of the means of production, distribution and exchange’. To Webb ‘common ownership’ was primarily public, but also saw a role for non-state ownership and worker democracy, just not yet fully articulated.
- 161 E McGaughey, *Participation in Corporate Governance* (2015) [ch 6](#)
- 162 Master of the Post, created in 1516, Municipal Corporations (England) Act 1835, Government of India Act 1858, Telegraph Act 1869, Elementary Education Act 1870, *Attorney General v Edison Telephone Co of London Ltd* (1880–81) LR 6 QBD 244, Petroleum Act 1918, Housing of the Working Classes Act 1919, BBC Charter 1926, London Passenger Transport Act 1933, British Overseas Airways Act 1939.

- 163 Magna Carta 1215 chs 47-48, recast as Charter of the Forest 1217, cl. 1 (right of herbage in forests, gathering plants), cl. 9 (agistment and pannage, right of grazing including pigs) and cl. 10 (right to farm). However, attacked by E Coke, *The Fourth Part of the Institutes of the Laws of England: Concerning the Courts* (1644) ch 73.
- 164 McGaughey (2022) ch 2(5) 38-40.
- 165 McGaughey (2022) ch 2(5) 42-43
- 166 B Black, R Kraakman and A Tarassova, ‘Russian Privatization and Corporate Governance: What Went Wrong?’ (2000) [52\(6\) Stanford Law Review 1731](#)
- 167 e.g. D Hall, E Lobina and P Terhorst, ‘Re-municipalisation in the Early Twenty-First Century: Water in France and Energy in Germany’ (2013) [27\(2\) International Review of Applied Economics 193](#). A Cumbers and S Becker, ‘Making sense of remunicipalisation: theoretical reflections on and political possibilities from Germany’s Rekommunalisierung process’ (2018) [11\(3\) Cambridge Journal of Regions, Economy and Society 503](#).
- 168 See *Weir v Secretary of State for Transport* [2005] EWHC 2192 (Railtrack plc transfer to Network Rail Ltd), Banking Act 2009 (codified public ownership route for failed banks, e.g. RBS/Natwest, but made private by 2025), Passenger Railway Services (Public Ownership) Act 2024, Great British Energy Act 2025, Steel Industry (Special Measures) Act 2025.
- 169 M Smith, ‘Support for nationalising utilities and public transport has grown significantly in last seven years’ (18 July 2024) [YouGov](#)
- 170 N Lawson, *The View from No. 11: Memoirs of a Tory Radical* (1992) 613
- 171 ‘What do the public think about tuition fees?’ (2023) [WonkHE](#), n=1500, poll by Redfield & Wilton
- 172 E McGaughey, ‘Social infrastructure law in the UK, EU and US’ in G Sitaraman et al, *Cambridge Handbook on Networks, Platforms and Utilities Law* (Cambridge UP 2026) on [ssrn.com](#)
- 173 International Covenant on Economic, Social and Cultural Rights 1966 [art 13\(2\)\(c\)](#)
- 174 G Galvin (24 March 2021) [Morning Consult](#)

- 175 H Hartig (11 August 2021) [Pew Research](#)
- 176 ‘Voters Overwhelmingly Favor Investment in Water Infrastructure’ (28 April 2020) [US Water Alliance](#)
- 177 ‘New Polling Data Shows Strong Support for Public Power’ (30 November 2023) [American Public Power Association](#)
- 178 ‘Amtrak survey finds overwhelming support for rail investment’ (10 August 2023) [Railway Technology](#)
- 179 D Conlon (8 April 2025) [Streets Blog NYC](#)
- 180 C Kahn (19 August 2020) [Reuters](#)
- 181 ‘Americans more likely to support than oppose continuing federal funding for NPR and PBS’ (26 March 2025) [Pew](#)
- 182 e.g. *Buckley v Valeo* 424 US 1 (1976) and *Citizens United v FEC* 558 US 310 (2010). Previously *Lochner v New York* 198 US 45 (1905) and *Civil Rights Cases* 109 US 3 (1885). M Gilens and BI Page, ‘Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens’ (2014) 12(3) *Perspectives on Politics* 564 (public opinion has had no effect upon US lawmaking since 1980).
- 183 McGaughey (September 2025) [World Inequality Lab, WP N°2025/18](#), part 2(3) elaborates this section.
- 184 J Stiglitz and J Rosengard, *Economics of the Public Sector* (2015) 84. The concept came from JS Mill, *Principles of Political Economy* (1848) Book IV, ch 11, §12, referring to ‘practical monopoly’.
- 185 Mill (1848) Book II, ch 14, §14
- 186 Also on public options, M Ricks, G Sitaraman, S Welton and L Menand, *Networks, Platforms, and Utilities* (2022) ch 1, 32, 36
- 187 e.g. Anglo-Persian Oil Company (Acquisition of Capital) Act 1914. *Weir v Secretary of State for Transport* [2005] EWHC 2192 (Ch). GB Energy Act 2025 [s 1\(2\)](#).
- 188 e.g. *Royal Charter of the BBC* ([1 January 1927](#)). King’s College, London Act 1997 s 15. NHS Act 2006 Sch 7, on foundation trusts.

189 Companies Act 2006 ss 168 and 284. Note it is a myth that directors must prioritise shareholder interests over others. They have never been required to prioritise shareholder interests at all, and especially not since the Companies Act 1985 [s 309](#) was replaced by CA 2006 [s 172](#). See *Shepherd v Williamson* [2010] EWHC 2375 (Ch). If directors owe duties to stakeholders, they will still fulfil shareholders wishes if shareholders can vote them out. Even if directors owe duties to the corporation alone, they will fulfil directors' own wishes if they cannot effectively be voted out by any stakeholder.

190 e.g. Water Act 1973 [s 1\(2\)\(c\)](#), GB Energy Act 2025 [s 3\(2\)](#), NHS Act 2006 [s 1](#), and Bank of England Act 1998 [s 11](#).

191 e.g. Universal Service Directive 2002/22/EC. Urban Waste Water Treatment Directive 1991/271/EEC arts 4-5. Net Neutrality Regulation 2015/2120 art 3(3). Rail Passenger Rights Regulation (EU) 2021/782 art 19.

192 e.g. *Commission v UK* (2012) C-301/10, successful action against the UK for failing to stop pollution by Thames Water plc.

193 NHS Act 2006 [s 1\(4\)](#) and [ss 172-194](#) on exceptional charging.

194 McGaughey (2022) ch 20(2)

195 McGaughey (2022) ch 20(1)

196 Consumer cooperatives may be regarded as common ownership, where consumers are in effect the public, and finance the sector, so long as workers who produce have equal governance rights. This is often not the case, but a good example of where the principles combine well is the Wikimedia Foundation, where anyone with an account (usually Wikipedia editors who provide labour, but not so formally limited) has a vote for who is on the Wikimedia board.

197 E McGaughey, *Participation in Corporate Governance* ([2015](#)) ch 7

198 J Froissart, *The Chronicles of Froissart* (1385) trans. GC Macaulay (1895) 250–2

199 R Hilferding, *Finance Capital: A Study of the Latest Phase of Capitalist Development* (1910) [ch 25](#), though note that Hilferding was focused primarily on debt capital and banks.

- 200 AA Berle, *Studies in the Law of Corporate Finance* (1928) 39. AA Berle, *Power without property* (1959) 52-5. AA Berle, 'Property, Production and Revolution' (1965) [65 Columbia Law Review 1](#), 17.
- 201 PF Drucker, *The unseen revolution: How pension fund socialism came to America* (1976) ch 1, 1.
- 202 McGaughey ([2015](#)) ch 6(1) and (3). 'Democracy in America at work' (2019) [42 Seattle Uni LR 697](#), 745
- 203 e.g. Bernie Sanders, *Corporate Accountability and Democracy: Shareholder Democracy* (2019). See also EU Adequate Minimum Wage Directive [2024/2041](#) art 4, requiring Member State action plans to reach 80% collective bargaining coverage.
- 204 e.g. Q Curtis, L Strine and D Webber, 'Rebalancing retirement: how 401(k) plans exacerbate inequality and what we can do about it' (2025) 30(2) *Stanford Journal of Law, Economics & Business* 401
- 205 Pensions Act 2008 Sch 1
- 206 Einstein ([1949](#))
- 207 See M Thatcher, 'Rebuilding an Enterprise Society through Privatisation' in *Transforming Government Through Privatization* (Reason 2006) 7, 'A system of state control can't be made good merely because it is run by "clever" people who make the arrogant assertion that they "know best" and that they are serving the "public interest"—an interest which of course is determined by them.'
- 208 N Bevan, *In Place of Fear* (1952) 103-5, 'Democracy is protected by extending its boundaries.'
- 209 E McGaughey, 'Economic Democracy: A Brief History and the Laws That Make It' (2025) [University of Cambridge, Centre for Business Research, Working Paper Series, WP 539](#), following the three stakeholder analysis of K Kautsky, *The Labour Revolution* (1924) and S Webb and B Webb, *Industrial Democracy* (1920)
- 210 E McGaughey, 'Votes at work in Britain: Shareholder Monopolisation and the "Single Channel"' (2018) [47\(1\) ILJ 76](#)

- 211 S Webb and B Webb, *Industrial Democracy* (1920) [Part III, ch 3\(e\)](#). S Deakin, ‘The floor of rights in European labour law’ (1990) [15 NZ Journal of Industrial Relations 219](#)
- 212 E McGaughey, ‘The future of democracy and work: The Vote in Our Economic Constitution’ (2021) [Sefton-Williams Lecture, University of Toronto](#)
- 213 S Deakin, ‘The corporation as commons: rethinking property rights, governance and sustainability in the business enterprise’ (2012) [37\(2\) Queen’s LJ 339](#), 379
- 214 South Metropolitan Gas Act 1896 s 19. Port of London Act 1908 s 1(7). ‘Votes at work in Britain’ (2018) [47\(1\) ILJ 76](#)
- 215 Oxford University Act 1854 [ss 16 and 21](#). Cambridge University Act 1856 [ss 5-51](#). Oxford University Commission, *Report of Her Majesty’s Commissioners appointed to inquire into State, Discipline, Studies and Revenues of University and Colleges of Oxford (1852)* 7-8. P Searby, *A History of the University of Cambridge: Volume III, 1750-1870* (1997) 518-23 and 530-533.
- 216 E McGaughey, ‘The codetermination bargains’ (2016) [23\(1\) Columbia Journal of European Law 135](#), 149.
- 217 Gesetz über die Entsendung von Betriebsratsmitgliedern in den Aufsichtsrat, Feb. 1, 1922, RGBL. I at 209.
- 218 Now Massachusetts General Laws ch 156, § 23 (2018). McGaughey (2019) [42 Seattle Uni LR 697](#), 718-9
- 219 Z Adams et al, *CBR Labour Regulation Index: Dataset of 117 Countries, 1970-2022* ([2023](#)), and see indicator D.30
- 220 e.g. Ireland’s Worker Participation (State Enterprises) Acts 1977. Australia’s Public Service Reform Act 1984 [s 12](#). The UK’s Post Office Act 1977 s 1. NHS Act 2006 Sch 7.
- 221 TUC, ‘6 in 10 people support elected workers on large company boards, new TUC poll reveals’ ([29 November 2016](#)). Also High Pay Centre, ‘Worker voice in corporate governance: how to bring perspectives from the workforce into the boardroom’ ([October 2022](#)) 8, 70% thought it would raise pay and 73% improve job satisfaction.

- 222 D Matthews, ‘Workers don’t have much say in corporations. Why not give them seats on the board?’ ([6 April 2018](#)) Vox
- 223 IW Trends, *Betriebsratswahlen* ([2018](#)) 82. *Betriebsratswahlen* ([2022](#)) 71
- 224 E Thomasson, ‘Swiss back executive pay curbs in referendum’ (3 March 2013) [Reuters](#)
- 225 e.g. McGaughey (2015) [ch 6\(1\), 126-8](#)
- 226 Taft-Hartley Act of 1947 §302(c)(5)(B) in 29 USC §186
- 227 Superannuation Industry (Supervision) Act 1993 s 89.
- 228 Pensions Act 2004 ss 241-243.
- 229 e.g. University of Toronto Act 1971. NHS Act 2006 Sch 7. Gemeindeordnung Nordrhein-Westfalen 1994 §§107-113. France’s Consumer Code art L 411-1.
- 230 H Morrison, *Socialisation and Transport* (1933)
- 231 M Thatcher, ‘Rebuilding an Enterprise Society through Privatisation’ (2006) 7
- 232 European Social Charter 1961 [art 2\(1\)](#). D Kamerade, S Wang, B Burchell, SU Balderson and A Coutts, ‘A shorter working week for everyone: How much paid work is needed for mental health and well-being?’ (2019) [241 Social Science & Medicine 112353](#), suggesting optimal work week is between 8 and 30 hours.
- 233 e.g. ILO Termination of Employment Convention 1982, c 158
- 234 e.g. Adequate Minimum Wage Directive 2024 art 4
- 235 e.g. German Civil Code 1900 §§557-8. M Haffner, M Elsinga and J Hoekstra, ‘Rent Regulation: The Balance between Private Landlords and Tenants in Six European Countries’ (2008) 8(2) Int’l J Housing Policy 217
- 236 P Lele and M Siems, ‘Shareholder Protection – A Leximetric Approach’ (2007) [7 Journal of Corporate Law Studies 17](#)
- 237 e.g. JF Kennedy, ‘Special Message to the Congress on Protecting the Consumer Interest’ (15 March 1962)

- 238 UDHR 1948 [art 25](#)
- 239 W Beveridge, *Full Employment in a Free Society* (1944) 18
- 240 E McGaughey, ‘Will Robots Automate Your Job Away?’ (2022) [51\(3\) Industrial LJ 511](#)
- 241 McGaughey (2022) ch 20(2) 671-80
- 242 A Smith, *The Wealth of Nations* (1776) Book V, ch 2, part II
- 243 e.g. J Stiglitz and JK Rosengard, *Economics of the Public Sector* (4th edn 2015) with very similar principles
- 244 T Piketty, *Capital in the Twenty-first century* (2014)
- 245 E McGaughey, ‘Do Corporations Increase Inequality?’ (2016) [TLI Think! Paper 32/2016](#)
- 246 cf *New Testament* (ca 380) Acts of the Apostles 4:35, and 11:30. A fourth principle might be that profits from harmful activity should be taxed out of existence. Yet this leads to the risk that governments keep the harm in existence once they become reliant on revenue (such as for carbon, tobacco or gambling). Bans on harmful conduct work better.
- 247 ML King, ‘Speech to the Negro American Labor Council’ (May 1965) in TF Jackson, *From Civil Rights to Human Rights* (2007) [ch 8, 230](#)
- 248 YouGov ([8 July 2025](#))
- 249 YouGov ([29 October 2024](#)). The poll did not give options of higher (progressive) corporate rates for large or multinational business, which presumably even more people would support.
- 250 ‘Tech Oversight Project/PPP National Poll: Americans Deeply Critical of Big Tech CEOs, Support Big Tech Tax’ ([11 June 2025](#))
- 251 FA Hayek, *The Constitution of Liberty* (Chicago 1978) 184-5 on ‘control the movement... across the frontiers...’

252 KD Ewing, 'Democratic socialism and labour law' (1995) 24(2) *Industrial LJ* 103, 105-7, on public law principles that (1) the people are sovereign, (2) state authority is to be used for social good, and (3) social goals are promoted so as to respect civil liberties.

253 J Rawls, *A Theory of Justice* (1971, revised edn 1999) ch I.6, 27-8

254 C Gearty, *Civil Liberties* (2007)

255 e.g. Proclamation of Teheran (1968) art 13, 'Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights, is impossible.'

256 e.g. Trade Disputes Act 1906, Trade Boards Act 1918, Representation of the People Act 1918 and Representation of the People (Equal Franchise) Act 1928. Before this, equally intertwined, Reform Act 1867 and Trade Union Act 1871.

257 Versailles Treaty 1919, Part XIII, and UDHR 1948.

258 cf J Locke, *The Second Treatise of Government* (1690) [ch IX, §123](#)

259 e.g. Universal Declaration of Human Rights 1948 arts 8-10 and 21

260 e.g. European Convention on Human Rights 1950 arts 5, 9-11

261 O Kahn-Freund, 'The impact of constitutions on labour law' (1976) [35\(2\) Cambridge LJ 240](#), 244

262 O Kahn-Freund, 'Autobiographical Memories of the Weimar Republic: A Conversation with Wolfgang Luthardt' (February 1978) translated by E McGaughey (2016) [KCL Law School Research Paper No. 2016-34](#)

263 See E McGaughey, 'Democracy or Oligarchy? Models of Union Governance in the UK, Germany and US' (2017) [KCL Law School Research Paper No. 2017-35](#), on the theory of an 'iron law of oligarchy' in political parties and unions.

264 *Roberts v Hopwood* [1925] AC 578, 594, per Lord Atkinson, equal pay order of council unlawful and 'motivated by ' some eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes in the matter of wages in the world of labour'. Not reversed till the Equal Pay Act 1970.

- 265 *Rookes v Barnard* [1964] UKHL 1, reversed by Trade Disputes Act 1965.
- 266 *Barker v Corus (UK) plc* [2006] UKHL 20, reversed by Compensation Act 2006.
- 267 *O’Kelly v Trusthouse Forte plc* [1983] ICR 728, per Sir John Donaldson MR, appointed by Thatcher. *Carmichael v National Power plc* [1999] UKHL 47, per Lord Irvine LC, appointed by Blair. *Independent Workers of Great Britain Union v Central Arbitration Committee* [2023] UKSC 43, per Lady Rose, denying labour rights to some of lowest paid manual workers in UK.
- 268 *Civil Rights Cases*, 109 US 3 (1883) not reversed till the Civil Rights Act of 1964.
- 269 *Lochner v New York*, 198 US 45 (1905) not reversed till Roosevelt threatened to pack the court.
- 270 *Buckley v Valeo*, 424 US 1 (1976) still in force. See M Gilens and BI Page, ‘Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens’ (2014) 12(3) *Perspectives on Politics* 564, showing that US public opinion has had no effect upon public policy since 1980.
- 271 *AT&T Mobility LLC v Concepcion*, 563 US 333 (2011) still in force. A majority of US workers covered by mandatory arbitration agreements, meaning they cannot go to court to enforce rights, including anti-discrimination rights.
- 272 For more, E McGaughey, ‘Fascism-lite in America (or the social ideal of Donald Trump)’ (2018) [7\(2\) British Journal of American Legal Studies 291](#)
- 273 See Weimar Constitution 1919 arts 153 and 165. Grundgesetz 1949 [arts 1](#), 20 and 79(3).
- 274 *New State Ice Co v Liebmann*, 285 U.S. 262 (1932) per Brandeis J. Further, E McGaughey, ‘What is the UK’s true constitution?’ in A Bogg, J Rowbottom and A Young (eds), *The Constitution of Social Democracy* (Hart 2020) ch 17
- 275 ECHR 1950 [arts 5-7](#)
- 276 ‘High-profile minister who aims to reshape our lives’ (29 April 1998) [South Wales Echo](#), on Alun Michael, Welsh Labour.
- 277 Versailles Treaty 1919, Part XIII

- 278 M Weber, 'Politik als Beruf' (1919)
- 279 I Kant, *Zum Ewigen Frieden* (1795) translated by MC Smith, *Perpetual Peace* (1903)
- 280 ICCPR 1966, art 1(1)
- 281 UN Charter 1945 art 2(4)
- 282 Geneva Conventions 1864-1949
- 283 UDHR 1948 arts 2–3
- 284 UN Charter 1945 art 1
- 285 UDHR 1948 arts 13–15
- 286 DD Eisenhower, 'Farewell Address to the Nation' (17 January 1961)
- 287 However, efforts exist in (1) non-proliferation of weapons treaties, (3) negotiations to decrease the military and (4) campaigns to cancel international debt, such as the Jubilee 2000 movement.
- 288 Magna Carta ch 41
- 289 Universal Declaration of Human Rights 1948 [arts 13-14](#)
- 290 JA Schumpeter, *Capitalism, Socialism and Democracy* (1943) ch VII, 83
- 291 AO Hirschman, *Exit, Voice and Loyalty* (1970) ch 2, 24
- 292 V Acharya, R Baghai and KV Subramanian, 'Labor laws and innovation' (2013) 56(4) *Journal of Law and Economics* 997
- 293 D Ariely, U Gneezy, G Loewenstein and N Mazar, 'Large Stakes and Big Mistakes' (2009) 76 *Review of Econ Studies* 451.
- 294 M Mazzucato, *The Entrepreneurial State* (2013)
- 295 E McGaughey, *Principles of Enterprise Law* (2022) ch 8(2)(d), 351

- 296 FA Hayek, *Law, Legislation and Liberty* (1976) vol 2, ch 9, 88
- 297 A Cohn, E Fehr, B Herrmann and F Schneider, ‘Social Comparison in the Workplace: Evidence from a Field Experiment’ (2011) IZA Discussion Paper No 5550
- 298 HA Simon, ‘Recent Advances in Organization Theory’ in SK Bailey, *Research Frontiers in Politics and Government* (1955) ch 2, 29
- 299 JS Mill, *Chapters on Socialism* (1879) ch 4, 95
- 300 LA Stout, ‘The Corporation As Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form’ (2015) 38 Seattle Uni LR 685
- 301 R Posner, *Economic Analysis of Law* (2011) 37
- 302 R Posner, ‘Some economics of labor law’ (1984) 51(4) University of Chicago Law Review 988, notably paying lip service to Adam Smith, but then ignoring the central concept to Smith’s writing, that employers have the ability to ‘hold out’ longer and so have greater bargaining power: *The Wealth of Nations* (1776) Book I, ch 8, §12
- 303 Judge Richard Posner (2017) YouTube at 5:04, ‘antitrust is dead, isn’t it? That was my impression. . . Amazon, Microsoft and Google [are] the three best companies in the world, so who’s concerned whether they have monopolies, right?. . . I don’t have any problem with prices, quality of the products. . . and neither does my cat who is an avid consumer of extremely expensive cat food, right? So we’re happy.’
- 304 ML King, ‘The mastery of fear’ ([1 July 1962](#)) Atlanta, Georgia
- 305 M Kalecki, ‘Political Aspects of Full Employment’ (1943) [14\(4\) Political Quarterly 322](#)
- 306 Notably attended by L Summers, author of ‘Some simple economics of mandated benefits’ (1989) [79\(2\) American Economic Review 177](#) which argues, without evidence, that labour rights and ‘mandated benefits’ usually reduce jobs.
- 307 R Heede, ‘Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010’ (2014) 122 Climatic Change 229
- 308 M Friedman, *Capitalism and Freedom* (2002 edition) Preface, 1982, xii-xiii

- 309 E McGaughey, 'The codetermination bargains' (2016) [23\(1\) Columbia Journal of European Law 135](#). Also F Neumann, *Behemoth* (1942) 214, 'The German economy... is a monopolistic economy—and a command economy. It is a private capitalistic economy, regimented by the totalitarian state. We suggest as a name best to describe it, 'Totalitarian Monopoly Capitalism'.'
- 310 HA Turner, *German Big Business and the Rise of Hitler* (1985) as much as 25m RM for 1933 elections, SPD 2m RM.
- 311 M Gilens and BI Page, 'Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens' (2014) 12(3) *Perspectives on Politics* 564
- 312 *Buckley v Valeo* 424 US 1 (1976), accelerated by *Citizens United v FEC* 558 US 310 (2010). See E McGaughey, 'Fascism-lite in America' (2018) [7\(2\) British Journal of American Legal Studies 291](#)
- 313 VI Lenin, 'The Role and Functions of the Trade Unions Under the New Economic Policy' (12 January 1922) 'all authority in the factories should be concentrated in the hands of the management... The trade unions must collaborate closely and constantly with the government.'
- 314 e.g. B Taylor and Q Li, 'Is the ACFTU a Union and Does it Matter?' (2007) 49(5) *Journal of Industrial Relations* 701
- 315 A Bevan, 'Resignation speech in the House of Commons' (23 April 1951)
- 316 G Orwell, *Nineteen Eighty-Four* (1949) and 'The Lion and the Unicorn: Socialism and the English Genius' ([1941](#))
- 317 K Kautsky, *Marxism and Bolshevism: Democracy and Dictatorship* (1934) [IV](#), 'He who thinks that there are various ways of achieving Socialism and that democracy is merely one of them, and the most ineffective at that, regards democracy exclusively from the viewpoint of the conquest of state power.'
- 318 T Piketty, *Capital in the twenty-first century* (2013) Introduction. JS Mill, *Principles of Political Economy* (1848) Book IV, ch 6. HE Daly, 'The Economics of the Steady State' (1974) 64(2) *Am Economic Rev* 15, 19. McGaughey (2022) ch 20, 667-70.