

Liberal Socialism
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Introduction

The biggest challenge facing a defense of liberal socialism is the viscerally negative reaction it evokes from major segments of both right and left as, in the words of Matthew McManus, a “perceived oxymoron...”¹

For some parts of the left, perhaps most egregiously among the subset of Marxist-Leninists known by their adversaries as tankies, “liberal” is the ultimate pejorative. To quote McManus again:

For many Marxists, and not a few liberals, liberalism is historically, normatively, and efficaciously, the handmaiden political ideology of capitalism. By contrast socialism, as the main political ideology critical of capitalism, and socialists, as partisans for the working class, must reject liberalism — even if many Marxists can express a (grudging) appreciation for the historical role liberal ideology played in supplanting the feudal order at the ideational level. Regardless, whatever positive ideological and material system socialists end up endorsing, it will not be a liberal one.²

The revulsion is directed not just against classical liberalism as a “bourgeois” ideology historically connected to a large extent with the defense of capitalism, but against any value — e.g. due process, freedom of speech, etc. — which is accidentally associated with bourgeois liberalism in the sense that, while liberals view it as an integral part of their own ideology, it carries no necessary connection to capitalism. Extremely online Marxist-Leninists, at least of the younger sort identifiable by Stalin avatars on their social media accounts, reflexively denounce anyone positively mentioning such values as a “liberal.” If they see fit to go beyond that, their further elaborations range from arguing the superiority of the economic rights in the USSR to Western civil liberties (apparently rejecting the possibility of having both), to assuring that the Soviet Union could not have had less than perfect freedom of speech and due process of law, “because it clearly states in the Soviet Constitution of 1936...”

On the other hand, among those on the right who most frequently identify themselves as “classical liberals,” or simply “liberals,” socialism is inherently illiberal. In their polemics, any mention of socialism is immediately met with references to Venezuela and Cuba. For example, Joseph Schwartz notes that “[Jonathan] Chait, who seems to have read little of Marx, let alone twentieth-

¹Matthew McManus, *The Political Theory of Liberal Socialism* (Routledge, 2025), p. 1.

²*Ibid.*, p. 8.

century Marxist thought, conflates everything from left social democracy to libertarian anarcho-communism with Stalinism.”³

It’s important to note, by way of clarification, that “liberal” and “liberalism” as I use them here are shorthand for certain Enlightenment values involving limitations on power and individual security and autonomy from power, which happen to be shared by liberalism; capital-L liberalism does not hold exclusive rights to them, nor is embracing them contingent on adopting Liberalism as a package deal. Indeed, as I and many of the theorists I cite in this paper point out, socialism is arguably a better vehicle for fulfilling these liberal values than was historic liberalism.

Further, the model of “liberal socialism” developed in this study is not a fusion of liberalism and socialism, or a splitting of the difference between them. My purpose here, rather, is to defend the value of many of the principles historically associated with the liberal ideology, completely independent of that ideology as a package deal, and to advocate for their integration into any socialist model worthy of the name. That does not by any means imply the aping of Western institutional forms; pluralism, due process, restraints on power, and freedom of speech and press, in the context of a socialist society, may take on institutional expressions that seem quite alien, or even unrecognizable, from a Western liberal capitalist perspective and in terms of prevailing institutional models like multi-party representative democracy.

It should also be noted that “freedom” or “liberty” as it is used here is viewed, not as consistency with some standard deduced from (e.g.) self-ownership and non-aggression, but as the maximization of subjectively experienced agency, room for flourishing, and security and autonomy from external constraint. This sense of agency and freedom from constraint includes not only negative freedom from interference with freedom of speech, contract, etc., but also access to some minimum standard of subsistence, and control over the decisions affecting one’s life. An ideally free society, in this formulation, is one that would be chosen by a rational person in a Rawlsian original position, desiring to maximize their agency, with no knowledge of the station they would occupy in such a society.

³Joseph M. Schwartz, “Liberalism’s Crisis, Socialism’s Promise,” *Jacobin*, April 28, 2016 <<https://jacobin.com/2016/04/jonathan-chait-nymag-marxism-democratic-socialists>>.

I. The Historical Importance of Liberalism to the Left

Those on the left, including anarchists and other socialists, have frequently pointed to the hypocrisy embedded in the much-vaunted formal equality and civil liberties supposedly guaranteed by liberal capitalist regimes. For example, Jürgen Habermas:

The socialist critique of the purely formal character of bourgeois law has constantly stressed that the autonomy guaranteed by private law could be enjoyed by all persons subject to it only to the extent that equal economic opportunities permitted the realization of legally equal chances for shaping one's life. Especially the separation of the producer from the means of production... transformed the formally equal legal relationship between capitalists and wage earners into a relationship of factual subordination; its conceptualization in terms of private law shrouded a quasi-public authority.⁴

But the proper approach to addressing this contradiction, contrary to that of too many on the left, is not to dismiss formal equality, due process rights, and the like as bourgeois fairy tales, or to promote worker control over the means of production *to the exclusion of* the autonomy promised under bourgeois law; it is to make real both autonomy from capital via control of the means of production, *and* autonomy from the state or other centers of power via secure guarantees of civil liberty. Regardless of the fact that bourgeois or capitalist liberalism fails to secure individual autonomy from one of the dominant power centers of society — capital — the fact remains that individual and group autonomy against all power centers, and the prevention of concentrated power centers *of any kind*, are positive goods in any society.

Despite all this, the contrasting principle that socialism should fulfill, on a higher level, the stated libertarian values on which liberalism has failed to deliver also has a venerable history on the left. As Rosa Luxemburg put it, writing in 1918 in response to Trotsky's statement that "we have never been idol worshippers of formal democracy,"

Surely, we have never been idol worshippers of socialism or Marxism either. Does it follow from this that we may throw socialism on the scrap-heap..., if it becomes uncomfortable for us?...

"We have never been idol-worshippers of formal democracy." All that

⁴Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Burger with the assistance of Frederick Lawrence (Cambridge Massachusetts: The MIT Press, 1989 [1962]), pp. 148-149.

that really means is: We have always distinguished the social kernel from the political form of *bourgeois* democracy; we have always revealed the hard kernel of social inequality and lack of freedom hidden under the sweet shell of formal equality and freedom – not in order to reject the latter but to spur the working class into not being satisfied with the shell, but rather, by conquering political power, to create a socialist democracy to replace bourgeois democracy – not to eliminate democracy altogether.⁵

The approach she recommends — not repudiating formal democracy or procedural justice as “bourgeois,” but fulfilling it where bourgeois liberalism fell short — was frequently suggested by Marx himself. As Matthew McManus characterized Marx’s approach to liberalism, he “projected that a new, higher form of society would come which carried forward the benefits of liberalism and capitalism while shedding their limitations.”⁶

The Liberal Marx: *Aufhebung* and the Negation of the Negation. As obvious as it might seem, I should start by acknowledging, in regard to the phrase “liberal Marx,” that Marx was not actually a liberal in the sense of identifying with liberalism as a systematic ideology. It is simply a shorthand way of referring to aspects of Marx’s thought which have some commonality with values like individual autonomy and dignity, freedom from arbitrary power, and the like, which are held by liberals.

Throughout his life’s work, Marx’s approach to bourgeois rights was characterized, not by simple abolition or negation, but in Hegelian terms of recapitulation on a higher level. Marx and Engels’ discussion of the abolition of private property, in the *Communist Manifesto*, was a classic example of the proper socialist approach — fulfilment, not negation — of the promises of liberalism. Contrary to classical liberalism’s celebration of bourgeois private property as a base for autonomy and security for the population in general, it had in historical fact never existed in any meaningful sense for most people. The great majority, with no relation of ownership to their dwelling space or conditions of work, and no “property” beyond a few personal possessions, were — far from being autonomous or secure — utterly dependent on the employing classes for their survival. It was the capitalists who had, in fact, abolished the real basis of security, customary possessory rights, for most of the population.

We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man’s own labour,

⁵Rosa Luxemburg, *The Russian Revolution*. Translated by Bertram Wolfe (New York: Workers Age Publishers, 1922, 1940). Hosted at Marxists Internet Archive. Chapter 8: Democracy and Dictatorship <<https://www.marxists.org/archive/luxemburg/1918/russian-revolution/ch08.htm>>

⁶Matthew McManus. “Marx and Rawls: Opposites or Complements?” *Liberal Currents*, October 4, 2022 <<https://www.liberalcurrents.com/marx-and-rawls-opposites-or-complements/>>.

which property is alleged to be the groundwork of all personal freedom, activity and independence.

Hard-won, self-acquired, self-earned property! Do you mean the property of petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily.

Capitalism had already expropriated, and socialized, the property of the great majority of the population. The communists, therefore, did not desire to transform personal property into social property. Property in the means of production was already social; all the communists proposed was to transfer ownership of this social property from a few private individuals to the workers in common.

You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population; its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is the non-existence of any property for the immense majority of society.⁷

In *The Civil War in France* Marx restated this position, that the dictatorship of the proletariat — of which he considered the Paris Commune to be a forerunner — would make “property rights” a reality for the working majority for the first time: The Commune “wanted to make individual property a truth by transforming the means of production, land, and capital, now chiefly the means of enslaving and exploiting labor, into mere instruments of free and associated labor.”⁸

Norberto Bobbio, over a century later, wrote in similarly dialectical terms of Hegel’s treatment of the state, which saw it

as the conservation and transcendence of pre-state society..., in the sense that the state is a new moment [i.e., in a dialectical progression], and does not only perfect the earlier phase..., yet is one without constituting an absolute negation and therefore an alternative.... Hegel’s state contains civil society and transcends it, transforming a merely formal universality... into an organic reality....⁹

Sophie Lewis explicitly drew on the concept of *Aufhebung*, found in both Hegel

⁷Karl Marx and Friedrich Engels, *Manifesto of the Communist Party* (1848), Chapter 2. Hosted by Marx/Engels Internet Archive <<https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch02.htm>>.

⁸Karl Marx, *The Civil War in France* (1871). First English edition of 1871. Hosted by Marxists Internet Archive. “Third Address (May 1871): The Paris Commune” <<https://www.marxists.org/archive/marx/works/1871/civil-war-france/ch05.htm>>.

⁹Norberto Bobbio, *Which Socialism? Marxism, Socialism and Democracy*. Translated by Roger Griffin. Edited and Introduced by Richard Bellamy (Minneapolis: University of Minnesota Press, 1987), p. 140.

and Marx, in her discussion of the nuances of the word “abolish” in *Abolish the Family*.

To be sure, some pundits cannot believe their ears. You can’t possibly mean *abolish*!?! Because, on its face, the answer to this question is almost comically self-evident: what do abolitionists want? Abolitionists want to abolish. We want things not to be. We want an absence of prisons, of colonizers. We desire the nonexistence of police.

Simple, right? Not according to the earliest originators and modern philosopher-activists of abolition (and we should now briefly register the word *abolition*’s weighty original German form, *Aufhebung*). In English translations of... Hegel, *Aufhebung* is sometimes translated as “positive supersession,” and intriguingly, this rather stiff bit of jargon unites the ideas of lifting up, destroying, preserving, and radically transforming, all at once. These four components can be illustrated with reference to slavery, the earliest example of a radical cause calling itself “abolitionist” in history. The successful global fight for the abolition of slavery meant that the noble ideal of humanism, trumpeted in the French Revolution, was simultaneously lifted up (vindicated), destroyed (exposed as white), preserved (made tenable for the future) and transformed beyond recognition (forced to incorporate those it had originally excluded). Slavery was overturned in law and eventually more or less done away with in practice. What we must understand, however, is that our very capacity to understand these events was generated *by them*.... The world manifested those ideas as they existed then, until, at the end of an enslaved person’s rifle, the self-styled inventors of “freedom” in these societies learned at last what real freedom (a *more real* freedom, for the time being) looked like. Humanism: negated, remade, born, buried, prolonged. By winning the struggle against slavers, abolition gave the lie to those societies, and supplied those brave ideals with their first-ever shot at becoming more than words.

That is *Aufhebung*, as I understand it, and it’s an understanding I owe to the expansive teachings of, among others, above all, Ruth Wilson Gilmore. The abolition of prisons and of the police, rather than constituting a simple deletion of infrastructure, is better understood as a world-building endeavor, a collective act of creativity without end, giving rise to real justice where, before, there had been Justice with a capital ‘J’. At its most basic level, says Gilmore, abolition “is not the absence of something; it’s the presence of something. That’s what abolition actually is.” To practice abolition, we are required to “change one thing: everything.”¹⁰

¹⁰Sophie Lewis, *Abolish the Family: A Manifesto for Care and Liberation* (London and New York: Verso, 2022).
Pagination from pdf hosted at Anna’s Archive

Liberal socialism, by the same token, could be described as a demand that the civil liberties and procedural guarantees of historic liberalism be simultaneously lifted up (vindicated), destroyed (exposed as bourgeois), preserved (made tenable for the future) and transformed beyond recognition (forced to incorporate those it had originally excluded).

In regard to the family, specifically, Lewis's "abolition" does not entail abolishing or stripping away the nurturing, fostering, and security functions of the nuclear family, but expanding and strengthening them with a broader social and resource base. It is not so much removing the biological parents and nuclear family, as adding to them the support of the surrounding community in a functional — less hierarchical and patriarchal, less "blood" or kinship-based — analog of the extended family, clan and village structures within which child-rearing and household subsistence life existed before the rise of the atomized nuclear family of the 20th century. She refers to "everyday utopian experiments" which

generate strands of an altogether different social tissue: micro-cultures which could be scaled up if the movement for a classless society took seriously the premise that households can be formed freely and run democratically; the principle that no one shall be deprived of food, shelter, or care because they don't work.¹¹

A conceptual model for this kind of *Aufhebung* of the family, she suggests, might be a resurrection of the archaic term "kith," which

denotes a form of dynamic relation between beings, a bond similar to "kin," but one whose ground is knowledge, practice, and place, rather than race, descent, and identity.... What if we reacquainted ourselves with it, and attempted to gently edge out the primacy of kinship, with which kith obviously massively overlaps?¹²

Likewise, simply negating "bourgeois liberalism" is very different from a liberal socialist project of "lifting [it] up, destroying, preserving, and radically transforming, all at once."

Marx's view of the Hegelian "negation of the negation" is relevant to *Aufhebung*. Peter Hudis writes:

Marx appropriates Hegel's discussion of the dialectic of negativity in the *Phenomenology* and *Encyclopedia* by arguing that the first negation is the abolition of private property. Yet this negation by no means ensures liberation; on the contrary, 'this type of abolition of private property is ...only a retrogression, a sham universality'. He calls it 'the *abstract* negation of the entire world of culture and civilization'. This 'vulgar

<<https://annas-archive.pm/md5/e8d3c0884bdac4ea72a8a44fd8e040a8>>, pp. 60-61.

¹¹*Ibid.*, p. 12.

¹²*Ibid.*, p. 63.

communist' negation of private property must itself be negated in order to reach liberation. Whether this type of communism is 'democratic or despotic' makes little difference: it is defective because it is infected with its opposite in focusing exclusively on the question of property. To abolish capital the negation of private property must itself be negated. Only then would there arise 'positive Humanism, beginning from itself'. For this reason, Marx calls genuine communism (which he equates to 'a thoroughgoing Naturalism or Humanism') 'the position as the negation of the negation'.¹³

Marx, in his historical notes in the *Grundrisse*, pointed out that much of precapitalist history was characterized by individual possessory or access rights to the means of subsistence and production, as a birthright rooted in their membership in the clan, communal village, and the like. Capitalism and the wage system had their origin by severing this socially-rooted tie between the individual or household and the means of subsistence, transforming the newly "liberated" means of subsistence and production into marketable commodities, and concentrating ownership of them into the hands of a capitalist class. Communist society, by abolishing a small minority's monopoly on meaningful control of private property, would restore the real material security which had been entailed in precapitalist societies' universal rights of access, but on a higher level. "In order for labour to relate to its objective conditions as its property again, another system must take the place of the system of private exchange...."¹⁴

Connecting this historical background to Marx's adoption the Hegelian concept of negation of the negation, Hudis writes:

The first negation is large-scale capitalist private property that supplants the small-scale property of artisans and peasants. But as capitalism undergoes a further concentration and centralisation in fewer and fewer hands, the point is reached where this negation is itself negated: 'But capitalist production begets, with the inexorability of it a natural process, its own negation'. This *second negation* does not reestablish the fragmented and isolated parcels of precapitalist property, but it does end the breach between the labourers and the objective conditions of production. What emerges is 'cooperation and the possession in common of the land and the means of production produced by labour itself'. The new society, for Marx, represents a reversal of the basic principle of capitalism, which was 'the annihilation of that private property which rests on the labour of the individual himself'. Instead, a free

¹³Peter Hudis, *Marx's Concept of the Alternative to Capitalism* (Leiden and Boston: Brill, 2012), p. 70.

¹⁴Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy (Rough Draft)*. Translated by Martin Nicolaus, notes by Ben Fowkes (Penguin Books in association with *New Left Review*, 1973). Notebook IV/V — The Chapter on Capital. Hosted by Marx/Engels Internet Archive
<<https://www.marxists.org/archive/marx/works/1857/grundrisse/ch09.htm>>.

association of producers overcomes the separation between individuals and the conditions of material wealth. This entails something far more emancipatory than the transformation of private property into state-property; indeed, Marx never mentions the state once in this chapter that concludes Volume I of *Capital*. His analysis of the two kinds of private property at the end of the first volume of *Capital* shows once again that he is not limiting his horizon to the contrast of private versus collective property. Instead, he is focusing on the contrast between property-relations that fragment individuals from their natural and subjective capacities and ones that overcome this separation. The latter, for Marx, constitutes the substance of a new society.¹⁵

Like Hudis, Igor Shoikhedbrod sees Marx as acknowledging the historic achievements of liberalism, while making it the task of socialism to fulfill the promises it was unable to satisfy because of its class context.

While Marx's critique demonstrates that the liberal conception of justice abstracts from exploitation and class domination in civil society, he regards the attainment of liberal rights as a historical achievement and a necessary condition for the communist society of the future. At the heart of Marx's critique of liberalism, however, is the insight that liberalism cannot realize its own ideals of freedom and equality because the political-economic context in which liberal rights are articulated is characterized by exploitation and class domination in the sphere of production. Although Marx criticized liberal rights for being atomistic, depoliticizing, and characteristically formal, he also saw them as stepping stones to a higher form of society. Whereas conventional readings of Marx's critique of liberalism interpret his argument as culminating with the "withering away" of right and rights — that is with them being transcended — Marx's new materialist outlook allows for an alternative conclusion, one in which the revolutionary transformation of capitalism leads to the development of a communist conception of right and a structure of rights that would be appropriate to the needs of socialized (as opposed to atomized) individuals under a communist mode of production.¹⁶

And like both Lewis and Hudis, he places strong emphasis on a Hegelian reading of *Aufhebung* to put Marx's understanding of "abolition" in context.

The transformation of rights under communism makes better sense when viewed through the prism of the dialectical method that Marx inherited from Hegel. The concept of *Aufhebung* is of particular relevance in this respect.

¹⁵Hudis, p. 168.

¹⁶Igor Shoikhedbrod, *Revisiting Marx's Critique of Liberalism: Rethinking Justice, Legality and Rights* (Palgrave Macmillan, 2019), pp. 6-7.

Hegel refers to *Aufhebung* in his *Science of Logic* to describe a simultaneous process of negation, preservation, and supersession...¹⁷

He goes on to quote Hegel's explanation of *Aufhebung* — rendered as “sublation” — from that work:

‘To *sublate*’ has a twofold meaning in the [German] language: on the one hand it means to preserve, to maintain, and equally it also means to cause to cease, to put an end to... Thus what is sublated is at the same time preserved; it has only lost its immediacy but is not on that account annihilated.¹⁸

It would, therefore, be “a mistake to conclude that the historical achievements of capitalism, including the granting of formal legal rights, would be annihilated under communism.”

Abolishing elementary formal rights would mean reverting to pre-capitalist social relations, in which the direct domination of the master, lord, or patriarchal community actively inhibited the free development of individuals. Marx did not wish to return to the ruins of the past; rather, he maintained that some elements of the past would be preserved in a superseded form, as evidenced by the transformation of property, equality, liberty, and security that Marx sketches...¹⁹

In regard to Marx's treatment of the question of rights in particular, Shoikhedbrod writes:

Whereas Hegel focuses on the logical progression from abstract right to objective spirit, Marx begins with the interchange between human beings and nature through productive activity. Every mode of production gives rise to a historically-specific standard of right, and this standard remains in effect until a period of social revolution ensues. A revolutionary transformation is characterized by a dialectical process in which elements of the preceding mode of production are simultaneously negated, preserved and raised to a higher level, as was noted in Marx's reflections on the March revolution of 1848 and the short-lived experience of the Paris Commune.²⁰

Hence, he argues, in regard to rights Marx “did not wish to return to the ruins of the past; rather, he saw elements of the past preserved in a superseded form, as was evidenced by the transformation of property, equality, liberty and security in Marx's scattered remarks about post-capitalist society.”

Communist right would negate the exploitative relations of production that characterize capitalist society while raising the rights of socialized

¹⁷*Ibid.*, p. 86.

¹⁸Igor Shoikhedbrod, “Re-Hegelianizing Marx on Rights,” *Hegel Bulletin* 40, no. 2 (2019), p. 296.

¹⁹Shoikhedbrod, *Revisiting Marx's Critique of Liberalism*, p. 87.

²⁰Igor Shoikhedbrod, “Re-Hegelianizing Marx on Rights,” *Hegel Bulletin* 40, no. 2 (2019), p. 297.

individuals to a higher level. Pre-capitalist social–economic formations were characterized by direct forms of dependence and domination, while individuals were thoroughly embedded in the community. Capitalist society is defined by legal relations between formally free and equal individuals that are disaggregated from the community. Communist society would restore the community’s control over production while building upon the equal rights introduced by capitalism.²¹

To support this, Shoikhedbrod quotes a passage from the *Grundrisse* on the dialectical progression from “personal dependence” under feudalism, through illusory individual independence masking real dependence under capitalism, to “free individuality” under communism:

Relations of personal dependence... are the first social forms, in which human productive capacity develops only to a slight extent and at isolated points. Personal independence founded on objective dependence is the second great form [capitalism], in which a system of general social metabolism, of universal relations, of all-round needs and universal capacities is formed for the first time. Free individuality, based on the universal development of individuals and on their subordination of their communal, social productivity as their social wealth, is the third stage [communism]. The second stage creates the conditions for the third.²²

“Against the usual reading of Marx’s critique of liberalism as culminating in the negation or transcendence of rights,” he relies on the concept of *Aufhebung* to argue

for an interpretation according to which rights in communist society will not simply be rendered superfluous but will instead be transformed. A close reading of Marx’s texts shows that he regarded the granting of civil and political rights as a precondition for the communist society of the future. Furthermore, when viewed through the lens of *Aufhebung*, Marx’s scattered remarks about post-capitalist society lend support to the view that “bourgeois” or liberal rights will be superseded rather than annihilated after the revolutionary transformation of capitalism.²³

...Marx’s attempt to transpose Hegel’s idealist philosophy of right into a materialist theory did not lead him to abandon right, nor did it prompt him to renounce the humanistic aspirations of his early writings. What Marx abandons in his mature work is an abstract and transhistorical view of rational law that is detached from historically specific relations of production. Rather than rejecting right and justice as such, Marx’s

²¹*Ibid.*, pp. 297-298.

²²*Ibid.*, p. 298.

²³Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 12.

materialist conception of history sees right as undergoing transformations as the material conditions of life change.²⁴

Shoikhedbrod quotes Marx on the negation of the negation in regard to property in the first volume of *Capital*:

The capitalist mode of appropriation, the result of the capitalist mode of production, produces capitalist private property. This is the first negation of individual private property, as founded on the labor of the proprietor. But capitalist production begets, with the inexorability of a law of Nature, its own negation. It is the negation of negation. *This does not re-establish private property for the producer, but gives him individual property based on the acquisition of the capitalist era: i.e., on co-operation and the possession in common of the land and of the means of production.*²⁵

And he quotes another passage from *The Civil War in France*, on the “expropriation of the expropriators” by the Commune — which made property real to the majority of the population, on a higher level, for the first time — to similar effect:

Yes, gentlemen, the Commune intended to abolish that class property which makes the labor of the many the wealth of the few. It aimed at the expropriation of the expropriators. It wanted to make individual property a truth by transforming the means of production, land, and capital, now chiefly the means of enslaving and exploiting labor, into mere instruments of free and associated labor.²⁶

Shoikhedbrod sums up this position of Marx as a consistent theme, running from so-called “juvenalia” like the 1844 manuscripts to the end of his life:

A close textual analysis of Marx’s writings, beginning with his *Economic and Philosophic Manuscripts of 1844* and extending all the way through *Capital* and the *Critique of the Gotha Program*, shows that the right to property is not repudiated in communist society, as is commonly assumed. Instead, property rights undergo a dialectical transformation in which the content of property changes, while its form is preserved and elevated to a higher level. In order for all individuals to have property in modern means of production (which are often not divisible — e.g. the factory), the assets would have to be owned by all individuals collectively — that is, the

²⁴*Ibid.*, p. 21.

²⁵Karl Marx, *Capital: A Critique of Political Economy*, Volume One: The Process of Production of Capital (1867), Chapter 32: Historical Tendency of Capitalist Accumulation. Hosted by Marxist Internet Archive <<https://www.marxists.org/archive/marx/works/1867-c1/ch32.htm>>. Quoted by Shoikhedbrod (added emphasis his) in *Revisiting Marx’s Critique of Liberalism*, p. 78.

²⁶Marx, *The Civil War in France*. “Third Address (May 1871): The Paris Commune” <<https://www.marxists.org/archive/marx/works/1871/civil-war-france/ch05.htm>>; quoted in Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 79.

associated producers. More broadly, Marx thinks that property is a general feature of all forms of production, although its content varies across different modes of production.²⁷

Marx held to a standard by which the idea of *Recht* in one social system could be higher or more advanced than that in another, and the standard of *Recht* advanced with the social and cultural level of humanity.

The charge of relativism is relevant for Marx because he does not refrain from making value-laden judgements about higher and lower standards of right. Nor does he abandon the idea of historical progress. Marx's understanding of historical progress relies on a transhistorical standard of evaluation. However, Marx does not derive this standard from an abstract and timeless account of natural law. Here, it would also be helpful to consider his later position in the *Critique of the Gotha Program*, where he discusses the immediate post-revolutionary transition to a communist society. There he submits that "Right (*Recht*) can never be higher than the economic structure of society and its cultural development conditioned thereby."

Marx's reference here to a "higher" standard of right is clearly an appeal to a transhistorical standard of evaluation, but this standard is based on *the degree to which human freedom is realized or hindered across various modes of production*.²⁸

And in *Critique of the Gotha Program*, Marx writes: "right can never be higher than the economic structure of society and its cultural development conditioned thereby."²⁹

All of this implies that a society which has reached the material and cultural preconditions for communism would have a higher standard of justice and right than capitalist society.

Consequently, Shoikhedbrod writes, even though Marx does not adhere to a transhistorical account of right, he

attributes transhistorical value to the realization of human freedom, which is what allows him to claim that capitalist society is a historical advance over feudalism and that the future communist society will be a "higher" form of society than capitalism, without falling prey to the charge of ethical relativism.³⁰

Marx saw "the recognition of equal rights" as such an advance, and despite the "contradictions and limitations of rights in capitalist society" saw such rights

²⁷Shoikhedbrod, *Revisiting Marx's Critique of Liberalism*, p. 79.

²⁸*Ibid.*, p. 45.

²⁹Marx, *Critique of the Gotha Program* (1875). Chapter I. Hosted at Marxist Internet Archive <<https://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>>.

³⁰Shoikhedbrod, *Revisiting Marx's Critique of Liberalism*, pp. 45-46.

“as preconditions for communist society.”³¹

Marx’s critique of the liberal constitutional state... is based on the insight that liberal or bourgeois right, although it is a major historical advance over *personal* relations of domination and dependence, remains blind to *impersonal* dependence and class domination. Bourgeois right abolishes formal privileges attendant on birth or rank and treats labourers and capitalists as equals before the law; however, by abstracting from asymmetries stemming from the ownership and control of productive property, the law of the liberal constitutional state remains blind to class domination and exploitative relations of production.³²

The Liberal Marx: The Paris Commune and the Workers’ State. The liberal side to Marx’s thought is suggested, on a more practical level, by his commentary on the social forms of the Paris Commune, to which he pointed as indicating many of the features of a transitional workers’ state as he envisioned it.

Although the phrase “dictatorship of the proletariat” is treated as a bugbear by those who frame Marx as an authoritarian, his idealized vision of the Commune, as a direct democracy in which governance was in the hands of workers themselves, was also a model for the future workers’ state. And the term “dictatorship” itself was not yet fixed with its 20th century meaning.

...[Hal] Draper identifies half a dozen instances or so across Marx’s works clustered in two periods (1850–52 and 1871–75) in which Marx and Engels were especially engaged with Blanquism. Draper argues that Marx (and Engels’s) use of the term [“dictatorship of the proletariat”] in these periods served to differentiate their position (the dictatorship of the class of proletarians) from the Blanquist idea of a dictatorship over the proletariat by a small number of revolutionaries. Draper further cautions that the term “dictatorship” in the nineteenth century had not yet taken on its modern meaning of an authoritarian regime inherently opposed to democracy and still retained echoes of the original Roman institution (a temporary, limited, and constitutional response to state emergencies). Finally, Draper emphasizes that the term played no special role in Marx’s thought, but functions interchangeably with phrases like the “political rule of the proletariat” or “conquest of political power by the proletariat.”

To this we can add the various terms that Marx uses in his Commune writings, including “Communal Constitution,” “Communal Republic,” “Republic of Labour,” and indeed “Social Republic.” Marx did not directly use “dictatorship of the proletariat” in *The Civil War in France* and its

³¹*Ibid.*, p. 55.

³²*Ibid.*, pp. 73-74.

drafts, but in a speech a few months later he identified the Commune with a “proletarian dictatorship.” (Many years later Engels insisted that those worried about what the “dictatorship of the proletariat” meant should “Look at the Paris Commune. That was the dictatorship of the proletariat.”)³³

Marx celebrated, in particular, the decentralist aspects of the Commune. It took into its hands not only municipal functions but all functions of the national government, and replaced bureaucratic institutions of the central state with local bodies under direct democratic control (e.g., the standing army with a workers’ militia); its government consisted entirely of elected deputies subject to recall without notice. Had it survived, the Commune envisioned itself as the model for similar such self-governing communes in all the major cities and provincial towns of France, sending recallable delegates to a national government:

The Paris Commune was, of course, to serve as a model to all the great industrial centres of France. The communal regime once established in Paris and the secondary centres, the old centralized government would in the provinces, too, have to give way to the self-government of the producers. “This Communal Constitution,” he remarked tellingly, “would have restored to the social body all the forces hitherto absorbed by the state parasite feeding upon, and clogging the free movement of, society.”³⁴

In an earlier draft, Marx had written that the Commune was the “true antithesis to *the Empire itself* – that is, to the State power, the centralized executive, of which the Second Empire was only the exhausting formula....”

This was, therefore, a revolution not against this or that, legitimate, constitutional, republican or imperialist form of State power. It was a revolution against the State itself, of this supernaturalist abortion of society, a resumption by the people for the people of its own social life. It was not a revolution to transfer it from one fraction of the ruling classes to the other, but a revolution to break down this horrid machinery of class domination itself.³⁵

Hudis sees Marx’s views of the state, in relation to the workers’ revolution, in a radically different light at the time of the Commune compared to the views expressed in the *Manifesto*.

To get a sense of how far the Commune changed Marx’s perspectives on revolution, recall that in the Communist Manifesto he had written, ‘The proletariat will use its political supremacy to wrest,

³³Bruno Leipold, *Citizen Marx: Republicanism and the Formation of Karl Marx’s Social and Political Thought* (Princeton University Press, 2024), pp. 363-364.

³⁴Marx, *The Civil War in France*. “Third Address.

³⁵Karl Marx, “The Rise of the Commune and the Central Committee.” First draft (April-May 1871). Drafts of The Civil War in France. Marxists Internet Archive <<https://www.marxists.org/archive/marx/works/1871/civil-war-france/drafts/ch01.htm>>.

by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State, i.e., of the proletariat organised as the ruling class; and to increase the total productive forces as rapidly as possible'. In contrast, in *The Civil War in France* he writes, 'But the working class cannot simply lay hold of the ready-made State machinery and wield it for its own purposes'.³⁶

Likewise Leipold notes that Marx, in earlier writings like the *Manifesto*, "had simply assumed common ownership would mean the concentration of the means of production in the 'hands of the state' But through the [First International], he became increasingly open to the idea of socializing the means of production through cooperatives."³⁷ And in the *Manifesto*, Marx had written of seizing the state machinery and using it to implement communism and abolish classes, after which it would wither away. But with his observations on the Commune in *The Civil War in France*, Leipold argues, Marx realized that this was not a viable strategy.

He now recognized that the political form of bourgeois society, the bourgeois republic, was an inappropriate political form for bringing about communism. He warned that the "working class cannot simply lay hold of the ready-made State machinery, and wield it for its own purposes." If the working class was going to emancipate itself it would require its own political form that transformed the existing state machinery. In place of a bourgeois republic it needed "a 'Social Republic,' that is a Republic which... guarantees... social transformation by the Communal organisation."³⁸

In his first draft of *The Civil War in France*, Leipold writes, Marx celebrated the character of the Commune as "'a government of the people by the people.' Or, as he otherwise summarized it, 'the actual "social" character of their Republic consists only in this, that workmen govern the Paris Commune!'"³⁹

Marx's changed understanding of the social republic went hand in hand with a new attitude to the bourgeois republic. While his Commune writings contain similar condemnations of the emancipatory limits of the bourgeois republic that we find in his 1848 writings, we find no corresponding statements that the bourgeois republic still remains the terrain on which this emancipation is to be fought for. Marx insisted that the "Social Republic" had replaced the "other Republic," and it is now this republic that he identifies as the political structure, which, though it itself "does not

³⁶Hudis, *Marx's Concept of the Alternative to Capitalism*, p. 184.

³⁷Leipold, *Citizen Marx*, p. 324.

³⁸*Ibid.*, p. 347.

³⁹*Ibid.*, p. 356.

[immediately do] away with the class struggles” is the structure in which to “strive to the abolition of all classes and, therefore, of all class rule . . . [and which] affords the rational medium in which class struggle can run through its different phases in the most rational and human way.”

[This] reflects a genuine and important shift in his political thought. He now recognized that the governmental and administrative structures of existing states, even in the form of a bourgeois republic, were an inappropriate vehicle for socialist transformation.⁴⁰

The Liberal Marx: Due Process and Rule of Law. Marx argued consistently that under any social system, some consistent rule of law independent of the immediate interests or will of the ruling class was necessary in order for the system to function. As Shoikhedbrod points out, citing *Capital* vol. 3, “In the absence of a legal framework, a mode of production simply could not function, nor would it be possible to distinguish between a system of law and sheer arbitrariness.” He goes on to quote Marx (emphasis Shoikhedbrod’s):

It is furthermore clear that here as always it is in the interest of the ruling section of society to sanction the existing order as law and to legally establish its limits given through usage and tradition. Apart from all else, this, by the way, comes about of itself as soon as the constant reproduction of the basis of the existing order and its fundamental relations assumes a regulated and orderly form in the course of time. And such regulation and order are themselves *indispensable elements of any mode of production*, if it is to assume social stability and independence from mere chance and arbitrariness.⁴¹

It follows that even under communism, some degree of regularity of procedure would be necessary to prevent it being governed by “mere chance and arbitrariness.”

Although the law is exploited by ruling classes to advance their material interests, it must nevertheless exhibit a degree of autonomy and independence from the arbitrary will of ruling classes to assume the *form* of law. In this respect, Marx’s mature writings continue to uphold the criteria that legal theorists typically attribute to legality — namely clarity, generality, publicity, and predictability — except that Marx traces the origin of *Recht* and its transformation to changes in the material conditions of life.⁴²

Further, Marx dropped repeated hints that genuine, enforceable rights would exist under communism. For example, citing the *Manifesto*, Shoikhedbrod writes:

⁴⁰*Ibid.*, p. 357-358.

⁴¹Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 39.

⁴²*Ibid.*, pp. 39-40.

He reiterates in the same context that the abolition of bourgeois private property should not be confused, as is typically case, with the abolition of individual or personal property. He writes: “When, therefore, capital is converted into common property, into the property of all members of society, personal property is not thereby transformed into social property.”⁴³

The choice of the term “property,” here used in reference to surviving individual rights of possession, suggests a personal right subject to guarantee of some sort.

Marx, in the course elaborating on the change in distributive principles from the lower to higher stage of communism, wrote in *Critique of the Gotha Program*: “Right, by its very nature, can consist only in the application of an equal standard.”⁴⁴ Shoikhedbrod comments: “This is further evidence that distributive justice would not become obsolete in communist society, but that a different distributive standard would prevail.”⁴⁵

The features of the Paris Commune which Leipold points to Marx celebrating — “imperative mandates..., the power to recall representatives, and short terms of office” — suggest that Marx, far from dismissing strict procedural mechanisms for accountability as “bourgeois,” himself took a fairly “liberal” view of them as criteria for genuine democracy.⁴⁶ And Engels’ introduction to *The Civil War in France* suggested that even under the transitional workers’ state, popular scrutiny of and constitutional controls (e.g. recall of delegates) over governing institutions would be necessary in order for “the working class, once come to power” to “protect itself against its own deputies and officials....”⁴⁷

Even positive economic rights, which Marxist-Leninist deriders of liberalism celebrate as superior to “bourgeois” negative civil liberties, to be meaningful — to be rights at all — require objective definitions and uniform procedural rules that are applied consistently and neutrally without distortion by power interests. *Any* system of rights, negative or positive, is meaningless without “liberal” procedural guarantees guiding their application and enforcement. And the disappearance of the state and politically generated law does not entail the disappearance of rights (“it does not follow that developed communist society would be devoid of rights once classes are abolished along with the external state apparatus”⁴⁸); any

⁴³*Ibid.*, p. 78.

⁴⁴Marx, *Critique of the Gotha Program*. Chapter I. Hosted at Marxist Internet Archive <<https://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>>.

⁴⁵Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 81.

⁴⁶Leipold, *Citizen Marx*, p. 368.

⁴⁷Friedrich Engels, “1891 Postscript” to *The Civil War in France* <<https://www.marxists.org/archive/marx/works/1871/civil-war-france/postscript.htm>>.

⁴⁸Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 82.

Matthew McManus writes:

Shoikhedbrod marshals an immense amount of textual evidence to show how Marx remained a proponent, indeed a fierce advocate, for certain fundamental liberal rights throughout his career....

administrative system will require consistent operating rules, including enforceable standards for their equitable enforcement.

Contrary to some Soviet theorists who argued that without classes or a state a communist society would have only “technical regulations” and not legality or rights, even the communist standard “to each according to his needs” would require some use of judgement by human beings, and with it the possibility of accusations of error; this, along with the likelihood of at least occasional disputes between individuals, would require regular and consistent procedures for settlement.

Even without a state, a communist society would have not only purely “technical regulations” governing the internal administration of economic enterprises, but also things like “traffic rules, workplace safety standards, and regulations concerning health care provision,” with content “just as much ethical and juridical” as technical.⁴⁹

And *any* system, if it to *maintain* itself as a system without degenerating into a fundamentally different kind of system, must have feedback processes — *rules* — to correct deviations from the norm. To take one example, if a system of land ownership based on occupancy and use, or communal ownership through land trusts, is not to degenerate into a form of absolute private property based on alienable, fee-simple commodity ownership, some social provision for adjudicating disputed claims must exist, and there must be some principled basis on which they act.

And given such rules, absent the existence of a hive mind, there will presumably arise at least occasional disagreements in regard to their application, and even cases of individual administrative functionaries abusing (or suspected of abusing) their positions out of personal motivations. There will be cases where the decisions of the collective body of the workers come into conflict with the welfare of the individual worker in unanticipated ways that require adjustment — a consideration reflected in the fact that large democratically governed cooperative enterprises in the current world nevertheless often have a grievance procedure. And this, in turn, will require procedural safeguards against arbitrary application, to ensure that rules are applied uniformly and equitably; there will likewise be a need of provisions for challenging administrative decisions in cases where someone feels a decision was made unfairly, and objective standards for

...In Shoikhedbrod’s telling, it is more accurate to claim that Marx felt liberal rights would be transcended rather than annihilated in a transition to socialism. Right can only be as high as the economic structure, and would ascend to a higher level under socialism and then communism. Indeed, liberalism’s failure wasn’t in securing rights for all, which was a historical achievement worth preserving and expanding. Instead, it was that liberalism aligned with capitalism instituted rights which were inadequate to fully secure emancipation as liberals claimed to want.

—McManus, *The Political Theory of Liberal Socialism*, p. 134.

⁴⁹Shoikhedbrod, *Revisiting Marx’s Critique of Liberalism*, p. 104.

adjudicating such cases that include procedural protections for the parties involved. “The associated producers would... need rights vis-à-vis each other and vis-à-vis the collective body of associated producers.”⁵⁰

At a conceptual level, Marx’s new materialist conception of right commits him to a system of justice that would be appropriate to the needs of individuals in the context of communist production. The general principle “from each according to his abilities, to each according to his needs” comes to mind here, but sufficient as this principle may be for matters of distributive justice, it does not offer a *prima facie* case for communist legality. After all, one could infer... that technical efficiency and material abundance would eliminate all sources of interpersonal conflict and render legality superfluous under communism. However, there is no textual evidence that communist society would eliminate the potential for *individual* conflicts and disputes on all matters, even under conditions of associated production and relative material abundance. Marx hints as much in his 1859 Preface to *A Contribution to a Critique of Political Economy*: “The bourgeois relations of production are the last antagonistic form of the social process of production — *antagonistic not in the sense of individual antagonism*, but of one arising from the social conditions of life of the individuals.” In other words, individual conflicts could still arise under developed communism, whether as a consequence of passion or of diverging preferences, and the resolution of these conflicts, however rare, would still require a system of legality. After all, Marx is not suggesting that social individuals would be saints whose projects will always coincide; individual disagreements will still occur in the absence of class antagonisms and production on the basis of commodity exchange.⁵¹

Further, even without the state, Marx asserts that some form of “public power” will persist, in the sense of governance or coordination mechanisms. And such administrative mechanisms, even if non-state, require internal procedural safeguards for the same reason that the civil society organizations of our day have by-laws protecting their members against arbitrary action.

Marx provides the following response in the *Communist Manifesto*: “When, in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character.” Political power is defined by Marx as the “organized power of one class for oppressing another,” while public power is associated with the self-determination of the vast association or community. Although the repressive

⁵⁰*Ibid.*, p. 120.

⁵¹*Ibid.*, p. 121.

and class character of the state will be abolished under communism, the rights of socialized individuals will still be protected by the public power. It is quite conceivable that individuals in such a society would find fewer occasions for pressing their rights against each other, but this does not mean that they would not have recourse to rights.⁵²

The Liberal Marx: Human Flourishing, the Realm of Freedom, and Disposable Time. Another theme, liberal in spirit, recurring in Marx's work was his humanistic view of human flourishing as he envisioned it under socialism.

In his commentary on Hegel in the *Economic and Political Manuscripts*, he treated communism as simply a means to a humanistic end. To quote Hudis:

Marx goes so far as to write, 'Communism is the necessary form and dynamic principle of the immediate future, but communism as such is not the goal of human development, the form of human society'. But if communism is only the *immediate* but not *ultimate* goal, what is Marx really striving for? It appears that it is what he calls 'a totality of human manifestations of life'. He refers to a new society as one that 'produces man in this entire richness of his being – produces the *rich* man *profoundly endowed with all the senses* – as its enduring reality'. This is far beyond what he calls 'crude communism', which like capitalism reduces human sensuousness to *one* sense – the sense of *having*.⁵³

In the *Manifesto*, Marx called for the replacement of "bourgeois society" by "an association, in which the free development of each is the condition for the free development of all."⁵⁴

He continued to promote such values throughout his intellectual career. In the *Grundrisse*, he emphasized maximizing free time as a central social goal of postcapitalist society for the sake of individual development; he characterized such a society as one of "free individuality" (i.e. a society in which labor is directly social but independent, as opposed to directly social but dependent under pre-capitalism and indirectly social and nominally independent under capitalism).⁵⁵

Another example of this aspect of this was the transition, resulting from conditions of abundance, from the "realm of necessity" to the "realm of freedom."

In fact, the realm of freedom actually begins only where labour which is determined by necessity and mundane considerations ceases; thus in the very nature of things it lies beyond the sphere of actual material production.... Freedom in this field can only consist in socialised man,

⁵²*Ibid.*, p. 82.

⁵³Hudis, *Marx's Concept of the Alternative to Capitalism*, p. 74.

⁵⁴Marx and Engels, *Manifesto*, p. 27.

⁵⁵Hudis, *Marx's Concept of the Alternative to Capitalism*, pp. 112-115.

the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature; and achieving this with the least expenditure of energy and under conditions most favourable to, and worthy of, their human nature. But it nonetheless still remains a realm of necessity. Beyond it begins that development of human energy which is an end in itself, the true realm of freedom, which, however, can blossom forth only with this realm of necessity as its basis. The shortening of the working-day is its basic prerequisite.⁵⁶

As Hudis comments, for Marx the realm of freedom “begins when humanity no longer has to define itself by labouring-activity.” Although labor “exists in all forms of society and under all possible modes of production,” nevertheless in the “truly free society” that succeeds capitalism, “human life-activity is no longer *defined* by labour engaged in material production. It is not defined by external or natural necessity.”⁵⁷

Hudis refers also to Marx’s discussion of “disposable time” as a feature of communist society, in his 1861-63 rough draft of *Capital*:

In a new, postcapitalist society, in which exchange-value is ‘eliminated’, the amount of time that individuals spend on the production and reproduction of basic necessities will remain an important factor. However, such labour-time... will cease to be the *determining* principle governing such a society. Labour that is engaged in material production and reproduction, even when creating wealth, instead of value, is still determined by ‘extraneous’ purposes insofar as it is subject to some degree of natural necessity. Human activity can therefore not be its own end where labour remains the determining principle of social reproduction. A truly free society, according to Marx, is not governed by labour-time engaged in material production but by free time – the time taken to express the totality of one’s sensuous and intellectual capacities.⁵⁸

“In a higher phase of socialism or communism, labour is fully inseparable from the individual’s self-activity and self-development. It becomes a self-sufficient end.”⁵⁹

In the actual published text of *Capital*, Marx described communism as “a society in which the full and free development of every individual forms the ruling

⁵⁶Karl Marx, *Capital: A Critique of Political Economy*, Volume III: The Process of Capitalist Production as a Whole. Edited by Friedrich Engels (Moscow: Institute of Marxism-Leninism, 1959). Online version hosted by Marxists Internet Archive <<https://www.marxists.org/archive/marx/works/download/pdf/Capital-Volume-III.pdf>>, p. 536.

⁵⁷Hudis, *Marx’s Concept of the Alternative to Capitalism*, pp. 181-182.

⁵⁸*Ibid.*, p. 145.

⁵⁹*Ibid.*, p. 201.

principle.”⁶⁰

Matthew McManus identifies a “normative core” of Marx’s writing, which he characterizes as “a broadly developmental ethic, profoundly stamped by Aristotle and Hegel.”

It is Aristotelean in the sense of recognizing that humans are for the most part social animals, and most of us can only flourish in community with others. Such flourishing takes the form of the development of our human powers which is not an end in itself under capitalist conditions. Under capitalism, the development of our human powers or “energy” is put to the end of the valorization of capital. This will not be the case in the higher form of society to come when the development of human powers will for the first time become an end in itself....

Marx’s view is Hegelian in his realization that the development of human powers and the creation of non-domineering communities cannot occur so long as we continue to reify the lifeworld, and see it as something alien and imposed upon us. Freedom as self-determination can only come into being when the free development of each becomes a condition for the free development of all.... It is only through awakening a sense of proletariat class consciousness to sublimate capitalism that humanity as a whole will eventually assume self-conscious control over the form society takes....⁶¹

Alongside the many liberals who regard Marx as an authoritarian collectivist whose thought is fundamentally at odds with liberalism,

there are a myriad of interpreters who have long stressed points of overlap between Marx and at least the more egalitarian strains of liberalism, including liberal socialists. As [Elizabeth] Anderson puts it, Marx’s “understanding of the good life is very close to Mill’s. Mill, too, holds that happiness requires the exercise of distinctively human capabilities, in ways [sic] that freely express one’s own ideas about how to live.”⁶²

Liberal Socialism. One of the earliest prominent advocates for a liberal socialism, ironically, was a man widely regarded as the leading light of classical liberalism: John Stuart Mill. Bruce Baum argues that Mill’s “liberal commitment to individual freedom led him, as he says in his *Autobiography*, toward socialism as the ‘ideal of ultimate improvement.’”

Mill, in contrast [to those who see liberty and social justice or egalitarianism as conflicting values], advances a form of liberal democratic socialism for the enlargement of freedom as well as to realize social and distributive justice. He

⁶⁰Marx, *Capital*, Volume 1, p. 415.

⁶¹McManus, *The Political Theory of Liberal Socialism*, pp. 130-131.

⁶²*Ibid.*, p. 133.

offers a powerful account of economic injustice and justice that is centered on his understanding of freedom and its conditions.⁶³

Further, although Mill's view of freedom encompassed both "positive" and "negative" liberty, he himself considered the two concepts inseparable. "For Mill, freedom is always freedom of some agent (or agents) from certain obstacles or constraints, to do or be or become something.... Mill does not sever freedom from the conditions of its exercise." This principle, for him, extended to a right of self-governance in the economic realm.⁶⁴

Mill's conception of economic freedom is a direct extension of his broader conception of freedom. Alongside his attention to individualistic practices of economic freedom, such as the freedom of individuals to pursue particular types of work and professions and, as consumers, to purchase desired goods and services, Mill also maintains that the freedom of democratic self-government should be extended to associated workers with respect to governing economic enterprises.⁶⁵

This orientation resulted, in practical terms, in "a market economy dominated by decentralized democratic cooperative firms that would achieve social justice by establishing a standard of... *maximal economic freedom*."⁶⁶

The evolution of Mill's later thought in regard to property rights, in particular, is noteworthy.

He implicitly extends to the regulation of property rights the principle that while the state must respect "the liberty of each individual in what specifically regards himself, [it] is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over others".... Accordingly, he follows other socialists in treating private ownership of articles of consumption, or personal property, differently from private ownership of the means and instruments of production. Although the former is a necessary condition of the freedom of individuals to pursue their own manner of life, private ownership of the means of production gives some people power over others. Mill summarizes this aspect of his view of property rights... with special reference to property in land. He says that when the state permits any person to own more land than is necessary for subsistence, "it confers on him power over other human beings – power affecting them in their most vital interests...." Overall, Mill rejects the view "that all the rights now regarded as pertaining to property belong to it inherently." He notes that that "idea of property" is not "one thing" but is

⁶³Bruce Baum, "J. S. Mill and Liberal Socialism," in *J. S. Mill's Political Thought: A Bicentennial Reassessment*. Edited by Nadia Urbinati and Alex Zakaras (Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo: Cambridge University Press, 2007), pp. 99-100.

⁶⁴*Ibid.*, p. 103.

⁶⁵*Ibid.*, p. 104.

⁶⁶*Ibid.*, pp. 100-101.

historically “variable like all other creations of the human mind.” Therefore, it may be politically altered to serve the public good in different ways in different societies.⁶⁷

Baum treats Mill, “with his emphasis on individual freedom, decentralized power, and industrial democracy within a market economy,” as the pioneer of “an important ongoing liberal socialist tradition that includes Eduard Bernstein, G. D. H. Cole, John Dewey, Carlo Rosselli, and, more recently, Norberto Bobbio and Chantal Mouffe.”⁶⁸

McManus, likewise, described Mill as “the first liberal socialist,” devoting an entire chapter to him in *The Political Theory of Liberal Socialism*. “Taken together, Mill’s mature political theory constitutes the first systematic — if tentative and flawed — theoretical argument for a form of liberal socialism.”⁶⁹

It was natural, McManus argued, that Mill, as a somewhat heterodox liberal, should come to be attracted to socialism; socialism arose as a coherent ideology in the 19th century as a critique of the shortcomings of mainstream classical liberalism, and its critique was from the perspective of the same progressive Enlightenment values it shared with liberalism.

...[S]ocialism constituted a popular systematic response to, and critique of, the new liberal society which was not reactionary in form. This was unprecedented in the history of liberalism. By the 19th century, liberals had plenty of practice responding to reactionary defenders of the Ancien Regime, condemnations of Enlightenment reason, and all the rest. Socialism, by contrast, was clearly an offspring of the same Enlightenment soil from which liberalism itself had sprouted. Indeed, for many socialists, the failure of liberalism lay in the partiality and class specificity of its undeniable achievements. While “bourgeois” society had emancipated the (upper) middle classes from the aristocracy and formally established equal rights for “all” (with all initially being propertied white men) through appeals to reason, it had stopped short of demanding emancipation for the lower orders. This was unacceptable in an economic context where technological improvements were absolute scarcity [sic?], where poverty could be eliminated and real equality achieved.⁷⁰

Mill’s growing interest in socialism dovetailed with at least a partial abandonment of the conventional classical liberal view of “private property rights” as a natural phenomenon predating the state.

In [his later work], Mill... expressed growing reservations about naturalizing relations of production, property, and compensation/distribution. These

⁶⁷*Ibid.*, pp. 106-107.

⁶⁸*Ibid.*, p. 101.

⁶⁹McManus, *The Political Theory of Liberal Socialism*, p. 114.

⁷⁰*Ibid.*, p. 99.

forms of naturalization took capitalist relations of production and distribution to be immutable extensions of the laws of nature.... Instead, Mill comes to argue that certainly the latter, and to an extent the former, could be constructively reformed through egalitarian reforms.⁷¹

Mill “was clearly influenced by a combination of utopian socialism, the emerging worker co-op movement in Britain, and of course his unquestionable liberal commitments.”

That this would appeal to Mill shouldn't be surprising, since it was exactly the kind of experimentalism in socioeconomic arrangements carried out with minimal state involvement which he favored.... Mill's socialism was oriented around changing the relations of production between workers and capitalists through the former gradually expropriating the capitalist class and taking over the management of the productive process and profit distribution directly. These cooperative firms would still compete with one another in the market to ensure innovation and economic efficiency, but also because Mill insisted that such independence would be vital to maintaining individuality and a sense of independence from the state.

In contemporary parlance, Mills could be called a market socialist. Private property would still exist, including in the “means of production,” but would be treated variably. He predicted the state would own some property in the means of production to redistribute it to cooperatives or preserve it as common land.⁷²

...Mill becomes increasingly wary of the methodological individualism of classical liberal and utilitarian social theory, recognizing the extent to which we are interdependent and life outcome depends on favorable social circumstances. Nonetheless, he emphatically endorses normative and expressive individualism, becoming iconically aligned with the idea that each person is a living tree which must develop themselves according to their own nature. He rejects the acquisitive and possessive ethic for a developmental approach, stressing the need to reform social institutions to enable those disadvantaged by birth to develop their “capacities,” talents, virtues, and so on. And most importantly, Mill explicitly endorsed socialism and aligned that with further arguments for strengthening liberal institutions and practices.⁷³

The actual term “liberal socialism” was first coined by the Italian socialist Carlo Rosselli in his book by that title, written in the late 1920s. Rosselli saw socialism

⁷¹*Ibid.*, p. 104.

⁷²*Ibid.*, pp. 111-112.

⁷³*Ibid.*, p. 114.

and liberalism as complementary: “Socialism must tend to become liberal, and liberalism to take on the substance of the proletarian struggle. It is not possible to be liberal without joining actively in the cause of the workers....”⁷⁴ And socialism itself, “in the last analysis, is a philosophy of liberty.”⁷⁵

Indeed, Rosselli saw socialism as taking up the project of liberalism where the latter had left off. As he put it, the socialist movement was “the objective heir of liberalism....”

The bourgeoisie was, at one time, the standard-bearer of this idea of liberty; the liberal function was in its hands when it broke open the rigid, frozen order of the feudal world and sowed the seeds of fecund life. In its battle against the dogmatism of the church and monarchical absolutism, against the privileges of the nobility and clergy..., the bourgeoisie embodied, over a long sequence of centuries, the progressive impetus of the whole society. That is no longer true. The bourgeoisie has won; it has captured the dominating heights, but as it triumphs, its revolutionary function and its progressive ferment fade away....

Bourgeois liberalism attempts to halt the historical process at its present stage, to perpetuate its own commanding position...; it obstructs the entry of militant new social forces onto the stage of history. With its dogmatic attachment to the principles of economic libertarianism (private property, rights of inheritance, full freedom of initiative in every field, with the state as the organ responsible for internal policing and external defense), it has managed to shackle the dynamic spirit of liberalism to the transitory pattern of a particular social system....

Bourgeois liberalism is powerless to understand the problem posed by the socialist movement; in other words, it does not understand that political and social liberty by themselves are incapable of bringing about liberalism's true goal. It arbitrarily extends its historical experience to the proletariat and makes the absurd claim that the problem of liberty presents itself in the same terms for all social classes....

Where then is liberalism alive, where is it being implemented?...

The poor, the oppressed, those unable to adapt themselves to the present state of affairs because they are suffering under it and feel limited and mutilated and are conscious of their mutilation: the new armies of liberalism will be these....

In sum, the proletariat can rightly say that the legacy of the liberal

⁷⁴Carlo Rosselli, *Liberal Socialism*. Edited by Nadia Urbinati. Translated by William McCuaig (Princeton, N.J.: Princeton University Press, 1994), pp. 83-84.

⁷⁵*Ibid.*, p. 84.

function has passed to it.⁷⁶

Having conquered political supremacy in the 19th century, the bourgeoisie valued liberty less and less, as its strategic focus shifted from overthrowing power to maintaining it. And as the bourgeoisie became increasingly illiberal, the workers in contrast were forced to fight in defense of freedom against the totalizing nature of new capitalist production methods.

In any case, the time when bourgeois politics and liberal, free-market politics were one and the same has passed. All over the world the bourgeoisies no longer defend free markets and are no longer necessarily liberal. The more the proletarian movement takes hold and an active sense of liberty gains strength among the masses, the more the bourgeoisie, in its most backward sectors, tries to escape from the discipline and pattern of liberty. Even the new directions that modern production — rationalized, mechanized, technocratic — is taking as it sacrifices the human personality of the worker are forcing socialists to assume a liberal function in the quite traditional sense of the term.⁷⁷

It fell to the working class, having taken up the mantle of liberalism, to expand liberty from the purely political realm to the economic, and where bourgeois liberalism had been satisfied to extend liberty only to a privileged minority, to make it real for all.

The result is that liberty, from being a notionally universal prerogative that in fact corresponded to the interests of a minority, is truly becoming the patrimony of all.

Socialism is nothing more than the logical development, taken to its extreme consequences, of the principle of liberty. Socialism... is liberalism in action; it means that liberty comes into the life of poor people. Socialism says: the abstract recognition of liberty of conscience and political freedoms for all, though it may represent an essential moment in the development of political theory, is a thing of very limited value when the majority of men, forced to live as a result of circumstances of birth and environment in moral and material poverty, are left without the possibility of appreciating its significance and taking any actual advantage of it. Liberty without the accompaniment and support of a minimum of economic autonomy, without emancipation from the grip of pressing material necessity, does not exist for the individual; it is a mere phantasm.... Free in law, [the worker] is in fact a slave....

In the name of liberty, and for the purpose of ensuring its effective possession by all men and not just a privileged minority, socialists postulate

⁷⁶*Ibid.*, pp. 87-90.

⁷⁷*Ibid.*, p. 84.

the end of bourgeois privilege and the effective extension of the liberties of the bourgeoisie to all. In the name of liberty they ask for a more equal distribution of wealth and the automatic guarantee for every person of a life worth living. In the name of liberty they speak of socialization, the abolition, that is, of private ownership of the means of production and exchange.⁷⁸

Further, Rosselli's idea of liberty was profoundly humanistic. Socialism, "grasped in its essential aspect," was "the progressive actualization of the idea of liberty and justice among men." The liberties it pursued, in continuing the legacy of bourgeois liberalism, were analogous to the transition from Marx's realm of material necessity to his realm of freedom.

It is the progressive effort to ensure an equal chance of living the only life worthy of the name to all humans, setting them free from the enslavement to the material world and material needs that today still dominate the greater number, allowing them the possibility freely to develop their personalities in a continuous struggle for perfection....⁷⁹

Liberty was something to be, not simply possessed and enjoyed as a goal, but used as a means to the goal of

shared human life. The goal is to arrive at a condition of social life in which each individual is certain of being able to develop his own personality fully.... Liberalism conceives of liberty not as a fact of nature, but as becoming, as development. One is not born free; one becomes free. And one stays free by retaining an active and vigilant sense of one's autonomy, by constantly exercising one's freedoms.⁸⁰

And it followed that the value of liberty necessarily conditioned the means by which it was pursued. "The means must not only suit the end..., it must also be permeated by it."⁸¹

Liberty can never be won through tyranny or dictatorship, or even through being granted from above. Liberty is a conquest, a self-conquest, which is preserved only through the continual exercise of one's faculties and individual autonomies.

For liberalism, and hence for socialism, observance of the *liberal method*, that is, the democratic method, of entering the political contest is fundamental. This is the method that in its essence is utterly permeated with the principle of liberty. It can be summed up in a single word: self-government. The liberal method intends peoples and social classes, like individuals, to administer their affairs by using their own capacities, without

⁷⁸*Ibid.*, pp. 85-86.

⁷⁹*Ibid.*, p. 78.

⁸⁰*Ibid.*, p. 85.

⁸¹*Ibid.*, p. 81.

coercion or paternalistic intervention.⁸²

A more recent contributor to the liberal socialist current was Norberto Bobbio, writing in the 1980s. His book *Which Socialism?* (actually a collection of essays) took the Left, and the Marxist Left in particular, to task for its inadequate theory of the workers' state as it related to institutional structures for the control of power. By "the issue of institutions," he meant not "the general conception of the state and of politics" — which Marxism has indeed addressed — but

the basic issue underlying the permanent debate on the relationship between parliamentary committees and parliament; between parliament and executive power; between the head of state and his or her powers; between the administrative state, including the State Council, and the State Audit Court; between local power and central authority; between electoral systems and democratic power, and so on *ad infinitum* [sic] and *ad nauseam*?⁸³

One source of the problem was that so many Western Marxists viewed the workers' state as a comparatively brief and self-liquidating phase. Another was the tendency of 20th century Marxists to see the defining feature of the state as class dictatorship. For them the primary question to ask, in evaluating a given state, was which class was in power — not how a given class state was organized in terms of institutional forms.

Bobbio did, however, see forms of government as occupying a more important position for Marx than for most 20th century Marxists. He argued that Marx did attach some importance to forms of government as such. As examples, he cited his analysis of Bonapartism, as opposed to liberal parliamentarianism, in *Eighteenth Brumaire*; and his detailed examination of the direct democratic institutions in the Commune and favorable comparison of it to bourgeois "democracies," in *Civil War in France*.⁸⁴

At any rate, he saw the general Marxist tendency to ignore considerations of power, and restrictions on its abuses, as a failure. To the extent that they had begun to pay some attention to it, he mocked it as "the discovery of the obvious...."

One of these really extraordinary discoveries, which has sent shock waves reverberating through the world of Marxist theory for the last twenty years, is that power, when it is not controlled, can become corrupted, and that to prevent the possible forms this corruption can take, it is necessary to take preventive measures, raise barriers, and erect effective defences such as democratic control, the protection of certain civil liberties..., and a plurality

⁸²*Ibid.*, p. 94.

⁸³Norberto Bobbio, *Which Socialism? Marxism, Socialism and Democracy*. Translated by Roger Griffin. Edited and Introduced by Richard Bellamy (Minneapolis: University of Minnesota Press, 1987), p. 108.

⁸⁴*Ibid.*, pp. 192-196.

of social forces and their organizations in free competition, etc.... That the co-founders of historical materialism or the philosophy of praxis were never seriously concerned with this is no good reason not to know that the problem is as old as the hills, even if it can serve as a good excuse for Marxists to have dismissed it as irrelevant. Marx and Engels..., convinced as they were that the political sphere was the sphere of force (and in this they were quite right), always posed this problem in terms of the ‘historical subject’ embodying this force, identified with the dominant class at any one time, rather than in terms of the various forms in which this force can be exercised (which is the problem of institutions).⁸⁵

Bobbio saw a trans-historical value to the democratic and liberal institutions created under bourgeois rule, and their importance for safeguarding popular liberty under socialism.

...[S]ocialism is a movement which not only aspires to eliminate economic exploitation but also to achieve the emancipation of humanity from all the historical forms of servitude inflicted by fellow human beings and, as far as possible, by nature as well. It therefore cannot help appropriating, and welcoming as its own, those institutions which are based on the principle of autonomy rather than of heteronomy. I can see no other way of interpreting the ‘freedom’ of which Marx and Marxists talk when they contrast the realm of freedom with the realm of necessity, other than as autonomy....⁸⁶

He attacked, accordingly, those Marxists who dismissed the expansion of suffrage within bourgeois liberal republics as some sort of diversionary grand strategy by the bourgeoisie, and not something forced on them by mass action.

The result of this type of historical analysis... is that all the gains which have cost the working-class movement blood, sweat and tears, from the right to strike to universal suffrage, from welfare legislation to workers’ statutes, are interpreted as cunning tactical moves by the capitalists to retain power.⁸⁷

And democratic restraints on power, in the form of the enforcement and respect for procedural rules “which enable the greatest number of citizens to participate directly or indirectly in the making of decisions which at various levels (local, regional, national) or in the most various contexts (school, work, etc.) affect society as a whole,” continue to be important for the working class under socialism.⁸⁸ The achievement of restrictions on the abuse of power, achieved by mass action under capitalism, are to be expanded into new realms under socialism.

⁸⁵*Ibid.*, pp. 60-61.

⁸⁶*Ibid.*, p. 97.

⁸⁷*Ibid.* p. 57.

⁸⁸*Ibid.*, pp. 56-57.

The objection raised to bourgeois democracy is that it has conceded freedom to the citizen and not to the producer, the worker. But there will be no new or renewed democracy, in fact there will be no democracy at all, if the freedom of the producer is not accompanied and underpinned by the freedom of the citizen.⁸⁹

Ernesto Laclau and Chantal Mouffe, writing in 1985, stressed the importance of pluralism both in the struggle to abolish capitalism and in the socialist successor society. The focus of their book was the socialist movement's workerism — i.e., its fixation on the class struggle as the primary axis of oppression and liberation — and the belief that once that point of conflict was resolved, social conflict would be superseded in favor of a harmonious collective will.

What is now in crisis is a whole conception of socialism which rests upon the ontological centrality of the working class, upon the role of Revolution, with a capital 'r', as the founding moment in the transition from one type of society to another, and upon the illusory prospect of a perfectly unitary and homogeneous collective will that will render pointless the moment of politics. The plural and multifarious character of contemporary social struggles has finally dissolved the last foundation for that political imaginary.... Today, the Left is witnessing the final act of the dissolution of that Jacobin imaginary.⁹⁰

Although most of the book was devoted to the obsolescence of the unitary, class reductionist model of revolutionary struggle, the authors also touched on issues of pluralist governance in a postcapitalist society. In particular, they argued the need for procedural mechanisms by which not only workers, but those affected along multiple axes of identity, might have input into the decisions that affect them.

The multiplication of political spaces and the preventing of the concentration of power in one point are, then, preconditions of every truly democratic transformation of society. The classic conception of socialism supposed that the disappearance of private ownership of the means of production would set up a chain of effects which, over a whole historical epoch, would lead to the extinction of all forms of subordination. Today we know that this is not so.... It follows that it is only possible to construct this articulation on the basis of separate struggles.... This requires the autonomization of the spheres of struggle and the multiplication of political spaces, which is incompatible with the concentration of power and knowledge that classic Jacobinism and its different socialist variants imply. Of course, every project

⁸⁹*Ibid.*, p. 45.

⁹⁰Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985), p. 2.

for radical democracy implies a socialist dimension, as it is necessary to put an end to capitalist relations of production, which are at the root of numerous relations of subordination; but socialism is *one* of the components of a project for radical democracy.... For this very reason, when one speaks of the socialization of the means of production as one element in the strategy for a radical and plural democracy, one must insist that this cannot mean only workers' self-management, as what is at stake is true participation by all subjects in decisions about what is to be produced, how it is to be produced, and the forms in which the product is to be distributed. Only in such conditions can there be *social appropriation* of production. To reduce the issue to a problem of workers' self-management is to ignore the fact that the workers' 'interests' can be constructed in such a way that they do not take account of ecological demands or demands of other groups which, without being producers, are affected by decisions taken in the field of production.⁹¹

In other words, there must be a "democratic equivalence" between workers' rights and justice defined in relation to other axes like race, gender, environmental issues, etc. And this in turn required

the construction of a new 'common sense' which changes the identity of the different groups, in such a way that the demands of each group are articulated equivalentially with those of the others — in Marx's words, 'that the free development of each should be the condition for the free development of all'.⁹²

Paul Hirst's "associative socialism" or "associative democracy" falls under the broad heading of liberal socialism. He argues for a recuperation of the "socialisms" which were "beaten into marginality by their more successful opponents in the late nineteenth century and early twentieth century — associationalist, co-operative, and syndicalist socialisms." Since the collapse of the Soviet model of centrally planned state socialism, "aspects of the 'other' socialisms have become relevant as never before, because they raise questions of the democratic organisation of society which are now vital."⁹³

The performance of the Soviet bloc countries has called into question the viability of centrally planned economies, even if severed from the Soviet authoritarian political model. Even a formally democratic centrally planned

91 *Ibid.*, p. 178.

92 *Ibid.*, p. 183.

93 Paul Hirst, "Associational Socialism in a Pluralist State," *Journal of Law and Society*, Vol. 15, No. 1 (Spring 1988), p. 140.

socialist economy would be a sham democracy in real terms.

...An efficient centralised and planned economy would imply the centralisation and inter-meshing of information and decisions. It would inevitably concentrate economic and political power. Distinct interests, alternatives, and policy options would have to be eliminated or restricted even if political authority were formally democratic and if there were free public discussion and majority voting on what to choose...⁹⁴

Meanwhile, not only did the failure of the Soviet bloc regimes discredit state socialism as a viable alternative,⁹⁵ but it largely eliminated their role in legitimizing the current Western model of liberal democracy by comparison. In the process, Western capitalist democracy has likewise been shown to be a sham. Rather than simply proving itself superior to Marxist-Leninist regimes in terms of the autonomy and freedom it offers its citizens, liberal democracy is increasingly judged in relation to the core values and claims of liberal democratic theory. It is “failing badly” when judged by its own standards.⁹⁶

Even in the most effective and responsive of political systems, modern representative democracy offers low levels of governmental accountability to citizens and of public influence on decision-making. Democracy has become far more a means of legitimation of the centralized and bureaucratic government of the nation state than it is a check upon it.⁹⁷

In terms of the values of liberalism, individual freedom, and self-action, to which the Right appeals, the dominance of the “free” market means the dominance of management, using market mechanisms. Liberal democratic values are negated by private governments which impose hierarchy, loyalty, and obedience on those who work for them, and which impose market outcomes on all agents who lack their economic power.⁹⁸

Therefore, if socialism is to have any current relevance, it lies in its ability to address “the two linked questions of the democratic governance of private corporations and the democratisation of state administration.” Socialism can achieve anything beyond marginal significance only “by acting in conformity with the dominant values which stress individual choice and self-action.”⁹⁹

Associational socialism, traditionally, “always presupposed the plurality and autonomy of enterprises and collective bodies as decision-making agencies.”

It assumed a system of co-operatively and associatively-owned agencies that were to be managed by procedures which depended on democratic consent.

⁹⁴*Ibid.*, p. 141.

⁹⁵*Ibid.*, pp. 2-3.

⁹⁶*Ibid.*, p. 3.

⁹⁷*Ibid.*, p. 3.

⁹⁸*Ibid.*, pp. 140-141.

⁹⁹*Ibid.*, p. 141.

Where possible co-operation and association would link these agencies, rather than exchange relationships and market competition. Traditional associational socialism was producer-oriented and a doctrine of the self-management of the working class.¹⁰⁰

It is nevertheless adaptable to “much more complex societies, which are no longer dominated by relatively low technology factories and which have a complex and differentiated occupational structure in place of a ‘working class’.”

Associational socialism is adaptable to hospitals, universities, and shopping centres, as much as it is to factories. It is compatible with complex forms of social ownership, in which workers, providers of capital, and other interested parties are represented on a democratic board of management. By its very principle it permits diversity in forms of organisation and management of enterprises. Associational socialism addresses the problems of hierarchy and administrative centralisation in enterprises and collective bodies. It argues for the democratisation of corporations. It permits and encourages the organisation of social life in associations. Education, health, welfare, and community services can be provided by co-operatively or socially owned and democratically managed bodies. Associational socialism permits such bodies to set their own objectives. It is thus compatible with a pluralistic society in which there are distinct sorts of values and organised interests.... As associational socialism builds on — rather than negates — the plurality and diversity of western civil society, it enhances the powers of voluntary associations and communities. Unlike the economic totalitarianism of central planning, it is not condemned to marginalise associations and deny them decision-making autonomy. Unlike the domination of market-oriented corporate capitalism it does not push associations to the "social" margins, away from economic market-oriented activity.¹⁰¹

In short, Hirst argues, “[a]ssociational socialism is... closer to the traditions of western pluralism and liberalism than are the doctrines of either the central planners or the free-marketeers.”¹⁰² He argues for the achievement of liberal values through institutions other than those traditionally advocated by classical liberals, arguing that “democratic government based on accountability to the individual citizen means little” if economic affairs are largely controlled by large hierarchical corporations, and social affairs by state bureaucracies.¹⁰³

Hirst describes the benefits of association in terms, among other things, of human flourishing. It does not simply facilitate individuals pursuing their own

¹⁰⁰*Ibid.*, pp. 141-142.

¹⁰¹*Ibid.*, pp. 141-142.

¹⁰²*Ibid.* pp. 141-142.

¹⁰³Hirst, *Associative Democracy: New Forms of Economic and Social Governance* (Cambridge: Polity Press, 1994), pp. 22-23.

prior choice of ends, and their positive control over the conditions of their life, but also "as a person, developing their capacities through running or participating in the work of the group. Through the process of association, "individuals develop themselves; they are further individuated by associating with others."¹⁰⁴ In the economic realm, in particular, "[s]ecurity, stability and the capacity to have a measure of control over one's affairs are part of human well-being," and "necessary to advanced individuation."¹⁰⁵

In practical terms, his associational model calls for voluntary associations to "progressively take over an increasing range of social and public functions," and "be answerable in the first instance to their own memberships through their processes of self-government for the administration of these activities." Government's role would be one primarily of providing funding and support for the activities carried out by these associations.¹⁰⁶ In the case of welfare spending, in particular, voluntary associations would provide resources funded from state revenue.¹⁰⁷ This resembles the Partner State model of social welfare advocated by Cosma Orsini (about which more below), who cites the examples of Japan and Italy's Emilia-Romagna region in disbursing a considerable amount of social spending through self-governing mutuals rather than a welfare bureaucracy.

[Associationalism] proposes that authority be as far as possible divided into distinct domains, whether territorial or functional, and that authority should be as localized and small-scale as possible.¹⁰⁸

...[It] treats self-governing voluntary bodies not as secondary associations, but as the primary means of both democratic governance and organizing social life. A self-governing civil society thus becomes the primary feature of society. The state becomes a secondary, but vitally necessary, public power that ensures peace between associations and protects the rights of individuals.¹⁰⁹

Its voluntary nature also implies, as "the most basic right," the right of exit: the right "to be able to leave an association within a relatively short and specified period of time and without a significant fine or equivalent financial loss."¹¹⁰

In the economics, associationalism desires "that as many economic actors as possible have the highest level of control of the assets that are necessary to their livelihood" — either directly, "as with the artisan who owns his or her own workshop," or by a democratic, representative governance mechanism "in the case

¹⁰⁴*Ibid.*, p. 50.

¹⁰⁵*Ibid.*, p. 98.

¹⁰⁶*Ibid.*, p. 24.

¹⁰⁷*Ibid.*, p. 167.

¹⁰⁸*Ibid.*, p. 29.

¹⁰⁹*Ibid.*, p. 29.

¹¹⁰*Ibid.*, p. 51.

of enterprises that depend upon external capital."¹¹¹ Hirst argues, for promoting this model, a shift toward an economic structure with a larger presence of "small- and medium-sized enterprises," and predominantly local firm ownership and sourcing of capital,"¹¹² on the grounds that they are most conducive to self-management and the vesting of decision-making in those with direct knowledge of circumstances.¹¹³

The state, in this model, provides a "thin and procedural" framework of rules within which the associations operate, consisting primarily of a guarantee of fundamental human rights which associations may not violate, and a set of "general rules all associations would have to comply with."¹¹⁴

One of the first contemporary writers to use the actual term "liberal socialism" was Ian Hunt, who explicitly formulated it as "a synthesis of Marx's critique of capitalism with Rawls's theory of justice."¹¹⁵ The combination

reinforces Rawls's own reasons for taking capitalism to be unjust by showing that capitalism not only violates the difference principle [about which more below], because its basic structure relies on a reserve army of labor, but also enables exploitation of wage-laborers.¹¹⁶

We have taken a modified form of Rawls's theory of justice as a feasible, more realistic shared political conception of justice, and supposed that a majority decides in favor of public ownership of large scale productive wealth. This society gives everyone the opportunity of pursuing the good of free collective cooperation in pursuit of ends that groups and society as a whole have chosen independently of just those ends that serve survival.¹¹⁷

To use Rawls's criterion of fair basic structure rules to underpin Marx's moral critique of capitalism, we need only make two not so central changes to Marx's social theory: discard some utopian elements in Marx's ideal of a future society [i.e. that its level of abundance will be such that there are no competing claims for finite resources]; and hedge Marx's claim that a free association of workers will transcend the horizon of bourgeois right by accepting that there can be justice and right beyond bourgeois right.¹¹⁸

In concrete terms, Hunt proposes a form of market socialism in which the

¹¹¹*Ibid.*, p. 98.

¹¹²*Ibid.*, p. 128.

¹¹³*Ibid.*, pp. 128-129.

¹¹⁴*Ibid.*, p. 56.

¹¹⁵Ian Hunt. *Liberal Socialism: An Alternative Social Ideal Grounded in Rawls and Marx* (Lanham, Boulder, New York, London: Lexington Books, 2015). Pagination from pdf hosted at OceanofPDF.com

<<https://oceanofpdf.com/authors/ian-hunt/pdf-epub-liberal-socialism-an-alternative-social-ideal-grounded-in-rawls-and-marx-download/>> p. 81.

¹¹⁶*Ibid.*, p. 81.

¹¹⁷*Ibid.*, p. 198.

¹¹⁸*Ibid.*, p. 91.

means of production are owned by society, the state, or the workers who operate them, and markets in producer and consumer goods are allowed to operate. Posing Rawls' test of whether any alternative social system could have a less disadvantaged least well off group than the worst off under capitalism, he responds with Schweickart's model of economic democracy in combination with market allocation of resources and consumption goods — a system which is "consistent with either Rawls's 'private property owning democracy' or 'liberal socialism'." ¹¹⁹

Hunt proposes a socialist economic model because he views capitalist ownership and the wage system, and the constraints they impose on the agency and flourishing of workers, as fundamentally at odds with the spirit of Rawlsian liberalism.

In capitalist societies, workers normally feel compelled, despite their formal independence, to enter into an agreement to subordinate their will at work to a capitalist employer, because they lack means for an independent livelihood.

These workers are unfree in the way that anyone is unfree who chooses how to make the best of their situation when subject to a threat. The threat "Your money or your life" offers the option of continuing life on condition that your money is handed over....

...Similarly, people who accept wage offers in the market because they have no other likely option than falling into Marx's "reserve army of labor" will not be fully voluntarily cooperating with others in their role as employees simply because that is their best option in their unjust circumstances.

For Marx..., this choice of employment is not a fully voluntary choice, since it is a choice among options that have been unfairly limited by an unfair distribution of wealth in capitalist societies. If workers generally were not free of all means to realize their productive capacity in goods for sale, they would not choose employment on the terms and conditions offered by capitalists as being in their best interests. ¹²⁰

"[T]he institutional rules of a capitalist market system" do not only violate Rawls' standard of "fair equality of political liberty and fair equality of opportunity"; if Marx's theory of exploitation is correct, the distribution of wealth under capitalism, with its relative surplus population and reserve army of the unemployed, also "violates Rawls's difference principle and undermines the bargaining position of workers so that they are exploited and dominated at work." ¹²¹

119 *Ibid.*, pp. 94-95.

120 *Ibid.*, pp. 156-157.

121 *Ibid.*, p. 91.

Hunt dismisses Marx's rejection of markets in favor of planning as "not necessary for social cooperation to take a transparent and intelligible form."

Market coordination of economic activity is not freedom diminishing simply because it goes on outside the scope of conscious collective coordination of production. In the absence of some future technological enhancement of our capacities, some aspects of coordination of production must be beyond the scope of conscious control if the burden of coordination is not to be too great. Whether this is freedom diminishing overall may be determined by whether limits on conscious control in some directions, such as those inherent in distributive devices like the market, rationing procedures, or allocation by ballot, outweigh control over more important or fundamental aspects, such as the just distribution of the burdens and benefits of social cooperation.

A free association of producers can choose the scope and limits of commodity production, if justice in distribution requires it in the absence of independent criteria of just individual outcomes. It may choose not to adopt market mechanisms for some aspects of exchange, such as provision of education or health services, where real world markets cannot be sufficiently competitive. It may choose gift giving where personal relationships are important to exchange, or where tradition rather than new product development is important, such as in the production and consumption of traditional foods and household goods.

...With a highest sustainable social minimum income, rather than the smallest safety net required to limit discontent, and limits on higher incomes and concentrations of wealth, market competition need no longer seem a terrifying, implacable force that determines life fates for generations.

Therefore, Marx has reason to reject commodity production in the shape it takes under capitalism, but could accept it if a market based, free association of workers can have socially planned economic activity that is not dominated by impersonal forces.¹²²

Like many of the other thinkers surveyed in this section, Hunt is largely dismissive of the distinction between "negative" and "positive liberty." He argues that purely "negative liberty" is inadequate for understanding basic rights, because even "negative" rights require positive action to be meaningful.

Nor should we see basic liberties as merely negative rights in a just society, since a just basic structure must impartially and effectively enforce its basic liberties.... The right to security of possessions requires that others forbear from theft of our possessions but it also obliges any of them to carry

¹²²*Ibid.*, pp. 88-89.

out a duty to inform authorities of any theft they know.¹²³

But this is, if anything, too weak a statement. More importantly, the distinction between “positive” and “negative liberties” is itself arbitrary, and depends on how property rights have been previously defined. For example, both a landlord’s right to evict tenants or exclude trespassers from a piece of land to which they hold fee-simple absentee title, and an occupant’s right to maintain possession of their usufructory/possessory claim against any would-be collector of rent, can be defended as a negative right, depending on the property regime.

[Isaiah] Berlin struggles to explain how positive and negative freedom might be opposites until he puts the contrast in terms of different ways in which freedom might be a practical concern. For Berlin, those who want positive freedom are concerned with how much control they have over their lives and want such control placed in their own hands. On the other hand, those who want negative freedom are concerned with maximizing the area of their lives in which others do not interfere with threats or force, and want to limit any such power others might have over their lives.¹²⁴

But often a given liberty can be framed as either negative or positive, or both at the same time. Secure possession of living space, or workplace autonomy, for example, both maximizes individual control over major aspects of one’s life, and maximizes freedom from outside interference. Indeed, individual control and freedom from interference are arguably different ways of stating the same thing.

The ideal approach, as we will argue in a later section, is to design property rules through predistribution, such that they maximize both individual autonomy and control in ways that can be positioned as negative, and enforceable as accomplished facts of possession.

Hunt’s book was followed the next year by an article in *Jacobin* by Joseph M. Schwartz, in which he argued that “Socialism isn’t the negation of liberalism. It’s the realization of liberal values made impossible by capitalism.”¹²⁵

Democratic socialists believe that capitalist democracy is too capitalist to be fully democratic. In fighting to extend democracy into the economic sphere, socialists aim to go beyond liberal democracy while fulfilling its aims: the flowering of human individuality and the ability of all to have an equal voice in governing the institutions that affect daily life....

Socialists extend the liberal concept of democratic self-determination by fighting to extend democracy in the workplace and to achieve social control

¹²³*Ibid.*, p. 170.

¹²⁴*Ibid.*, pp. 182-183.

¹²⁵Joseph M. Schwartz, “Liberalism’s Crisis, Socialism’s Promise,” *Jacobin*, April 28, 2016 <<https://jacobin.com/2016/04/jonathan-chait-nymag-marxism-democratic-socialists>>.

over what we produce and how we produce it and allocate the social surplus created.¹²⁶

Despite all the material surveyed above, the term “liberal socialism” first received widespread notice and became a major subject of controversy on the left only with the publication of Matthew McManus’s *The Political Theory of Liberal Socialism* in 2025. In it he elaborated on the thesis which he had stated in an article shortly before the publication of the book: “At its best, liberalism points beyond itself to an overcoming of capitalism. It also explicitly upholds certain moral ideals that it would be a mistake for socialists to renounce.”¹²⁷

The book does not devote much effort to formulating an actual theory of liberal socialism. McManus spends by far the greater part of it, not to expounding liberal socialism as a doctrine or proposing a liberal socialist societal model, but to a historical survey. Although the book contains a strong element of advocacy for liberal socialism as a relevant political agenda for our day, it is — unlike Hunt’s — secondary to its historical focus. In the first part, on the sources of liberal socialism, he surveys the thought of liberals — including early figures like Thomas Paine and Mary Wollstonecraft (who, by deriving implications of economic egalitarianism from the liberal conception of human rights, both foreshadowed liberal socialism) and the later John Stuart Mill (who explicitly identified as a socialist).

Insofar as he attempts to demonstrate the viability of liberal socialism as a contemporary project, he does so by showing that some classical liberal theorists of the past considered themselves socialists with no contradiction, and that there were liberal aspects to many socialists like Marx. Like Hunt, he also relies heavily on Rawls as an exemplar of liberalism.

And his advocacy, insofar as he does engage in it, largely takes the form of integration or synthesis; McManus notes that although examples of both socialist thought among liberals, and vice versa, have been quite common, they have never formed a continuous ideological tradition. He takes the term “retrieval” from C.B Macpherson, who used it to mean “retrieving the key ethical commitments of a tradition which had become occluded, calcified, or perverted into ideology over time.”¹²⁸ The book

aims to go a step further than Macpherson by suggesting that “retrieval” needn’t be limited to extracting core egalitarian insights from innovative liberal and socialist thinkers. In this case, it means retrieving clear

¹²⁶*Ibid.*,

¹²⁷McManus, “The Best of Liberalism Points to Socialism,” *Damage*, March 4, 2025

<<https://www.damagemag.com/p/the-best-of-liberalism-points-to-socialism>> Quotes are from preprint shared by author, not from online version.

¹²⁸McManus, *The Political Theory of Liberal Socialism*, p. 2.

principles, methods, and arguments that are recognizably liberal socialist while taking both prongs of that identity seriously. Applied so broadly, retrieval becomes a kind of canonical reconstruction which establishes an intellectual past and present for liberal socialism in order to project new possibilities for the future.¹²⁹

McManus defines liberalism as “a political ideology... in the non-pejorative sense to encompass the whole family of liberal viewpoints and modes of expression.”¹³⁰

Consequently, it is more accurate to speak about liberalisms than liberalism. Liberalisms bear a family resemblance to one another out of a commitment to a set of general principles which any contemporary liberal would agree to accept at a sufficiently high level of abstraction. But these are instantiated in a wide variety of different ways....

... [A]t a sufficiently high level of abstraction, I’d argue the two uncontroversial moral principles of modern liberalism are a commitment to the normative equality, or equal worth, of all human beings and, relatedly, their fundamental entitlement to equal liberty within civil society.¹³¹

He goes on to note that socialists are also committed to these two principles, at “a sufficiently high level of abstraction,” continuing:

These are quite similar to the basic principles which liberals are committed to, regardless of how they connote them, with the notable exception that the republican principle of community and solidarity is embraced and extended to the economy by socialists in a way that would be very controversial among liberals. This isn’t to suggest that ultimately the debate between classical liberals, liberal socialists, and socialists is over the centrality or desirability of the republican principle of community/solidarity. It’s simply to demonstrate why, at a moderately high level of abstraction, there is nothing irreconcilable between the normative commitments of liberals and socialists. This demonstrates why liberal socialist political theorists have found it possible to integrate the two traditions together or even argue they immanently lead into one another when conceived from a certain direction.¹³²

In an interview with Zachary Woodman at Center for a Stateless society, he additionally mentions, as “a canonical understanding of socialism going all the way back to people like the Owenites, ...social ownership of the means of production.” That does not mean, he clarifies, the right-wing caricature of “social

¹²⁹*Ibid.*, , p. 3.

¹³⁰*Ibid.*, , p. 8.

¹³¹*Ibid.*, , pp. 10-11.

¹³²*Ibid.*, , p. 14.

ownership” found on the right:

Now again in the Anglosphere certainly since the cold war that's invariably been understood as state ownership of the means of production.... [B]ut social ownership of the means of production has also been understood in very different ways by various different socialist theorists and certainly by socialist practitioners and one of the goals of my book is in some sense is to reintroduce the socialist tradition to the anglosphere by pointing out it is just as diverse, eclectic and indeed in many ways rich a tradition as the tradition of liberalism....

... The argument is that the commanding heights of the economy should be owned socially although again what that means whether that should be done through worker co-ops kind of market socialism or a mixed system with markets and nationalizations that's where there's a lot of interesting debates that take place.¹³³

Responding to a challenge from Woodman, he also explains the socialist opposition to private property in terms that make it clear that by “private property,” socialists mean something other than security of personal possessions and living space, and that socialism respects the importance of the latter as a source of individual autonomy, and does so in terms of the same values that liberalism attaches to the concept of “private property.”

By way of critique Woodman points to McManus’s repeated citation of a line from Mises, as typical of mainstream classical liberalism, to the effect that “the liberal view can be summed up as a commitment to private property.” He acknowledges that Mises in particular understood private property in a way that was not historically contingent enough. He oftentimes confused collective ownership of certain things which can exist in the absence of a state, that's what Elinor Ostrom's entire work is about..., and I think Mises didn't appreciate the extent to which property... as it exists under capitalism as a historical matter was largely a creature of state attempts at grabbing power....

But he criticizes the perceived failure of “many in the liberal socialist tradition” to “acknowledge the extent to which the demands that we as embedded creatures must make on each other to respect the physical manifestations of our life projects is a morally important point.”

McManus replies that the main source of his animus toward the Lockean conception of private property is the propensity to regard property as some kind of natural institution or right preceding the state or preceding society.... He's pretty clear that

133“Matthew McManus on Liberal Socialism,” C4SS Feed 44, Sep 22, 2025. Mutual Exchange Radio <<https://www.youtube.com/watch?v=Iz8OFQ6l9RY>>.

property rights exist in the state of nature. Indeed that civil society is created precisely in order to provide protection for our natural rights including our right to property. And I think that as nice as this narrative sounds it's just completely implausible, and I point out that I think Paine was amongst the first to recognize this. It's very difficult to understand property except as a social institution since property amongst other things is inherently exclusionary.... And the reason I continuously foreground this is one of the more useless debates I think that's emerged between libertarians and socialists is over this question of state coercion or non-state coercion. I still see many vulgar libertarians, to use your terminology, say things like well, socialists just want a coercive state. And then when I inevitably bring up, well if you think property rights should be respected doesn't that require state coercion in order to back it up, they'll say yeah but that's justified state coercion. And my response then is well okay, but then we're not talking about coercion versus non-coercion. What we're talking about is what forms of coercion are justified. And maybe it is the case that a more propertarian approach is justified and a liberal socialist one isn't. But then we need to have that debate and not get sidetracked in idle debates about who among us are supporting coercion or not.

And I do think that it has been more difficult for libertarians and certainly classical liberals to wean themselves off of this idea that property is a natural institution or a natural right than many have appreciated. So ultimately what I think what we need to do as a society and as thinkers is recognize that property is a social institution that state or some kind of coercion is required in order to instantiate respect for it and then ask ourselves are the forms of justification given for this coercion legitimate and plausible or are they not? And that opens up a more granular set of questions than what you get in these more reductive forms of the Locke story, that again still pervade a lot of vulgar libertarianism and vulgar classical liberalism.

He then proceeds to acknowledge the importance of secure rights of possession, and their integral relation to individual identity, in terms fairly amenable to liberal sensibilities:

Now in terms of my own response to this right, I think that property does serve a useful function in some circumstances and I'd like to stress that all liberal socialists would agree with that right so again every liberal socialist for example would emphasize the importance of things like personal property for the reasons that you mentioned. An acknowledgement of the fact that personal property is important for people's self-respect and the sense of self ownership that's intrinsic to anyone who supports liberal tradition. And also because various forms of property can also have an

expressive kind of value.... That's very much the intuition I'm pumping in my extended cognition of property rights work. So figures like J.S. Mill and Rawls... are sensitive to this. The question becomes when does private property reach a threshold where ownership of the means of production or ownership of the commanding heights of the economy facilitates domination of individuals by other individuals? And where that threshold is extremely debatable even in the liberal socialist tradition, right.¹³⁴

Returning to the book, liberal socialism itself McManus defines in the broadest terms, as a political theory

committed to instituting a basic structure securing the equal substantive and social freedom of all society's members as a basis for their shared developmental flourishing by combining support for liberal political institutions and rights with equitable and democratic economic arrangements. Its three core principles are:

- A concurrent commitment to a methodologically collectivist social ontology and normative individualism.
- A commitment to each person having as equal an opportunity to lead a good life as possible through the provision of shared resources and the design of institutions to enable the development of their human powers. This developmental ethic can be contrasted with the extractive and possessive ethic characteristic of classical liberalism.
- A commitment to instituting a basic social structure characterized by highly participatory liberal–democratic political institutions and protections for liberal rights concurrent with the extension of liberal democratic principles into the economy and family to establish more egalitarian economic arrangements free of domination and exploitation. This also means that liberal socialists do not prioritize the right to private property the way many classical liberals do, even if all liberal socialists defend entitlements to personal property.¹³⁵

Liberal socialists are “normative individualists,” insofar as they view “the well-being of concrete individuals” as “the ultimate end of society.” However, they reject the doctrine, which holds the status of dogma on much of the libertarian right, of “methodological individualism,” which starts from the assumption of the atomized individual as the unit of analysis. “In this sense, liberal socialists are methodological collectivists about social ontology and theory.”¹³⁶

McManus's third principle, “highly participatory liberal–democratic political institutions,” extends not just to the state (as in conventional liberalism), but also to

¹³⁴*Ibid.*

¹³⁵McManus, *The Political Theory of Liberal Socialism*, pp. 17-18.

¹³⁶*Ibid.*, p. 18.

“private” institutions like the family and economic enterprise. It envisions reducing the extent to which they are characterized by domination, through a “process of democratization and the extension of worker rights” by which “capitalist control of the means of production would become less central and ideally even be eliminated wholesale.”¹³⁷

McManus’s understanding of liberal socialism is heavily influenced by Rawls as well as Marx, and can be seen as a synthesis between them.

This chapter [on Rawls] and the one on Marx are in many ways the most difficult and important in and to the book. ...[I]t is important to be clear that I am largely convinced by both the correctness of Rawls’ normative views and Marx’s dialectical treatment of the social totality and the forms of domination present within it.¹³⁸

The second core lesson Rawls takes from Marx and Hegel is... the Hegelian point that the “basic structure” is the first subject of justice. The move is subtle and all-important for two reasons. First, in making the basic structure, the chief subject of justice Rawls shifted liberal theories away from an untenable foundation in the atomized individual and her apolitical rights and interests.... Second, by locating questions of justice in the basic structure Rawls also moved the burden of proof for the justification of inequalities and forms of domination from those who would ascribe responsibility to the individual to structural factors....

This strikes a considerable blow against the more vulgar forms of meritocratic neoliberalism. These attempts to relocate the source of inequities in individual effort and desert [sic] imply that any forms of poverty or domination that emerge in society are the fault of those who are in fact victimized by structures of oppression. It must be the goal of a committed liberal socialism to do better.¹³⁹

Rawlsian liberalism differs from socialism in that Rawls does not consider socialism as such necessary to extend liberal justice to the economy.

He thinks that either liberal socialism or property-owning democracy would do the trick.... Taciturn to the last, Rawls states that “justice as fairness does not decided [sic] between these regimes... but tried to set out guidelines for how the decision can be reasonably approached.”

Nevertheless, I think... that the best regime for realizing justice as fairness would be liberal socialism rather than property-owning democracy. This is because property-owning democracy would be more inherently unstable by enabling forms of economic domination to reemerge through

¹³⁷*Ibid.*, p. 21.

¹³⁸*Ibid.*, p. 176.

¹³⁹*Ibid.*, p. 181.

processes of capital accumulation.¹⁴⁰

In response to criticisms from some Marxists that Rawlsians “want to maintain capitalist societies while insulating citizens from their worst consequences — for instance, by limiting inherited wealth,” McManus responded:

The first edition of *A Theory of Justice* [Rawls] notes that the question of whether a socialist system, a “private property system”, or the “many intermediate forms most fully answer to the requirements of justice cannot, I think, be determined in advance.” Whether one of these systems is to be chosen as the best to institute the principles of justice will depend “in large part upon the traditions, institutions, and social forces of each country, and its particular historical circumstances.” Nothing at even this early point forecloses the possibility of socialism in Rawlsianism.¹⁴¹

Socialism is arguably implicit in the stated values of liberalism, and it was natural that workers and other subordinate groups would seize upon them and apply them to their own movements for liberation. Classical liberalism was “an ideological grenade,” McManus writes, because of its recognition

that society was an “artificial” creation constituted through human agency, rather than coextensively mapping a sublime transcendent order or naturalizing necessary relations of domination and subordination....

...[B]y foregrounding the capacity of human reason to know and act well in the world, and locating it within a more democratic array of individuals, classical liberalism not only deconstructed the ancient worldview. It ensured that the new civic culture of critique and debate would impose continuous pressure and obligation on whatever regime would emerge in the postrevolutionary era. The consequence was a permanent rethinking of the epistemic bases of political legitimacy. Later, Marxist and critical theorists would rightly draw attention to how the nominally free and rational individuals of modern liberal societies were still operating under the determinacy of ideology, mute compulsion hegemony, discourse, and control. But it remains important to note how, even if qualified, the emergence of the “bourgeois public sphere” as a site of permanent deliberation and legitimation constituted a genuine advance on the quiescence that was expected within antiquarian subjects. The age of the citizen had arrived. And as it turned out citizens were demanding.¹⁴²

The realization, or rediscovery, that “inequality and social hierarchy are not natural phenomena but human creations” has clear revolutionary implications for those who feel themselves subordinated by the higher orders

¹⁴⁰*Ibid.*, p. 186.

¹⁴¹McManus, “The Best of Liberalism Points to Socialism.”

¹⁴²*The Political Theory of Liberal Socialism*, pp. 48-49.

without much benefit flowing their way. Much of it has its roots in early liberal thought, for all its limitations....¹⁴³

A good many bourgeois classical liberals, however, were less than pleased at this appropriation of their doctrines by their journeymen, tenants, wives, and slaves.

Unfortunately for many possessive liberals, it was as easy to demand this equality for themselves as it was to deny that others were entitled to it. This wouldn't last. Soon slaves, the poor, colonial subjects, and even women found it very easy to denaturalize their subordination and demand liberty and equality for themselves. Worse still, these subordinates proved eloquently capable of turning the very arguments possessive liberals used to commend violence and sacrifice for the end of their own emancipation into accusations of hypocrisy.¹⁴⁴

Abigail Adams pointed out, in a letter to her husband, that his arguments against subordination to British authority could be applied to the subordination of women. John Adams replied:

We have been told that our Struggle has loosened the bands of Government everywhere. That Children and Apprentices were disobedient — that schools and Colledges were grown turbulent — that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first Intimation that another Tribe more numerous and powerful than all the rest were grown discontented.¹⁴⁵

But despite the visceral hostility of bourgeois classical liberals to egalitarian economic interpretations of their doctrines, socialism nevertheless better captures the spirit of liberalism than what passes for “liberalism” among liberal capitalists today.

It is indeed true that the great liberal movement of modern times has, in the first instance, benefited the capitalist bourgeoisie, and that the parties which took the name Liberal were, or became in time, nothing but straightforward defenders of capitalism. There can, of course, be nothing but enmity between these parties and Social Democracy. But with respect to liberalism as a historical movement, socialism is its legitimate heir, not only chronologically, but also intellectually.¹⁴⁶

McManus also notes that liberalism and Marxism each has certain weak or blind spots, for which the other provides a complement or corrective. He acknowledges the leftist critique that “left-liberals have largely been unable to

¹⁴³*Ibid.*, p. 45.

¹⁴⁴*Ibid.*, pp. 45-46.

¹⁴⁵*Ibid.*, 46.

¹⁴⁶*Ibid.*, p. 144-145.

theorize the nature of power under capitalism” as a result of the nature of their ideology. He agrees

that one simply cannot compare the theoretical rigor and depth of Marxist and other critical traditions on ideology and hegemony to what one sees in the writing of left-liberals today. Moreover, otherwise impressive liberal socialists from Mill to Rawls to Axel Honneth have by and large demonstrated a poor understanding of the nature of capitalism as a global system of mute compulsion.¹⁴⁷

But in any case, it’s important to stress that the question is not whether the entire philosophy of any particular liberal thinker, as a package can be considered adequate as a socialist model in its own right, but whether some of their principles — in Rawls’s case the Initial Position and Veil of Ignorance, and the standard of equal liberty; and more generally, liberal ideas of due process and limits on power — are of value to socialism.

At the same time, McManus acknowledged Marx’s own shortcomings when it came to a grasp of power issues: “...Marx was still somewhat blind to the possibilities of abuse of power in a postcapitalist transitional regime, and the practical mechanisms required to prevent it.”¹⁴⁸ A good illustration is Marx’s exchange with Bakunin on the nature of the workers’ state. Among his criticisms of Marx, Bakunin questioned the representative nature of a “workers’ state”:

What does it mean, “the proletariat raised to a governing class?” Will the entire proletariat head the government? The Germans number about 40 million. Will all 40 million be members of the government? The entire nation will rule, but no one will be ruled. Then there will be no government, there will be no state; but if there is a state, there will also be those who are ruled, there will be slaves.

In the Marxists’ theory this dilemma is resolved in a simple fashion. By popular government they mean government of the people by a small number of representatives elected by the people. So-called popular representatives and rulers of the state elected by the entire nation on the basis of universal suffrage... is a lie behind which the despotism of a ruling minority is concealed, a lie all the more dangerous in that it represents itself as the expression of a sham popular will.

So, from whatever point of view we look at this question, it always comes down to the same dismal result: government of the vast majority of the people by a privileged minority. But this minority, the Marxists say, will consist of workers. Yes, perhaps of *former* workers, who, as soon as they become rulers or representatives of the people will cease to be workers and

147Schwartz, “Liberalism’s Crisis, Socialism’s Promise.”

148McManus, “The Best of Liberalism Points to Socialism.”

will begin to look upon the whole workers' world from the heights of the state. They will no longer represent the people but themselves and their own pretensions to govern the people. Anyone who doubts this is not at all familiar with human nature.¹⁴⁹

Marx, in a set of notes on Bakunin's *Statism and Anarchy*, answered these charges thusly:

...will consist of workers. Certainly, with your permission, of former workers, who however, as soon as they have become representatives or governors of the people, cease to be workers...

As little as a factory owner today ceases to be a capitalist if he becomes a municipal councillor...

and look down on the whole common workers' world from the height of the state. They will no longer represent the people, but themselves and their pretensions to people's government. Anyone who can doubt this knows nothing of the nature of men.

If Mr Bakunin only knew something about the position of a manager in a workers' cooperative factory, all his dreams of domination would go to the devil. He should have asked himself what form the administrative function can take on the basis of this workers' state, if he wants to call it that.¹⁵⁰

But this particular criticism of Bakunin's was entirely reasonable. It foreshadowed Robert Michels' quite valid questions concerning the feasibility of any form of representative democracy, and the ability of a popular majority to maintain meaningful control over an administrative apparatus staffed by a small minority of the population, regardless of how formally representative the organization is.

The problem is not, as the tone of Bakunin's rhetoric might suggest, one of cartoonishly evil representatives rubbing their hands together like Snidely Whiplash and proceeding to take advantage of their new positions of power to cynically promote their own selfish material interests at the expense of the workers they're supposed to represent (although such temptations would surely have some effect on the margins). The concerns Bakunin raised are entirely compatible with workers' delegates sincerely serving the best interests of the working class as they understand it, and taking what they see as the best course of action.

The problem lies in those phrases "as they understand it" and "what they see." Our understanding of the world is situational, or perspectival. We always see it from a partial perspective. This is the source of ideology — a problem to which an

¹⁴⁹Mikhail Bakunin, *Statism and Anarchy: The Struggle of the Two Parties in the International Working Men's Association* (1873). Translated by Marshall Shatz. Hosted at The Anarchist Library <<https://theanarchistlibrary.org/library/mikhail-bakunin-statism-and-anarchy>>.

¹⁵⁰Marx, extract from *Conspectus of Bakunin's: Statism and Anarchy* (April 1874 — January 1875). Hosted at Marxists Internet Archive <<https://www.marxists.org/archive/marx/works/1874/04/bakunin-notes.htm>>.

entire field, the sociology of knowledge, is devoted.

Bakunin's phrase "will cease to be workers and will begin to look upon the whole workers' world from the heights of the state" is key. The governors and administrators of a workers' state, despite being elected from the factory floor, will view the world from a different perspective in their new positions. For one thing, the needs and interests of a socialist economy as a whole are different from, and may even conflict with in the short run, the needs and interests of the workers in the specific enterprise they came from.

The same principle is implicit in Marx's analysis of Bonapartism in *The Eighteenth Brumaire of Louis Bonaparte*, which abandons crude instrumentalism and treats the Bonapartist state as to some degree an independent force standing over and above the bourgeoisie, that creates the prerequisites for capitalism over the frequent opposition of individual capitalists or even, in the short term, the entire capitalist class.

In addition, the former workers who comprise the institutional apparatus will become a collective interest in their own right, with their own institutionally biased view of the world. For that matter, the functionaries in the various departments of a state apparatus, regardless of the social system, inevitably come to see the interests of the state in terms of the interest of their departments. And to the extent that they require the support of permanent staffs of experts, their own perception of the possible range of policy alternatives will come to be limited by the perspectives of these staffs. This phenomenon, of institutional capture, or of political appointees "going native" and representing their own departments and staffs to their nominal superiors, is universal.

This is not to say that state functionaries will consciously promote the interests of the state apparatus at the expense of the workers. Rather, there is an inevitable tendency of the functionaries of any institutional machinery to begin to equate the interests of their institutions as such with the interest of the publics those institutions were officially created to serve, and to see attacks on the institutional structure and its operating procedures as an attack in the interests it was created to serve. The tendency, likewise, is to narrow the range of policy alternatives down to what can be accomplished by existing institutions and in accordance with their institutional culture.

Marx's own examples, of the capitalist alderman and the hired manager, if anything, inadvertently illustrate these principles.

Many on the left, in short, are power-blind in the sense that they see restrictions on power entirely in terms of the classes to whom it is accountable, and not in terms of its internal structuring. The insight that power can be abused, regardless of who wields it, and must therefore be divided and otherwise structured to prevent its use, is an insight that should be more widely acknowledged.

Questions of perspective aside, returning to the subject of Robert Michels, there is an additional difficulty: the *ability* of workers, or any other outside public, to control their nominal representatives inside the state apparatus. The power of periodic elections, or recall, no doubt exerts some very broad influence on policy at the most general level, and sets some maximum limit on abuses of power. But the public's discretion will be limited, under normal circumstances, to choosing between a few rival policy programs which are all compatible with the existing institutional culture, or a few slates of representatives who all come from that same culture and will be working within it. And once these very limited powers have been exercised, *whoever* winds up working inside the machinery will have a massive advantage over the outside public when it comes to time, attention, information, and control over the agenda. For the average member of the public to whom the state apparatus is theoretically responsible, there is a very limited amount of time and energy available for attention to or participation in political affairs; it will generally come below home and family, friends and neighbors, and day-to-day issues in the workplace, on their list of priorities. For those on the inside, on the other hand, the internal functioning of the apparatus and matters of policy are not only their full-time job, but quite likely their chief personal interest, and perhaps coincides with most of their friendships as well.

II. Principles of a Liberal Socialist/Anarchist Society

Rule of Law/Regularity/Procedural Guarantees. Rawls understood due process in terms of a procedural regularity which, independently of the substantive just of the institutional framework, was vital in its own right:

...[I]nstitutions are impartially and consistently administered by judges and other officials. That is, similar cases are treated similarly, the relevant

similarities and differences being those identified by the existing norms. The correct rule as defined by institutions is regularly adhered to and properly interpreted by the authorities. This impartial and consistent administration of laws and institutions, whatever their substantive principles, we may call formal justice. If we think of justice as always expressing a kind of equality, then formal justice requires that in their administration laws and institutions should apply equally (that is, in the same way) to those belonging to the classes defined by them.... Formal justice is adherence to principle, or as some have said, obedience to system.

Of course, such formal procedural regularities, while necessary, are not sufficient: “law and institutions may be equally executed and yet be unjust. Treating similar cases similarly is not a sufficient guarantee of substantive justice. This depends upon the principles in accordance with which the basic structure is framed.”

Nevertheless, formal justice, or justice as regularity, excludes significant kinds of injustices. For if it is supposed that institutions are reasonably just, then it is of great importance that the authorities should be impartial and not influenced by personal, monetary, or other irrelevant considerations in their handling of particular cases. Formal justice in the case of legal institutions is simply an aspect of the rule of law which supports and secures legitimate expectations.¹⁵¹

Procedural regularity or rule of law means minimizing the role of individual will and making the application of principle as automatic as possible.

...[T]he conception of formal justice, the regular and impartial administration of public rules, becomes the rule of law when applied to the legal system. One kind of unjust action is the failure of judges and others in authority to apply the appropriate rule or to interpret it correctly. It is more illuminating in this connection to think not of gross violations exemplified by bribery and corruption, or the abuse of the legal system to punish political enemies, but rather of the subtle distortions of prejudice and bias as these effectively discriminate against certain groups in the judicial process. The regular and impartial, and in this sense fair, administration of law we may call “justice as regularity.”...

...When [procedural] rules are just they establish a basis for legitimate expectations. They constitute grounds upon which persons can rely on one another and rightly object when their expectations are not fulfilled. If the bases of these claims are unsure, so are the boundaries of men's liberties.¹⁵²

Rule of law requires, among other things, “that similar cases be treated

¹⁵¹John Rawls, *A Theory of Justice*. Original edition (Cambridge and London: Belknap Press of Harvard University Press, 1971), pp. 58-59.

¹⁵²*Ibid.*, p. 235.

similarly,”¹⁵³ and “that there is no offense without a law.” The latter means that laws be known and expressly promulgated, that their meaning be clearly defined, that statutes be general both in statement and intent and not be used as a way of harming particular individuals who may be expressly named..., that at least the more severe offenses be strictly construed, and that penal laws should not be retroactive to the disadvantage of those to whom they apply. These requirements are implicit in the notion of regulating behavior by public rules.¹⁵⁴

In regard to its internal operating procedures, the legal system “must make provisions for conducting orderly trials and hearings; it must contain rules of evidence that guarantee rational procedures of inquiry.”¹⁵⁵

Regularity of legal procedure is indispensable for genuine, substantive personal freedom.

...[I]f the precept of no crime without a law is violated, say by statutes, being vague and imprecise, what we are at liberty to do is likewise vague and imprecise. The boundaries of our liberty are uncertain. And to the extent that this is so, liberty is restricted by a reasonable fear of its exercise. The same sort of consequences follow if similar cases are not treated similarly, if the judicial process lacks its essential integrity, if the law does not recognize impossibility of performance as a defense, and so on.¹⁵⁶

Pluralism and Platform Governance. Liberalism has long attached great importance to the division of society into autonomous spheres, not subject to the control of a dominant power center, as bases for personal freedom. For security of rights to exist, on a level beyond mere paper guarantees, they must be backed by some countervailing power that can enforce them against power centers.

This principle was noted at least as long ago as Mill’s time. He challenged “Bentham's political philosophy,” that it was an “at all times and places, good for mankind to be under the absolute authority of the majority of themselves.”

All countries which have long continued progressive, or been durably great, have been so because there has been an organized opposition to the ruling power, of whatever kind that power was.... A centre of resistance, round which all the moral and social elements which the ruling power views with disfavour may cluster themselves, and behind whose bulwarks they may find shelter from the attempts of that power to hunt them out of existence, is as necessary where the opinion of the majority is sovereign, as where the ruling

¹⁵³*Ibid.*, p. 237.

¹⁵⁴*Ibid.*, p. 238.

¹⁵⁵*Ibid.*, p. 239.

¹⁵⁶*Ibid.*, p. 239.

power is a hierarchy or an aristocracy.

...Surely when any power has been made the strongest power, enough has been done for it; care is thenceforth wanted rather to prevent that strongest power from swallowing up all others. Wherever all the forces of society act in one single direction, the just claims of the individual human being are in extreme peril.¹⁵⁷

Rawls writes that membership in any of the associations of civil society should be voluntary, at least in the sense that “even when born into them, as in the case of religious traditions, citizens have a right to leave them unmolested by the coercive powers of the government. Furthermore, no association comprises all of society.”¹⁵⁸

This limit to the associational sphere reflects Rawls’s distinction between it and the political: “the political is distinct from the associational, say, which is voluntary in ways that the political is not; it is also distinct from the familial and the personal, which are affectional, again in ways the political is not.”¹⁵⁹

As anarchists or libertarian socialists we take Rawls’s principles governing the associational realm a step further, into the political realm. Ideally, the distinction between institutions for “civil society” and “political” governance should be as close as possible to nonexistent. Their decisions should, as much as possible, be binding only on their own membership; their memberships should tend to be somewhat but not completely overlapping; and there should be no association, civil or political, whose membership is coextensive with society or claims a general police power over a contiguous geographic area.

Governance structures must take on the character of civil society. That means that the distinction between the state and civil society is blurred at the expense of the former. Governance, under this model is mostly through institutions that would be considered civil society organizations today, governance structures are loosely overlapping and polyarchic. There is no “state,” in the sense of a single institution asserting a general police power over a contiguous territory, although a sort of body of common law may emerge from the various civil society institutions’ interactions with one another and the coordinating effect of their overlapping memberships.

This model would sound familiar to someone living in the Middle Ages. The medieval polity — if such a thing can be said to have existed — was polycentric and lacked any single source of central authority. It was a patchwork of

¹⁵⁷John Stuart Mill, “Bentham.” First published in *London and Westminster Review*, August 1838, and revised for inclusion in *Dissertations and Discussion* (1859). Section 4, Bentham's Philosophy of Law, Government, and Utility <<https://www.laits.utexas.edu/poltheory/jsmill/diss-disc/bentham/bentham.s04.html>>.

¹⁵⁸Rawls, *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press, 2001), p. 144.

¹⁵⁹*Ibid.*, p. 182.

overlapping vertical and horizontal relations, characterized by contractually limited authority, between feudal lords, the Church, self-governing village and town communes, and guilds of every imaginable sort.

But to the *politiques* — statesmen, jurists and theorists like Bodin, who promoted the consolidation of the rising early modern states from the sixteenth century on — this was anathema. These ideologists of the modern absolute state adhered to an idealized model of absolute, indivisible sovereignty, based on Roman law, which abhorred any form of “state within the state.”¹⁶⁰

From the 19th century on, a major segment of the left has sought to reverse this transformation. The abolition of sovereignty and the replacement of the state by, or its evolution into, non-sovereign successor bodies, is an idea that can be traced at least to Saint-Simon’s transition from “legislation over persons” to the “administration of things.”

One noteworthy explication of this general principle appears in the later thought of Proudhon, in which he anticipates the treatment of the state in Laski’s early thought (about which more below) as simply one association among others, which is equal to them and related to them horizontally. As Shawn Wilbur characterized the mature thought of Proudhon,

this new clarity about the nature of social evolution was accompanied by a more sophisticated notion of how “collective force,” which was so important in his analysis of “property,” manifests itself in the form of collective beings — or rather how all beings worthy of the title are always already collectivities, organized according to a law of unity and development. That notion led him to reconsider the status of “the state,” apart from its connection to the principle of government, and to rank some sort of non-governmental state alongside families, workshops, and other collective beings which must somehow be accounted for in his sociology.

[It involved positing] this “organized collectivity” . . . as a being, with its own organization, interests and reason, operating alongside human beings and other collective beings (when not itself subordinated to other interests by governmentalism).....¹⁶¹

These assorted organized collectivities would coexist through the principle of federation, and “denying the governmental principle” (roughly equivalent to sovereignty): “this federation, where the city is equal to the province, the province equal to the empire, the empire equal to the continent, where all groups are politically equal....”¹⁶²

¹⁶⁰Pyotr Kropotkin, *The State: Its Historic Rôle* (London: Freedom Press, 1898), pp. 4, 20-21, 23-24, 27, 32.

¹⁶¹Shawn Wilbur, “Notes on Proudhon’s changing notion of the state,” *The Libertarian Labyrinth*, January 18, 2013 <<https://www.libertarian-labyrinth.org/contrun/notes-on-proudhons-changing-notion-of-the-state-1-of-3/>>.

¹⁶²Pierre-Joseph Proudhon, *Justice in the Revolution and in the Church*, quoted in Shawn Wilbur, “Notes on Proudhon’s changing notion of the state,” *The Libertarian Labyrinth*, January 18, 2013 <<https://www.libertarian->

The result was a conception of “the non-governmental state as an individual actor,” coexisting with other collective bodies “in relations of mutuality”: a level “field of play” where the beings we are accustomed to consider “individual” and a range of organized collectivities can actually only claim “individual” status by the same title, their status as groups organized according to an internal law which gives them unity. People, families, workshops, cities, nations and “humanity”.... occupy non-hierarchical relationship with one another, despite differences in scale and complexity, and despite the participation of individuals at one scale in collective-individualities at another.... Without a governmental principle to elevate any of these individuals “above the fray” in any way, mutuality becomes absolutely vital.¹⁶³

The state of Proudhon’s day had preempted its horizontal relationship to other, rightfully equal, individuals:

The assumption of governmental authority by a part of society over the rest amounts to an imposture...., with the usurpers pretending to be an organ society [sic], but somehow outside and above society as well. Now, Proudhon went on to assert that there is indeed a State, which is in some sense an organ of that society, so it does not follow from that assertion that this State could perform the role of government. This State is simply one of the various non-human “individuals,” collective absolutes, which exists on the social terrain, and which, according to the bare-bones “social system” we’re exploring, encounters other individuals as equals.¹⁶⁴

Proudhon argues for moving the state from a position of superiority to one of equality to the individual. His state has “lost its *authority*.”

It no longer has anything but Rights, guaranteed by the rights and interests of the citizens themselves. It is itself, if we can put it this way, a species of citizen; it is a civil person, like families, commercial societies, corporations, and communes.¹⁶⁵

Harold Laski, in his early writing on pluralism and the plural state, denied the *de facto* existence of sovereignty, on the grounds that claims to sovereign authority were limited by the individual’s willingness to obey, and that individuals in practice had divided loyalties some of which they would put before their loyalty to

labyrinth.org/contrun/notes-on-proudhons-changing-notion-of-the-state-1-of-3/.

¹⁶³Wilbur, “Notes on Proudhon’s changing notion of the state.”

¹⁶⁴Shawn Wilbur, “Encounters and Transactions,” *Contr’un*, September 9, 2013 <<http://libertarian-labyrinth.blogspot.com/2013/09/encounters-and-transactions.html>>; deleted blog post preserved at Internet Archive <<https://web.archive.org/web/20151022152035/http://libertarian-labyrinth.blogspot.com/2013/09/encounters-and-transactions.html>> (accessed April 8, 2026).

¹⁶⁵Proudhon, *Theory of Taxation* (1861), quoted in Wilbur, “Proudhon on the State in 1861,” *The Libertarian Labyrinth*, February 18, 2013 <<http://libertarian-labyrinth.blogspot.com/2013/02/proudhon-on-state-in-1861.html>>.

the state in the event of a conflict.¹⁶⁶ An observer would “find himself in the presence of different wills, some of which, from their strength, have more importance than others.”¹⁶⁷ Hence, real authority lies with “the person... who can get his will accepted.”¹⁶⁸ In his “pluralistic theory of the state,” the determination of the “respective spheres” of authority was left “to the test of the event.”¹⁶⁹ He saw it as a reversion to the medieval understanding of the polity as a “community of communities”¹⁷⁰ which had overlapping jurisdictions, and none of which had the final word; in his plural state, as in the medieval understanding, sovereignty, “in the sense of an ultimate territorial organ which knows no superior,” was “an unthinkable thing.”¹⁷¹

The more carefully the political process is analyzed, the more clearly does it appear that we are simply confronted by a series of special wills none of which can claim any necessary pre-eminence....

The pluralistic state is an attempt to remedy [the defects of hierarchy] by substituting coordination for a hierarchical structure.... It would follow that there is no such thing as the sovereignty contemplated by law in any sense which admits of practical political application. In actual fact what we meet is a variety of interests, functional and territorial; and the way in which they are related suggests the necessarily federal character of all government.¹⁷²

And this federalism was one in which “sovereignty is partitioned” not only geographically, but “upon some basis of function.”¹⁷³ Trade unions and business enterprises, every bit as much as territorial units, were entitled to status as self-governing bodies within the federal structure.¹⁷⁴

Laski’s pluralism, in short, was one of many overlapping jurisdictions and

166 Harold J. Laski, *Studies in the Problem of Sovereignty* (London: George Allen and Unwin, 1917, 1968), pp. 10-11; *Ibid.*, p. 19.

167 Laski, “The Theory Popular Sovereignty,” *The Foundations of Sovereignty and Other Essays* (London: George Allen & Unwin, 1921), p. 230.

168 Laski, *Studies in the Problem of Sovereignty*, p. 17.

169 *Ibid.*, p. 23.

170 *Ibid.*, p. 274.

171 “The Foundations of Sovereignty,” Laski, *The Foundations of Sovereignty and Other Essays* (London: George Allen & Unwin, 1921), p. 1.

172 Laski, “Preface,” *The Foundations of Sovereignty and Other Essays*, vi-viii.

173 Laski, “The Pluralistic State,” *The Foundations of Sovereignty and Other Essays*, p. 240.

174 *Ibid.*, p. 242.

associations, with the state but one among many, and none of which had the last word.

Paul Hirst approaches the same principle in his work on associational socialism, although he recoils from the logical implications of his own line of analysis. In fact he explicitly repudiates the idea that the state is one association among many, interacting with them horizontally — a doctrine he attributes to the early Laski — although it's difficult to understand his own rejection of the principle of sovereignty as implying anything else. This general statement on the subject gives some indication of the conflicting strains of thought which he imperfectly synthesizes:

...A society of democratic associations requires a state which not only shares the attributes of civil society, that is, pluralism and democratic self-management, but to a degree merges with it. In such a complex and differentiated society communication between administrative organs of state and the social bodies must be close if regulative acts and decisions are to reflect the needs of associations. At the same time, the public power must have that degree of separation from and superiority over associations which is necessary to sustain an independent legal order that oversees their actions and is not subject to associations' influence and pressure. The implication is a pluralistic state.... Such a state has a complex and multiform structure, with distinct, functionally separate forms and levels of authority, in which there is no fiction of a single "sovereign".

Pluralism is difficult to define as a political and legal doctrine. Sometimes it has amounted to no more than a challenge to some of the more extreme versions of the doctrine of state sovereignty, which are only modernisations of the claims of royal absolutism. Sometimes it has been carried to virtual incoherence by making the assumption that the state is merely one association among others, and that its claims to obedience are no more overriding than those of other associations.¹⁷⁵

On the one hand, he calls for a “pluralist” state made up of ad hoc bodies that largely mirror the range of functions of the self-managed associations that comprise society.

A society in which the basic units are democratically managed associations nevertheless requires mechanisms of interaction between them, and the regulation of that interaction. The basic units cannot be left to associate spontaneously and manage themselves, except on the assumptions of a basic homogeneity of aim and identity of interests... On the assumptions [sic] of a plurality of aims and diversity of interests, inter-associational interaction cannot simply be a matter of mutual consent....

¹⁷⁵Hirst, "Associational Socialism in a Pluralist State," p. 144.

An associational society cannot be a stateless commonwealth or a pure democracy of associations. As a plurality of realms of agencies of decision, it requires a legal order and a legal order requires a public power in some form.' Associational socialism is committed to the project of developing a certain form of social order. It therefore requires a public power with the collective agencies and funds to supervise associations and provide services to enable them to fulfil their roles....¹⁷⁶

A state which builds associations into its own order through representative and consultative mechanisms, which disperses its administrative apparatus through distinct, functionally-specific domains of authority, which is decentralised, and which permits its servants a measure of democratic self-management, is a pluralist state. Its legislature will reflect in its composition that state's own internal complexity and that of society, but within the limits of the pluralist constitution it will have full powers to make legal provision. Its judiciary, likewise, will be independent and able to judge associations' claims and conduct according to law.¹⁷⁷

Hirst also argues against the principle of sovereignty, i.e. that the state has a "plenitude of power... to make rules for every person, agency and circumstance within a definite territory."¹⁷⁸ Or rather, he describes sovereignty as something that "emanates from all the complex and divided governing powers that compose society."¹⁷⁹

But he does not actually go so far as to argue what this language might seem to imply, that the "state" is simply one equal association among others. He argues that power in an associational political system cannot actually "depend on assent from the bottom up," but must "be devolved downwards by explicit public policy."¹⁸⁰ He strongly rejects the idea that associational democracy, or associational socialism, can be a stateless order, or that the state can be simply one association among others relating to the rest as equals — a doctrinal error which he continues to associate with "the early [i.e. before 1920] work of Laski."¹⁸¹

Hirst's stated positions — in particular, taking into account his unclear definition of "sovereignty" — are contradictory to the point of incoherence. If the state is stripped of sovereignty, and becomes another association, it ceases to be truly a state. On the other hand, if the power of associations, governed by the principle of subsidiarity, results from concession by the state, the state is still in effect sovereign because it determines the power of every organization within its

¹⁷⁶*Ibid.*, pp. 142-143.

¹⁷⁷*Ibid.*, p. 145.

¹⁷⁸Hirst, *Associative Democracy*, pp. 27-28.

¹⁷⁹*Ibid.*, p. 104.

¹⁸⁰*Ibid.*, p. 32.

¹⁸¹Hirst, "Associational Socialism in a Pluralist State," p. 33.

territory; it is the authority of last resort, and the authority of associations is ultimately dependent on its sovereign permissive will. Hirst confuses sovereignty with the exercise of power, rather than the authority to decide in the last resort how the exercise of power is distributed.

Hirst himself, if inadvertently, presents an argument against the need for a sovereign state with the last word, in order to prevent competitive chaos between associations:

The members of most associations will also be members of others too. Furthermore, for many purposes associations or their organizations will need to coordinate with others in like spheres of activity.... Associations may thus gradually create a network of formal and informal relations, which enables society to enjoy both diversity in social governance and a substantial measure of coordination.¹⁸²

Something very much like the plural state model of Proudhon, Laski and Hirst is the “Partner State,” a concept widely attributed to Cosma Orsi. It was subsequently developed by John Restakis and Michel Bauwens. Simply put, in the view of its advocates, the Partner State or Enabling State, is a platform operating in a geographical area which provides support and facilitation, primarily administrative rather than political, for the cooperative and commons-based bodies operating within that territory.

As Bauwens describes it, the Partner State is essentially a nonstate social association — or support platform — for managing the commons, extended to an entire geographical region.

Now, here is the kicker, how would you call an institution that is responsible for the common good of all the participants, in this case, not the people involved in a similar project, but the inhabitants of a territory? I would argue that this type of for-benefit institution has a very similar function to what we commonly assign to the state....

Can we then, imagine, a new type of state? Enter the concept of a Partner State! The Partner State... is a state form that enables and empowers the social creation of value by its citizens. It protects the infrastructure of cooperation that is the whole of society. The Partner State can exist at any territorial level, as a set of institutions that protect the common good, and enable the citizens to create value. It does, on a territorial scale, what the for-benefit institutions do on a project-scale. While the for-benefit associations work for the commoners as to particular projects, the Partner State works for the citizens.¹⁸³

¹⁸²Hirst, *Associative Democracy*, p. 69.

¹⁸³Michel Bauwens, “Evolving Towards a Partner State in an Ethical Economy,” in Andrea Botero, Andrew Gryf Paterson and Joanna Saad-Sulonen, eds., *Towards Peer Production in Public Services: Cases from Finland*

Elsewhere Bauwens describes it as a sort of arbiter or venue for dialogue between stakeholders in a geographical area:

Rather than seeing itself as sovereign master, the state must be seen as embedded in relationships, and as in need of respecting these multiple relationships. This is probably best translated by the concept of multistakeholdership. We can probably expect that the nation-state, along with the newly emerging sub- and supraregional structures will continue to exist, but that their policies will be set through a dialogue with stakeholders. The key will be to disembed the state from its primary reliance of the private sector, and to make it beholden to civil society, i.e. the commons, so that it can act as a center of arbitration....¹⁸⁴

John Restakis describes the Partner State as “above all an enabling state” whose primary purpose is

to maximize the capacity of civil society to create social value and to act as the primary agent in the formation of public policy. It is citizens, acting through civil institutions that they control, that ultimately decide and direct the implementation of public policy....

...Ultimately, the Partner State acts primarily as an administrative support for the coordination of policies decided upon by institutions of civil society on the basis of cooperative, direct democracy.¹⁸⁵

David Bollier calls for exploring models of “commons-friendly” polity that reject “the premises of the Westphalian nation-state system, with its strict notions of absolute sovereignty over geographic territory.”

The commons can act as a shared meta-language among these highly diverse groups [i.e. parallel or counter-economy groups] because the commons expresses many of the core values and priorities of many “system-change” movements....

...[T]he state is no longer the sovereignty [sic] authority. It becomes just one participant among others in the pluralistic guidance systems and contributes its own distinctive resources to the negotiation process... official apparatuses remain at best first among equals. The state’s involvement would become less hierarchical, less centralized and less directive in character. The exchange of information and moral suasion become key sources of legitimation and the state’s influence depends as much on its role as a prime source and mediator of collective intelligence as on its command

(Helsinki: Aalto University School of Arts, Design and Architecture, Department of Media, 2012), pp. 57-58.

¹⁸⁴Bauwens, “Peer Governance as a third mode of governance,” *P2P Foundation Blog*, June 9, 2010. Deleted post preserved at <<https://web.archive.org/web/20201023064401/https://blog.p2pfoundation.net/peer-governance-as-a-third-mode-of-governance/2010/06/09>> (accessed April 9, 2026).

¹⁸⁵John Restakis, *Cooperative Commonwealth & the Partner State* (The Next System Project, 2017) <<https://thenextsystem.org/sites/default/files/2017-08/JohnRestakis-1.pdf>>, p. 11.

over economic resources or legitimate coercion [sic].¹⁸⁶

For Christian Iaione, it is a platform that follows an open-source logic and is organized from below. And to some extent it recapitulates the polyarchic systems of governance that predated the Westphalian nation-state and its model of sovereignty.

For this reason, we need to re-think the organization and the culture of institutions in a framework of open-source and circularity: we need a State-Platform that does not want to guide the process but choses [sic] to act from below, supporting a circuit of relationship and allowing [public, private, third sector, cultural institutions such as schools and universities, single citizens and social innovators] to become authors and actors of general interest. The State-Platform must break the monopoly of public care of the general interest, without withdrawing from the care of those interests which are inescapably public and becoming a system administrator, as it happens in the web....

...[A] new form of State, a State which is plural because distributed, because it can be found in the different worlds of society, economy and knowledge and not anymore confined to the offices and hallways our institutions. Thus, a program of large-scale experimentation is needed to regenerate institutions, a program able to strengthen administrations' institutional capacity to manage change without suffocating it nor attempting to direct it. The State should accompany, enable, monitor and value such change by becoming a platform. A State-Platform will be ready to make his time, competences, human, technical and logistic resources available in order to organize processes and territorial laboratories where things begin to happen regardless of the administration, but in a more controlled and legitimate way. It will grant everyone the possibility to experiment, allowing everyone to be informed on what projects others citizens are undertaking and perhaps to join them. Making sure that basic norms on security and inclusion are respected, it should provide a free license to experiment and imagine. The multitude of mistakes made and even more of lessons learnt should become the base from which we begin to re-think the State in the XXI century.¹⁸⁷

LabGov's Co-Cities project includes, among its Protocols ("design principles... for transitioning from urban commons projects to the city as a commons"), the "Enabling State," which is

the design principle that expresses the role of the public authority or the State in the governance of the commons and identifies the characteristics of an enabling state that facilitates collective actions for the commons. As highlighted by

¹⁸⁶"Re-imagining the Polity for a Networked Humanity," *David Bollier: news and perspectives on the commons*, September 7, 2016 <<https://www.bollier.org/blog/re-imagining-polity-networked-humanity>>.

¹⁸⁷Christian Iaione, "The Platform-State. Government as an enabler of Civic Imagination and Collaboration," in *The City as a Commons Papers: The founding literature and inspirational speeches* (CO-Cities, LabGov et al, 2019), pp. 32-34.

Sheila Foster in her first study on the urban commons, the presence of the State acting as an enabling platform for collective actions might represent a key factor for the success of community projects on the urban commons.¹⁸⁸

The model is also closely paralleled by Abdullah Ocalan's third principle of Democratic Confederation, whose "decision-making processes lie with the communities," insofar as higher bodies are purely ministerial in function.

Higher levels only serve the coordination and implementation of the will of the communities that send their delegates to the general assemblies. For limited space of time they are both mouthpiece and executive institutions. However, the basic power of decision rests with the local grass-roots institutions.¹⁸⁹

If we synthesize the best aspects of all these models, we wind up with a state that dissolves into something — or better yet somethings — as "unstatelike" as possible. This means, in practical terms, replacing as many functions of territorially-based governance bodies (especially at the municipal level) as possible with a polyarchy of self-managed stakeholder cooperatives and commons management bodies, with overlapping and interlocking memberships. The ultimate goal is to eliminate any entity with authority, derived from a unified source, to exercise general police power over a contiguous geographic area. When permanent institutions are required, as a matter of technical necessity, for coordinating various aspects of social life involving more than one locality (e.g. the networks of railroad or fiber optic lines running between communities), they should be as function-specific as possible, exercising no other general authority, and act as standing platforms whose operation is purely ministerial or administrative on behalf of the communities its delegates represent, and as close as possible to automatic most of the time.

Memberships among nodes do not only overlap; they intersect. In this society of parallel networks, nodes that belong to multiple networks, and nodes linked by interlocking or overlapping memberships, none of the nodes has sovereign, statelike authority over the others. All relations are horizontal, and all policies are negotiated. This means that a wide variety of nodes can exist, including those like (for example) women's or youth councils, unions of caregivers, etc., which represent social groupings — especially groups that have long had subaltern status — as well as those which exercise traditionally administrative, "political," or economic functions. These networks can not only laterally contest the social authority and policies of other nodes, and pressure or negotiate with them to recognize their concerns; members of organized social solidarity groups can also constitute intersectional blocs within other nodes, and challenge policies that ignore or neglect their interests.¹⁹⁰

¹⁸⁸LabGov, *The Co-Cities Open Book: Transitioning from the Urban Commons to the City as a Commons* (2018), p. 8.

¹⁸⁹Abdullah Ocalan, *Democratic Confederation*. International Initiative Edition (London and Cologne: Transmedia Publishing Ltd, 2011), p. 33.

¹⁹⁰For these ideas I'm indebted to my friend Aeris, in a number of our email discussions in the Spring of 2026. Her

So the Partner State, arguably, is not so much a “government” as a system of *governance*. It need not be a state at all, in the sense of an institution which claims the sole right to initiate force in a given territory. It is, essentially, a nonstate social association — or support platform — for managing the commons, extended to an entire geographical region.

It is arguably quite possible to sever the Partner State altogether from even residual forms of sovereign police power over all the individuals in a contiguous geographical area. Neighborhoods and communities do not have to be subject to a single majority rule, as such, in order to have democratic governance.

Let’s assume, in a postcapitalist society based on the maximum possible degree of decentralization and direct democracy, that most of the institutions affecting people’s lives — workplaces, electrical and water utilities, telecommunications, land trusts, co-living projects, natural resource commons, mail, etc. — are organized cooperatively and democratically managed by their customers, rate-payers, residents, and/or workers. Many people — the self-employed, those who generate power off-grid, etc. — may fall between the cracks. And none of these bodies has the authority to make decisions that are binding on anyone but its own members. Nevertheless, the vast majority of people in a given locality will almost certainly belong to one or more of them, and probably a majority will belong to multiple such bodies. Every such body, therefore, will have interlocking or overlapping memberships in common with many others, together forming an entire polycentric ecosystem of commons-based institutions with self-selected memberships, or made up of users of a particular common resource, with substantially overlapping memberships, and large minorities or even majorities of those in the same area being members of most of them. Adjudication or negotiation of the relationships between them will cause a body of “common law” to emerge for the system as a whole, and acquire quasi-constitutional status — not as the sovereign will of any unified political actor, but as a long-term emergent phenomenon of the general culture. The result will be a substantial degree of *de facto* coordination, directly or indirectly, over the entire population of a common geographical area.

Predistribution. Matthew Dimick aptly explains the difference between redistribution and predistribution, although his examples of predistributive polices are for the most part on a considerably less fundamental institutional level than we advocate here.

Redistribution refers to changing, through taxes and transfers, the distribution of income *after* people have already engaged in labor and consumer market transactions. Predistribution, on the other hand, refers to using legal rules — minimum wage laws, collective bargaining legislation,

writing on social science can be found at her blog, *A Fox’s Sky* <<https://aeris.baby/>>.

antitrust, intellectual property — to shape the influence of market forces that produce income inequality in the first place.¹⁹¹

In this paper, we ground our argument for predistribution, achieved through the fundamental property and other institutional rules built into the system at its outset, using John Rawls' framework of the "original position" and his two serial principles of 1) equal personal liberties and 2) distribution based on the difference principle.

In conceptualizing the proper legal and institutional framework for a hypothetical just society, Rawls starts from an "original position" in which participants attempt to design an ideally just society from behind a "veil of ignorance" in which

no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain.¹⁹²

The veil of ignorance is meant to ensure that an ideally just society is designed from the standpoint people who know nothing ahead of time about the position they would occupy in that society, and therefore have no temptation

to exploit social and natural circumstances to their own advantage.... They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like.¹⁹³

...It... seems widely agreed that it should be impossible to tailor principles to the circumstances of one's own case.... For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he

¹⁹¹Matthew Dimick, "Matthew Dimick: Predistribution or Redistribution?" The Baldy Center for Law and Social Policy, January 19, 2024 <<https://www.buffalo.edu/baldycenter/multimedia/blog.host.html/content/shared/www/baldycenter/blog-2023-24/dimick-predistribution.detail.html>>.

¹⁹²Rawls, *A Theory of Justice*, p. 12.

¹⁹³*Ibid.*, pp. 136-137.

was poor, he would most likely propose the contrary principle. To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices.¹⁹⁴

The outcome of this design process largely coincides with that of the “maximin rule,” i.e. “the design of a society in which his enemy is to assign him his place.” This rule “tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others.”¹⁹⁵ In other words, Rawls’ veil of uncertainty amounts to the mom’s rule in which one divides the cake and the other picks.

Rawls argues that those behind a veil of ignorance would choose rules for justice based on equality: his first principle requiring equality of personal and political rights; and the second, or difference principle, which holds that any increase in inequality of distribution be justified by its benefit to the worst off. This means that they would not approve a system in which some had more liberties than others without a resulting absolute increase in the liberties of the least free, or benefited economically at the expense of others rather than by making them better off. And they would not approve a system of economic inequality on the grounds that it increased average prosperity, if it did not increase the prosperity of the worst off.

Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction....

I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society. These principles rule out justifying institutions on the grounds that the hardships of some are offset by a greater good in the aggregate. It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the

¹⁹⁴*Ibid.*, pp. 18-19.

¹⁹⁵*Ibid.*, pp. 152-153.

situation of persons not so fortunate is thereby improved.¹⁹⁶

From the standpoint of a rational person behind the veil of ignorance, it makes sense that “economic and social inequalities are to be judged in terms of the long-run expectations of the least advantaged social group.”¹⁹⁷

The first and second principles are ordered lexicographically: i.e. we must “satisfy the first principle in the ordering before we can move on to the second, the second before we consider the third, and so on.”

A principle does not come into play until those previous to it are either fully met or do not apply. A serial ordering avoids, then, having to balance principles at all; those earlier in the ordering have an absolute weight, so to speak, with respect to later ones, and hold without exception. We can regard such a ranking as analogous to a sequence of constrained maximum principles. For we can suppose that any principle in the order is to be maximized subject to the condition that the preceding principles are fully satisfied. As an important special case I shall, in fact, propose an ordering of this kind by ranking the principle of equal liberty prior to the principle regulating economic and social inequalities. This means, in effect, that the basic structure of society is to arrange the inequalities of wealth and authority in ways consistent with the equal liberties required by the preceding principle.¹⁹⁸

So, to summarize, emerging from the judgement of rational persons behind a veil of ignorance in the original position, are two principles of justice:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all....

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity.¹⁹⁹

This last sentence is intriguing. Rawls' earlier references to the second principle in passing suggested that, as in standard right-libertarian tropes, it was action to

¹⁹⁶*Ibid.*, pp. 14-15.

¹⁹⁷*Ibid.*, p. 44.

¹⁹⁸*Ibid.*, p. 43.

¹⁹⁹*Ibid.*, pp. 60-61.

change the unequal distribution of wealth that was to be limited by its compatibility with equal liberty. The language here seems open to the interpretation that, rather than the *goal* of equality, it is the allowance of *deviation* from it that must be judged in relation to the first principle; that is, it is any increase in economic inequality *itself* beyond an initial base of presumed equality which must be compatible with equal liberty, or presumed incompatible with it until proven otherwise. This impression is reinforced by the following:

For the present, it should be observed that the two principles (and this holds for all formulations) are a special case of a more general conception of justice that can be expressed as follows.

All social values — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. . . .

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. . . . Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that men forego certain political rights when the economic returns are significant and their capacity to influence the course of policy by the exercise of these rights would be marginal in any case. It is this kind of exchange which the two principles as stated rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains.²⁰⁰

This discussion becomes especially meaningful when we take into account

Rawls embrace of a standard by which we should maximize the *value* or *meaningfulness* of personal liberty to the individual, based on the material circumstances which enable them to make use of it.

...I shall think of [the inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally] as affecting the worth of liberty, the value to individuals of the rights that the first principle defines.... Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines. Freedom as equal liberty is the same for all; the question of compensating for a lesser than equal liberty does not arise. But the worth of liberty is not the same for everyone. Some have greater authority and wealth, and therefore greater means to achieve their aims.²⁰¹

The difference principle is incorporated, in part, in order to compensate for the unequal worth of liberty resulting from unequal means to realize it, and “to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all.”²⁰²

Rawls considers three possible interpretations of the equal liberty principle, and finds only one compatible with the difference principle.

He rejects what he calls “efficiency,” by which he means efficiency in terms of aggregate output or prosperity, as a standard for judging between the three conceptions of liberty, because it does not necessarily improve the circumstances of the worst off.

There are, however, many configurations which are efficient. For example, the distributions in which one person receives the entire stock of commodities is efficient, since there is no rearrangement that will make some better off and none worse off. The person who holds the whole stock must lose out.²⁰³

Now the principle of efficiency can be applied to the basic structure by reference to the expectations of representative men. Thus we can say that an arrangement of rights and duties in the basic structure is efficient if and only if it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectations of any representative man (at least one) without at the same time lowering the expectations of some (at least one) other representative man....

...Now it is natural to try out the idea that as long as the social system is

201 *Ibid.*, p. 204.

202 *Ibid.*, p. 205.

203 *Ibid.*, p. 69.

efficient there is no reason to be concerned with distribution. All efficient arrangements are in this case declared equally just. Of course, this suggestion would be outlandish for the allocation of particular goods to known individuals. No one would suppose that it is a matter of indifference from the standpoint of justice whether anyone of a number of men happens to have everything. But the suggestion seems equally unreasonable for the basic structure. Thus it may be that under certain conditions serfdom cannot be significantly reformed without lowering the expectations of some representative man, say that of landowners, in which case serfdom is efficient. . . . Now these reflections show only what we knew all along, that is, that the principle of efficiency cannot serve alone as a conception of justice. Therefore it must be supplemented in some way. Now in the system of natural liberty the principle of efficiency is constrained by certain background institutions; when these constraints are satisfied, any resulting efficient distribution is accepted as just. The system of natural liberty selects an efficient distribution roughly as follows. Let us suppose that we know from economic theory that under the standard assumptions defining a competitive market economy, income and wealth will be distributed in an efficient way, and that the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is, by the initial distribution of income and wealth, and of natural talents and abilities. With each initial distribution, a definite efficient outcome is arrived at. Thus it turns out that if we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined.²⁰⁴

Rawls, in other words, here rules out the pseudo-Coaseanism of some right-libertarians, who justify enclosures and the like by arguing to the effect that it doesn't matter who initially robs whom so long as property ends up in the hands of those able to use it most efficiently.

The first conception of liberty, "natural liberty," is essentially what mainstream right-libertarians mean by liberty:

the initial distribution is regulated by the arrangements implicit in the conception of careers open to talents. . . . These arrangements presuppose a background of equal liberty (as specified by the first principle) and a free market economy. They require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions. But since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of

204 *Ibid.*, pp. 70-72.

time is strongly influenced by natural and social contingencies.²⁰⁵

Rawls sees the second conception, or “liberal interpretation,” as an attempt to improve upon natural liberty in a more egalitarian direction

by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity. The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them....

The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all. Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers.

While the liberal conception seems clearly preferable to the system of natural liberty, intuitively it still appears defective. For one thing, even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective.²⁰⁶

Rawls, in all of this, does not touch — or touches only tangentially — on the fact that there is no self-evidently “natural” set of property rules that follows directly from liberal assumptions of self-ownership and free contract. And some possible property rules are more conducive to producing inequality and concentrated ownership over time, while others are more conducive to maintaining equality of material resources. As Gus diZerega argues,

different property rights and rules of contract generate different patterns of market phenomena. Markets exist when child labor is allowed and when it is not, when slavery is legal and when it is not, when workers give up their freedom while on the job, and when they do not. This same principle holds for virtually the entire gamut of property rights that is usually simply

²⁰⁵*Ibid.*, . 72.

²⁰⁶*Ibid.*, pp. 72-74.

assumed to exist, their concrete details ignored. What does it mean to “own land?” It is different in the market economies of Norway or England than in the market economy of the United States.²⁰⁷

Consider contractual property rights, which define the sphere of voluntary relationships into which right holders may enter. Markets cannot exist without such a sphere, yet the details of what should constitute such a right are by no means obvious or objective. For example, what counts as pollution and what does not, and do the criteria change over time with advances in knowledge or intensified concentrations of what was considered negligible at one time? The answers to these questions are public values that cannot be discovered by markets, which depend on their having already been determined.²⁰⁸

So ongoing “corrective” action is not the only means of remedying the tendencies toward inequality under natural liberty and the liberal system; the proper choice of property rules at the outset, so as to optimize outcomes and reduce the need for subsequent intervention, is also an option.

Finally — to return from our digression — Rawls elaborates upon the “democratic interpretation” of liberty, which alone explicitly takes the difference principle into account, and in his view fully complies with it. It results from combining the principle of fair equality of opportunity with the difference principle. This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.²⁰⁹

The difference principle “is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred.”²¹⁰

One passage seems especially suggestive, in terms of what the baseline for consideration should be in comparing two alternatives from the standpoint of the original situation.

Of course, if the basic structure is unjust, these principles will authorize

207 Gus DiZerega, "Outlining a New Paradigm," *Cosmos and Taxis* 1:1 (2013) <https://cosmosandtaxi.org/wp-content/uploads/2013/11/cosmostaxis_nov18_r1.pdf>, p. 11.

208 *Ibid.*, p. 11.

209 Rawls, *A Theory of Justice*, p. 75.

210 *Ibid.*, p. 76.

changes that may lower the expectations of some of those better off; and therefore the democratic conception is not consistent with the principle of efficiency if this principle is taken to mean that only changes which improve everyone's prospects are allowed. Justice is prior to efficiency and requires some changes that are not efficient in this sense. Consistency obtains only in the sense that a perfectly just scheme is also efficient.²¹¹

This seems to imply that the proper comparison, in determining whether the worst off will be better off, is not between some existing institution and a proposed hypothetical alternative, but between *two or more* hypothetical alternatives — both on equal footing — from the standpoint of the original position. Therefore, any proposed structure that is suboptimal — less beneficial to the worst off — compared to all other hypothetical structures has, by definition, reduced the welfare of the worst off compared to the others.

All of the above considerations from Rawls suggest that those in an initial situation, behind a veil of ignorance, would not choose distributional rules that would maximize aggregate or average well-being at the expense of harming some individuals. So they would reject a society in which some extracted benefit at the expense of others, even if it maximized GDP and average wealth.

And even if we refrain from value-laden terms like “unearned,” the concept of economic rents — as a return over and above what is necessary to incentivize production in a competitive market, resulting not from cost or effort but from power or positional advantage, and extracted from those not similarly empowered or positioned — is useful. Since such rents are paid by the less to the more powerful or situationally advantaged, and marginal units of income have more utility to the former than to the latter,²¹² the flow of rental income is likely to hurt the paying class more than it benefits the recipient class.

Further, it's likewise safe to assume that, even if the prevalence of such rents increases aggregate well-being — a dubious assumption, as we shall see shortly — it is nevertheless quite likely that some forms of rent, in absolute terms, will for those who pay them exceed their share of any resulting increase in aggregate societal well-being. This is true of land rent — the paradigmatic example of economic rent — which may amount to half or more of the least advantaged of the working class. It is true of interest on mortgage or credit card debt, which can effectively double the price of goods purchased with debt. It is true of life-saving drugs under patent, whose prices may be inflated by 2000% or more over marginal production cost; whatever dubious claims its advocates may make for the

²¹¹*Ibid.*, pp. 79-80.

²¹²I am aware of the stricture of right-libertarian welfare economics against interpersonal comparisons of utility. The doctrine that we can't know whether an additional dollar in income would increase the well-being of a homeless person more than that of Elon Musk says a great deal about the relevance of this body of thought to the common-sense world most of us live in.

pharmaceutical research it incentivizes, such hypothetical future advances are surely insufficient to compensate those who may die for inability to pay for medicine they need now. So social and economic inequalities resulting from economic rents fail to meet Rawls' second standard, i.e. that "they result in compensating benefits for everyone, *and in particular for the least advantaged members of society.*"

I have said that the increases in aggregate well-being resulting from such rents are dubious. It is a common argument on the libertarian right that great inequalities of income and wealth promote aggregate social well-being in the long run, because income maximization incentivizes production and efficiency, and enormous wealth tends to be invested in activities that promote increased production. Implicit in such arguments is the assumption that such income and wealth are the result of effort, or a compensation for increased productivity and efficiency. But in fact large-scale income and wealth, to the extent that they result from economic rents — which have no relation, remember, to effort or actual productive contribution — do just the opposite. Because economic rents result from power or situational advantage, or artificial scarcity or artificial abundance, they have a distorting effect on market incentives and promote irrational or inefficient behavior.

So those situated behind a veil of ignorance as to their own position in a future society, and desiring to maximize their advantage in it regardless of the position fate assigns them, will — if rational — choose a society without economic rents. They will, more generally, choose a set of property and distribution rules which — after appropriate side-constraints providing some minimum acceptable level of subsistence for all regardless of capability — allocate resources according to actual productive effort, which are most conducive to rational decision-making as a result of most effectively utilizing distributed or situational knowledge, and which eliminate the barriers to a minimum level of comfortable subsistence which result from the artificial costs imposed by economic rents.

Having addressed system design from the standpoint of the two principles of justice, Rawls discusses it in terms of the behaviors, desirable or undesirable, which a system promotes.

In designing and reforming social arrangements one must, of course, examine the schemes and tactics it allows and the forms of behavior which it tends to encourage. Ideally the rules should be set up so that men are led by their predominant interests to act in ways which further socially desirable ends. The conduct of individuals guided by their rational plans should be coordinated as far as possible to achieve results which although not intended or perhaps even foreseen by them are nevertheless the best ones from the standpoint of social justice.... [Such coordination] is the aim of the ideal

legislator in enacting laws and of the moralist in urging their reform.²¹³

In regard to our own project of predistribution through institutional design, this means doing so in a manner that minimizes cognitive and incentive distortions, moral hazard, etc. Predistribution is about changing the distribution of power — arguably in ways that are more rational, insofar as they vest it in parties that make the highest contribution to productivity and possess distributed knowledge which is difficult for superiors in a hierarchy to monitor.

Upon examination, it seems likely that the property rules and other institutional forms which promote distribution in terms of effort and productivity and minimize unearned income, are also best suited to minimizing perverse incentives and informational distortions.

Having chosen a basic set of principles of justice — of which he sees his two principles as the most plausible and workable from the standpoint of those behind a veil of ignorance — Rawls posits that participants go on “to choose a constitution and a legislature to enact laws, and so on,” also chosen “on terms to which they would agree if they were free and equal persons whose relations with respect to one another were fair.”²¹⁴ He reserves the institutional design process for the constitution for matters involving the guarantee of equal liberty and the justice of the political process. The second principle, involving equity in distribution — which “dictates that social and economic policies be aimed at maximizing the long-term expectations of the least advantaged under conditions of fair equality of opportunity” — only “comes into play at the stage of the legislature.”²¹⁵

This sequence, in my view, is mistaken. It would be better to include at least the general outlines of institutional arrangements for equality, like the most fundamental property rules, into the basic constitutional design.

An excellent fictional illustration both of predistribution, and of the Partner State concept discussed earlier, is the Martian planetary government in Kim Stanley Robinson’s Mars Trilogy, which barely qualifies as a state at all. During the revolutionary period of resistance against the UN’s Martian development organization, and the consortium of corporations engaged in terraforming and mining Mars, a majority of the human population lived in widely separated communities; the underground consisted of numerous communes and self-governing communities, with loose federal ties between various groupings of them. It followed of necessity that the post-independence polity would be a community of communities. The primary function of the Martian constitution was to establish a system of predistribution through property rules (all land was declared to be a social commons, and all enterprises were automatically worker-owned and self-

²¹³*Ibid.*, pp. 56-57.

²¹⁴*Ibid.*, p. 13.

²¹⁵*Ibid.*, p. 199.

managed), to set up a system of civil courts to enforce human rights and property claims, and in addition to establish an ecological court which was for all intents and purposes a steward administering the land and resource commons on behalf of its public owners. There was little in the way of legislative authority vested in any body.

Rawls himself is apparently indifferent to the question of property rights, beyond “the right to hold (personal) property,” which he numbers among the “basic liberties of citizen.”²¹⁶ Questions of property beyond this, like the choice between capitalist and socialist property in the means of production, are to be determined by prudential considerations under the heading of the second principle.

The liberal interpretation of the two principles seeks... to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining equal opportunities of education for all.²¹⁷

As for the question of property beyond personal property, “the choice between a private-property economy and socialism is left open; from the standpoint of the theory of justice alone, various basic structures would appear to satisfy its principles.”²¹⁸ The question of property rules design, in particular — “how should the background institutions of taxation and property be arranged” — is one of economics, not justice.²¹⁹ It is a matter to be determined by the policy-making branches of the state, as part of their duties of “necessary adjustments in the rights of property”²²⁰ and of

identifying and correcting, say by suitable taxes and subsidies and by changes in the definition of property rights, the more obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs. To this end suitable taxes and subsidies may be used, or the scope and definition of property rights may be revised.²²¹

In addition, however, property rules may be defined, not as a matter directly involving personal liberty, but nevertheless as an indirect consideration affecting

²¹⁶*Ibid.*, p. 61.

²¹⁷*Ibid.*, p. 73.

²¹⁸*Ibid.*, p. 259.

²¹⁹*Ibid.*, p. 265.

²²⁰*Ibid.*, p. 277.

²²¹*Ibid.*, p. 279.

individuals' ability to fully enjoy liberty or their equal benefit from liberty.

The two parts of the distribution branch derive from the two principles of justice. The taxation of inheritance and income at progressive rates (when necessary), and the legal definition of property rights, are to secure the institutions of equal liberty in a property-owning democracy and the fair value of the rights they establish.²²²

Rawls' distinction between "a private-property economy and socialism" distinguishes "private property" from the "public sector," and treats the size of the public sector and extent of state provisions of public goods as rough stand-ins for the degree of "socialism."²²³ It is therefore unsatisfactory insofar as it fails to acknowledge the existence of a wide range of possible forms of non-state property, among which the sets of available alternatives include fee-simple commodity ownership vs. commons governance of land and resources, and absentee share-based ownership of business firms vs. residual claimancy by the work force. It excludes a model of socialism in which the only "private property" — i.e. alienable property — is personal moveable goods, and ownership rights in business enterprise and land are only possessory or access rights to social commons, but state property is not a significant institution.

Rawls is correct, however, in arguing that markets will likely serve a useful rational rationing function for produced consumption goods whether under a "private-property economy" or "socialism," and are compatible with virtually all systems of property rules.²²⁴ In addition, markets are a potentially useful mechanism for allocating producer goods to their most productive use under a non-capitalist property system — a principle which he acknowledges at least to some extent.²²⁵

Another question Rawls raises concerns the stability of a society based on the two principles of justice as fairness. Would it inculcate in its members the sorts of values required for perpetuating the system?

A just system must generate its own support. This means that it must be arranged so as to bring about in its members the corresponding sense of justice, an effective desire to act in accordance with its rules for reasons of justice. Thus the requirement of stability and the criterion of discouraging desires that conflict with the principles of justice put further constraints on institutions. They must be not only just but framed so as to encourage the virtue of justice in those who take part in them. In this sense, the principles of justice define a partial ideal of the person which social and economic

²²²*Ibid.*, p. 276.

²²³*Ibid.*, p. 266.

²²⁴*Ibid.*, p. 270.

²²⁵*Ibid.*, pp. 270-273.

arrangements must respect.²²⁶

Considering how many political and social pathologies are generated by the sense of insecurity and rivalry under a regime of scarcity, it stands to reason that in a society in which everyone is secure in the knowledge that they will have at least enough of the primary social goods to subsist comfortably, cooperation and generosity of spirit would be at a maximum and authoritarianism at a minimum.

We have argued to this point, largely in reference to Rawls' original position and principles of justice as fairness, that an institutional design in which just distributional goals result from the initial definition of property rules rather than redistributive action after the fact — predistribution — is best suited to those principles. We proceed to a more detailed examination of the predistribution model itself.

The concept was anticipated by James Meade in 1964, in *Efficiency, Equality and the Ownership of Property*. He argues that the price mechanism allocates resources efficiently and encourages the most efficient use of scarce resources. But it may also result in an undesirable distribution of incomes depending on who owns relatively scarce and high-priced, or abundant and low-priced, resources.²²⁷ Of course even allocative efficiency depends on prices accurately reflecting abundance or scarcity, and not being distorted by artificial scarcity or abundance or information asymmetry.²²⁸

In a modern complex economy the State must set the background of institutions and policies which will enable the system to harmonize social and private interests; but it is still necessary to attach price tags to the various factors of production and to the various final goods and services in order to guide those who have the day-to-day decisions to make (whether these be private entrepreneurs, the servants of public authorities, or individual housewives) as to what is plentiful and what is scarce. But prices used for this efficiency purpose may result in a very undesirable distribution of income and wealth.²²⁹

Meade mentions labor in particular as an example of an abundant and poorly compensated resource, which results in undesirably low incomes for a major part of the population.²³⁰

But he neglects the extent to which the abundance and low bargaining power of labor are not simply a given, but the result of historical factors like the legal nullification and expropriation of customary land rights, separating them from

²²⁶*Ibid.*, p. 261.

²²⁷James Meade, *Efficiency, Equality and the Ownership of Property* (Cambridge: Harvard University Press, 1964, 1965), p. 11.

²²⁸*Ibid.*, p. 12.

²²⁹*Ibid.*, p. 13.

²³⁰*Ibid.*, pp. 13-14.

independent access to means of subsistence and forcing them into the wage labor market on the most disadvantageous terms.

But as every professional economist knows output per head (the average product of labour) is not the same thing as the addition to output which is due to the employment of an additional amount of labour (the marginal product of labour). It is the latter and not the former which is relevant to the use of the real wage rate as a guide to the efficient use of resources. Indeed this is the very heart of our dilemma. It is the value of the additional product which could be produced by taking on a little more labour which should on efficiency grounds be related to the real wage rate; it is the value of total output per head which will determine the total real income available for distribution among all citizens. If the marginal product of labour is low but its average product is high, wages paid on our efficiency basis will represent only a small proportion of total real income, the remainder accruing to the owners of property in profits and rent.

In the highly developed industrialized countries a substantial proportion of the real product does accrue to the owners of property and property is very unequally owned. There is already, therefore, a problem. The pattern of real wage rates which is required on efficiency grounds may lead to a very high level of real income per head for the small concentrated number of rich property owners.²³¹

(Meade here acknowledges the unjust institutional background against which the supposedly “neutral” price mechanism distributes incomes. But we should note that the determination of wage rates by marginal product does not, in fact, correspond to allocative efficiency. “Marginal productivity” is a circular concept that reflects the relative bargaining power of “factor owners.”)²³²

Most discussions about the social and economic problems which will arise in an automated world run in terms of the rise in real output and real income per head of the population. What, we ask, shall we all do with our leisure when we need to work only an hour or two a day to obtain the total output of real goods and services needed to satisfy our wants? But the problem is really much more difficult than that. The question which we should ask is: What shall we all do when output per man-hour of work is extremely high but practically the whole of the output goes to a few property owners, while the mass of the workers are relatively (or even absolutely) worse off than before?²³³

²³¹*Ibid.*, pp. 24-25.

²³²See Kevin Carson, *The Methodenstreit Revisited: Marginalism and the Lost Power Context* (Center for a Stateless Society, February 22nd, 2021) <https://c4ss.org/wp-content/uploads/2021/02/Methodenstreit_pdf.pdf>, pp. 20 et seq.

²³³Meade, *Efficiency, Equality and the Ownership of Property*, p. 26.

After considering and rejecting minimum wages and the combination of progressive income taxation and the welfare state as the primary solution to this problem (the latter because it does not address the unequal ownership of property), Meade proposes the “property owning democracy,” in which no one owns extremely large or extremely small amounts of property, and everyone derives a modest income from property.²³⁴

The essential feature of this society would be that work had become rather more a matter of personal choice. The unpleasant work that had to be done would have to be very highly paid to attract to it those whose tastes led them to wish to supplement considerably their incomes from property. At the other extreme those who wished to devote themselves to quite uncommercial activities would be able to do so with a reduced standard of living, but without starving in a garret. Above all labour-intensive services would flourish of a kind which (unlike old-fashioned domestic service) might be produced by one man for another man of equal income and status. Play-acting, ballet-dancing, painting, writing, sporting activities and all such ‘unproductive’ work as Adam Smith would have called it would flourish on a semi-professional semi-amateur basis; and those who produced such services would no longer be degraded as the poor sycophants of immoderately rich patrons.²³⁵

From here he goes on to examine the institutional changes that would be necessary to bring about such a distribution of property. Among his proposals are the progressive taxation of assets, progressive duties on inheritance and gifts, greatly increased and democratized spending on education, and the encouragement of such practices as profit-sharing, purchase of housing by tenants, and the like.²³⁶ These proposals are intended, however, to supplement rather than replace the welfare state.²³⁷

Note that all these proposals, although contrasted with simple redistributive measures like taxation and the welfare state, still take existing legal definitions of property and other such basic institutions for granted, and rely upon less fundamental measures like taxation to bring the desired property distribution about.

Rawls himself endorsed predistribution as the best approach to realizing justice as fairness, albeit not under that name, in his 2001 book *Justice as Fairness: A Restatement*. In Part IV of that book, in which he attempts to “survey what would be the main features of a well-ordered democratic regime that realizes [the two

²³⁴*Ibid.*, p. 40.

²³⁵*Ibid.*, pp. 40-41.

²³⁶*Ibid.*, pp. 53-63, 76.

²³⁷*Ibid.*, p. 75.

principles of justice as fairness] in its basic institutions,”²³⁸ he — like Meade — proposes a property-owning democracy.

He begins by posing five alternatives: property-owning democracy, laissez-faire capitalism, welfare state capitalism, a socialist command economy, and liberal or democratic socialism. After brief consideration, he dismisses laissez-faire and welfare state capitalism as paying inadequate regard to fair (as opposed to formal) equal opportunity, and command economy socialism as inadequately respecting personal liberty. That leaves a choice between property-owning democracy and liberal socialism.²³⁹

Rawls states that the means of production under socialism are “owned by society,” but — unlike in *A Theory of Justice* — presumes that such social ownership is implemented in such a way that it is dispersed among numerous firms, perhaps under worker self-management, and that such firms “carry on their activities within a system of free and workably competitive markets.”²⁴⁰

Property-owning democracy differs fundamentally from welfare state capitalism in that its “background institutions... work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy, and indirectly, political life as well.” It accomplishes this, not primarily through income redistribution, but “by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills)...”

The intent is not simply to assist those who lose out through accident or misfortune (although that must be done), but rather to put all citizens in a position to manage their own affairs on a footing of a suitable degree of social and economic equality.²⁴¹

A property-owning democracy does not simply redistribute resources to those at the bottom, who have lost out in competitive capitalism. Rather, its institutions “from the outset, put in the hands of citizens generally..., sufficient productive means for them to be fully cooperating members of society on a footing of equality.”²⁴²

Welfare capitalism, in contrast, leaves concentrated ownership of the means of production intact and merely transfers some returns on wealth to the least well-off.²⁴³ It redistributes income after the fact, when a class of people who need assistance is identified. But “given the lack of background justice and inequalities in income and wealth, there may develop a discouraged and depressed underclass

²³⁸Rawls, *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press, 2001), p. 135.

²³⁹*Ibid.*, pp. 137-138.

²⁴⁰*Ibid.*, p. 138.

²⁴¹*Ibid.*, p. 139.

²⁴²*Ibid.*, p. 140.

²⁴³*Ibid.*, p. 139.

many of whose members are chronically dependent on welfare.”²⁴⁴

But Meade’s and Rawls’ concept of predistribution, as Martin O’Neill and Thad Williamson point out, still relies mainly on legislative policies like taxation rather than the more fundamental constitutional design we advocate here.

While both [Meade and Rawls] look to reduce the month-to-month taxation and redistribution of incomes, they nevertheless agree that real predistribution involves the aggressive taxation of wealth, through taxes on capital holdings and transfers, and especially on inheritance. Real, radical forms of predistribution do not so much allow governments to tax less in absolute terms; rather, they require a fundamental shift in the focus of taxation from income to wealth.²⁴⁵

Rawls’ position in *Justice as Fairness* is consistent with the model we saw above, in which he left the second principle of distributive equity to the legislative process rather than the constitutional one.

The actual term “predistribution” was coined by Jacob S. Hacker in a 2011 article.²⁴⁶ In it, he proposed a policy emphasis on predistribution (“the way in which the market distributes its rewards in the first place”) rather than redistribution (which relies primarily on taxation and transfer payments).²⁴⁷ More specifically, he called for “market reforms that encourage a more equal distribution of economic power and rewards even before government collects taxes or pays out benefits.”²⁴⁸

The predistributive policies Hacker discusses are weighted mainly to the middle range of legislation and regulation, like changing corporate governance and unionization rules, rather than the more fundamental level of property rights and other institutional design. In contrast to Hacker’s approach — to rely on general regulation of the economy so as to reduce the need for after-the-fact progressive taxation and redistribution — our approach is to define unearned rents and other adverse outcomes out of the most fundamental property rules so as to reduce the need for after-the-fact regulation by a state at all.

Matthew Dimick cites the prevailing view of legal scholars that redistribution is more efficient — i.e., less market-distorting — than predistribution as a means of promoting income equality.

According to the received wisdom, it is more efficient — comes with less loss of economic resources — to redistribute income rather than

²⁴⁴*Ibid.*, p. 140.

²⁴⁵Martin O’Neill and Thad Williamson, “The Promise of Predistribution,” *Policy Network*, September 28, 2012 <<https://philpapers.org/archive/ONETPO-5>>, p. 5.

²⁴⁶Jacob S. Hacker, “The institutional foundations of middle-class democracy,” *Policy Network* 6, no. 5 (2011) <https://assets.website-files.com/64a8727f61fabfaa63b7b770/64aab85cf813ccbee57ce07f_hacker_pn.pdf>.

²⁴⁷*Ibid.*, p. 35.

²⁴⁸*Ibid.*

predistribute income. Interference in the market causes additional waste, on top of the economic losses that taxation already causes.... By narrowing the distribution of income, both predistribution and distribution distort work incentives and reduce the supply of labor. But predistribution also distorts behavior in the activity regulated by the legal rule.²⁴⁹

This “double distortion” argument against predistribution, as Dimick summarizes it, is that “[t]axes regulate a person’s income-earning activities; redistributive legal rules also do that, but in addition they regulate the activity that is the subject of the legal rule....”²⁵⁰

Dimick devotes an entire book to critiquing the “double distortion” argument, but his critiques are largely irrelevant to our purposes. He meets the argument mostly on its own ground, whereas our analysis rejects the basic premises of the argument.

The argument’s framing of the alternatives — predistribution that “interferes with the market,” vs. redistribution via taxation — starts from false assumptions. First, the phrase “interference with the market” assumes redistributive measures that are grounded primarily in regulatory legislation, while accepting the existing legal definition of most property rules. Such arguments are invalid, when made in reference to the more fundamental starting definitions of property rights in a system. No particular choice of property rules — e.g., fee-simple vs. commons-based or usufructory, or residual claimancy in the firm vested in capital vs. labor — can be any more “market-distorting,” or “interfere with the market” more than another, because no particular property rights framework can be taken as more natural than others, and the choice of property rules is prior to the market. Any market in which market-clearing prices are allowed to operate without hindrance, whatever the prior definition of property rights, can be said to be free from interference.

Further, our basis of comparison is between two alternative sets of rules from the standpoint of the original situation; we are not assuming that one is currently in place and evaluating the “distorting effect” of replacing it with some other, more egalitarian ruleset. Any set of property rules is a bundle of incentive effects, with varying degrees of desirability, the choice of which involves a tradeoff. If any particular ruleset is taken as the baseline, and the status quo treated as neutral, the other will be seen as creating “distortions” compared to the status quo.

We should also note that the “double distortion” argument starts from a definition of “efficiency” based on wealth maximization. An economic system is

²⁴⁹Matthew Dimick, “Matthew Dimick: Predistribution or Redistribution?” The Baldy Center for Law and Social Policy, January 19, 2024 <<https://www.buffalo.edu/baldycenter/multimedia/blog.host.html/content/shared/www/baldycenter/blog-2023-24/dimick-predistribution.detail.html>>.

²⁵⁰Matthew Dimick, *Ending Income Inequality: a critical approach to the law and economics of redistribution* (Cambridge, New York, Melbourne, New Delhi, Singapore: Cambridge University Press, 2025), p. 4.

more “efficient” if the pie is larger, even if the additional output comes at the expense of having more destitute people than an economic system where total output is lower but a majority of people are better off and everyone’s basic subsistence needs are met.²⁵¹ In other words, the standard economic definition of efficiency starts out by violating Rawls’s principles of justice as fairness, and is subject to all his criticisms of utilitarian doctrine. Advocates of redistribution argue that destitution can be more efficiently addressed through taxation and welfare policies; this argument treats income distribution as equivalent to welfare as such. It ignores the fact that concentrated property ownership and lack of workplace democracy and other forms of economic agency are, in themselves, arguably inefficiencies — ways in which the average person is worse off — in all but neoliberal terms.

Besides double distortions, two other practical arguments against redistribution that Dimick mentions are the “imprecision” or “haphazardness” argument (that distributive rules favoring consumers over producers, tenants over landlords, etc., are imprecise because personal income only corresponds very roughly to these statuses), and the “passing on” argument (that the privileged classes targeted by redistributive policies will find some way to pass the costs on to the non-privileged intended beneficiaries).²⁵² But in fact the richest segment of the population receives the great bulk of its income from the sort of unearned rents a properly designed redistributive policy would target. And, for reasons David Ricardo and Henry George pointed out long ago, deductions from economic rent are much harder to “pass on” to tenants or consumers than some would glibly suggest. Further, it’s considerably harder for employers to pass on costs to employees or landlords to tenants, when under the initially defined property rules occupants and workers *are* owners.

The contention that “legal rules should not be used for distributive objectives,”²⁵³ like the arguments we have examined above, takes existing legal rules as natural, neutral, and inevitable, and ignores the hard fact — which can be discovered through a wide range of leftist historical literature on primitive accumulation — that the legal rules we have now were, in large part, originally chosen for distributive objectives. The primary effect of what Polanyi calls “fictitious commodities” in land, labor, and money is to facilitate rent extraction by the holders of artificial property rights.

Indeed, the very definition of what qualifies as “output” or “wealth” will vary from one set of property rules to another, depending on what is commodified or monetized in any given system and what is not, the amount of waste production

²⁵¹*Ibid.*, pp. 3-4.

²⁵²*Ibid.*, p. 22.

²⁵³*Ibid.*, p. 11.

and irrational allocation of resources incentivized by a given set of property rules, etc. The more aspects of life that are successfully enclosed and commodified, and the greater the irrationality costs — Bastiat's broken windows — that are entailed in a unit of output, the greater the nominal output of the system in money terms.

Before concluding this section I should note that the majority of the public have been raised to see multi-party representative government, private property that is alienable without exception, and unlimited free contract, as the defining features of genuine democracy and freedom. For them, the very idea of a society in which inalienable commons-based ownership of land and resources and democratic worker control of the firm are baked into the fundamental constitutional structure, is bound to appear totalitarian.

Ian Hunt stipulates to these assumptions in *Liberal Socialism*. He acknowledges Marx's position that a socialist society will entail the suppression of capitalist private property, as "a just response to the injustices of capitalism." But after observing that "Marx's ideal of a free association of workers therefore does not require that the constitution or basic rights of a just society rule out private property," he goes on to echo Rawls in arguing that liberalism requires socialist property rules to be established through a multi-party legislative process, rather than being given constitutional status:

So long as socialism is not a constitutional requirement or basic right of society, liberal socialism may be chosen over a private property economy through legislation of a democratic government without this choice being at odds with Rawls's political conception of justice. It will have coercive implications inasmuch as citizens who favor a private property economy will not be able to pursue that ideal and will be forced to support institutions in which they do not believe....

However, since the alternative ideal of a private property economy can be implemented only through collective action with others, choice of liberal socialism will be no more oppressive than choice of one plan of public spending rather than another favored by only a minority of citizens. That supporters of private property economies are coercively required to support public funding of the institutions of a socialist economy is no more oppressive than coercively requiring supporters of unrestricted economic development to support public funding of wilderness parks, or forcing socialists to accept the dominance of institutions of private property in the means of production, if this has majority support.²⁵⁴

This defense, in my opinion, does not go nearly far enough. There is no reason that raising non-capitalist property rules to the status of fundamental law, or of basic right, should be regarded as illiberal as such. There is no reason for our

254 Hunt, *Liberal Socialism*, pp. 101-102.

notions of “freedom” and “democracy” to be defined by the contingent forms which have arisen under capitalism and the Westphalian nation-state.

The US Constitution itself incorporates certain desired distributional principles — e.g. protection of existing fee-simple property rights regardless of historical origin, on the assumption that they are just; the prohibition on impairment of the obligations of contract; the explicit authorization of intellectual property legislation; etc. — into the fundamental law. In other words, it writes capitalist property law into the Constitution in such a way that it can be altered only by a constituent authority — some combination of Congressional supermajorities, elected conventions called by supermajorities of state legislatures, and/or ratification by supermajorities of state legislatures, rather than by a simple legislative majority. Capitalist property law is effectively beyond debate, regardless of which party is in power. If we regard certain property arrangements for the achievement of egalitarian distributional goals as having the status of fundamental human rights in the same sense as liberal political and procedural rights, they should arguably be protected by similar fundamental status beyond the powers of ordinary governance to overturn.

There is no reason a different set of property norms — much more democratic than capitalist ones, I might add — should not likewise be part of a society’s fundamental constitutional structure. There is likewise nothing inherently less democratic about a society built around direct democratic governance of community and workplace institutions, and apolitical federative bodies responsible to them, than one built around a legislature composed of representatives elected from one of two party slates — just the opposite, in fact.

Certain libertarian circles — predominantly right-libertarian ones — will likely object to predistribution on the ground that it abrogates existing property rights. Those from such backgrounds will sometimes acknowledge the significant role of past injustice in the current distribution of property, but argue that in the absence of a clear claim to ancestral title and evidence of dispossession, the current title holder should receive the benefit of the doubt. But any policy that’s chosen — to redistribute income, or not, to redistribute property, or not — will wind up with some undeserving beneficiaries and some undeserving victims. Every choice is a tradeoff between different kinds of injustice.

First: inaction — not making a change — is a choice. The choice not to replace or radically alter a system which is causing active harm on a large scale, is the positive choice to impose that system on society.

Second: a policy decision about the structure of property rights or other institutional structures is — for that very reason — not a criminal trial, and is not subject to the same constraints. By the very nature of the situation, it is not necessary to show the illegitimacy of the property and possessions of every winner

in the current system beyond a shadow of a doubt, in order to justify changing the distribution of property or the basic rules of acquisition and transfer. If we leave the present distribution in place, that will also without question leave people who have suffered unjust harm — and quite likely a much larger number of victims than our proposed redistribution would result in.

The conventional libertarian approach, which is more concerned with process than with outcome, ignores the fundamental fact that coercion and aggression are baked into every aspect of the present system. Any approach that insists on formal “non-aggression” will simply ratify aggression on a large scale. Right-libertarians who demand a reasonable doubt standard for undoing the injustice of primitive accumulation, in effect, demand the *certainty* that the majority of our society suffer forever from a distribution in which most property is owned by the heirs and assigns of robbers and enclosers, based on the *possibility* that redistribution will result in some minority of legitimate and innocent owners suffering dispossession.

This argument is further strengthened by the likelihood that virtually no property holding is likely to be 100% legitimate.

In addition, the requirement to justify the redistribution of property — or, more properly, the redefinition of property rules on a more equitable basis — on grounds defined by the right-libertarians concedes far too much to their Lockean conception of property. Ian Hunt properly rejects the idea “that a government would not pursue some controversial idea of the good as superior to others if it simply legislated only libertarian Lockean rights.”

This presumes that legislating only Lockean rights does not pursue a controversial idea of the good as superior to others or that legislation limited to this does not prevent realization of other ideas of the good that presuppose other legislation. To rule out any form of socialism might not seem controversial in some countries in the world today, but a government that rules out socialism is pursuing a controversial idea of the good nevertheless.²⁵⁵

Right-libertarians are prone to view property as a sort of Platonic eidolon that exists outside of history, and its various features (i.e. in their view a fee-simple, marketable commodity) as all inherent in the concept of “property” as such and logically deducible from the axiom of self-ownership. The extent and shape of property rights, for them, are not socially defined; states simply come into existence to defend something whose existence is self-evident.

This is ahistorical nonsense. There are a near-infinite number of possible alternative rule-sets governing rights of possession, and in particular of land — with different provisions governing initial acquisition, transfer, extinction, and abandonment. None is self-evident; all are conventional and socially constructed.

²⁵⁵*Ibid.*, p. 36.

So we are not in the position of a court of law, indicting the owners of concentrated property holdings either for theft or receipt of stolen goods, with a sufficiently strong case to overcome the presumption of innocence and justify seizing property which would otherwise be self-evidently absolute and sacrosanct. We are choosing between two contingent rule sets, based on which is likely not only to produce the greatest benefit and cause the least harm, but which is likely to produce the highest degree of human agency and flourishing.

Our task, therefore, is to choose, not a *verdict*, but a *rule* — a rule whose operation will minimize the number of victims — and in addition, will include side constraints that guarantee to even the innocent victims of redistribution some minimal level of secure and comfortable subsistence far superior to that of the losers in the present system. The solution is not pareto optimal, insofar as not everyone is better off, and there are arguably some possible victims of unjust dispossession; nevertheless, it is not only a net improvement in terms of justice, material well-being, and flourishing, but the previous owners of concentrated property holdings will be guaranteed some minimal level of comfortable subsistence along with everyone else; there is no one in the after-state who is even remotely as bad off as the bottom strata of society today. Because the wealthy would be better off under such a regime than the median person is under the present system, I believe any rational wealthy person would choose it to be born into under Rawls' Veil of Ignorance.

As Gary Chartier stresses in *Economic Justice and Natural Law*, “property systems are contingent societal creations which reflect a diverse array of rationales.”²⁵⁶ There is “no single just system of property rights”; a system of property rights is “only reasonable only to the extent that it actually benefits the community’s members and their shared projects.”²⁵⁷

Property systems are constrained but contingent products of communal norms, rules, and institutions. Law, convention, and custom determine what does and does not count as property and shape the transactions in which people acquire and dispose of property. While practical reason can and should constrain property-related rules, there is still substantial latitude for different communities to craft morally appropriate structures and practices.²⁵⁸

While some system of property rights will be necessary in most circumstances, this is not because any single system is an inescapable requirement of justice. Rather, a community’s system of property rights is justified to the extent that it serves the well being of the community’s

²⁵⁶Gary Chartier, *Economic Justice and Natural Law* (Cambridge: Cambridge University Press, 2009), p. 3.

²⁵⁷*Ibid.*, p. 226.

²⁵⁸*Ibid.*, p. 32.

members and acknowledges the importance of several overlapping rationales for such rights.²⁵⁹

In *Anarchy and Legal Order*, Chartier for the most part replaces the term “property” with “possession,” and repeats that rules governing possession “are not themselves basic moral norms,” but are “contingent” (insofar as “they can take somewhat different forms”). They are derived from principles of fairness, and must be justified in terms of general well-being.²⁶⁰ Although rules concerning possession are conventional and contingent, they are not all equally valid; their range is constrained, and some can be judged superior to others, insofar as they promote various values or desired outcomes.²⁶¹

In regard to the contingency of such systems, he writes that because “land and tangible objects that are our focal instances of property did not arrive in the world with title deeds attached,” it follows that “rules and conventions” governing the “acquisition and distribution” of property do not “amount to a disruption of a purportedly natural property system,” but are the basis of property itself.²⁶²

Specific property rules are determined in light of how they serve a number of rationales, of which Chartier lists seven: “autonomy, compensation, generosity, productivity, reliability, stewardship, and identity.”²⁶³

The first in his list, autonomy, is especially important to us here: “a just property system”

will be one that facilitates people’s autonomy – their freedom to determine the contours of their own lives and make major life choices without coercive intrusion....

Primary control over some real and personal property furthers autonomy because it gives one the ability to act with relative independence from others’ influence and control, and the capacity to conduct a significant portion of one’s life in private, away from their potentially judgmental scrutiny.²⁶⁴

It is closely related to identity, or the “identity-constitutive attachment” an individual has to a particular property, or the manner in which it promotes their sense of “personhood.”²⁶⁵

A number of other closely related values all center on the design of property rules so as to promote economic efficiency in one way or another. Compensation

²⁵⁹*Ibid.*, p. 32.

²⁶⁰Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society* (Cambridge: Cambridge University Press, 2013), pp. 49-50.

²⁶¹*Ibid.*, p. 52.

²⁶²Chartier, *Economic Justice and Natural Law*, p. 33.

²⁶³*Ibid.*, p. 33.

²⁶⁴*Ibid.*, pp. 34-35.

²⁶⁵*Ibid.*, pp. 39-40.

refers to the design principle by which a system of property rules maximizes the ability of individuals to internalize, or be compensated for, the value of the goods and services created by their labor.²⁶⁶ The resulting incentive structure is directly related to promoting the values of reliability (stable expectations and predictable consequences for one's actions),²⁶⁷ stewardship (taking care of the productive resources in one's possessions),²⁶⁸ and more generally, as their common effect, of productivity.²⁶⁹ A system of property rules that meets these standards will most likely include reasonable recognition of "some claims by homesteaders and squatters to abandoned or unowned property."²⁷⁰

Based on these principles, and given the fact that the primeval property forms in land during the millennia after the agricultural revolution were predominantly communal or commons-based, given the share of the total population who at various times were dispossessed for various reasons, in every subsequent "privatization," given the inclusion of that illegitimacy in the chain of title from the dispossessor's time on, and given the diffusion of the dispossessed's right of redress throughout society over the generations, it makes more sense to regard every property title in land as having a moral and historical lien on it, and society as a whole having a communal eminent right to it.

Democratic and Participatory Values. Rawls also, in Section 36 of *A Theory of Justice*, largely assumes a conventional liberal republican model of political rights based on participation in elections to a territorially based representative legislature, as opposed to alternative modes in which participation is primarily via direct engagement in functional bodies like workplaces, commons management bodies, bodies for coordinating neighborhood and community infrastructures, and the like.

In any case, his own institutional presuppositions aside, he raises the general question of whether the institutions in a society based on the principles of justice as fairness would cultivate citizens with the internalized values required to perpetuate such a society. To repeat his statement quoted above:

A just system must generate its own support. This means that it must be arranged so as to bring about in its members the corresponding sense of justice, an effective desire to act in accordance with its rules for reasons of justice. Thus the requirement of stability and the criterion of discouraging desires that conflict with the principles of justice put further constraints on

²⁶⁶*Ibid.*, pp. 35-36.

²⁶⁷*Ibid.*, p. 38.

²⁶⁸*Ibid.*, pp. 38-39.

²⁶⁹*Ibid.*, pp. 37-38.

²⁷⁰*Ibid.*, p. 45.

institutions. They must be not only just but framed so as to encourage the virtue of justice in those who take part in them. In this sense, the principles of justice define a partial ideal of the person which social and economic arrangements must respect.²⁷¹

Justice depends heavily on the ability to see others as persons like oneself, with valid goals and preferences — i.e. seeing other persons as ends and not means. These traits are closely linked with empathy. Empathy is fostered by ongoing interaction and cooperation toward common ends, and the requirement to relate to one another as equals and as real persons. Elinor Ostrom's commons governance model assumes ongoing, direct interaction between members of a commons management body. The pathological outcomes of the Milgram Experiment depended on the subject being unable to communicate directly with anyone but the person directing it. Prisoner's Dilemma games assume subjects who are isolated from one another. Achieving one's own ends through cooperation with others fosters a sense of self-actualization within a larger framework of social solidarity. The ability to directly influence the circumstances under which one lives creates a sense of empowerment, and a tendency to approach the society and its problems constructively and with a sense of ownership, rather than passively.

Therefore a society in which as many social, economic, and political functions are decentralized to a point at which the individual can directly manage or influence them in cooperation with others, to a meaningful degree, will foster the virtue of justice.

Rawls himself, while not endorsing it, in the case of workplace democracy at least leaves this open as a possibility worth serious examination.

would worker-managed firms be more likely to encourage the democratic political virtues required for a constitutional regime to endure? If so, could greater democracy within capitalist firms achieve much the same result? I shall not pursue these questions. I have no idea of the answers, but certainly these questions call for careful examination.²⁷²

Robert Dahl, in *A Preface to Economic Democracy*, starts out with a Rawlsian argument that meaningful equality and democratic control are impossible under economic regimes in which the worker is subject to alien authority in the workplace, i.e.

that both corporate capitalism and bureaucratic socialism tend to produce inequalities in social and economic resources so great as to bring about severe violations of political equality and hence of the democratic process, and that we ought to consider whether an alternative more congenial to

²⁷¹Rawls, *A Theory of Justice*, p. 261.

²⁷²Rawls, *Justice as Fairness*, pp. 178-179.

democratic values might not be found.²⁷³

This is unacceptable, based on his argument that economic enterprises meet the criteria by which democracy is judged to be called for, and any association which meets all his criteria — not just the state — should be governed democratically.²⁷⁴ Among these criteria we should note, in particular, the first (“The collection of people in the association has a need to reach at least some collective decisions that will be binding on all the members of the collectivity”) and third (“Binding collective decisions ought to be made only by persons who are subject to the decisions”).²⁷⁵

To achieve Dahl’s standard of justice, an economic order must attain five goals:

1) a distribution of political resources favorable to the goals of voting equality, effective participation, enlightened understanding, and final control of the political agenda by all adults subject to the laws.²⁷⁶

(This, arguably, applies equally to a non-state order, insofar as economic security and leisure are prerequisites for all forms of participation in the decisions by which one is affected.)

2. Justice in “the distribution of economic resources — that is, economic fairness.”²⁷⁷

3. Efficiency in terms of the ratio of inputs to outputs. This requires distinguishing between “two kinds of outputs: outputs we as consumers value and outputs we as producers value — [i.e.] values realized in consuming end products and values realized in creating, producing, and distributing end products.”²⁷⁸ Efficiency, however, is measured not only in terms of the ratio of physical inputs to outputs, but also — when two different institutional configurations are capable of the same ratio — it’s ability to make work “a source of deep and daily satisfaction for most of us” rather than “a disagreeable burden.”²⁷⁹

4. Promoting (in the words of J.S. Mill) “the virtue and intelligence of the people,” i.e. “how far [institutions] tend to foster in the members of the community the various desirable qualities, moral and intellectual.”²⁸⁰

5. Promoting economic freedom, i.e. the general freedom or agency necessary for enabling us “to acquire whatever economic resources are necessary, and so far as possible sufficient, to advance and protect all our fundamental interests — or if

²⁷³Robert A. Dahl, *A Preface to Economic Democracy* (Berkeley and Los Angeles: University of California Press, 1985), pp. 60-61.

²⁷⁴*Ibid.*, p. 61.

²⁷⁵*Ibid.*, p. 57.

²⁷⁶*Ibid.*, pp. 84-85.

²⁷⁷*Ibid.*, pp. 85-86.

²⁷⁸*Ibid.*, p. 95.

²⁷⁹*Ibid.*, pp. 86-87.

²⁸⁰*Ibid.*, p. 87.

you like, the economic resources necessary for a good life.”

At a minimum, a right to economic freedom would guarantee a negative freedom: that is, no one would have the right to prevent any other person from exercising the right to acquire personal economic resources whenever an opportunity exists to exercise that right in a way that is not harmful to the equal right of another. At a maximum, such a right would guarantee positive economic freedom; that is, our social and economic order would ensure that such opportunities actually existed for each of us.²⁸¹

As an alternative to absentee management, whether by shareholders or state, Dahl suggests “an extension of the democratic process to economic enterprises,”²⁸² resulting in “a system of economic enterprises collectively owned and democratically governed by all the people who work in them.”²⁸³

If these were our paramount values, what sort of an economic order would we try to construct?...

To begin with, I assume that after contemplating the large body of historical experience with bureaucratic socialism in this century, with we would judge it to be fundamentally inconsistent with our goals. In fact, I assume that we would reject any alternative that required highly concentrated power in the hands of central officials of the state. I assume, then, that to people with the five goals I have just described, a desirable economic order would disperse power, not concentrate it.... In order for decentralization of control to be significant, decisions about inputs, outputs, prices, wages, and the allocation of any surplus would have to be made mainly or entirely at the level of the individual enterprises.

To achieve a satisfactory level of efficiency, however, the decisions of these relatively autonomous enterprises would somehow have to be coordinated. In an economy as complex as ours, I assume that coordination would require a market system...

...Such decentralization would require that significant authority to make important decisions be exercised *within* firms. The question we must therefore confront is, How should this authority be exercised within firms? I assume that we would reject the notion that firms should be simply extensions of the central bureaucracy of the state.... I also assume that we would search for an alternative to corporate capitalism, where authority within firms is exercised hierarchically by managers nominally accountable to stockholders.²⁸⁴

281 *Ibid.*, p. 88.

282 *Ibid.*, pp. 60-61.

283 *Ibid.*, p. 91.

284 *Ibid.*, pp. 89-91.

He goes on to assess worker-managed firms in terms of “the contribution they might make to the values of justice and democracy,” in two different ways, and arrives at a positive judgment in both cases.

First, that democracy within firms would improve the quality of democracy in the government of the state by transforming us into better citizens and by facilitating greater political equality among us. Second, that if democracy is justified in the government of our state, then it is also justified in the governments that make decisions *within* firms (quite apart from any benefits entailed by the preceding argument).²⁸⁵

In addition, an economy of self-managed enterprises has another democratizing effect: it moves a significant share of decisions into the realm of *real* democracy. That is, to the level of decisions based on direct day-to-day experience, unmediated by ideological abstractions and filtered information, where direct feedback from the consequences of one’s actions is a major source of decision input. It is therefore a significant increase in efficiency of governance. Along the same lines, Dahl himself notes that, by eliminating the conflict of interest between labor and management and all its distorting effects, self-management would result in increased efficiency.²⁸⁶

Gary Chartier, based on the same standards of justice, reasonableness, and human flourishing by which we saw him assess alternative property rules systems above, argues as well for a high but unspecified degree of participation in workplace decision-making.

Chartier’s natural law standards of justice and reasonableness apply not only to the state but to all institutions that exercise power over individuals. In keeping with this he supports workplace rules that require good cause for firing²⁸⁷ and only after due process involving “procedural safeguards” ensuring

(i) that, before being dismissed or demoted, a worker (a) receives all of the relevant information about her performance possessed by her firm, (b) can make available relevant evidence of her own, and (c) can defend herself before a neutral decision-making body that includes (appropriately defined) workplace peers, and (ii) that she be dismissed or demoted only if this body approves.²⁸⁸

He rejects the libertarian capitalist defense of at-will employment, on the grounds property rights in the firm, as “an implausible view of property rights,” which are rightly understood as “constrained but contingent communal artefacts.” Communities “have every reason to structure their property rights regimes in ways

²⁸⁵*Ibid.*, pp. 93-94.

²⁸⁶*Ibid.*, pp. 109.

²⁸⁷Chartier *Economic Justice and Natural Law*, p. 74.

²⁸⁸ *Ibid.*, pp. 75-76.

that guarantee a modicum of fair treatment to workers.”²⁸⁹

He also sees a natural law basis, if not for “strictly democratic” workplace governance structure, at least for “wide-ranging involvement by workers in firm decision-making, and for their right to exercise discretion unfettered by micro-management.”²⁹⁰ Freedom from subordination is a natural human value in its own right,²⁹¹ and the right of owners of capital to exercise authority over workers — as opposed to other arrangements in which the work force are residual claimants and the firm hires capital on a contractual basis — is not obvious.²⁹²

Emergence/Stigmergy/Self-Organization. The central liberal values of limits on power, and individual agency and security against arbitrary power, are maximized under conditions of pluralism or polycentricity. These values are therefore opposed not only to socialist models that assume high degrees of centralized coordination and planning, but to all schools of anarchism or socialism that envision systematically new-modeling society on the basis of any uniform organizational template — whether it be syndicates, councils, markets, municipal assemblies, agro-industrial communes, or whatever. Instead, the only viable approach is to allow a new complex of institutions to grow organically from the ground up, and form new connections with the rest of society — a process which takes time.

So polycentricity follows from the goal of limits on power and individual security from power, and this polycentricity extends not only to the number but to the variety of institutional types. And this principle of polyculture, in turn, implies open-endedness.

This is in keeping with Marx’s famous refusal to write “recipes for the cook shops of the future,” on the assumption that socialism would be built from socialist elements already arising within the capitalist system.

Complexity theory, and its focus on emergent, self-organizing systems, is relevant here. Everywhere we look, we see systems characterized by modular, building-block architectures and a few simple rules for combining them. These simple building blocks, through self-organization, give rise to complex emergent systems.

Mitchell Waldrop described it as “building blocks at one level combining into new building blocks at a higher level.”

It seemed to be one of the fundamental organizing principles of the world. It certainly seemed to appear in every complex, adaptive system that you

²⁸⁹*Ibid.*, p. 79.

²⁹⁰*Ibid.*, p. 89.

²⁹¹*Ibid.*, p. 93.

²⁹²*Ibid.*, p. 112.

looked at. . . . This hierarchical, building-block structure of things is as commonplace as air.²⁹³

The founding workshops at the Santa Fe Institute, a think tank devoted to complexity theory,

made it clear that every topic of interest had at its heart a system composed of many, many agents. These agents might be molecules or neurons or species or consumers or even corporations. But whatever their nature, the agents were constantly organizing and reorganizing themselves into larger structures through the clash of mutual accommodation and mutual rivalry. Thus, molecules would form cells, neurons would form brains, species would form ecosystems, consumers and corporations would form economies, and so on. At each level, new emergent structures would form and engage in new emergent behaviors. Complexity, in other words, was really a science of emergence.²⁹⁴

Such modular architecture is ubiquitous because “hierarchical, building-block structure”

utterly transforms a system's ability to learn, evolve, and adapt. . . . Once a set of building blocks like this has been tweaked and refined and thoroughly debugged through experience. . . ., then it can generally be adapted and recombined to build a great many new concepts. . . . Certainly that's a much more efficient way to create something new than starting all over from scratch. And that fact, in turn, suggests a whole new mechanism for adaptation in general. Instead of moving through that immense space of possibilities step by step, so to speak, an adaptive system can reshuffle its building blocks and take giant leaps.

A small number of building blocks can be shuffled and recombined to make any number of complex systems.²⁹⁵ Starting from a large number of modular individuals, each capable of interacting with a few other individuals, and acting on other individuals according to a simple grammar of a few rules, under the right circumstances it's possible for the modular individuals to undergo a rapid phase transition. According to systems theorist Stuart Kauffman: “The growth of complexity really does have something to do with far-from-equilibrium systems building themselves up, cascading to higher and higher levels of organization. Atoms, molecules, autocatalytic sets, et cetera.”²⁹⁶

An emergent system is one in which “the whole is greater than the sum of its parts,” and the system is qualitatively different from the component parts in ways

293M. Mitchell Waldrop, *Complexity: The Emerging Science at Edge of Order and Chaos* (New York: Simon & Schuster: 1992), p. 169.

294*Ibid.*, p. 88.

295*Ibid.*, pp. 169-70.

296*Ibid.*, p. 316-317.

that could not have been anticipated from studying the parts.

Flying flocks (and real birds) adapt to the actions of their neighbors, thereby becoming a flock. Organisms cooperate and compete in a dance of coevolution, thereby becoming an exquisitely tuned ecosystem. Atoms search for a minimum energy state by forming chemical bonds with each other, thereby becoming the emergent structures known as molecules. Human beings try to satisfy their material needs by buying, selling, and trading with each other, thereby creating an emergent structure known as a market.²⁹⁷

Gus diZerega discusses spontaneous orders in terms closely related to the concept of stigmergy, by which collectivities (like Wikipedia, an open source development community, or an anthill) are coordinated entirely by the permissionless behavior of individual agents reacting to the behavior of other agents.

[Spontaneous orders] arise from networks of independent equals whose actions generate positive and negative feedback that help guide future actors in pursuing their own independently conceived plans, thereby continuing the feedback process. Each person is a node within a network and is linked by feedback, with each node free to act on its own. The feedback they generate minimizes the knowledge anyone needs about the system as a whole in order to succeed within it.

All spontaneous orders possess certain abstract features in common. Participants are equal in status and all are equally subject to whatever rules must be followed to participate within the order. All are free to apply these rules to any project of their choosing. Anything that can be pursued without violating a rule is permitted, including pursuing mutually contradictory goals. Finally, these rules facilitate cooperation among strangers based on certain broadly shared values that are simpler than the values actually motivating many people when they participate. Compared to human beings, spontaneous orders are “value-thin.”²⁹⁸

Friedrich Hayek acknowledged this body of work in *The Fatal Conceit* (1988) and applied it in particular to social orders, observing that “order generated without design can far outstrip plans men consciously contrive.”²⁹⁹

...[O]ur values and institutions are determined not simply by preceding

²⁹⁷*Ibid.*, p. 288. “Boids” are an artificial life algorithm, with each individual programmed to carry out a few basic behavior in reaction to neighboring boids, in ways that result in flocking behavior by a group of boids with no central coordination.

²⁹⁸ Gus DiZerega, "Outlining a New Paradigm," *Cosmos and Taxis* 1:1 (2013) <https://cosmosandtaxi.org/wp-content/uploads/2013/11/cosmostaxis_nov18_r1.pdf>, p. 9.

²⁹⁹Friedrich A. Hayek, *The Fatal Conceit: The Errors of Socialism*. The Collected Works of F.A. Hayek, Vol. 1. Edited by W.W. Bartley III (Chicago: University of Chicago Press, 1988), p. 8.

causes but as part of a process of unconscious self-organisation of a structure or pattern. This is true not only of economics, but in a wide area, and is well known today in the biological sciences. This insight was only the first of a growing family of theories that account for the formation of complex structures in terms of processes transcending our capacity to observe all the several circumstances operating in the determination of their particular manifestations. When I began my work I felt that I was nearly alone in working on the evolutionary formation of such highly complex self-maintaining orders. Meanwhile, researches on this kind of problem — under various names, such as autopoiesis, cybernetics, homeostasis, spontaneous order, self-organisation, synergetics, systems theory, and so on — have become so numerous that I have been able to study closely no more than a few of them.³⁰⁰

“There can be no deliberately planned substitutes,” he wrote, “for such a self-ordering process.”³⁰¹ This means we do not “create” a self-ordering system through conscious design, but — based on what limited knowledge we possess of the structures of existing self-ordering systems — create the optimal conditions under which such a system can create itself. This approach relies on the automatic application of abstract, general rules rather than ongoing planning. “For in fact we are able to bring about an ordering of the unknown only by causing it to order itself.”³⁰² “In order to induce the self-formation of certain abstract structures of interpersonal relations, we need to secure the assistance of some very general conditions, and then allow each individual element to find its own place within the larger order.”³⁰³

Echoing diZerega’s value-thinness, Hayek argues that the difference between conventional central planning and this approach “is the same as that between laying down Rule of the Road, as in the Highway Code, and ordering people where to go.”³⁰⁴ The greatest possible freedom for all

can be secured by uniformly restricting the freedom of all by abstract rules that preclude arbitrary or discriminatory coercion by or of other people, that prevent any from invading the free sphere of any other.... In short, common concrete ends are replaced by common abstract rules. Government is needed only to enforce these abstract rules, and thereby to protect the individual against coercion, or invasion of his free sphere, by others. Whereas enforced obedience to common concrete ends is tantamount to slavery, obedience to

300*Ibid.*, p. 9

301*Ibid.*, p. 76.

302*Ibid.*, pp. 82-83.

303*Ibid.*, p. 83.

304*Ibid.*, p. 78.

common abstract rules (however burdensome they may still feel) provides scope for the most extraordinary freedom and diversity.³⁰⁵

As I wrote elsewhere, instead of “central planning and development according to a centralized design,”

we should pursue something like the decentralized development of a pattern language, in which a very large set of basic building blocks — an alphabet — is endlessly combined and recombined into an infinity of molecular forms by local initiative, according to a basic grammar.³⁰⁶

Efficiency considerations aside, this type of arrangement — as already mentioned at the beginning of this section — promotes liberal principles like uniformity and predictability of rules, and dispersal of power. Hayek writes:

Stripped of all technicalities this means that government in all its actions is bound by rules fixed and announced beforehand — rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.... While every law restricts individual freedom to some extent by altering the means which people may use in the pursuit of their aims, under the Rule of Law the government is prevented from stultifying individual efforts by *ad hoc* action.³⁰⁷

...Economic planning of the collectivist kind necessarily involves the very opposite of this. The planning authority cannot confine itself to providing opportunities for unknown people to make whatever use of them they like. It cannot tie itself down in advance to general and formal rules which prevent arbitrariness. It must provide for the actual needs of people as they arise and then choose deliberately between them. It must constantly decide questions which cannot be answered by formal principles only, and in making these decisions it must set up distinctions of merit between the needs of different people. When the government has to decide how many pigs are to be reared or how many buses are to be run, which coal mines are to operate, or at what prices boots are to be sold, these decisions cannot be deduced from formal principles, or settled for long periods in advance. They depend inevitably on the circumstances of the moment, and in making such decisions it will always be necessary to balance one against the other the interests of various persons and groups. In the end somebody's views will have to decide whose interests are more important; and these views must become part of the law of the land, a new distinction of rank which the

305 *Ibid.*, p. 78.

306 Kevin A. Carson, *Hayek's Fatal Conceit* (Center for a Stateless Society, 2020), pp. 18-19

307 Hayek, *The Road to Serfdom* (London and New York: Routledge, 1944), pp. 75-76

coercive apparatus of government imposes upon the people.³⁰⁸

...It is only because the control of the means of production is divided among many people acting independently that nobody has complete power over us, that we as individuals can decide what to do with ourselves. If all the means of production were vested in a single hand, whether it be nominally that of "society" as a whole, or that of a dictator, whoever exercises this control has complete power over us.³⁰⁹

One model for transition to a successor society, based on the principles we've discussed here, was suggested by Cosmist Insurrection, Inc., aka @yungneocon, an acute commentator on social science issues on the old Twitter: understanding the successor society as an emergent phenomenon coalescing around a few "attractor" institutions:

I also *trust* people, and do not think we *can*, let alone need, to figure out every detail ahead of time — such arrogant confidence in the ability to predict, plan, control, and address contingencies, localities, novelties, etc, is fatal to success & emancipation.

If I were to somewhat mis-use the terminology of complexity & systems, I think our positive projects are best seen as 'attractors' — focal points around which dynamic systems adapt & to which they tend; catalysts & resources for action, but not pre-determined outcomes.

On the other hand, it *is* really easy to see what in the current world, and in history, we want destroyed — so, for example, for me these basically come down, at the end of it, to prisons and private landownership, two vices which interpenetrate nearly every other....

Thinkers, ranging across eras, disciplines & ideologies as Aristotle, Ibn-Khaldun, Smith, Darwin, Kropotkin, Hayek, Taleb, Ostrom, Meadows, Bookchin, Scott, Polanyi, Collins, Sahlins, Ward, Graeber & others, emphasize complex, evolved, decentralized, organic systems.

These emerge in time & space through slow plodding, tacit knowledge, learning, trial & error, cooperation, evolution, selection, internalization, canalization, and so on, without unitary top-down planners global/universal in time & space....

Now, in the cases where systems have built up, by trial and error, habits, norms, practices, knowledge, skills, traditions, cultures, histories, systems, and so on, over a long period of time, it is the case that these systems will tend to be more robust, adaptable & unique

When someone comes in and tosses out these decentralized, evolved tacit traditions, and attempts to impose grids & order, they often end up doing

308 *Ibid.*, p. 77.

309 *Ibid.*, p. 104.

devastating damage, sometimes losing incredibly robust knowledge irreparably

James Scott gives the ideas of peasants, land enclosure, forest planning in Germany, villageization in Kenya, Hausmann/Le Corbusier/Robert Moses in urban planning, and other royal fuck ups....

But even where a positive project doesn't accompany a project of destruction or erasure, it can still be, all things considered, less wise to 'create' than it is to 'destroy' or change or remove or restore or evolve.

This is because positive projects — whether policies, bureaucracies, technologies, organizations, architectures, infrastructures, cultural shifts, inventions, etc — have *staying* power — if they turn out to be ill advised, they can be hard to remove....³¹⁰

In selecting negative focal points or “attractors” in the current system for removal, the most obvious candidates in my opinion are those institutions which facilitate rent extraction: private property and absentee ownership in land, resources, etc.; the restriction of the credit function to highly capitalized lenders that charge interest for the service; intellectual property; etc.