

The Condition of Democracy

Volume 1: Neoliberal Politics and
Sociological Perspectives

**Edited by Jürgen Mackert, Hannah Wolf
and Bryan S. Turner**

First published 2021
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2021 selection and editorial matter, Jürgen Mackert, Hannah Wolf and Bryan S. Turner; individual chapters, the contributors

The right of Jürgen Mackert, Hannah Wolf and Bryan S. Turner to be identified as the authors of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

A catalog record has been requested for this book

ISBN: 978-0-367-74533-2 (hbk)

ISBN: 978-0-367-74535-6 (pbk)

ISBN: 978-1-003-15836-3 (ebk)

ISBN: 978-0-367-74540-0 (set)

Typeset in Times New Roman
by Deanta Global Publishing Services, Chennai, India

Contents

<i>List of illustrations</i>	vii
<i>List of contributors</i>	viii
<i>Preface</i>	x
Introduction: Waves of democracy	1
BRYAN S. TURNER	
PART 1	
Neoliberalism and the meltdown of democratic life	17
1 Enchaining democracy: The now-transnational project of the US corporate libertarian right	19
NANCY MACLEAN	
2 Ordoliberalism, authoritarianism, and democracy	37
THOMAS BIEBRICHER	
3 Toward a predistributive democracy: Diagnosing oligarchy, dedemocratization, and the deceptions of market justice	56
MARGARET R. SOMERS	
4 The politics of bailing-out the rich: The role of ‘systemic importance’ within the European Banking Union	88
ANDREAS KALLERT	
5 Democratization or politicization?: The changing face of political-economic expertise in European expert groups, 1966–2017	106
CHRISTIAN SCHMIDT-WELLENBURG	

PART 2

Sociological perspectives on liberal democracy 129

6 The ideology of anti-populism and the administrative state 131

STEPHEN TURNER

**7 Roman Catholicism and democracy: Internal conservatism
and external liberalism?** 149

ROSARIO FORLENZA AND BRYAN S. TURNER

8 Breaking bad: The crisis of democracy in the age of digital culture 165

TIBOR DESSEWFFY

Index 181

3 Toward a predistributive democracy

Diagnosing oligarchy, dedemocratization, and the deceits of market justice

Margaret R. Somers

Introduction

In the face of today's egregiously spiking inequality,¹ politically empowered plutocracy, and increasing moves toward autocracy,² many have called for a new 'moral economy' and have turned to Karl Polanyi's *The Great Transformation* (GT) (Polanyi, [1944] 2001) for inspiration.³ Yet one of the great contributions of Polanyi's work is that it disabuses us of the sentimental delusion that when it comes to the economy, morality has a progressive heart. Too often misread as a story of confrontation between morality (good) versus markets (bad), Polanyi's GT makes clear that all matters economic traffic in morality, that classical (and modern) political economy is drenched in moral sentiments, and that those who fail to reckon with its moral justifications will fail to understand the power of capitalism.⁴ Today's most grotesque forms of inequality, economic domination, and dedemocratization are not symptoms of the absence of morality; rather, they are signature expressions of the dominant neoliberal moral economy.

A moral economy is a normative apparatus that justifies specific economic arrangements on the grounds that they produce morally superior – fair and just – outcomes. The moral economy of capitalism is that of *market justice* – the normative claim that distributional outcomes produced by legally voluntary market transactions operating in a morally neutral price system are by definition morally just.⁵ While he doesn't use the precise term, the concept of market justice is a neglected linchpin of Polanyi's analysis of market society's moral infrastructure that lays the predicate for capitalism's formidable *inequality regime* – a regime that in the name of market neutrality and efficiency relentlessly suppresses popular efforts to democratize the economy, all the while occluding the actual exercise of power and coercion that underlies unequal market distributions. As such, market justice provides a diagnostic window into the submerged foundations that prop up the market system, induce the suffering of so many, and which impel the forces of dedemocratization, oligarchy, and authoritarianism.

Using the conceptual tools derived from a Polanyian perspective,⁶ the diagnosis is straightforward: like all moral economies, market justice rests on and advocates for a specific political economy – an analysis of both the empirical and the

necessary relationship between economy and government, market and state. The political economy of capitalism is that of *market naturalism* – the claim that the economy operates according to natural internal laws and regularities, symmetrical to the laws of nature, which tend toward maximum efficiency when left autonomous from government and politics. Market naturalism bestows moral privilege on market outcomes on the grounds of its alleged neutrality, voluntarism, and freedom from power and human bias. In fact, it rests on a market economy that is anything but natural and nonpolitical, but one constituted by a phalanx of *predistributive mechanisms of political and legal engineering*.

Claims that the market economy is free from government power are thus utterly fictitious. *Freedom from the power of democracy*, however, has been a structural constant of capitalism from its inception. There is a consequential flaw in this paradox of competing powers. Thomas Piketty (2014, 2020) reminds us that in democracies, where the professed equality of legal citizenship rights contrasts dramatically with vast economic inequalities, the contradiction is compensated for by the discourse of meritocracy – the claim that such extreme disparities are warranted by the differences in people’s productive value and contributions. Here is the flaw: while capitalist democracies depend on meritocracy for their legitimation, both meritocracy and market justice are among the chief drivers of the very plutocracy and creeping autocracy that inexorably undermine the democracies they are supposed to buttress. That is the potency and the peril of capitalism’s moral economy.

Clearly, for those distressed about the condition of democracy and the fate of citizenship today, the call for morality by itself is no panacea for our ills. Instead, the challenge is to *name* the specific kind of economy we seek as an egalitarian and democratic alternative to the moral economy of capitalism. This chapter advocates for a *predistributive democratic citizenship* as an alternative political and moral economy and a mandate for structural and ideational change, which diagnoses inequality not simply as a problem of income distribution but as one of the maldistribution of power and the acceleration of dedemocratization. The goal is to organize a system of *countervailing predistributive powers*, to substitute equality and democratic rights for market justice’s inequality regime; to call for a decommodification of the workforce and democratization of the workplace; and ultimately to aim for what Polanyi aspired to in the name of his version of democratic socialism: ‘[To] transcend the self-regulating market by consciously subordinating it to a democratic society’ (Polanyi, [1944] 2001, p. 242; see also Ferreras, 2020).

The invention of market justice

The story of market justice is rooted in classical political economy, which was from the outset handmaiden to a perceived political and social grievance: late 18th- and 19th-century property owners and economic liberals protested that Poor Law taxes were extracted from them coercively by the government in the name of morally invidious ideas of compassion.⁷ The stepchild of political liberalism,

economic liberalism skilfully deployed the former's rhetoric of liberty to demand freedom from the tyranny of government. But whereas political liberalism opposed the Crown in the name of rights, economic liberalism named the rights of the poor as instruments of coercion.⁸

For justification, political economy invented market naturalism, an idealized thought experiment that stipulates that the laws governing nature also govern the site of property.⁹ The economy is not 'like' the natural world; the world of private property and the natural world are one and the same and regulated by the same laws and exigencies.¹⁰ Market naturalism fabricated a bifurcated world in existential conflict between a biological-like organism that tends innately toward law-like equilibrium in so far as it is free of government and moral interference, and a hierarchically dominated coercive state that exercises power at will and arbitrarily imposes moral imperatives.

Market naturalism set the terms for modern economics' Rubicon-like divide between a voluntary contractual *nonpolitical* site of market processes and a coerced *political* site of governance. By appropriating the self-regulatory laws of nature, political economy declared economic society capable of self-management, as only a market anchored to the self-equilibrating laws of nature could usurp the government in its own administration. This was not, however, a divide separate but equal: market naturalism also dethroned the ruling authority of government and established the *primacy of the economic*. Whereas under mercantilism the economy served as a handmaiden to the priorities of state power ('trade follows the flag'), with market naturalism, the economy became the arbiter of policy. The imperative to shield the market from politically imposed distortions to the self-regulative process now trumped all competing goals. Legislation that neutralized potential threats to market autonomy were justified, but those aimed at reducing economic insecurity through social provisioning were dismissed as distorting natural processes.

In triumph, political economy gained scientific prestige on the grounds of 'disinfect[ing]' the market 'of intrusive moral imperatives' (Hont, 2005, p. 406). As for the economic suffering that ensued, political economy had an answer for that: just as nature's predator/prey relationships are not judged to be just or unjust, so too must economic conditions be judged not by the Magistrate but by the majesty of nature, free of moral sentiments and sanctions.¹¹

Over time market naturalism's biological foundations were disposed of in favour of a more constructionist story of voluntary buying and selling, equilibrated by the law-like fulcrum of the price mechanism. But while biological foundations are not necessary to maintain the functional autonomy of the economy from government, what is necessary is a sustained commitment to some version of market naturalism. Without it, the idea of the market's benign system of incentives that operates freely without the exercise of power is implausible, as is the market's capacity to self-govern without politically imposed distortions and the self-regulative capacity of the price system. Absent political management, a 'free' market must be rooted in some kind of naturalistic ontology.¹² For that, *efficiency* is a perfectly serviceable modern replacement.

From market naturalism to market justice

What followed next was a remarkable act of epistemic cunning: having shifted the centre of ontological gravity away from the morality-laden coercions of government to the morally indifferent sphere of nature, political economy now smuggled in under the cloak of nature a *new metric of morality*, this one measured by *conformity to the laws of nature*. In a dizzying ethical and epistemic brain twister, the moral neutrality of nature laid the predicate for the invention of a new kind of justice, which I name as *market justice*. Market justice declares that as the site of the self-regulating force of nature, the market's adjudications by definition are just because they are uninfected by morality, unimpeded by human capriciousness, untouched by political power. The scientific privileging of morally neutral laws of nature was thus effortlessly – and by sleight of hand – converted to the moral privilege of markets.

Consider the conceptual gymnastics: market naturalism was endowed primacy not because it embodied a better system of values or because of the moral superiority of property rights. Rather, it was deemed superior to a government-managed economy because it was alleged to have dispensed entirely with morality and to be completely *free of values*, reflecting nothing more than the unbiased bloodless regularities of the natural world. It was the ice-cold laws of nature that conferred scientifically grounded privilege to the market, not loftier values, ethics, or morality. How then does the site of nonmorality transform into one of moral privilege? By sheer chicanery: *the market's adjudications become morally just precisely because unimpeded by morality*. Its claims to just deserts, meritocracy, and moral righteousness rest incoherently on its putative roots in moral *absence*.

Market justice's inequality regime

Market justice, with its roots in (and dependence upon) market naturalism, is the scaffolding of capitalism's moral economy, which in turn supports the *inequality regime* of modern market society.¹³ Comprised of justifications for unequal market outcomes, mandates for appropriate structural arrangements, and policy blueprints for its own survival, market justice can be parsed into three of its most significant diktats.

The first diktat of market justice is the original justification for social exclusion and inequality, which in turn laid the predicate for modern economics' *marginal productivity theory*. As explained by Thomas Malthus ([1803] 1992), poverty and riches alike are the result of nature's distributional processes and thus cannot be subject to social, moral, or political judgement (Block & Somers, 2014, pp. 150–192). Precisely because market distribution is a product of natural, not human laws, the suffering of the hungry is morally unimpeachable and cannot be 'disobeyed' without enormous risk:

A man who ... cannot get subsistence ... [because] society does not want his labour, has no claim of right to the smallest portion of food ... At nature's

mighty feast there is no vacant cover [seat]. She tells him to be gone, and will quickly execute her own orders. We disobey[ed] these laws at our peril
(Malthus ([1803] 1992, p. 249; see also Somers, 2020b)

Decades later, Malthusianism found its echo in neoclassical economics' keystone principle of marginal productivity theory, which posits that because it is a self-equilibrating naturalistic system, the market's distributional incomes precisely reflect different degrees of effort and contribution. Thus John Bates Clark in 1899:

It is the purpose of this work to show that the distribution of the income of society is controlled by *a natural law*, and that this law, if it worked without friction, would give to every agent of production the amount of wealth which that agent creates.

(Clark, [1899] 2001)

With marginal productivity theory, the sleight of hand by which the moral neutrality of natural law becomes the backdoor route to a morally privileged theory of market justice reaches its specious apogee in an illogical amalgam of impersonal naturalism and voluntaristic meritocracy. On the one hand, because it is the result of 'natural law' shorn of the pity and perversities of human morality and passions, the existing distribution of income and wealth, however unequal, is morally just. At the same time, market outcomes are morally just because whatever the market produces in the way of income, wage, or wealth inequalities reflects 'the amount of wealth which that agent creates' (Clark, [1899] 2001) or what each person has contributed to total output, whether through labour or ownership of capital. Rewards are thus the product of *just deserts*; earnings are *deserved*.¹⁴ It is desert achieved by naturalism's tautological fiat: inequality *must* fairly reflect desert because, *qua* Bates, the market is controlled by *natural law*.

In its potent blend of naturalism and marginal productivity, market justice issued in a new *political economy of moral worth* (Somers, 2017). More than a century later, little has changed with market justice: referring to the stagnant wages of American workers, corporate apologists explain it as 'the tough-but-fair result of market forces': 'People will get paid on how valuable they are to the enterprise', John Snow, the economist then serving as Treasury Secretary under President George W. Bush, explained in 2006 (*New York Times*, 2020). On this theory, thanks to new technologies and increased foreign competition, 'most Americans just aren't worth what they used to be' (*New York Times*, 2020). The conservative playbook thrives on this diktat, and even celebrates inequality for its fair reflection of merit-driven market justice, protected from the distortions of 'social justice' that are arbitrary and driven by envy of the rich. In a world of market justice, market naturalism endows moral worth.¹⁵

Redistribution as theft

From the first claim that market outcomes are morally just and deserved, the second condemns as theft efforts to alleviate need through redistributive social provisioning. Murphy and Nagel (2002) dub this 'everyday libertarianism' – the

conceit that because pretax income is ‘presumptively just’ (reflects fair earnings), it is ‘owned’ by the earners and ‘departures from that baseline’ in the form of taxes entail nothing less than government larceny (Murphy & Nagel, 2002, p. 15). Market justice by definition makes government redistribution morally illegitimate.

When its beneficiaries are factored in, the crime of redistribution becomes even more odious to the inequality regime as it entails wrongly appropriating from the meritorious to give to the undeserving. And while it is empirically the case that over the last four decades, tax policy has overwhelmingly redistributed *from* the have-nots *upwards to* the highest earners (Saez & Zucman, 2019; Piketty, 2020), the language of redistribution is associated – and stigmatized – exclusively with the transfer of income from ‘hard workers’ to the ‘lazy poor’. In the popular jargon of neoliberalism, the state illegitimately taxes the ‘makers’ to give to the ‘takers’ (Feroz, 2016) and subjects property to the predatory excesses of unearned entitlement (Buchanan & Tullock, 1962).

Democracy as moral and mortal threat

The third diktat of the inequality regime demonizes and initially criminalizes popular sovereignty as moral and mortal threat to market justice. Since market justice was born of the conceit of naturalism’s freedom from politics and power, democracy was a menacing source of political power. Whereas 17th- and 18th-century political liberals focused on protecting property from the tyranny of the Crown, 19th-century political economists and *economic* liberals were hell-bent on protecting their property and market freedom from The People. Statesmen used political economy to denounce democratic rights-claims as stealth designs to violate market justice by plundering private property. British Chartists were persecuted as moral outlaws and prosecuted as criminals (Somers, 1995, 1997). Polanyi writes: ‘Inside and outside England, from Macaulay to Mises, from Spencer to Sumner, there was not a militant [economic] liberal who did not express his conviction that popular democracy was a danger to capitalism’ (Polanyi, [1944] 2001, p. 233).¹⁶

Capitalism’s legally enforced ‘hatred of democracy’ (Ranci re, [2005] 2014) proved untenable over time. In the face of the need for the services of working people in war and industry, elites eventually conceded to a widening of the franchise, and outright criminalization gave way to scope restrictions, putting at the centre of debate contestation over how much elasticity in the sphere of economic distribution popular sovereignty would be permitted. The compromise was a *market-conforming democracy*, in which the actualization of popular preferences – whether through legislative or collective action – is legitimate only insofar as its scope is restricted to the public sphere and prohibited from touching the property regime. With the overriding goal of public policy protecting the economy from political ‘interventions’, a constricted market-conforming democracy preserves the veneer of market justice as impartial, apolitical, morally neutral, universally beneficial, and free of the ‘special interests’ of democratic constituencies (Crouch, 2004).

These precepts took on new prestige in the 1920s with von Mises's and von Hayek's injunctions that the preferences of voters in democratic politics must be ignored when they conflict with the requisites of market processes.¹⁷ And despite a brief interlude from the New Deal to the Cold War hybrid of 'capitalist democracies', the diktat of a constricted market-conforming democracy came back turbocharged when in the 1970s centrist intellectuals sent out alarms that the 1960s had produced way too much democracy and not enough capitalism. Embodied in the Tri-Lateral Commission's (Crozier, Huntington & Watanuki, 1975) famous attack on 'an excess of rights', the fanfare over public choice theory (Buchanan & Tullock, 1962; MacLean, 2017), and the rise of Chicago's 'law and economics', the newly named 'crisis of democracy' (along with Great Society policies) was blamed for much that ailed the economy in the 1970s and early 1980s. Under the exigency to not 'politicize' the economy, neoliberalism endowed market efficiency with the privilege of trumping democratic efforts to address distributional inequity.¹⁸ Increasingly deemed by the right as too troublesome to capitalism to endure, democracy retained its legitimacy only to the extent that it was a depleted and disempowered democracy of restriction, defined by its proscriptions rather than by substantive affirmative rights (Streeck, 2014, 2016).¹⁹

The power of predistribution: Denaturalizing market naturalism

Market naturalism is of course a complete fiction: the market has no laws, natural or otherwise; there is no market neutrality free of power and politics; unequal income and wealth do not reflect market justice, merit, or worth; nor is there any moral justification for restricting democratic practices to that of market-conformity. No matter; with market naturalism and justice political economy produced the most formidable ideational regime of the last two centuries, one which continues to give moral credit to the wealthy while shaming the poor for moral deficiencies; to condemn government efforts to alleviate the suffering of those in need; and to legally enhance and protect the power of capital over and against that of a democratic citizenry.

Against the metaphysics of market naturalism, Polanyi ([1944] 2001) challenged the assumptions that endowed market justice with the privilege of adjudicating moral worth. His method was to reverse engineer the epistemic sleight of hand by which the market was made morally privileged precisely because it was declared free of moral contamination and political interest. Since the entire edifice rested on the nominalist naturalism of the economy, he had only to dismantle this naturalist illusion and the moral code of market justice would collapse precipitously.

Polanyi (1957) developed an alternative institutionalist political economy based on the premise that all of social life is based on institutions, coercion, and power rather than nature, voluntarism, and neutrality, and that free markets do not exist in the wild but are engineered to appear as such. His most counterintuitive and paradigm-changing argument is that actual markets are constituted by the very power, coercion, and violence abhorred and repudiated by the market

naturalist ideal. Free market doctrine claims an economy made efficient and free by its liberation from government interference, but Polanyi denies that markets and governments are separate and autonomous entities. Government action cannot 'interfere' in the economy; government rules, rights, and legal powers are what constitute the economy in the first place. The market is itself an allocative institution of power.

What appear to be free, natural, and autonomous markets are *politically* engineered in at least three ways: (1) redistributive legal and political power; (2) the power to extract social wealth and convert it to private gain; (3) the power to disempower democracy.

From the myth of the stateless market to redistributive political engineering

The concept of redistribution²⁰ conveys the Polanyian (1957) insight that primary market outcomes (wages, income, wealth), which appear to be the result of impersonal autonomous market forces (globalization, automation, the price mechanism), are in fact driven by government policies, legal coercions, and institutional powers. The concept plays on the contrast with the more familiar one of redistribution: whereas the latter focuses on government policies (especially taxation) *outside* the economy, redistribution exposes how government policies and legal powers actually shape the structure of markets *inside the economy* and influence primary market *redistribution*. It upends the binary that attributes politics, power, and governance to the public sphere, and freedom *from* power to the private. By putting law and government engineering into the heart of the price mechanism, redistribution challenges the very idea of the economy as the 'private' sector separate from government and law and puts an end to the myth of the stateless market.²¹

Examples of redistributive governance that are treated as natural to markets include copyright and patent laws that favour Big Pharma and obstruct fair competition (intellectual property law); crippling anti-union judicial rulings that have created radical asymmetries of power in waged labour and in the workplace (contract law); vigorous disabling of anti-trust law since the 1970s, leading to massive corporate consolidation (monopolies and anti-trust); financial instruments that create wealth out of legal technologies; bankruptcy laws written by the financial sector (bankruptcy law); and defanged regulatory agencies (lack of enforcement).²²

A key feature of redistributive practices is that they are designed to occlude the exercise of political or legal power inside the economy and to instead appear simply to be in the nature of things. Unlike redistribution, which is aggressively contested in the open realm of government policy and legislative debate, redistribution operates inside the black box of the market, and is fiercely shielded from public scrutiny. The result is that market outcomes continue to be perceived as reflecting impersonal natural market forces. Indeed, the very novelty and unfamiliarity of the term 'redistribution' testifies to the successful

depoliticization of primary market inequalities, making the ever increasing levels of wealth that have moved upward to the rich and super rich appear nonpolitical and simply market driven rather than as the result of predistributive power.²³ Alas even much of the left tends to attribute decades of rising inequality to ‘unfettered’ and ‘deregulated’ markets rather than to politically and legally engineered ones.²⁴

Predistribution, as a concept, echoes the pathbreaking insights of the legal realists (Block, 2013; Britton-Purdy et al., 2020; Fried, 1998; Hale, 1920, 1923, 1943; Rahman, 2016b) and American institutionalists (Novak, 2019; Veblen, 1904, 1936; Commons, 1924, 1934) who in the 1920s and 1930s argued that contra the *laissez-faire* free contract ideology of their day, the economy is constitutively enmeshed in legally administered coercions.²⁵ They demonstrated how those coercions underpinned all economic transactions through the rights and capacities allocated by law to market participants, which in turn explains the relative bargaining power of labour and employers, of renters and property owners, of consumers and firms, and so on (see also Woodruff, 2014). Like legal realism, predistribution exposes the deceit that attributes power and coercion exclusively to the state, while denying the power of political and legal engineering to effect market outcomes.

Social predistribution: Extracting wealth from the commons

The second form of predistributive power is what I dub social predistribution, which, despite the limited nature of their actual wealth-creating activity, allows businesses to accumulate great wealth by extracting value from what we today call the *social commons* and convert it into exclusively private gain. Alperovitz and Daly (2008) focus in particular on how companies and wealthy individuals extract for private gain the economic value of society’s ‘knowledge inheritance’, especially that of accumulated social, scientific, and technological knowledge: ‘[The] great bulk of our prosperity is due not to our own efforts or genius, but to the efforts and knowledge accumulation of those who came before us’ (Alperovitz & Daly, 2008, p. 158). Social predistribution explains how much private wealth is less the product of a firm’s productivity and capital investment and more of unremunerated productivity, knowledge, skills, technology, and infrastructure – the value, in short, of ‘a complex system of social cooperation’ (Alperovitz & Daly, 2008, p. 157).

Warren Buffet, among the wealthiest men on the earth, implicitly recognized social predistribution: ‘[Society] is responsible for a very significant percentage of what I’ve earned’ (Buffet, cited in Caulkin, 2013). Buffet was actually channeling Thomas Paine’s *Agrarian Justice* ([1795/96] 2015), in which Paine lays out a plan for universal social insurance²⁶ based on his analysis of the foundations of economic value and private riches, a political economy that turns on its head the standard Lockean assumptions that property is the natural right of those who have ‘mixed their labor with the soil’ (Somers, 1995). Not when that soil is the property of the commons and of society as a whole, Paine avers, and not when those riches

are the product of the wrongful private appropriation of society's much larger contributions:

Personal property is the *effect of society*; and it is as impossible for an individual to acquire personal property without the aid of society, as it is for him to make land originally. Separate an individual from society, and give him an island or continent to possess, and he cannot acquire personal property ... All accumulation, therefore, of personal property, beyond what a man's own hands produce, is derived to him by living in society.

(Paine, [1795/96] 2015, p. 34)

Elizabeth Warren (2011) also captured the practice of social redistribution when she made her famous 'You didn't build that' speech, in which she explains that the rich get rich by freeloading off of societal value. It is no coincidence that Warren has directed her criticism in particular to the high-tech companies such as Amazon, Facebook, and Google, whose vast wealth has been vacuumed up from personal data provided by you and me, which they recycle into private gain by marketization (Fourcade & Gordon, 2020; Zuboff, 2019; Kapczynski, 2020). Arguably, Silicon Valley can only exist by appropriating government-funded technological knowledge and public university research, as well as the common stock of scientific knowledge developed over generations (Block & Keller, 2011; Mazzucato, 2015). Social redistribution accelerates inequality and the wealth of private capital because unlike labour, that which is created from social resources is treated as a private asset. Put succinctly, modern economies reward activities that extract value rather than create it (Mazzucato, 2019).

Social redistribution also captures Polanyi's most influential insight that market economies are built by organizing into commodity markets what he calls social substances: labour and land are 'no[ne] other than the human beings themselves of which every society consists and the natural surroundings in which it exists' (Polanyi, [1944] 2001, p. 75). Private capital deploys social redistribution to extract societal value by converting humans and nature into factors of production. The value of 'labor' derives from the vast amount of unpaid work in families, communities, schools, indeed the entire social environment that makes human society and human reproduction possible – none of which is returned to the commons (Federici, 2012; Folbre et al., 2013; Hester, 2018; Fraser, 2016). Polanyi best explains how markets extract from what he calls 'the reality of society' in the form of fictitious commodities: 'All along the line, *human society had become an accessory of the economic system*' (Polanyi, [1944] 2001, italics added, p. 79; see also Ferreras, 2017, 2020).

Predistributive dedemocratization: The power to constrict democracy

Although capitalism's long history of repressing democratic forces in the public sphere (voter suppression, Jim Crow, etc.) has always been the more conspicuous, *predistributive dedemocratization* is more effective as it hardwires – and

naturalizes – dedemocratization into the economy itself and excludes ordinary citizens from exercising democratic influence over the economy. By instituting a firewall between economy and politics, it enforces and polices the boundaries of democracy by shielding market efficiency from political and moral considerations of equality and distribution.

Like other forms of predistribution, dedemocratization and the restrictions of market-conforming democracy are difficult to recognize as they have been so normalized as part of a free-market society that excluding citizens from having a voice in their own livelihoods appears to be simply in the nature of things. From the outset, the founders designed the US Constitution to institutionalize, and naturalize, a Rubicon-like divide between the economy and the polity, to structurally depoliticize the economy by isolating it from constitutional jurisdiction, and to give the public sector free rein only insofar as it was market-conforming. Thanks to the ideational regime of natural rights, constructing what Polanyi ([1944] 2001) called the ‘only legally grounded market society in the world’ appeared not as an act of affirmative power, but as if dividing up and protecting market processes from citizens was simply naming what was already given in nature. Notwithstanding an early and extensive white male franchise, even citizens with political rights were effectively powerless against the power of owners and employers (Polanyi, [1944] 2001, p. 234).

Under the rule of judicial review, the American judiciary has reiteratively enforced market-conforming democracy by swatting away legislative attempts to contest the absolute power embodied in property rights and freedom of contract.²⁷ In the early 20th century, *Lochner*-era courts notoriously and repeatedly struck down, in the name of freedom of contract, legislation that aimed to expand and protect the rights of workers.²⁸ It took three decades before New Deal economic policies were able to survive constitutional scrutiny, notably the 1935 NLRB (created the right to form unions) and the 1938 Fair Labor Standards Act (legalized minimum wages and maximum hours) (Fishkin & Forbath, 2014).²⁹ But notwithstanding a 30-year New Deal legal era and landmark civil rights victories under the Warren court in the 1950s and 1960s, since the 1970s we have seen the full-blown return of a neo-*Lochnerian* ‘juristocracy’ that polices with an iron fist the structural constraints of a market-conforming democracy,³⁰ not merely thwarting democratic efforts at regulation but also making creative use of unrelated constitutional rights to undermine the democratizing power of unions.³¹

Thanks to predistributive dedemocratization, when workers commute from home to work, where they have no voice over the conditions and practices that dominate their lives and livelihoods, they transform from rights-bearing citizens to rightless fictitious commodities. Rightlessness in the workplace is justified as a product of voluntary free contract in the private sphere, but it is the *political* nature of the firm and legal *predistribution* that makes the workplace the ultimate site of dedemocratization. As Anderson (2017, p. 54) explains: ‘The state has established the constitution of government of the workplace: it is a form of *private government*’ where employers’ authority is ‘sweeping, arbitrary, and

unaccountable—not subject to notice, process, or appeal’. With legally orchestrated rightlessness in the workplace, predistributive dedemocratization turns citizenship into a very thin concept. The commodification of humans into labour explains why dedemocratization creates not just inequality, and not just unequal power, but the much greater affliction of *unfreedom*. As Polanyi ([1944] 2001, p. 74) explains, the ‘commodity “labor power”’ is actually the ‘human individual who happens to be the bearer of this peculiar commodity’ and because ‘man’s labor power’ is one and the same thing as the ‘physical, psychological, and moral entity “man” attached to that tag’, it is not some fictional abstraction of ‘labor’ but the whole human being who is subjected to the silencing of dedemocratization and the unfreedom of servility that is a condition of employment (see also Ferreras, 2017).

The privatization of public goods is another mechanism of predistributive dedemocratization. Years of dismantling the social state have been justified by market efficiency, but motivating these conversions is not greater efficiency but the project of dedemocratization and the nullification of rights. When public goods are privatized, they are removed from the public sphere of democratic accountability and moved into the unaccountability of the private zone. Privatization means that efforts to exercise democratic voice over the distribution of social necessities are silenced for violating the firewall between efficiency and politics (Somers, 2017; Farrell, 2018).

Central banks hardwire dedemocratization into the heart of the economy. The outsized influence of the American Fed is virtually uncontested because of its independence from – and unaccountability to – the legislature and public sphere. Completely unimpeded by democratic voices, it sets interest rates based on an obsessive focus on low inflation, which is guaranteed to keep unemployment rates high and labour’s bargaining power low. Predistributive dedemocratization has been the very essence of the global economy (Slobodian, 2018). Fashioned to scale up to the global level the (fictional) self-regulating capacities of the domestic market, the gold standard has long given way to such bodies as the WTO, GATT, the IMF, the World Bank, and numerous international trade deals. In the absence of any comparable political bodies, they are even more cloistered from democratic input than are national markets, while at the same time legally enabled to impose policies and mandates to override democratically elected national legislative bodies (Braithwaite, 2008; Chang, 2002; Streeck, 2014; Slobodian, 2018).

After predistributive denaturalization: Deconstructing the inequality regime

By shattering the fabrications of market naturalism, predistributive analysis leaves exposed the moral trickery of market justice, whose claim to just deserts rests entirely on the economy’s professed absence of power. Where does the denaturalized economy leave the diktats of market justice?

The truth about inequality and the political economy of moral worth

At the close of GT, Polanyi confronts the moral superiority and the smug indifference so often expressed toward the suffering of the vast numbers of unemployed in the 1930s:

Neither voters, nor owners, neither producers, nor consumers [felt they] could be held responsible for such *brutal restrictions of freedom* as were involved in the occurrence of unemployment and destitution. Any decent individual could imagine himself free from all responsibility for acts of compulsion on the part of a state which he, *personally*, rejected; or for economic suffering in society from which he, *personally*, had not benefited. He was ‘paying his way,’ was ‘in nobody’s debt’ ... His *lack of responsibility* for them seemed so evident that he *denied their reality* in the name of *his freedom*.

(Polanyi, [1944] 2001, p. 266 italics added)

Polanyi here captures the self-righteousness – expressed in the language of personal responsibility, individual merit, and self-reliance – produced by the code of market justice, which allocates moral worth, blame, and responsibility according to the principles of just deserts and the stateless market. Regulated by the allegedly moral neutrality of marginal productivity, unemployment and social exclusion can only reflect merit and desert. ‘Paying one’s own way’ and being in ‘nobody’s debt’ put one beyond both moral reproach and responsibility for others’ suffering. After all, if market justice makes unemployment and destitution the effect not of shared fate and social conditions but of moral deficits and nature’s preferences, then our own good luck reflects our superior capacities, extraordinary productivity, and moral character.

But then with surgical precision, Polanyi tears away the veil of self-satisfaction: look closer and we’ll see that market justice is a ‘false Utopia’ as it is in fact driven by underlying mechanisms of power and coercion:

Liberal economy gave a false direction to our ideals. It seemed to approximate the fulfillment of intrinsically Utopian expectations. *No society is possible in which power and compulsion are absent, nor a world in which force has no function*. Vision was limited by the market which ‘fragmented’ life into the producers’ sector that ended when his product reached the market, and the sector of the consumer for whom all goods sprang from the market. The one derived his income ‘freely’ from the market, the other spent it ‘freely’ there. Society as a whole remained invisible. *The power of the state was of no account since the less its power, the smoother the market mechanism would function*.

(Polanyi, [1944] 2001, p. 266 italics added)³²

The moral code of market justice, in short, is engineered by the exercise of power, not by the fiction of natural laws free of political domination. Earnings, income, and freedom itself reflect not merit and fairness but the coercions of asymmetrical

power and commodification, just as corporate profits reflect not the equilibrium of the price mechanism but of government-protected monopolies, the legal suppression of unions, and the private appropriation of social wealth. The ‘power of the state’ makes the price mechanism not a neutral regulator but a function of the allocation of legal rights and capacities, just as the legally sanctioned maldistribution of bargaining power between workers and employers undermines the meritocratic and naturalistic claims of marginal productivity theory. The fairness, worth, and desert attributed to market distributions are reflections of power and coercion smuggled under nature’s protective cover into the ‘morality-free’ economy. Power, not nature, ascribes economic status, and inequality is a problem of domination and unfreedom (Rahman, 2016a).

Today, four decades of rising inequality have likewise been explained by an incoherent mix of market forces – globalization, automation, and technology – combined with the voluntaristic self-congratulatory language of meritocracy (Markovits, 2019; Sandel, 2020). Just as Polanyi disposed handily of the specious political economy of moral worth in his time, a comparative international glance refutes it in ours: no advanced country comes even close to the levels of US inequality (see Alvaredo et al., 2018). It is not globalization that has driven up the enormous fortunes of Bill Gates, Big Pharma, and the top 1 per cent but, among other things, government-granted patent and copyright monopolies (Baker, 2016, 2018; Pistor, 2019, 2020; Kapczynski, 2014). Market justice would have us believe that oligopolies are so profitable and CEOs so overpaid because they are superbly managed, but the reality is that predistribution, not meritocracy, is occurring.³³ Their heightened profits reflect neoliberal judicial doctrine and practice that facilitate monopolies and oligopolies in the name of ‘consumer welfare’ (Crouch, 2011; Khan & Vaheesan, 2017; Piraino, 2007; Rahman, 2016a, b; Somers, 2012; Whitehouse, 2020).

Nor is it robots and automation that have stagnated wages for 40 years but far-reaching asymmetries of power inside the workplace, both the ‘initial endowments’ market participants bring to the labour contract as well as the rules of absolute dominion – ‘employment at will’ – those contracts enforce (Economic Policy Institute, 2020; Bagenstos, 2020). These are policies and laws that, under the formalist illusion of the free labour contract, overwhelmingly endow employers and high-level managers with vastly disproportionate power, while simultaneously restricting and constricting the rights and freedoms of the citizenry qua workers, both inside and outside the workplace (Anderson, 2017; Purdy, 2018a). Above all, much of today’s extreme inequality can be attributed to anti-union judicial rulings that today’s neo-Lochnerian juristocracy can count among its most shameful redistributive achievements (Cohen, 2020). The specious doctrine of equal bargaining power³⁴ in labour law has provided cover for the courts to prohibit collective labour litigation, while it has ‘weaponized’ the First Amendment to weaken and undermine unions (see *Janus v. AFSCME*, 2018; see also Purdy, 2018b; Tebbe, 2020).

In short, it is redistributive political and judicial engineering that has orchestrated the massive upward redistribution of wealth and income in US since the 1970s (Baker, 2016; Whitehouse, 2020). But because predistribution remains

shrouded, four decades of rising inequality have been attributed to ‘deregulated’ markets rather than to capital’s four-decade campaign redistributing wealth through predistributive practices. There is, of course, no such thing as deregulated markets, only *reregulated* ones – predistributive practices that switch from one beneficiary to another (Block & Somers, 2014). Viewed through the *alchemy of misrecognition*, ‘deregulation’ is simply the name used for unrecognized and unnamed predistributive practices that redistribute income and wealth upwards – ‘naturally’ (Somers, 2018).

The truth about redistributive justice

Justifying inequality by market justice leads inexorably to the claim that efforts to mitigate the suffering of those in need through redistributive taxation wrongfully steal from the deserving ‘owners’ of their income and give these ‘stolen’ unearned rewards to the undeserving. Social predistribution clarifies who is stealing from whom. In their *Myth of Ownership*, Murphy and Nagel (2002) challenge the premise that the pre-tax distribution of income and wealth should be taken as the ‘presumptively given’ – that is, fairly earned – baseline, which in turn challenges the idea that taxes are theft. Although taxes are generally deemed redistributive, they use predistributive reasoning to show that pre-tax earnings are not earned ‘on one’s own’ but are dependent on the taxes that *precede* and *make feasible the possibility of any economic transactions at all*. It is taxes that sustain the legal system that defines property rights and the boundaries of their control; that support the legal and policing infrastructure that protects the rights to private property; that support the sites of capital accumulation through which goods and services are produced; and that sustain the financial system, the legal system of patents and copyrights, the vast infrastructure of transportation and telecommunications and all the other aspects of society that those from Thomas Paine ([1795/96] 2015) to Elizabeth Warren (2011) have documented as foundational to all wealth creation. Without taxes derived from society, there would be no market economy. In this sense, taxes can be predistributive.

Everyday libertarianism, like market justice, rests on the myth of the stateless and taxless market. What appears to be the market’s natural distribution of income and wages is in great part the product of the *prior* predistributive power of taxes to create the conditions for markets in the first place. The idea that income is presumptively earned by one’s own hands in the market, prior to and independently of any government or social support, is part of the ‘myth of ownership’ of pre-tax income.

Once everyday libertarianism has been punctured, so too must be its claim that redistribution benefits the ‘undeserving’, who are stigmatized as social parasites (Mazzucato, 2019). Social predistribution – the unearned wealth accumulated by those rich enough to extract value from society’s present and past resources – also makes short shrift of the poisonous vocabulary of ‘deserts’ and the political economy of moral worth from which it derives. The real injustice is the outsized power that allows private capital to accumulate vast wealth by taking from society

and giving nothing in return (other than the opportunity to buy more), not even the duly owed taxes which they lawlessly evade (Saez & Zucman, 2019). The World Inequality Lab's 2018 (Alvaredo et al., 2018) report analyzes how private capital and businesses appropriate enormous amounts of public wealth, creating state indebtedness and incapacitating governments. Social redistribution makes clear where the real theft takes place and who are the truly undeserving.

The truth about democracy and capitalism

The diktat of criminalizing and then radically constricting popular governance to that of market-conforming democracy was designed to contain the threat to property of the pitchforked masses. Predistributive analysis reveals that the true threat is the power of property and capital to democracy, rather than vice versa. Predistributive dedemocratization so efficiently escalates inequality that the plutocracy it nurtures effortlessly glides into becoming an occupying power in the public sphere where it neutralizes all but the formalities of democratic citizenship.

The end of market naturalism exposes the multiple deceptions market justice mobilizes to justify robbing the citizenry of their democratic rights. One is that democracy is a vehicle of 'special' interests and so threatens market justice's 'universality' – the claim that its wealth-maximizing efficiency makes everyone better off. The evidence against this is overwhelming. If the alarmist cries of the 1970s about the perils to capitalism of 'too much democracy' and an 'excess of rights' had any credibility, the preceding decades should have been years of stagnation. Instead, as is well known, the *trentes glorieuses* produced not only high growth rates but years of relatively high equality. By contrast, over the recent decades of neoliberalism, rather than benefitting the whole of society, almost every additional penny of growth has accrued to the top 0.01 per cent while leaving workers unremunerated for their productivity gains.³⁵ Contrary to public choice theory (Buchanan, 2000), not innocent property-owners but the public fisc is the real 'prey' in the market/democracy relationship (Block, 2018; Streeck, 2014, 2016; Hacker & Pierson, 2010, 2020; Gilens & Page, 2014).

In another deceptive claim, market justice is depicted as a morally disinterested process of unbiased nonpolitical 'horizontal' transactions among equals, entirely free of the coercions of 'vertical' domination characteristic of politics and power. Predistributive dedemocratization punctures this fiction by revealing the currency of the market economy to be power – the power to enforce a limited market-conforming democracy and to silence democratic voices in the workplace. The truth about this diktat is that democracy is engaged not because it is a threat to *la doux commerce* (Hirschman, [1977] 2013) but because it is a *competing* power. The difference between the two kinds of power is that the market's predistributive powers and coercions are occluded under the veil of the 'free market', whereas democratically articulated efforts to exercise power are fully visible and contestable in the public realm of legislative debate and collective action. The comparative advantage that accrues to market justice is that of *naming*: keeping workers in conditions of virtual servility in the workplace, prohibited from expressing their

voices as citizens, is named as freedom of contract, while contesting these conditions in the effort to democratize the workplace is named as politicizing the economy. Predistributive analysis, by making explicit that the economy is already constitutively political, makes a mockery of this false dichotomy between neutral and power-driven (Somers, 2018; Block, 2018; Britton-Purdy et al., 2020).

A third deception that rationalizes the constriction of democracy derives from the edicts of public choice theory – that feckless politicians acting out of their own economic self-interest will succumb to popular predations upon defenceless property owners who will be left besieged and stripped of their wealth (Buchanan, 2000; MacLean, 2017). Four decades of neoliberalism have rendered ludicrous this narrative of helpless property owners under assault by a rapacious democratic mobocracy (Brown, 2019). On the contrary, predistributive dedemocratization has institutionalized structural bulwarks deep inside the market economy to completely bar the democratic citizenry from coming anywhere near the propertied elite and their wealth. From the constitutional firewall between politics and property, to the prohibition of workers' voices in 'private governments', to the judicial support of monopoly and monopsony, to the dedemocratized central banks and global financial organizations, naming the problem as 'too much democracy' is risible.

History, in fact, demonstrates the reverse – it has been the refusal of capital to tolerate even the mildest of economic reforms that precipitated not merely plutocratic control of governance but moves to eliminate democracy altogether. In GT, Polanyi argues that the triumph of fascism in Continental Europe in 1930s was triggered by an impasse between democracy and global capital – working-class led parliamentary efforts to democratically enact social protections against the extreme privations of mass unemployment, versus (or vs. if not enough room) the gold standard's dictum against 'distorting' national currencies through social spending. Defining the essence of fascism as using state power to save capitalism by extirpating democracy, Polanyi argues that economic elites' virulent antagonism to democracy was so overdetermining that it motivated them to ally with fascists to fortify capitalist power through a strong state: '[The] victory of fascism was made practically unavoidable by the [economic] liberals' obstruction of any reform involving planning, regulation, or control' (Polanyi, [1944] 2001, p. 265; Dale, 2016a, b).

Polanyi saw fascism's triumph as but the most virulent outbreak of capitalism's innate antidemocratic virus. Echoes of the calamitous fate of Europe in the 1930s are found in America's surging inequality and illiberal market authoritarianism today. The complicity between the Republican Party, a colluding judiciary, and the Trump presidency most clearly underlines the elective affinity between a plutocracy and authoritarianism (Whitehouse, 2020). Predistributive dedemocratization reveals that it is not market justice that is threatened by democracy, but – once again – democracy that is threatened by capital (Streeck, 2016).³⁶

Toward a predistributive democracy

Market justice was born under the false flag of nature and the myth of the stateless market. Based on this fictional naturalism – unencumbered by the biased

hands of power and social ideas of morality – political economy then attributed moral privilege to market outcomes. Predistribution – legal/political, social, and dedemocratizing – is a solvent; once it strips away the make-believe symmetry between the laws of nature and those of the market, it exposes market justice as empirically and morally bankrupt – it is neither true nor just. Where then does that leave us? Is there an alternative metric of justice?

Redistributive justice has been the traditional philosophy of compensating for unjust deserts, and redistributive social provisioning continues to be an essential element in a progressive political programme, especially in light of its decommo-
difying and democratizing effects (O’Neill, 2020; Esping-Andersen, 1990; Piketty, 2014, 2020; Klein, 2020). But by itself, redistribution is insufficient, as it ‘comes too late’ (Vogel, 2019). It primarily focuses on government *corrections* for market inequalities, while it deflects attention from the maldistributive *origins* in the market’s asymmetrical powers of domination and dedemocratization. The solution, then, is not merely a redistribution of income, but a *redistribution of power* and *democratization* through what I dub as *predistributive democratization*.

The goal of a predistributive democracy is to hardwire justice and democracy into the structure of the market (Kennedy, 2019) by reappropriating the predistributive powers that currently advantage wealth and capital and reverse engineer them to egalitarian and democratic ends. This would eschew peddling the pretence of achieving a market free of power – or of the legal fiction of equal power, which amounts to the same thing. Once we have established that all markets are structured by power, we can also recognize the politically contingent nature of predistribution: it can either strengthen or weaken the bargaining power of workers, either bolster or tame corporate profits through antitrust and rules of monopoly, be calibrated either to skew income to the 1 per cent or to contribute to a more equitable wage and income structure. Whether predistribution will advantage wealth and capital or distribute income and wages in a more egalitarian direction depends almost entirely on the balance of power between capitalism and democracy.

With this in mind the goal of a predistributive democracy is to laser focus on the very predistributive policies that have been most instrumental in generating four decades of ever-spiking inequality and dedemocratization and to mobilize *countervailing predistributive democratically driven powers* to undo and transcend them. Jacob Hacker (2011) explains the project clearly: predistribution ‘focus[es] on market reforms that encourage a more equal distribution of economic power and rewards even before government collects taxes or pays out benefits’. Martin O’Neill (O’Neill & Williamson, 2012a), the philosopher who should be credited with most widely and effectively disseminating the concept, elaborates: ‘Instead of equalizing unfair market outcomes through tax-and-spend or tax-and-transfer, we instead engineer markets at their internal structural level to create fairer outcomes from the beginning’ (see also Vogel, 2019). Beyond just ‘fairer outcomes’, however, a predistributive democracy must confront the economic and political oligarchy that, in a vicious circle, is able to continuously reimpose unequalitarian policies and legal coercions to undermine not merely fair earnings but ultimately

freedom and democracy itself (Bartels, 2008; Brown, 2019; Gilens & Page, 2014; Reich, 2015; Hacker & Pierson, 2020).

To dismantle the inequality regime produced by market justice requires an alternative institutionalist and power-centric political economy (Polanyi, 1957; Guinan & O'Neill, 2018; Somers & Block, 2020; Block & Somers, 2014; Fligstein & Vogel, 2020; Britton-Purdy et al., 2020) to that of social naturalism: (1) Market processes do not mimic the self-regulative laws of nature, always moving toward a default state of equilibrium. The currency of markets is power, not nature: all market participants are enmeshed in networks of power, and market outcomes reflect the market's infrastructural relations of power, specifically those of political/legal, social, and dedemocratizing redistributive power. (2) The stateless market is a myth, the economy is 'market-crafted' by the state (Vogel, 1996, 2018), and the market is an allocative institution of power redistributively designed to dedemocratize (Somers, 2020a). (3) Wealth is not produced exclusively by capital accumulation but by the redistributive powers of political power and law, the redistributive powers of capital to extract social and public value from the commons and the public fisc, and by the redistributive powers to structurally dedemocratize and restrict popular sovereignty to its market-conforming limits.

This political economy makes clear the solution to inequality and the moral crimes of market justice requires the countervailing powers of redistributive democratization. At the top of the agenda must be redressing the 'unjust deserts' (Alperovitz & Daly, 2008) by which private capital and owners engorge themselves on the social resources and inheritances they had little to do with creating. Recalling Thomas Paine's ([1795/96] 2015) manifesto, since private property is built on societal wealth, then justice requires returning that social wealth to the commons: '[He] owes on every principle of justice, of gratitude, and of civilization, a part of that accumulation back again to society from whence the whole came' (Paine, [1795/96] 2015, p. 34). Inspired by Paine, thinkers from Louis Bourgeois to Henry George, through Elizabeth Warren, have worked to elaborate this vision. Alperovitz and Daly (2008) argue that because so much capital accumulation is due not to individual efforts or merit but to exploiting social inheritance and the commons it follows that 'properly recognizing this gift establishes *a social claim to the wealth that it generates, a moral claim* that is presently largely unrecognized' (Alperovitz & Daly, 2008, italics added, p. 156).

Recognizing that so much wealth is a product of the extraction of social value compels us to discard the wrongheaded precepts of desert-based ideas of justice and substitute democratic ones. If market outcomes are shaped not by neutral market processes or merit, but by politics, rules, power, and the extraction of societal value, it is much easier to understand that wealth and property are not individually but collectively produced. Property, from this angle of vision, is a fictive private asset; its privileges must be subject to the democratic deconstruction of their illicit foundations. A citizen dividend, public wealth funds, new public utilities – these are just some of the ways this could happen (Guinan & O'Neill, 2019; O'Neill, 2019; Rahman, 2016b; Alperovitz, 2017; Alperovitz & Daly, 2008; Howard et al., 2020; Poole, 2020).

Perhaps the most important mandate of a predistributive democracy is to unbridle the encaged powers of democratic citizenship beyond the limits of a market-conforming democracy. Working people have been stripped of their full citizenship rights inside the firm under the doctrine of equal bargaining power and consent-based freedom of contract, which ‘undermines freedom, fairness, and democracy’ (Economic Policy Institute, 2020; Bagenstos, 2020). Rather than accept the ruse of an apolitical economy, it is critical to recognize there is a *citizenry* already inside the economy. A predistributive democracy aims to activate those democratic citizenship rights currently suppressed inside the economy, and for citizens to activate their rights in the polity beyond the emaciated rights of a market-conforming democracy.

Reviving union power is at the heart of a predistributive democracy. No less than Lawrence Summers (2020) now argues that strengthening the countervailing power of unions is the ‘central and urgent priority’ for combating inequality. But at stake in reviving unions is much more than income distribution: union power is democratic power. As Block and Sachs (2020) remind us: ‘[Without] unions ... millions of lower-income Americans have lost their most effective voice in our democracy’. Unions are also critical vectors for decommodification, as democratization is the precondition for decommodification, which is itself the precondition for freedom (Polanyi, [1944] 2001; Ferreras, 2020).

Predistributive democracy thus aims to constrain the powers of economic and political domination by enlarging democratic citizenship at the structural level (Mackert, 2017; Rahman, 2018; Rahman & Russon, 2019; Somers, 2008; Somers & Roberts, 2008). Fourcade and Gordon (2020) argue for ‘seeing like a citizen’, while Forbath and Fishkin (2014, 2016) articulate a new political economy based on an ‘anti-oligarchic constitution’. They argue that when the courts have disallowed on the grounds of contractual consent efforts to redress workplace imbalance of power, it is not enough to respond that the Constitution does not disallow these ameliorative acts. Because they read the Constitution as an ‘equality of opportunity’ and ‘anti-oligarchy’ document, the issue is not about what the Constitution ‘allows’ but what it *demand*s and *require*s the legislature to do if it is to meet its primary goal of constructing an anti-oligarchic democratic republic with equal citizenship rights (Forbath, 2019; see also Sitaraman, 2016, 2017). To combat the hegemony of the neoliberal ‘One Percent Constitution’, McCluskey (2016, 2020) argues for a progressive ‘structural constitutionalism’ that aims to ‘re-order the distribution of power’ away from a market-conforming democracy toward generating ‘collective political economic power for an inclusive and democratic vision of “we the people”’. Rahman (2016b, d) also argues for a new ‘constitutional political economy’, but with less of an emphasis on the formal Constitution and more on the democratic moralities and structures that are necessary to ‘constitute’ a democratic egalitarian society.

Monopolization increasingly enriches the financial oligarchy and bolsters its ability to suppress the voices – and the wages – of an independent democratic citizenry. The ‘New Brandeisians’ and others (Lynn, 2010; Khan, 2018; Khan & Vaheesan, 2017; Teachout, 2020, Teachout & Khan, 2014; Rahman, 2016c;

Reich, 2015; Steinbaum, 2019; Vaheesan, 2020; Schneider & Vaheesan, 2019) focus on combating the law and economics doctrine of anti-anti-trust that pre-distributively coddles monopolies in the name of greater ‘consumer welfare’, efficiency, and growth, while prohibiting any consideration of democratically deliberated distributive equity.³⁷ While it was Lynn (2010) who first brought back to public attention the predatory politics of monopolization, the movement has quickly grown with Rahman (2016b) arguing that to oppose monopoly is to support an independent democratic citizenry against a financial autocracy, and Khan (2018, p. 131) writing: ‘antimonopoly is a key tool and philosophical underpinning for structuring society on a democratic foundation’. In the same vein, Baker (2016) and Kapczynski (2014) challenge the system of patents and copyrights as a primary predistributive driver of inequality, while Reich (2015), Stiglitz (2015, 2019, 2020), Baker (2016), and Sitaraman (2019) all have developed extensive programmes for combating the government’s multiple methods of predistributive market ‘rigging’ that drive wealth and income upwards to an ever more financially bloated plutocracy (Guinan & O’Neill, 2019; Rahman, 2017–2018).

A different angle of vision focuses on the structure of property itself. Ciepley (2020) focuses on the public and socialized nature of the corporation, reminding us that the corporation is not a private entity but constituted by a charter, granted by the state (see also Crouch, 2011). Even in a corporate-dominated economy not stockholders but the ‘sovereignty of public authority’ is the ultimate owner, which includes workers, consumers, the community, and the environment. Forcing the public nature of the corporation into the open has clear implications for democratizing the economy. Under the moniker of ‘capital redistribution’, from a different angle of vision Martin O’Neill (2017) argues that we should be ‘worrying less about marginal tax rates and more about ownership and control of capital’. More important than the flow of income streams are ‘the sources of wealth from which they came’ – from ownership patterns increasingly structured to support a plutocracy. Capital redistribution would aim to ‘change the nature of property rights such that wealth ... would be dispersed across the population, with individual capital holdings for all viewed as *an entitlement of citizenship*’. Restructuring ownership toward a ‘property-owning democracy’ (O’Neill, 2017, pp. 363, 369) captures the essence of predistributive democracy, which recognizes the social foundations of wealth and property, and aims to redemocratize the value of that which has been privatized by the enclosure of the commons (see also O’Neill, 2020, 2021; Guinan & O’Neill, 2019; Alperovitz, 2017).

Conclusion

Although there are differences of emphasis, all these proposals contribute to envisioning the components of a predistributive democracy. They make clear that inequality is not merely a moral issue of deep injustice and harm – although it certainly is that; nor is it merely an economic issue of redistributing income – although income must indeed be redistributed. Rather, they clarify that the maldistribution of power and property, as well as the continuing violence of dedemocratization

and human commodification, is both the cause and consequence of authoritarian oligarchy, making inequality a crisis of democracy and political freedom itself.

A Polanyian perspective explains this crisis not as the effect of deregulated market forces nor of the absence of morality, but of predistributive coercive powers, including those of an all-powerful juristocracy and the legal invention of wealth, the wrongful extraction of social wealth by capital, and the structural processes of dedemocratization. Market justice provided the original justification: because market outcomes, however cruel, reflect nature's own distributional mechanisms, they are the unbiased arbiters of livelihood and fate. This in turn produced a political economy of moral worth that righteously grafts stigmatizing blame onto the pain of exclusion, and self-congratulatory praise onto the comfort of wealth. An alternative predistributive political economy exposes market justice's moral crimes of justifying inequality, degrading the moral worth of the excluded, and nullifying democratic citizenship rights. Polanyi understood democracy to be the only thing standing between the crises wrought by market justice and full-blown fascism. He also taught us that discarding the false dichotomy of markets versus morals is a precondition to fashioning a democratic rather than an authoritarian response. Clearly, those who fail to reckon with the moral economy of the capitalist crowd will fail to understand its outsized powers. We can only build a predistributive democracy on the ruins of market justice.

Acknowledgements

Earlier versions of this chapter were presented at Princeton University's Belknap Global Workshop on the Moral Economy, 6–7 April 2018; the University of Potsdam, Germany, International Conference on The Condition of Democracy and the Fate of Citizenship 11–13 July 2019; and at the Conference on *The Great Transformation* at 75, Bennington College, 25–27 October 2019. I'm appreciative of the many comments I received in those settings. As always, Fred Block gave invaluable feedback on previous drafts.

Notes

- 1 It would take an average Amazon worker 3.8 million years, working full time, to earn what CEO Jeff Bezos now possesses. And the country's wealthiest 20 people own more wealth than half of the nation combined – 20 people with more wealth than 152 million others. See <https://inequality.org/facts/income-inequality/>. Alvaredo et al. (2018), Roser & Ortiz-Ospina (2016).
- 2 In 'En route to autocracy in America', Masha Gessen argues that United States is in the first stage of an autocratic transformation. See Heffner (2020).
- 3 The term 'moral economy' famously comes from E.P. Thompson (1971). On the influence of Polanyi on Thompson, see Block and Somers (2014, pp. 44–72).
- 4 This would hardly surprise those familiar with 40 years of revisionist scholarship on Adam Smith. Polanyi, however, attributes classical political economy not to Smith but to Malthus and Ricardo.
- 5 There is an elective affinity between market justice and meritocracy, see Markovits (2019) and Sandel (2020), but they are not the same. The latter addresses individual input and outcomes whereas market justice, while it has implications for micro justification or 'just deserts', is a macro-generated normative claim about structural market forces.

- 6 Rather than an exegesis on his work, this chapter uses a Polanyian conceptual vocabulary Fred Block and I have abstracted from his writings (Block & Somers, 2014).
- 7 The accusation of moral invidiousness was based on Joseph Townsend's and Malthus's claims that providing poor relief presented a moral hazard, inducing laziness and more poverty (Block & Somers, 2014, pp. 150–192; Somers, 2020b).
- 8 This and several of the following paragraphs are revised from Somers (2020a).
- 9 On theoretical realism in economics, see Somers (1998).
- 10 On naturalism, see Polanyi ([1944] 2001). On social and market naturalism, see Block and Somers (2014, pp. 150–192) and Somers (2008, pp. 254–288). On the history of economic naturalism, see Harcourt (2011) and Grewal (2017).
- 11 Thus Polanyi: 'Essentially, economic society was founded on the grim realities of Nature. If man disobeyed the laws which ruled that society, the fell executioner would strangle the offspring of the improvident. *The laws of a competitive society were put under the sanction of the jungle*' (Polanyi, [1944] 2001, p. 131 - italics added).
- 12 Lest anyone be tempted to think the crude discourse of market naturalism has been surpassed, consider the recent thoughts of President Bill Clinton: globalization is 'the economic equivalent of a force of nature, like wind or water', see <https://www.economist.com/books-and-arts/2016/11/19/the-third-wave-of-globalisation-may-be-the-hardest>, or former Prime Minister Tony Blair, regarding the globalization debate: 'You might as well debate whether autumn should follow summer', see <https://www.theguardian.com/uk/2005/sep/27/labourconference.speeches>.
- 13 Piketty (2020) uses the same concept of an inequality regime but with very different substantive content.
- 14 In its crudest version, that CEOs receive 500 times that of each individual worker in his/her firm simply reflects a remarkably talented corporate elite.
- 15 On how this moral code shapes modern social policy, see Somers (2017).
- 16 Dale (2016b, pp. 55–79) masterfully reconstructs Polanyi's thesis on the basic incompatibility of capitalism and democracy. See especially Streeck (2014) to understand the fundamental conflict between democracy and capitalism.
- 17 Hayek's strenuous anti-democratic injunctions continued through his life's work, see von Hayek ([1939] 1980), Mirowski and Plehwe (2009), Burgin (2012), Stedman Jones (2012), Streeck (2014).
- 18 On law and economics, see Harcourt (2011), Crouch (2011), Britton-Purdy et al. (2020), Teles (2012), Posner (1983).
- 19 See Krugman (2014), 'American politicians don't dare say outright that only the wealthy should have political rights—at least not yet but if you follow the currents of thought now prevalent on the political right to their logical conclusion, that's where you end up'. Thus, Steven Moore, one of the leading pundits of conservative economics: 'Capitalism is a lot more important than democracy, I'm not even a big believer in democracy. I always say that democracy can be two wolves and a sheep deciding what to have for dinner' (Harwood, 2019).
- 20 The term predistribution was coined by political scientist Jacob Hacker (2011), and put into currency by Ed Miliband in 2012, then leader of the UK's Labour Party. See also O'Neill and Williamson (2012a, b), O'Neill (2020), Thomas (2017), Somers (2018), Vogel (1996, 2018, 2019). Predistribution should not be confused with the more familiar concept of embeddedness, which is used most commonly to suggest that social and political institutions modify markets rather than structure their mechanisms (e.g. price system) of distribution. For analyses of the Polanyian roots of predistribution, see Somers (2018), Somers and Block (2020).
- 21 For a discussion of how Polanyi's theory of market utopianism lays the groundwork for the modern concept of predistribution, see Somers (2018).
- 22 Reich, 2015; Baker, 2016; Bagenstos, 2013, 2020; Block and Somers, 2014; Stiglitz, 2015; Pistor, 2019, 2020.

- 23 Although he does not use the term predistribution, few have done more than Baker (especially 2016) to convey that it is government policy and law, not the ‘free market’, that are responsible for driving incomes upwards over the recent decades.
- 24 But see Somers (2008) and Stiglitz (2020): ‘But, of course, the neoliberal deregulation agenda was never really about deregulation per se. The point has always been to regulate in a way that will advance certain interests at the expense of others’.
- 25 Although Polanyi’s work has strong elective affinities with legal realism (as well as with American economic institutionalists, such as Veblen and Commons), it was the structuralist anthropologists, especially R.C. Thurnwald and B. Malinowski, the German historical school, especially G. Schmoller and C. Bücher, the English historical economists, especially W. Ashley and W. Cunningham, and E. Heckscher, who most influenced his historical institutionalist thinking in *The Great Transformation* (pp. 269–303; Polanyi, 2014; Somers, 1990; Koot, 1987). Although, see Dale (2016a, b) for the definitive discussion of Polanyi’s intellectual influences.
- 26 Both *Agrarian Justice* and the plan are currently featured on the US government’s official Social Security website <http://www.ssa.gov/history/paine4.html>. See also socialsecurityworks.org.
- 27 The apparent exception to this rule was the 1890 Sherman Anti-Trust Act, which, perhaps not surprisingly, was justified entirely by its stated purpose of using law to strengthen the competitive nature of capitalism. Indeed, while on its surface it appeared to use the law to ‘interfere’ in free trade, in reality it was at first used almost exclusively to ‘interfere’ with the creation of labor unions, the primary vector of democratic influence in the interest of expanding the rights of working people.
- 28 *Lochner v. New York*. 198 U.S. 45 (1905).
- 29 Although, see Taft-Hartley (1947).
- 30 Law and economics has provided the intellectual fodder, see Teles (2012), Harcourt (2011), Phillips-Fein (2010), Britton-Purdy et al. (2020), Kapczynski (2018).
- 31 *Janus v. AFSCME* 138 S. Ct. 2448 (2018), and see Cohen (2020).
- 32 Thanks to David Woodruff for reminding me of the importance of these paragraphs for my analysis.
- 33 Piketty (2014) empirically and handily undermines CEO claims to meritocratically justified ‘super salaries’.
- 34 On the deadly effects of the doctrine of equal bargaining power in labor law, see Bagenstos (2020), and EPI (2020).
- 35 Recent estimates suggest that the annual sum that has shifted from workers to owners now tops \$1 trillion. Every American worker who is not in the top 10 per cent of the income ladder is in effect sending an annual check for \$12,000 to a richer person in the top 10 per cent (*New York Times*, 2020). The World Inequality Lab’s 2018 report reveals that the global top 1 per cent of wage earners captured twice as much economic growth as the bottom 50 per cent between 1980 and 2016.
- 36 Hence Stiglitz (2020): ‘In America, self-interested wealthy elites who want to secure their position at the top have formed a de facto unholy alliance with extremists (including white supremacists and neo-Nazis). By manipulating the political system and supporting measures to disenfranchise and suppress voters, they have effectively replaced American democracy with minority rule’.
- 37 The Democratic Party now has a strong programme for combating monopoly: <https://prospect.org/power/house-antitrust-big-tech-report-not-about-big-tech/>.

References

- Alperovitz, G. (2017). *Principles of a pluralist commonwealth*. Retrieved from <https://thenextsystem.org/principles>.
- Alperovitz, G., & Daly, L. (2008). *Unjust deserts*. New York: The New Press.

- Alvaredo, F., Chancel, L., Piketty, T., Saez, E., & Zucman, G. (2018). *World inequality report*. Cambridge: Harvard University Press. Retrieved from <https://wir2018.wid.world/files/download/wir2018-summary-english.pdf>.
- Anderson, E. (2017). *Private government*. Princeton: Princeton University Press.
- Bagenstos, S. (2020). Lochner lives on. *Economic Policy Institute*. October 7. Retrieved from <https://www.epi.org/publication/lochner-undermines-constitution-law-workplace-protections/>.
- Bagenstos, S.R. (2013). Employment law and social equality. *Michigan Law Review*, 112(2), 225–273.
- Baker, D. (2016). *Rigged: How globalization and the rules of the modern economy were structured to make the rich richer*. Washington, DC: Center for Economic and Policy Research.
- Baker, D. (2018). Is intellectual property the root of all evil? Patents, copyrights, and inequality. CEPR Working Paper. October 2018. Retrieved from <https://www.cepr.net/images/stories/reports/ip-2018-10.pdf>.
- Bartels, L.M. (2008). *Unequal democracy: The political economy of the new gilded age*. New York: Russell Sage Foundation and Princeton University Press.
- Block, F. (2013). Relational work and the law: Recapturing the legal realist critique of market fundamentalism. *Journal of Law and Society*, 40(1), 27–48.
- Block, F. (2018). *Capitalism: The future of an illusion*. Berkeley: University of California.
- Block, F., & Keller, M. (2011). *The state of innovation*. Boulder: Paradigm.
- Block, F., & Somers, M.R. (2014). *The power of market fundamentalism: Karl Polanyi's critique*. Cambridge: Harvard University Press.
- Block, S., & Sachs, B. (2020). A clean slate: Reforming law to empower workers. *Canadian Law of Work Forum*. March 4. Retrieved from <https://www.cleanslateworkerpower.org/>.
- Braithwaite, J. (2008). *Regulatory capitalism*. Cheltenham: Edward Elgar.
- Britton-Purdy, J., Singh Grewal, D., Kapczynski, A., & Rahman, K.S. (2020). Building a law-and-political-economy framework: Beyond the twentieth-century synthesis. *The Yale Law Journal*, 129(6), 1784–1832.
- Brown, W. (2019). *In the ruins of neoliberalism: The rise of antidemocratic politics in the West*. New York: Columbia University Press.
- Buchanan, J.M. (2000). *The politics of public choice*. Indianapolis: Liberty Fund.
- Buchanan, J.M., & Tullock, G. (1962). *The calculus of consent: Logical foundations of constitutional democracy*. Ann Arbor: University of Michigan Press.
- Burgin, A. (2012). *The great persuasion: Reinventing free markets since the depression*. Cambridge: Harvard University Press.
- Caulkin, S. (2013). What Warren Buffett can teach us all. *Financial Times*. May 12. Retrieved from <https://www.ft.com/content/2a9be5ca-ae83-11e2-8316-00144feabdc0>.
- Chang, H.-J. (2002). *Kicking away the ladder*. London: Anthem.
- Ciepley, D. (2020). Privatizing sovereignty, socializing property: What economics doesn't teach you about the corporation. LPE Project. February 18. Retrieved from <https://lpeproject.org/blog/privatizing-sovereignty-socializing-property-what-economics-doesnt-teach-you-about-the-corporation/>.
- Clark, J.B. [1899] (2001). *The distribution of wealth: A theory of wages, interest and profits*. Library of Economics and Liberty. New York: The Macmillan Company. Retrieved from <https://www.econlib.org/library/Clark/clkW.html>.
- Cohen, A. (2020). *Supreme inequality: The Supreme Court's fifty-year battle for a more unjust America*. New York: Penguin.

- Commons, J.R. (1924). *The legal foundations of capitalism*. New York: The MacMillan Company.
- Commons, J.R. (1934). *Institutional economics: Its place in political economy*. New York: MacMillan.
- Crouch, C. (2004). *Post-democracy*. Cambridge: Polity.
- Crouch, C. (2011). *The strange non-death of neoliberalism*. Malden: Polity.
- Crozier, M., Huntington, S.P., & Watanuki, J. (Eds.) (1975). *The crisis of democracy: Report on the governability of democracies to the trilateral commission*. New York: New York University Press.
- Dale, G. (2016a). *Karl Polanyi: A life on the left*. New York: Columbia University Press.
- Dale, G. (2016b). *Reconstructing Karl Polanyi*. London: Pluto Press.
- Economic Policy Institute (EPI). (2020). *Unequal power*. Retrieved from <https://www.epi.org/unequalpower/>.
- Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Princeton: Princeton University Press.
- Farrell, H. (2018). *Privatization as state transformation*. University Press Scholarship Online. Retrieved from doi:10.18574/nyu/9781479842933.003.0008.
- Federici, S. (2012). The reproduction of labor power in the global economy and the unfinished feminist revolution. In S. Federici (Ed.), *Revolution at point zero: Housework, reproduction, and feminist struggle* (pp. 101–122). Oakland: PM Press.
- Ferreras, I. (2017). *Firms as political entities: Saving democracy through economic bicameralism*. New York: Cambridge University Press.
- Ferreras, I. (2020). Work: Democratize, decommodify, remediate. 29 October. Retrieved from <https://democratizingwork.org/>.
- Fishkin, J., & Forbath, W.E. (2014). The anti-oligarchy constitution. *Boston University Law Review*, 94(671). Research Paper No. 561. Retrieved from SSRN: <https://ssrn.com/abstract=2431255>.
- Fishkin, J., & Forbath, W.E. (2015–2016). Reclaiming constitutional political economy: An introduction to the symposium on the constitution and economic inequality. *Texas Law Review*, 94, 1287–1299.
- Fligstein, N., & Vogel, S. (2020). Political economy after neoliberalism. *Boston Review*. October 6. Retrieved from <https://bostonreview.net/class-inequality/neil-fligstein-steven-vogel-political-economy-after-neoliberalism>.
- Folbre, N., Gornick, J.C., Connolly, H., & Munzi, T. (2013). Women's employment, unpaid work, and economic inequality. In J.C. Gornick & M. Jäntti (Eds.), *Income inequality: Economic disparities and the middle class in affluent countries* (pp. 234–260). Stanford: Stanford University Press.
- Forbath, W. (2019). A political economy the constitution requires. *LPE Blog*. October 23. Retrieved from <https://lpeproject.org/blog/title-tk/#more-2944>.
- Foroohar, R. (2016). *Makers and takers: The rise of finance and the fall of American business*. New York: Crown Business.
- Fourcade, M., & Gordon, J. (2020). Learning like a state: Statecraft in the digital age. *Journal of Law and Political Economy*, 1(1), 78–108.
- Fraser, N. (2016). Contradictions of capitalism and care. *New Left Review*, 100, 99–117.
- Fried, B.H. (1998). *The progressive assault on laissez faire: Robert Hale and the first law and economics movement*. Cambridge: Harvard University Press.
- Gilens, M., & Page, B.I. (2014). Testing theories of American politics: Elites, interest groups, and average citizens. *Perspectives on Politics*, 12(3), 564–581.

- Grewal, D.S. (2017). The legal constitution of capitalism. In H. Boushey, J.B. DeLong, & M. Steinbaum (Eds.), *After Piketty: The agenda for economics and inequality* (pp. 471–490). Cambridge: Harvard University Press.
- Guinan, J., & O’Neill, M. (2018). The institutional turn: Labour’s new political economy. *Renewal: A Journal of Labour Politics*, 26(2), 5–16.
- Guinan, J., & O’Neill, M. (2019). *The case for community wealth building*. Cambridge: Polity Press.
- Hacker, J. (2011). The institutional foundations of middle-class democracy. *Policy Network*, 6(5). Retrieved from http://www.policy-network.net/pno_detail.aspx?ID=3998&title=The-institutional-foundations-of-middle-class-democracy.
- Hacker, J., & Pierson, P. (2020). *Let them eat tweets: How the right rules in an age of extreme inequality*. New York: Liveright Publishing Corp.
- Hacker, J.S., & Pierson, P. (2010). *Winner-take-all politics: How Washington made the rich richer—and turned its back on the middle class*. New York: Simon & Schuster.
- Hale, R.L. (1920). Law making by unofficial minorities. *Columbia Law Review*, 20(4), 451–456.
- Hale, R.L. (1923). Coercion and distribution in a supposedly non-coercive state. *Political Science Quarterly*, 38(3), 470–494.
- Hale, R.L. (1943). Bargaining, duress, and economic liberty. *Columbia Law Review*, 43(5), 603–628.
- Harcourt, B. (2011). *The illusion of free markets*. Cambridge: Harvard University Press.
- Harwood, J. (2019). The GOP is attacking socialism, but Trump Fed pick Stephen Moore pits capitalism against democracy. *CNBC*. April 18. Retrieved from <https://www.cnn.com/2019/04/18/capitalism-trumps-democracy-for-trump-fed-pick-stephen-moore.html>.
- Heffner, A. (2020). En route to autocracy in America. *The American Prospect*. October 11. Retrieved from <https://prospect.org/politics/en-route-to-autocracy-in-america/>.
- Hester, H. (2018). Care under capitalism: The crisis of “women’s work”. *IPPR Progressive Review*. Retrieved from <https://onlinelibrary.wiley.com/doi/full/10.1111/newe.12074>.
- Hirschman, A.O. [1977] (2013). *The passions and the interests: Political arguments for capitalism before its triumph*. Princeton: Princeton University Press.
- Hont, I. (2005). *Jealousy of trade*. Cambridge: Harvard University Press.
- Howard, T., Galvin, R., Guinan, J., & Kelly, M. (2020). Owning our future after COVID-19. *Democracy Collaborative*. Retrieved from <https://democracycollaborative.org/>.
- Janus v. Am. Fed’n of State, Cty., & Mun. Employees. (2018). Council 31, 138 S. Ct. 2448, 2501 (Kagan, J., dissenting).
- Kapczynski, A. (2014). Intellectual property’s leviathan. *Law and Contemporary Problems*, 77(4), 131–145.
- Kapczynski, A. (2018). The Lochnerized First Amendment and the FDA: Toward a more democratic political economy. *Columbia Law Review Online*, 118. Retrieved from <https://columbialawreview.org/content/the-lochnerized-first-amendment-and-the-fda-toward-a-more-democratic-political-economy/>.
- Kapczynski, A. (2020). The law of informational capitalism. *The Yale Law Journal*, 129(5), 1276–1599.
- Kennedy, L. (2019). Inequality: From redistribution to predistribution and beyond? *Social Europe*. May 2. Retrieved from <https://www.socialeurope.eu/inequality-socialisation>.
- Khan, L. (2018). The new Brandeis movement: America’s antimonopoly debate. *Journal of European Competition Law & Practice*, 9(3), 131–132.

- Khan, L., & Vaheesan, S. (2017). Market power and inequality: The antitrust counterrevolution and its discontents. *Harvard Law & Policy Review*. Retrieved from <https://ssrn-com.proxy.lib.umich.edu/abstract=2769132>.
- Klein, S. (2020). *The work of politics: Making a democratic welfare state*. Cambridge: Cambridge University Press.
- Koot, G.M. (1987). *English historical economics*. Cambridge: Cambridge University Press.
- Krugman, P. (2014). Plutocrats against democracy. *New York Times*. October 23. Retrieved from <https://www.nytimes.com/2014/10/24/opinion/paul-krugman-plutocrats-against-democracy.html>.
- Lynn, B. (2010). *Cornered: The new monopoly capitalism and the economics of destruction*. Hoboken: John Wiley & Sons.
- Mackert, J. (2017). Why we need a new political economy of citizenship. Neo-liberalism, the bank crisis and the ‘Panama Papers’. In J. Mackert & B.S. Turner (Eds.), *The transformation of citizenship. Vol. 1. Political economy* (pp. 99–117). London: Routledge.
- MacLean, N. (2017). *Democracy in chains: The deep history of the radical right’s stealth plan for America*. New York: Viking.
- Malthus, T.R. [1803] (1992). *An essay on the principle of population*. Edited by D. Winch. Cambridge: Cambridge University Press.
- Markovits, D. (2019). *The meritocracy trap: How America’s foundational myth feeds inequality, dismantles the middle class, and devours the elite*. New York: Penguin.
- Mazzucato, M. (2015). *The entrepreneurial state: Debunking public vs. private sector myths*. New York: Public Affairs.
- Mazzucato, M. (2019). *The value of everything: Making and taking in the global economy*. New York: Penguin.
- McCluskey, M. (2016). Constitutional economic justice: Structural power for ‘We the people’. *Yale Law & Policy Review*, 35(1), 271–296.
- McCluskey, M. (2020). Countering the neoliberal structural constitution. *LPE Blog*. September 15. Retrieved from <https://lpeproject.org/blog/countering-the-neoliberal-structural-constitution/>.
- Mirowski, P., & Plehwe, D. (2009). *The road from Mont Pèlerin*. Cambridge: Harvard University Press.
- Murphy, L., & Nagel, T. (2002). *The myth of ownership: Taxes and justice*. New York: Oxford University Press.
- New York Times. (2020). The jobs we need. *Editorial Board*, June 24. Retrieved from <https://www.nytimes.com/2020/06/24/opinion/sunday/income-wealth-inequality-america.html>.
- Novak, W. (2019). Institutional economics and the progressive movement for the social control of American business. *Business History Review*, 93(4), 665–696.
- O’Neill, M. (2017). Philosophy and public policy after Piketty. *Journal of Political Philosophy*, 25(3), 343–375.
- O’Neill, M. (2019). James Meade, public ownership, and the idea of a citizens’ trust (with S. White). *International Journal of Public Policy*, 15(1–2), 21–37.
- O’Neill, M. (2020). Power, predistribution, and social justice. *Philosophy*, 95(1), 63–91.
- O’Neill, M. (2021). Social justice and economic systems: On Rawls, democratic socialism, and alternatives to capitalism. *Philosophical Topics*, 49(1) (forthcoming). <http://eprints.whiterose.ac.uk/165444/>.
- O’Neill, M., & Williamson, T. (2012a). The promise of predistribution. *Policy Network*. September 28. Retrieved from http://www.policy-network.net/pno_detail.aspx?ID=4262&title=The-Promise-of-Pre-distribution.

- O'Neill, M., & Williamson, T. (Eds.) (2012b). *Property-owning democracy: Rawls and beyond*. Boston: Wiley-Blackwell.
- Paine, T. [1795/6] (2015). *Agrarian justice*. Foreword by N.J. Altman. Washington: Social Security Works Education Fund.
- Phillips-Fein, K. (2010). *Invisible hands*. New York: W. W. Norton & Company.
- Piketty, T. (2014). *Capital in the twenty-first century*. Cambridge: Harvard University Press.
- Piketty, T. (2020). *Capital and ideology*. Cambridge: Harvard University Press.
- Piraino, T.A. Jr. (2007). Reconciling the Harvard and Chicago schools: A new antitrust approach for the 21st century. *Indiana Law Journal*, 82(2), 346–409.
- Pistor, K. (2019). *The code of capital*. Princeton: Princeton University Press.
- Pistor, K. (2020). The value of law. *Theory and Society*, 49(2), 165–186.
- Polanyi, K. [1944] (2001). *The great transformation: The political and economic origins of our time*. Boston: Beacon Press.
- Polanyi, K. (1957). The economy as instituted process. In K. Polanyi, C.M. Arensberg & W. Pearson (Eds.), *Trade and market in the early empires* (pp. 243–270). Chicago: University of Chicago.
- Polanyi, K. (2014). *For a new West*. Edited by G. Resta & M. Catanzariti. Cambridge: Polity Press.
- Poole, I. (2020). The popular mandate for a democratic economy in 2020. *The Next System Project*. November 3. Retrieved from <https://thenextsystem.org/>.
- Posner, R. (1983). *The economics of justice*. Cambridge: Harvard University Press.
- Purdy, J. (2018a). The left's guide to reclaiming the constitution. *New York Times*. September 10. Retrieved from <https://www.nytimes.com/2018/09/10/opinion/brett-kavanaugh-supreme-court-constitution-democrats-.html>.
- Purdy, J. (2018b). Beyond the bosses' constitution: The First Amendment and class entrenchment. *Columbia Law Review*, 118(7), 2159–2184.
- Rahman, K.S. (2016a). *Democracy against domination*. New York: Oxford.
- Rahman, K.S. (2016b). Domination, democracy, and constitutional political economy in the new gilded age: Towards a fourth wave of legal realism?, *Texas Law Review*, 94(7), 1329–1359.
- Rahman, K. S. (2016c). Challenging the new curse of bigness. *The American Prospect*. Retrieved from <https://prospect.org/economy/challenging-new-curse-bigness/>
- Rahman, K.S. (2016d). From economic inequality to economic freedom: Constitutional political economy in the new gilded age. *Yale Law & Policy Review*, 35(1), 321–336.
- Rahman, K.S. (2017–18). Policymaking as power-building. *Southern California Interdisciplinary Law Journal*, 27(2), 315–377.
- Rahman, K. (2018). Constructing citizenship: Exclusion and inclusion through the governance of basic necessities. *Columbia Law Review*, 118(8), 2447–2503.
- Rahman, K.S., & Russon, H. (2019). *Civic power: Building American democracy in an era of Crisis*. Cambridge: Cambridge University Press.
- Rancière, J. [2005] 2014). *Hatred of democracy*. New York: Verso.
- Reich, R.B. (2015). *Saving capitalism: For the many, not the few*. New York: Knopf.
- Roser, M., & Ortiz-Ospina, E. (2016). Income inequality: *Our world in data*. October. Retrieved from <https://ourworldindata.org/income-inequality>.
- Saez, E., & Zucman, G. (2019). *The triumph of injustice: How the rich dodge taxes and how to make them pay*. New York: W. W. Norton & Company.
- Sandel, M. (2020). *The tyranny of merit: What's become of the common good?* New York: Farrar, Straus and Giroux.

- Schneider, N., & Vaheesan, S. (2019). There's more than one way to fight a monopoly. *The Atlantic*. August 11. Retrieved from <https://www.theatlantic.com/ideas/archive/2019/08/fighting-monopoly-will-require-collective-power/595729>.
- Sitaraman, G. (2016). The puzzling absence of economic power in constitutional theory. *Cornell Law Review*, 101(6), 1445–1532.
- Sitaraman, G. (2017). *The crisis of the middle-class constitution*. New York: Vintage.
- Sitaraman, G. (2019). *The great democracy: How to fix our politics, unrig the economy, and unite America*. New York: Basic Books.
- Slobodian, Q. (2018). *Globalists: The end of empire and the birth of neoliberalism*. Cambridge: Harvard University Press.
- Somers, M.R. (1990). Polanyi's intellectual legacy. In K. Polanyi-Levitt (Ed.), *The life and work of Karl Polanyi* (pp. 152–160). Montreal: Black Rose Books.
- Somers, M.R. (1995). The 'mysteries' of property: Relationality, families, and community in Chartist narratives of political rights. In J. Brewer & S. Staves (Eds.), *Early modern conceptions of property* (pp. 62–92). London and New York: Routledge.
- Somers, M.R. (1997). Deconstructing and reconstructing class formation theory: Narrativity, relational analysis, and social theory. In J.R. Hall (Ed.), *Reworking class* (pp. 73–106). Ithaca: Cornell University Press.
- Somers, M.R. (1998). We're no angels: Realism, rational choice, and relationality in social science. *American Journal of Sociology*, 104(3), 722–784.
- Somers, M.R. (2008). *Genealogies of citizenship: Markets, statelessness, and the right to have rights*. Cambridge: Cambridge University Press.
- Somers, M.R. (2012). Zombie entanglements: How corporate power stalks among us. *Socio-Economic Review*, 10(3): 617–623.
- Somers, M.R. (2017). How grandpa became a welfare queen: Social insurance, the economisation of citizenship, and a new political economy of moral worth. In J. Mackert & B.S. Turner (Eds.), *The transformation of citizenship. Vol. 1. Political Economy* (pp. 76–98). London: Routledge.
- Somers, M.R. (2018). Utopianism and the reality of society: Decoding Polanyi's socialism, freedom, and the alchemy of misrecognition. In M. Brie & C. Thomasberger (Eds.), *Karl Polanyi's vision of a socialist transformation* (pp. 91–109). Montreal: Black Rose Books.
- Somers, M.R. (2020a). The moral economy of the capitalist crowd: Utopianism, the reality of society, and the market as a morally instituted process in Karl Polanyi's The Great Transformation. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 11(2), 227–234. Retrieved from doi:10.1353/hum.2020.0017.
- Somers, M.R. (2020b). Even the Republican 'skinny' relief bill failed. How is such unnecessary suffering justified? *The Guardian*. September 14. Retrieved from https://www.theguardian.com/commentisfree/2020/sep/14/republican-skinny-coronavirus-relief-mitch-mcconnell?CMP=Share_iOSApp_Other.
- Somers, M.R., & Block, F. (2020). Polanyi's democratic socialist vision: Piketty through the lens of Polanyi. In R. Desai & K. Polanyi Levitt (Eds.), *Karl Polanyi and twenty-first century capitalism* (pp. 211–230). Manchester: University of Manchester Press.
- Somers, M.R., & Roberts, C.N. (2008). Toward a new sociology of rights: A genealogy of 'buried bodies' of citizenship and human rights. *Annual Review of Law and Social Science*, 4, 385–425.
- Stedman Jones, D. (2012). *Masters of the universe*. Princeton: Princeton University Press.

- Steinbaum, M. (2019). Antitrust, the gig economy, and labor market power. *Law & Contemporary Problems*, 82(3), 45–64.
- Stiglitz, J.E. (2015). *Rewriting the rules of the American economy: An agenda for growth and shared prosperity*. New York: Norton.
- Stiglitz, J.E. (2019). *People, power and profits: Progressive capitalism for an age of discontent*. New York and London: W. W. Norton & Company.
- Stiglitz, J.E. (2020). Solidarity now. *Project Syndicate*. February 28. Retrieved from <https://www.project-syndicate.org/onpoint/abandoning-neoliberalism-reforming-capitalism-globalization-by-joseph-e-stiglitz-2020-02>.
- Streeck, W. (2014). *Buying time: The delayed crisis of democratic capitalism*. New York: Verso.
- Streeck, W. (2016). *How will capitalism end?* New York: Verso.
- Summers, L. (2020). U.S. workers need more power. *The Washington Post*. June 28. Retrieved from <https://www.washingtonpost.com/opinions/2020/06/28/us-workers-need-more-power/>.
- Teachout, Z. (2020). *Break 'em up: Recovering our freedom from Big Ag, Big Tech, and Big Money*. New York: All Points Books.
- Teachout, Z., & Khan, L. (2014). Market structure and political law: A taxonomy of power. *Duke Journal of Constitutional Law and Public Policy*, 9(1), 38–74.
- Tebbe, N. (2020). A democratic political economy for the First Amendment. *Cornell Law Review*, 105(3), 959–1021.
- Teles, S. (2012). *The rise of the conservative legal movement: The battle for control of the law*. Princeton: Princeton University Press.
- Thomas, A. (2017). *Republic of equals: Predistribution and property-owning democracy*. Oxford: Oxford University Press.
- Thompson, E.P. (1971). The moral economy of the English crowd in the eighteenth century. *Past & Present*, 50(1), 76–136.
- Vaheesan, S. (2020). Privileging consolidation and proscribing cooperation: The perversity of contemporary antitrust law. *Journal of Law and Political Economy*, 28(1), 28–45.
- Veblen, T. (1904). *Theory of Business Enterprise*. New York: Charles Scribner & Sons.
- Veblen, T. (1936). The preconceptions of economic science. In Wesley C. Mitchell (Ed.), *What Veblen Taught: Selected writings of Thorstein Veblen* (pp. 39–150). New York: The Viking Press.
- Vogel, S. (1996). *Freer markets, more rules*. Ithaca: Cornell University Press.
- Vogel, S. (2018). *Marketcraft: How governments make markets work*. New York: Oxford University Press.
- Vogel, S. (2019). Elizabeth Warren wants to stop inequality before it starts. *The New York Times*. 3 January. Retrieved from <https://www.nytimes.com/2019/01/03/opinion/elizabeth-warren-economic-policy-democrats.html>.
- Von Hayek, F.A. [1939] (1980). The economic conditions of interstate federalism. In F.A. von Hayek (Ed.), *Individual and economic order* (pp. 255–572). Chicago: University of Chicago Press.
- Warren, E. (2011). In Lucy Madison: ‘Elizabeth Warren: “There is nobody in this country who got rich on his own”’. *CBS News*. September 22. Retrieved from <https://www.cbsnews.com/news/elizabeth-warren-there-is-nobody-in-this-country-who-got-rich-on-his-own/>.
- Whitehouse, S. (2020). America’s captured courts. *Project Syndicate*. November 25. Retrieved from <https://www.project-syndicate.org/commentary/dark-money-federalist-society-captured-us-courts-by-sheldon-whitehouse-2020-11>.

- Woodruff, D. (2014). Commons, Hale, Polanyi, and, naturally, Piketty. *Political Economy in Public*. July 4. Retrieved from <http://politiceconomyinpublic.blogspot.com/2014/07/commons-hale-polanyi-and-naturally.html?m=1>.
- World Inequality Lab. (2018). World inequality report. Retrieved from <https://wir2018.wid.world/>.
- Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. New York: Public Affairs.