For Coöperation and the Abolition of Capital, Or, How to Get Beyond Our Extractive Punitive Society and Achieve a Just Society

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For Coöperation

and

the Abolition of Capital

Or, How to Get Beyond Our Extractive Punitive Society and Achieve a Just Society

Bernard E. Harcourt

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Note to Reader

This is the first draft of a book manuscript. As such, it is not a final book, but rather a work-in-progress. Because it addresses pressing issues, I have decided to share this first draft with readers. I am eager to receive your comments and feedback. I apologize for typographical errors, stylistic infelicities, and substantive errors—all mine. Please send me your thoughts and comments, preferably by way of comments on the Open Review website that hosts this first draft (http://harcourt.cooperation.law.columbia.edu) or by email to cccct@law.columbia.edu.

I thank you in advance, Bernard E. Harcourt.

***

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In response to an infamous provocation: “What is property?”, Pierre-Joseph Proudhon famously answered in 1840: “Property is theft!”

The paradox could hardly have been greater. The idea of theft, after all, presumes property. Proudhon’s detractors ridiculed his argument.

But Proudhon was onto something—something that remains crucial today: namely, that the government’s enforcement of its property rules can do extreme violence to our ideals of justice. It can rob us of our sense of self, of our own labor, of our very autonomy—and even, sometimes, of our lives.

Proudhon, the first self-proclaimed anarchist, militated for the abolition of property. Not just the equality of property or the fair distribution of property, he declared: “I demand, as a measure of general security, its entire abolition.”

Proudhon proposed instead an economic regime based simply on possession. “Suppress property while maintaining possession, and by this simple modification of the principle, you will revolutionize the law, government, economy, and institutions,” Proudhon declared: “you will drive evil from the face of the earth.”

* * *

By contrast to Proudhon, I would not draw the line merely at possession. Possession is just another type of property right. It is simply another variety of theft.

No, contra Proudhon, I would abolish a particular kind of property: today, in the United States, it is capital that must be eradicated.

One of the greatest sources of evil in society today is capital, understood as the investor’s alienable stake in an enterprise in which the only true interest is to maximize the return regardless of the wellbeing of others.

What must be abolished today, then, is not property, but the kind of property constituted by capital.
Shares of stock, the transferrable equity of a corporation, the alienable shareholder’s stake of corporate finance: that is a major source of evil in today’s extractive capitalist economy.

Capital elevates selfish profit over human welfare. It detaches the owner of capital from any real investment in the lives of all those who work for or are associated with the enterprise. It turns the possessor of capital into a mere speculator on other people’s lives.

The ordinary stockholder has one primary interest: to maximize the return on their capital investment, to draw larger dividends, to sell their stock at a higher value. Their interest is to extract more from the enterprise via their equity stake; to squeeze out more from everyone who is associated with the enterprise; to eke out more from the workers; to manipulate share price through stock buy-backs and other devices; to inflate future prospects—in effect, to make out like a bandit, to make out like a thief!

* * *

Definitions matter. By “capital,” I mean equity, shares of stock, in essence the alienable financial stake in a public corporation or enterprise. Capital is the transferable equity interest in an ongoing publicly traded enterprise.

This differs from other possible definitions of the term “capital.” Thomas Piketty, in his best-selling book, Capital in the Twenty-First Century, defines capital as any non-human asset. Capital represents, for Piketty, wealth. To Katharina Pistor, in The Code of Capital, capital represents only a limited set of assets that are legally privileged: assets become capital when lawyers bestow on them certain attributes of priority, durability, universality, and convertibility. Karl Marx, much before them, defined capital specifically as the money received from the sale of commodities that is then used as a mode of production to buy other commodities, equipment, or labor.

None of that is what I have in mind—though those definitions may well have their place in empirical, legal, or economic analyses. For my purposes, capital is defined in its corporate finance meaning: capital is transferrable ownership shares of publicly traded companies.

* * *

Most people who own stocks today—whether directly or indirectly—hold them as a form of speculation to increase the overall return on their savings and to grow
their wealth—if possible, to grow their wealth more than others, and more than the market, since that is the only way effectively to get richer, and richer than others.

But this is nothing more than gambling on other people’s livelihoods—more often than not, today, on other people’s misery. It is nothing more than an effort to extract wealth from an enterprise, from its consumers or workers, from all the people whose livelihoods depend on the business.

This kind of property—capital—has turned into a plague that has transformed ours into an extractive and punitive society. One marked by unconscionable (and growing) wealth inequality; by hyper-militarized policing used to enforce gross property inequalities; by a caste system that subjugates persons of color, building on the harrowing legacy of slavery and Jim Crow, of the genocide of Native peoples, of the age-long exploitation of Hispanic, Asian, and other migrants to this country.

This kind of property, capital, must now be abolished.

* * *

Whenever progress toward justice has occurred in history—however precariously—it has been achieved through limitations on kinds of property.

The abolition of slavery put an end to one kind of property: human chattel property.

The emancipation of women put an end to another kind of property: human marital property or coverture, a husband’s property in his wife.

The decline of feudalism, much earlier, put an end to serfdom: property relations that tied humans to land.

It is now time to abolish the kind of property, capital, that effectively ties human livelihood to equity.

Like those other kinds of property that were abolished, capital also bears a reprehensible relationship to human life, insofar as it is a form of speculation on the lives of others that ties their fates to share value.

It is only by decapitating this property that we can end the scourge of extractive capitalism and put in place a new political economic regime of coöperationism.

Electronic copy available at: https://ssrn.com/abstract=3702010
This ambition must be understood as continuing W.E.B. Du Bois’s project—and the promise—of Abolition Democracy.⁷

* * *

The only way forward today is through a genuine legal, political, and economic revolution that replaces the logic of capital extraction with coöperative, mutualist, and non-profit enterprises.

The legal structure that grounds the corporation must be replaced with a new framework that equitably circulates the wealth generated from production and consumption.

The many of us who create, invent, produce, work, and serve others need to displace the few who extract and hoard capital, and put in place a new coöperationism that favors the equitable and sustainable distribution of economic growth and wealth creation.

These alternative legal forms have existed for centuries and surround us today. They include worker coöperatives for producing and manufacturing, credit unions for banking, housing coöperatives for living, mutuals for insuring, producer, retailer, and consumer coöperatives for commercial exchange, and non-profit organizations for good works and learning.

Coöperationism is also the only way to address head-on the global climate crisis. The goal of coöperation is not to maximize the extraction of capital, but to support and maintain all of the participants in the enterprise and to distribute wellbeing, which depends on an ecologically healthy environment. The logic, principles, and values of coöperationist arrangements can serve to slow down our consumption-at-all-cost society.

* * *

A future based on coöperationism is no mere fantasy. Coöperationist enterprises surround us today and thrive. In many respects, they already outperform and outlast conventional publicly traded firms. They also often show themselves to be more resilient during economic downturns.

Existing coöperationist enterprises permeate the economy: Land O’Lakes,⁸ Sunkist,⁹ and Ocean Spray are producer coöperatives.¹⁰ State Farm and Liberty Mutual are mutual insurance companies.¹¹ R.E.I. is a consumer coöperative, and Ace Hardware a retailer coöperative.¹² Isthmus Engineering and Manufacturing in Madison,¹³ Cooperative Home Care in the Bronx,¹⁴ and AK Press in California are
worker coöperatives. The Navy Federal Credit Union, with over $125 billion in assets and 8 million members, is a member credit union. And non-profit educational, cultural, and social institutions surround us.

Existing coöperationist enterprises can be as large as multinationals. The Mondragon coöperative consortium headquartered in Spain—a diversified enterprise manufacturing heavy equipment—employs over 70,000 workers and brings in annual revenues in the billions of euros.

Existing coöperationist enterprises can dominate the competition and be technological leaders in their field. Swann-Morton, a worker coöperative in Sheffield, England, is a world leader in manufacturing and selling surgical blades and scalpels, and exports to over 100 countries around the globe. Founded in 1932 on the principle that “claims of individuals producing in an industry come first,” Swann-Morton has estimated annual revenues today in the range of $50 million.

There are today myriad coöperationist enterprises run by and for members, workers, producers, or consumers, that fuel our economy and defy the extractive logics of capital.

* * *

Take but one example: the Mondragon coöperative consortium, headquartered in Catalonia, Spain, which manufactures automotive components, construction and industrial equipment, household equipment, and machine tools.

Mondragon is composed of over 100 independent worker coöperatives, which, including subsidiaries, employ over 70,000 workers in about 65 countries. The consortium also includes a banking enterprise.

The individual member coöperatives are fully worker owned. In each, the pay disparity between employees is capped, with highest-paid directors earning a maximum of four-and-a-half times the salary of the lowest-paid worker.

The distribution of profits is decided by a general assembly at each member coöperative: at least 10% goes to a social fund, at least 20% goes to the reserve fund, and a maximum of 70% is deposited directly to the members’ individual accounts. The member coöperatives utilize the principle of “one worker one vote regardless of the share of capital owned.”

The consortium recently brought in revenues of 6 billion euros.

* * *
The modalities for coöperationist enterprises are simple and, by now, well understood and worked out—whether they involve credit unions, insurance mutuals, non-profit organizations, or worker, producer, consumer, and retailer coöperatives.

For member-owned coöperatives, the capital in the business is replaced by the aggregated membership stake in the ongoing enterprise.

In a consumer coöperative, like R.E.I., all of the users (the consumers of the enterprise) are invited to become coöperative members for a small fee, in the case of R.E.I. only $20. Those membership fees accumulate, in the aggregate, to form the members’ stake that effectively replaces equity capital. With 7 million eligible voting members at R.E.I. as of December 31, 2019, the members’ equity stood at $312 million. Including retained earnings, the total members’ equity surpassed $1 billion.

In a worker coöperative, each worker-member is required over time to contribute the equivalent of a portion of their salary, which becomes their stake in the enterprise. At Mondragon, for example, each worker at a member coöperative must contribute one year’s salary, which can also be borrowed at low interest from their credit union, Caja Laboral. A member then opens an individual account at the credit union that is credited with yearly profits (or losses) at their coöperative; the account accrues interest similarly to a savings account. The worker-member contributions, aggregated, serve as the equity of the coöperative that can be invested in equipment, machinery, research and design.

By 2020, practically all the kinks of coöperationist enterprises have been worked out. We know how to make coöperation possible. We know how to make it work.

* * *

Defenders of capital will respond that equity investments funnel resources to the most productive and efficient economic producers, thus ensuring enhanced economic growth and prosperity for all. If wealth is properly directed to the more performing enterprises, they argue, it will create more jobs and will spread out the benefits of economic production. The rising tide will lift all boats: the increased return on capital will be spent as consumption, fueling the economy, creating jobs, and spreading the wealth.

But these arguments are purely ideological. They have no empirical basis. If anything, they are belied by social reality. The condition of the average American
worker, the shrinking middle class, the growing impoverished majority in the United States—these utterly betray the ideological claims of capital.

The best empirical evidence shows mounting levels of inequality within the post-industrial, Western, capitalist societies and growing indebtedness within the major economies—to the point where many of the supposedly wealthiest countries have effectively hocked their common.²⁷

The idea that capital investment is magically lifting all boats is fantasy. The reality of the COVID-19 economic crash and its stark inequalities based on race, class, and poverty, show the lie of the claims of capital.

* * *

What of the $38 billion in corporate equity in the United States?²⁸ Where would all that money go? After all, capital represents money that individuals ultimately own and place in the markets—either directly through brokerage accounts, holdings of mutual funds, or retirement accounts, or indirectly through pensions or savings accounts that are then invested in the market (or loaned out for investment purposes) by banks. What would happen to it all?

Well, first, a substantial portion of it would be converted into membership contributions that would be placed in the coöperative enterprises and accrue wealth for the consumers, workers, or other coöperative members.

Another substantial portion, second, could be lent to coöperative and mutualist enterprises as ordinary debt (bond obligations) to support expansion of the enterprises (whether to buy equipment and facilities for manufacturing, or goods and commodities for consumption, etc.).

As for the rest, this may be surprising, but it is basically borrowed wealth that does not amount to that much. Well over two thirds of it in the United States, in effect, is canceled out by national debt.

At the end of June 2020, the national debt in the U.S. exceeded $26 trillion and was mounting at a stunning clip, up more than $3 trillion in the first six months of 2020. In total, that’s about $212,000 in debt per American taxpayer, or $80,000 per citizen.²⁹

Our capital prosperity in this country is a figment of our national debt. If we think about capital accumulation holistically, the equity in private hands in the United States is offset by the collective debt we owe as a nation.
In effect, our prosperity, concentrated in the hands of the few, is nothing more than borrowed wealth.

* * *

How then could we eliminate capital?

Well, it is as easy as rewriting the laws of incorporation or revising the tax code. With a stroke of the pen, we could prohibit capital and mandate instead coöperationist corporate charters; or we could effectively disfavor capital to the benefit of coöperationist arrangements by, for example, taxing capital returns at a steeper capital gains rate.

Mechanically, the process of abolishing capital is simply a matter of repealing and replacing the law of corporations. Politically, it might be more complicated. It might even require a revolution. So be it.

We abolished human chattel property. We can abolish equity capital.

* * *

The Black Death—the plague epidemics of fourteenth century Europe—contributed to the demise of serfdom relations as a kind of property.

The Reconstruction Amendments brought about the end of another kind of property—human slavery.

Today, the COVID-19 pandemic has revealed the unsustainability of our extractive punitive society.

This is a day of reckoning. It is time to bring about the demise of another kind of property. It may not solve all the problems of injustice, but it will be one gigantic step in the right direction.

It is time to replace capital with coöperation. It is time to displace our extractive capitalism with a legal, political, and economic framework that favors coöperation and collaboration between those who create, invent, produce, make, work, labor, and serve others.

In the end, rather than corporations that extract capital for the few shareholders and managers, we need mutuals, coöperatives, unions, and non-profits that distribute the wealth they create widely to everyone in the shared enterprise—and continually guard against the gross disparities and inequalities, especially along racial lines, that now characterize our economy.
Chapter 1. Coöperation Today

Coöperation surrounds us today and thrives in the social and economic spheres. It is, however, *disfavored and discouraged* by our tax system, our laws, our politics, and our reigning ideologies. Capital, by contrast, is favored through all kinds of incentives and preferences, such as low capital gains tax rates, retirement account structures, government bailouts, the fetishization and legal treatment of the stock markets, and the ideology of pioneering individualism. Today, the material reality and the public imagination in Western liberal democracies, especially in the United States, is stacked against coöperation and in favor of capital competition.

This makes it all the more remarkable that coöperationist enterprises actually flourish in capitalist economies. Even though the entire weight of American law, politics, and ideology presses against coöperation, these kinds of solidaristic arrangements can be found practically everywhere and, in some industries, permeate the field. Just imagine what we could achieve today if these types of social and economic ventures were favored.

The insurance industry, for instance, has always been home to large and resilient mutualist societies. Half of the largest 10 property and casualty insurance companies, in fact, are mutuals, and together, those five mutual insurance companies serve 25% of the entire market (by contrast, the other five largest non-mutual insurance companies serve only 21% of the market). Most of the household-name insurance companies—State Farm, Liberty Mutual, New York Life, Nationwide, Northwestern Mutual, Mutual of Omaha, etc.—are mutuals and are extremely resilient. The median age of a U.S. mutual insurance company is about 120 years.

The financial sector as well is populated by credit unions, which developed importantly starting in 1920 with the Massachusetts Association of Credit Unions and in 1934 with federal laws enabling their formation. Credit unions gained lasting status by surviving the Great Depression and the financial crises in the 1980s, and today have over 100 million members in the United States. In a country like France, the Crédit Agricole Group, which is formed by 39 regional banks that are full-fledged coöperative entities, serves over 21 million customers, and has over 9.3 million member-clients at the local level. As of September 2018, Crédit Agricole had 23.3% of French household deposits and total assets of 1.7 trillion Euros.
Farmer and producer coöperatives, consumer, worker, and retailer coöperatives thrive across economic sectors today—again, despite everything being stacked in favor of capital. In fact, and quite surprisingly, coöperatives in the United States “survive through their first six to 10 years at a rate 7% higher than traditional small businesses.” To get a preliminary sense of things, let’s quickly take a whirlwind tour of some of these collaborations in the United States and abroad.

**Mutual Insurance | State Farm**

Insurance mutuals run by and for policy holders, and not investors, are part of the very fabric of the founding of this country. In the United States, the first mutual insurance company was founded by Benjamin Franklin in 1752, the Philadelphia Contributionship for the Insurance of Houses from Loss by Fire. Mutuals have a track record of longevity and resilience, and represent a large portion of the insurance industry—as noted, the five largest mutuals serve 25% of the market.

Not just in the United States, but across the globe, mutual insurance has proven to be especially effective at mitigating financial risk, particularly in the labor market. Many mutuals arose among guild members as a way to reduce information asymmetries, insofar as those sharing the same profession were exposed to similar risks but could use the mutuals to even out the probability of those risks harming them.

Mutual insurance has been growing across the globe. Since 2006, mutuals have been “the fastest growing part of the global insurance market, moving from a market share of 23.4% in 2007 to 27.3% in 2013.” Three of the top 10 largest insurance companies in the world are mutuals: National Mutual Insurance Federation of Agricultural Co-operatives (Zenkyoren) in Japan, and State Farm and the Kaiser Foundation in the United States.

Membership in a mutual insurance company is typically based on holding a policy. Although that membership stake is not equivalent to an equity interest, since it cannot be freely sold or exchanged, it serves as the source of funding to operate the business. In effect, mutuals are funded either by the membership stake of current or prospective policyholders or by loans that are borrowed and paid off by operating profits. What is unique about the mutual insurance company, by contrast to capitalized insurance, is that the policyholder is “the sole focus” of a mutual insurance company.
State Farm, the largest auto insurance company in the United States, with 17% of the market, is a good illustration. Originally founded in 1922 as State Farm Mutual Automobile Insurance Company by George J. Mecherle, it began and grew as a way to capture a low-risk segment of the market. Mecherle was an Illinois farmer who became an insurance salesman and then decided to concentrate on selling automobile insurance to farmers at low rates. Mecherle’s working assumption was that rural and small-town drivers had lower accident rates than city dwellers or the nation at large, and so together could save money through lower rates in a mutual insurance company. The operation quickly surpassed $1 million in revenue by 1928, and it then opened an office in Berkeley. After auto insurance, State Farm went into life insurance in 1929 and fire insurance in 1935, reaching one million policies by 1944.

Today, approximately one out of every five cars in the United States is insured through State Farm, and there are over 16,000 agents across the country. It is now one of the largest auto and home insurers in the country. As of its 2019 Annual Report, State Farm had over $178 billion in assets and a net income of $2.3 billion.

At State Farm, member policyholders are the stakeholders. They elect the board of directors at an annual meeting that all members may attend. The first-named insured has a right to vote by proxy or in person. The board decides on the vision and operations without any outside investor influence. Given the group’s structure and principles, State Farm employees receive “ample group health, disability and dental plans” alongside traditional retirement plans and one-on-one financial planning; the company will provide $5,000 in assistance to any adoptions of children and a full workday off to help with schooling.

According to Crain’s Chicago Business, in a head-to-head comparison with a non-mutual like Allstate, the main difference in performance is due to coöperative ownership: “State Farm has more leeway to compete on price with the likes of Geico and Progressive, because its customer-owners benefit from any price cuts.” By contrast, for an institution that is beholden to stockholders rather than policyholders, “every dime Allstate spends on claims or price cuts is one less dime for shareholders.” Since 2001, despite encroaching market entrants such as Geico and Progressive, “State Farm has an enviable position of being very over-capitalized and mutual status with no stockholder-earnings pressures.”
Credit Unions | Crédit Agricole, France

Credit unions and coöperative banks also have a long history dedicated to the welfare of their member accountholders. They too share in a form of democratic governance and mutualism: typically, any account holder may become a member, will receive shares, and will have one vote regardless of the number of shares they have. The ownership rights thus stem only from membership, not from the number of shares, which lowers the potential for takeovers. The bank’s equity consists of those shares. The ambition of these unions is to promote the well-being of their members, rather than to maximize profit, since the business is not run for profit.

Historically, there have been different models of coöperative banking, including coöperative banks, credit unions, and building societies. Coöperative banks started as a result of social movements during the 1850s, especially in Germany, and evolved along different lines. One model, known as the Schulze-Delitzsch model of coöperative credit or a “People’s Bank,” uses a general assembly as its main body for governance, allows for the election of executives and control entities, and pays members dividends derived from operating profits. A second model, the Raiffeisen model, was adapted from the first model for more rural conditions and aimed to “render social co-living more harmonious.” Both models took on the form of “credit unions” in the United States and Canada. Building societies in the United Kingdom were initially meant to be “terminating”—in the sense that they would serve to finance housing among a group of members, but then dissolve; but these societies grew to be permanent with additional services offered to customers. In the United States, “building societies” took on the form of “savings and loans.” Today, savings and loans hold about $209 billion in assets and supplement the larger credit union sector.

In the United States, credit unions developed in the early twentieth century, with federal laws enabling their formation in 1934. They thrived in part by surviving the Great Depression and the financial crises of the 1980s, and they now have over 100 million members. By contrast to European credit unions, those in the United States tend to only do business with members and are focused on consumer lending.

One of the reasons that coöperative banking is so robust is that it often works hand-in-hand with coöperative enterprises. International Raiffeisen Union estimates that over 900,000 coöperatives with over 500 million members in over 100 countries are working using coöperative banking principles. Rabobank in the
Netherlands, for instance, the largest agricultural bank in the world, reaches 50% of Dutch citizens and is rated the world’s third safest bank (as per 2009). The potential of credit unions is illustrated well by the Crédit Agricole Group in France, one of the country’s leading banking institution. The Crédit Agricole Group is composed of 39 regional coöperative banks that together serve over 21 million customers and 9.3 million member-clients. This represented, in 2018, 23.3% of French household deposits or total assets of 1.7 trillion Euros. 

Crédit Agricole began in 1885, as a local initiative, with the creation of the Société de Crédit Agricole de l’arrondissement de Poligny. The year before, the French government had passed the Act of 1884, legalizing farming coöpéretives as authorized professional associations in response to farmers having trouble accessing credit. A decade later, the Act of November 1894 allowed the creation of local agricultural banks by members of farm coöpéretives. These ultimately “formed the foundation of the institutional ‘pyramid’ created by Crédit Agricole.” The next layer, regional banks, were authorized by an Act in 1899 that helped enable the Banque de France to supply funds to farmer coöpéretives. In the aftermath of World War I, another piece of legislation, the Act of August 1920, created the “Caisse Nationale de Crédit Agricole” (CNCA) (renamed as such in 1926) to act as a central clearing organization for the regional banks. Crédit Agricole became self-financing in 1963 after creating a dense nationwide network and raising funds though notes and long-term bonds. In 1988, Crédit Agricole Regional Banks bought the CNCA and transformed the entity into a limited liability company, completely independent of the state. More recently, the CNCA (the central clearing house) was listed on the stock exchange in 2001, resulting in a hybrid entity now that accompanies the 39 fully coöpéretive banks.

Today, after the public listing of the CNCA, the Crédit Agricole Group is a complex organization, but one that is essentially run by the 39 regional coöpéretives that have the majority stake in the total enterprise. This hybrid model, in which the regional coöpéretives own 54% of the entity, allows for the raising of some capital, while maintaining the credit union’s ethical values as a coöpéretive. Crédit Agricole, for instance, has vowed not to sell its members’ data and to “not operate in countries that do not exchange fiscal information to avoid tax evasion.”

Credit unions differ from speculative banks and offer “real benefit for members who are represented in governance structures.” As member-owned, they can care less about profits and more about maintaining market share—which
is reflected in the fact that mutual banks maintain three-fifths of the banking market in France.\

### Producer Coöperatives | Land O’Lakes

Producer coöperatives are especially prevalent in agriculture and farming, in which many companies operating under coöperative principles have become household names, such as Land O’Lakes, Sunkist, or Ocean Spray.

Land O’Lakes, for instance, is a farmer-owned food and agricultural coöperate that is now a Fortune 200 and operates under several well-known trademarks, including Land O’Lakes, Purina Animal Nutrition, and WinField Solutions. Land O’Lakes classifies itself as a “farmer- and retail-owned cooperative” with a primary focus on “always supporting member-owners,“ as the company states in its Annual Report for 2019. The organization spans horizontally across the agricultural field, from seed and crop inputs, to B2B marketing, to branded good sales, and, of course, to butter.

Land O’Lakes originally started about one hundred years ago as the Minnesota Cooperative Creameries Association, the product of 320 dairy farmers meeting in St. Paul, Minnesota, with the purpose, in their own words, to “joint together to effectively market and distribute members’ dairy production across the country.” Land O’Lakes is now governed by a board of directors that is elected by its members—nearly half are elected by the dairy producers and the other half are elected by the agricultural members. The directors are elected to four-year terms at the organization’s annual meetings by voting members. The board determines “policies and business objectives, controls financial policy, and hires the CEO.”

As of February 2020, Land O’Lakes consists of 1,711 dairy producers, 744 agricultural producers, and 989 agricultural retailers. And it is doing extremely well. Land O’Lakes has net sales of $14 billion, net earnings of $207 million, and returns $187 million in cash to its members.

### Consumer Coöperatives | R.E.I.

Consumer coöperatives also surround us, especially locally in the food and grocery sector, and they have weathered difficult economic times well. The sports apparel and equipment chain, Recreational Equipment, Inc., better known as R.E.I., is a good illustration. Founded in 1938 by a small group of Pacific Northwest mountaineers who were seeking out quality mountain climbing equipment, R.E.I.
is now one of the country’s best-known specialty outdoor retail companies. And it operates fully as a consumer coöperate.  

R.E.I. began back in 1935 when a couple of Seattle-based outdoorspeople, Lloyd and Mary Anderson, were trying to buy quality ice picks and couldn’t find them at the right price at local ski shops. They decided to buy directly from wholesalers in Austria at a price of $3.50 per ice axe, including postage, instead of about $20. The Andersons started collecting money from friends who wanted to get in on their discovery, and they built up a wholesale purchasing operation. They officially formed the coöperate with the aid of a lawyer in 1938. The original mission statement from a bulletin published in 1938 reads as follows:

Intent of the founders of this organization was to secure sufficient membership to make group buying possible; to distribute the goods with as little overheads expense as possible, using membership cooperation with the work as much as possible; to gradually build up a reserve of purchasing stock; to have the membership fee ($1.00) so that everyone interested will be financially able to join.

R.E.I. was modeled in part on the Rochdale Pioneers Society of 1844 in England which is considered one of the first successful consumer coöperatives. Rochdale “established the principles of linking voting rights to persons rather than shares” and first put in place a “dividend on purchases,” basically a patronage refund.

Membership in R.E.I. is open to all persons who pay the membership fee, which is a single time fee of $20 for lifetime membership with all voting rights in the affairs of R.E.I., including electing its board of directors. Members are entitled to dividends, relative to the amount of merchandise an individual member purchases from R.E.I. throughout the year, as well as to member-only discounts. Members are sent candidate profiles for the board along with their annual dividend. The board of directors is ten to fourteen directors in size; each elected director serves for three years and can have maximum of four consecutive terms. As a member, R.E.I. gives back 10% of the price paid on goods purchased through an annual dividend in March.

Today, R.E.I. operates more than 160 retail stores throughout the United States. It has over 19 million members. It had net sales of over $3 billion, according to their last reported financial statements, year-end 2018. According to a former CEO of R.E.I., interviewed in The Atlantic, being a coöp allows for the
management team—unlike a publicly traded company that has earnings calls that affect stock prices—to take a longer-term perspective and focus on growth over a five or ten year horizon.92

Worker Coöperatives | Isthmus Engineering

Worker coöperatives have a long history of bringing democracy and equality to the workplace. They instantiate the values of solidarity and coöperation—and the principles of one person, one vote. In a worker coöperative, the workers are owners and have a vote and equal say to create a democratic workplace.93 If there were ever one form of coöperation that instantiates the ideals of solidarity, mutuality, and social justice, it is the worker coöp.

A lot of economic theory suggests that worker coöperatives will have a hard time operating because of the costs associated with collective decision-making. John Hansmann’s classic work in corporate organization, The Ownership of Enterprise, for instance, stipulates that firms are more successful when they are more efficient in reducing transaction costs—the costs to operate and generate profit; and that, given the lower number of coöperatives than ordinary corporations, there must be a high transaction cost impediment that is offsetting the advantage of coöperatives.94 The transaction costs in a coöperative model tend to be the more burdensome demands of collective governance, since all the views of members must be considered. But those costs are offset by other factors, such as the enhanced labor incentive given the vested stake worker-owners have in the enterprise.95 In many cases, the advantages trump. If our tax code and politics favored coöperatives, there is no question they would thrive.

A good illustration is the Isthmus Engineering & Manufacturing Co-Op (“Isthmus Engineering” or simply “I.E.M.”), based in Madison, Wisconsin. Isthmus Engineering builds robotic machines for industrial companies.96 It has been used as a case study in successful worker coöperatives,97 which is especially noteworthy given that it operates in a high-technology environment that is often believed to be more competitive and difficult.98

Isthmus Engineering started as a partnership of three mechanical engineers (who knew of each other through work with a family-owned business) and a bookkeeper. They performed contract engineering for nearby businesses and worked out of the home of one of the partners.99 New partners were brought in who had additional skills and required more flexibility in entry (and exit) than a limited liability partnership allowed. Two of the partners heard about the success...
of the Mondragon coöperative in Spain at a conference, and so they all decided to incorporate the partnership as a coöperative using attorneys and advisors. The coöperative now includes 29 worker-owners, and membership in the coöperative is open to all employees.

The decision to turn the partnership into a coöperative involved some personal financial risk by members of the coöperative since each one of them was underwriting a portion of the bank loan through co-signs. But the enterprise proved successful. And I.E.M. has grown from two customers in the automotive industry in the early 1980s to a larger customer base with a skilled labor force. I.E.M. now has annual revenues exceeding $15 million.

In the initial 12 years after incorporating as a coöperative in 1982, I.E.M. grew from 8 to 50 members. The membership fee was described as “the price of a small car.” The coöperative was structured into an administrative staff and five areas of “sales, controls (electrical) engineering, mechanical engineering, controls (electrical) assembly, mechanical assembly and machining.” Out of the 50 employees, 29 were considered “worker-owners,” and served on a board of directors that met biweekly to govern. I.E.M. terminated some memberships in the 1990s and established a more rigorous membership process in the 2000s that remains open to every employee, but “gives the board significant flexibility in considering applications.”

In order to become a member today, one has to have been a full-time employee for two years to apply. Unless an application is rejected by two-thirds of the membership, the applicant proceeds to board member interviews and an invitation to join open and closed sessions of board meetings. Applicants can serve on board committees during this phase. One of the only limits is that only one applicant can be considered at a time. If the application is successful, meaning no more than three to five votes against it, the applicant is invited to join the coöperative conditional upon buying a share of the coöperative, priced around $20,000. The principles of the coöperative are that “All owners must be workers, all owners serve on the Board, and all workers are eligible for ownership.”

In terms of income, practically all of the workers (apart from the sales manager and general manager) receive hourly wages that are set on a scale from when the worker is first hired. The hourly wages do not change when a worker becomes an owner, but there is no longer a benefits package. Owners only receive wages if Isthmus Engineering is profitable. At the end of the year, owners “pay a certain percentage of their total earnings into common equity and receive a certain
share as dividends." When an employee-owner leaves the coöperative, their stock and equity is repurchased.

There are, of course, costs associated with a worker coöperative. At times, to sustain growth and requests from customers, I.E.M. has been forced to utilize contract workers or has been forced to offset a potential lay-off by spreading the “lack of work” across multiple coöperative members (e.g., instead of getting rid of a 40-hour a week position, four workers are asked to work 30-hour weeks until the work picks up).

But there are many offsetting benefits. Mostly, given lack of outside equity, the coöperative structure allows, even encourages, the group to focus on long-term strategies. There is little pressure to produce short-term profits at the expense of longevity. Moreover, as worker-owners, line workers and those working on project teams are—or at least state that they are—more self-motivated, in part because of the lack of hierarchy and the fact that they feel they have no one to answer to. There is also a certain amount of mutual monitoring that leads to a sense of empowerment and is a source of motivation to work. This reflects the absence of a manager-employee relationship, which apparently is felt positively by non-owning employees as well. Even among the latter, apparently, there is a strong negative feeling about employees downplaying their work by invoking their status as “only” an employee.” Similarly, there is a strong feeling that members should not leverage their ownership-status.

Overall, the focus of Isthmus Engineering has been sustainability. In the words of one member: “Most companies would correlate profit margins with the size of the company. That’s the last thing we do. Before profit, the first thing is sustainability.” And given its coöperative principle of “Concern for Community,” Isthmus Engineering mobilized to produce and donate thousands of face shields to local clinics and coöperatives nationwide in face of the COVID-19 crisis. It also helped the Medical College of Wisconsin create custom tooling to expedite production as part of the “Milwaukee Million Mask Challenge” (an effort by United Way to meet demand).

Worker coöperatives come in varied forms and under different names. They can be structured as a partnership or a limited liability corporation, so long as they abide by the principles of coöperatives, especially the “one vote principle” and non-hierarchy.

Another form of worker coöperative is called the “benefit corporation.” Benefit corporations are traditional companies that take on a modified obligation
toward accountability, transparency, and purpose, with a commitment to creating what is called “public benefit and sustainable value.” Some benefit corporations are legally required to consider and benefit all stakeholders, including workers. These too, even if they are not fully worker-owned coöperatives, can serve the goals of mutuality.

An example of a benefit corporation is King Arthur Flour, America’s oldest flour company, founded in 1790. King Arthur is a certified B Corp (certified and evaluated as to social and environmental performance) and commits itself to a “triple bottom line” for “people, planet, and profit.” It also is required to do a B Impact Assessment to show and certify its success toward these missions (independently done).

Prior to 1996, King Arthur was a regular corporation run by Frank and Brinna Sands. When the Sands began thinking about retiring, they decided to sell their company to its employees through an employee-stock ownership plan (ESOP). In an ESOP, an ESOP trust is formed as a legal entity to hold shares of stock on behalf of the employees of a company. The ESOP trust is funded entirely by the company. The trust gains cash through profit or loans, and then uses that funding to acquire shares from the owner (the value is appraised independently). The trust then allocates the shares it has bought to employees. So in effect, employees gain stock without a cash outlay, and the owner is paid out over a period of time, often through a promissory note. In effect, ESOPs function a lot like retirement plans such as 401(k)s, but there is one enormous difference: The company fully funds the ESOP and the employees do not contribute financially. For King Arthur specifically, “after the first year of employment, all workers who log more than 800 hours a year, including season and part-time laborers, are eligible for the employee stock ownership program, or ESOP.”

According to Joseph Blasi of Rutgers University, co-author of The Citizen’s Share: Reducing Inequality in the 21st Century, many family business-owners are drawn to ESOPs to promote the best interests of their workers.

This has proven successful for King Arthur, which has experienced major growth since transforming itself into an employee-owned business. It began distributing products outside of New England in the late 1990s and has now reached over $100 million in annual sales and sends over 2,000 King Arthur products to grocery stores.
Another form of coöperation consists of independent retailers working together through a coöperative arrangement to help each other and leverage their numbers. A good illustration is Ace Hardware. Ace began as a wholesale group in the 1920s. A number of Chicago hardware retailers banded together to pool their purchasing power and to buy directly from manufacturers, in order to avoid having to go through a middleman for hardware merchandise to sell. The group formally incorporated their business as “Ace Stores” in 1928 and opened a warehouse in 1929. Membership expanded to 41 retailers by 1934. By 1969, they had opened distribution centers in Georgia and California, expanding operations to the South and West.

Originally, Ace Stores operated as a conventional wholesale group. When the co-founder and long-term president Richard Hesse retired in 1973, he sold the enterprise to its member-dealers to create a dealer-owned hardware coöperative, which is its current corporate structure.

Today, Ace Hardware consists of hardware stores that are part of the coöperative in a franchise-like model with Ace Hardware providing shared capabilities and brand recognition. Member-retailers fall under one of two programs for Ace Hardware support: “Ace Branded” stores or “Individually Branded” stores. The former account for 91% of the national network, operating under the Ace brand and entitled to all services and benefits (including marketing). “Individually Branded” stores represent about 9% of the national domestic network for Ace Hardware. They rely on Ace’s product assortment and product pricing, but do not participate in marketing programs (usually, they can leverage their brand name recognition in their local communities). Ace also now has a separate legal entity (AWH) to sell to non-member retailers, formed in 2014.

As a matter of corporate finance, Ace Hardware divides its membership structure into Class A and Class C stocks—each Class A stock is $1,000 per share and Class C stock is $100 per share—with Class A stockholders having voting rights. In order to be a member of Ace Hardware, a retailer must purchase stock, and based on that, they will receive patronage distributions that are based on the volume of merchandise they have purchased. Stock is sold only to approved retailers of hardware who apply for membership. Initial membership requires buying one share of Class A stock plus 40 shares of Class C stock, so a total investment of $5,000. For each additional store location, members require an
additional 50 shares of Class C stock, but no additional Class A stock (as a way to limit dilution of voting parity between retailers within the coöperative).

As of year-end 2018, Ace Hardware reported $5.7 billion in annual revenues, with net income of $128 million.\textsuperscript{136} Ace Hardware had a total store count of 5,253.\textsuperscript{137} At this point, according to Ace, about three quarters of American homes and businesses are “located within 15 minutes of speedy-sized Ace stores.”\textsuperscript{138}

Research suggests that, at a general level, many members of purchasing coöperatives find them to be a compelling strategy to manage supply chain costs, often resulting in “2 to 5 percent cost savings.”\textsuperscript{139} The competitive advantage of a coöperative as against other purchasing structures is that “a true purchasing coöperative can provide a monetary return to its members in the form of patronage dividends.”\textsuperscript{140} For Ace Hardware, the purchasing coöperative means that the member stores are its only shareholders, which gives them an advantage over “big box” retailers such as Lowe’s and Home Depot.\textsuperscript{141} Also, there tends to be high satisfaction among members. At Ace, apparently, the overall satisfaction of affiliates has been high: more than 90% surveyed “expressed strong pride in Ace” and 80% of retailers rated overall satisfaction as 8 or higher out of 10.\textsuperscript{142}

\textbf{The Resilience of Coöperation}

Across these different sectors, coöperationist enterprises have proven resilient, especially during economic downturns and despite the favored treatment of capital.

In the financial sector, credit unions entered the financial crisis of 2007-2008 in stronger shape than their for-profit peers and came out of the recession stronger as well. Before 2007, coöperative financial institutions were reported to have “comparable or slightly higher earnings than investor-owned banks and achieved higher return on equity,” and in this sense, entered the crisis with a “stronger capital base than their competitors.”\textsuperscript{143} In Europe, coöperative banks only suffered 7% of all banking industry asset write-downs and losses throughout the financial crisis, despite having 20% of the market. In large part, this was due to their limited exposure to subprime mortgages and investment activity.\textsuperscript{144} In the United Kingdom, mutual building societies suffered minimal losses.\textsuperscript{145}

In fact, in the face of financial crisis, financial coöperatives often see an increase in “almost every facet of their business.”\textsuperscript{146} They see an increase in assets and deposits: for instance, 516 credit unions in Canada saw a six-month increase in
assets in the second quarter of 2008; the Credit Union National Association in the United States saw deposits in credit unions increase by 10% in 2009; Rabobank in the Netherlands saw its share of loans increase to 42% of the total market. They see an increase in the volume of lending: for instance, loans by credit unions in the United States increased from $539 billion in 2007 to $575 billion in 2008, while 8,300 U.S. for-profit banks saw loans outstanding decrease from $7.91 trillion to $7.88 trillion. They see an increase in membership levels: for instance, in the United States, membership in credit unions rose to 90 million in 2008 from 85 million in 2004; Raiffeisen Switzerland had record growth in 2008 with 7.3% new members. And they offer better interest rates: in the United States, savings and credit coöperatives have better rates compared to their peers; favorable lending rates were also a major impetus for Brazilian owners and low-income families to form a savings and credit coöperative.

Worker coöperatives have a record of actually growing during recessions. According to Johnston Birchall, author of “The Performance of Member-Owned Businesses Since the Financial Crisis of 2008,” in The Oxford Handbook of Mutual, Co-Operative, and Co-Owned Business: “Since the late nineteenth century, in countries where there are strong worker co-operatives, these have tended to increase in number during recessions, both as new start-ups and takeovers of ailing businesses.” As evidence for this, Birchall notes that the worker coöperative sector in France grew by more than 263 coöperatives in 2013 (an increase of 17% since 2009) and had a survival rate of 77% versus 65% for conventional firms. In addition, the “level of indebtedness of worker co-ops was lower than that of comparable enterprises,” and the job losses were less significant (e.g. in Spain, 6.4% vs. 11.9% in other types of enterprises). In the United States, in the decade after the 2008 financial crisis, the sheer number of worker-owned coöperatives almost doubled.

Overall, the CECOP-CICOPA Europe (International Organization of Industrial and Service Cooperatives, Europe) has conducted annual surveys that highlight the resilience of coöperatives by contrast to conventional enterprises. Coöperatives demonstrate lower job losses and failures: in Italy in 2011, for instance, 68% of coöperatives kept the same employment number, 18% grew, and only 13% contracted. In France, the number of coöperatives increased throughout the 2008 crisis: In 2005, there were 1,612 worker coöperatives and that number continued to rise through 2010, ending with 1,822 coöperatives. Bruno Roelants and his colleagues offer several compelling hypotheses to explain the resilience of coöperationist enterprises.
Chapter 2. Beyond Capitalism and Communism

To move forward toward coöperation, the first and most important step will be to leave behind the misleading debate between capitalism on the one hand and communism, socialism, and anarchism on the other. That centuries-old debate is pure ideology—nothing more than illusions masquerading as economic and political science.

American capitalism may look and feel like it is all about “free commerce” and “private enterprise,” but in fact the entire system rests wholly on the government’s promise—and track record—of rescuing private corporations in case of economic and financial collapse. Without the federal government backstop, without the promise and reality of bailing out private corporations during depressions and recessions, the fragile and deeply indebted structure of American capitalism would collapse in a split second—among other things, foreign investors would withdraw their capital and the American markets would implode. The full ideology of American capitalism serves simply to mask the fact that the entire system is a house of cards that serves to funnel wealth to the richest and most privileged Americans. American capitalism must be understood, in truth, as a statist form of economic redistribution.

Really-existing communism is also purely ideological. It claims to place everything in common, when in fact it monopolizes ownership in the hands of a centralized state apparatus or political party or faction. Any and all allocations and distributions of goods and wealth are the magnanimous (more often self-serving) decisions of a centralized bureaucracy or autocracy. By the same token, socialism is really nothing more than the state ownership of the means of production, which produces the same self-serving elitism, and anarchism is, well, an imaginary.

The centuries-old debate between capitalism, communism, and socialism is utterly useless today because it masks the actual allocation of proprietary interests and the resulting real distributions of material possessions. It rests on imagined ideal types that are misleading and pure illusions. They need to be unmasked and relegated to the twentieth century.
The Misleading Label “Capitalism”

The label “capitalism” itself was always a misnomer, coined paradoxically by its critics in the nineteenth century. The term misleadingly suggests that there is such a thing as “capital” that inherently functions in certain ways and is governed by stable economic laws of its own. That’s an illusion, however. Capital is just an artifact shaped by laws and politics—in effect, constructed by the state. Its code is entirely man-made. There are no “laws” of capital. And in truth, we do not live today in a system in which “capital” or “free enterprise” dictate our economic circumstances. Instead, we live in a system that should be called “tournament dirigisme”: a type of state-directed tournament, or gladiator sport, where our political leaders bestow spoils on those with wealth and privilege—not surprisingly, given the legacy of slavery in this country, the white upper-class.

The provenance of a misleading term

The use of the term “capitalism” dates to the early nineteenth century. The notion of capitalism as an economic system grounded on capital investments traces to that period in both French and English. The OED traces the first use in English to 1833 in the Standard, and offers the following comparisons:

Compare French capitalisme possession of capital (1753), economic system based on capital investment (1842),
German Kapitalismus possession of capital (1787 or earlier), economic system (K. Marx 1863 or earlier).158

Of course, the term “capitalist,” with a “t,” had an earlier provenance, also related to the term “capital,” which itself was in usage in the thirteenth and fourteenth centuries. Its etymology (“capitalist”) traces to the “French capitaliste (noun) person subject to a capital tax (in the Netherlands) (1678), investor (mid 18th cent.), (adjective) of or relating to capital (1755 in an early use of uncertain precise meaning), engaged in investing capital (1832), that advocates capitalism (1869), itself after Dutch capitalist (noun) person subject to a capital tax (1621), rich person (1683), advocate of capitalism (late 19th cent.).”159 Along these lines, in English, the term “capitalist” was used beginning in 1774, referring to the Dutch wealthy subject and to “capitation”; and its date stamp in English has to be compared with the “German Capitalist investor, moneylender (1673 with reference to the Netherlands), rich person (1687), advocate of capitalism (now Kapitalist), Italian capitalista investor (1769, rare in early use).”160
For its more political economic meaning, though, we must turn to the early to mid-nineteenth century and, for the most part, to the socialist critics of capitalism. This is ironic, since it is in this usage of the term that “capitalism” became reified and naturalized—as if “capital,” as a thing, functions economically, when in fact it is nothing but a set of crystalized government rules of economic redistribution. Capitalism, in other words, and tragically, was turned into a naturalized object by its critics.

But so-called capitalism is not primarily about the object “capital.” Rather, it is about government privileging returns on investments with more favorable tax rates, government protecting capital investors by bailing them out during financial crises, and government encouraging and underwriting the stock markets.

In this sense, capitalism is really about the state’s control over the redistribution of proprietary interests. It is a form of dirigisme that favors individuals who privately hold capital as property—it is not just a regime of private property.

Capitalism, as an economic regime, is the product of government and elite control of the mechanisms of redistribution: bailouts during crises that allow managers to enrich themselves during good times, without making reserves or taking risk into account, because they are bailed out during bad times; rules of capital accumulation that make it easy for those with wealth to hoard more than others and pass it on to their heirs; wide-ranging actions (from judicial decisions to intelligence gathering shared with top officials to selective club admission) that give those with capital the knowledge and ability to capitalize on their wealth. By bailing out during crises, especially, the government allows capital holders to pillage in good times and get rescued in bad.

One of the greatest problems with retaining the term “capitalism” is that it suggests that “capital” and private enterprise have certain laws surrounding them; that they function naturally in certain ways. Even Marx naturalized capital too much—not paying sufficient attention to the political dimension of bailouts and handouts. This was facilitated by the very nomenclature of “capitalism.”

This type of economic regime should no longer be called “capitalist,” but rather a term that has government and elite control and redistribution at its heart. It is closer to the “state capitalism” that we attribute to China; but again, the term “capitalism” in “state capitalism” is a red herring. All the terms that quickly come to mind are lacking: corporate welfarism does not afford enough attention to the centrality of this welfare system, as if welfare is just something in addition, when in fact it is the whole system; cronyism gets at the corruption of it all and its elitism,
but is too demeaning; profiteering, like the pirates of past, captures something about booty and stolen profit, and has an interesting relationship to state sanction and complicity, but the relationship to the state is backwards because it was the pirates who were more in charge and only later licensed.

I would propose instead that we call it “tournament dirigisme” to capture both the element of state control (dirigisme) and the way in which the state distributes the spoils. In the United States, we live in an economic system of “tournament dirigisme” that is all about extraction of wealth and redistribution to the wealthiest—the whitest and most privileged.

The metaphor of extraction is important, as Saskia Sassen has emphasized. Our tournament dirigisme seeks to extract wealth from the enterprise. The capital investors have one guiding interest: to extract a profit. They are not really concerned about growth and equity, nor about other persons affiliated with the enterprise. They want a good return on their investment. The metaphor here is gold mining or mining more generally. Our tournament dirigisme is an extractive process that seeks to extract capital as wealth and leave behind the detritus. Like an old mine, it then abandons the space of extraction. It does not care. All it wants is the profit.

There is, of course, a spectrum of extraction. At the most extreme end, there are vulture capitalists who buy failing enterprises because they are worth more sold as assets than they are as ongoing enterprises. That is pure extraction. Investors like T. Boone Pickens or Carl Icahn, who used to be referred to as takeover artists or corporate raiders, often took the strategy of buying companies literally to extract capital—more capital than they paid—by breaking up the company and selling its assets. But even in less extreme forms, extraction is at the heart of the enterprise: to mine a higher return on investment than others, or than the market, by treating and working others to the bone. Otherwise, there is no comparative enrichment.

Marx’s critique of capitalist modes of production focused so much on labor and the exploitation of workers that it did not sufficiently account for the central role of the state in directing distributions in favor of capital holders. Marx too had a fetish for capital, for surplus-value, for the commodity that is our labor. He replicated that objectification and turned it into the idea of a regime of “capitalism.” “It is often said,” as Foucault reminds us in his lectures on the Birth of Biopolitics, “that there is no theory of power in Marx, that the theory of the state is inadequate, and that it really is time to produce it.” Perhaps Marx did not need one at that time. Perhaps he had sufficient work to do to understand the political
The reality of tournament dirigisme

To get a sense of what we are really dealing with when we talk about “capitalism,” it is worth taking a look at the 2020 government bailout.

In the immediate aftermath of the COVID-19 outbreak and the resulting economic crash, President Donald Trump signed on March 27, 2020, a $2.2 trillion package titled the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act.” The legislation flew through Congress and was passed without an impact assessment by the Congressional Budget Office (“CBO”). Few legislators had the time to read it before it was signed into law.

To give an idea of the scale of the package, the total national debt of the United States stood at $23,535,039,888,496.42—essentially $23.5 trillion—on the day the president signed the CARES Act. So the bailout represented almost 10% of our enormous national debt. Even that underestimates the size of the measure because the national debt has grown so fast in the past decades. The total national debt stood at only $5 trillion in 1996. It doubled to about $10 trillion by 2008, and then doubled again to about $20 trillion in 2017. With such a high national debt today, the CARES Act may seem like a relatively small contribution to the country’s indebtedness—but that is merely an artifact of the colossal size of the national debt itself.
To give a better idea, the size of the CARES Act is about 2.5 times the federal government’s financial deficit for the entire fiscal year 2019. The federal deficit for 2019 was approximately $984 billion—so almost a trillion dollars—up from $779 billion for 2018 and $666 billion for 2017. Alternatively, the CARES Act is about half the size of the entire federal budget for fiscal 2019—from October 1, 2018 to September 30, 2019—which reached $4.45 trillion. Yet another comparative measure: the 2009 bailout was about $800 billion, so only almost a third of the CARES Act. In other words, we are talking about a gigantic bailout.

The main components of the CARES Act include:

- $500 billion in government support to corporations (of which $25 billion may support passenger airlines, $4 billion cargo airlines, and $17 billion companies related to national security) (Title IV)
- $350 billion in government support to small businesses for loans to cover worker payroll and other expenses (Title I); it seems as if these loans can be forgiven
- Another $350 billion in government support to small businesses, plus another about $40 billion for special loans
- $150 billion in government support (“payments”) to states, tribal governments, and local governments (Title V)
- $100 billion in government support to hospitals
- $45 billion for a disaster relief fund
- $32 billion in government support to airline workers for wages and benefits
- $10 billion in government support (loans) to U.S. Post Office
- $10 billion in government grants in aid to airports
- $3.5 billion in government support to states to support childcare facilities and to universities to support federal work-study jobs for students

In addition, the CARES Act provided $500 billion in government support to low-income households, which was distributed through $1,200 checks with a signed letter from President Trump. There are also lots of smaller grants in the Act, including the following: “$100 million for additional rural broadband and $150 million for arts and humanities grants to bring cultural programming to Americans stuck at home. It would increase funding for domestic violence shelters and hotlines and set aside $425 million to deal with mental health and substance abuse disorders related to the pandemic. $400 million would become available to protect and expand voting for the 2020 election cycle.”

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For present purposes, let’s focus on the $500 billion in government loans to corporations—as well as the additional $25 billion for the airline industry.

According to the New York Times, the $500 billion “include $425 billion for the Federal Reserve to leverage for loans to help broad groups of distressed companies and $75 billion for industry-specific loans to airlines and other hard-hit sectors.” Of that, $25 billion in grants for the airline companies, with possible equity interests; plus $17 billion for direct loans to “companies related to America’s national security.” There are certain strings attached—but most of them can be unknotted and are temporary.175

The treatment of airline companies is particularly telling.

The Airline Bailouts

First, Title IV of the CARES Act is titled the “Coronavirus Economic Stabilization Act of 2020” and provides for $500 billion in loans and investments to American corporations. Of that sum, the Act provides that “$25,000,000,000 shall be available to make loans and loan guarantees for passenger air carriers,” and another $4 billion to cargo air carriers.176 These seem to only include loans and loan guarantees, and not other investments. The loans are not to exceed 5 years, and will entail certain restrictions on the corporations, namely:

- “until the date 12 months after the date the loan or loan guarantee is no longer outstanding, neither the eligible business nor any affiliate of the eligible business may purchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business, except to the extent required under a contractual obligation in effect as of the date of enactment of this Act;
- “until the date 12 months after the date the loan or loan guarantee is no longer outstanding, the eligible business shall not pay dividends or make other capital distributions with respect to the common stock of the eligible business;
- “until September 30, 2020, the eligible business shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the levels on such date”177

For any of these loans or loan guarantees, the government must also receive, for publicly traded corporations, a warrant or equity interest, and, for non-publicly
traded corporations, a warrant, equity interest, or senior debt instrument. These loans supposedly cannot be forgiven.\(^{179}\)

Second, Subtitle B of that Title IV, titled “Air Carrier Worker Support,” provides for another $32 billion dollars to the airline industry by way of payments to workers in the industry. This is broken down, specifically, into $25 billion for passenger airline companies, $4 billion for cargo airline companies, and $3 billion for airline industry contractors, such as catering, baggage handling, ticketing, and aircraft cleaning. More specifically, the Act provides as follows:

To preserve aviation jobs and compensate air carrier industry workers, the Secretary [of the Treasury] shall provide financial assistance that shall exclusively be used for the continuation of payment of employee wages, salaries, and benefits to—

(1) passenger air carriers, in an aggregate amount up to $25,000,000,000;
(2) cargo air carriers, in the aggregate amount up to $4,000,000,000; and
(3) contractors, in an aggregate amount up to $3,000,000,000.\(^{180}\)

Here too there are some temporary strings attached. Airlines may not furlough workers during the grant, and there are some restrictions on executive pay. Moreover, to “protect taxpayers,” the Treasury department may seek equity in the companies. According to the Act, “The Secretary may receive warrants, options, preferred stock, debt securities, notes, or other financial instruments issued by recipients of financial assistance under this subtitle which, in the sole determination of the Secretary, provide appropriate compensation to the Federal Government for the provision of the financial assistance.”\(^{181}\)

So, for airlines, that amounts to $29 billion in loans and $29 billion in payments to workers, for a total of $58 billion.

On April 14, 2020, the Treasury Department and several airlines reached agreement on the terms of the bailout. The department indicated that the following airlines would participate in the payroll support program—i.e. the grants from the federal government to pay airlines workers: Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, United Airlines, SkyWest Airlines and Southwest Airlines.
According to the New York Times, “American Airlines said it would receive $5.8 billion as part of the deal, with more than $4 billion in grants and the remaining $1.7 billion as a low-interest loan. The funds are intended to be used to pay employees, and the airlines that take them are prohibited from major staffing or pay cuts through September. American Airlines plans to separately apply for a nearly $4.8 billion loan from the department as well.”182 Southwest Airlines said it would seek $2.2 billion in grant moneys and $1 billion in a low-interest loan.

Now here is where it gets interesting: the associated “warrants.” With regard to the $1 billion loan to Southwest, the Treasury Department is expected to get only $2.6 million in warrants, which can be used to buy an equity stake. The Times reports:

The administration had spent weeks haggling with the airlines over the terms of the bailout, with Mr. Mnuchin pushing the airlines to agree to repay 30 percent of the money over a period of five years. The Treasury Department also has been seeking warrants to purchase stock in the companies that take money. Airlines have complained that Treasury was effectively turning the grants into loans by requiring repayment.

Last week, the Treasury Department said that it would not require airlines that receive up to $100 million in bailout money to give the government equity stakes or other compensation. The government had received over 200 applications from American airlines seeking payroll support and Treasury said that the majority of those were asking for less than $10 million.183

So, the corporations are (1) resisting repaying any of the grants and (2) trying to get out from under the equity stakes by asking for grants in multiple lower-level applications.

What is clear is that the corporations are getting significant amounts of money compared to their profits years earlier. And the restrictions, if any, are temporary. As soon as the grant period is over, the corporations will begin laying off their employees. American Airlines already threatened at the end of August 2020 to lay off 19,000 workers.184

Let’s continue with American Airlines. American made profits of $7.6 billion in 2015—up from about $500 million in 2007 and less than $250 million the previous year. As Tim Wu argues in the New York Times, it used most of those
profits to shore up its stock price. “From 2014 to 2020, in an attempt to increase its earnings per share,” Wu explains, “American spent more than $15 billion buying back its own stock.”\textsuperscript{185} American Airlines, though, was not the only one. This was an industry-wide phenomenon. As Wu notes, the airline industry as a whole “collectively spent more than $45 billion on stock buybacks over the past eight years.”\textsuperscript{186} Other industries as well engaged in these types of buybacks even when the conditions looked risky. “As recently as March 3 of this year, with the crisis already beginning, the Hilton hotel chain put $2 billion into a stock buyback.”\textsuperscript{187}

So, while American Airlines is now getting bailed out, it spent its profits earlier buying back stock as a way to increase the capital holder’s value. In other words, the airline was extracting value during good times and getting bailed out by the federal government—and our tax dollars—during bad times.

And it is not just the airlines that are extracting profit from the pandemic.

Of the other $454 billion earmarked for the Federal Reserve Board of Governors, these funds can be used not just for loans and loan guarantees, but also for “other investments.” What these include are the following:

“to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by—

(A) purchasing obligations or other interests directly from issuers of such obligations or other interests;

(B) purchasing obligations or other interests in secondary markets or otherwise;

(C) making loans, including loans or other advances secured by collateral.\textsuperscript{188}

Some requirements apply regarding the prohibition on loan forgiveness—although those too may go by the wayside.\textsuperscript{189} And this nevertheless represents a huge amount of money that can be invested directly into publicly traded corporations to protect shareholder value.

\textit{Hidden Jackpots in the CARES Act}

And then, there are hidden treasures for the wealthy in a bailout bill like this one which runs through Congress with lightning speed—allowing the majority, in
this case the Republican majority in the Senate, to sneak into the bill beneficial tax changes for the wealthy that they had previously been trying to get passed.

One such provision temporarily suspends a limitation, passed in 2017 as part of the massive Republican tax code revisions, on the amount of deductions to nonbusiness income (e.g. capital gains) that owners of businesses that are established as “pass-through” entities can claim as a way to reduce their taxes owed. The provision effectively amended section 172(a) of the Internal Revenue Code, which deals with “net operating loss deductions” for all kinds of entities, including farmers, insurance companies, businesses and taxpayers other than corporations. The section that effectuates changes is itself innocuous and imperceptible, using language that no lay person would suspect of having much impact. It is the kind of language that starts:

(1) IN GENERAL.—The first sentence of section 172(a) of the Internal Revenue Code of 1986 is amended by striking “an amount equal to” and all that follows and inserting “an amount equal to—

“(1) in the case of a taxable year beginning before January 1, 2021, the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, and

“(2) in the case of a taxable year beginning after December 31, 2020, the sum of—

“(A) the aggregate amount of net operating losses arising in taxable years beginning before January 1, 2018, carried to such taxable year, plus

“(B) the lesser of—

“(i) the aggregate amount of net operating losses arising in taxable years beginning after December 31, 2017, carried to such taxable year, or

“(ii) 80 percent of the excess (if any) of—

“(II) taxable income computed without regard to the deductions under this section and sections 199A and 250, over

“(II) the amount determined under subparagraph (A).”.
The nonpartisan congressional body, the Joint Committee on Taxation ("JCT"), headed by Senator Chuck Grassley (R-Iowa) and Representative Richard Neal (D-Mass), issued a report on March 26, 2020, estimating some of the revenue effects of the tax provisions included in the CARES Act.\textsuperscript{193} It estimated that the amendment to section 172(a) of the IRC, as it affects taxpayers other than corporations, would reduce tax revenues by $74.3 billion in 2020, with continued reductions over the next decade, resulting in total revenue losses over the period 2020-2030 of $169.6 billion. In addition, the "Modifications for net operating losses (‘NOLs’)" (corresponding to the "increase taxable income limitation for net operating loss from 80 percent to 100 percent of taxable income, and allow 5 year generally NOL carryback") was estimated to generate $80 billion in lost tax revenue in 2020.\textsuperscript{194}

In a subsequent letter dated April 9, 2020, responding to an informational request from Senator Sheldon Whitehouse (D-RI) and Representative Lloyd Doggett (D-Texas), the JTC broke down the likely distributional effect of the tax change by income category, revealing that the tax reductions would disproportionately benefit the wealthy.\textsuperscript{195} In its table, the JTC documented that 81.8% of the total reduction in tax liability of $86 billion in 2020 (in other words $70.3 billion in reduced tax revenues) would likely benefit those with an income over $1 million. The table also revealed that there will be approximately 43,000 returns filed by taxpayers with income over $1 million. In effect, this suggests that taxpayers in that highest tax bracket (over $1 million in income) will receive on average a tax bonanza of $1.63 million.\textsuperscript{196}

This represents, as Senator Whitehouse and Representative Doggett state, "a massive windfall for a small group of wealthy taxpayers from a Republican provision in the coronavirus relief bill."\textsuperscript{197} As they emphasize, in fact, 95% of those who will likely benefit from the tax change make over $200,000.\textsuperscript{198} Representative Lloyd Doggett put it in these terms: "For those earning $1 million annually, a tax break buried in the recent coronavirus relief legislation is so generous that its total cost is more than total new funding for all hospitals in America and more than the total provided to all state and local governments. Someone wrongly seized on this health emergency to reward ultrarich beneficiaries, likely including the Trump family, with a tax loophole not available to middle class families."\textsuperscript{199}

All in all, this minor tax provision hidden in the CARES Act will reduce tax revenues—in other words, increase the wealth predominently of the wealthy—by an estimated total of $195 billion over ten years according to the JCT.\textsuperscript{200} That far
outweighs much of the benefits of the CARES Act for those ordinary citizens getting a $1,200 check.

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One need not look further than to the CARES Act—or, for that matter, the bailout of 2008—to realize that all the talk about the American system of free enterprise is a smoke screen for a system of state control that funnels wealth primarily to the wealthiest and most privileged, which in this country corresponds to the white upper-class.

There is no better demonstration of this than the behavior of the American stock markets in the six months following the outbreak of the COVID-19 pandemic. The economic news could not have been worse. Unemployment reached depression levels. Economic growth dropped precipitously. And the stock markets hit record highs for months. In March and April 2020, over thirty million Americans filed first-time unemployment claims, pushing unemployment to its highest levels since the Great Depression. Despite that, the U.S. stock markets recorded in April their best month since 1987; after an initial shock, the markets rallied steadily, rising over 30% since their lows in late March. Dire economic news continued to pound the country for the following four months. In the second quarter of 2020, the American economy lost a third of its steam, with quarterly economic growth (GDP) declining at an annual rate of 32.9%—the worst quarter in at least 145 years. And yet, the S&P had its best month in August 2020 since 1986, and the NASDAQ since 2000. The Dow Jones rose above 29,000 in September 2020 to reach record highs from before the pandemic.

Most economists were puzzled and offered fanciful daily explanations. Even Paul Krugman had little to say, suggesting that “Investors are buying stocks in part because they have nowhere else to go.” But the reasons are obvious and there is no wonder the markets defied the economic crash: the pandemic is a boon for capital extraction. For the markets, there is nothing like a good crisis when the right people are in power. It provides the perfect opportunity for more capital extraction. Philip Mirowski wrote tellingly about this during the last debacle—the financial meltdown of 2008—under the moniker “Never let a serious crisis go to waste.” Now too, the Faustian logic is clear.

First, President Trump and the Republican Senators have made it crystal clear that they have the backs of the large-cap corporations no matter how bad things get. By strengthening the largest corporations now, the CARES Act will help them weed out their smaller competitors and facilitate monopolistic practices later. After
the pandemic, the large-cap corporations will be poised to reap extractive profits, while most small businesses and mom-and-pop stores will be out of business.

Second, the sunset provisions on the bailout restrictions will allow shareholders and managers to enrich themselves when an economic recovery eventually happens, again without ever needing to build reserves because they know they will be bailed out next time as well. As Tim Wu details, these recurring bailouts have allowed wealthy managers to pillage in good times—through stock buybacks and exorbitant executive pay—and get rescued in bad.209 This too enhances market value while extracting capital for the wealthy.

Third, Trump has sapped any momentum toward universal health care by promising financial exceptions for coronavirus-related health care costs. These COVID-19 carve outs may protect the Republicans from backlash in the November 2020 elections. After it’s all over, the less fortunate will continue to be ravaged by ordinary cancers and poverty-related diseases without any coverage, to the financial benefit of private insurance and corporate and wealthier taxpayers.210

Fourth, the pandemic is disproportionately decimating the most vulnerable populations: the elderly, the poor, the uninsured, the incarcerated, and persons of color. The racial imbalance is unconscionable211: the coronavirus mortality rate for African Americans is almost three times higher than the mortality rate for whites.212 The rates of infection in prison and jails are also horrifying.213 The populations at risk are disproportionately older and poorer, so on Medicare and Medicaid. Some refer to this as “culling the herd.”214 Market investors can expect that social security will be less of a drag on the economy in the future.

Fifth, the Republicans have been able to secret into the bailouts tax bonanzas for millionaires. The earlier provision just discussed—suspending the limitation on the amount of deductions to nonbusiness income that owners of businesses established as pass-through entities can claim as a way to reduce their taxes owed—will disproportionately benefit about 43,000 taxpayers in the highest tax bracket (over $1 million in income) who will receive an average windfall of $1.63 million per filer.215

The stock markets have become the mirror of this ugly truth of capital extraction. Michel Foucault presciently observed, back in 1979, that markets are the touchstone of truth in neoliberal times.216 And the ugly truth that they reveal today is that the pandemic is a goldmine for large-cap corporations, institutional investors, and the wealthiest. I once overheard a New York real estate tycoon talking about the land grab in the Adirondacks in the 1930s and commenting
“Wasn’t the Great Depression grand!” Institutional investors must feel the same way about the COVID-19 pandemic.

Sadly, one can hardly expect that much difference in a Democratic administration, especially one that is equally beholden to Wall Street and wealthy donors. The last two—those of Bill Clinton and Barack Obama—avidly embraced neoliberal policies such as workfare for the unemployed and welfare for the corporate elite. The Paulson and Geithner bailouts of 2008 were the model for today’s.

None of this is new, and it replicates fully the experience of 2008. As Mirowski demonstrates well, neoliberal extractive capitalism was strengthened, rather than weakened, by the 2007-2008 crisis. The proponents of neoliberalism persevered, undaunted, redoubled their efforts to capture the economics profession, pulled the wool over people’s eyes, found ways to co-op protest movements like Occupy, and came through with policy proposals and responses that outflanked the left-leaning neoclassical economists. In the process, they extracted even more capital from the economy. As Mirowski writes, “The tenacity of neoliberal doctrines that might have otherwise been refuted at every turn since 2008 has to be rooted in the extent to which a kind of “folk” or “everyday” neoliberalism has sunk so deeply into the cultural unconscious that even a few rude shocks can’t begin to bring it to the surface long enough to provoke discomfort.”

“They know what it means to never let a serious crisis go to waste.”

It is time for the proponents of coöperation to learn this lesson.

It is time to stop talking about “capitalism,” perhaps even “neoliberalism,” and refer instead to the system of tournament dirigisme.

The only way forward, now, is a genuine transformation that replaces our existing dirigiste regime with coöperative, mutualist, and non-profit enterprises.

The Problem with “Communism”

The term “communism” is no less misleading than the term “capitalism.” Derived from the root “common,” communism suggests the abolition of private property and the creation of a common shared by all. But in really-existing communist regimes, there has never been such a “common,” instead a centralized state- or party- driven allocation of possessory interests. Here too, the nomenclature is entirely deceiving.
The term “communism” itself also traces to the same period, the early nineteenth century. Understood as the political and economic system that abolishes private property, the term “communism” started to be used in English in 1840, with an entry in the New York Spectator from August 1840. The term “Communism” with a capital “C” associated with Marx and the proletarian overthrow of the bourgeois class, began to be used in English in 1850.\(^{219}\) Regarding its French usage, the OED notes:

The coinage of the French term has been variously attributed to Charles Augustin Sainte-Beuve (1804–69), French poet, novelist, and critic (in a letter of 3rd August 1840: see C. A. Sainte-Beuve Correspondance générale III. 332), Étienne Cabet (1788–1856), French philosopher (E. Cabet Histoire populaire de la révolution française IV. (1840) 331), and Théophile Thoré (1807–69), French art critic (T. Thoré La vérité sur le parti démocratique (1840) 27). All three seem to have arrived at the term independently in 1840. Compare also quot. 1848 and quot. 1840 at sense 1. For a full discussion of the origins and development of French communisme (and related terms), see Geschichtliche Grundbegriffe III. at Kommunismus.\(^{220}\)

The term “communist” in English, with a “t” at the end, has a similar time stamp, around 1840, with or without a capital “C.” Here, the term was used previously in the late eighteenth century in French with different connotations, but essentially traces to the mid-nineteenth for its current usage:

French communiste was used earlier (1769) with reference to participants in the collective possession of land (mortmain). The French term was also used for other kinds of collective ownership in the late 18th cent., e.g. with reference to the right of pasturing animals on common land (1789). It was also used from at least the 1830s to refer to adherents of François-Noël Babeuf (1760–97), militant French revolutionary. Coinage of the term in the sense ‘advocate or adherent of the theory of communism’ has been variously attributed to Pierre-Joseph Proudhon (1809–65), French editor, politician, and social theorist (P.-J. Proudhon Qu’est-ce que la propriété? (1840) 326) and Étienne Cabet (1788–1856), French philosopher (É. Cabet Comment je suis communiste (1840)). Both seem to have arrived at the term independently in 1840. For a full
But this animating idea of collective or communal ownership of property—of the abolition of private property in favor of the “common”—has never been realized at a national level, other than through state nationalization of the modes of production. The laudable ideal of living together in common can work well for a commune, but does not scale up to the level of a large economy like the United States, the State of New York, or even New York City.

The problem is principally one of scaling. As soon as the communal body grows beyond the size of the commune, the governing mechanisms get crystalized into an elite party or centralized state apparatus that inevitably becomes autocratic. The abolition of private property and creation of the common inevitably requires a governing mechanism and institutions of dispute resolution. Proponents of the common often speak of the need for democratic governance of the common by the people; but that is nothing more than an abstract ideal that has to be concretized in legal form. In practice, that legal form takes the shape of a decision-making body (such as a communist party leadership) and juridical rules.

That is why the dream of a common has never truly existed at a national level, historically. Every really-existing experiment has rapidly devolved into another form of state dirigisme: an autocracy of an elite party or a centralized state apparatus. Instead of referring to “communism,” we should call it something like “party dirigisme.”

The same problems plague the term “socialism,” which, in its full form, is simply the state ownership of the means of production as trustee for the citizens of a country. Naturally, I am being reductionist here. Other philosophers, such as Étienne Balibar, trace genealogies of socialism to other forms, such as “autogestion,” that have far more in common with coöperation. Balibar makes the astute observation in his analytics of socialism that the socialist project has always included “two violently opposed tendencies: one statist and the other autogestionnaire.” But as he himself acknowledges there, it is the statist side of socialism that is the dominant thread and has been, in history and in the perception of socialism. For purposes here, then, I will set aside the autogestionnaire variant of socialism, which is indeed closer to coöperation. That will have to wait for further development. I have only the statist version in mind here, and dismiss it.
At bottom, the fundamental problem is that the concept of “the common” is far too blunt an instrument to describe accurately how material goods and things are distributed and used in society.

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Naturally, this calls for a much longer discussion, and a more sustained debate with Michael Hardt and Toni Negri on the one hand, and with Pierre Dardot and Christian Laval on the other—all of whom have reimagined the concept of “the common” for today.223

For the latter at least, but certainly not for the former, the argument for the common similarly rejects the traditional notion of communism. Dardot and Laval work hard to distinguish themselves from the type of state communism that, they believe, has plagued the term “common.” They refer to “the communist burden” – the way in which the actually-existing communist experiments have distorted the concept of the common. Their main effort is to liberate the concept of the common from the state. Dardot and Laval are adamantly anti-state communism. They write:

In other words, it [the common] is a term that helps us turn our back on the strategy of state communism once and for all. By appropriating and operating the means of production in its entirety, the communist state methodically destroyed the prospects for real socialism, which “has always been conceived of as a deepening – not a rejection – of political democracy.” For those dissatisfied with the neoliberal version of “freedom,” the common is thus a means of opening up a new path. It is precisely this context that explains the thematic emergence of the common in the 1990s. It was a shared political demand that could be found in the most local and concrete struggles, as well as within the largest national and international political mobilizations.224

In fact, at practically every juncture, Dardot and Laval try to distinguish their concept of “the common” from what has come before, so that it has a genuine novelty to it. They even distinguish theirs from the notion of the commons tied to the anti-globalization struggles of the 1990s. These struggles constructed the world in terms of a second “enclosure”: not the early enclosure of lands in the 17th and 18th centuries, but rather a renewed global enclosure of property, associated with privatization and neoliberalism, which took away common space from the people. The struggle in the 1990s was to reclaim “the commons,” in the plural, consisting
of water and land that are being privatized. However, by contrast to those anti-
globalist movements, which they associate with trying to develop the commons
outside of capitalism as small isolated pockets, Dardot and Laval want to take a
different path. They reject this approach to changing the world without taking
power. They also simultaneously reject the Marxist logic of getting beyond
capitalism from within.

What Dardot and Laval call for is a revolutionary concept of “the common”
as a new way forward—one that will replace and, in the process, destroy
neoliberalism. They do not believe that piecemeal reform will do any good, or
even that the creation of pockets of common goods will save us from ecological
peril. Instead, they call for a radical transformation, a revolution in their words:
They call for “profoundly transforming the economy and the society by
overthrowing the system of norms that now directly threatens nature and humanity
itself.”

Dardot and Laval emphasize and are careful to attribute the introduction of
the concept of “the common,” in the singular, to Hardt and Negri. They argue that
this is a decisive and radical achievement and probably the most important step
forward: not to think of the commons which effectively preceded capitalism, but
the concept of the common as a new development to get past capitalism. They
write:

For us, the common is the philosophical principle that makes it
possible to conceive of a future beyond neoliberalism, and for Hardt
and Negri the common is the only possible path toward a non-
capitalist future. The common is also a category tasked with
undermining any residual nostalgia for state socialism, particularly
in terms of the state’s monopolization of a bureaucratized public
service. In other words, the common is a category that transcends
public and private.

Dardot and Laval place their concept of the common in the lineage of the
environmental and ecological movements and the alter-globalization movements
in the 1990s—though, as we saw earlier, they seek to distinguish it from those
earlier experiments. Dardot and Laval trace the intellectual lineage directly back to
the writings of Hardt and Negri, to the empirical work done by and in the wake of
Elinor Ostrom, and to the emergence of what they referred to as the field of
“common studies.” They emphasize the shift from the plural to the singular,
from “the commons” to “the common,” reflecting the more abstract and
substantial concept of the common as opposed to the traditional or historical examples of commons. “In short, we are living in a moment in which the “common” is a term that designates a regime of practices, struggles, institutions, and research all dedicated to realizing a non-capitalist future.”

This calls for a longer treatment, of course. But as I hope to have made clear by this point and in the following chapters, the idea of getting rid of proprietary interests that involve personal exclusive possession—including the opportunity to improve and receive the benefits of those improvements—may work in a small community or commune, but does not scale up to a national economy.

And therein lies the problem.

We need to design a coöperationist economy that can thrive alongside dirigiste ones. Otherwise, too many will abscond with their wealth.

**Getting Beyond the Cold War**

In effect, and in this respect, I agree with Dardot and Laval that we desperately need to get beyond the terms “capitalism” and “communism”—as well as “socialism” for that matter. We need to get beyond the crude, vulgar debates of the Cold War.

Historically, neither term was accurate. What was really at play was some other confrontation between tournament dirigisme and something like state- or party- centralized control of proprietary interests. The former is a system of spoils directed by the government; to better understand this system, we need to read Venkatesh and Levitt on gang finances in *The Quarterly Journal of Economics*, August 2000, and explore the tournament model of Lazear and Rosen from 1981. The latter is a system of spoils directed, most often, by a central party apparatus that increasingly, today, resembles what we traditionally call “capitalism.”

It is imperative to imagine a grounded economic analysis as an alternative to the worn and fruitless debates between “capitalism” and “communism” or even “socialism.” It is imperative to reimagine a new form of coöperation as an economic model in order to get beyond the illusory debate between Hayek and Marx.

The former rests on the fabricated myth of individualism, as if individuals alone take responsibility for and achieve economic success, when in fact people work together and are supported by each other. Economic productivity only works through collaboration and coöperation. Too many of us in this country are still entranced by the myth of American individualism—the idea that we can go it alone
and invent and create and build things by ourselves and reap all the benefits. It is so ingrained in the public imagination, tied to the image of the pioneer gold-digger and the shiny rewards of solitary hard work. The ideology undergirds the private corporate form and the logic of capital extraction. But for the most part, we succeed in inventing, creating, and producing through mutual support, working together, and collaboration. It is these forms of coöperation that must ground a post-pandemic economy.

The latter rests on the fanciful imagination of an economic space that could be shared by us all without conflict and decisionist dispute resolution. It does not pay sufficient attention to the inevitable need for dispute resolution and the inextricable fact that, in resolving disputes, someone or some small collective is ultimately deciding distributional and proprietary interests.
Chapter 3. Reimagining Coöperation

In order to move forward, it is essential to leave behind these Cold War ideologies. The way to start is to return, briefly, to their genealogy as a way to identify where they went off track.

In the nineteenth century, the movement for worker coöperatives and workshops often pitted philanthropic entrepreneurs against communist or socialist thinkers.

The former were often social reformers who were interested, not so much in eliminating private property, as in relieving the misery of workers by sharing with them some of the profits of their work and providing for their social welfare. Many of the reformers imagined, and some built, utopian workshops, factories, and company towns, that were intended to provide for the welfare of workers. The Welsh industrialist, Robert Owen, who refashioned his textile factory at New Lanark and in 1825 created a social utopia at New Harmony in Indiana; the French merchant, Charles Fourier, who imagined and promoted the *phalanstère* and an entirely new circulation of desire; the French politician and historian, Louis Blanc, who advocated for government-sponsored worker coöperatives—these social visionaries focused on reorganizing industrial modes of production in order to center the interests of the workers and their families who toiled in the factories and workshops. Louis Blanc’s most important tract, in fact, was precisely called *The Organization of Labor*, published in 1839—one of the first texts to use the term “capitalist” in its modern meaning and to declare “from each according to his ability, to each according to his needs.” The emphasis was on reorganizing forms of production for the benefit of workers and their families, limiting the hours of labor, improving living conditions and education—not abolishing private property *tout court*.

The latter were more focused on overturning the regime of private property as a means of revolutionizing modes of production. Pierre-Joseph Proudhon, the first self-proclaimed anarchist, championed the abolition of property and imagined workshops in which workers had full possession of the means of production. Karl Marx and Friedrich Engels famously proposed the “expropriation of the expropriators” in *The Communist Manifesto*, inspiring generations of communists to embrace the conviction that change in society must pass through a revolution in the property regime and the abolition of private property. Socialist thinkers, such as Louis Auguste Blanqui and others, favored the expropriation of property as a
means to enable either a commune or state ownership and organization of the means of production.

The long history of the twentieth century, however, should have taught us at least one lesson: property is never abolished, it is simply modified. What matters is not what we call it, but who reaps the benefits of its use, of its temporary possession, of the fruits of its product. Someone or some entity—whether it is one or more persons, a collective, a communist party, the state, or the general will—always has the final say on who gets to enjoy the advantages of material possessions and their fruits. There is no escaping the reality of a final decision-maker—and that person or entity inexorably allocates proprietary interests.

In effect, the abolition of property is an illusion: material goods, equipment, tools, machines, cars, land, real estate, in short, all material things are subject to competing claims to use and enjoyment, whether temporary or long-lasting. Those competing claims do not resolve by themselves. And whoever or whatever institution ultimately resolves them—whether a judge, a chief, the majority, an autocrat, or a party—they will be allocating proprietary interests. Whoever is allowed to glean dead timber, maintain a forest, build a shelter, consume the fruits, hunt, or simply walk through the land is exercising a proprietary claim, and someone will decide whether they are allowed to do so.

To think properly about property, one must return to the articulation of different proprietary interests—whether in Roman Law, borrowing concepts like usus, fructus, abusus, or in American Legal Realism with the notion of “bundles” in property law. One must understand that property is not a monolithic unitary thing that can be scrapped or allocated whole. It is a complex bundle of interests that are always separated and allocated in myriad ways and that never go away. And this is the most important thing: someone or some entity, ultimately and inexorably, gets to decide and have the final say on how those interests are distributed and who gets to enjoy them. That will never go away, even if we “abolish property.”

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Thus, the challenge today can no longer be posed through a nineteenth century dichotomy of social utopianism versus communism, nor of worker welfare versus the abolition of property. The task is not to abolish property, which is no more than a quixotic phantasm. No, it must focus instead on the actual distribution of the enjoyment of material things. This requires a detailed analysis, dissection, and allocation of proprietary interests. And this leads directly to the question of who gets to reap or share the benefits of economic production, circulation, and
consumption—whether it is the consumer, the worker, the merchant, the capital investor, the politician, the party member, etc.

This calls for a complete reimagination of the classic nineteenth century debates over worker workshops, communism, and socialism. Instead, we now, more than ever, need to engage in the intricate work of redesigning the distribution of proprietary interests associated with the production of wealth in society.

In order to achieve a just and equal distribution, coöperation must be reimagined for the twenty-first century, not as an abstract economic regime, but rather as a specific, concrete allocation and distribution of material interests. It is only in this way that coöperationism will be able to overcome the worn and now counterproductive debates between so-called capitalism on the one hand and communism or socialism on the other. One must analyze concrete distributions, not imagined ideal-types.

To make any progress, then, we need to focus on the actions that humans take. It has to be all about the verbs: possessing, using, improving, zoning, reaping the benefits of proprietary interests. The basic building block is not money, capital, or private property, but use, zoning, taking, improving, alienating goods, land, workshops, etc.

Specific concrete distributions are what matter. Before beginning to analyze the possible dimensions of proprietary interests, it is important first to articulate the panoply of subjects and objects—the different entities and forms associated with material possessions.

The Myriad Dimensions of Proprietary Interests

In order to even begin to chart just distributions, it is essential to map the myriad dimensions of proprietary interests.

There are, first, a finite set of entities that can be rights bearers, in other words who can exercise proprietary interests over things or who can be given the right to use or enjoy property. Depending on those rights bearers, we tend to describe the corresponding property relation in the following terms:

- The state as owner, which generally corresponds to state ownership, controlled economies, or the nationalization of industries;
- An individual, partnership, or legally chartered corporation, which usually corresponds to regimes of individual, personal, group, or private property;
• A collective (e.g. farmer coöperative; factory workers), which typically corresponds to collective property, collectivism, or coöperatives;
• The people owning in common, or what we often refer to today as “the common,” or in earlier times as “the commons.”

Notice that these different subjects can be on either side of the property equation, so that the state could have title to land and allow a private individual to use it; or the other way around, an individual could have title to land and allow the state to use it.

Second, there are different things that can be the object of property. Most legal regimes throughout history have differentiated between:
  • Land and buildings (real estate)
  • Movable or chattel property (goods, commodities, supplies)
  • Personal possessions (clothes, bedding, food)
  • Intangible property (intellectual property)
  • Modes of production (equipment, tools)
  • Financial property (stocks, bonds, bank accounts)

Notice here that there can be different proprietary regimes for and within each type of property. So, for instance, land could be owned by the state or a tribal nation, while the buildings on the land could be used or leased to private individuals; personal possessions could be assigned entirely to individuals, while modes of production could be the property of the collective.

Third, there are an assortment (bundle) of proprietary rights assigned to each of these subjects and kinds of property. So, for instance, with regard to land, there could be an assignment to different subjects of each of these interests:
  • The decision who uses the land (use)
  • The decision how the land is used (zoning)
  • The decision how the revenue from the use of the land is distributed (enjoying the fruits)
  • The decision who can improve or alter the land (improvements)
  • The decision who can reap the rewards of these improvements
  • The decision who has power to transfer or alienate these interests
  • The decision who can assign these interests
  • The decision who can adjudicate any disputes regarding these assignments
In their book *Common*, Dardot and Laval propose and discuss a similar list of these possible proprietary interests. The American Realists, much before them, showed us how these bundles of rights can be separated.

Fourth, and finally, it is important to emphasize that whoever gets to decide about how to interpret and resolve disputes about the different options listed above is determinative. The final arbiter is, *de facto*, the one with the real proprietary interest. If we decide, for instance, that it is a state supreme court that has the final say over property rights in the state, then that court is ultimately the arbiter of property relations. If it is a people’s council or open to popular democratic accountability, then the people ultimately have control over proprietary interests. The final decision-maker may ultimately have more power over the property framework than the entity who purportedly has the authority to allocate. This is why judicial review in the United States is, in the end, such a powerful tool for judges.

**Allocating the Proprietary Interests**

Once the different dimensions of proprietary interests become clear, we are in a position to allocate them justly and equally without returning to the fictions of, on the one hand, “private property” or, on the other, “abolishing property.” Regimes of so-called “private property” are actually state-controlled allocations and enforcement of proprietary interests granting and favoring, for the most part, unlimited accumulation of use and alienation to individuals by means of lower capital gains taxes and no inheritance taxes. These are regimes that favor the concentration of wealth in the hands of the wealthy, white, privileged. Regimes that supposedly “abolish property” are actually state- or party-controlled allocations and enforcement of proprietary interests that tend to favor those and their families and friends in decision-making capacities—another elite.

The ambition of coöperation is to reallocate proprietary interests in such a way as to produce wealth equality and social justice. There are many possible ways to do this, but here, for instance, is one approach. Again, it is all a question of mixing and matching the different dimensions of proprietary interests, discussed above, to create a just society. This is just one approach, purely hypothetical:

1. The final decision-making power to resolve any dispute over proprietary interests will be allocated to a 9-person committee consisting of seasoned members of mutual organizations and coöperatives, elected by all the members of coöperationist
institutions. The determinations of this 9-person body will bind the law enforcement mechanisms of society.

2. The incorporation statutes will favor mutuals, coöperatives, and non-profits through tax incentives and benefits; traditional investor capital will either be struck from the corporate code or disfavored through tax and transfer.

3. All land will be owned by a trust set up for the benefit of current and future generations; the use and improvement and benefits of any improvements on land will be allocated to the individual with the possessory interest. Possession and use of land will be determined by an assembly elected by all citizens at the state level.

4. Individuals will have possessory interests (including exclusive use, right to improve and to enjoy the benefits of improvements, and the right to alienate) of their residential homes or coöperative apartments, which they will be allowed to buy and sell.

5. Individuals will have exclusive possessory interests (including use and the right to alienate) of personal property consisting of personal items, clothes, household goods, vehicles, and money.

6. All proprietary interests will extend only over the life of individuals and will not transfer upon death.

Obviously, I am simplifying things to keep them simple, but you understand: the allocation of all the different proprietary interests can be organized and distributed in myriad ways that would promote (or undermine) coöperation.

It is time to reconfigure and reimagine coöperation for the real, concrete, material world, and not for an abstract fantasy.

**The Simplicity of Coöperation**

The most important point is that it is extremely easy to design coöperationist arrangements. It is as easy as rewriting the laws of incorporation. The fact is, designing coöperation—*just like designing capital*—uses the basic toolkit of the lawyer, a toolkit that has been used and mastered for centuries. It is as easy as using a hammer or screwdriver. It is basic plumbing for the lawyer.

In *The Code of Capital*, Pistor demonstrates how lawyers, deploying the conventional classic tools of legal practice and relying on the enforcement powers of the state, turn ordinary assets into capital.

As noted earlier, Pistor defines “capital” as an asset with advantageous properties for its owner: The advantageous properties render the asset more valuable because it has a competitive advantage over other assets. It may be protected from taxation; it may have priority claims as against other credit holders; it may survive an economic downturn by contrast to other assets or even less well coded capital.

Historically, the class of assets that could be coded as capital—transformed into capital by lawyers—has changed over time. Whereas before it included primarily landed property and immovable goods, over time it has come to include ideas and know-how (intellectual property, trademarks, and patents) as well as digital assets such as computer code.

But the notion of an asset is very simple and consists of anything that can be owned.

*And the methods of coding capital are simple and basic as well*, as Katharina Pistor demonstrates. They include the basic building blocks of the law school curriculum—contract law, property law, corporations, trusts and bankruptcy. These are all classical tools of the law, even if they can be used in innovative ways to create unheard of capital forms, such as the complex derivatives and mortgage-backed securities that were responsible for the 2007 recession.

What turns assets into capital is the *combination* of legal code and state enforcement. This has two elements, then: law and government. Regarding the law, Pistor could not be clearer that it is lawyers who convert assets into capital, through simple legal processes and transformations. She is talking about the “legal coding of capital.” As she emphasizes, “observers treat law as a side show when in fact it is the very cloth from which capital is cut.” At the same time, she is equally clear about the centrality of the state. Without the state’s protection and enforcement of the legal code, it could not operate. As she writes, “accumulating wealth over long stretches of time requires additional fortification that only a code backed by the coercive powers of the state can offer.”

Together, lawyers and the state can provide and enforce “the code of capital” that serves to give the capital holder an advantage over others. Together they provide “the legal privileging of some assets, which gives their holders a
comparative advantage in accumulating wealth over others.”  In short, capital is inextricably linked to law and state power.”

But the most important point of Pistor’s work is to show how simple the plumbing is: first, we are dealing with very basic assets. The class of assets are common and straightforward. They include land, debt, knowledge, and firms or institutions; the list grew, in time, to include intellectual property and digital assets like code itself. As Pistor writes, “ordinary assets are just that—a plot of land, a promise to be paid in the future, the pooled resources from friends and family to set up a new business, or individual skills and know-how.” Second, the tools of the trade, those of the attorney, are also basic. They are the core elements of private law, most of which are taught in the first year of law school: contract law, property law, as well as second-year courses in corporations, trusts and estates, bankruptcy law, and secured transactions. Third, the transformation of assets into capital is a simple enhancement that gives some assets merely “a comparative advantage over others.” Those advantages are also simple and can be reduced to four mainly: priority, or the idea that the capital owner has a higher claim to an asset than others; durability, which means that the ownership extends in time; universality, which means that it extends spatially; and convertibility, which means the capability to convert the asset into liquid money. As Pistor writes, “Law is code; it turns a simple asset into a capital asset by bestowing the attributes of priority, durability, universality, and convertibility on it.” Fourth and finally, the entire scheme rests on two very basic instincts or practices common throughout history:

For centuries, private attorneys have molded and adapted these legal modules to a changing roster of assets and have thereby enhanced their clients’ wealth. And states have supported the coding of capital by offering their coercive law powers to enforce the legal rights that have been bestowed on capital.

Pistor brilliantly lays this out in her book, The Code of Capital. Others as well spell out this essential, intimate, but basic link between legal practice and government enforcement. Surprisingly, some of the German Ordoliberals did as well—as Foucault details in The Birth of Biopolitics. This is, in fact, precisely the “singularity” that Foucault associates with the German Ordoliberals: the recognition of the central role of legal regulation in structuring the market society—or what Foucault writes, “the redefinition of the juridical institution and
of the necessary rules of right in a society regulated on the basis of and in terms of
the competitive market economy: the problem then, broadly speaking, of law.”

In a fascinating passage discussing the Walter Lippmann colloquium held in
France in August 1938, Foucault cites the organizer, Louis Rougier, who places basic
legal regulation at the core of market society—anticipating perhaps “the code of
capital.” Rougier was more of a liberal than an ordo-neoliberal, but his language
and ideas tracked theirs, to an extent. Rougier says:

The liberal regime is not just the result of a spontaneous natural
order as the many authors of the Natural codes declared in the
eighteenth century; it is also the result of a legal order that
presupposes juridical intervention by the state. Economic life takes
place [in fact] within a juridical framework which fixes the regime of
property, contracts, patents, bankruptcy, the status of professional
associations and commercial societies, the currency, and banking,
none of which are given by nature, like the laws of economic
equilibrium, but are contingent creations of legislation.

This is a striking passage that corresponds pretty well to the views of the
Ordoliberals (though they would subsume the notion of natural order entirely
within that of legal order) and prefigures the argument about the legal
foundations of capital. Rougier goes on to say:

Being liberal is not like the ‘Manchester’ attitude, allowing vehicles
to circulate in any direction, according to whim, with the
consequence of endless congestion and accidents; and it is not that
of the ‘planners,’ fixing the hours of use and routes to be followed
for every vehicle: it means imposing a Highway Code, while
accepting that at a time of faster means of transport this code will
not necessarily be the same as in the time of stagecoaches.

This idea of a “Highway Code” has several important implications for Rougier
and for the Ordoliberals that Foucault teases out well in his analysis in The Birth of
Biopolitics. First, it entails that the economic and juridical are fully integrated: the
relationship between law and economics is not one of superstructure and
infrastructure, but of co-constituency. The model is not Marx, but Weber. Second,
it calls for economic-institutional historical analyses. Third, and most importantly,
it makes possible a conception of “the survival of capitalism.”
All of this work, especially Pistor’s, makes plain that capital is easily constructed using the basic tools of law, enforced by government.

The code of coöperation is just as simple.

The way to code assets so that they are held in a mutual or credit union, the rules about profit distributions, and the laws of incorporation are the basic building blocks of lawyers.

It is as simple to them as the use of a power drill is to the mechanic.

We know how to incorporate coöperatives and mutuals.

We know how to code coöperation.

The question is one of will, not of knowledge or expertise.

**Addressing Global Climate Change**

Coöperation is, incidentally, the only way we will be able to confront and remedy global climate change. The fundamental principles and ideals underlying coöperation represent the best path forward toward sustainability.

Those principles favor equal voice and shared well-being, both of which are essential to creating a more sustainable environment. Under the United Nations guidelines, the principles that define the coöperate enterprise include: open and voluntary membership, democratic member control of the enterprise, participation in the enterprise, as well as autonomy and independence. These mirror the seven core principles of coöperatives that have emerged in the literature on coöperation—and include, as well, each member having substantially equal control and ownership; each member having a functional role in the enterprise; and a primary focus on the well-being of the members. What characterizes the coöperative versus other forms of business structures is the notion of one-member-one-vote and the fact that the primary purpose of a coöperative is not profit maximization or short-term growth, but general well-being.

Those guiding principles of equality and welfare are precisely the values that will promote a more sustainable living environment.
Chapter 4. Abolishing Capital

Charting a new coöperationist landscape is as straightforward as realigning the property dimensions and reallocating proprietary interests. Reimagining an economy based on coöperation requires only a few fundamentals of corporate finance.

The Corporate Finance of Coöperation

Under the current regime of capital investment, a commercial enterprise is started either by an individual, who buys their tools and materials and starts making and selling goods or services; or by a partnership of individuals, who essentially do the same thing. They can incorporate and form a corporation or limited liability partnership, all of which are ways to protect them from personal liability for the obligations of the company. They use the corporate form as a shield from personal liability, as a way to keep their finances separate, to gain tax advantages, to get credit from a bank, and so on.

The privately held company

As a privately held company (whether founder-owned, family-owned, or a partnership), the company can buy and sell real property in its name, as well as goods, equipment, and intangibles. It owns all the assets (tools, inventory, goods, accounts receivable or payable, etc.) and is responsible for any debt. The owners of the company can engage in all the following activities. They can:

- Buy and own real estate and equipment.
- Lawfully use their real estate and equipment in any way they want.
- Sell, transact, exchange, and offer all the goods or services that they produce.
- Sell the company or any of its assets, or transform the structure of the company into something else, such as an LLC or a B Corp.
- Take out loans, pay off loans, increase or reduce their debt.
- Pay themselves salaries.
- Hire and pay employees (at or above minimum wage).
- Pay taxes on their profits.
- Reinvest some of their profits into the enterprise.
- Distribute moneys to the owners as distributed corporate profits.

Electronic copy available at: https://ssrn.com/abstract=3702010
Essentially, the owners of a privately held company can do everything except raise equity on a public stock exchange, for which they would need to do an initial public offering (IPO) and become a publicly held company (with the minor exception of Regulation D, which allows privately held companies to sell a small, limited number of equity shares without registering with the SEC).

In a privately held company, as a result, the equity that the owners have in the company is not very liquid. In order to take their money out, the owners need to sell assets or distribute profits, pay themselves higher salaries, dissolve the company, or sell their equity in the company to someone else. This makes it slightly difficult for a company to raise major capital inflows.

_The publicly traded corporation_

And that, naturally, is the major difference between the privately held company and the publicly held company: in the latter, capital can flow in (or out) through the sale of equity shares on a public market. The fluctuating value of those publicly traded shares will change the value of the firm and therefore affect its ability to borrow money or raise more capital. The speculative nature of equity markets affects, positively and negatively, the ability of publicly traded companies to attract capital.

In order to become a publicly held company, a privately held company must go public through an IPO and raise equity capital from investors who become equity shareholders. One of the greatest differences, then, between the private and public firm is all the disclosure regulations that surround the publicly traded company (all the SEC filings, quarterly statements, etc.).

So, the publicly traded company can do all the things that the privately held company can do, listed earlier, plus raise equity capital on the public markets. Some of the things it can do will have different names. The distribution of corporate profits, for instance, is called dividends in the case of publicly traded companies. But the functionalities are the same. In addition, publicly traded companies can also buy back their equity shares by buying their stock on the market, often enhancing the value of the remaining shares.

In publicly traded corporations, the management runs the company and satisfies the shareholders in good times through dividends (paying out profit) and increased equity value (increasing stock price), which keep the investors holding on to the stock (or selling happily at a higher price) and thus increasing the company’s equity value.
The equity shares are the ownership stake in the enterprise. They represent the value of the enterprise. Their value should be related to the current and expected profitability and cash flows of the company. On a double-entry accounting balance sheet, their value should reflect current assets, property, machinery, and goods owned, as well as the expected stream of incoming revenue, accounts payable, and likely future earnings, net of any debt or other obligations.

Theoretically, the wealth of the enterprise could be distributed to the different stakeholders of the company by means of the salaries and benefits for the management and workers, the contractual exchanges with customers or providers of goods and services, and the distributions and benefits to the investor shareholders. All of the wealth of the firm could be distributed in these different ways. In other words, all of the wealth generated by a publicly held corporation (over and above the servicing of debt obligations and the costs of operation) could be equitably distributed to workers, management, and outside affiliates, like the consumers or suppliers. But those distributional decisions are controlled by the management, under the supervision of the board of directors, and ultimately by the shareholders. As a result, it is usually the management and shareholders who extract wealth from the firm.

The extraction of wealth by shareholders and management happens in a few ways. First, there are dividend distributions: the enterprise distributions part of its profits by means of a dividend on shares. Second, there is the value of the shareholding itself. If the firm is publicly traded, then that value can increase and be sold on the stock market at a profit. Management can find ways to affect stock prices (e.g. stock buyback programs) and thereby increase share value.

By contrast to ordinary creditors (e.g. banks that loan to the enterprise or other bond holders), the shareholders assume more risk in return for the prospect of receiving a greater return. If things go badly, their equity stake may be wiped out. They have no guarantee of recouping their investment in case of bankruptcy, by contrast to a secured or primary creditor. If things go well, their return is not fixed by contract, as with debt obligations, but can exceed expectations.

In this sense, there is a gambling aspect to capital investment. It is a form of elegant, economic, educated gambling. Many of the early stock companies, like the West or East India trading companies, began as forms of gambling by the Dutch and British elite. And at the time, the ties to the slave trade were thick. It would also be important to discuss Lloyds of London in this regard. What is clear is that a logic of gambling undergirds capital investment. Like the horse track or casinos, betting on
a commercial enterprise through stock acquisition is principally about making a profit and cares little, or at least, has little incentive to care for the welfare of the others affiliated with the enterprise.

**Coöperative enterprises**

As opposed to a gambling logic, coöperation operates more on a sustainability and welfare logic. Its principal goal is the long-term welfare of its members. This changes the equation, even if the fundamentals of corporate finance are not that different.

The members of a coöperative (whether they are consumers, workers, producers, bank account- or insurance-holders) acquire a share in the enterprise either by purchasing that stake or by using or working for the enterprise. The members become, in effect, the shareholders, and they detain the equity in the firm. In other words, whatever the value of the enterprise is—again, meaning the assets and expected revenues, minus the debt obligations—that value is effectively held by the members of the coöperative.

As the mutual enterprise creates value (say, through profits or selling assets at a higher price), that additional value can either be funneled back into the business or distributed to its members. Nothing here, so far, is technically different than in the publicly traded corporation. The wealth of the coöperative, like the latter, is essentially distributed by means of salaries to the employees, contractual exchanges with customers and providers of goods and services, and distributions and enhanced membership stakes for the members. The flows are similar, though the categories may have different names. Whereas distributions may be called dividends for the publicly traded corporation, they may be called “patronage refunds” in consumer coöperatives or “profit distributions” in worker coöperatives.

A non-profit is not fundamentally different from a coöperative, except that the stakeholders do not receive distributions. The non-profit raises money predominantly through grants and charitable donations, and it distributes value through its operations and as salaries to its employees. It does not distribute any profit to its stakeholders, as a coöperative could if it were making a profit. Extra moneys raised by the non-profit over and above its operating expenses go into an endowment as a reserve for future years or are invested in building and equipment, or just placed in reserve for bad years. Again, the flows themselves are essentially comparable in the different types of enterprises—coöperatives and non-profit institutions.
All the Difference

However, there are two major differences between the publicly held corporation and the coöperative-type enterprises.

The first is that the coöperative enterprise (like the privately held corporation) has no liquid, transferrable equity and cannot raise capital on the public markets. This places constraints on its ability to grow. It means that the mutual enterprise can only expand by bringing in more members (who often have less disposable cash than capital investors) or by borrowing or issuing obligations. Naturally, this places financial constraints on the coöperative. It makes it all the more important to cultivate symbiotic relations with credit unions and coöperative banks—as, for instance, Mondragon has done with the Caja Laboral Popular.253

The second is that the decision-makers in a coöperative are themselves members of the ongoing enterprise and accountable to the other members, rather than to outside investors. And this latter distinction makes all the difference. It means that the decision-makers care about the sustainability of the enterprise and the welfare of the members, rather than its immediate or short-term value. It means that the members in management positions have the members themselves—whether workers or consumers or producers—as their foremost interest. The coöperatives exist to benefit their members.

This has dramatic implications. It should not come as a surprise, then, that at the member coöperatives of Mondragon, for instance, the disparity between the salary of the highest-paid directors and that of the lowest-paid workers cannot exceed 4.5 to 1.254 When the members are the decision-makers, the results are likely to be more equitable and just. Compare this to the average disparity in wages in enterprises in the United States today—what is often called the “wage ratio” between CEO pay and average worker pay. The average disparity stood at 303 to 1 in 2014.255 At McDonald’s, the wage ratio in 2018 was 3,101 to 1.256

Après moi, le déluge. Dardot and Laval refer to this as “the true ‘spirit of capitalism.’”257 They are entirely right. The fact is, capital investors have little reason to care about the welfare of the company’s employees while they are invested, and they have absolutely no reason to care about the company itself or its employees after they have sold their shareholdings. If anything, schadenfreude will make them secretly wish that the company’s value decreases; in fact, that expectation is often what leads to the sale of stock.
What this means, naturally, is that the capital investors do not have an ongoing interest (or incentive) to pay attention to the long-term welfare of workers or employees or really anyone else touched by the enterprise. The profit motive is the only direct interest that the shareholder has. This is a recipe for disaster. Especially given that the business model of the publicly traded corporation depends on continued capital investment by future shareholders, whereas the models of coöperatives and non-profits do not.

**Redesigning the corporate landscape for coöperation**

The puzzle, then, is how to redesign the corporate landscape in such a way as to retain all the advantages of the coöperative framework—the emphasis on sustainability and prioritizing the welfare of consumers, workers, producers, affiliates, etc.—while ensuring the ability to raise sufficient funds for economic growth. The fact is, a lot of wealth in the United States is invested in capital. The immediate question, then, is how that capital could be turned into funds to support economic growth in a coöperationist framework.

To be more precise, the total value of the equity markets in the United States, as of December 31, 2019, was $37.7 trillion, consists of the following:

- The New York Stock Exchange, which lists about 2,400 companies, has a total equity value (market capitalization) of about $21 trillion (in 2019)
- The NASDAQ (originally, the National Association of Securities Dealer Automated Quotation system), which lists about 3,800 companies, has a total equity value of about $11 trillion (in 2019)
- The OTC (over the counter, officially the OTCQX U.S. Market), which trades about 10,000 over-the-counter securities, including foreign companies and multinationals, and other quirky entities.

At the global level, the total value of all stocks around the world stood at about $90 trillion in 2019. This capital, invested in the stock markets, consists either of savings (retirement accounts, brokerage accounts, bank accounts that are invested by banks, etc.) or borrowed moneys on margin. Total margin debt (individual and institutional) in the United States stood at around $600 billion in 2019, equal to about 1.6% of the market capitalization of the stock markets, so a small fraction. The total market capitalization, then, represents, essentially, disposable savings as investments. The $37.7 trillion in the United States represent mostly moneys that individuals ultimately own—either directly through retirement accounts,
brokerage accounts, holdings of mutual funds, or indirectly through savings accounts that are then invested into the market (or loaned out) by banks, or doubly indirectly by corporations (ultimately owned by shareholders) that invest in the markets themselves.

Surprisingly, though, these numbers are not that big. First, on a per capita basis (with a U.S. total population of 329.6 million),²⁶¹ the market capitalization is about $114,381 per person (if only Americans, and not foreigners, held the capital). Second, in the aggregate, they are not that big either. To put them in perspective, it is worth emphasizing that:

- The U.S. national debt stood at about $25 trillion on May 8, 2020²⁶²
- The U.S. GDP stood at about $21 trillion on May 8, 2020²⁶³

Plus, the national debt is skyrocketing. It already exceeded $26 trillion by the end of June 2020, up more than $3 trillion in the first six months of 2020. As a result of the COVID-19 bailouts, the national debt now stands at 98% of the economy, and is projected to outsize the nation’s entire annual economy in 2021—a situation that the country has not experienced since World War II.²⁶⁴ According to the Congressional Budget Office, “Federal debt, as a share of the economy, is now on track to smash America’s World War II-era record by 2023.”²⁶⁵ On a per capita basis, again, that’s about $212,000 in debt per American taxpayer, or $80,000 per citizen.²⁶⁶

This almost wipes out the aggregate U.S. market capitalization.

So, in other words, all the talk about the importance of market capital is empty: it is pretty much borrowed money at the national level. And as an aside, the total value of market capitalization in the United States is likely to collapse after the 2020 elections when President Trump no longer has the same election incentive to keep the markets at artificial highs through massive indebtedness. Given that the markets have not in any way absorbed the economic recession that is and will continue in light of COVID-19 or the massive indebtedness of the United States, the present market bubble is sure to explode before the next inauguration. In any event, market capitalization in this country is now pretty much a figment of our imagination—and of the national debt.

Even so, if the corporate landscape were reconfigured to favor coöperation, a significant portion of the money that is now market capitalization would be reinvested into coöperative and mutual enterprises as membership equity.

Electronic copy available at: https://ssrn.com/abstract=3702010
So, first, *capital investors would use their savings to invest in themselves and their ongoing enterprises*. Workers and employees would put portions of their savings into the enterprises to form coöperatives. Producers, consumers, retailers as well would invest in coöperation. Much of the existing capital would be placed in our own ongoing businesses.

Second, capital investors could lend their moneys to coöperative enterprises. In other words, another big portion of the existing capital markets would be *reinvested in the debt obligations of coöperatives*. This could be incentivized by the government assuring a certain level of return on the debt obligations of coöperatives and by securing those loans, which would make it even more attractive for those with capital to place their savings in coöperative enterprises.

Third, and most importantly, there would be a gradual redistribution and evening of wealth over the longer-term that effectively would displace the kind of hoarding of wealth that produces so much of the market capitalization. In effect, a more equalized distribution of wealth would mean that a portion of the capital would be used instead as consumption: employees and workers would have more money to spend on their homes and vehicles and household goods and other goods and services. The invested capital, in part, would be funneled back into the economy as consumption and circulation.

The redesign and creation of a coöperationist economy will reduce the amount of wealth that is extracted as capital and returned into investment speculation. Any profits that the coöperative enterprise makes (after paying taxes on any profit and reinvesting a certain amount of the profits in the enterprise) will be distributed to the members. The return on members’ equity may be lower than one would expect from extractive capitalism, primarily because salaries may be higher for most workers and more equitable. But as more equitable wealth begins to permeate the economy, it will be transformed into consumption and economic growth.

**Fending Off the Skeptics**

Could an economy based entirely on coöperation really exist? How would it compete against or within a global capitalist system? How would coöperative enterprises raise sufficient cash to grow? Could coöperatives become huge multinationals, like Boeing or IBM, or now Amazon, Apple, or Google? We know that economies of scale return profits to enterprises. How could domestic coöperatives compete with foreign giant multinationals?
Part of the puzzlement in this regard is a shared belief today—at least, shared by many if not most today in the United States—that capitalism won in 1989 and vanquished collectivism when the Berlin Wall fell. In other words, there is a shared imaginary that the United States and the U.S.S.R. were two competing models—capitalism versus communism, or some form of collectivism—and that the U.S. model prevailed. And it is certainly true that Russia, in the post-Soviet era, has itself turned to tournament dirigisme, and that China as well is there or headed there—and that collectivism everywhere else across the world has pretty much lost steam, whether in Vietnam or Venezuela. Most Americans share the believe that recent history reflects the triumph of capitalism.

As I argued earlier, though, this Cold War mentality is entirely misplaced, and both terms capitalism and communism are misleading. If anything, one style of dirigisme beat another, but that tells us nothing about the potential for genuine coöperation.

Coöperationism is not communism—in fact, it is just as opposed to the illusion of communism as it is to the illusion of capitalism. Both of those other political economic systems are types of state dirigisme that benefit elites—the wealthy or the party members, or both at the same time. By contrast, coöperationism, as described here, centers the consumers and workers and members of all the mutual enterprises. Coöperation turns the economy over to those of us who create, invent, produce, make, work, labor, and serve others. It privileges the welfare of us all—employees, workers, consumers, producers, credit union account-holders, and mutual insurance-holders—and the sustainability of our enterprises, and of our environment.

So, we need to set aside the ideological debates about capitalism versus communism and understand that we have never honestly tried coöperation.

_The Higher Return on Capital_

Even so, even if we set aside the Cold War debates, some might argue that the return on capital invested in the stock market has always exceeded the return on obligations—and would likely exceed the return on coöperative membership. As a result, capital wealth would just flee the coöperationist jurisdictions and find other countries in which to invest. There would be a flight of capital and no way to funnel that capital into coöperative enterprises. The economy, in effect, would collapse.
It is of course true that capital investment has historically outperformed investment in Treasury, state, municipal, or corporate bonds. We tend to explain that based on the risk-reward equation: the return on U.S. Treasuries, for instance, has historically been much lower than the return on stocks because there is practically no or little or less risk. The spread between the (long-term) return on Treasury bonds and stock markets supposedly reflects this natural risk-reward equation. To be sure, right now, in September 2020, it is a particularly strange time to compare Treasuries and the stock market because the United States is devouring debt, which is pushing government fixed-income returns to nothing—in fact, even negative returns for a split moment—and inflating the S&P 500. But the historical data is consistent. For $100 invested at the start of 1928, you would have had in 2019:

- $502,417.21 if you had placed it in S&P 500;
- $48,668.87 if you had placed it in BAA Corporate Bonds;
- $8,012.89 if you had placed it in US Treasury bonds; and only
- $2,079.94 if you had placed it in 3-month Treasury bills.267

There is, of course, greater risk if one speculates on individual stocks and does not maintain a diversified portfolio. But if you kept the money in a market index and did not speculate further—if, for instance, you just had an S&P 500 Index over the long-term—here is what the returns for the four asset classes would have been over the past two decades:268

<table>
<thead>
<tr>
<th>Year</th>
<th>S&amp;P 500 (includes dividends)</th>
<th>3-month Treasury Bill</th>
<th>U.S. Treasury Bond</th>
<th>BAA Corporate Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>20.89%</td>
<td>4.64%</td>
<td>-8.25%</td>
<td>0.84%</td>
</tr>
<tr>
<td>2000</td>
<td>-9.03%</td>
<td>5.82%</td>
<td>16.66%</td>
<td>9.33%</td>
</tr>
<tr>
<td>2001</td>
<td>-11.85%</td>
<td>3.39%</td>
<td>5.57%</td>
<td>7.82%</td>
</tr>
<tr>
<td>2002</td>
<td>-21.97%</td>
<td>1.60%</td>
<td>15.12%</td>
<td>12.18%</td>
</tr>
<tr>
<td>2003</td>
<td>28.36%</td>
<td>1.01%</td>
<td>0.38%</td>
<td>13.53%</td>
</tr>
<tr>
<td>2004</td>
<td>10.74%</td>
<td>1.37%</td>
<td>4.49%</td>
<td>9.89%</td>
</tr>
<tr>
<td>2005</td>
<td>4.83%</td>
<td>3.15%</td>
<td>2.87%</td>
<td>4.92%</td>
</tr>
<tr>
<td>2006</td>
<td>15.61%</td>
<td>4.73%</td>
<td>1.96%</td>
<td>7.05%</td>
</tr>
<tr>
<td>2007</td>
<td>5.48%</td>
<td>4.35%</td>
<td>10.21%</td>
<td>3.15%</td>
</tr>
<tr>
<td>Year</td>
<td>S&amp;P 500</td>
<td>T-bonds</td>
<td>T-bills</td>
<td>Long-term Average</td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>-------------------</td>
</tr>
<tr>
<td>2008</td>
<td>-36.55%</td>
<td>1.37%</td>
<td>20.10%</td>
<td>-5.07%</td>
</tr>
<tr>
<td>2009</td>
<td>25.94%</td>
<td>0.15%</td>
<td>-11.12%</td>
<td>23.33%</td>
</tr>
<tr>
<td>2010</td>
<td>14.82%</td>
<td>0.14%</td>
<td>8.46%</td>
<td>8.35%</td>
</tr>
<tr>
<td>2011</td>
<td>2.10%</td>
<td>0.05%</td>
<td>16.04%</td>
<td>12.58%</td>
</tr>
<tr>
<td>2012</td>
<td>15.89%</td>
<td>0.09%</td>
<td>2.97%</td>
<td>10.12%</td>
</tr>
<tr>
<td>2013</td>
<td>32.15%</td>
<td>0.06%</td>
<td>-9.10%</td>
<td>-1.06%</td>
</tr>
<tr>
<td>2014</td>
<td>13.52%</td>
<td>0.03%</td>
<td>10.75%</td>
<td>10.38%</td>
</tr>
<tr>
<td>2015</td>
<td>1.38%</td>
<td>0.05%</td>
<td>1.28%</td>
<td>-0.70%</td>
</tr>
<tr>
<td>2016</td>
<td>11.77%</td>
<td>0.32%</td>
<td>0.69%</td>
<td>10.37%</td>
</tr>
<tr>
<td>2017</td>
<td>21.61%</td>
<td>0.93%</td>
<td>2.80%</td>
<td>9.72%</td>
</tr>
<tr>
<td>2018</td>
<td>-4.23%</td>
<td>1.94%</td>
<td>-0.02%</td>
<td>-2.76%</td>
</tr>
<tr>
<td>2019</td>
<td>31.22%</td>
<td>1.55%</td>
<td>9.64%</td>
<td>15.33%</td>
</tr>
</tbody>
</table>

The fact is, historically, over the period 1928-2018, the average returns have been sharply different: “On an annual basis over this period, the return on the S&P 500 averaged 9.5% per year, T-bonds 4.8% and T-bills 3.4%.” From a financial perspective, the compounded difference in interest of about 5% over 90 years results in a huge difference in wealth. In the short term, people may prefer to avoid the risk, but over the long term, the differential is staggering.

Though hard to believe, this is actually right—mathematically. If you use for instance the compound interest calculator on the website of the U.S. government, and you compare 4.8 and 9.5% compounded annually, you get a striking difference:
Now, part of this differential is reduced as a result of existing tax rates. Most of us are familiar with the basic tax rules:

1. Dividends from stock holdings (which are paid with after-tax corporate dollars), are taxable at the federal, state, and local level, but at a lower rate equal to a maximum rate of 20% at the federal level for qualified dividends;
2. Returns on capital (capital gains) will depend on whether they are short or long term;
3. Long-term capital gains are taxed at a lower rate (20% federal maximum about, depending on tax bracket);
4. Interest income is fully taxable at ordinary income tax rates, which can easily reach almost 50% in high tax brackets when federal, state, and municipal taxes are included;
5. Interest on U.S. Treasuries will be taxed at the federal income tax rate, but exempt from state and local taxes;
6. Interest on municipal bonds is triple-tax free.

So, in effect, and these are back of the envelope calculations, it is fair to say that the difference in the net return on the different investment portfolios would be less sharp than in the above scenario. In simple terms, we might expect the following:

1. On a Treasury bond annual return of 4.8%, there should be about a 35% tax rate for the highest federal tax bracket, and no other state and local taxes, so that return would reduce to about 3.12%.
2. On the equity return of 9.5%, there should be about 20% federal tax rate at the highest tax bracket, plus another 8.82% for, say, New York State, plus NYC taxes of about 3.8%, for a total of about 32.62% tax rate, which would lower the net return to about 6.4%.

That means, in effect, a slightly smaller net disparity. Before, the differential was 4.7%. With the tax load, it would be 3.28%. There is still a difference if you compound annually. Actually, this is how 3.12% versus 6.4% compounded annually looks like, this time, to make it simple, over 100 years:

The differential has shrunk considerably but remains important. And of course, tax shelters and tax planning could help increase the net differential.

This is precisely what makes the proponents of capital investment so sure of themselves and of their argument that everyone should prefer investing in the stock markets—or even, that the federal government should replace Social Security with individual stock market accounts. This is the strongest argument against coöperatives and for capital investment: the long-term returns over the twentieth century demonstrate that capital investment is the best thing to do with your savings. In all likelihood, returns on mutual and coöperative equity will look more like returns on bond obligations; therefore, coöperation is a non-starter.

The Response

The problem is that these differentials are purely and entirely man-made. They are created, principally, by the tax code: by the favorable treatment of capital
in general, or more specifically about all the legal and tax rules regarding the inclusion of generous business expenses, the amortization of certain real estate, the favorable treatment of capital gains, etc. All of the rules favor capital.

And as a result, the return on capital is greater than economic growth—that, precisely, is the extraction of capital, the extraction of value from the corporate enterprise that can be achieved by means of the code of capital. So, if you compare the GDP growth rates for the United States to the growth of the S&P 500 (including dividends), what you see is precisely the amount of extraction that is made possible by our tax and corporate laws.\(^{271}\)

<table>
<thead>
<tr>
<th>Date</th>
<th>GDP Growth (%)</th>
<th>Annual Change</th>
<th>S&amp;P 500 Growth</th>
<th>S&amp;P 500 Growth less GDP Growth (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/99</td>
<td>4.7532</td>
<td>0.27</td>
<td>20.89%</td>
<td>16.14</td>
</tr>
<tr>
<td>12/31/00</td>
<td>4.1275</td>
<td>-0.63</td>
<td>-9.03%</td>
<td>-13.16</td>
</tr>
<tr>
<td>12/31/01</td>
<td>0.9983</td>
<td>-3.13</td>
<td>-11.85%</td>
<td>-12.85</td>
</tr>
<tr>
<td>12/31/02</td>
<td>1.7417</td>
<td>0.74</td>
<td>-21.97%</td>
<td>-23.71</td>
</tr>
<tr>
<td>12/31/03</td>
<td>2.8612</td>
<td>1.12</td>
<td>28.36%</td>
<td>25.50</td>
</tr>
<tr>
<td>12/31/04</td>
<td>3.7989</td>
<td>0.94</td>
<td>10.74%</td>
<td>6.94</td>
</tr>
<tr>
<td>12/31/05</td>
<td>3.5132</td>
<td>-0.29</td>
<td>4.83%</td>
<td>1.32</td>
</tr>
<tr>
<td>12/31/06</td>
<td>2.855</td>
<td>-0.66</td>
<td>15.61%</td>
<td>12.76</td>
</tr>
<tr>
<td>12/31/07</td>
<td>1.8762</td>
<td>-0.98</td>
<td>5.48%</td>
<td>3.60</td>
</tr>
<tr>
<td>12/31/08</td>
<td>-0.1366</td>
<td>-2.01</td>
<td>-36.55%</td>
<td>-36.41</td>
</tr>
<tr>
<td>12/31/09</td>
<td>-2.5368</td>
<td>-2.4</td>
<td>25.94%</td>
<td>28.48</td>
</tr>
<tr>
<td>12/31/10</td>
<td>2.5638</td>
<td>5.1</td>
<td>14.82%</td>
<td>12.26</td>
</tr>
<tr>
<td>12/31/11</td>
<td>1.5508</td>
<td>-1.01</td>
<td>2.10%</td>
<td>0.55</td>
</tr>
<tr>
<td>12/31/12</td>
<td>2.2495</td>
<td>0.7</td>
<td>15.89%</td>
<td>13.64</td>
</tr>
<tr>
<td>12/31/13</td>
<td>1.8421</td>
<td>-0.41</td>
<td>32.15%</td>
<td>30.31</td>
</tr>
<tr>
<td>12/31/14</td>
<td>2.452</td>
<td>0.61</td>
<td>13.52%</td>
<td>11.07</td>
</tr>
<tr>
<td>12/31/15</td>
<td>2.8809</td>
<td>0.43</td>
<td>1.38%</td>
<td>-1.50</td>
</tr>
<tr>
<td>12/31/16</td>
<td>1.5672</td>
<td>-1.31</td>
<td>11.77%</td>
<td>10.20</td>
</tr>
<tr>
<td>12/31/17</td>
<td>2.217</td>
<td>0.65</td>
<td>21.61%</td>
<td>19.39</td>
</tr>
<tr>
<td>12/31/18</td>
<td>3.1839</td>
<td>0.97</td>
<td>-4.23%</td>
<td>-7.41</td>
</tr>
<tr>
<td>12/31/19</td>
<td>2.3336</td>
<td>-0.85</td>
<td>31.22%</td>
<td>28.89</td>
</tr>
</tbody>
</table>
In real economic terms, all of that surplus of return on capital over basic economic growth—126% over twenty years—is the product of the legal and tax rules favoring capital. And that surplus is all man-made. It is not inherent to capital investment. In other words, the 9.5% rate of return is not natural. It is the pure by-product of a legal-political-economic regime that favors the capital investor. In a similar fashion, the 4.8% return on Treasury bonds is a man-made artifact, produced by the flow of capital to stock markets and by the U.S. government’s promise to repay. In great part, it is an artifact of the shared belief that the U.S. government is stable and will repay its loans. It is the product of the political promise of the federal government. In other words, it is a political product.

Add to that that most major public corporations finesse the tax rules in such a way as to actually glean tax revenues from the federal government. So, for instance, in 2015, American Airlines made profits of over $4.6 billion, but received a tax refund of almost $3 billion. From 2001 to 2014, Boeing made profits of $52.5 billion, yet received a net federal tax refund of $757 million and received as well $55 million in state tax refunds.272

There are then several man-made dimensions to the purportedly natural higher return on capital investments.

First, the Treasury can attract investors by means of security and safety, and as a result does not need to reward with rates of return equal to the riskier corporate equity. That, of course, is a factor of the United States’ geopolitical position and recent history of stability. It is a political artifact and would change dramatically if, for instance, large sovereign investors, like China, sold their Treasuries or decided to no longer buy any. It is entirely related to how much debt the country has—although even that seems somewhat disconnected lately—and its political track record of honoring its debt. The situation is clearly very different for a country like Venezuela.

Second, capital returns are artificially inflated by the general exploitation of labor: by not paying workers adequately, by perpetuating huge disparities with management compensation, by not distributing profits to the workers, and by relying on the federal government and states to support workers. So, for instance, because Walmart does not pay a living wage, many of its employees rely on
Medicaid for health insurance, food stamps to feed their families, and government subsidized housing for their shelter. As a result, American taxpayers support Walmart employees—and therefore underwrite Walmart itself—to the tune of about $6.2 billion each year. Meanwhile, Walmart made almost $15 billion in profits in 2015. For the fast-food industry, again because of unacceptably low wages, American taxpayers spend about $7 billion a year subsidizing companies like McDonald’s, Burger King, and Wendy’s.273

Third, the differential is inflated because the management of public companies extract and hoard the profits for capital investors. They distribute the profit entirely to themselves, paying out dividends and buying back stock, gearing everything toward profiting the shareholder and not the other persons affiliated with their commerce.

Fourth, and most importantly, the differential is the product, mostly, of state dirigisme that favors capital investors: bailouts in bad times; tax loopholes for capitalists; tax breaks for capital gains; etc. If these were eliminated, the rates of return on capital investments would decline because the profits would be distributed more evenly and there would not be the hoarding or state-sanctioned profiteering. So, the higher return on capital, again, is entirely man-made.

***

It is time to reverse those differentials so as to promote coöperation, equality, and social justice.

Those differentials are man-made. They can be reengineered.

The laws of incorporation, the tax code, the government bailouts—they can all be reconfigured to privilege mutuals and coöperatives so that the consumers, workers, producers in this country get the benefit of economic growth.

It is simply a question of will.

Coöperation can be made to be more profitable.

Human Greed

This is not to suggest that it would be easy to create that will.

No, on the contrary, it will be extremely difficult to get people to agree to eliminate the benefits of capital investment—and not just among capitalists, but among all Americans who imagine or fantasize themselves to be one day wealthy
capitalists. All those who buy into the American myth, including poor Americans on Medicaid and food stamps working for Walmart.

Human greed is, of course, the major impediment to coöperation. Greed is also the greatest threat to an ongoing coöperative enterprise.

And it is unlikely to go away any time soon.

Coöperation will not be easily achieved precisely because of the ideology of capital investment. It may take a generation. Or perhaps the failure of purportedly more radical change, like the supposed abolition of property.

But I believe it will come. I believe it is in our future. I believe it will, soon, displace our punitive extractive liberal democratic regimes of capital.
Chapter 5. The Long History of Coöperationism

Coöperationism is not a new idea. It has been around for generations—even in the United States. In fact, it has existed under different rubrics for centuries. It has never, however, triumphed. Now is its time.

Peter Kropotkin’s 1902 book, Mutual Aid: A Factor of Evolution

Many trace the lineage of coöperationism through Peter Kropotkin’s 1902 book, Mutual Aid: A Factor of Evolution. Kropotkin’s book was a scientific intervention, intended to prove that solidarity, rather than competition, was central to animal flourishing and evolution, including among humans. Although the notion of evolution suggests that Kropotkin was writing in response to Charles Darwin, he was actually responding more directly to the essay by Thomas Huxley, “The Struggle for Existence.” Nevertheless, Kropotkin was clearly making an evolutionary argument in the wake of Darwinian theory. As Jia Tolentino of the New Yorker explains:

Kropotkin identifies solidarity as an essential practice in the lives of swallows and marmots and primitive hunter-gatherers; coöperation, he argues, was what allowed people in medieval villages and nineteenth-century farming syndicates to survive. That inborn solidarity has been undermined, in his view, by the principle of private property and the work of state institutions. Even so, he maintains, mutual aid is “the necessary foundation of everyday life” in downtrodden communities, and “the best guarantee of a still loftier evolution of our race.”

Kropotkin, himself an anarchist, pushed his argument toward the abolition of private property and state institutions.

Many political theorists, though, trace coöperationism further back to the early nineteenth century and the social utopians like Henri de Saint-Simon, Robert Owen, Charles Fourier, and Louis Blanc, as well as to the British practitioner, William King. The histories of coöperatives and of the birth of the coöperatives movement always refers primarily to Owen and Fourier. In Europe, a key historical moment for the coöperatives movement was the establishment of the Rochdale
Society of Equitable Pioneers in 1844, which is often considered to be the archetype and exemplar for modern coöperative associations.\textsuperscript{277}

In the United States, the histories of coöperatives most often pay homage to Benjamin Franklin. Franklin founded a mutual fire insurance company in 1752, the Philadelphia Contributionship for the Insurance of Houses from Loss by Fire, which is considered by many as the first recognized coöperative business in the United States and the oldest property insurance company in the country.\textsuperscript{278} It continues to operate today under the name “The Philadelphia Contributionship.”\textsuperscript{279} Other key historical moments for the emergence of coöperatives in the United States include the organization in 1810 of the first recorded dairy and cheese coöperatives, which were then followed by coöperatives for other agricultural commodities\textsuperscript{280}; the establishment of “The Cooperative League of the United States of America” (CLUDSA) in 1916, which was intended to promote a broad coöperative agenda\textsuperscript{281}; the passage of a first credit union statute in the state of Massachusetts in 1909\textsuperscript{282}; and the passage in 1922 of the Capper-Volstead Act, in response to the Sherman Antitrust Act, allowing farmers to work together coöperatively, under certain circumstances, to process and market commodities.\textsuperscript{283}

Here, for instance, is a good illustration of a history of the coöperatives movement from Lynn Pitman of the University of Wisconsin Center for Cooperatives—a premier academic research center dedicated to the promotion of coöperatives.\textsuperscript{284}

The development of U.S. cooperative organizations is rooted in the upheavals that characterized the Industrial Revolution in England during 1750-1850. During this period many small, home-based enterprises disappeared, forcing workers to move to cities where they faced harsh working conditions and low wages. In rural areas, the enclosure movement and changes in land tenure patterns drove many small farmers off their lands into towns and cities looking for work.

Building on trade and social guild traditions, mutual aid and “friendly society” organizations sprang up to address the conditions of the times, and contributed to the development of the cooperative business ideas. Robert Owen (1771-1858) and Charles Fourier (1772-1837), searching for paths to a more harmonious, utopian society, articulated arguments that provided a broader rationale for cooperative organizations.
The more pragmatic William King (1786-1865) advocated the development of consumer cooperatives to address working class issues. His self-published magazine, “The Cooperator,” provided information on cooperative practice as well as theory. King emphasized small cooperatives that could be started with capital supplied by members. He stressed the use of democratic principles of governance, and the education of the public about cooperatives.

The wave of consumer cooperatives that followed were part of a broader vision in which social needs could be met through cooperative action. The Rochdale Society of Equitable Pioneers, considered the prototype for the modern cooperative association, was organized in 1844.

A Recent Revival of Interest

Coöperationism is a topic of continued, if not increasing interest. Mutual aid especially has become a hot topic and focus of attention during the COVID-19 pandemic and the economic crisis that has ensued.

Jia Tolentino of the New Yorker recently chronicled the different mutual aid projects that have arisen organically throughout the United States in response to the pandemic. Tolentino details, in inspiring ways, local mutual aid efforts, some of which have grown nationwide—offering, for instance, free home delivery of groceries by mutual aid volunteers to the elderly and infirm who are stuck at home and at greatest risk of contagion. One of the associations, “Invisible Hands”—note the ironic reference to Adam Smith!—was set in motion by a college junior, Liam Elkind, and attracted over 1,200 volunteers in its first 96 hours in early March. It spawned chapters around the country, delivering groceries to those in need. By mid-April, Invisible Hands had over 12,000 volunteers and had served about 4,000 requests for aid.

Others who are deeply involved in the mutual aid movement during this pandemic include the abolitionist Mariame Kaba, who is a devoted advocate of mutual aid and perhaps most closely associated with the method; Representative Alexandria Ocasio-Cortez, who has worked with Kaba to promote mutual aid during the pandemic; and Dean Spade as well, who is both a lawyer and critical theorist, who recently wrote a piece in Social Text about all this called “Solidarity, Not Charity.”
Looking around the world today, the anthropologist David Graeber—who sadly passed away suddenly in September 2020—argues that mutual aid is more relevant today than ever. Graeber identifies ongoing mutual aid projects in the Democratic Federation of Northeast Syria (Rojava), the Occupy movements, the migrant solidarity mobilizations in Greece, the Zapatista in Chiapas, and most recently, the various solidarity aid projects addressing the Covid-19 pandemic, just discussed. For this reason, Graeber penned, along with his co-author Andrej Grubačić, a new introduction to Kropotkin’s book for a forthcoming edition. Few young activists have read Kropotkin—which is in part why Graeber co-authored the new preface—but their actions reflect the very core of mutual aid. As Graeber wrote, “this book is being released in the belief that there is a new, radicalized generation, many of whom have never been exposed to these ideas directly, but who show all signs of being able to make a more clear-minded assessment of the global situation than their parents and grandparents, if only because they know that if they don’t, the world in store for them will soon become an absolute hellscape.” These are some of the last words that Graeber left us:

We write this introduction during a wave of global popular revolt against racism and state violence, as public authorities spew venom against “anarchists” in much the way they did in Kropotkin’s time. It seems a peculiarly fitting moment to raise a glass to that old “despiser of law and private property” who changed the face of science in ways that continue to affect us today. Pyotr Kropotkin’s scholarship was careful and colorful, insightful and revolutionary. It has also aged unusually well. Kropotkin’s rejection of both capitalism and bureaucratic socialism, his predictions of where the latter might lead, have been vindicated time and time again. Looking back at most of the arguments that raged in his day, there’s really no question about who was actually right.

Clearing Some Ground | Owen, Fourier, Proudhon

It is crucial, though, to reset the dial on coöperation and not get caught in the quagmire of earlier historical debates or different historical contexts. These are very different times today than the early nineteenth century, and in the United States, for the moment at least, we are past the period when wealthy industrialists, like Robert Owen, or fanciful utopians, like Charles Fourier, marshalled philanthropic ideals to relieve the misery of 5-year-old orphans working in
factories. A lot of that ground needs to be cleared, especially today when the reality and practice of mutuals and coöperative enterprises—from credit unions to mutual insurance to worker coöperatives—have now been proven to be effective, perhaps even more resilient than traditional corporations, and have such a solid track record.

Robert Owen (1771–1858), for instance, prefigured a more just society and had enlightened views for his time about educating and training the poor and workers, in order to shape their character and eliminate misery, crime, and punishment from society; but his writings are off-putting in important ways. This is not to minimize his achievements. Owen experimented with enlightened factory workshops and towns (New Lanark in Scotland and New Harmony in Indiana) that provided housing, education, and welfare for the workers. He strongly believed in government providing education and training for the poor. Owen is often called a “utopian socialist,” though in reality he was more of a social reformer of a social democrat or socialist style, who believed strongly in government welfare programs. He is considered by many the father of the coöperative movement, but he did not experiment so much with coöperatives, as he did with top-down social welfare clusters, at his factory in New Lanark and his factory town in New Harmony. Owen militated throughout his life for an 8-hour workday. He formed the Association of all Classes of all Nations in 1835, which helped coin the term “socialism” and made it current in British terminology. And, first in an essay published in 1813, then with three additional essays revised and fully published in 1816–1817, Owen set out his vision of a new society. He also proposed, in 1818, an outline of an ideal society in a report to House of Commons on the Poor Laws. 295

Owen righteously decried the condition of misery that plagued three-fourths of the British population. He proclaimed essential truths about human conduct—namely, that we can shape the character of humans through education and training and formation, and that this will benefit everyone in society and relieve the generalized conditions of misery—with the goal of enlightening political leaders and the public, and with the underlying assumption that knowledge will produce action. Owen explained patiently that the education and training and formation of children will lead those who are excluded away from lives of crime and vice, toward more productive lives of labor; and that this will benefit not only the excluded by relieving their poverty, but will also benefit the privileged because they will be better able to enjoy their advantages. His social aim was to bring about a society without misery, without vice, and without punishment—in his words, “man may by
degrees be trained to live in any part of the world without poverty, without crime, and without punishment.”

Owen also put his theory into practice—he is almost a perfect illustration of *critique and praxis*: throughout, Owen emphasizes that what he was proposing not only worked in theory but was also demonstrated in practice. He constantly referred to putting his “principles into practice.” And he did, eventually losing all his wealth as he tried to construct more just micro-societies.

But it is important to remember that he employed about 500 orphan children aged 5 and 6 in the factory that he took over in 1784 in Glasgow—he referred to them as “about five hundred children, who were procured chiefly from workhouses and charities in Edinburgh.” Owen was writing as an industrialist and capitalist, as someone who was interested in deriving profit from these reforms. He was managing mills and trying to sustain himself on the profits from his private enterprises. Owen makes this clear in an address to other industrialists at the beginning of the third essay of *A New View of Society*:

> Like you, I am a manufacturer for pecuniary profit. But having for many years acted on principles the reverse in many respects of those in which you have been instructed, and having found my procedure beneficial to others and to myself, even in a pecuniary point of view, I am anxious to explain such valuable principles, that you and those under influence may equally partake of their advantages.

The profit motive is pervasive. The programs that Owen advanced, he writes in essay three, “will yet appear, upon a full minute investigation by minds equal to the comprehension of such a system, to combine a greater degree of substantial comfort to the individuals employed in the manufactory, and of pecuniary profit to the proprietors, than has hitherto been found attainable.” Owen appeals to the proprietors’ keen sense of investment in machines—in equipment and mechanisms—and then draws the parallel to “vital machines” or workers. He refers to “living machinery,” that is, people, anticipating Gary Becker’s theory of human capital. Tending to that living machinery, Owen argued, “will essentially add to your gains.”

None of this is to detract from the vision and justice of Robert Owen. He was years ahead of his time in advocating for a social welfare state, for a “national” plan for education and formation of character, for “the happiness of the community.”
“The end of government is to make the governed and the governors happy,” he declared. “That government then is the best, which in practice produces the greatest happiness to the greatest number; including those who govern, and those who obey.” He was years ahead of his time in creating socially reformed workplaces. Nevertheless, he lived as an industrialist during a very different time and there is little point returning to his rhetoric or set of arguments. Coöperationism has advanced too much since his *New View of Society*.

The same is true of Charles Fourier (1772-1837), whose quixotic work, *The Theory of the Four Movements* (1808), laid the foundation for a new political economy of desire and labor, based on his extraordinarily imaginative *phalanstères*—those self-sufficient autonomous utopian microcosms of 1,200 people designed for the benefit of workers and their families. Fourier was a brilliant and radical thinker, one of the founders of utopian socialism, a feminist—in fact, he allegedly is the one who used the term feminist first in 1837—and very forward looking on issues of sexuality. His writings on the libidinal motivations for labor inspired generations of thinkers at the intersection of coöperation and liberation, from Kropotkin to Herbert Marcuse, André Breton, Roland Barthes, and Hakim Bey.

But here too, although he put coöperation at the center of his enterprise, Fourier was wedded to the idea of profit and the desire for luxury, which he placed at the emotional center of his project. The phalanxes would triumph, Fourier argued, because of human greed and the desire for luxury. He wrote:

> The strongest passion of peasants, as of city-dwellers, is a love of profit. When they see an associative community yielding a profit (other things being equal) three times as large as that produced by a community of isolated families, as well as providing all its members with the most varied pleasures, they will forget all their rivalries and hasten to put association into practice. And no laws or coercion will be necessary for this to spread to every part of the world, because people everywhere are motivated by a desire for wealth and pleasure.

Fourier had in mind a new family organization, but one that included domestic servants. Not only that, he had other failings. Fourier was anti-Semitic. He believed that Jews, whom he associated with trade, were the source of evil and had to be forced to do farm work. In fact, he advocated the return of Jews to Palestine.
Again, there is no need to return to these debates and precursors of coöperation. We are much further along.

Pierre-Joseph Proudhon (1809-1865) as well, was deeply problematic in this regard. Although he articulated and in part gave birth to mutualist philosophy, although he coined the term “anarchist” and advocated the radical transformation and abolition of property, Proudhon himself was anti-Semitic and sexist. His confrontation with Marx, it turns out, was not purely intellectual. It was not just about ideas. There was a deeply anti-Semitic dimension to it. This is what Proudhon wrote about Jews (including Marx by name) in his private diaries in 1847, which were only published in the 1960s:

December 26, 1847: Jews. Write an article against this race that poisons everything by sticking its nose into everything without ever mixing with any other people. Demand its expulsion from France with the exception of those individuals married to French women. Abolish synagogues and not admit them to any employment. Demand its expulsion. Finally, pursue the abolition of this religion. It’s not without cause that the Christians called them deicides. The Jew is the enemy of humankind. They must be sent back to Asia or be exterminated. H. Heine, A. Weill, and others are nothing but secret spies; Rothschild, Crémieux, Marx, Fould, wicked, bilious, envious, bitter, etc. etc. beings who hate us. The Jew must disappear by steel or by fusion or by expulsion. Tolerate the elderly who no longer have children. Work to be done – What the peoples of the Middle Ages hated instinctively I hate upon reflection and irrevocably. The hatred of the Jew like the hatred of the English should be our first article of political faith. Moreover, the abolition of Judaism will come with the abolition of other religions. Begin by not allocating funds to the clergy and leaving this to religious offerings. – And then, a short while later, abolish the religion.\(^{308}\)

Proudhon was also sexist and wrote in his journals that women should either be courtesans or housekeepers. In addition, he added, women should be the dominion of their masters, men.\(^{309}\)

There is in fact a long and difficult history between socialism (even utopian socialism) and anti-Semitism, tracing back to Fourier and Proudhon and others. This is a rich topic. But there is no need to return there. To be sure, the internal debates between Proudhon and Marx on property,\(^{310}\) or between Proudhon and Blanc on
the organization of worker workshops, are theoretically rich and informative. But again, we have learned so much since then, and coöperation has evolved so much since the nineteenth century, so there is little point returning to those ideological debates.

Reimagining Coöperation

Instead of going back to those debates and early writings, it is better to use them as a way to distinguish and reimagine a new coöperationism for our time.

Mutual Aid

A good illustration is Kropotkin’s notion of mutual aid and its modern forms. It is helpful to use these as a foil—as a way to sharpen the present argument for coöperation by differentiating it from some dimensions of mutual aid.

The theory of mutual aid can sometimes elide the structural failures that are the root cause of the problems that give rise to the very need for mutual aid. At other times, the concept of mutual aid comes too close to charitable work. It is problematic, for instance, that some proponents glorify mutual aid, arguing that it works better than state or top-down measures, and as a result (1) ignore the fact that the problems are the product of indifference and structural racism, poverty, classism, and gender discrimination, and (2) suggest that we would all be better off with no state interventions. Dean Spade gets to this in his essay, “Solidarity, Not Charity,” when he argues that most of the media stories about recent mutual aid efforts elide the structural causes of the problems; and when he argues that they feed into the rhetoric of small government.

Another concern with mutual aid is that it only really addresses one small or tiny segment of coöperation, the sector that relates to charitable works, non-profit service, or what might be called public service—altruistic projects aimed at relieving the immediate effects of poverty and hunger and sickness. This raises several problems.

First, it has an anarchist bent that may be detrimental to coöperation: the impetus and force of coöperatives and mutuals may well be that the individual workers and members drive the enterprise, and in this sense, many of these initiatives are bottom-up or grass-roots; but that does not signify in any way that there is no need for an organizational mechanism or regulatory framework to administer and ensure the smooth functioning of these initiatives. Coöperationism is not anarchism. It may devalue the dirigiste elements of the state (by, among
other things, placing ultimate decision-making in the hands of elected members of coöperatives), but it does not do away with the state necessarily.

Second, it takes a part for the whole: mutual aid is just one type of coöperationist enterprise, and it fits alongside housing and worker coöperatives, credit unions, mutuals, etc. Each one of these types of enterprise will have their own unique features. Mutual aid may appear to require less state intervention than worker coöperatives, but that is only because state regulation is often so hidden. It is pervasive in the mutual aid context: the state licenses food services and has OSHA regulations for the groceries where Invisible Hands’ Elkind shopped (Fairway Markets), as well as all kinds of worker and other regulations, FDA etc. And these differ from the kinds of regulations that would be necessary for banking through credit unions. Each one of these will need their own conceptualization, and we could never say that “mutual aid” governs those other areas—that makes far too many assumptions and simplifications about coöperationism.

Third, mutual aid does not really address root causes, despite its oft-repeated claims: these mutual aid projects are more temporary remedies, than solutions to the problems. They are valiant forms of self-help, but they depend on some of us having enough money to volunteer and shop for others, for instance in the Invisible Hands initiative. They build solidarity and reorient our moral compass—all good—but do not resolve the structural problems that give rise to capitalist exploitation. When Tolentino writes in the *New Yorker* that “Both mutual aid and charity address the effects of inequality, but mutual aid is aimed at root causes—at the structures that created inequality in the first place,”313 I have to disagree. Other forms of coöperation will get at the root causes, but not the mutual aid projects. Tolentino links in the article to the Big Door Brigade.314 The Big Door Brigade is a project that Dean Spade has been involved with.315 On its website, built by and maintained by him, Dean Spade explains:

Mutual aid is when people get together to meet each other’s basic survival needs with a shared understanding that the systems we live under are not going to meet our needs and we can do it together RIGHT NOW! Mutual aid projects are a form of political participation in which people take responsibility for caring for one another and changing political conditions, not just through symbolic acts or putting pressure on their representatives in government, but by actually building new social relations that are more survivable. Most mutual aid projects are volunteer-based, with people jumping
in to participate because they want to change what is going on right now, not wait to convince corporations or politicians to do the right thing.\textsuperscript{316}

To be sure, mutual aid embraces a notion of people building new social relations and taking matters in their own hands and taking responsibility; but that is not the equivalent, I would argue, to addressing the structural problems of capitalist exploitation (unless, backing up to the first point, you are an anarchist). So again, more needs to be added to really address the root problems.

This is not to impugn mutual aid in any way. There is a long and admirable history to mutual aid that goes back to the Black Panther Party’s free-breakfast program in the United States in the 1960s and well before; and that extends to ongoing initiatives like the groups that leave water in the desert for immigrants crossing the border (the No More Deaths collective).\textsuperscript{317} There is a strong parallel between mutual aid and Occupy Wall Street: the idea of prefiguring another form of democracy. Kaba talks about the practice of mutual aid as “prefiguring the world in which we want to live.”\textsuperscript{318} That was, as you will recall, a constant refrain of Occupy and of Judith Butler’s work on assembly.\textsuperscript{319}

But mutual aid is only one small dimension of a society built on coöperation, one dimension which has its own peculiarities. It should not be built up to represent the whole. For one thing, it simply does not constitute a viable economic system for production and growth. Contemporary coöperationist enterprises do.

\textit{The American Coöperative Movement}

In a similar vein, it is important to distinguish reimagined coöperation from the trajectory of the coöperatives movement in the United States, which gradually became reformist—especially during the Cold War, when it veered conservative.

The movement has a long and august history that traces to the early twentieth century. The Cooperative League of the United States of America was founded in 1916 with the righteous ambition of creating a “Coöperative Commonwealth.”\textsuperscript{320} The league was principally about \textit{consumer} coöperatives. It quickly won the support of the likes of John Dewey and Walter Lippmann.\textsuperscript{321}

The Cooperative League was inspired at first, at least in part, by the writings of Kropotkin. Its founder, James Peter Warbasse, was a doctor who argued, in his own words, that “The forces which promote co-operation are the natural human instincts, the inherent animal tendency toward mutual aid, which has existed as a biological necessity since animals began, and without which the race would
One can hear Kropotkin in these words, and in fact Warbasse cited to Kropotkin’s work in his manifesto, *Co-operative Democracy* (New York: MacMillan Co., 1923). There were, of course, other influences—and his writings reflect an eclectic theoretical mix:

His theory of consumers cooperation ... was drawn primarily from two French theorists, Charles Gide and Ernest Poisson. He borrowed both from Marxian socialism and Kropotkin’s mutual associationalism. Good nineteenth century secular and religious humanitarianism obviously infused his whole approach to life. He may not have been a careful student of either William James or John Dewey, but pragmatism came naturally to influence his beliefs. For all this eclecticism his system was surprisingly logical, coherent, and persuasive.

There are many strengths to build on here. For instance, there were times when the Cooperative League presciently prefigured the ideals of a reimagined coöperationism. At an early stage, Warbasse imagined “co-operative democracy” as a third way, an alternative to both capitalism and socialism. Warbasse positioned himself politically as opposed both to capitalism and socialism:

Capitalism was doomed; but its declared alternative, the socialist state, was equally to be feared. Co-operation offered the only valid way to win a new world. The need was for the application of “constructive social engineering” to usher in, by evolutionary steps, a cooperative society. Both capitalism and socialism tended toward statism. [...] The paternal state, welfare capitalist or socialist, corroded the self-reliance of the people, destroyed their initiative, usurped their liberties. The paternal state led to insolence and arrogance on the one hand, and indifference and submission on the other.

Notice how coöperation is here situated against both capitalism and socialism as too statist, too dirigiste. I share in that assessment.

But here too, there were warning signs and prejudices to avoid. According to an early commentator by the name of Clarke Chambers, “Warbasse’s view of the human animal, like that of most of his associates, preferred Kropotkin’s Darwinism to Sumner’s. The instinct for mutual aid was fortified by other inherent tendencies or ingrained *racial habits*—‘natural good-heartedness, the inherent sense of
justice, the fairness, and the good-will of human beings.” The deeply troubling reference to “racial habits” reflects the fact that much of the coöperatives movement in the United States formed in homogenous ethnic areas, Finns and Swedes in the Mid-West for instance; and so here too we need to distance ourselves from these writings and their biases. The references to social evolution and racial habits are simply unacceptable.

Moreover, in the post-war period, the Cooperative League became more conservative, especially as the Cold War began. In 1946, a designated language committee “recommended that there be no more ‘indiscriminate’ criticism of capitalism, for that merely aroused hostility and misunderstanding. ‘Indiscriminate attacks on 'capitalism' may cause the speaker to be classified as a communist or fascist.’ A better tactic was to demonstrate that an unregulated profit drive led to monopoly. ‘Many who are alienated by an attack on 'capitalism' will heartily support opposition to monopoly.’ Avoid use of the old term ‘Cooperative Commonwealth,’ the committee urged, for it suggests that all enterprise should be taken over by cooperatives ‘which is neither true nor possible.’”

The Cooperative League also played into an imaginary of ownership. During and after the Great Depression, leaders of the Cooperative League argued that capitalism had failed and presented coöperatives as the best alternative to capitalism and communism. “America was at a cross-roads: it could swing down the right hand path to dictatorial fascism, down the left hand road to totalitarian socialism, or toil down the straight and narrow path toward a consumers cooperative society,” Chambers writes, describing the arguments of the leader, Eugene R. Bowen. “Cooperation was the peaceful way out, depending on neither ‘bullets nor ballots,’ and was the means by which Americans would come to own America.”

Today, the Cooperative League is part of the National Cooperative Business Association. It is part of a more mainstream business environment. Chambers retraces the variegated ideological history of the Cooperative League in the following terms:

The Cooperative League grew out of Jewish democratic socialism and fraternalism and out of Finnish radicalism. Under Warbasse’s leadership the League’s official theory was close to a benevolent form of anarchism that predicted the withering away of the state as the cooperative commonwealth was gradually established. With Bowen the great agricultural purchasing associations were brought
into the League, which they soon dominated. With this development, during the terrible crisis of the depression decade, the League moved gently away from rigid neutralism toward social reform through political action, and tempered its earlier utopianism by more practical programs. With Lincoln and Voorhis, the League fully accepted the sector ideal of the Swedish cooperative movement without for a moment surrendering its reform urge. The League can be found today campaigning for every good cause of political and social liberalism.  

These pendulum swings reflect the geopolitical shifts of the twentieth century.

We need not subject ourselves today, however, to the aftershocks of those histories. The Russian Revolution, the Great Depression, the Cold War, McCarthyism—those pushed and pulled the Cooperative League in different directions. We need not follow those vicissitudes today.

We can reimagine coöperation for our times.
Conclusion

“What more am I to do?” That is where I left off in *Critique & Praxis*.

The question today is more urgent than ever. The COVID-19 pandemic confirmed everything we know about the ills of society, its inequalities and failures. It confirmed the racial hierarchy and caste system in this country. It affirmed everything we suspected about precarity and the lack of universal health care, about who is truly vulnerable in our society, about the hidden interests of our leaders. We knew all that. The pandemic just confirmed it—as the Great Recession of 2008 had years before.

And it confirmed that we must focus in a renewed way on the goal of social transformation—of revolutionary change. The task now, as I see it, is to single-mindedly and tenaciously, like a laser, keep our eyes on the prize: revolutionizing our unequal and unjust society and creating a just society.

My goal now, more explicitly than ever, is to identify, imagine, or reimagine the revolution: what must it look like today, and how will it succeed in bringing about a more just and equal society? Everything I do, everything I write, every action I take must now pursue the mission of revolutionizing our society.

W.E.B. Du Bois’s *Darkwater* reaffirmed this for me. The resoluteness of his writing, the certainty of his ideas, the clarity of his vision, Du Bois leaves us with no doubt about our circumstances (circa 1919) and what we should do, perhaps even today:

> If the attitude of the European and American worlds is in the future going to be based essentially upon the same policies as in the past, then there is but one thing for the trained man of darker blood to do and that is definitely and as openly as possible to organize his world for war against Europe.

Yes, war against Europe—and not just Europe, but “Europe” as standing in for practices of exploitation, racism, colonialism, and all the other forms of oppression associated with our governing political economic regime of tournament dirigisme maintained by the police state.

Du Bois put much of his faith in education. Speaking of persons of color first, Du Bois wrote (and these are ominous words prefiguring our current carceral state): “We bury genius; we send it to jail; we ridicule and mock it, while we send mediocrity and idiocy to college, gilded and crowned.” He militated for education
for all, not just whites or the wealthy. “All children are the children of all and not of individuals and families and races,” he insisted. “The whole generation must be trained and guided and out of it as out of a huge reservoir must be lifted all genius, talent, and intelligence to serve all the world.”

Yes, education must be a priority—critical education that is. But much more is needed now. It is time for a revolution in how we govern ourselves and others.

* * *

The only way forward is a genuine transformation that replaces our existing extractive punitive regime with coöperative, mutualist, solidaristic, and non-profit enterprises. The legal structure that enables the corporate form—what Katharina Pistor accurately calls the “code of capital”—has to be repealed and replaced with a new economic framework that circulates the wealth generated from production and consumption. By replacing the logic of capital extraction—the extractive logic as Saskia Sassen calls it—with an ethos of equitable distribution, we can also prepare to address the climate crisis after the pandemic is over.

It is not enough to increase progressive wealth taxes on the billionaires and invest more in public hospitals and public schools, as Piketty recently suggested. That will not fundamentally change the Faustian logic and temptations. Instead, and urgently, it is time to replace our system of tournament dirigisme with a new coöperationism.

This pandemic and economic crash must not prevent us from working together to place ourselves in a better position to deal with the other crisis—climate change—still looming on the horizon. On the contrary, these times call for a legal, political, and economic revolution to ring in a new epoch of coöperationism. This will demand political will. It will not come from our political leaders, so beholden now to corporate contributions. It will have to come from us all united.

* * *

In the end, capitalism is a misnomer, and communism a non-starter. Only coöperationism will achieve a just society.

“Capitalist” economies, it was widely believed, were governed by the economic laws of capital: both the strongest proponents of capitalism (the free market economists of the Chicago School) and its staunchest opponents (Marxists and anarchists) held that capital has inherent traits that produce good (or bad) outcomes—that capital, in effect, has a force of its own. This reflected the materialism of Marx: capitalist modes of production necessarily cause increased
exploitation and decreased profitability that autonomously destroy capitalism. It was also reflected in the magical thinking of the Chicago School and its precursors going back to Mandeville and Smith: the private vices and greedy pursuit of capital autonomously causes (through the invisible hand) the greatest public virtue.

But capital does not exist as an autonomous thing. It is a creature of the human laws of corporations. It can be privileged or disfavored. There are no independent laws of capital, and even the greedy taste that humans have developed for capital returns are not immutable laws of nature. The “capitalist” crises of accumulation that plague Western post-industrial societies are not an artifact of capital, but rather of tournament dirigisme.

“Communism” is equally misleading and no more promising. The valiant idea of living together in common may possibly work at times for a small commune, but it does not scale up to the level of a large economy. The problem is principally one of scaling. It too produces a form of dirigisme.

The state and these forms of dirigisme—hand in hand with the police state—have taken center stage for too long now. They are, however, merely a historical phase in human history. As Foucault demonstrated in Security, Territory, Population, the concept of the state was born at a certain period (with the theories of raison d’État) and has dominated our conception of governance over the past three or so centuries. But before that, there may have been monarchies, or even empires—and after that, there will be coöperation.

It is time to end our various experiments in statism and dirigisme and to embrace a new form of coöperationism. It is time to be guided by the principles of solidarity.
This is a work in abolition democracy. It follows in the footsteps of W.E.B. Du Bois, Angela Davis, Dorothy E. Roberts, and others. It seeks to abolish our racist, extractive, punitive society—to abolish everything that makes our punitive society possible—in order to reimagine and instantiate a coöperationist future infused with the values of solidarity, equality, and social justice reflected in the “one vote principle” and non-hierarchy of mutual relations.

This project is grounded in the connections between all the different aspects of our extractive, punitive, caste society today—all the ways in which the punitiveness and extractive nature of tournament dirigisme, the forms of inequality and racial hierarchy, and human greed work together and build on each other.

Proudhon had argued for the abolition of property. “I prove that those who do not possess today are proprietors by the same title as those who do possess; but instead of inferring from this that property should be shared by all, I demand, as a measure of general security, its entire abolition.” For all his weaknesses, Proudhon had tapped into something important: social revolution must go through the paths of abolition and address the question of property.

In fact, social progress has been the history of abolishing forms of property. All the turning points of liberation are tied in some way to abolishing a property relationship:

- The abolition of feudalism was the end of a proprietary relationship of serfdom.
- The abolition of slavery was the abolition of a property relationship over persons (with the exception of the prison).
- The abolition of coverture and of the marital rights of the husband was the abolition of a property relationship over women.
- The abolition of the prison, as the last remaining exception to slavery under the 13th Amendment, will be the end of the prison as the final exception to property in persons.

Today, it is time for the abolition of the type of property that constitutes capital. In this sense, this work is more than a work in “political economy.” It is a work in abolition democracy.

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Historically, the term “political economy” corresponds to an intellectual conversation or discourse or proto-discipline (in the academic sense of discipline) that began in the late-eighteenth century in England and Western Europe, and prefigured the birth of the social sciences, especially economics, political science, and sociology. It offered a new way to understand the historical development of Western society. Although shaped by other discourses, such as natural law theory, theories of moral sentiment, and the tradition of *raison d’État* (reason of state), it displaced those and for a while—at least, some of us believe—was a dominant way of interpreting the then-present.

To be very specific, one could trace its birth to the interval between Smith’s *Theory of Moral Sentiments*, published in 1759, and his *Wealth of Nations*, published in 1776. The latter depended entirely, intellectually, on the former; but it assumed it, and did not make the connections explicitly. In that implicit severing, we could say, political economy was born. And it would develop at that time in the work of David Ricardo, Pierre-Joseph Proudhon, Karl Marx, and others.

But it is no longer, today, a discourse that lives. It was displaced in the twentieth century by modern welfare economics on the one hand and by rational choice theory in political science. To be sure, there were ways to interpret subsequent debates in the twentieth century—for instance, between Keynes and Hayek, or the writings of Karl Polanyi and Joseph Schumpeter—as emanations in political economy or continuations of that discourse; and even more contemporary economic writings, such as those of Thomas Piketty, are and can be placed in conversation with Smith and Marx. But those are more nostalgic than real, and allusions rather than substance: we refer back to Marx and “laws of capital,” but we do not really engage his theory of value or exchange. We do not continue the conversation they had in the nineteenth century about the difference between use value and exchange value, for instance—which was at the heart of so many debates in political economy.

Today, those writings in political economy are primarily material for historians and economic historians. But we have learned far too much since then, and refined coöperation, to be limited to those debates and ideas.

To be sure, what the term “political economy” offers, that for instance “economics” alone does not, is to emphasize the necessarily *political* dimension to economic regimes. That is key. In fact, it is central to this project. It means we no longer talk about “capitalism,” but instead about “tournament dirigisme.”
But that is not a reason to return to an exhausted discourse or proto-discipline. It is far better to make that argument in plain terms, without unearthing all the writings from the eighteenth and nineteenth centuries. Those writings introduce biases and errors. Returning to them is a quagmire. We have lost decades’ worth of intellectual exchange for a simple or basic intervention.

So yes, we need to emphasize the political dimension of economics today. But we do not need to appropriate an exhausted label, “political economy.” This does not mean we cast aside all those texts. To the contrary, we should engage those texts and read them closely, but not because they anchor our present, rather for another reason: because they were grappling with central questions of property, government, and community, and offer lenses and arguments about those that we should discuss in our own formulations of governing. We should use them as foils to refine coöperation and, just as often, as prejudices and biases to avoid.

* * *

In sum, we need to understand the project of coöperation as in direct lineage to the project of abolition democracy. In direct continuity with:

- W.E.B. Du Bois and Angela Davis on “Abolition Democracy”\(^\text{342}\)
- The abolition of slavery\(^\text{343}\)
- The abolition of coverture and marital dominion
- The abolition of capital punishment\(^\text{344}\)
- The abolition of prisons\(^\text{345}\)
- The abolition of our punitive society and incarceration\(^\text{346}\)
- The abolition of the police\(^\text{347}\)
- Abolition constitutionalism\(^\text{348}\)
- And in conversation with the abolition of property, of oil, and of borders.\(^\text{349}\)

Welcome to Abolition Democracy 13/13. Please join the debate here: http://blogs.law.columbia.edu/abolition1313/.
Bibliography


Big Door Brigade. “About.” [https://bigdoorbrigade.com/about/](https://bigdoorbrigade.com/about/).


Simpson v. Ernst & Young, 100 F.3d 436 (6th Cir. 1996).


Notes

Preface


2 Proudhon, What is Property?, 36.


4 Thomas Piketty, Capital in the Twenty-First Century (Cambridge, MA: Harvard University Press, 2014), 45. Capital, for Piketty, is what we usually think of as wealth, and in fact he uses those two terms interchangeably, in his own words “as if they were perfectly synonymous.” Piketty, Capital, 45. For Piketty, capital includes all assets (except human capital) that can be traded or exchanged on any kind of market. Piketty includes in his definition of capital all land and natural resources; as well as gold and other stores of value, and residential real estate. It includes patents and intellectual property, and other forms of immaterial capital reflected in stock value for instance. In Piketty’s words, “capital is defined as the sum total of nonhuman assets that can be owned and exchanged on some market. Capital includes all forms of real property (including residential real estate) as well as financial and professional capital (plants, infrastructure, machinery, patents, and so on) used by firms and government agencies.” Piketty, Capital, 46. It can consist of what is owned by private parties, by groups of individuals, by the government, or by governmental agencies. It is basically all wealth or assets that can be exchanged on markets.

The one factor that Piketty excludes is human capital. So, by contrast say to Pistor, who includes human capital if it has been augmented, there is no consideration in Piketty for any form of individual labor power, training, education or skills or abilities. Piketty, Capital, 46.

The reason Piketty defines capital in this way is because he is primarily interested in understanding the relationship between the portion of national income that is attributable to labor versus capital. In other words, he is primarily interested in measuring the wealth of nations, what he calls “national income,” and understanding the proportion of a country’s domestic product as a relationship of
capital and labor. So he writes, “all production must be distributed as income in one form or another, to either labor or capital: whether as wages, salaries, honoraria, bonuses, and so one (that is, as payments to workers and others who contributed labor to the process of production) or else as profits, dividends, interest, rent, royalties, and so on (that is, as payments to the owners of Capitol used in the process of production).” Piketty, *Capital*, 45.

5 Katharina Pistor, *The Code of Capital* (Princeton, NJ: Princeton University Press, 2019), 183. Pistor offers a nice history and typology of the definition of “capital” at pages 9-10 of *The Code of Capital*. She refers to Fernand Braudel, who traced capital back to the 13th century and, primarily, to “a fund of money, goods, or money rented out for interests, at least where this was permissible.” Pistor, *The Code of Capital*, 9. She refers to Geoffrey Hodgson’s book on *Conceptualizing Capitalism*; and then, to other ways of conceiving of capitalism, either as tangible, or as a factor of production, or as an accounting variable. She also discusses what people mean by the term the “age of capitalism,” whether it is associated with industrialization, or earlier forms of agricultural capitalism, or our current financial and global capitalism. This is all very helpful. Onto capitalism, and disagreeing with both Karl Marx and Karl Polanyi, Katharina Pistor distinguishes capital from mere commodification. She writes: “Capitalism, it turns out, is more than just the exchange of goods in a market economy; it is a market economy in which some assets are placed on legal steroids.” Pistor, *The Code of Capital*, 11. Here again, you will notice, the special feature of capital and capitalism is the “asset prime” element.


Electronic copy available at: https://ssrn.com/abstract=3702010


23 Forcadell, "Democracy, Cooperation and Business Success," 255.
Chapter 1


Tipsord, *2019 Annual Report to State Farm Mutual Policyholders*.

Bowers, “State Farm: Behind the Veil.”


Cahill, “State Farm’s Edge? It’s Private.”

Bowers, “State Farm: Behind the Veil.”


Goglio and Kalmi, “Credit Unions and Co-Operative Banks Across the World,” 146.

Goglio and Kalmi, “Credit Unions and Co-Operative Banks Across the World,” 147.


Birchall and Ketilson, Resilience of the Cooperative Business Model in Times of Crisis, 3.


“The History of Crédit Agricole | Crédit Agricole.”

“The History of Crédit Agricole | Crédit Agricole.”

“The History of Crédit Agricole | Crédit Agricole.”


Voinea, “How Does Crédit Agricole Stay Local While Operating Multinationally?”

“Voinea, How Does Crédit Agricole Stay Local While Operating Multinationally?”

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Boland, Cooper, and White, 13-14.


"REI History: It Started With An Ice Axe.”


Leighton, “The Perks of REI’s Lifetime Membership Far Outweigh Its One-Time $20 Cost.”


Leighton, “The Perks of REI’s Lifetime Membership Far Outweigh Its One-Time $20 Cost.”


Michael Billeaux et al, "Worker Cooperative Case Study," 4.

IEM had annual revenues of $15 million as of 2009. See *Capitalism: A Love Story,* directed by Michael Moore et al., Documentary (Montreal: Alliance Vivafilm, 2010), https://www.youtube.com/watch?v=LUpnFNUmfKw&has_verified=1, 58 min.


Michael Billeaux et al, "Worker Cooperative Case Study," 5.

Michael Billeaux et al, "Worker Cooperative Case Study," 6.

Electronic copy available at: https://ssrn.com/abstract=3702010
Michael Billeaux et al., “Worker Cooperative Case Study: Isthmus Engineering & Manufacturing” (Staff Paper, Center for Cooperatives, University of Wisconsin-Madison, Madison, Wisconsin, October 2011), 3.

102 Michael Billeaux et al, "Worker Cooperative Case Study," 6.
103 Michael Billeaux et al, "Worker Cooperative Case Study," 6.
104 Michael Billeaux et al, "Worker Cooperative Case Study," 8.
105 Michael Billeaux et al, "Worker Cooperative Case Study," 6.
106 Michael Billeaux et al, "Worker Cooperative Case Study," 15.
107 Michael Billeaux et al, "Worker Cooperative Case Study," 15.
108 Michael Billeaux et al, "Worker Cooperative Case Study," 10.
109 Michael Billeaux et al, "Worker Cooperative Case Study," 16.
110 Michael Billeaux et al, "Worker Cooperative Case Study," 16.
111 Michael Billeaux et al, "Worker Cooperative Case Study," 23.
112 Michael Billeaux et al, "Worker Cooperative Case Study," 22.
113 Michael Billeaux et al., “Worker Cooperative Case Study,” 10.
114 Michael Billeaux et al, "Worker Cooperative Case Study," 12.
115 Michael Billeaux et al, "Worker Cooperative Case Study," 22.


Martin, “At King Arthur Flour, Savoring the Perks.”

Martin, "At King Arthur Flour, Savoring the Perks."

Martin, "At King Arthur Flour, Savoring the Perks."


140 Mazero and Loonam, "Purchasing Cooperatives," 149.
Cooperative-specific effects identified as advantages with respect to the economic crisis

1. Micro level (individual enterprises)
   ✤ The capacity to mobilize members’ participation, mainly enterprise staff
   ✤ The capacity to mobilize the participation of the wider community (especially in the cases of social cooperatives)

2. Meso level (mobilisation of mutual aid among cooperatives)
   ✤ Existence of business support entities (in the field of training, consulting and financing) owned and controlled by the national cooperative movements
   ✤ Development of horizontal groups/consortia/networks among cooperatives

3. Macro level (favourable environment)
   ✤ Presence in a substantial part of the economy
   ✤ The existence of a conducive legal framework, e.g. making indivisible reserves compulsory, establishing non-banking financial instruments, regulating worker and/or social cooperatives and other employee-owned enterprises such as the Spanish "Sociedades Laborales", and defining public policies promoting such enterprise forms
Chapter 2

166 H.R. 748, § 1103(b)(1).  
169 H.R. 748, § 1107(a)(6) and (7).  
171 H.R. 748, page 263.


175 Cochrane and Fandos, “Senate Approves a $2 Trillion Virus Response.”


177 H.R. 748, § 4003 (c)(2)(E), (F), and (G). Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 471 (2020), §4003 (c)(2)(E), (F), and (G).


184 Chris Isidore, “American Airlines Will Lay Off 19,000 Workers If It Doesn’t Get Additional Federal Help,” CNN, August 25, 2020,


187 Wu and Serkez, “These Companies Enriched Themselves. Now They’re Getting a Bailout.”


194 JCT, *Estimated Revenue Effects*, page 2, line C.5; page 1, line C.3. The *Washington Post* describes the tax change as follows: “Under the 2017 legislation, owners of businesses formed as “pass-through” entities and partnerships could deduct a maximum of $250,000 (or $500,000 in the case of couples) in losses from their ‘nonbusiness’ income. That change came with other measures aimed at
lowering the tax obligations for these firms, including new deductions from their federal tax obligations.... Under the coronavirus relief legislation, the limit was suspended, enabling wealthy investors to use millions in losses to reduce their tax burdens. The policy also applies retroactively so losses in 2018 and 2019 can be ‘carried back’ against the past five years.” Jeff Stein, “Tax change in coronavirus package overwhelmingly benefits millionaires, congressional body finds,” Washington Post, April 14, 2020, accessed April 15, 2020, https://www.washingtonpost.com/business/2020/04/14/coronavirus-law-congress-tax-change/.


196 Joint Committee on Taxation to Honorable Sheldon Whitehouse and Honorable Lloyd Doggett, April 9, 2020 (estimating the average benefit at $1.6 million). Forbes magazine estimates the tax change is likely to net about $1.7 million each for about those 43,000 taxpayers with annual earnings over $1 million. Forbes calculated this by taking 82% of the tax revenue loss estimated for the tax change in the first JTC report ($90 billion) and dividing that by the number of returns in that category (e.g. 43,000). Shahar Ziv, “How Some Rich Americans Are Getting Stimulus ‘Checks’ Averaging $1.7 Million,” Forbes, April 14, 2020, accessed April 15, 2020, https://www.forbes.com/sites/shaharziv/2020/04/14/why-are-rich-americans-getting-17-million-stimulus-checks/#1c29916a665b. As Forbes emphasizes, the $1.7 million windfall is an average, with some individuals likely to get more and others less.


Wu, “Don’t Feel Sorry for the Airlines.”


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217 Mirowski, Never Let a Serious Crisis Go to Waste, 89.

218 Mirowski, Never Let a Serious Crisis Go to Waste, 358.


220 Oxford English Dictionaries, s.v. "communism, n."


222 Étienne Balibar identifies two violently opposed tendencies within the project of socialism, namely a statist tendency and one he calls, using the French term, “autogestionnaire.” The latter, though, he concedes, is a minor current, and most thinkers for and against socialism essentially identify it with the statist version. Étienne Balibar, “Régulations, insurrections, utopies : pour un ‘socialisme’ du XXle siècle,” 264-298, in Balibar, Histoire interminable. D’un siècle l’autre. Écrits I (Paris: La Découverte, 2020), 268.

Dardot and Laval, *Common*, 5.

Dardot and Laval, *Common*, 85.

Dardot and Laval, *Common*, 399-403.

Dardot and Laval, *Common*, 2; see also 5.

Dardot and Laval, *Common*, 125.

Dardot and Laval, *Common*, 125.

Dardot and Laval, *Common*, 5.

Dardot and Laval, *Common*, 5.


Dardot and Laval reject the bundle of rights approach that has been taken by American legal realists. They argue that the bundles approach is incoherent, naïve, and elusive. The reason, they argue, is that there’s a dominant hierarchy where the right to the capital overshadows all the other. Dardot and Laval, *Common*, 326. Dardot and Laval argue that a use right is inadequate and toothless. They write, “according to our thesis – namely, *the establishment of rules of common use through the exercise of instituent praxis, and its extension into a form of instituent use that is based on the ongoing revision of these rules* – common use must be linked to co-decision concerning the rules, and the resulting co-obligation that flows from this process.” Dardot and Laval, *Common*, 326. I do not find this convincing and will need to address it at greater length. More on this soon. It is worth noting here, though, that in political proposition five, Dardot and Laval write about economic associationism. They described the “social economy,” which comes close to the idea of the coöperationist economy I am developing here.
Chapter 3

Dardot and Laval, *Common*, at p. 325.


Pistor, *The Code of Capital*, 205. One of the most important recent historical developments is the fact that states have begun to recognize the foreign laws of capital coding, and as a result, are increasingly willing to enforce legal protections established in other states. This has been very powerful for coding capital because it has allowed lawyers to impose the most beneficial laws—the English common law and the laws of the state of New York—to all states. Katharina Pistor refers to this as the “empire of law,” suggesting the imperial dimension of English and New York law on to other states. This allows capital holders to extend the advantages of capital beyond the local context. In her words, it allows states to “use their coercive powers to enforce” capital, and it “allow(s) domestic parties to opt into foreign law without losing the protections of local courts.” Pistor, *The Code of Capital*, 7.


See Foucault, *The Birth of Biopolitics*, 162 (they would respond that the purported natural order “is nothing other than the effect of a particular legal order.”)

Foucault, *The Birth of Biopolitics*, 162.
Foucault, *The Birth of Biopolitics*, 164. All of this important discussion is at 162 et seq.


As the United States Court of Appeals for the Sixth Circuit made clear in *Simpson v. Ernst & Young*, in 1996, “if a worker cooperative chooses not to classify worker-owners as employees, it must give substantial management power to those worker-owners, and must adopt clear safeguards to prevent the devolution into a more hierarchical structure.” Orsi, Lisa, and Jacob, 45; see *Simpson v. Ernst & Young*, 100 F.3d 436 (6th Cir. 1996). On the role of the NLRB, see NLRB v. North Arkansas Electric Cooperative, Inc. 446 F.2d 602 (8th Cir. 1971); NLRB v. Bell Aerospace Co. 416 U.S. 267 (1974).

Chapter 4


Dardot and Laval, *Common*, 1.


Jim Tankersley, “Federal Borrowing Amid Pandemic Puts U.S. Debt on Path to Exceed World War II.”


Damodaran, “Historical Returns on Stocks.”


Chapter 5


Owen, *A New View of Society*, 73.


See Proudhon to Marx, May 17, 1846, in McKay, *Property is Theft!*, 164. Dardot and Laval take on the debate between Marx and Prudhon at page 79 and elsewhere. Dardot and Laval, *Common*, 79. Of course, the notion of the common was really important to Marx already from the early essay on the theft of wood (see my discussion of this in the course context of *La société punitive* [The Punitive Society]). Bernard E. Harcourt, course context to *The Punitive Society: Lectures at the Collège de France 1972-1972*, ed. Bernard E. Harcourt, trans Graham Burchell (New York: Picador, 2015): 265-300. Dardot and Laval discuss the theft of wood essay for a whole chapter, chapter 8 on “The ‘Customary Law of Poverty.’” I will return to this discussion.

Dardot and Laval also critique Hardt and Negri for basically returning to Proudhon. They argue that Hardt and Negri “make theft a central mode of
accumulation that is independent of capital itself (as did Proudhon).” Dardot and Laval, Common, 126. I will return to these pages as well, 126 and 127; 136, 137; and page 252 on Proudhon and collectivism.

311 Proudhon to Blanc, April 8, 1848, in McKay, Property is Theft!, 296; Proudhon letter response to Louis Blanc, December 28, 1849, McKay, Property is Theft!, 501.

312 Dean Spade, “Solidarity, Not Charity.”


315 “About,” The Big Door Brigade, http://bigdoorbrigade.com/about/ (“As part of and inspired by that group, Dean Spade created this website to lift up the significance of mutual aid as a strategy for survival and mobilization, and he continues to maintain it.” Dean Spade, “Welcome,” http://www.deanspade.net/.)


Chambers, “The Cooperative League of the United States of America,” 65 n.16.


Conclusion and Postscript


Du Bois, Darkwater, 34.

Du Bois, Darkwater, 127 (emphasis added).

Du Bois, Darkwater, 127.


he argues for national or regional taxes on capital that would reduce inequality but avoid a violent transformation. In effect, Piketty argues for a re-invigorated social state, a strong welfare state. He also argues for investment and educational institutions, a unified retirement scheme with equal rights for everyone, and progressive income tax schemes. Piketty, *Capital*, 490. The heart and soul of his intervention, though, is to argue for a global tax on capital.

Philip Mirowski, in *Never Let A Serious Crisis Go To Waste* (2013), offers a searing critique of this position, insofar as the “solutions” that Piketty offers rest on the very foundations of neoclassical economic thought that Mirowski demolishes in his book. Dardot and Laval also deride those who think that it is going to be an easy transition to a better world; they especially mock those who “think we can reform capitalism by adding a few more taxes,” obviously referring to Thomas Piketty. Mirowski, *Never Let A Serious Crisis Go To Waste*, 397.


