

Working Paper 24-062

The Fading Light of Democratic Capitalism:

*How Pervasive Cronyism and Restricted Suffrage
Are Destroying Democratic Capitalism as a
National Ideal...and What to Do about It*

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OVERVIEW

What are we to do about declining public trust and confidence in democratic capitalism, which many citizens consider a cornerstone of our national ideology and identity? While the answer is not entirely clear, I argue here that any effort aimed at restoring public trust in U.S.-style democratic capitalism must start with the understanding that our system of economic and political governance has become less democratic in recent decades and that restoring public trust in democratic capitalism requires its further democratization.

In presenting this argument, I begin by defining what democratic capitalism includes as a system of economic and political governance and then explain how this governance system has become corrupted in recent decades by the toxic combination of pervasive cronyism and restricted political voice and suffrage. On one side of this “democracy squeeze,” cronyism has led to a small but wealthy and influential group of individuals and corporations advancing their private interests by the capture of legislators and regulatory agencies through campaign contributions and lobbying, often with scant regard for the interests of ordinary citizens. On the other side, restricted political voice has made it difficult for ordinary citizens to countervail this elite power due to constraints on their right to vote, to run for public office, and to hold elected officials accountable to the public will. This situation hardly qualifies our political economy as either truly democratic or truly capitalist. And it forces the question of how best to strengthen democratic capitalism as our primary governance model going forward. To this end, I draw on the work of political philosopher and democracy advocate Danielle Allen in calling attention to the principle of political equality, as well as the two related sub-principles of reciprocity and power sharing, as essential guides. Based on these ideas, I suggest a series of practical steps to make our economic and political markets more democratic by curbing cronyism and expanding citizens’ access to the political processes governing our nation.

These market-specific recommendations are, however, insufficient in and of themselves. They leave unaddressed the reality that democratic capitalism can also be diminished by the way in which many corporations, which serve as our nation’s primary social institution, are managed—namely, as nondemocratic regimes, modeled on centuries of military chains of command and control. This management approach tends to downplay employee participation in decisions affecting their interests and personal well-being and raises the important question of how private corporations can become more “democracy-supporting.” The answer lies, I suggest, in introducing the principle of reciprocity and the artful practice of power sharing or collaborative problem-solving into the practice of corporate governance, where vital constituency interests conflict. To support this suggestion, I describe past and current examples of reciprocity and power sharing in business settings as a way of suggesting future possibilities.

I end this essay with some reflections on the moral culture required to restore and sustain public trust and confidence in democratic capitalism as a governance system and national ideal. What’s required is no less than a broadly based effort to nudge social norms and values away from maximizing personal utilities and the exclusive pursuit of private interest toward a more relational culture based upon the moral principles of political equality, reciprocity, and the artful practice of power sharing discussed in this essay. I offer some ideas about what this socialization process could look like in the years ahead.

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I. Introduction

After the Second World War, the social construct we call “democratic capitalism” became for many North Americans and Western Europeans a celebrated ideal. In the half century following World War II, democratic capitalism brought Americans a period of singular economic growth and prosperity—marked, in part, by the highest level of average annual income in the world.¹ Universal high school education and the G.I. Bill (the Servicemen’s Readjustment Act of 1944), which sent many veterans to university, supported this economic record, making the U.S. the most educated nation in the world and enabling unprecedented rates of technological innovation and new business formation. Along the way, Americans’ access to the political process expanded as the right to vote broadened and received new protections (with the Voting Rights Act of 1965).

Although this era of exceptional growth and economic development was interrupted in the 1970s by deep recession and high inflation, an economic boom during the 1990s brought a period of steady job creation, lower inflation, rising productivity, and a surging stock market. This recovery was accompanied by a growing belief among many Americans that laissez-faire capitalism (and the deregulation of industries such as banking and airlines) was the best way back to prosperity. The arc of this 50-year economic history was sufficient to convince many Americans that, despite its intermittent breakdowns and corruptions, capitalism was an acceptable economic system—even one to be celebrated, as long as a well-developed political democracy could rein in the excesses of free markets and hold private parties controlling the factors of production accountable to the public will.² Gradually, the broad appeal of our unique, if imperfect, pairing of capitalism and democracy blended into the imagery of what many Americans believe our nation stands for. For some citizens, like me, who matured during those prosperous post-war years, democratic capitalism has long been considered a cornerstone of our national ideology and identity, expressing our collective hopes and ideals.

¹ The high level of U.S. average annual income (GNP divided by population) has continued into the 21st century. In 2018, this average income was more than \$56,000, compared with \$9,850 for Russia and \$8,250 for China, according to data assembled by the OECD, World Bank, and International Monetary Fund.

² Recent examples of such breakdowns and corruptions include: the failure of one-third of the country savings and loan associations during the 1980s and 1990s; the bursting of the dotcom bubble and subsequent stock market crash in 2000; Enron’s spectacular collapse and dozens of other cheating and fraud scandals in the early years of the Millennium; and the 2008 financial crisis followed by the most serious recession since World War II.

More recently, however, survey after survey has shown that its two vital building blocks—democracy and capitalism—have suffered dramatic setbacks in popular trust and confidence,³ which raises three questions about its status and prospects as our espoused ideology. What, precisely, does “democratic capitalism” mean in the U.S. context? Can this understanding of democratic capitalism continue to serve as a realistic aspiration for the U.S. in the future? If the answer is no, how can this idea be restored as an illuminating ideal?

In addressing these questions, I begin with a discussion of **The Idea of Democratic Capitalism that provides** an overview of what the idea of democratic capitalism includes and how inherent frictions between democracy and capitalism have, until recently, been either accommodated or tolerated in the U.S. setting.

Next, in a section titled **The Fading Light of Democratic Capitalism** I explain how the toxic combination of pervasive cronyism and restricted suffrage limit the political voice and influence of ordinary citizens puts the fragile relationship between capitalism and democracy at risk. Here, I discuss how—in the context of historically high levels of income and wealth inequality—this “toxic duo” poses a deep-seated threat to popular support for democratic capitalism as a national ideal. It does so by inflaming popular feelings that our system of economic and political governance is not only rigged in favor of wealthy and powerful elites, but is also unaccountable to a large swath of the voting public.

Cronyism in this context refers to special interests influencing and bending the political system to private advantage. It typically involves the capture of legislative and regulatory rulemaking by small but powerful groups of elites operating largely in the private sector. Cronyism greatly diminishes the democratic aspect of democratic capitalism.

³ Several surveys have documented rising public anxiety and criticism of American-style democracy as not serving the public’s needs. In 2017, Common Cause reported surveys showing that 71% of Americans agreed that our system of democracy had reached “a dangerous low point.” The comparable statistic for the 1960s was about 30%. More recently, in the run-up to the 2022 mid-term elections, the Pew Research Center reported that about 6 in 10 Americans were dissatisfied with the way democracy is working in the country. During the 2022 elections, the future of democracy was the second-most important voting issue after the economy for 60% of Democrats and 66% of Republicans. With respect to capitalism, the 2020 Edelman Trust Barometer reported that 47% of those Americans surveyed agreed that “capitalism as it exists today does more harm than good.” (By comparison, Edelman found that 69% of people in France had lost faith in capitalism; 55% in Germany; and 53% in the U.K.) Fewer than half of the 18- to 29-year-olds in the U.S. now support capitalism, according to a 2018 Gallop survey. Finally, a recent *Wall Street Journal*/NORC survey found that only 36% of voters said the American dream holds true, down from 48% in 2016 and 53% in 2012. For a full report, see Aaron Zitner, “Voters See American Dream Slipping Out of Reach,” *The Wall Street Journal*, November 24, 2023.

Restricted suffrage presents a comparable threat to democratic capitalism. It refers to matters such as citizens' restricted rights to vote, restricted rights to gain ballot access and run for office, and, more generally, difficulties participating in political processes and accessing the instruments of government that enable citizens to exercise their right to shape civil society.

The combined effects of citizens living under a governance system that is increasingly perceived to be rigged by special interests and not subject to control by the voting public is, inevitably, marked by increased political indifference and the capture of disconnected and disenchanted voters by political madcaps and demagogues.

In response to this unsettling political scenario, I turn to **Restoring the Promise of Democratic Capitalism**. Here, I address the steps needed to restore democratic capitalism as an illuminating ideal and realistic aspiration for the United States. The critical first step is weakening the fatal grip of cronyism and the restricted voice on our political economy. I discuss why such a restoration will require adjusting the imbalance of power between (1) wealthy and influential parties—both in business and politics—who manipulate society's rules accordingly to their private interests and (2) ordinary citizens who possess minimal countervailing power and value different political and economic outcomes than those of their wealthier and more powerful compatriots. I anchor this discussion in the bedrock principle of a just political economy—*political equality*—and two facets of political equality, namely, *reciprocity* and *power sharing*. This discussion, I hasten to add, is *not* an argument for limiting wealth creation and the accumulation potential of capitalism, but is instead an argument for a more democratic pathway to achieving the economic and social benefits that it offers.

Until this point in my discussion, I focus primarily on the corroding dynamics of our economic and political markets. I expand the scope of analysis in the next section, titled, **Can Firms Be More Democracy-Supporting?** Here, I discuss how the ideal of democratic capitalism is diminished by firms' traditional hierarchical decision structure (our primary social institution) modeled on centuries of military chains of command and control, where little attention is paid to employee participation in decisions affecting their personal well-being. I then identify ways in which these essentially nondemocratic regimes can become more "democracy-supporting."⁴

⁴ This is Danielle Allen's phrase. See *Justice by Means of Democracy*, The University of Chicago Press, 2023, pp.170-176.

I conclude with a section titled, **A Moral Culture for Democratic Capitalism**, which addresses the norms and values required to support the work of democracy reformers in both the private and public sectors. Today, democratic capitalism suffers from a moral culture that celebrates self-interest; tolerates cronyism and outsized political influence by small groups of wealthy individuals and corporations; and condones restrictions on the voice and influence of ordinary citizens, whose democratic role is to express the public interest and hold elected representatives accountable to their campaign promises and other public responsibilities. What's required to support the idea of democratic capitalism—as a cornerstone of our national ideology—is a broadly based effort to nudge social norms and values away from maximizing personal utility and the exclusive pursuit of private interest toward a more relational culture based on the moral principles of political equality and reciprocity, and the artful practice of power sharing. Socializing these principles and norms must include wider reporting of, and publicity for, the reciprocal exchanges and mutual gains that have already been created, and are being created today, in innovative power sharing forums and other relational environments around the country. Continued field-based research on contemporary experiments in democracy-supporting governance, in both business and politics, is required to support the efforts of current and would-be evangelists to restore democratic capitalism. I provide several examples of past shifts in moral values in the U.S. based on research, publication, and publicity of that research, as well as the evangelical work of reformers who built a strong powerbase to influence a shift in the values and norms within the business community, electoral politics, and the judiciary.

As support for this essay, I have prepared three supplementary appendices.

In Appendix A, **The Problematic Doctrine of Democratic Capitalism**, I elaborate how the canonization of the shareholder wealth maximization doctrine as the only legitimate expression of corporate purpose has provided a strong rationale and great financial incentive for corporations to disengage as a moral force in our political economy by focusing executives' attention on pursuing institutional and personal self-interest (wealth maximization), even to the extent of compromising the fairness and justness of our system of economic and political governance. I also shed light on the doctrine's conceptual flaws as a normative economic concept.

In Appendix B, **Understanding Crony Capitalism**, I elaborate my discussion of cronyism by describing the ambiguities involved in spotting true cronyism and the range of damage true cronyism creates when it emanates from the private sector. However we choose to value the costs of cronyism, it is a predictable by-product of the ascendancy of shareholder wealth maximization into the central

consciousness of corporate executives and the vulnerability of public officials to capture by wealthy interests.

In Appendix C, titled **Power Sharing and Negotiating Forums**, I address the variety of forums in which power sharing and reciprocal exchanges can take place. Specifically, I identify the principal types of power sharing and negotiating forums resident in our political economy, comment briefly on issues involved in establishing a forum, offer a few rules of operation that can shape the results of a forum, and call attention to ten important aspects of agreement-making that are common to most power sharing and negotiating processes.

The arguments and amplifying clarifications that comprise this essay supplement current diagnoses of democratic capitalism's current ill health (many of which are referred to below). In one notable example, Martin Wolf, the long-time chief economic commentator at the *Financial Times* and author of *The Crisis of Democratic Capitalism*⁵ tells a well-researched and thoughtful story of (1) the loss of confidence in our current political economy, rising inequality, deindustrialization, and successive economic shocks; (2) a shared sense by a large part of society that the game is rigged against them; and (3) the resulting embrace by an anxious middle class of "populist loudmouths" who have little idea of what's gone wrong and how to fix it. Wolf argues that democratic capitalism, "which is about the marriage of democracy with the market economy" is failing economically, and that "because it is failing economically, it is failing politically." This "has left us open to profoundly antidemocratic forces, and we have to reverse this before it is too late."⁶ As a supplement to this wide-ranging analysis, my focus here falls on elaborating two component issues: (1) why capitalism appears to so many as being a rigged game for the rich and powerful and (2) how pervasive cronyism, together with the weakening of representative democracy, have diminished the prospects of democratic capitalism as a realistic aspiration for our nation going forward. In focusing on these two central matters, which have severely weakened the democracy component of democratic capitalism, I seek to support Wolf's basic thesis that "it is impossible to sustain a universal suffrage democracy with a market economy if the former does not appear to open to influence—and the latter does not serve the interests—of the people at large."⁷

⁵ Penguin Press, 2023.

⁶ March 31, 2023 McKinsey & Company, "Author Talks: Martin Wolf issues a wake-up call on the state of democratic capitalism," at <https://www.mckinsey.com/featured-insights/mckinsey-on-books/author-talks-martin-wolf-issues-a-wakeup-call-on-the-state-of-democratic-capitalism>

⁷ Wolf, p.218. Or put somewhat differently, "The idea that economic outcomes will be a matter of indifference to the public at large will not survive in a universal suffrage democracy." p.35.

II. The Idea of Democratic Capitalism

Democratic Capitalism Defined

Democratic capitalism refers to a manmade system of relationships and rules governing the behavior of economic actors. As a social construct, it is a system of economic and political governance in which the conduct of market economies is shaped by rules and regulations worked out by democratically elected representatives and public officials whose primary responsibility is to serve the will of the people.⁸ These rules and regulations determine the way in which markets and firms are structured, sustained, regulated, and held accountable. When played out in a civil society capable of compromise and peaceful negotiations (and where political power is diffused among the public rather than concentrated in the hands of a few), such a governance system ideally provides a means to align competing economic and non-economic priorities and distribute the benefits of economic activity according to society's collective will.

Commonly assumed goals of democratic capitalism (i.e., reflecting society's collective will) include economic prosperity that enables an increasing standard of living for all citizens, good jobs for those who can work, security for those who need it, eliminating special privileges for the few, and, as an overarching goal, institutional support for human justice.⁹ In my view, and that of many fellow citizens, there's much work to be done to achieve these goals.

Democratic capitalism relies on two, interrelated sub-governance regimes. The first pertains to *economic governance* (capitalism) and ideally encompasses the ways in which relatively free and open markets (1) enable the supply and demand for goods and services to be matched by self-interested consumers seeking to maximize their preferences; (2) coordinate the decisions of savers and investors through the price mechanism; and, in the end, (3) allocate resources to their most productive end use. In addition to its allocative function, capitalism also serves a creative function by providing strong incentives for innovation and making the benefits of innovation widely available to the public at large. Capitalism also provides incentives for millions of problem-solving experiments to occur every day, for

⁸ The idea of capitalism as a system of governance is developed in great detail by Bruce R. Scott in *Capitalism: Its Origins and Evolution as a System of Governance* (Springer, 2011).

⁹ As initially articulated by President Franklin Roosevelt in January 1941 and restated by Martin Wolf in *The Crisis of Democratic Capitalism*, pp.229-231.

competition to select the best solutions, and for scaling-up and making the best solutions available.¹⁰ At the level of *ideal theory*, the capitalist form of economic governance presumes a minimalist role for government, freedom from coercion, and freedom to buy and sell anything that one has created or owns. Whenever government is permitted or invited to intervene, its role should be limited to replicating a well-functioning market's outcomes.

In practice, significant departures exist from this capitalist model of economic governance—such as legislation setting minimum working hours or wages, protections against discrimination, state ownership of selected firms and industries, and targeted industry subsidies, and much more. Relatedly, there is great variety in the pattern of economic governance across nations. As many students of capitalism have pointed out, France's system of economic governance is not identical to that of the United States; Sweden is not Italy; the U.K. is not South Korea; and Japan is not Singapore.¹¹ Each of these nations differ according to social and political preferences related to individual freedoms, the degree of private ownership of capital, public authorities' regulatory intervention, the existence and nature of their social security systems, the incentives available for risk-taking and entrepreneurship, the tolerance level of economic inequality, taxation, and much more.

Across all variants of capitalism, however, a common feature is the role of markets (rather than centralized government planning) in allocating capital. Yet, despite this shared feature of capitalist economies, the presence of market activity does not by itself define the essence of capitalism. Instead, the central feature of all capitalist systems are private property rights, sanctioned by political authority, that enable reasonably efficient market exchanges. These property rights give private economic actors the right to own, trade, and control property according to their interests, to invest capital as they see fit, and to reap the bulk of subsequent returns.¹²

In the U.S., the principle of private property rights has been deeply embedded as a national ideal since the founding of our nation as a commercial republic. Our Constitution's framers were familiar with John

¹⁰ Nick Hanauer and Eric Beinhocker have effectively argued this point in "Capitalism Redefined," *Democracy: A Journal of Ideas*, Winter 2014, No. 31 and Colin Mayer, *Prosperity*, Oxford University Press, 2018.

¹¹ See Michael Novak, "Democratic Capitalism," *National Review*, September 24, 2013, and *The Spirit of Democratic Capitalism*, Simon & Schuster, 1982; Thomas K. McCraw, *Creating Modern Capitalism*, Harvard University Press, 1998; and Bruce R. Scott, *Capitalism: Its Origins and Evolution as a System of Governance*, Springer, 2011.

¹² David Upham, "The Primacy of Property Rights and the American Founding," *Foundation of Economic Education*, February 1, 1998.

Locke and Adam Smith, whose work argued that every man had a property right to whatever he acquired or created through his own labor, and that property rights were indispensable to the success of the new nation. James Madison, Thomas Jefferson, John Adams, and Alexander Hamilton, among others, found common ground in the idea that the right to property was both a guarantee of people's legal rights and essential to liberty. Thus, the notion that a market-based system of reciprocal exchanges of property in what we now call the private sector contributes to society's well-being has been part of the American DNA and the American dream since the founding of our nation. As many scholars have documented, it took less than a century after the Constitution ratified the importance of private property for large, hierarchical firms (in mining, manufacturing, transportation, and trade) to arise from their modest beginnings to populate an ever-expanding capitalist economy.

The democracy component of democratic capitalism took a good deal longer to take hold than the capitalism component. It did not become an important modifier of capitalism until slavery was abolished in the 19th century and universal suffrage was instituted in the 20th. With political and economic reforms legislated during the 1930s and then after WWII during the 1950s and 1960s, the idea of truly democratic capitalism began to take on strong sponsorship and broad credibility in contrast to previously competing ideologies such as democratic socialism and communism. Such ideologies had attracted some citizens during the Great Depression before WWII, which takes us to the second governance regime comprising democratic capitalism.

The second governance regime relates, of course, to political governance (as in a representative democracy). It encompasses a mix of political processes, laws, and regulations that set the rules of the game for decentralized decision-making throughout the economy. In a functioning democracy, it is the people who hold the ultimate power to determine whether these rules and procedures—and the exercise of political power and governance flowing from them—are democratic or need to be changed. A necessary condition for democratic oversight is people's full participation rights in the political process, starting with the right to vote and hold political office. A functioning democracy thus rests on the bedrock principles of popular sovereignty and political equality.¹³

¹³ Political equality includes five defining characteristics according to Danielle Allen (*Justice by Means of Democracy*, 2023, pp.36-37): freedom from domination; equal access to the instruments of government; good knowledge processes; reciprocity or mutual responsiveness; and co-ownership of political institutions such as congresses and judicial offices at the federal, state, and local levels, which effectively puts a limit on the (inappropriate) use of these institutions.

Another notable feature of representative democracy is “majority rule” as a mechanism for aggregating public preferences and translating them into policy. In representative or constitutional democracies, however, limits are typically placed on majority rule by unelected and nominally independent institutions such as courts or central banks.¹⁴ In addition, any democracy worth its name requires that winners in the competition for power between political parties accept the legitimacy of defeat, a feature of democracy crassly ignored by former President Donald Trump. Accepting the legitimacy of elections and the results of other competitions for political power requires acts of sacrifice for democracy to confer stability and legitimacy. As Danielle Allen explained, because most transactions in business and politics cannot be a perfect bargain for all parties, voluntary sacrifice is required to build and maintain trust by drawing people into a “network of mutual obligation” where those who benefit from a sacrifice see themselves “as recipients of a gift that they must honor and (someday) reciprocate.”¹⁵

As important as it is to understand what the system of economic and political governance of democratic capitalism entails, it is equally important to understand that the relationship between the two governance regimes is changing constantly in response to shifting conceptions of corporate purpose and political context. In the U.S., for example, we know these evolving relationships left notable historical footprints. In the late 19th and early 20th centuries, a period now characterized as Managerial Capitalism saw newly emergent large corporations seeking ways to co-exist with an evolving democratic system that had formerly been based on patronage in seeking votes and staffing federal departments. To protect their privileged status in American life and create a stable and predictable regulatory structure, business leaders began to push the political system and federal bureaucracy to eliminate patronage-based governance. By the mid-1950s after the Great Depression, the New Deal, and two world wars, a new era now referred to as Stakeholder Capitalism began to take shape. During this period, which followed intensive debates about the role of business in society during the 1930s, executives of large corporations found it useful to begin speaking of enlightened self-interest in their corporate governance and start working with political authorities and organized labor to expand infrastructure, education, housing, and taxes and to enforce the rule of law and public accountability. Stakeholder capitalism was not a complete takeover of American capitalism, but it was an important influence in those days, and its influence persists with other interpretations of democratic capitalism. After the economic shocks of the 1970s, another form of capitalism known as Shareholder Capitalism captured the imagination and policies of the business

¹⁴ For a discussion of the philosophical and practical limitations of majority rule, see George Will, “The Limits of Majority Rule,” *National Affairs*, Summer 2001, available at <https://www.nationalaffairs.com/publications/detail/the-limits-of-majority-rule>.

¹⁵ *Talking to Strangers*, University of Chicago Press, 2004, p.111.

community as a practical, financial overlay of the more general post-war ideal of democratic capitalism. Milton Friedman, a Nobel prize-winner in economics from the University of Chicago, became a leading spokesperson for shareholder capitalism in the early 1970s by arguing that corporations have no moral obligation other than increasing profits for shareholders (within constraints of the law and accepted social norms).¹⁶ Any responsibility to society or the body politic beyond profit-making was decidedly off the table. Over the past 50 years, during which economists, business executives, and reformers of all stripes have forcefully debated the role of the corporation in modern society, a greater recognition that corporations cannot ignore issues important to the public has again emerged in the business community. This holds even as public corporations, large private equity firms, and institutional investors such as state pension funds stand by their unwavering commitment to shareholder wealth maximization as a top priority.¹⁷

The history of continued mutation and evolution of capitalism and its relationship with an evolving democratic polity is vastly more technical and political than indicated here. But this capsule history shows that, as a social construct, one would expect national forms of capitalism to evolve over time as the body politic and its political vision changes. No steady state exists in capitalism or democratic capitalism. It also suggests that we are inevitably witnessing changes—for better or worse—in the development path and prospects of democratic capitalism as a mutually reinforcing system of economic and political governance.¹⁸

Managed Contradictions between Capitalism and Democracy

There are good reasons to expect the two governance regimes that we think of as capitalism and democracy to be mutually reinforcing and thus resilient to external challenges posed by less democratic regimes and self-inflicted wounds (in the form of policy errors and corruption). For example, Rebecca

¹⁶ Milton Friedman, “The Social Responsibility of Business Is to Increase Profits,” *New York Times Magazine*, September 13, 1970.

¹⁷ As of this writing, a strong backlash against so-called ESG investing (that is, restricting portfolio investments to companies meeting certain environmental, social, and governance standards rather than a single profit-maximization standard) has taken hold in an increasing number of state and local pension funds, ranging from Austin to Tallahassee to Boise and some of the smaller GOP-led states. In some cases, states’ investment managers favoring ESG investing have been fired, as with Blackrock by the State of Texas. In 2023, 165 pieces of anti-ESG state legislation have been introduced, with 22 becoming law, according to Danielle Moran and Shelly Hagan, “Money Managers Raise Alarms Over Anti-ESG Crusade in GOP States,” Bloomberg (March 28, 2023) available at <https://www.bloomberg.com/news/articles/2023-03-28/anti-esg-crusades-in-gop-states-stumble-amid-pension-pushback?embedded-checkout=true>

¹⁸ Scott stressed this point in his detailed study of the origins and evolution of capitalism. Scott, *Capitalism*, 2011.

Henderson points out that democratic government protects and strengthens free markets by providing important protections such as (1) an impartial justice system, (2) a marketplace where prices can reflect true costs rather than other arbitrary charges, (3) real competition leading to persistent innovation, and (4) freedom of opportunity through the provision of education and access to health care and other necessary public services.¹⁹

In addition, social philosopher Michael Novak has long argued that in the long run, democracy is a necessary condition for the success of capitalism because (1) more autocratic forms of capitalism ignore the interests of non-corporate constituencies vital to sustained economic success and (2) democratic institutions are critical in securing the perceived legitimacy of capitalism and, with this, social stability.²⁰ In other words, capitalism needs democracy to work as a moral engine of prosperity, and democracy needs capitalism to support the social contract (or “the deal”) between the state and the people. Novak also argues that the survivability of democratic capitalism depends on the moral culture or “moral ecology” surrounding it—comprised of virtues such as creativity, self-sacrifice, self-restraint, and disciplined work. Whereas Novak’s model of democratic capitalism is exceedingly difficult to live up to, cultivating the right moral ecology is both the next generation’s major challenge and major reward. The history of democratic capitalism’s successes and self-inflicted failures over the past 40 years shows how on target Novak’s assessment is.

Torben Iversen and David Soskice similarly argue that in advanced economies, democracy and capitalism tend to strengthen one another, as well as the survivability of democratic capitalism, provided three stabilizing pillars are in place: (1) a strong government, which constrains the power of large firms and labor unions and ensures competitive markets; (2) a sizeable middle class forming a political bloc that insists on sharing in the prosperity created by a capitalist society; and (3) large firms, even in the era of globalization, that remain sufficiently rooted in their original habitat to be taxed so the government can spend on middle class priorities.²¹ (Widespread profit shifting by large corporations into tax havens around the world with very low tax rates certainly weakens this pillar.)

¹⁹ Rebecca Henderson, “The Business Case for Saving Democracy,” *Harvard Business Review*, March 10, 2020.

²⁰ Michael Novak, “Democratic Capitalism,” *National Review*, September 24, 2013.

²¹ *Democracy and Prosperity*, Princeton University Press, 2019.

Finally, Martin Wolf characterizes the symbiotic relationships between market capitalism and liberal democracy as “complementary opposites.” The two are complementary in the sense that they share the idea of the right of people to make their own choices and to shape their own lives—whether by freely voicing opinion and exercising the right to vote in political markets or freely buying and selling property in economic markets. This commonality is part of the emotional and ideological glue supporting the vision of democratic capitalism. Another concept, according to Wolf, is the understanding that capitalism supplies democracy with economic resources, whereas democracy supplies capitalism with legitimacy. But Wolf also sees dissonance between capitalism and democracy. While capitalism seeks private financial returns, a democratic electorate focuses on different community outcomes: economic security; insurance against unemployment, ill health, and old age; laws that protect the public from exploitation; tax paying by the wealthy; and so on. This fragile symbiosis between capitalism and democracy—which Wolf calls “the great story of democratic capitalism”—can only be maintained by compromise and cooperation among the social, economic, and political actors in the governance system that we refer to as democratic capitalism. Wolf sees this cooperative marriage at risk, but salvable.²²

Standing apart from these cautious optimists is Wolfgang Streeck, a German economic sociologist, and prolific student of capitalism, who takes a more apocalyptic position than any of the philosophers and social scientists mentioned above.²³ Streeck argues that we are now witnessing the end of capitalism caused by a variety of disorders including, among other things, (1) a decline in economic growth, which leaves fewer resources with which democratically elected governments can settle distributional conflict; (2) “oligarchic redistribution” leading to ever-increasing income and wealth inequality; (3) corporate fraud and moral decay, such as Enron, WorldCom, and banks’ price-fixing of interest rates; and (4) global disarray caused largely by the declining performance of the U.S. economy, a series of destructive financial crises, rising levels of sovereign debt with attendant risks of default and bailouts of national and international banks, and increasing lack of confidence in the U.S. dollar as a reserve currency. Streeck’s ominous analysis includes a useful reminder that dissonance does indeed exist between capitalism and democracy, as Wolf and others are aware. This dissonance, Streeck argues, is rooted in conflicting principles of resource allocation held by each governance regime—one based on the free play of market forces, the other based on social need or entitlement, as expressed and certified by the collective choices of democratic politics. Under democratic capitalism, both principles need to be honored simultaneously,

²² Martin Wolf, *The Crisis of Democratic Capitalism*, especially Chapters 2 and 9.

²³ “The Crises of Democratic Capitalism,” *New Left Review*, Sept/Oct 2011, and “How Will Capitalism End?” *New Left Review*, May/June 2014.

which, logically speaking, can only be achieved under two simultaneous conditions: (1) when the system of economic and political governance can deliver sufficient economic returns to both capitalists and the demos to keep the delicate balance (trade-offs) between free enterprise and political democracy in place, and (2) in the presence of widely shared virtues such as self-restraint, honesty, trustworthiness, truthfulness, and respect for the law. For Streeck, this is a tall order of conditions to be met.

Were he alive today, German philosopher, economist, sociologist, historian, and political theorist Karl Marx would disagree philosophically with the idea that democratic capitalism could survive under either Wolf's or Streeck's conditions. Marx argued in *The Communist Manifesto* back in 1848 that democracy will always be sacrificed to protect capitalism, and that capitalism, in turn, makes democracy impossible. Under capitalism, the state is most concerned with political democracy, not economic democracy. And, in any case, even in the most liberal states, governments have little or no formal power over private capital. For all these reasons, if we want true democracy, Marx tells us to forget capitalism. A contemporary historian studying the rise of "neoliberal globalization" following World War II adds a historical dimension to Marx's claim.

Quinn Slobodian writes in his history of the rise of global neoliberalism that neoliberals such as E.A. Hayek and his academic followers—who believed in global laissez-faire government (including self-regulating markets, shrunken states, and the reduction of all human motivation to the rational self-interest of *Homo economicus*)—did not see democracy and capitalism as either synonymous or mutually reinforcing. Instead, democracy is viewed by neoliberals as a problem for capitalism.²⁴ According to Slobodian, what democracy means for the early neoliberals is "successive waves of clamoring, demanding masses, always threatening to push the functioning market economy off its tracks."²⁵ Democracy is also perceived as a danger to capitalism by legitimizing the redistribution of capitalism's gains. For these reasons, a central goal of the neoliberal project is to build global "safeguards against the disruptive capacity of democracy."²⁶

One does not need to be either a Marxist or a neoliberal to imagine other points of contradiction between the two governance regimes. Consider, for example, the critical matter of who holds "decision

²⁴ *Globalists*, Harvard University Press, 2018.

²⁵ *Ibid.*, p.17.

²⁶ *Ibid.*, p.272.

rights” in our political economy. In a true democracy based on political equality among citizens, people make laws and public policies as equal citizens, principally through free and fair elections. Seen in this light, democracy is an *inclusive governance regime* based on the belief that every citizen should have an equal say in decisions affecting their lives. Under capitalism, however, private property has evolved into industrial and commercial hierarchies where legally protected property rights confer dominant decision power to business owners, investors, and their agents over the deployment of capital and the governance of privately owned firms (where 85% of the U.S. workforce is employed). In marked contrast to other players in the economy, the decision rights and power of capitalists in the private sector often dominate the decision rights of all others, and the result is an *exclusive governance regime* with restricted decision-making rights both within and beyond firm boundaries (which happen to be our nation’s dominant social institution).²⁷ With economic control and decision-making largely relegated to privately owned corporations, whose executives live with unrelenting demands of shareholders seeking above-average returns on their investments, democracy’s core principles of popular sovereignty and political equality take a big hit.

The extent of capital’s dominance in the conduct of today’s business operations is best seen in the remarkable canonization of shareholder wealth maximization over the past 40 years as the only legitimate expression of business purpose. The adoption of this doctrine by the business community represents a major shift in corporate values away from those that prevailed in the 1930s under a more stakeholder-oriented version of capitalism. More specifically, this doctrine offers incentives for corporate executives and powerful insiders to place their self-interests way ahead of the interests and concerns of other constituencies of the enterprise. For example, corporations can create stock-based compensation plans for executives that guarantee huge rewards for increasing their companies’ stock price, even though increases in stock price may have little to do with creating long-term economic value of the enterprise. Furthermore, following from this executive compensation regime, corporations provide incentives for executives to invest in short-term gains through stock buybacks (which has the effect of increasing the

²⁷ Of the more than 6 million companies operating in the U.S., the largest proportion consists of small firms not listed on any stock exchange. A small but influential number are traded on stock exchanges. Today, there are about 4,000 U.S. corporations listed on the NYSE, AMEX, and Nasdaq exchanges. Another 15,000 stocks are traded over the counter, meaning they are not traded on one of the major exchanges. Although precise calculations are difficult, I am guessing, based on Federal Reserve Economic Data, that the earnings of these 4,000 companies account for roughly 10% to 12% of the nation’s GDP. Considering their supplier base, their large population of employees, and the number of communities in which they reside, this sector’s economic, political, social, and environmental impact is arguably far greater than this ratio suggests. (“Looking Behind the Declining Number of Public Companies,” Harvard Law School Forum on Corporate Governance and Financial Regulation, and Craig Doidge, G. Andrew Karolyi, and René M. Stulz, “The U.S. Listing Gap,” *Journal of Financial Economics*, March 2017.)

earnings per share, stock price, and wealth position for executives holding stock options and stock grants) rather than investing corporate capital in risky long-term business development.

With very high personal and shareholder gain on the line, the natural tendency of rational, self-interested corporate management is to preserve and structure the economic game in ways that best serve their interests by “investing” in electoral politics and legislative/regulatory lobbying. In addition, the idea of shareholder wealth maximization provides a seemingly rational justification for executives to lock themselves into a perpetually dominant bargaining position over the distribution of corporate benefits vis-à-vis other participants in the enterprise—such as employees and local communities—who have a legitimate claim, under law and custom, on the firm’s resources. (See Appendix A for a detailed explanation of this economic doctrine and the challenges it presents for the future of democratic capitalism.)

Serious consequences exist for this corporate governance regime—namely, those pertaining to the distribution of economic benefits created under market capitalism. There are several stories here. The more encouraging story recounts the widely-distributed economic benefits of American-style capitalism that flow from its unprecedented rates of innovation, despite its flaws. This includes many quality-of-life improvements (in refrigeration, communication, transportation, and healthcare, for example) and sustained GDP and job growth.

On the GDP growth front, *The Economist* recently pointed out that America today accounts for 58% of the G7’s GDP, up from 40% in 1990.²⁸ Similarly, as noted in the Introduction, American income per capita has been higher and steadily increasing since 1990 over that of Western Europeans, and investment returns in the S&P 500 Index of American companies (supporting our vital pension funds, as just one example) has outperformed the returns of a similar index of non-American, rich-world stocks by a factor of four. Yet, there is also a less encouraging, politically troubling story that recounts: how the real (purchasing-power adjusted) wages of many U.S. workers have barely budged over the past 40 years; how income and wealth inequality is higher in the U.S. than in almost any other developed country, suggesting that only a small segment of society appears to be gaining from GDP growth;²⁹ how the

²⁸ “America’s economic performance is a marvel to behold,” *The Economist*, April 13, 2023. Available at <https://www.bloomberg.com/news/articles/2023-03-28/anti-esg-crusades-in-gop-states-stumble-amid-pension-pushback?embedded-checkout=true>.

²⁹ From the mid-1990s to 2015, the cumulative real growth in incomes of the top 1% was 95% compared with 14% for the remaining 99%. Wolf, *The Crisis of Democratic Capitalism*, p.91. By 2023, the top 1% held 31.4 % of household wealth and the bottom 50% held only 2.5%, according to the Bureau of Labor Statistic and the Federal Reserve Bank. This data demonstrates

financial security of many citizens has declined; and how the rate of intergenerational economic mobility is below that of other advanced economies. These latter trends are emblematic of ongoing frictions between capitalism and democracy.

Fortunately, one of the important features of America's democratic-capitalist political economy is that some of the most essential contradictions have been contained by the body politic in recent decades. Past containment strategies include a combination of market and financial regulations (beyond the abolition of slavery) aimed at minimizing the ills of capitalism associated with unbridled personal gain, monopoly and restraint of trade, securities manipulation, and environmental degradation; the introduction of maximum working hours and minimum wage legislation; anti-discrimination measures; increasingly redistributive tax policy; and the introduction and expansion of publicly funded mechanisms to provide safety nets for people injured by economic change and dislocation. In addition, the voice of the trade union movement, although only embracing a small minority of the work force (10% today, down from 20% in the early 1980s), has been effective in balancing the dominance of capital's decision right in some industries and protecting and promoting workers' interests in the political marketplace. Relatedly, on the wage front, the government's pursuit of an accommodating monetary policy allowed collective bargaining for higher wages and full employment to coexist at the expense of an accelerating rate of inflation. This arrangement was critical to maintaining a stable democracy during the turbulent 1980s and 1990s (although it was not a sustainable strategy over the long run). Finally, an increasing number of influential entrepreneurs and business leaders have understood, stood for, and governed their enterprises according to the idea that successful businesses need to view themselves as cooperative systems, not simply vehicles to maximize shareholders' wealth. In marked contrast to emphasizing maximizing shareholders' value or wealth, their espoused purposes reflect a different moral culture best summarized as creating shared value for all the firm's constituencies or, more simply, "making a decent profit in a decent way." Rebecca Henderson provides several instructive examples in her recent book on re-imagining capitalism.³⁰

While these accommodations and economic benefits may have preserved the promise of democratic capitalism as a credible governance model in the past, it is questionable that they are sufficient to preserve democratic capitalism as stable or practical governance model for America in the future. Unless a renovated democratic capitalism can successfully reverse the decline of public trust in both large

that focusing solely on GDP is misleading because it obscures the range of financial outcomes in an economy as unequal of that of the United States.

³⁰ *Reimagining Capitalism in a World on Fire*, Public Affairs, 2020.

corporations and in capitalism as a system of economic governance, the days of democratic capitalism serving as an illuminating ideal and realistic national aspiration will end. This is what repeated polling is telling us. Over the last decade, and in the aftermath of the 2008 financial crisis and the great recession, surveys by Gallop, Frank Lutz, Harvard's Institute of Politics, and the Edelman Trust Barometer have all shown that only about one in five respondents trust U.S big business, and that throughout the industrialized world only 20% feel that the current system of political economy is working for them. It is highly unlikely that these opinions will change without substantial reform in our system of economic and political governance.

As observed by leading free market economists Raghuram Rajan and Luigi Zingales, "...democratic capitalism's greatest problem is not that it will destroy itself economically, as Marx, would have it, but that it may lose its political support."³¹

³¹ *Saving Capitalism from the Capitalists*, Princeton University Press, 2004.

III. The Fading Light of Democratic Capitalism

To reverse declining public trust in today's democratic capitalism and preserve the idea of democratic capitalism as a practical ideal for the U.S. going forward, we need to attack two cancers that are assaulting our system of economic and political governance: cronyism and restrictions on the voice and political influence of ordinary citizens.

There are, of course, additional malignancies residing in our body politic that adversely affect public trust in our current political economy, including years of unequal sharing of gains in income growth and historically high levels income and wealth inequality. When the top 1% of income earners capture 50% of the overall economic growth of real incomes per family over 1993–2018, that hardly leads to feelings that the system is working for most citizens, even if their family income is growing.³² And when wealth becomes concentrated in the hands of high-income earners, as in the U.S. where 70% of the total wealth is owned by the top 10% of earners, that only compounds the dissatisfaction of the remaining 90% with their disadvantaged status and a system in which they feel trapped.³³ This concentration of wealth also enables powerful and self-serving influence by the few over politics through funding political parties and candidates, as well as lobbying Congress and regulatory agencies.

These and other outcomes have given many Americans reason to believe that society has stopped working for them. Such outcomes are not easily reversed in a world where economic rulemaking and policy preferences remain under the increasing influence (see below) of a small, powerful, and politically unaccountable elite comprised of wealthy individuals and corporations. Here is where the twin cancers of cronyism and restricted political voice pose special risks to democratic capitalism. Together they inhibit, rather than enable, people to improve their material and political well-being, which are fundamental promises of democratic capitalism.

³² Emmanuel Saez, "Striking It Richer: The Evolution of Top Incomes in the United States" (Updated with 2018 estimates), February 2020, available at <http://elsa.berkeley.edu/~saez/TabFig2018prel.xls>.

³³ Statistica, "Wealth distribution in the United States in the second quarter of 2023," available at <http://elsa.berkeley.edu/~saez/TabFig2018prel.xls>.

Capitalism's Malady: Pervasive Cronyism

Cronyism, also known as crony capitalism, refers to a world where economic success (or survival) depends on developing close relationships between businesspeople and government officials rather than independently achieved success in a competitive market.

In its most basic form, it is useful to think of cronyism as a two-sided transaction. On the business side are the vast resources that wealthy individuals, firms, and industry associations spend on campaign financing and lobbying to promote their idiosyncratic interests. On the government side are members of Congress who both depend on campaign contributions from well-heeled supporters and are highly susceptible to the influences of well-paid and relentless lobbyists. This dynamic enables a small, but wealthy and influential elite to trade campaign finance and lobbying dollars for privileged advantages that typically emerge as Congressional legislation, targeted exemptions from legislation, advantageous rules drafted by regulatory agencies, preferred access to credit, direct subsidies, preferential tariffs, tax breaks, and protections from prosecution—just to name a few sources of advantage.³⁴ In short, cronyism entails the capture of government by entrenched interests. It violates one of the essential conditions of democratic capitalism, which is the “separation of power from wealth and so of politics from the economy (and vice versa).”³⁵

David Stockman, former director of the Office of Management and Budget under President Ronald Reagan, subsequent Wall Street banker, and critic of contemporary capitalism, characterizes this rent-seeking as “stealing through the public purse in ways that reward the super-rich.”³⁶ Similarly, Charles Koch, the politically active (and notable conservative) CEO of Koch Industries, characterizes crony

³⁴ For economists, crony capitalism is a special type of money making, which they refer to as “rent-seeking.” In technical terms, “an economic rent is the difference between what people are paid and what they would have to be paid for their labour, capital, land (or any other inputs to production) to remain in their current use. In a world of perfect competition, rent would not exist.” See “Planet Plutocrat,” *Economist*, March 15, 2014, available at <http://www.economist.com/news/international/21599041countries-where-politically-connected-businessmen-are-most-likely-prosper-planet>. Lawrence Lessig also refers to the phenomenon of cronyism as a form of “dependency corruption.” See *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (2015), p.15-20 and pp.230-246, for a complete definition and discussion.

³⁵ Wolf, *The Crisis of Democratic Capitalism*, p.29.

³⁶ David A. Stockman, *The Great Deformation: The Corruption of Capitalism in America* (Public Affairs, 2013). Stockman, budget director in the Reagan administration and an early partner in the Blackstone Group, also refers to crony capitalism as “a mutant regime, which now threatens to cripple the nation’s bedrock institutions of political democracy and the free market economy,” (p.3) See also Chapter 3, “Days of Crony Capitalism Plunder,” pp.35-52.

capitalism as “nothing more than welfare for the rich and powerful.”³⁷ Stockman and Koch are correct: where cronyism operates, public policy becomes skewed toward the rich and the status quo rather than reflecting the popular will.

Cronyism threatens democratic capitalism when innovation, economic efficiency, market pricing, and equal access to government decision-makers are compromised, and when well-placed persons invest their wealth in lobbying and campaign contributions to ensure that the system continues to work on their behalf. Cronyism becomes blatantly corrupt when instead of accruing wealth from successfully serving customers in competitive markets, wealth comes from simply being powerful. It also becomes corrupt when it undermines integrity in the discharge of duty by public officials. For all these reasons, cronyism compromises the legitimacy of any governance regime claiming to be democratic.

A classic example of crony capitalism at work is the U.S. sugar industry. Domestic sugar producers have long received generous federal support and protection in response to massive lobbying and large-scale campaign contributions. In the heavily lobbied Farm Bill of 2008, for example, Congress increased price support for sugar producers, while reducing support for producers of all other crops. This support effectively guaranteed the price per pound that the government would pay for raw and refined sugar if producers could not profitably sell at prevailing market prices. The legislation also guaranteed U.S. suppliers of beet and cane sugar 85% of the domestic market for human consumption. Because of these price supports and protections—whose annual costs, paid by consumers, is about \$3.7 billion according to Agralytica³⁸—U.S. sugar prices have been 64% to 92% higher than world prices in recent years.

The big question, of course, is how this highly favorable deal for sugar producers has lasted so long. The answer lies in the industry’s political influence. Lobbying by the sugar industry has accounted for more than 33% of all funds spent on lobbying by U.S. crop producers—even though sugar production accounts for only 1.9% of the value of all U.S. crop production. Donations to political action committees (PACs) from sugar companies also exceeded those of all other U.S. crop producers combined. In 2013, for example, the sugar industry spent about \$9 million on lobbying, according to the Center for Responsive Politics, with the top client—American Crystal Sugar—paying about \$1.10 million in

³⁷ Charles G. Koch, “Cronyism is for the rich and powerful” at <https://www.wichitaliberty.org/economic-freedom/cronyism-welfare-rich-powerful-writes-charles-koch/>

³⁸ “Economic Effects of the Sugar Program Since the 2008 Farm Bill & Policy Implications for the 2013 Farm Bill,” Agralytica, June 3, 2013, at [://efaidnbmnnnibpcajpcglefindmkaj/https://fairsugarpolicy.org/wordpress/wp-content/uploads/2018/03/AgralyticaEconomicEffectsPaperJune2013.pdf](https://efaidnbmnnnibpcajpcglefindmkaj/https://fairsugarpolicy.org/wordpress/wp-content/uploads/2018/03/AgralyticaEconomicEffectsPaperJune2013.pdf).

lobbying fees. Meanwhile campaign contributions from the industry to Republican and Democratic congressional candidates alike was more than \$5 million in 2012, with American Crystal Sugar contributing \$2.1 million of that amount.

This story—like comparable ones in the energy, transportation, finance, pharmaceuticals, and manufacturing industries—stands out as an example of crony capitalism. Clearly, Congress and industry players have colluded in formulating a set of policies that serve private interests at the expense of U.S. consumers. Where’s the public interest in the sugar industry story? Barely there, other than perhaps preserving farm employment for a very limited number of producers at an enormous public cost. Consumers pay far above world prices for sugar, and the tax-paying public forks over billions of dollars to an industry where, according to the *Wall Street Journal*, just three companies that produce about 20% of the U.S. sugar supply receive more than half of the sugar industry price support.

As clear as the sugar industry example of cronyism may be, many relationships in the real world are not always neatly characterized. Most troublesome is that the legitimate public interest or dereliction in matters involving industry subsidies, tax preferences, and legislative loopholes is often difficult to determine.

Take, for example, the case of wind farms. Most wind farms would not be economically viable without a tax credit. When developers of wind energy started receiving a production tax credit in 1992, was that cronyism? Not if the federal government wanted to foster energy independence, a new source of clean energy, and a new tool for fighting global warming—all presumably in the public interest, and perhaps justifiable under the general welfare clause of the Constitution (Article, Section 8). Viewed in this light, tax breaks for wind farms escape the taint of cronyism. However, some critics, including Senator Lamar Alexander (R-TN), claimed that the tax breaks unfairly and inappropriately undercut coal and nuclear power, waste money, and promote an industry that “destroy[s] the environment in the name of saving the environment.”³⁹ Senator Alexander was particularly incensed over the fact that the tax credit—then set at 2.3 cents for each kilowatt-hour of wind power produced—was sometimes worth more than the energy it subsidized. In markets such as Texas and Illinois, Alexander claimed that “sometimes...the subsidy is so large that wind producers have paid utilities to take their electricity and still make a profit.” So, is the wind tax credit an example of appropriate national energy policy or a financial windfall for wealthy investors at the expense of the national budget? It depends. In the case of

³⁹ Lamar Alexander, “Wind-Power Tax Credits Need to Be Blown Away,” *Wall Street Journal*, May 7, 2014, p.A17.

alternate energy production and services, which includes wind farms, private firms spent more than \$48 million on lobbying Congress in 2022 for investment tax credits and other incentives, according to Open Secrets, a comprehensive resource for campaign contributions and lobbying data. At the state level, it is not uncommon for lobbying by off-shore wind farms alone to range from \$4 to \$8 million a year.⁴⁰

Business–government relationships that comprise the toolkit of crony capitalism include (1) campaign financing of elected representatives; (2) heavy lobbying of Congress and other rule-writing agencies of government, and (3) the “revolving door” between government service and the private sector employment, and vice versa. Although these relationships may be perfectly legal, they each represent potential corruptions of democratic capitalism—where business-friendly public policy results from non-representative forces, leading to a diminution of public trust in our leading institutions of business and government.

Ironically, both campaign financing by private citizens and lobbying by business (and non-business) interest groups have historically played a central and often essential role in the functioning of American government. Without the government spending a penny, campaign contributions from individuals, corporations, industry associations, labor unions, and PACs have long funded elections to public office. Similarly, lobbying has long fed costly information to legislators at no cost to the public. At first blush, this may seem like an efficient arrangement—and one protected by the First Amendment of the U.S. Constitution under the “right to petition” the government.⁴¹ However, when a relatively small group of wealthy individuals and corporations contribute large amounts of undisclosed or “dark money” that becomes the major source of funding for campaign finance budgets, the democratic nature of electoral process is severely compromised. Similarly, when business interests engage in massive lobbying efforts that result in direct quid-pro-quo benefits or crowd out the voice of contending interests before Congress and regulatory agencies, the unequal power of these individual and firms not only disables the electoral process, but also leads to electoral dropouts and public alienation. This is money that speaks not for

⁴⁰ Joe Donohue, “Offshore Wind Power Developers Have Spent Almost \$4.2 million on Lobbying During the Past Decade, *New Jersey Globe*, May 3, 2021.

⁴¹ According to the Congressional Research service, the right to petition the government has expanded over the years and now includes “demands for an exercise by the government of its powers in furtherance of the interest and prosperity of the petitioners and of their views on politically contentious matters.” Or, as described by The American League of Lobbyists, the role of lobbying in the U.S. political process is “advocating a point of view by (a) researching and analyzing legislation and regulatory proposals, (b) monitoring and reporting on congressional and regulatory hearings, and (c) educating government officials and corporate officers as to the implications of various changes.” While the right to petition the government extends to all government departments, this right does not include attempts to influence legislators to insert, vote in favor of, or excise provisions in bills that serve individual client or industry-specific interests.

ordinary people, but for vested interests, and it has been a problem for a long time. Over a hundred years ago, Republican Senator from Ohio Mark Hanna quipped in 1895, “There are two things important in politics. The first is money, and I can’t remember the second.”

John Kerry’s farewell speech to the Senate on January 30, 2013, after he was confirmed as secretary of state, provides a more considered statement about campaign financing. Speaking about the key challenges facing the Senate based on his 25 years in the chamber, Senator Kerry said:

There is another challenge we must address—and it is the corrupting force of the vast sums of money necessary to run for office. The unending chase for money, I believe, threatens to steal our democracy itself. I’ve used the word corrupting—and I mean by it not the corruption of individuals, but a corruption of a system itself that all of us are forced to participate in against our will. The alliance of money and the interests it represents, the access it affords those who have it at the expense of those who don’t, the agenda it changes or sets by virtue of its power, is steadily silencing the voice of the vast majority of Americans who have a much harder time competing, or who can’t compete at all.

The insidious intention of that money is to set the agenda, change the agenda, block the agenda, define the agenda of Washington. How else could we possibly have a U.S. tax code of some 76,000 pages? Ask yourself, how many Americans have their own page, their own tax break, their own special deal?

. . . This is what contributes to the justified anger of the American people. They know it. They know we know it. And yet nothing happens. The truth requires that we call the corrosion of money in politics what it is: it is a form of corruption, and it muzzles more Americans than it empowers, and it is an imbalance that the world has taught us can only sow the seeds of unrest.⁴²

According to OpenSecrets, the total amount of money donated by individuals giving more than \$200 (such donations must be reported to the Federal Election Commission) and political action committees rose from \$500 million in the 1990 election cycle to \$8.0 billion in 2012 and \$16.4 billion in 2020.⁴³

⁴² January 30, 2013, available at <https://www.c-span.org/video/?c4344563/kerry-farewell-speech>

⁴³ OpenSecrets data is produced by the Center for Responsive Politics. See <https://www.opensecrets.org/open-data>

These numbers have been adjusted for inflation. By the way, Super PAC spending adds another 20% to this total.⁴⁴

As with campaign contributions, the scale of congressional lobbying by businesses is large and, by some measures, getting larger. According to OpenSecrets, there were 12,555 registered federal lobbyists in 2023, up from 11,500 in 2014. The total lobbying dollars spent at the federal level in 2023 was \$3.1 billion, up from \$2.4 billion 10 years earlier in nominal dollars.

It should therefore come as no surprise that legislative proposals and policies that wealthy individuals and corporations (owned largely by the economic elite) support have much greater chances of becoming law than those supported by the “average citizen.” According to one of most detailed and current studies of which set of actors (such as average citizens, economic elites, and organized interest groups, whether mass-based or business-oriented) have the most influence over public policy, most of the American public has little influence over the policies our government adopts.⁴⁵ Take the 2017 tax cut, for example. Prior to the passage of the tax bill, 56% of Americans disapproved of the proposed changes to the tax code, according to a Gallup poll. Two years after the tax cut, only 39% of American approved of the new law.⁴⁶ Rebecca Henderson concludes, “That’s not surprising: Most estimates suggest that at least 80% of the benefits from the cut have gone to the wealthiest 10%.”⁴⁷

Multiplying the ill effects of vast amounts of money in politics is the so-called “revolving door” between business and government. This happens when the continuous movement of senior executives and staff between the private sector and public service leads to a shared ideology favoring business interests over the public interest. This phenomenon has been referred to as “regulatory capture,” and generations of economists have profiled it.

⁴⁴ In contrast to traditional PACs (political action committees), Super PACs may raise unlimited sums of money from corporations, unions, organizations, and individuals but are prohibited from donating money directly to political candidates or coordinating with the candidates they support.

⁴⁵ Martin Gilens and Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens,” published online by Cambridge University Press, 18 September 2014. Available at <https://www.cambridge.org/core/journals/perspectives-on-politics/article/testing-theories-of-american-politics-elites-interest-groups-and-average-citizens/62327F513959D0A304D4893B382B992B>

⁴⁶ Megan Brenan, “More Still Disapprove than Approve of 2017 Tax Cuts,” October 10, 2018. Available at <https://news.gallup.com/poll/243611/disapprove-approve-2017-tax-cuts.aspx>

⁴⁷ Rebecca Henderson, “The Business Case for Saving Democracy,” *Harvard Business Review*, March 10, 2020.

The financial costs of cronyism’s toolkit imposed on Americans and democratic capitalism are large and growing. Many of the direct economic costs—costs stemming from legislation favorable to business, targeted exemptions from otherwise threatening legislation, advantageous rules drafted by regulatory agencies, preferred access to credit, direct subsidies, preferential tariffs, tax breaks, and protections from prosecution—can be crudely estimated. For example, a recent Cato Institute study calculated that the federal government spends almost \$100 billion annually on direct and indirect subsidies to small businesses, large corporations, and industry organizations, and this total does not consider tax loopholes and favorable regulatory and trade decisions. Here’s the quid pro quo: As mentioned previously, industry spending on lobbying alone amounted to \$3.1 billion in 2023, a 30% increase over the previous decade. According to Pulitzer Prize winner Herrick Smith, the monies financed legions of business lobbyists, which have out-numbered trade union lobbyists in Washington by as much as 30 times and the combined total of labor, consumer, and public interest lobbyists by 16 times. In dollar terms, this gave business and trade groups nearly a 60-to-1 business advantage in the early decades of the millennium.⁴⁸ Other costs—such as the degradation of values such as self-restraint, truthfulness, trustworthiness, and lawfulness that are vital to the functioning of capitalism and democracy and the crumbling of public confidence in the nation’s democratic processes and institutions—defy precise quantification but are the most important costs of cronyism over the long run. (See **Appendix B** for a more extensive discussion of cronyism and crony capitalism.)

Democracy’s Retreat: Restricted Suffrage

The second deadly cancer attacking democratic capitalism involves the restricted voice and political influence for many ordinary citizens. These restrictions stem from electoral rules and practices that muzzle the voice of ordinary citizens by curbing their rights to run for public office, to vote and express their will on all matters of policy, and to shape their own community as they see fit. U.S. history is littered with episodes of granting and withdrawing voting rights to Black men and women, native Americans, Mexican Americans in the southwest, Chinese Americans, non-English speaking immigrants, and other demographic groups.

⁴⁸ Herrick Smith, *Who Stole the American Dream?* Random House, 2012. Lobbying dollars encompass expenses spent on influencing individual Congresspersons, Congressional committees, and regulatory agencies tasked with developing (often highly contested) implementation guidelines for passed legislation. Agencies can spend years determining the details of how to apply a piece of legislation.

Most rules and regulations affecting such voting rights are state-specific, per Article Four of the Constitution.⁴⁹ The major exception to this generalization is the Voting Rights Act of 1965, which outlawed discriminatory voting practices adopted in the South after the Civil War and afterward. One of the most discriminatory was the partisan redesign of voting districts to limit the influence of black voters by shuffling these citizens between districts to maintain the minority share of black voters in each. This practice is commonly referred to as “redistricting to dilute the African American vote.” (Other discriminatory practices included poll taxes, literacy requirements, burdensome photo identification, the closing or moving of polling stations, restrictions on community-based registration drives, and the elimination of same day registration and early voting.) To remedy this situation, the Voting Rights Act of 1965 was passed and signed by President Lyndon Johnson after numerous peaceful demonstrations by civil rights leaders brought renewed attention to the issue of voting rights. Since 1965, however, various protections of citizens’ rights to vote that were spelled out in the Act have been withdrawn by U.S. Supreme Court decisions. Such decisions have had the unfortunate effect of limiting African American voter registration along with their political power. Most significantly, the Supreme Court’s decision in *Shelby County v. Holder* in 2013 invalidated a key provision of the Voting Rights Act of 1965 that determined the formula by which states and jurisdictions were required to undergo preclearance of any changes in voting law or practices before their implementation. Once the Court struck down this preclearance requirement, Texas and North Carolina immediately moved to impose multiple voting restrictions once again, including the discriminatory redesign of voting districts without federal oversight. With these redistricting efforts came a wave of redistricting challenges across the South, and the Act is still being litigated today. What’s at stake, of course, is citizens’ voice and influence.

For example, as I write in March 2024 over a decade after the *Shelby v. Holder* decision, the implementation of the eviscerated Voting Rights Act of 1965 is before the Supreme Court. The high court is considering South Carolina’s attempt to reinstate a congressional redistricting plan that a lower court found had exiled 30,000 Black voters to create a district safer for a White Republican candidate. The lower court found that South Carolina’s mapmakers tried to keep the African American population below a certain target in the Charleston County district, thereby treating it “in a fundamentally different way than the rest of the state.”

⁴⁹ Furthermore, constitutional lawyer Richard Hasen pointed out that “the U.S. Constitution contains no affirmative right to vote” as in other democracies such as Canada and Germany. Hasen writes, “The original Constitution provided for voting only for the House of Representatives, leaving voter qualifications for House elections to the states”—all of which was reconfirmed by the Supreme Court in the *Bush v. Gore* contested Florida election case. See Richard L. Hasen, “The U.S. Lacks What Every Democracy Needs,” *The New York Times*, January 17, 2024, p.A22.

Wherever universal suffrage and voter representation in a market economy is curtailed by local, state, or federal rules and rule makers—and citizen voice and influence is thereby isolated or eliminated—the delicate marriage between capitalism and democracy is placed under enormous stress. Laissez-faire capitalism creates many uncertainties and inequalities, which can overwhelm the great majority of the public, which cannot protect or insure itself against the misfortunes that dynamic capitalism can bring. As such, we have seen from consistent public polling that the absence of meaningful political voice and representation in dealing with these matters jeopardizes the perceived legitimacy of our current political economy.

Restricted voice and influence creates another challenge for democratic capitalism—that is, ensuring that political power is accountable to those who depend on it. In the U.S., the development of representative democracy over the past 175 years has created the framework for an accountable political system populated by professional politicians who act as intermediaries between the electorate and government bodies and whose re-electability is contingent on representing their constituencies' interests. The weaker the political voice of these constituencies, the less accountability these intermediaries have and the less democratic our system of economic and political governance becomes. This is the direction we are headed today, and, as we have seen, the public is beginning to feel serious anxiety.

It is no secret that two major factors are contributing to this anxiety and restricted political voice in the U.S. setting: (1) ballot access for prospective candidates and (2) accessible voting for those who want to register their voice in local, state, and national elections. Because most election rules, practices, and behaviors are state-specific, it makes sense to start addressing these two factors on a state-specific basis, such as in my home state of Massachusetts.⁵⁰ Many other states could provide salient examples of highly cynical political theatre dealing with increased restrictions on political voice and influence—all in the name of protecting the integrity of suffrage.

With respect to ballot access, state laws define the scope of voter choice—and the variety of ways states can restrict ballot access is mindboggling. For democracy to function, however, every viable

⁵⁰ In addition to these two restrictions on political voice, a strong argument can be made that the current, unrepresentative size of the U.S. House of Representatives also impinges on the exercise of citizens' political voice. Danielle Allen, who co-chaired the American Academy of Arts and Sciences Commission on the State of Our Democracy, has written extensively on this subject. She has argued that increasing the size of the House would help the U.S. achieve more inclusive, responsive, and energetic governance, while reconnecting House members to their constituents and enabling members to better understand and represent their constituents' voice. See, for example, "How big should the House be? Let's do the math. " *The Washington Post*, March 28, 2023 at <https://wapo.st/3qlYNZP>.

candidate should be able to compete, and every election should meaningfully reflect diverse viewpoints. This is clearly not the case across the country, however, because numerous states design their primaries to prevent viable candidates from running for office.

For example, under Florida state law, if a party only signs off on one candidate for the primary ballot, the primary contest is not held. Citing this law, the state Democratic party refused to put Rep. Dean Phillips (D-Minnesota) on the state's primary ballot in November 2023. This denied Phillips the chance to compete against President Biden in the Democratic primary election for that party's 2024 presidential nomination. This is clear example of America's dysfunctional primary election system in action.

Massachusetts has its own set of idiosyncrasies and dysfunctions. Such characteristics resulted in the state running, after the 2020 election cycle, the least competitive legislative election among all states, judging by the number of open elections, contested primaries, and contested general elections. According to Partners in Democracy, a nonprofit committed to renovating institutions of democracy, Democrats had primary choices in just 20% of state legislative seats in either chamber, whereas Republicans had a primary choice in just 5% of Senate and 1.25% of House seats.⁵¹ This extremely low level of primary choices and lack of competition for seats in the state legislature suggests that ballot access at nominating conventions for new, relatively unknown candidates was restricted by both party rules and the power of incumbency.

Here's how these restrictions work. To get on a Democratic or Republican primary ballot for electoral office in Massachusetts, candidates must first collect 10,000 signatures and second win at least 15% of delegates' votes at party nominating conventions. For Democrats, the required 15% of convention delegates' votes is tallied by a winner-take-all rule, which means in a primary race against an incumbent with significant name recognition, it is difficult for a newcomer to gain a majority of precinct votes in a first run for office. Normally, we would celebrate a newcomer getting, say, 25% of a precinct's vote. But, in Massachusetts, if an incumbent with a reasonable reputation gathers 30% of a precinct's votes, it is winner-take-all and the so-called successful newcomer is totally vanquished and takes no votes to the nominating convention to count toward his or her qualifying 15% of convention votes. This procedure results in weakly contested or uncontested primaries and almost a blockade against new candidates representing new ideas and constituencies. According to Ballotpedia, which tracks elections nationally, Massachusetts was rated in 2022 as the least competitive state in the country based on factors such as how

⁵¹ <https://partnersindemocracy.us>

often an incumbent faces a challenger—and this has been the case in at least the past three election cycles.⁵² As just one example, Congressional incumbents in Massachusetts have lost a seat only twice in the last 27 years.⁵³

Many other states besides Massachusetts field uncompetitive elections. According to No Labels, a political action group committed to restoring faith in American democracy, only 36 out of 435 House general elections were truly competitive in 2022—where “competitive” is defined as one that is decided by five points or less. There have been fewer and fewer of these races every year.⁵⁴

Another significant result of the current candidate selection system is that candidate diversity is very low for certain populations. For example, the percent of people of color in the Massachusetts state legislature and legislative leadership are, respectively, barely 10% and 5%, way below the 20% share of population in the state. And in seven of the state’s 10 largest cities, people of color make up a smaller share of the City Council than their population. According to FairVote, a non-partisan organization seeking better elections, Massachusetts was ranked tenth in its assessment of the 19 worst ballot access laws in the U.S. and joins a large number of states with the most restrictive ballot access regimes in the nation.⁵⁵

With respect to accessible voting, the record in Massachusetts is mixed. On the plus side, there is permanent vote-by-mail and in-person early voting. On the negative side, there is no universal automatic voter registration (available in 14 other states); no same-day registration (available in 19 other states); no electronic voting (available in 4 states and DC); and election day is not a holiday, so many voters must take time off work to vote many times a year. We know that any restrictions on citizens’ right to vote naturally affects total voter turnout.

⁵² “Primary election competitiveness in state and federal government, 2022,” available at https://ballotpedia.org/Primary_election_competitiveness_in_state_and_federal_government,2022#Massachusetts

⁵³ Matt Stout, “Blue Mass. Changing Its Colors,” *The Boston Globe*, October 12, 2023, p.1.

⁵⁴ This claim has been substantiated and elaborated by Fix Our House, an education and advocacy group promoting proportional representation as an urgently needed electoral reform. In a study of the 2022 House general election, Fix Our House found that only 42 of 435 House elections were competitive in 2022 (again measured by margins of victory), and that 35 House seats were uncontested. Of these uncontested 35 races, the study reported that 19 districts only had one major party candidate on the ballot. This finding was partly due to the fact that many voters do not live in evenly divided communities and partly due to “successful” redistricting or gerrymandering of voters by political parties. See Lauren Sforza, “Only 10 percent of House races were competitive in midterms: advocacy group,” *The Hill*, March 23, 2023, available at <https://thehill.com/homenews/campaign/3897518-only-10-percent-of-house-races-were-competitive-in-midterms-advocacy-group/>

⁵⁵ https://fairvote.org/the_primary_problem_with_american_primaries_lack_of_competition/

Turnout in Massachusetts state primaries has seen wide fluctuations, but the state has seen a general decline to below 20% until a jump upward during the Trump years. In presidential primaries, except for the Trump years, voter turnout in Massachusetts has not exceeded 50% since 1952. (According to FairVote, voter turnout in the U.S. is much lower than in other countries, hovering around 60% in presidential elections and 40% in midterm election years. Turnout soars to 90% in countries with mandatory voting and reaches around 70% in other developed countries.)

Possibly due to restricted ballot access and the lack of candidate diversity, Massachusetts was 48th in the country for the gap between white and people of color voter turnout in 2020. Black turnout was 36%, just over half of white turnout. Black, Latinex, and Asian American and Pacific Islander (AAPI) voters as a group cast 13.3% of votes in 2022, while accounting for 26.3% of the state's population.

Adding fuel to the fire of restricted political voice is a lack of legislative and administrative transparency in Massachusetts and other states. Lack of transparency makes it difficult for voters to see the policy implications of their electoral choices. According to Partners in Democracy, many issues contribute here. As just one example, Massachusetts does not require committee votes and often does not require floor votes (to get a floor vote, 16 representatives must demand it); the legislature often waits until the very end of the session to complete business, leading to rushed processes with limited potential for public oversight. Furthermore, the lack of public voting records makes it difficult to discern the positions of individual legislators. In a democracy, the lack of public sector transparency effectively disables public voice and influence, especially with respect to institutionalized cronyism.

It is poor news for democratic capitalism if the Massachusetts experience indicates the variety of restrictions on political voice throughout the 50 states. A weak or unhealthy democracy is not a boon to market capitalism. Where the people's voice is neither heard nor represented—thereby freeing the political governance regime from rigorous oversight and control—the economic and political sustainability of democratic capitalism is inevitably compromised. In the absence of democratic feedback over both formulating and implementing legislated rules and policies that affect decision-making by independent economic actors, the probabilities that a market economy based on private property rights will behave in ways that can serve both public and private interests will decline rapidly. In one credible scenario, cronyism in its various forms might become even more malignant than it is today, thereby exposing democratic capitalism to a further loss in public confidence and trust.

Restoring the Promise of Democratic Capitalism

The death grip of cronyism (on one side) and restricted political voice (on the other) represent an unsustainable imbalance of power in our political economy. So, the big question facing us is whether or not the idea of democratic capitalism can serve as a realistic aspiration or illuminating ideal for the U.S. going forward. The answer is this: Not without a lot of remedial work.

To make progress in unlocking this death grip of opposing constituencies, we first need to agree on basic principles of democratic action that can curb the excesses of American-style cronyism and strengthen the political voice and influence of ordinary citizens who are affected by the ill-effects of cronyism and other forms of domination. We then need to demonstrate how these principles can be usefully applied to (1) containing the curse of cronyism, (2) strengthening political voice and suffrage, and, to add another precondition, (3) promoting the appeal and presence of democracy-supporting firms in our political economy.

Political Equality as a Guiding Principle.

There is no rational way to expect enduring support for any intended democratic activity if the principle of political equality is not baked into that activity. This is as true for democratic capitalism as it is for democracy itself. This is because political equality is such a central value of the democratic aspiration.

According to philosopher and democracy advocate Danielle Allen, the principle of political equality follows from the fundamental concept of human moral equality. Moral equality refers to our basic need to be an autonomous, purposeful authors of our lives and to have that need and personal capacity “recognized as a necessary element of well-being, worth, and dignity.”⁵⁶ In a complex society, the only way for us to be maximally autonomous and purposeful is to be co-creators or active participants in creating the societal constraints that bound our lives—and to be free from domination by other individuals or groups in this participation. In everyday life, this individual freedom includes “meaningful participation in collective decision-making” related to matters such as cultural practices, the structure of

⁵⁶ Allen, *Justice by Means of Democracy*, p.32.

civil society, and participating in the institutions of political governance.⁵⁷ The freedom and capability of doing this defines the essence of political equality.

Political equality should not be confused with economic equality, social equality, or gender equality, although each of these are important.⁵⁸ As suggested, political equality means personal autonomy, freedom from domination, access to the institutions of government such as legislative and regulatory bodies, and the ability to shape one's own life and community. The term "political" in this context refers to being involved in a governance system in which participants typically have nonidentical interests. This involvement is two-faced. One face is the conduct of governing bodies, whether in the public sector or private sector. The other face relates to the members' standing and freedoms within these governing bodies as they participate in aspects of institutional governance that affect their lives. In this sense, political equality relates to egalitarian participation in the institutions of civil society on matters that affect one's current welfare and future possibilities.

Whereas political equality is a shared value or organizing principle, it provides the intellectual framework to protect two important categories of rights: (1) *individual* rights related to free speech and association, freedom of religion, freedom to choose one's employment, property ownership, as well as the right to be left alone and to commit one's personal property in commercial transactions in ways that serve one's own well-being and (2) *collective* rights related to the freedom to participate in politics as a voter, elected official, and decision-maker in political institutions. Democracy, according to Allen, is the only governance system that can guarantee both these categories of rights and, in doing so, guarantee the existence of political equality itself.⁵⁹ I acknowledge Allen's work here because it succinctly explains why the democratic component of capitalism as an economic governance system is so important to preserve.

The daily implementation of political equality—with its emphasis on non-domination, equal access to the instruments of government, and participative problem-solving on matters affecting one's well-being—relies on various forms of reciprocity and power sharing. As I discuss next, reciprocity or mutual responsiveness anchors the principle of political equality in a contentious world, where progress requires

⁵⁷ Ibid., p.33.

⁵⁸ Ibid., p.32.

⁵⁹ Ibid., p.33. For an informative, historical review of philosophical discussions pertaining to major categories of individual rights, see pp.20-30.

compromise and negotiation, as well as the recognition and reciprocation of sacrifices made by some members of the polity on behalf of others.⁶⁰ Political equality, along with reciprocity and non-domination as critical subprinciples, enables inclusive deliberation and problem solving by parties with often conflicting interests. This is a form of governance that does not exist under other forms of capitalism, including state-guided capitalism, welfare capitalism, or autocratic (oligarchic) capitalism.

Containing Cronyism

The most evocative example of the lack of political equality—and of domination and the lack of equal access to the instruments of government—is cronyism. Consider, for example, two major tools in the toolkit of crony capitalism: campaign financing and political lobbying. Cronyism is a serious problem when well-placed and influential parties invest individual and corporate wealth in lobbying and political contributions to ensure that the political system works on their behalf, even if it retards innovation and economic efficiency. This is a clear form of economic and political domination of those without the means to play the big money game in politics. In addition, it is a prime example of how access to the instruments of government can be blocked for those without the benefit of a political war chest of comparable size.

Numerous self-evident reforms can help contain the damage that cronyism imposes on democratic capitalism. To start, we can push for greater transparency, including better reporting of industry and business lobbying on specific pieces of legislation and regulatory rule writing. At minimum, the public would have greater clarity about who is bringing how much fire power to legislative rulemaking and regulatory rule-following. Federal law—principally the Lobbying Disclosure Act of 1995 and the Honest Leadership and Open Government Act of 2007—does not now require such disclosure. This needs to change. Reporting all corporate political activities should be made mandatory. Not only would this bring greater transparency in how companies exercise political influence, but it would also allow investors, employees, and customers to judge consistency among companies' publicly espoused values and actual lobbying behavior on matters ranging from clean air standards to tax policy.

We can also strengthen restrictions on the revolving door. President Obama did this with one of his first executive orders, which prohibited former lobbyists from working at agencies and on issues they had previously lobbied, and which barred them altogether from related advisory boards and commissions. In

⁶⁰ Ibid., p.42.

addition, we can tighten requirements for cooling-off periods for public- and private-sector officials passing through the revolving door to minimize trust-destroying conflicts of interest and privileged access by influential business interests to Congress and regulatory agencies.

While both initiatives would be extremely useful and should be pursued, no significant containment or reversal of American-style crony capitalism will occur without a major change in our approach to campaign financing. As Robert Kaiser, an experienced political reporter and editor of *The Washington Post* argued in *So Damn Much Money* (2009), lobbying has not only corroded American government but has interfered with the legislative agenda of both the Right and the Left.

Our country has a long history of attempted campaign finance reform, starting with the Tilman Act of 1907, which prohibited corporations and nationally chartered (interstate) banks from making direct financial contributions to federal candidates. The act was an early attempt to reduce the power and influence of large banks on congressional and presidential elections, but unfortunately weak enforcement undercut the act's potential effectiveness. Much more recently, Congress has crafted legislation such as the Bipartisan Campaign Reform Act of 2002, also called the McCain-Feingold Act. As succinctly explained by OpenSecrets in "The Legacy and Impact of McCain-Feingold," this act was written to prohibit soft money contributions to national political parties, and to limit campaign financing in hard money.⁶¹ (Soft money is unlimited funding collected by political parties intended for party strengthening, whereas hard money is donations made directly to a candidate's campaign.) Opponents of the McCain-Feingold Act successfully argued eight years later in *Citizens United v. Federal Election Commission* (2010) that the law would be a restraint on the freedom of corporations, unions, and wealthy individuals to express themselves. Following *Citizens United*, parties were free to spend money independently either supporting or opposing individual candidates, and the path was cleared for individuals and corporations to contribute unlimited amounts, mostly undisclosed or shielded through shell companies, as long as they were not working with campaigns and political parties. Within two years of the *Citizens United* decision, about 85% of funding for congressional campaigns came from large contributors—mainly wealthy individuals and corporations—with a negative effective on American democracy.⁶² In addition, according to the Brennan Center for Justice at New York University, this Supreme Court decision led to the creation of Super PACs that "empower the wealthiest donors, and the expansion of dark money through shadowy

⁶¹ Kaitlin Washburn, "The Legacy and impact of McCain-Feingold," OpenSecrets, posted August 28, 2018. Available at <https://www.opensecrets.org/news/2018/08/the-legacy-of-mccain-feingold>.

⁶² See Lawrence Lessig, *Republic Lost: How Money Corrupts Congress—and a Plan to Stop It*, Hachette Book Group, 2015.

nonprofits that don't disclose their donors.”⁶³ Whereas traditional PACs raise and spend money in support of, or in opposition to, political candidates, legislation, or ballot initiatives and are limited to raising a maximum of \$3,300 per year per candidate per election, Super PACs have no such spending limits and can accept unlimited contributions from individuals and corporations as long as they don't contribute to the campaigns of individual candidates. Super PACs do have some disclosure requirements on the books, but because many of these donors contribute through groups that are difficult to identify, the original source of these donations—referred to as “dark money”—are often unclear.⁶⁴

What this means is that a tiny group of largely unidentified contributors can affect the policy agenda of Congress and block reforms of all kinds. According to an analysis by political scientists Martin Gilens of Princeton and Benjamin Page of Northwestern University (2014), “Economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence.”⁶⁵ This is truly a picture of domination by an American oligarchy and, correspondingly, the denial of equal access to the instruments of government.

Unfortunately, the long and contorted history of attempted campaign finance reform sends a clear message: it is next to impossible for incumbent members of Congress to agree on meaningful controls on funds flowing into federal elections. Most party leaders, and more than a few legal scholars and the current Supreme Court, oppose controls that would diminish the role of money in politics, arguing that controls would be “an infringement on free speech and healthy political competition.” Such intransigence in Congress and the Supreme Court leaves only a few paths forward for reforming the status quo: repealing *Citizens United* (through a constitutional amendment), broadening the donor disclosure requirements of Super PACs that currently serve as the principal channel of dark money to political campaigns of all sorts, and/or changing the financing opportunities for political campaigns in ways that strengthen voters' voice.

⁶³ Tim Lau, “Citizen United Explained,” Brennan Center for Justice at <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained?ref=foreverwars.ghost.io>

⁶⁴ Ibid.

⁶⁵ Martin Gilens and Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens,” *Perspectives on Politics* (American Political Science Association, 2014).

With respect to repealing *Citizens United* through constitutional amendment, the prospects of such an initiative are even more daunting than Congressional action on campaign finance reform, given that it would require (1) a two-thirds vote in both the House and Senate and ratification by three-quarters of the states; (2) a two-thirds vote of a national convention called by Congress; or (3) ratifying conventions in three-fourths of the states. Although many Americans view the Supreme Court’s *Citizen United* decision as “the decision that broke democracy,”⁶⁶ it is procedurally and politically unrealistic to assume that it can be easily taken off the books.

This leaves reforming Super PACs and introducing new campaign financing options as the two more practical avenues for change.

Super PACs, in the aftermath of the *Citizens United* decision, have come to play an outsized role in corrupting democracy. As noted, traditional PACs—which are regulated heavily by the Federal Election Commission (FEC)—may accept up to \$3,300 in individual contributions to fund campaigns for or against candidates, ballot initiatives, or legislation. Corporations and unions are barred from contributing to such PACs. In marked contrast, Super PACs, which have flourished since *Citizen United*, are allowed to raise unlimited sums of money from corporations, unions, associations, and individuals and then donate unlimited sums to advance the interests of political parties as long as this spending is not coordinated with the campaigns of specific candidates. In practice, the dividing line between coordinated and uncoordinated political contributions can be murky, such as when the Super PACs most closely dedicated to supporting Obama and Romney in the 2012 election cycle were run, respectively, by former aides to the president and his Republican challenger.⁶⁷ Not surprisingly, candidates and Super PACs frequently work hand in glove, with candidates fundraising for Super PACs, providing, for example, Super PACs with preferred messaging and other materials to support their campaigns, and contracting through common vendors that are familiar with the candidate’s messaging and strategic objectives.”⁶⁸

According to Equal Citizens—a nonprofit founded by Lawrence Lessig to fix democracy by establishing truly equal citizenship—the rise of Super PACs as a major campaign finance instrument is

⁶⁶ Lawrence Lessig, “After 14 Years, it is time to change strategies,” email to author, January 21, 2024.

⁶⁷ ABC News, “What is a Super PAC? A Short History,” <https://abcnews.go.com/Politics/OTUS/super-pac-short-history/story?id=16960267>

⁶⁸ Sophia Gonsalves-Brown, “Super PAC Deals are a Bad Deal for Democracy,” <https://campaignlegal.org/update/super-pac-deals-are-bad-deal-democracy>

one of the leading reasons that our representative democracy has become so corrupt. In the words of Lessig, “the only voices that our government listens to are the special interests who fund their campaigns” and the result is a system of economic and political governance that is “rigged to favor the powerful and the well-connected.”⁶⁹

One path forward in curbing this corruption is to activate states to pass anti-Super PAC initiatives that the Supreme Court can then review with petitioners arguing that the federal government indeed has the power to regulate (unlimited) corporate spending on elections, ballot initiatives, and legislation and that *Citizen United* was incorrect in deciding the negative. (This is the strategy Equal Citizens is following in the State of Maine.)

A parallel path would involve greater disclosure of corporate political spending under an SEC rule requiring such disclosures.⁷⁰ Such a disclosure requirement would include disclosure of donations to Super PACs. The last effort to legislate disclosure—the DISCLOSE Act proposed by Representative Chris Van Hollen of Maryland and Senator Chuck Schumer of New York in 2010—lost by one vote in the House and two votes in the Senate. Since 2011, when a group of law professors proposed that the SEC require mandatory disclosure of corporations’ political contributions, the agency has resisted making any decision regarding this hotly debated matter—even though recent polling shows that as many as 80% of Americans think it is very/somewhat important for companies to disclose their political donations and lobbying.⁷¹ Another poll reports that two-thirds of self-identified Democrats, Independents, and Republicans support disclosure of political funding.⁷² In our current world of undisclosed—or minimal voluntarily disclosed—political contributions, OpenSecrets has calculated that \$1 billion in dark money was spent on political campaigns alone in the 2020 election cycle.⁷³

⁶⁹ Lawrence Lessig at <https://equalcitizens.us/about-equal-citizens/>

⁷⁰ Lucian A. Bebchuk, Robert J. Jackson, Jr., James D. Nelson, and Roberto Tallarita, “The Untenable Case for Keeping Investors in the Dark,” *Harvard Business Law Review*, Vol. 10, 2019.

⁷¹ Shannon Cabral, Daniel Krasner, and Rachel Doubledde, “Calls for Transparency Around Corporate Political Spend Are Growing Louder,” *Just Capital*, May 2, 2023. Available at <https://justcapital.com/news/31-percent-of-americas-largest-companies-disclose-lobbying-political-contributions/>. See also Ciara Torres-Spelliscy, “More Shareholders Seek Transparency on Corporate Political Spending and Climate Change,” Brennan Center for Justice. See <https://www.brennancenter.org/our-work/analysis-opinion/more-shareholders-seek-transparency-corporate-political-spending-and>

⁷² “Dark Money: Outing Donors State by State,” Reclaim the American Dream at <https://reclaimtheamericandream.org/progress-disclose/>

⁷³ Anna Massoglia and Karl Evers-Hillstrom, “‘Dark money’ topped \$1 billion in 2020, largely boosting democrats,” Open Secrets, March 17, 2022 at <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>

Today, the antidemocratic effects of *Citizens United* and the reporting loopholes for Super PACs created in the wake of *Citizens United* remain in place and seem unlikely to be addressed by direct Congressional action. As a result, the Federal Election Commission has been unable to protect the voice and influence of ordinary voters. Fortunately, however, while the federal government is mired in denial and dysfunction regarding essential democracy reforms, as many as 21 states are currently taking actions to expose dark and special interest money in election campaigns.⁷⁴ These state-led actions can serve as both an inspiration and legislative model for Congress in designing and passing legislation dealing not only with enhanced disclosure of how corporations spend their political contributions, but also with the disclosure by Super PACs of where contributions from corporations and other wealthy donors are coming from. Broadening these state-level initiatives needs to be the focus of all democracy renovators and proponents of democratic capitalism as a governance ideal.

Turning from Super PAC reform to innovative campaign financing options, many deserve to be tested in practice. One option is a voucher program (as adopted in Seattle in 2015) where voters receive monetary vouchers worth, say, \$25 or \$250 that can be donated to candidates participating in such a program. Vouchers can provide a simple way to help a more diverse pool of candidates run for office and somewhat reduce the impact of large contributions from wealthy individuals and corporations.

Another option, with similar goals and effects in mind, involves the government providing “matching funds” for the first chunk of donations (say, \$250) that private individuals make to a candidate running in a federal election. Matching funds would make small donations more valuable to a campaign, create an incentive for campaigns to pursue such donations, reduce the candidates’ and incumbents’ dependence on larger gifts from influential wealthy donors, and thereby enhance the power of less-wealthy individuals.

Lawrence Lessig notes that the cost of “voting with dollars”-type reforms would be very small relative to the cost of “corporate welfare” (government subsidies, tax loopholes, and the like), which the Cato Institute, cited previously, calculates to run at about \$100 billion a year.⁷⁵

Another approach to campaign finance reform has recently emerged with the swift and ironic rise of so-called independent Super PACs aimed at electing a Congress committed to small-dollar campaign

⁷⁴ See <https://reclaimtheamericandream.org/progress-disclose/> for a state-by-state summary.

⁷⁵ Lessig, p.269.

funding.⁷⁶ As an example, look at the record of Mayday, a crowd-funded, nonpartisan Super PAC Lessig launched in 2014, which quickly raised \$12 million dollars in less than three months to back Congressional candidates who support campaign finance reform.⁷⁷ Other super PACs aiming to reduce the influence of wealthy interests and elevate the impact of small donors on campaigns include Counterpace, Friends of Democracy, and Every Voice Action (formerly Friends of Democracy). These initiatives—which targeted specific races and candidates as far back as 10 years ago—are the most direct and professionally managed efforts to date aimed at changing the big-money-in-elections game. The failure of such initiatives to gain momentum—against the backdrop of significant legislative failures during the 1990s and the Supreme Court’s *Citizen’s United* decision—would be a setback for U.S. democracy and perpetuate the damage cronyism created to democratic capitalism.

Oddly enough, the current structure of campaign finance and lobbying is sometimes explained as a rational attempt by rationally self-interested individuals and institutions to reduce the uncertainties of their world by trying to influence, control, and, wherever possible, dominate political processes affecting their future. All the economic incentives push wealthy and powerful individuals and firms in this direction. But these incentives and resulting behaviors lead to a blatantly nondemocratic outcome: where the non-sacrificeable democratic principles of political equality and nondomination are violated systematically—to the disadvantage of less-well-resourced members of the body politic. What’s required to restore the democracy portion of democratic capitalism—before it’s too late to reverse the alarming decline in citizen confidence in, and support for, our current governance regime—are the kinds of campaign finance and lobbying reforms suggested here.

Expanding Political Voice and Influence

There can be no clearer constraint on political voice and influence—and no clearer violation of the core democratic principle of political equality—than the combined effect of limited ballot access, closed primaries, and restrictions limiting accessible voting. As previously discussed, where there are high barriers to representative candidates gaining access to ballots, such as highly partisan primaries that exclude nonparty candidates from running for public office and conditions inhibiting the physical casting of votes, large numbers of citizens will be excluded from the electoral process and therefore the political

⁷⁶ ABC News, “What is a Super PAC? A Short History,” <https://abcnews.go.com/Politics/OTUS/super-pac-short-history/story?id=16960267>

⁷⁷ Disclosure: The author contributed to the Mayday PAC in 2016.

process. This happens, in fact, in many states across the nation, including my home state of Massachusetts.

Political parties control access to primary ballots, and the general public has little ability to modify party rules (especially in states such as Massachusetts where 61% of registered voters are not affiliated with any political party). The most practical approach to rehabilitating our dysfunctional primary election system, therefore, is to open ballot access to first-time and nonparty affiliated candidates—thereby creating more competitive elections—by replacing party primaries with non-partisan primaries, as Louisiana, California, Washington, and Alaska have already done. A ballot access system such as this is often referred to as a “Top 5” election system, encompassing an “all-comers preliminary” followed by a final election for the Top 5 finishers in that preliminary.

Here’s how this electoral innovation would work in state-wide elections as explained by Partners in Democracy, an organization devoted to democracy innovation.⁷⁸

All candidates running in each election would appear on a single ballot, regardless of whether they are registered with a party. The top 5 finishers in that preliminary election—i.e., the five candidates with the most popular support across the electorate—would then compete in a final election, using “instant runoff” to ensure that the winner crosses the threshold of winning a majority. This final election would thus feature up to five viable, popular candidates—in contrast to today’s elections, which often fail to produce more than one.

This instant runoff system is often referred to as “ranked choice voting.”

Under a Top 5 or ranked choice voting system, voters rank the competing candidates by preference. If a candidate wins a majority of first-preference votes, he or she is declared the winner. If no candidate secures a majority, the candidate with the fewest first-place votes is eliminated, and their votes are transferred to the next choice on each ballot. A new tally is conducted to determine whether any candidate has won a majority of the adjusted votes. The process is repeated until a candidate wins an outright majority.

Such a reform would also foster legislative bodies that better represent the diversity of their constituencies. It prevents wasted votes and re-empowers the broad electorate, instead of the extreme base (which tends to dominate primary elections). Furthermore, independent voters finally get a voice. There is

⁷⁸ Disclosure: The author is Treasurer of Partners in Democracy.

no better way to apply the principle of political equality to the problem of political voice and influence than such an electoral innovation at both the state and municipality levels, as in my hometown, the City of Cambridge.

The standard of political equality also applies to the exercise of citizens' right to vote. In Massachusetts, the exercise of that right is among the lowest in the nation. For example, as recently as 2020, Partners in Democracy reports that Massachusetts was 50th in the country for Black voter registration, with only 42% of Black Massachusetts residents registered to vote (according to U.S. Census data)—the lowest rate of any ethnic group, anywhere in the country recorded in the data that year. As of 2022, Massachusetts continued to be below average in registration rates for Asian American and Hispanic voters. One explanation for this low level of voter turnout is the absence of candidates that appeal to this segment of the electorate. Due to restrictions on ballot access and low voter turnout, Massachusetts has among the fewest contested elections in the country, which in turn leads to the lack of accountability and a low level of responsiveness among office holders.

With respect to citizen voting rights, the two most impactful reforms are (1) same-day voter registration and (2) automatic mailing of ballots. Currently, in states such as Massachusetts, citizens must register to vote at least 20 days before an election, which means two trips during a work week for new voters, which creates a barrier for many workers with fixed job schedules. It also creates a barrier for eligible young people in school or university and more transient populations. In brief, this arbitrary restriction keeps thousands of otherwise qualified residents from participating in our democracy. Same-day voter registration would allow unregistered but eligible voters to show up at a polling location on election day or during early voting hours, register, and vote all at the same time. It is already in place in 21 states and Washington, D.C. and has been working well for more than 40 years in states such as Maine and Minnesota. In these states, it has shown to improve voter participation by up to seven points, with an even greater impact in low-income, Black, and Hispanic communities.

Automatic mail-in ballot systems require that election officials automatically send mail-in ballots to all eligible voters—who can then return their ballots by mail or via designated drop boxes. This type of system also boosts voter turnout by expanding voting accessibility, especially among Black and brown people, disabled people, rural residents, older people, and members of the military. Historically, Republicans and Democrats have agreed that this system offers the easiest way to cheat in an election process. But the experience of the nine states allowing mail-in ballots shows that few people have been

charged, in fact, for either mail ballot fraud or assistance fraud in elections in which tens of millions of votes were cast.⁷⁹

Same day voter registration and automatic mailing of ballots are two reforms that would increase levels of voter registration; minimize disparities in voting rates between the suburbs and gateway cities; make it easier for citizens to enter the political process and exercise their influence on matters that affect their lives; and increase citizen's sense that the core democratic value of political equality is not being sabotaged by political and economic elites.

⁷⁹ According to CNN Fact Check at https://www.cnn.com/factsfirst/politics/factcheck_8b1382ba-4b0e-4d9c-b933-adebced94e98 and Elise Viebeck, "Minuscule number of potentially fraudulent ballots in states with universal mail voting undercuts Trump claims about election risks," *The Washington Post*, June 8, 2020 at https://www.washingtonpost.com/politics/minuscule-number-of-potentially-fraudulent-ballots-in-states-with-universal-mail-voting-undercuts-trump-claims-about-election-risks/2020/06/08/1e78aa26-a5c5-11ea-bb20-ebf0921f3bbd_story.html

V. Can Firms Become More Democracy-Supporting?

So far, I have not yet addressed the question of how the management of firms affects public (and employee) perceptions of democratic capitalism. I have concentrated instead on behavior affecting, for better or worse, the democratic characteristics of our economic and political markets.

Let's now assume that the adoption of political equality as a central governance principle, enabled by the deft use of power sharing, helps us loosen the stranglehold of cronyism and restricted political voice on U.S. democratic capitalism. If successfully applied in curbing cronyism and restoring universal suffrage, we would still be left with the inconsistency of private sector firms employing millions of people in essentially nondemocratic regimes where the decision hierarchies are administered in ways that are rarely compatible with core democratic principles—where employees lack voice and influence on corporate matters affecting their work life and welfare. This forces the working public to straddle two different worlds of (1) private employment in nondemocratic decision hierarchies and (2) public citizenship in a robustly democratic political marketplace.

Such a straddle would be most difficult to tolerate for those employed by publicly traded companies whose executives tend to be razor-focused on creating above-average returns for shareholders and less attentive to making their firm more democracy-supporting for their employees. While publicly traded companies make up only 1% of U.S. firms, they employ about 33% of the U.S. workforce. Due to the canonization of maximizing shareholder value as the only legitimate expression of corporate purpose over the past half century, many managers of publicly listed firms have become increasingly untethered in managing their organizations from the democracy-supporting principles and values that we have been considering in this essay. This helps explain why contemporary political philosophers such as Elizabeth Anderson and Danielle Allen and some organizational economists have become so interested in how these enterprises could play a more explicit democracy-supporting role.⁸⁰

Pathways to More Democratic Organizations

Such a democracy-supporting role for corporations would need to be premised on the same political equality principle and power sharing practices we have been discussing. And herein lies the rub. According to traditional thinking about the coordination, control, and management of hierarchical

⁸⁰ See, for example, Elizabeth Anderson, *Private Government*, Princeton University Press, 2017.

business organizations, people joining such enterprises are expected to give up some degree of personal freedom and voice as part of the employment contract. Job descriptions and titles are on offer, as are wages and various conditions of employment, including benefits. Either one wants to join the enterprise and agrees to the terms of employment, or one does not. After accepting (and sometimes negotiating) the terms of employment, most employees have few opportunities and little leverage to shape their work environment. Furthermore, in both publicly owned and privately owned organizations, decision rights over the conduct of the business have long been legally retained by shareholders who invest risk capital in the enterprise and delegate these rights to a board of directors and the firm's senior leadership. For both of these reasons, when joining an established firm, employees cannot expect to play a major role in this decision and control structure unless senior management explicitly invites them to do so.

For democracy-supporting firms, much of this traditional approach to management would need to change so that employees and perhaps other constituencies could participate in corporate deliberations that affect their lives both inside and outside the enterprise. In other words, business policy decisions affecting participants' welfare would need to be discussed, and in some cases shared, with these affected participants—in ways that do not permanently compromise corporate efficiency and competitiveness.

This kind of mutual engagement is not, of course, a completely new idea. Several approaches to employee consultation and participation in corporate decision-making have been pursued for decades. Labor unions have forged the longest and most widely recognized approach, which long ago won the right to bargain with company managements on policies and practices affecting the welfare of their employees. Over the years, this right, along with processes for organizing nonunion employees and bargaining with managements on their behalf, have been codified and protected by federal law as both labor and management tested ways to gain advantage in protecting their interests. Another approach known as codetermination was created and mandated as a matter of national economic policy in Germany at the end of World War II and exists to this day. Two other approaches that conceivably can lead to a more democratic consultation and sharing of decision rights within corporations involve employee ownership and Benefit Corporation certification. Both have been pursued voluntarily for years by a small number of managements. However, apart from German-style codetermination, where many business policy decisions are shared with employees through their representatives on companies' supervisory boards, the impact of unionization, employee ownership schemes, and Benefit Corporation certification on the sharing of decision rights has been minimal, both within individual firms and across the economy.

Consider, for example, the case of unionized firms. For the 6% of private sector companies that are unionized and employ 11.3% of the U.S. workforce (according to the Bureau of Labor Statistics), these employees have indeed gained significant voice in the determination of wages, work rules, length of the workweek, health benefits, and unemployment benefits. However, considering the extremely low and the dramatically declining incidence of unionized companies over the past 50 years, the limited range of negotiable issues under collective bargaining, and the often antagonistic tone of labor–management relations, it is not surprising that few of the negotiating methods and gains associated with unionization have led to collaborative problem-solving beyond the collective bargaining agenda. Most decision and control rights affecting corporate prospects and performance remain firmly in the hands of boards of directors representing shareholders and corporate executives to whom such rights are delegated.

Employee ownership has had limited impact on sharing decision rights within firms, despite some notable pioneers. Employee stock ownership occurs when a company's employees own shares, which can be acquired in a variety of ways. In the U.S., the most common route to employee ownership is through an Employee Stock Ownership Plan (ESOP) set up by the company, where employees become the beneficiaries of employer-contributed stock. Under such a plan, companies' match employee 401(k) contributions with employer stock as an alternative to a cash contribution, and employees can then choose to invest in company stock through their 401(k)-retirement plan. Other routes to stock ownership include employee purchases of shares through a stock option plan or deductions from an employee's salary (which is common in the U.K.). ESOPs have been around since the mid-1950s, yet employee-owned firms currently represent only a very small portion of the nation's businesses. According to the National Center for Employee Ownership and the U.S. Census Bureau, there are currently 6,257 U.S. companies offering an ESOP versus 6.1 million employer-owned companies. Most of these 6,257 companies are privately held (only 493 are publicly listed), and only a third were 100% employee-owned in 2019. While employees in ESOPs appear to be enthusiastic about engaging with management and thrashing out problems together, most do not seem interested in the formal trappings of decision management and control or board representation. Examples of major ESOP companies are Publix Markets (230,000 employees) and W.L. Gore and Associates (maker of Gore-Tex, 12,000 employees). At Publix, employees own about 80% of company shares, and the Jenkins family owns the rest. W.L. Gore is also a privately held corporation.⁸¹

⁸¹ Not to be confused with ESOPs, a few private equity firms specializing in buyouts and the revitalization of underperforming companies (such as KKR, TPG, Silver Lake, and Warburg Pincus) have experimented with distributing as much as 4% of the equity of acquired companies to employees as a way of retaining employees and increasing their engagement during the turnaround process. Employees stand to make as much as 50% to 100% of their annual salary when a successful turnaround is sold—usually at great profit to the sponsoring buyout firm. Under such an arrangement, employees with equity grants do not possess any board seats or voting rights, and the buyout sponsors do not assume any fiduciary responsibility to represent

Yet another conceivable pathway to more democracy-supporting corporate management is through a firm's voluntary (and time consuming) pursuit of certification as a so-called Benefit Corporation. Benefit Corporations (or B Corps) are not designed explicitly to promote power sharing among corporate stakeholders. However, the value system and management practices of firms that choose to undergo B Corps certification, and then meet the standards B Lab (the nonprofit behind the B Corp certification) sets, are more likely to support new decision-making and power sharing practices than non-B Corps firms. The mission of certified B Corps is to use business as a force for good. Certification involves committing to nonfinancial impacts of corporate actions and conforming to high standards of accountability and transparency. Many B Corps, for example, pay specific attention to employee benefits and fair employee practices in their supply chains. For example, Patagonia focuses predominantly on its environmental agenda. Adopters of B Corp standards claim that it enables them to pursue a social mission and preserve a collaborative work environment while scaling the business. That said, there are only about 6,000 B Corps in the U.S. and Canada, including a few large public firms such as Nike and Walmart. But publicly listed B Corps all tend to be closely held by founders or founding families that are able to establish and protect internal governance practices that traditional shareholders might reject. Once again, this population of private and public companies represents a tiny portion of the corporate economy.

Finally, codetermination remains a conceivable route to participating in the decision and control structure of firms. This, however, is not a promising option in the U.S. setting. German-style codetermination involves the legal right of employees to participate in managing the companies they work for through representation on their companies' boards of directors. While this can be seen as a democracy-supporting practice in the workplace, it is in many respects inconsistent with existing state laws governing corporations such as in Delaware, where about 70% of Fortune 500 companies and 1.5 million businesses are incorporated. (In the U.S., corporations are chartered by the states because the federal government does not possess a general corporate statute as states do.) This means that a full-scale adoption of such a legally sanctioned governance structure would require that our current corporate governance model be re-legislated and, inevitably, re-litigated on a state-by-state basis—or somehow superseded by a new federal incorporation statute. This is not easy to implement nor, perhaps, even desirable, in the U.S. Push-back from states such as Delaware with thriving corporate law practices and corporations that like to shop around individual states for legal domiciles would be massive.

employee interests, as with an ESOP. KKR has reportedly introduced such employee equity plans into 30 portfolio companies since 2011. See Lydia DePillis, "Who Owns This Place? The Workers, Partly," *The New York Times*, January 28, 2024.

In sum, apart from the fallout from the labor union movement, sharing the decision and control rights in the modern corporation through employee ownership and B Corps certification have not been widely impactful and implementing full codetermination continues to be a serious legal challenge. The low adoption rate of employee ownership and B Corps governance options, plus the substantial legal barriers to integrating codetermination into the U.S. corporate governance regime leaves us with very weak options for imbuing U.S. corporations with more democracy-supporting features. What's left to be considered is a strategy for changing administrative behavior within the current legal framework of American corporate governance in ways that do not freeze decision-making through employee veto or otherwise compromise operating efficiencies. The purpose of such an effort would be to shift traditional command-and-control behavior based on management's unitary decision rights to a management philosophy focused on creating a more "relational environment" with more consultation and selectively shared decision rights among a firm's membership.⁸²

What a relational environment means in administrative terms is that business problems affecting the well-being of a firm's members would be solved *with* and *not for* its members. In such an environment, corporate executives and their boards should consider business policies, practices, and strategy for what they often become in practice—namely, agreed upon outcomes rather than imperial directives. Relational companies understand few matters exist that involve employees and other critical participants in the business where management can realistically expect to hold unitary decision rights, because there are too many interests and blocking behaviors involved. In addition, senior executives operating in a relational environment recognize the legitimacy of a company's key constituencies as discussion and negotiation partners on matters directly affecting their interests.

In relational environments, the great risk is that every business policy becomes negotiable, which would clearly disable firms as an adaptive enterprise in industries undergoing severe cost and technological competition. This can be managed in two ways: first, by promoting the practical idea that inclusiveness and organizational effectiveness are not mutually exclusive; and second, by thinking through the mix of issues that sensibly fall into the "discussible" and "negotiable" categories and those that do not. The precise mix of issues qualifying for joint discussion, negotiation, and power sharing will vary from company to company depending on their idiosyncratic operating circumstances and the constituency interests. The mix of qualifying matters could be traditional labor-management issues such

⁸² "Relational environment" is Danielle Allen's phrase, *Justice by Means of Democracy*, p.172.

as working conditions and wages, health and safety, reorganizations, plant openings and closings, employee transfers and reductions, and the introduction of new technologies affecting working conditions and job security. In most relational companies, matters related to corporate financing and financial structure, dividend policy, changes in ownership (M&A transactions), and R&D investment might be discussed with employees for informational purposes only. For active investors and creditors, however, these matters have always been, and would certainly remain, fair game for direct negotiation, especially where threats of corporate takeover and the management replacement are concerned.

The U.S. has a long history of providing both occasional and permanent interactive forums where such matters can be addressed—forums where information can be shared, joint problem-solving can take root, and power sharing can eventually become a recognized and validated pathway to finding practical solutions to constituency conflicts. Such forums have existed, and exist today, under many names and titles: labor–management committees at local and corporate levels, joint study committees and employee engagement committees, continuous improvement councils, quarterly town hall meetings, and face-to-face meetings with top-level executives. Each of these forums helps keep employees (and other key constituencies) engaged with their companies, gives employees an opportunity to influence working conditions and practices, improves work relationships, increases both team and operational effectiveness, bolsters job satisfaction, and fully engages employees in the life of the enterprise. Additional benefits of such problem-solving and power-sharing forums include their role in creating truly cooperative organizations with low coordination costs based on reciprocal relationships—rather than disunited organizations generating unnecessarily high costs of coordinating parties with conflicting interests and agendas.

As we have seen, public ownership of companies can complicate the implementation of such a management refocus, but that does not invalidate or repudiate relationality, power sharing or, as I discuss below, the principle of reciprocity that motivates effective power sharing.

Reciprocity and Power Sharing

If reciprocity is to be the democracy-supporting principle that underlies and legitimizes power sharing in hierarchical profit-seeking enterprises, what, precisely, does reciprocity call for?

Reciprocity, writes Danielle Allen, is at the heart of justice.⁸³ Adopting the habit of reciprocity enables the possibility that interacting parties—whether they be friends, fellow citizens, business partners, or employees—can achieve some form of “egalitarian engagement” in solving problems that affect their lives.

The reciprocity principle has a long and distinguished history, starting with Aristotle, who wrote that the concept refers to an exemplary kind of social cooperation, where transacting parties preserve parity in utility of benefits exchanged over time.⁸⁴ To meet the (ethical) standard of reciprocity, the utility value of goods and skills exchanged must be proportional to each party’s perceived needs and wants.⁸⁵ If one party gets richer at the other’s expense, reciprocity does not exist. Indeed, one party has more than one’s due share and the other suffers the injustice of having less. Similarly, the value of each party’s needs and wants can only be accurately and fairly established if relevant exchange negotiations are free from the domination of one party over another. Where there is no voluntary exchange, there is no reciprocity and, thus, no power sharing (only power hoarding).

Important about reciprocal exchanges is they are the result of a bargain struck between parties setting their own terms of exchange.⁸⁶ The parties estimate their own want satisfactions that they will derive from the goods or skills they will get in exchange for their own goods or skills. In subsequent bargaining, parties arrive at an exchange ratio that is an intermediate or mutually determined ratio between the two (pre-bargaining) estimations of want satisfactions. In the absence of domination of one party over another, this exchange ratio establishes each transacting party’s “reserve price” for cooperation. And because the context of exchange relationships in business continually change, reciprocity is best understood as a procedural matter, based on dialogue and periodic revisits of prior agreements, where new agreements or

⁸³ Allen, *Justice by Means of Democracy*, p.42.

⁸⁴ Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education* (Chicago: University of Chicago Press, 2004), p.131. Aristotle refers to this as an “exchange of equivalents.”

⁸⁵ Josef Soudek, “Aristotle’s Theory of Exchange: An Inquiry into the Origin of Economic Analysis,” *Proceedings of the American Philosophical Society* 96, no. 1 (February 1952), pp.45–75. Throughout the discussion of the reciprocity principle, I have relied heavily upon Soudek’s analysis of Aristotle’s theory of exchange and the relevance of reciprocal justice principles to economics and management.

⁸⁶ As Soudek points out (p.64), money serves as a useful medium for expressing wants and thus the value of goods and services exchanged, and greatly facilitates exchange by transforming subjective, qualitative phenomena like wants and want satisfactions into objective, quantitative ones.

contracts can be forged, and reimbursements or other paybacks can take place if one party has been disadvantaged in the past.

When the reserve price of all parties is met through the exchange of *quid pro quos* and, often, mutual sacrifice of short-term personal gains for long-term, shared benefits—the moral integrity of the exchange remains intact. Such exchanges are also tangible expressions of reciprocity and power sharing that democratic capitalism needs in order to keep its moral legitimacy undivided.

In corporations where the principle of reciprocity is adopted as a behavioral guideline and a moral constraint on shareholder wealth maximization, shareholders (as the residual bearers of risk in all incorporated enterprises) continue to hold a preeminent position in the hierarchy of corporate stakeholders with expectations of a return on their investment sufficient to compensate them for the uncontrollable and often unknowable risks they bear. This expected return is, of course, shareholders' reserve price (or required rate of return) for investing risk capital in the enterprise. But shareholders are not the only party with a reserve price for participating in the organization's work. Other parties—such as employees, suppliers, customers, creditors, neighbors, and guardians of the environment—also have their reserve prices, too, related in part to the risks that they bear through their voluntary (and sometimes involuntary) participation in the life of the enterprise. In the absence of total domination by capital, their participation in and support for the enterprise depends on a surplus of benefits for their continued collaboration or, at the very least, a level of valued benefits above an imagined breakeven exchange.

In the world of business (and politics), reciprocity is difficult to sustain despite best intentions. This is because reciprocity always requires, as suggested, a certain amount of personal or institutional sacrifice.⁸⁷ Sacrifice—namely, the surrender of something valued or desired for the sake of something regarded as having a higher or more pressing claim—is as central to the world of business as it is to the practice of democracy and democratic citizenship. With respect to democracy, for example, sacrifice involves accepting defeat after a hard-fought election. In this way, sacrifice builds community (and discourages violence). Sacrifice in the world of business involves a willingness to defer (surrender) corporate and personal gains to maintain the long-term health of the enterprise and the economic system. This, we shall see, is where experiments with reciprocal management meet their greatest challenge. Sacrifice involves tolerating a certain amount of disappointment and psychological pain, which often triggers nonrational, systematic behaviors that are intimately linked with the brain's fight-or-flight responses. Economist

⁸⁷ Allen, *Talking to Strangers*, pp.37ff.

Michael Jensen refers to this behavior as “pain avoidance,” a nonrational but fixed behavior that tends to block change of all kinds, including the kind of corporate governance changes we are discussing here.⁸⁸ Although the phenomenon of pain avoidance as a barrier to change deserves more discussion than I can afford here, it is, in my experience, an ever-present barrier to our willingness to suffer a short-term loss to gain a long-term benefit (such as a democracy-supporting ideal).

Examples of Reciprocity and Power Sharing in Practice

So, with this warning, what evidence do we have about how reciprocity and power sharing can and do work in practice? One source are companies founded and led by activist-minded entrepreneurs who willingly pursued reciprocity in creating relational work environments as an expression of their own (democratic) beliefs systems and theories of management. Companies in this category include the previously mentioned Publix Markets, W. L Gore & Associates, and Patagonia, each of which have a public record of continuity and estimable commercial success. Significantly, the shares of these companies—all controlled by founding families—are not publicly traded, and the CEOs have unfettered freedom to manage things the way they desire.

In the U.S. setting, publicly listed companies that have attempted to create relational work environments (often by becoming employee owned) typically have been forced to do so by dire competitive and financial factors. When this pressure subsides, or when outside entities takeover the companies, a reversion in the direction of prior, nonrelational governance practices often set in as the financial and competitive context changes. Perhaps the classic example of the disappearing revolution in corporate governance is Weirton Steel Corporation, formerly one of the world’s largest producers of tin plate products. In the 1980s, Weirton Steel became the largest employee-owned steel plant in the world when the company offered employees stock ownership as a way to negotiate concessions with unions to avoid bankruptcy. After 2004, when the company declared bankruptcy and eventually disappeared into the portfolio of a Luxembourg multinational steel manufacturing corporation, the employee ownership and power sharing revolution at Weirton Steel likewise vanished.

⁸⁸ Michael C. Jensen, “Self-Interest, Altruism, Incentives, and Agency Theory,” *Journal of Applied Corporate Finance*, vol.7, no.2, Summer 1994.

A less well-known case, but one more profound in the scope and scale of governance changes attempted, involves General Motors Corporation.⁸⁹ In 1981, at the peak of the Japanese small-car onslaught, GM was forced to scrap its plans for an American-made small car—the S-car—to take on the imports. After years of publicly denying the existence of a Japanese competitive advantage, GM, through its own internal analyses of the cost to produce the proposed S-car, confirmed that such a car simply could not compete on a manufacturing cost basis. At the end of 1983, a GM-UAW Joint Study Center was announced to rethink how to build a small car. After three short weeks, the 99-member committee had developed a “statement of philosophy” that reflected the kind of management–labor relationship they believed was necessary for GM to compete. Note that this statement was not about workplace democracy per se, but rather about institutional survival, job security, and company values. The statement of the Study Committee read, in part:

We believe that all people want to be involved in decisions that affect them, care about their jobs, take pride in themselves and in their contributions, and want to share in the success of their efforts.

By creating an atmosphere of mutual trust and respect, recognizing and utilizing individual expertise and knowledge in innovative ways, providing the technologies and education for each individual, we will enjoy a successful relationship and a sense of belonging to an integrated business system capable of achieving our common goals, which ensures security for our people and success for our business and communities.

The study’s participants explained how this philosophy could help GM meet its goal of reducing costs and improving quality. For example, trust between management and labor would reduce the need for management layers and supervision (overhead). This philosophy also served as a template for testing the design of the S-car manufacturing subsystems, including plant layout and design, technology, work units, and job design. The tangible result of all this collaborative work was GM’s decision in January 1985 to go forward with its “clean sheet” approach to building a competitive small car in the U.S. under the Saturn nameplate. Saturn would not only be a separate brand (the first new one added since 1918) but also a separate (wholly owned) corporation with endowed assets of \$5 billion.

Many of the principles the Joint Study Committee expressed and embedded in the Saturn Corporation were further codified in the corporate-wide 1984 labor contract between GM and the UAW. A variety of

⁸⁹ See David Dyer, Malcolm S. Salter, and Alan M Webber, *Changing Alliances*, Harvard Business School Press, 1987.

joint GM-UAW committees were created to carry out different elements of the contract agreement, to share information, to discuss common problems, and to develop a shared perspective. The introduction of Saturn-like joint committees was designed to change the long-embedded, noncooperative, entirely transactional mode of interaction between management and union employees. Historically, plant managers had cracked the whip; they had ensured that discipline and control were maintained on the shop floor (but the discipline was bad, including absenteeism, drinking alcohol on the production line, and petty acts of product sabotage such as putting Coke bottles inside door panels that would rattle and annoy customers). And the local union president had responded in kind. They won elections by showing that they could and would stand up to the boss by filing waves of grievances or refusing to go along with changes that threatened to boost productivity. The new committee structure promised to alleviate this situation. Rather than making the plant manager and local president less important, the committees made them vital elements in establishing the new management–employee relationship, where their joint-decision making (power sharing) became the building blocks of competitiveness.

The philosophy so painstakingly worked out and nurtured at Saturn paralleled practices put in place at the giant GM-Toyota manufacturing joint venture (NUMMI) in Fremont, CA, which produced the Corolla and a small GM model for the U.S. market. At NUMMI, small groups of workers were given wide latitude to participate in developing company policy, even to the point of reviewing the company's annual plan; teams of workers created job descriptions of group and team leaders, instead of the other way around; and hourly workers participated in developing their own work. Workers were accorded job security, authority, and responsibility for their own operations, as well as equal respect and status with management (no distinctions between the two sides in either the parking lot or the cafeteria). In brief, the same set of behaviors and *quid pro quos* negotiated between management and labor in Japan were present.

Saturn Corp., the 1984 labor contract, and NUMMI, as well as a vast number of other plant-level initiatives across the auto industry, illustrate that the companies' dire competitive fight for survival were sufficient to force the kind reciprocity (job security for changes in work rules) and power sharing (joint committees) that took place at GM. Initially, external objective measurements rewarded these efforts, which demonstrate that both the need for change and the direction of change were well considered (and in line with democracy-supporting). Throughout the 1980s, GM recorded significant improvements in product quality and productivity, as well as plant-level factors such as absenteeism, grievances, and unauthorized work stoppages—all of which provided workers with the greatest possibilities for job security. This slice of GM-UAW history shows that a relational environment can be created in designated

facilities in large public corporations when the economic incentives are sufficient. GM's history also shows, however, that sustaining and spreading this relational environment (and its first derivative, lean manufacturing) beyond the two, newly co-created facilities at Saturn (Tennessee) and NUMMI (California) was not ultimately successful due to decades of management intransigence and sour labor relations throughout the greater GM production system.

There is of course much, much more to GM's story. In the case of the Saturn Corporation, despite early success in the 1990s (Saturn was the third best-selling car model in the U.S. in 1994), the venture ultimately failed because senior GM executives outside of the Saturn Corp. subsidiary could not see the benefits of new ways of doing things and a new kind of organizational culture! GM insisted on managing all of its automotive divisions centrally, and the leadership at both GM and the UAW demanded that Saturn get in line with traditional ways of doing things. GM wanted Saturn to be like the rest of its offerings, a compilation of standard GM parts with a different nameplate, not a different kind of car manufactured and sold in a different way. Corporate executives lectured Saturn that the GM corporate way was more profitable, because it used the same parts across many automobile platforms. Saturn cars (and their marketing) soon became more generic and lost their differentiated consumer appeal. As for the UAW, Local 1810 at Saturn also came under constant fire from above to get in line. One local president was removed from his position by the UAW, and a successor was treated as a heretic for wanting, as he put it, to "create a viable model for the labor union in our modern era." Saturn people, he believed, didn't think of themselves as GM subordinates or as UAW card carriers. They were Saturn team members with a common mission. And for that, team leaders and members were ostracized and criticized. In the case of NUMMI, the first car ran off the production line in December 1984, but it took seven years of losses before the Fremont, CA plant finally reached breakeven in 1991. Production of Toyota and the GM vehicle reached a peak of 428,633 units in 2006, certainly high enough for considerable economies of scale to take hold. But by 2009, a year after the great financial crisis, GM found itself in serious financial trouble as demand evaporated, and it was forced to file for a Chapter 11 bankruptcy reorganization. GM pulled out of the NUMMI joint venture, with Toyota soon following suit. In the end, GM was unsuccessful in exporting the plant's relational environment and lean production to the rest of its U.S. operations.

GM and the U.S. auto industry were not alone in the 1980s (and before) to experiment with non-adversarial worker-management collaborative committees addressing specific issues related to the quality of work, cost savings, job restructuring, safety, training, and the quality of work-life in general. Before the Saturn experiment, there were thousands of joint management-employee committees established at

the plant level during World War II to increase wartime production. (Many disappeared after the war.) During the economic adjustments of the 1980s, economic circumstances forced the textile, clothing, semiconductor, telecommunications, and healthcare industries to forge more cooperative and less shareholder-value-maximizing labor–management relations. There is also a long history of industry-level committees or forums with management and employee representatives working at the national level in the ladies’ garment industry, the construction industry, the textile manufacturing industry including such companies as DuPont, Burlington Mills, and J.P. Stevens. Finally, we have a rich history of geographic area committees or forums established to improve the job climate and attract new business enterprises, as well national, multi-party forums, some entirely private, focused on enhanced productivity and matters of economic policy, health care policy, and various issues of common concern. Today, that history continues. The healthcare company Kaiser Permanente has nearly 4,000 teams of management and labor representatives coming together to joint problem-solve about company operations and to give employees a direct voice in their work.⁹⁰ Ford Motor Company and many others instituted employee engagement and continuous improvement teams at the plant level. Levi Strauss is well-known for its efforts to build a more equitable and inclusive organization with DEI (diversity, equity, and inclusion) teams spread throughout the company. And in the fall of 2023 as the impact of artificial intelligence (AI) on the future of work and employment levels emerged in industries as disparate as Hollywood script writers and auto workers, calls were being made by one of the nation’s leading labor experts to consider legislation requiring companies to set up employee advisory boards (power sharing forums) to give workers some say in how AI would be deployed.⁹¹ It is unclear how, in the absence of such legislated forums, how nonunion workers could influence policy affecting their livelihoods. The good news, however, is that we have a long and continuing history of firms experimenting with relational engagement and other elements of democracy-supporting management practices upon which we can build.

The less good news involves the status of federal labor law. Today, many of the collaborative committees or forums cited above are only allowed under the National Labor Relations Act (1935) in companies that are unionized. The Act *prohibits* nonunion employer–worker collaborations out of fear of management domination of these committees. As a result, employee voice and information flows from employees are severely compromised in nonunion settings. Forums for cooperation and reciprocity are

⁹⁰ Roy E. Bahat, Thomas A. Kochan, and Liba Wenig Rubenstein, “The Labor Savvy Leader,” *Harvard Business Review*, July-August 2023, p.74.

⁹¹ See comments of Thomas Kochan, professor at the MIT School of Management, quoted by Hiawatha Bray in, “Hollywood writers won their AI battle: What about the rest of us?” *The Boston Globe*, September 30, 2023, p.D1.

now being shut down, precisely when new avenues to worker voice and participation are most needed. What's clearly required is amending section 8(a)(2) of the National Labor Relations Act (NLRA), which prohibits the creation of nonunion worker–management committees. To prevent management from controlling or manipulating such forums, advocates (such as American Compass, best known for its work in building a new conservative economic agenda) have suggested that workers must support their creation through a free and fair election and must have the power to dissolve it by withdrawing that consent. In 2022, Republican Senator Marco Rubio and Congressman Jim Banks introduced legislation to this effect. This legislation deserves broad support.

Commonalities in Firms Practicing Reciprocity and Power Sharing

One clear commonality across firms seeking to develop more relational environments is the motivating fear of catastrophic economic breakdown. The possibility of a financial collapse has been a huge incentive to restructure (and renegotiate) long-standing relations with industrial partners throughout the industrial hierarchy. It remains to be seen if the call to renovate democratic capitalism offers a sufficient incentive to foster the kind of power sharing discussed throughout this essay in the absence of an economic crisis.

Another commonality is that when entrepreneurial companies such as Body Shop, Aveda, Tom's of Maine, and Whole Foods—all created with a social, environmental, or relational agenda—are acquired by large public corporations such as L'Oreal, Estee Lauder, Colgate Palmolive, and Amazon, the companies' founding agenda often faces financial pressures to focus on growing revenues and earnings for shareholders.⁹² The same is true for private companies becoming publicly listed and inviting outside capital that seeks above average returns into the enterprise.

A further commonality is the fact that virtually no agreements between management, employees, and other parties could have been reached unless each participant in the negotiating or power sharing forum was prepared to give something to others—involving a mutual sacrifice or surrendering of interests and rights. For company managers, power sharing has meant accepting an irrevocable commitment to share some aspects of strategy making and implementation with other industrial actors. As noted, power sharing differs from yielding decision-making, but it does require enormous skill and patience in shaping the

⁹² See Geoffrey Jones, *Deeply Responsible Business: A Global History of Value-Driven Leadership*, Harvard University Press, 2023.

content of the discussion and identifying the trade-offs to be made when considering the various interests at stake. (See **Appendix C** for a discussion of the wide variety of power sharing and negotiating forums that have been employed in the U.S. context and the types of operational matters that need to be resolved for such forums to be effective as collective problem solvers.)

We should not be under the illusion that redefining the nature of corporate stewardship in this way is an easy task. It requires strong commitment and moral leadership on the part of corporate management and boards of directors to take on such a role. This raises questions such as, what kind of moral culture is needed to encourage and reinforce such leadership in our political economy? How can we best advance a moral culture where business and political leaders are less self-interested and more concerned with the perceived legitimacy of democratic capitalism and the illuminating ideal it offers the nation going forward?

VI. A Moral Culture for Democratic Capitalism

In his 1796 farewell address, after six years as commander-in-chief of the Continental Army and another eight years as president of the United States, George Washington warned the states that a national morality is paramount in supporting the American system—that moral requirements were needed to sustain the republican form of government that the Founders had envisioned. He said, “Of all the disposition and habits which lead to political prosperity...morality is a necessary spring of popular government.” Today, 227 years later, we must ask ourselves whether Washington’s exhortation about the need for a national morality is a realistic expectation. Is it possible today to have a widely shared moral culture supportive of democratic capitalism in a nation that includes wide variances in demographics and philosophical predispositions? If so, how would we define such a culture? And how could we best advance a vision of a country that is less self-interested, more mutual, and more in line with true democratic capitalism?

Relevant Norms and Values

Culture is defined by a set of social norms and values that guide behavior. Families often develop (largely idiosyncratic) cultures of their own. So, too, do business firms and political economies—in response to a mix of historical factors.⁹³ Take, for example, the culture of corporate America, which refers to the population of large firms that play such a dominant role in our political economy. Economics writer David Leonhardt has opined that in the decades following the great economic crisis known as the Great Depression, “the prevailing culture of corporate America called for restraining self-interest in the name of national interest.”⁹⁴ The self-interest Leonhardt referred to involved easing back from short-term profit maximization. National interest involved recovering from the widely shared economic pain of the 1930s. This contemporary culture, according to Leonhardt, “explains why corporate executives helped build a high-wage economy and accepted high taxes on their incomes. They were willing to sacrifice their own short-term interests for what they considered to be larger causes, including political stability and American power.”⁹⁵

⁹³ See Joel Mokyr, *A Culture of Growth: The Origins of the Modern Economy*, Princeton University Press, 2016, p.8 for a discussion of culture in an economic and political context.

⁹⁴ David Leonhardt, *Ours Was the Shining Future*, Random House, 2023, p.261.

⁹⁵ Ibid., p.262.

Note that Leonhardt's characterization of the post-Depression corporate culture makes no reference to society's laws or governing institutions pertaining to sacrifice. That's because culture is distinct from the law, even though law and culture influence each other greatly. Here is Leonhardt's simple but evocative observation:

Institutions and laws tend to revolve around rules that dictate how people must behave. Culture involves more judgement. The law says that a customer must pay a restaurant bill and that an employer must pay at least minimum wage. Culture affects how much of a tip the customer leaves and how much more than minimum wage an employer pays an entry-level worker.⁹⁶

For the most part, Leonhardt is perfectly correct: culture involves extra-legal values and standards.

The norms and values defining national culture, industry culture, or corporate culture can be moral or not. The standards against which these norms and values can be judged to be moral and responsible commonly include honesty, trustworthiness, and lawfulness. All certainly support democratic capitalism.⁹⁷ But, as I have argued throughout this essay, an important addition to any such list of moral values needs to be a deep commitment to both political equality and reciprocity as key enablers. Without political equality and reciprocity as core values, there cannot be a true democracy. And without a true democracy, there can be no true democratic capitalism.

In the words of philosopher and democracy theorist Danielle Allen, "the realization of democracy as a political form depends upon maximizing the trajectory toward *political equality*."⁹⁸ To this important thought, I add the idea that if the realization of democracy depends on political equality as a core value and reciprocity as one of its most important facets, then it stands to reason that the perceived legitimacy of democratic capitalism also depends on including political equality in the mix of values that define the moral culture of true democratic capitalism.

Embedding political equality and reciprocity as core values in a political economy long dominated by self-interest and personal utility maximization is not an easy task. On the business side of our political economy, we have seen that the values of political equality and reciprocity that developed between a group of GM executives and UAW employees during their competitive and financial crisis of the 1980s and 1990s, was, in the end, an isolated response to an existential threat mounted by Japanese automakers.

⁹⁶ Leonhardt, *Ours Was the Shining Future*, p.51.

⁹⁷ See Michael Novak, "Democratic Capitalism," *National Review*, November 24, 2013, for a discussion of moral and cultural practices consistent with democratic capitalism and "the prospering of free societies."

⁹⁸ Allen, *Justice by Means of Democracy*, p.35.

Once competitive conditions in the U.S. auto industry appeared to ease, the never-before-seen practices of reciprocity and power sharing at the creation of the Saturn Corporation receded as GM and UAW leaders fell back on the traditional management–labor relations model, where the name of the game was maximizing economic self-interest and negotiating leverage. A corporate culture embodying political equality and reciprocity turned out not to be a “sticky” feature of capitalism.

On the political side of our political economy, we have seen similar passing moments of reciprocity and cooperation in the aftermath of the subprime mortgage banking crisis of 2008 (when members of Congress came together to authorize \$800 billion to stabilize the U.S. financial market and promote economic recovery), and the Covid-19 pandemic (when Congress came together in March 2021 to pass the historic American Rescue Plan that made investments to crush the virus, create millions of jobs, provide direct relief to working families, and help schools open safely). But once these crises passed, political conduct reverted to normal contentiousness, which in the intervening years has come to define our increasingly polarized and fractious democracy. Political equality and reciprocity turn out not to be a “sticky” feature of democracy either.

All this may seem perfectly normal. But the deeply troubling question for those of us concerned about the future of democratic capitalism as a credible governance ideal is whether sufficient incentives exist for American society to shift our governance culture further in the direction of political equality, reciprocity, and more relational norms.

From my perspective, the answer to this question is “not without a great deal of public education regarding the national stakes involved and credible leadership that brings public attention to the existential risks that we are running.” Currently, there is little or no push by our business leaders, political candidates, or elected officials to coalesce around a new or expanded set of democracy-supporting norms and values. The only exception to this pattern is the rising number of public-spirited, bi-partisan, democracy reform advocates like Partners in Democracy, Equal Citizens, and Issue One beginning to spring up across the country.

Perhaps some unexpected economic or political crisis, or external threat, will change the general public’s state of mind and deepen fears about our future as a true democracy. But barring catastrophe, I see little evidence that the nation broadly believes we have now reached such a tipping point or that we

need to start questioning whether our social norms and values are still true or workable and whether a different kind of conduct or set of relationships might make more sense.⁹⁹

Consistent with this apparent lack of a popular push to embed the moral principles of political equality and reciprocity more deeply into our business and political culture are the powerful incentives that discourage the development of more relational and democracy-supporting values. Stories about cronyism and restricted suffrage make this point clear.

In the cronyism story, the incentives that drive corporate executives and other wealthy elites to collude with the political class for their private benefit (in seeking a favorable regulatory environment, government subsidies, tax breaks, and intentionally ambiguous laws that can be easily gamed) are huge. At the top of the list, these incentives include the preservation and enhancement of their privileged position as society's most powerful and rationally self-interested participants. For society's economic and political elites, the disincentives to change behavior and an enabling culture are massive.

In the restricted suffrage story, huge incentives are at work counteracting the democratization of the right to vote and the right to run for political office. As previously discussed, parties in control of state legislatures and Congressional representatives, along with incumbents, have great personal incentives to protect their incumbency and extend their tenure in the political arena through election practices that restrict ballot access, curtail the influx of newcomers to political office, and limit the menu of candidate choices.

Despite the currently high institutional barriers to change in the values that define our current economic and political culture, we all know that the need to change often exists before it becomes obvious. That's where we are today. The need to change the norms and values driving our current system of economic and political governance is expressed in aforementioned surveys reporting a radical decline of public trust and confidence in both democracy and capitalism (and the governance of our political economy) among many demographic groups.

These survey results should not surprise us. When a national culture like ours celebrates, let alone tolerates, narrowly defined concepts of self-interest and self-preservation, it naturally puts civic society at

⁹⁹ For an important discussion about the triggers of cultural change, see Ann Swidler, "Culture in Action: Symbols and Strategies," *American Sociological Review* 51, no. 2 (April 1986);, pp.273-86. Referenced in Leonhardt's discussion of how culture changes over time, p.51.

risk driving the polity into rivalrous, noncooperating groups. This is what we are experiencing today as our business and political communities become increasingly oriented toward claiming as much advantage for the self and ignoring the well-being and representation of others as part of one's own self-interest. Crony capitalism is a prime example of this phenomenon, as are the increasing restrictions on universal suffrage being established by highly partisan and self-interested elected officials and their political parties through gerrymandering, ballot access restrictions, and revised voting procedures. Under these conditions, finding common purposes and policies, let alone a sense of justice, is nigh on impossible.

Our great challenge, then, is to perfect ways of nudging our national culture in a direction that is less rooted in self-interest and more aligned with community and national interests, as George Washington exhorted the nation in 1796.

Such a cultural shift is unlikely to take place on its own without a broad social mandate or effective evangelical effort. In the absence of such a mandate, it is unreasonable to expect that current economic and political actors will voluntarily ignore long-embedded incentives that reward the pursuit of narrowly defined self-interest—whether they be highly paid corporate executives whose total compensation is tightly linked to their companies' share price or elected officials who stand to gain from uncontested elections.

This leaves the singular option of relying on unrelenting persuasion of the kind that could help our business and political communities rethink what norms and values could best guide our unique form of democratic capitalism going forward. The history of successful economic and political movements in our country and elsewhere shows that to be effective, such persuasion needs to be rooted in compelling research and writings of movement leaders or spokespersons, education at local levels throughout the country, and respected evangelists in the business and political communities speaking out in support of, in this case, a renewed democratic capitalism.

The first step in mounting such a culture campaign is alerting the public to the dangers to truly *democratic* capitalism posed by the kind of excessive self-interest and personal utility maximization that drives today's pervasive cronyism and restricted suffrage. Perhaps such a wakeup call could feature publicizing the social costs of what years of polling data documents as a nose-dive in citizen trust and confidence in both capitalism and democracy. Beyond that, however, such a campaign will require, from the very beginning, an appeal to a higher loyalty than the maximization of personal self-interest. That

higher loyalty needs to be far more consistent with the democratic element of democratic capitalism than narrow conceptions of self-interest or the maximization of personal utility.

Committing to Fairness and Reciprocity

What might that higher loyalty be? What shared social value or idea is *more* important to the future of democratic capitalism as a governance system than our current, dogged pursuit of individual utility maximization?

There are at least two answers to this question. One answer, which does not reach for an explicit moral or ethical justification, involves simply committing to a broader conception of self-interest than individual utility maximization in day-to-day decision-making—for practical reasons. For example, business school professors like Bower, Leonard, and Paine think of self-interest as including the interests of others with whom individuals and firms interact on a continuing basis. These authors, in their study of capitalism at risk, concluded that forward-looking companies,

...recognize that their own health and prosperity are deeply intertwined with the health and prosperity of the market system as a whole and to enterprises across the industrial spectrum. In seeking to moderate forces that threaten to disrupt the system—or in adopting strategies and behaviors that help reinforce and strengthen the system—these businesses realize that they are looking after their own long-term-term interest as much as they are performing a civic responsibility.

Referencing the French political thinker Alexis de Tocqueville, they refer to this broader conception of self-interest as “self-interest properly understood.”¹⁰⁰ This, of course, is eminently sensible from an economic point of view.

A second answer, which is compatible with the first, relies more directly on moral principle. Because we are discussing the renovation of democratic capitalism as a system of economic and political governance, I suggest Aristotle’s principle of justice, which is best understood as “fairness in the process of governing,” as the most appropriate moral principle. This justice principle is a good place to anchor a moral culture that supports democratic capitalism, because it recognizes the need to provide voice and influence for all members of the national community in formulating business and public policies that affect their well-being. No other principle or value comes closer to the essence of democracy than this.

¹⁰⁰ Joseph L. Bower, Herman B. Leonard, and Lynn S. Paine, *Capitalism at Risk*, Harvard Business Review Press, 2011, p.150.

Adopting the Aristotelian notion of fairness as a cornerstone of a moral culture supportive of democratic capitalism requires careful attention to what, precisely, makes the democracy component of our governance system “fair.” I have argued throughout this essay that political equality, and especially its all-important facet of reciprocity, are the critical enabling conditions for fairness in a democratic state.

To recall our earlier discussion, reciprocity refers to an exemplary kind of social cooperation in a transactional setting. Reciprocity, if nothing else, is a relational concept focused on mutuality—not an individualistic concept focused on the maximization and preservation of self-interest.

Aristotle argued that for the economic basis of society to be both secure and ethical every exchange in economic markets, and by implication political markets, must be an exchange of equivalent value. In other words, market exchanges cannot be sustained unless the exchange partners are assured that what they give away and what they receive are of equivalent value to them. For this to happen, some principle or shared value is required to hold people together. That principle is what Aristotle defines as “reciprocal justice” or reciprocity, which involves equivalent or proportional returns between contracting parties. To meet the standard of reciprocal justice, the utility value of the items exchanged must be equal (actually, proportional) to each party’s perceived needs and wants. If one party gets richer at the other’s expense in this exchange, reciprocal justice would not be realized—because one party would receive a supernormal award and the other would suffer the injustice of having less. This supports a point I made earlier in this essay—this exchange can only be considered fair and just if the negotiations between the parties are free from the domination of one party over the other.¹⁰¹ Relatedly, it is only when the reserve price of all parties is met through the exchange of quid pro quos free from domination that the moral integrity of the exchange remains intact. For business readers, nothing in this definition of fairness and reciprocity requires investors or other suppliers of capital to take a discount from their risk-adjusted required rate of return (their reserve price), unless such a cut leads to compensating returns in future time periods.

Aristotle’s principles of fairness and reciprocity provide the essential organizing ideas for all democratic regimes (such as democratic capitalism)—namely, the idea that democratic societies are basically fair systems of social cooperation among free and equal persons.¹⁰² Social cooperation in this context includes the idea of “fair terms of cooperation,” implying notions of reciprocity or mutuality that I have touted throughout this essay as guiding principles for the restoration of democratic capitalism. (The

¹⁰¹ Again, see Soudek, “Aristotle’s Theory of Exchange,” pp.45-75.

¹⁰² John Rawls, *Justice as Fairness*, 2001.

“toxic duo” of cronyism and restricted voice are two democracy destroying examples of the lack of fairness and reciprocity.)

Of course, fairness and reciprocity do not stand alone as the only moral principles relevant to the renovation of American democracy. But they need to command a leading position. Consider, for example, the important moral principle of freedom. While fairness is about ensuring that everyone is treated in a politically equal way, freedom is a matter of personal liberty and the ability to live one’s life as one sees fit. Freedom is certainly a core moral principle embedded in our national ideology (“liberty and justice for all” in our Pledge of Alliance), and its intellectual provenance in the world of political economy is certainly a distinguished one. Some refer to freedom as “America’s national creed.”¹⁰³ But it is arguable that freedom cannot be sustained independently from Aristotle’s principle of justice as fairness. This is because, in the absence of justice or fairness, the weak would easily be dominated over time by the strong, both economically and politically, and only the powerful would end up possessing freedom.¹⁰⁴ This is the lesson that today’s pervasive cronyism in our political economy teaches us.

Socializing Moral Values

If we accept fairness and reciprocity as our higher loyalty, then the question becomes how to socialize and build commitment to these governance principles and their underlying values more broadly than we have been able to do in recent decades. There are several ways of doing so: by *proclamation*, where norms, values, and preferences are spread via autocratic fiat and enforced by state power, such as under the Third Reich; by *revolution*, where values are reprioritized via popular uprising and the power of the polis, as in the American and French revolutions and in various revolutionary theocratic republics today; by *legislation*, where values are legitimized, diffused, and enforced via democratic legislative action and legal compliance, such as in the U.S. with civil rights, social security, healthcare, voting rights, and competition policy; and by *moral suasion* via evangelism and social movements.

None of these categories are totally discrete. There is certainly overlap among them (as between moral suasion as a precursor to legislation), yet they do suggest a conceptually differentiated set of activities based on the source of power driving changes in social norms, values, and preferences. Much

¹⁰³ Leonhardt, *Ours Was the Shining Future*, p.377. In the name of freedom came the American revolution, abolition of slavery, trust-busting, women’s suffrage, the rise of organized labor, civil rights laws, same sex marriages, and so on.

¹⁰⁴ See David Gordon, “Freedom vs. Justice: Are They in Conflict?” Mises Wire (Mises Institute), March 10, 2016. For a full discussion. Available at <https://mises.org/library/freedom-vs-justice-are-they-conflict>.

can be said about each way of socializing norms and values, which is beyond the scope of this essay—other than to say we need to focus on *moral suasion* as the most promising and relevant route to renovating democratic capitalism. Socialization of moral values via proclamation requires the police power of the state to implement, which is totally unacceptable (unimaginable) in the U.S. context and, in any case, a sign of the kind of moral degradation we are trying to avoid. Revolution, apart from its incalculable social costs, is not called for in our current economic and political circumstance. Legislation, unless nested in a strong compliance culture and broadly united polis, inevitably leads to the gaming of rule-writing in Congress, more run-arounds of new rules in pursuing economic and political self-interest, and other ways of corrupting democratic governance such as through pervasive cronyism.

Moral suasion, especially through social movements, however, offers a different path to changed cultural values and norms. Deva Woodly's highly relevant work on social movements demonstrates the capacity to change "canonical thinking" and modify our understanding of politics and the range of political and cultural possibilities open to us. She writes, "Social movements infuse the essential elements of pragmatic imagination, social intelligence, and democratic experimentation into public spheres that are ailing and have become nonresponsive, stagnant, and/or closed."¹⁰⁵ Her most recent account of the Movement for Black Lives Matter (M4BL) that emerged in 2014—along with the differentiated histories of the Tea Party movement starting in 2009, the Occupy movement in 2011, and the #Me Too movement in 2017—show how social movements can catch fire in multiple ways depending on the local social landscape, political context, ecology of existing citizen-action groups, and choice of leadership structure.

According to Woodly, social movements comprise a way of meeting, engaging, educating, and preparing for collective action to serve some public cause. Social movements present in a wide variety of forms, with two iconic forms anchoring the ends of a full spectrum of possibilities and representing two vastly different approaches to leadership and followership. The first takes its energy and direction from a dominant leader and leadership group that seeds local chapters or associations and provides programmatic and political support. This type builds power and influence through publicly known advocates and proselytizers with concrete ideas for a possible future in mind. The development and remarkable success of the Committee for Economic Development described below is a good example of this type of social movement.

¹⁰⁵ Deva R. Woodly, *Reckoning: Black Lives Matter and the Democratic Necessity of Social Movements*, Oxford University Press, 2022, pp.xi, xvi, 4, and 17.

The second iconic type of social movement is more organic and widely distributed in society, comprised of existing, community-based organizations with shared interests who choose to coordinate activities and seek shared goals in response to a crisis or overwhelming moment affecting society at large. This social movement model notably does not include a single didactic leader, yet it is richly “leaderful”—meaning that the movement has multiple leaders and a diffuse leadership with little coordination by a national body.¹⁰⁶ The Movement for Black Lives Woodly described is an archetypical example of this type of social movement—one that was in place before the killing of George Floyd in May 2020 nationalized the agenda of M4BL.

The main challenge of relying on moral suasion and social movement organizing as a means of socializing new norms and values is that it requires a long-term, sustained effort with uncertain returns. Still, abundant evidence exists that such strategies for changing cultural and political values need not end up as a fool’s errand.

In the specific realm of the political economy, David Leonhardt provides a good example (in his recent assessment of “the American Dream”) of how moral suasion and the creation of a national organization promoting a new approach to labor relations in the 1930s and 1940s led to significant change in values throughout the U.S. business community.¹⁰⁷ Leonhardt observed that after the Great Depression and Franklin Roosevelt’s New Deal legislative initiatives, many in the business community continued to resist new economic regulations and social policy and to fight organized labor. But following repeated election victories of Roosevelt and like-minded politicians, some business leaders began to see wisdom in accepting the New Deal’s spirit of recovery, including, for example, the economic advantages of raising the wages of labor and building a productive, high-wage economy rather than focusing solely on labor cost-cutting.

Accepting this new wisdom was very much the result of missionary work of the newly formed Committee for Economic Development (CED), which both triggered and embodied this shift in values—starting, first, at the edges of the business community and then expanding “to shape postwar economic policy and help staff both the Truman and Eisenhower administrations.”¹⁰⁸ The CED’s purpose under the leadership of Paul Hoffman—a University of Chicago drop-out who took a job at local car dealership that

¹⁰⁶ Ibid., p.44

¹⁰⁷ Leonhardt, *Ours Was the Shining Future*, Chapter 2.

¹⁰⁸ Ibid., p.79.

eventually led him to the chairmanship of Studebaker Motors—was no less than reforming the culture of American business. According to Leonhardt,

Hoffman became an evangelist for a corporate America that was less self-interested and more concerned with the national interest. He argued that good wages were crucial to prosperity for businesses and workers alike. He figured out how to work with labor unions and government regulators, at least most of the time. He tried to persuade other executives to adopt a similar approach—and many of them did. In the 1940s and 1950s, Hoffman’s vision of corporate America triumphed.¹⁰⁹

All this was accomplished through moral suasion, building the case for a more collaborative or relational economic development model. Along the way, Hoffman personally recruited some of the biggest names in corporate America, “including the magazine publisher Henry Luce and top executives at Eastman Kodak, General Foods, and Lehman Brothers.” Eventually other large corporations and their CEOs joined the CED project, including Charles Wilson of General Electric, who became a CED board member. Hoffman also sought advice from intellectuals such as the theologian Reinhold Niebuhr and Peter Drucker.¹¹⁰ Under his leadership, the CED developed into a grassroots movement with 2,000 chapters run by local businessmen and supported by a national group providing expert advice to local chapters garnered from academic economists and Federal Reserve Bank officials. Hoffman and other CED officials toured regional gatherings of local chapters giving speeches so that local leaders could hear how their interests and work at the local level fit into an overall national effort.¹¹¹

CED’s initial message was that “cost control was not the only route to profitability,” and it soon expanded to include the proposition that “the twin crisis of depression and war had increased the appeal of a less rapacious version of capitalism.”¹¹² In private, CED officials accused those remaining hard-liners outside CED as being “‘intellectual Neanderthals’ who believed in ‘self, self, self and who were undermining the capitalist system they claimed to venerate.’”¹¹³ By 1944, Paul Hoffman and his work with the CED was celebrated on the cover of *Time* magazine.¹¹⁴ Whatever the public kudos, the basic fact was that Hoffman’s campaign based on moral suasion carried to both local communities and expressed

¹⁰⁹ Ibid., p.49.

¹¹⁰ Ibid., p.59.

¹¹¹ Ibid., p.60.

¹¹² Ibid., pp.61 and 62.

¹¹³ Ibid., p.63.

¹¹⁴ Ibid., p.64.

publicly at the national level converted the values of many in corporate America and probably saved the country from ideological lurches to both the left (as a result of the appeal of socialism during the 1930s) and the right (as a result to wide-spread fears of Communism in the 1950s).

There is a lot more to this highly organized, leader-intensive, moral suasion story, and even the barest outline of this story shows how effective moral suasion can be in the hands of committed leaders. By recruiting national opinion leaders (other CEOs) and organizing and coaching local committees of businesspeople to serve as the CED's local advocates and power sources throughout the country, Hoffman and his associates changed the course of democratic capitalism in the era before shareholder wealth maximization became a national preoccupation. Indeed, they called for and received support for an entirely new set of values and priorities in conducting business affairs: more collaboration, less self-interest.

Importantly, this moral suasion and organizing movement story is not an isolated one in recent American history. Leonhardt reports on two additional stories, both involving more distributed constellations of leadership that aimed at developing a new set of legal and economic values in the law and economics professions. The first involves the creation in 1982 of a legal movement by conservative law students, supported by legal scholars, that resulted in what is now called the Federalist Society for Law and Public Policy Studies. This movement takes the form of a conservative and libertarian legal organization that advocates for a textualist and originalist interpretation of the U.S. Constitution. The Federalist Society's statement of purpose says it was founded

...on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities.

In pursuing these activities, the Federalist Society created an extensive grassroots network of supporters and discussion participants in a Student Division with more than 10,000 students, a Lawyers Division with more than 65,00 legal professionals and others interested in the practice of law, and a Faculty Division that aims at encouraging constructive academic discourse.¹¹⁵ The success of the Federal Society grassroots movement in advocating a particular legal philosophy and populating the judicial system during the Trump administration is undisputed.

¹¹⁵ <https://fedsoc.org/about-us>

The second story involves the development of the so-called “neoliberal movement,” which gathered force before the election of Republican Ronald Reagan as President in 1980. This emergent consensus on the right followed from years of scholarly work and public conversation that Milton Friedman initiated with several other Chicago School economists and advanced by a group of lawyers from the University of Chicago law school (including Frank Easterbrook and Antonin Scalia who later were appointed by President Reagan, respectively, as judges on the U.S. Court of Appeals for the 7th District and the U.S. Supreme Court); Harvard Law School professor Douglas Ginsberg (who was appointed by President Reagan to the U.S. Court of Appeals for the D.C. District); and Judge Robert Bork (also appointed by Reagan to the U.S. Court of Appeals for the D.C. District after many years of scholarly work in anti-trust and government regulation arena at Yale Law School). These neoliberals believed in, argued for, and disseminated opinions on limited interpretations of the U.S. Constitution to protect individual freedoms, preserve free and open markets via deregulation of the private sector, cut taxes, restrict immigration, and a raft of social policies that, in their judgment, either violated or did not reflect the intent of the Constitution. Many of this group’s neoliberal ideas and values reached a broader audience than the Reagan administration and were found to be acceptable by many Democrats in the Clinton administration. They also lead to the deregulation of financial markets, telecoms, and airlines; the repeal of the Glass-Steagall Act of 1933; clampdowns on aggressive anti-trust policy; and lowered tax rates.

These three stories about movements that shifted society’s economic and political values reveal, first, that it can be done. Second, they reveal that successful efforts to socialize and build commitment to an underrepresented set of values and preferences starts with years of often scholarly homework, and then proceeds to widening circles of professional support, public education, and proselytizing through scholarly and more popular publication, speeches, and, in the case of the neoliberal movement, eventual financial support for political candidates reflecting neoliberal values.

The same progression can work to socialize the principles of fairness and reciprocity and renovate democratic capitalism. On the democracy side, scholarly work needs to continue to consolidate and package what we know about current rights to vote, rights to run for political office, the accountability of elected officials, and the impact of campaign finance and lobbying on legislating for the public interest. Fortunately, a great deal of work is underway and aimed at enhancing citizens’ political participation and voice—ranging from efforts to increase voter registration and turnout to widening the field of candidates competing for political office. Much of this work has been cited in this essay.

On the capitalism side, a similar workplan needs to begin with reporting on successful collective problem-solving experiments, where reciprocal exchanges and mutual gains among economic actors have been created in a variety of negotiating and power sharing forums around the country. My own earlier research that documented the history of the Joint Study Committee that led to creating the Saturn Corporation within General Motors Corporation is one case in point. A more recent example of such reporting is that by Rebecca Henderson on the leadership of CEO Paul Polman of Unilever in waging his campaign against palm oil production and its destructive effects on the deforestation of the rainforests. Through years of innovative collaborations with multiple stakeholders in various industry and advocacy group forums, the Sustainable Palm Oil partnership developed agreed-upon standards for cultivating sustainable palm oil. Wider-reaching forums soon followed, such as the Consumer Goods Forum, also aimed at reducing environmental contamination by consumer goods companies.¹¹⁶ And this is only one story from Henderson's extensive case library. Like the creation of the Saturn Corporation, the Sustainable Palm Oil partnership is the kind of field-based case study that deserves broad distribution as instructive examples of cronyism-in-reverse and successful attempts to restore environmental justice in our global political economy. There are many additional stories from the field across the nation regarding similar experiments embodying the principles of fairness and reciprocity and the delicate practice of power sharing.

As Deva Woodly, Rebecca Henderson, and others have shown, this is natural work for faculty members at business schools, schools of public policy and government, and law schools who for decades have been successful in bringing new, productive ideas to both the broad public and institutional leaders through prolific case-writing. Such scholars have researched and written about matters of management and control of complex organizations, corporate finance, international trade, defense policy, and constitutional law and precedent—just to mention a few areas where critical matters from the field have been modeled and analyzed to the benefit of practitioners.

In addition to foundational research that can motivate the socialization of a new set of governing values and reverse offending behaviors—such as pervasive cronyism and restricted suffrage—credible spokespersons and evangelists such as Paul Hoffman are required to advance the vision and build the power base needed for meaningful change. At first look, one might conclude there is a remarkable dearth of respected evangelists today. But this conclusion is not accurate. There is, in fact, an emerging cadre of intellectual leaders working on democracy renovation projects and, by direct application, the renovation

¹¹⁶ Henderson, *Reimagining Capitalism in a World on Fire*, Chapter 6.

of democratic capitalism as a practical governance ideal for the U.S. going forward. Two notable examples, already referenced, are philosophy professor and political activist Danielle Allen and law professor and political activist Lawrence Lessig, both of Harvard University. Allen founded Partners in Democracy, which works with dozens of partners in the democracy renovation space around the country focusing on voter registration, voter turnout for elections, accessibility of voting, the competitiveness of elections, ease of candidate ballot access, candidate representatives, government responsiveness, legislative and administrative transparency, and strong news coverage.¹¹⁷ Lessig founded Equal Citizens whose goal is reforming the Electoral College and Super PACs and reducing the corrosive influence of big money in politics.¹¹⁸

In addition, to these established pioneers, there are many inquisitive and informed senior executives and established political leaders who could become spokespeople or evangelists, if they chose to do so—persons already working with such organizations as The Business Roundtable, The Conference Board and its Committee for Economic Development, the Aspen Institute, the Problem Solvers Caucus in Congress and serving in various state and national legislative bodies.

Never before have evangelists for a truer form of democratic capitalism had more knowledge and more grassroots and national-level democracy support groups available to them. With this intellectual and political infrastructure moving into place, the time to start socializing the norms and values comprising a supportive moral culture for democratic capitalism is at hand. Action principles have never been clearer. The need has never been so pressing. And an implementable plan of action to renovate democratic capitalism is taking shape. Others can undoubtedly add to the reform agenda I have proposed here, but an outline of such a practical agenda is clear:

- **Curb Cronyism** through reforms in campaign finance laws (including alternate campaign financing schemes that allow candidates to free themselves from large, controlling donors); federally mandated requirements for Super PACs to disclose their donors (thereby eliminating the massive presence of dark money in electoral campaigns, Congressional lobbying, and ballot initiatives); greater transparency in *corporate* reporting of campaign and lobbying spending; and a slowdown in the revolving door between business and government.

¹¹⁷ See <https://partnersindemocracy.us>

¹¹⁸ See <https://equalcitizens.us>

- **Strengthen Citizen Voice and Influence** as a countervailing power to wealthy and influential elites (corporate and otherwise) who have captured large segments of our legislative and regulatory establishment. Improve ballot access for a more diverse population of candidates and reduce restrictions on citizens' right to vote on all candidates.
- **Create More Democracy-Supporting Firms** that mirror the application of democratic principles of fairness and reciprocity in economic and political markets through selective power sharing with key constituencies and the liberation of firms from the obsessive pursuit of the problematic doctrine of shareholder wealth maximization.
- **Advance a Moral Culture Conducive to Democratic Capitalism** through social movement tactics that include public education and support for evangelists and spokespersons who can alert the nation to the idea that the perceived legitimacy of our system of economic and political governance can be restored by practicing the democracy principles that we teach and admire as a nation. This includes the principles of fairness, political equality, and power sharing (collaborative problem-solving) rather than individual utility maximization based on narrowly defined self-interest.

As daunting as this restoration program is, it makes little sense to wait for another existential threat or crisis to shock us into a changed mentality. Nor do we have time to wait for the moral pendulum to swing away from the currently celebrated ethos of self-serving utility maximization back in the direction of mutuality. Such a cultural shift, on its own clock, would take at least generation.

The longer we wait for the restoration to actuate, the more the decline of democratic capitalism as a national ideal will become irreversible. And without the restoration of our national ideal and a renewal of Americans' faith that democratic capitalism is working *for them*, rather than *against them*, social unrest and political dysfunction will inevitably accelerate.

Hopefully, Ralph Waldo Emerson's assertion—that "America is the country of tomorrow"—will be proven correct once again, with that "tomorrow" including the restoration of democratic capitalism as a credible aspiration for our country. To that end, we have great work to do together.

Appendix A

The Problematic Doctrine of Shareholder Wealth Maximization

The canonization of shareholder wealth maximization as the only legitimate expression of corporate purpose over the past 40 years, along with the subsequent adoption of executive compensation plans where the level of pay is tightly linked to a company's stock price, provides strong ideological and financial incentives for many U.S. executives to disengage as a social and moral force in our political economy and focus more on how best to increase their company's stock price than on how best to contribute to a just and fair system of economic and political governance.¹¹⁹

Examples of social disengagement and the include persistent lack of sustained attention and investment in environmental protection; failure to ensure a rising and widely shared standard of living for hourly employees, while the compensation of senior executives continues to soar (twice as fast as the rise in median full-time wage in the U.S. over the past decade¹²⁰); pervasive cronyism, as discussed above, that serves the powerful and wealthy and can bring special privilege for the few; wide-spread gaming of our legislated rules-of-the-game that may benefit shareholders but offer few compensating public benefits; wide-spreading cheating; lack of accountability for corporate misdeeds; and lack of attention to the plight of "capitalism's losers."

Readers may want to add to or otherwise re-shape this characterization of social and moral disengagement. But the important point is that the canonization of doctrine of shareholder wealth maximization represents an important shift in the norms and values of U.S. capitalism—even we harbor varying intuitions about what's just and unjust behavior under the current corporate governance regime and what social injuries have been created by narrow visions of corporate purpose.

The extent of social and moral disengagement by the business and financial communities makes it unlikely that the decline in public trust of American-style capitalism and the fraying social contract that it

¹¹⁹ Martin Wolf refers to this situation as "detached capitalism." With respect to executive focus on company stock price, vested stock awards and exercised stock options accounted for 80.1% of the average compensation of CEOs at the 350 largest publicly owned U.S. firms as of 2021, according to the Economic Policy Institute.

¹²⁰ A survey in 2019 by David Lacker and Brian Tayan of Stanford University found that 86% of pension fund and other asset managers thought CEOs were overpaid, while a more recent survey of American corporate directors by PWC consultancy showed that one in two thought corporate executives were overpaid. Reported by Schumpeter, "How much is too much?" in *The Economist*, October 21, 2023, p.58.

represents can be easily reversed. But we know that the purpose and governance of corporations have changed many times through the ages and that corporations can do so again when it makes good business sense to do so.

Today, the incentive to pursue further change in corporate purpose and governance—by committing to the principles of fairness and reciprocity, supported by the deft use of power sharing, in dealing with key constituencies of the corporation on matters of mutual consequence—is no less than saving democratic capitalism from self-inflicted damage.

A realistic, persistent pursuit of such a mission can benefit from a solid understanding of what the theoretical basis of the shareholder value maximization doctrine encompasses; how this doctrine or belief system has led to the degradation of corporate purpose and practice in recent decades; how the shareholder value maximization doctrine came to be so deeply embedded in our business culture; and what serious conceptual and practical problems are inherent in this doctrine, which has had the effect of steering corporations and their executives away from social and moral engagement with non-shareholding participants in the life of firms. It is to this agenda that I now turn in this appendix.

The Shareholder Wealth Maximization Doctrine

The promotion of shareholder value maximization as the only appropriate expression of corporate purpose and standard of corporate performance can be traced directly to the development and promotion of the “shareholder primacy” theory of the firm during the 1970s and 1980s. Put most simply, this theory proposes that shareholders own their corporations and that corporate employees should therefore run the corporation in their interest; in other words, employees’ primary mandate is to maximize the value of the company’s shares. And since shareholders are the residual bearers of risk in corporate activity—meaning that they could lose all their money without any recourse or appeal—managers have a moral obligation to protect shareholders from the “unusual degree of exposure” that they have to the corporation.¹²¹

¹²¹ Theo Vermaelen, “Maximizing Shareholder Value: An Ethical Responsibility,” in Craig Smith and Gilbert Lenssen, *Mainstreaming Corporate Responsibility*, Wiley, 2009, cited in Mayer, *Prosperity*. op. cit.

This idea has deep roots in many decades of discussion in the economics literature about a general theory of profit maximization¹²² and theories of managerial discretion.¹²³ Much of this literature adopts the idea of *maximization*, which first appeared in the work of the 18th-century English philosopher and political radical Jeremy Bentham. Bentham coined the term to convey the idea that in a world where human beings are assumed to be self-interested—seeking everywhere their own advantage in matters of pleasure and profit—such behavior will be calculating and calculable. It can also be pursued without limit. According to the intellectual historian David Wooten, this perception of mankind has led to an emergent view of morality as a strategy for achieving one’s interests—a vision markedly different from older, more traditional conceptions of honor and virtue in the conduct of human affairs, which required restraint, moderation, self-abnegation, and self-sacrifice. It didn’t take long for this new moral philosophy to find broad acceptance in Bentham’s fast-industrializing, entrepreneurial world, not least because it set no limit on entrepreneurs’ self-interested conduct other than avoiding self-defeating behavior. In the ensuing centuries, this concept of self-interest and self-maximizing behavior has played a central role in the development of the discipline of economics.¹²⁴

By the 1970s, there was increasing agreement among economists and finance scholars that what managers sought to do was to maximize not only their own self-interests but also the value of the firms for which they worked. But was maximizing firm value actually the case in practice? Were managers truly loyal to shareholders, or did they revert to maximizing their own self-interests as predicted by the theories of managerial discretion? And, equally as important, how *should* managers behave with respect to shareholders?

Stephen Ross suggested in a 1973 paper that answers to such questions could only be understood by better understanding the “agency relationship” that existed between shareholders and managers as agents of the shareholders.¹²⁵ Soon afterwards, Michael Jensen and William Meckling published a landmark paper in 1976 addressing this agency relationship, laying out a theory of the firm based on agency theory, which, among other major contributions, made an economically elegant case for shareholder value

¹²² See, for example, H. T. Koplin, “The Profit Maximization Assumption,” *Oxford Economic Papers* 15, no. 2 (July 1963), pp.130–139.

¹²³ See Oliver E. Williamson, “Managerial Discretion and Business Behavior,” *American Economic Review* 53, no. 5 (December 1963), pp.1032–1057.

¹²⁴ David Wooten, *Power, Pleasure, and Profit*, Harvard University Press, 2018, pp.3–5.

¹²⁵ Stephen A. Ross, “The Economic Theory of Agency,” *The American Economic Review*, 134 (1973).

maximization as the only legitimate expression of corporate purpose and the most effective tool for managing the agency relationship between shareholders and managers.¹²⁶

The Jensen and Meckling paper understandably had a rich intellectual background that extended way back in the history of economic thought beyond the agency theory paper by Ross. As a start, their “model of man” is a direct descendant of the self-interested model of mankind assumed by Bentham. The Jensen and Meckling paper was also intimately connected to more recent work begun in the 1930s when the economics profession began studying in a serious way the economic nature of the corporation and the conditions that lead to the formation of firms. Most prominent was the work by Nobel Laureate Richard Coase who characterized the modern corporation as a “nexus of contracts” or series of transactions bound by “contracts” with suppliers, customers, and other parties that agree to work together for mutual benefit.¹²⁷ In the words of Jensen and Meckling,

“It is important to recognize that most organizations are *simply legal fictions which serve as a nexus for a set of contracting relationships among individuals*...The private corporation or firm is simply one form of a *legal fiction which serves as a nexus for contracting relationships and which is also characterized by the existence of divisible residual claims on the assets and cash flows of the organization which can generally be sold without permission of the other contracting individuals*.” (Italics are included in the original text.)

The authors go on to claim that,

“...it makes little or no sense to try to distinguish between those things which are ‘inside’ the firm (or any other organization) from those things that are ‘outside’ of it. There is in a very real sense only a multitude of complex relationships (i.e., contracts) between the legal fiction (the firm) and the owners of labor, material and capital inputs and the consumers of output.”¹²⁸

What’s most notable about this theory or metaphor of the firm is that it stands in sharp contrast to the older conception of the corporation as an entity co-created by public authority (through state charter), which grants corporations and their managers the right to make money and operate within the constraints of certain rules of game. Indeed, as a “legal fiction,” the firm that Jensen and Meckling describe is completely detached from the history and rules of corporate law.¹²⁹

¹²⁶ Michael C. Jensen and William H. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure,” 3, *Journal of Financial Economics* 305 (1976).

¹²⁷ R. H. Coase, “The Nature of the Firm,” 4 *Economica* 386 (1937).

¹²⁸ Jensen and Meckling, op. cit. p.310-311.

¹²⁹ For a detailed, legal discussion of the historical role of political authority in the creation of the U.S. corporation (the delineation its various rights and privileges), see Leo E Strine and Nicholas Walter, “Originalist or Original: The Difficulties of

According to this new theory, firms are created when internalizing contracts between owners and various factors of production into a hierarchy is efficient—that is, when the benefits of coordinating these implicit and explicit contracts and related activities in a hierarchy are greater than the costs of coordinating them through market-based transactions and when the value of the goods and services sold by the firm exceed the costs of the inputs used. Presumably, when a firm is thus created and where capital markets are efficient, a corporate shareholder gets a fair valuation of the internalized contracts that comprise the firm and the firm’s future returns.

This basic idea about the nature of firms was at the core of the Jensen and Meckling theory of the firm and was enhanced and publicized very effectively thereafter by Jensen in a series of academic papers and management articles spanning 20 years of original thinking and scholarship.¹³⁰ Jensen’s theory posits that the efficient performance of this contractual firm requires the recognition that the primary interest of shareholders (so-called principals) is the maximization of their wealth by professional managers (agents)—to whom significant decision rights are delegated. The theory also argued that efficient performance requires that firms adopt a system of internal governance and control that supports this primary interest.

According to Jensen, the objective of such an internal governance and control system is minimizing whatever agency costs exist when agents (directors and managers) behave in opportunistic ways that do not fully satisfy the interests of the principals (shareholders). These agency costs—equal to the sum of the costs of monitoring managers incurred by principals, the costs of bonding managers’ interests to those of shareholders incurred by the agents, and the residual losses from agency costs that cannot be controlled—arise naturally, the argument goes, because in real organizational life managers of publicly owned firm with dispersed shareholders, who possess substantial decision and control rights over corporate resources, are rarely “perfect agents” for the owners. This is because they do not receive the full benefits of the profits earned and therefore have incentives to extract perquisites from the firm at the expense of the firm’s true owners. In other words, the incentives of managers and owners are not naturally aligned. Minimizing such agency costs therefore logically involves paying corporate managers in ways that tie

Reconciling *Citizens United* with Corporate Law History,” The Harvard John M. Olin Discussion Paper No. 812. (February 13, 2015). Available at SSRN: <https://ssrn.com/abstract=2564708> or <http://dx.doi.org/10.2139/ssrn.2564708>. Strine is the Chief Justice of the Delaware Supreme Court and Walter is an attorney at Wachtell, Lipton, Rosen & Katz.

¹³⁰ Many of these papers have been collected into Michael C. Jensen, *Foundations of Organizational Strategy*, Harvard University Press, 1998) and *A Theory of the Firm: Governance, Residual Claims, and Organizational Forms*, Harvard University Press, 2000.

their pay increases with share value, thereby aligning management incentives with the primary interests of shareholders—namely the value of their investment expressed in stock price.

Agency theory immediately attracted enormous attention. Thirty years after its publication (1976), the Jensen-Meckling article was the third most cited in major economics journals.¹³¹ The most significant management implication of this elegantly argued theory—that long-term value maximization for shareholders needs to be the primary metric for assessing the performance of business enterprise—also found a great deal of support in the financial and business communities and among faculty members in many leading business schools, including my own. Despite Michael Jensen’s observation—twenty-five years after his pioneering work on agency theory appeared—that value maximization is not a vision or even a purpose and that value maximizing says nothing about how to create a superior vision or strategy (it only tells us how to measure corporate success),¹³² the semantics of his early work certainly reflected “shareholder primacy” with respect to corporate governance and control. Accordingly, the sole fiduciary duty of corporate directors and officers—as “contractual agents” of shareholders—is to maximize shareholder wealth.¹³³

One indication of the broad acceptance of this revisionist theory of the firm in the U.S. and its implications for corporate purpose was the 180-degree turn that the Business Roundtable’s “Statement on Corporate Responsibility” took between 1981 and 1997. In 1981 that statement read as follows:

“Balancing the shareholder’s expectations of maximum return against other priorities is one of the fundamental problems confronting corporate management. The shareholders must receive a good return but the legitimate concerns of other constituencies must have appropriate attention...[In] striking the appropriate balance, some leading managers have come to believe that the primary role of corporations is to help meet society’s legitimate needs for goods and services and to earn a reasonable return for the shareholders in the process...They believe that by giving enlightened consideration to balancing the legitimate claims of all constituencies, a corporation will best serve the interests of shareholders.”

By 1997, the spirit and conditionality of this statement had changed substantially:

¹³¹ J.B. Heaton, “Corporate Governance and the Cult of Agency,” July 16, 2018. Available at SSRN: <https://ssrn.com/abstract=3201934> or <http://dx.doi.org/10.2139/ssrn.3201934>. Heaton’s source on citations was E. Han Kim, Adair Morse, and Luigi Zingales, What Has Mattered to Economics Since 1970, 20 *J.Econ. Persp.* (2006), pp.189 and 192.

¹³² Michael C. Jensen, “Value Maximization, Stakeholder Theory, and the Corporate Objective Function,” *Business Ethics Quarterly*, Vol. 12, No. 2, Jan. 2002.

¹³³ Jensen and Meckling (1976), pp.305 and 311.

“In the Business Roundtable’s view, the paramount duty of management and boards of directors is to the corporation’s shareholders; the interests of other stakeholders are relevant as a derivative of the duty to shareholders. The notion that the board must somehow balance the interests of stockholders against the interests of stakeholders fundamentally misconstrues the role of directors.”¹³⁴

Another, more instrumental indication of this acceptance has been the wholesale conversion of executive compensation to stock-based pay for senior corporate officers. Heavy use of performance-contingent stock option awards and stock grants was widely adopted and justified as a way of providing a direct link between pay and performance and mitigating agency problems between managers and shareholders. Indeed, starting in 1993 when Congress amended the tax code to encourage public companies to tie executive compensation to objective performance measures, this practice was supported by public policy.¹³⁵

How Shareholder Wealth Maximization Became So Embedded in Business Culture

It’s difficult to explain fully why this new theory of corporate purpose and governance has become so solidly embedded in our business culture, but several explanations stand out. As a start, however, it is now obvious that much of the appeal of this new theory of the firm and its implications for corporate purpose and governance was created by the widely read, practitioner-oriented articles published by Michael Jensen, all of which were backed up by more than 100 scientific papers addressing, one way or another, what he referred to as “the struggle for organizational efficiency.”¹³⁶ Along the way, Jensen anchored his theory in a series of conceptual building blocks that started, appropriately, with assumptions about the nature of man (including the role of self-interest) that led to analyses of the inefficiencies and learning disabilities of organizations (such as agency problems) and the disciplining power of a firm’s capital structure (such as the heavy use of debt) and markets (as in the market for corporate control).

¹³⁴ I should note that corporate governance in the UK has repeatedly and recently supported this principle in law and code via the Companies Act (2006), Listing Rules, Takeover Code, and the Stewardship Code. See Choudhury, Barnali and Petrin, Martin, Corporate Governance that ‘Works for Everyone’: Promoting Public Policies Through Corporate Governance Mechanisms (January 2018), p.8. Available at SSRN: <https://ssrn.com/abstract=3095249>.

¹³⁵ Under new rules, Internal Revenue Code section 162(m) capped the deductibility of executive compensation at \$1 million for non-performance pay, but firms could continue to deduct compensation expenses for executives when and if the board’s compensation committee certified that pre-existing goals had been met and such performance-based compensation was disclosed to shareholders.

¹³⁶ Some of the most widely read and influential articles were published in the Harvard Business Review: Michael C. Jensen, “Eclipse of the Public Corporation,” *Harvard Business Review* (September-October 1989); Michael C. Jensen, and Kevin J. Murphy, “CEO Incentives: It’s Not How Much You Pay, But How,” *Harvard Business Review* 68, no. 3 (May–June 1990); and Michael C. Jensen, “Corporate Budgeting Is Broken, Let’s Fix It,” *Harvard Business Review* 79, no. 10 (November 2001).

This foundation was supplemented with a series of published case studies and provided Jensen with the platform he needed to address what he saw as capitalism's principal shortcomings—uncontrolled agency costs and unresponsive corporate governance practices—and a variety of proposals for reversing what he saw as the breakdown in the internal control systems of large firms. In addition to his writings, Jensen's public lectures and over-subscribed classes at the Harvard Business School, from which generations of students launched careers in investment banking, private equity, management consulting, and corporate management, brought him great popularity and, in some quarters, notoriety. For all these reasons, Jensen became one of the best-known and influential business economists spanning the Millennium, even as his work was being challenged by academic colleagues and students who had entirely different conceptions of what role corporations served, and needed to serve, in contemporary society. To many audiences, however, Jensen's ideas about the coordination, control, and management of organizations "made sense." And, in many respects, they did.¹³⁷

For example, many of Jensen's students and fans in industry were just as concerned as he was about failure of the internal control systems of large, public firms, which was the subject of his 1993 Presidential address to the American Finance Association.¹³⁸ After analyzing the performance of large public firms during the 1980-1990 in preparation for this address and its accompanying paper, Jensen reported that a large proportion were unable to earn their cost of capital (due to major inefficiencies in their capital expenditures and R&D spending) on a sustained basis. From these findings of low investment returns and the widespread destruction of economic value in large firms (particularly those without monopoly power) during the 1980s, it seemed straightforward that Jensen's advocacy for aggressive pursuit of shareholder value maximization, coupled with compatible governance reforms, was the proper antidote for the number of underperformers. Many in academia and the business community agreed.

In addition, Jensen's concerns about underperforming firms coincided with the development of the market for corporate control which blossomed in the 1980s, and his arguments in favor of hostile takeovers as a disciplining device for inefficient firms immediately found support from buy-out firms,

¹³⁷ Full disclosure: In the early 2000s, I taught one section of Jensen's six-section CCMO elective course at HBS, developed with co-professors George Baker, Carliss Baldwin, and Karen Wruck. Each section enrolled between 75 – 90 students, making it by far the most heavily-enrolled elective course at the Harvard Business School.

¹³⁸ Michael C. Jensen, "The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems," *The Journal of Finance*, Volume 48, Issue 3, July 1993, pp.831–880,

whose widely debated and oft-criticized takeover strategies suddenly found an elegant, academic validation. I should note that starting in the 1980s, almost a quarter of public firms in the U.S. were the target of attempted hostile takeovers opposed by a firm's management and another quarter received takeover bids supported by management.¹³⁹ In this environment, Michael Jensen's carefully argued rationale for shareholder value maximization and equity-based pay (as a way of reducing agency costs) was quickly picked up and embraced by buyout firms and takeover specialists seeking economic justification for supposedly value creating strategies (one-third of which eventually turned out not to be, due to insolvencies stemming from an excess use of debt to finance takeovers¹⁴⁰).

Another source of popularity of this this new theory of the firm and expression of corporate purpose was that it offered corporate executives and financial analysts a simple, theoretically justifiable performance measure (stock price) that captured the present value of all future effects—namely, firm value. As Jensen famously wrote in 2002,

“Any organization must have a single-valued objective as a precursor to purposeful or rational behavior... It is logically impossible to maximize in more than one dimension at the same time... Thus, telling a manager to maximize current profits, market share, future growth profits, and anything else one pleases will leave that manager with no way to make a reasoned decision. In effect, it leaves the manager with no objective.”¹⁴¹

From here, it was an easy step to place firm value at the center of corporate conscience. In addition, profit maximization was widely seen as being compatible with notions of private property and ethical principles embedded in freedom theories of justice. This simplicity no doubt appealed to researchers, journalists, and students seeking an easy way to measure and monitor corporate performance; to buyout firms and takeover specialists seeking economic justification for their profitable work; and to CEOs and their boards who saw shareholder wealth maximization as a way of tying various pay-for-performance schemes to the interests of shareholders.

In addition, the shareholder supremacy view of corporate purpose greatly simplified the ways that we think about valuing firms (discounted cash flow available to shareholders) and clarified the primary role

¹³⁹ Mark Mitchell and J. Harold Mulherin, “The Impact of Industry Shocks on Takeover and Restructuring Activity,” *Journal of Financial Economics*, Vol. 41, Issue 2, June 1996, pp.193-229.

¹⁴⁰ Bengt Holmstrom and Steven N. Kaplan, “Corporate Governance and Merger Activity in the U.S.: Making Sense of the 1980s and 1990s,” NBER Working Paper No. 8220, April 2001.

¹⁴¹ Michael C. Jensen, “Value Maximization, Stakeholder Theory, and the Corporate Objective Function,” *12 Business Ethics Quarterly* 235 (April 2002).

of corporate governance (ensuring that managers make decisions consistent with shareholder value maximization).¹⁴²

Finally, the contractual theory of the firm, buttressed by agency theory, seemed to validate the argument of soon-to-be Nobel Laureate Milton Friedman, whose voice in his famous 1970 *New York Times* article rang loud and clear throughout the business community and continues to resonate today in many classrooms and boardrooms.¹⁴³ Friedman's argument that a manager's primary duty is to maximize the value of shareholders' capital because it maximizes the chance of capitalism to allocate capital freely in the service of individual needs, promotes economic efficiency, preserves individual freedoms, and maintains the trust that shareholders place in managers to serve their interests was, at base, an ethical argument—resonating themes of fairness and freedom, as well as efficiency. In this sense, the concept of shareholder value maximization was co-branded by two of the leading lights of the Chicago school of economics (where Friedman was a professor and Jensen received his doctorate.) As U.S. industries became increasingly deregulated during the 1990s, a new, less-constrained runway appeared for the exercise of the kind of value maximization espoused by Friedman and Jensen.

Conceptual and Practical Problems with this Revisionist Theory of Corporate Purpose

Whatever the full explanation for its ascendancy, controversy and criticism surrounding this revisionist conception of the firm and corporate purpose persists. First of all, the theory is naïve in several respects, despite its elaborate conceptual underpinnings. For example, the well-functioning of market economies and firms requires more than shareholder value maximization as a motivating principle. To operate functionally, firms need to work hard at building and retaining the mutual trust and confidence of constituencies beyond shareholders. In the absence of such trustworthiness, the social legitimacy of market-based institutions will be under relentless challenge. So, too, will the costs of coordination and commitment skyrocket.

Second, the metaphor of the firm as a “nexus of contracts” with attendant principal-agent problems that only a focus on shareholder value maximization can mitigate is also too simple an analogy.

¹⁴² See Jay B. Barney, “Shareholders, Stakeholders, and Strategic Factor Markets,” in Subramanian Rangan, Ed., *Performance & Progress: Essays on Capitalism, Business, and Society* (Oxford University Press, 2015), p.204 for discussion of this issue.

¹⁴³ Milton Friedman, “The Social Responsibility of Business Is to Increase Profits,” *New York Times Magazine*, September 13, 1970.

Corporations, in their everyday operation, are far more than a “nexus of contracts” through which business transactions are carried out—although associating with a corporate entity through contracts and law to pursue self-interest is certainly part of the creation story. But contracts and law, as Elizabeth Anderson points out, do not exhaust the reciprocal understanding on which the productivity of firms rests. Supracontractual understandings or voluntary reciprocal exchanges with stakeholders are also required for corporations to be successful.¹⁴⁴ For example, relationships with “internal stakeholders” (directors, executives, employees and their unions) comprise the teamwork necessary for production and the mutual benefits flowing from that production, and in this production team the contributions of each manager and worker are difficult to observe and ascribe to specific bits of production. Since it is impossible to contractually specify all the ways team members need to cooperate for efficient production, and since excessive monitoring is likely to depress morale and breed “reciprocal distrust,” well-managed firms develop norms of trust and reciprocity among members in return for contractually unguaranteed rewards such as bonuses, promotions, better working conditions, family leaves, and so forth. In addition, relationships with “external stakeholders” (suppliers, customers, and communities in which the corporation does business) require similarly reciprocal normative understandings beyond contractual guarantees that, as just two examples, promote customer satisfaction and build creditor confidence that executives will not extract short-term gains at the risk of insolvency. For both classes of stakeholders, explicit contracts and governance relationships **cannot** ensure corporate success.

On this basis alone, it does not make much sense to view the firm simply as a nexus of contracts. Rather, it makes more sense to view the firm, in Anderson’s words, as

“.... a joint enterprise constituted by a nexus of cooperative relationships in which internal stakeholders commit firm-specific assets to relatively long-term team production arrangements, submit to common governance, and repeatedly interact on the basis of norms of trust and reciprocity, all for mutual and reciprocal benefit, the terms of which are not exhausted by law and contract. The firm also typically enters into protracted reciprocal relationships with external stakeholders which are supported by normative expectations of trust, reciprocity, and mutual gain, not all of which are defined in explicit contracts.”¹⁴⁵

¹⁴⁴ Elizabeth Anderson, “The Business Enterprise as an Ethical Agent,” in Subramanian Rangan, ed., *Performance and Progress: Essays on Capitalism, Business, and Society*, (Oxford University Press, 2015), p.188.

¹⁴⁵ *Ibid.*, p.91 and 189-90.

The most important implication of this conception of the firm is that directors owe a fiduciary duty to the corporation itself, not to the shareholders exclusively, and shareholder value maximization as a singular definition of corporate purpose under market capitalism is inappropriate.

Anderson's vision of the firm, I should point out, is consistent with the view of Merrick Dodd who in a *Harvard Law Review* article 80 years ago argued that corporations are major social institutions that play a key role in organizing economic and social life.¹⁴⁶ For both Dodd and Anderson, shareholder value maximization in its pure form is an incomplete and corrupting guide for firms seeking affirmation in political regimes such as ours that espouse democratic capitalism. Apparently, many businesspeople share that view today.

Third, there are other problems with principal-agent and agency cost theories derived from the nexus of contracts conception of the firm. In considering the firm to be an instrument of its owners who employ agents to operate on their behalf, agency cost theory assumes that these agents (managers) are, to a notable extent, shirkers or disloyal to the firm's principals (shareholders). It is by no means clear that this assumption holds up in real life. Jensen's 1993 study revealing the systematic inability of large public corporations to earn their cost of capital during the 1980s can only imply agency costs as a driver of his computations of value destruction. There have been very few other attempts to measure agency costs directly, and it is probably impossible to do so because the definition of agency costs lacks the kind of specificity that can be converted into easily measurable, organizational or behavioral characteristics. So, the premise of agency costs, while conceptually plausible, remains to be proven.

Fourth, another weakness of the principal-agent model of the firm is that from a "business" point of view, any value creation strategy based upon a conception of corporate purpose that places shareholders in stark competition with other constituencies of the enterprise over the allocation of economic returns ignores many instances when reciprocity and cooperation and collaboration between a firm's stakeholders are critical to success.¹⁴⁶

Most commonly, entrepreneurship, which is the life blood of capitalism, involves the assembly of complementary resources and skills, and where that cooperation among enterprise members is absent, no new business can be launched, let alone developed. And apart from entrepreneurial startups, shareholders

¹⁴⁶ E. Merrick Dodd, "For Whom Are Corporate Managers Trustees?" 45 *Harvard Law Review* 1145 (1932).

¹⁴⁶ Freeman, R.E., Martin, K. & Parmar, B., "Stakeholder Capitalism," *J Bus Ethics* (2007) 74.

are rarely the sole group that provide specialized inputs to corporate production and make essential contributions to and have an interest in an enterprise's success. Executives, rank-and-file employees, creditors, even members of a local community also make essential contributions.¹⁴⁷

Fifth, recent scholarship that finds no systematic evidence strongly suggesting that an exclusive focus on share value and shareholder-primacy enhances corporate performance or that firms with presumably non-value-maximizing employees on their boards of directors through co-determination arrangements have a negative effect on the performance of the firm's share price.¹⁴⁷

Sixth, a further problem is that the shareholder-primacy conception of the firm assumes that all shareholders are alike in their personal goals and values, including their preferences for concentrated versus diversified investing and their reluctance to sacrifice some economic gain for a measure of ethical investing. This concept of the firm assumes away all kinds of differences and then reconciles these differences by reducing them to a single financial goal. But can we assume that all mutual funds, pension funds, private equity funds, hedge funds, governments, foundations, universities, family offices, and retail investors have the same goals? What if some but not all institutional investors seek to maximize financial returns for their investors; what if families seek to maximize their "socio-emotional wealth;" what if governments seek to improve social welfare of its citizens? This assumption seems to be an oversimplification of shareholder and investor motives, a simplification that both reduces the measurement of corporate performance to a single, amoral metric and promotes unbalanced devotion to achieving a goal that can be easily gamed or manipulated by management. Herein lies the degradation of corporate purpose. While simplifying the measurement of corporate performance by limiting consideration to a single metric (say, share price) may appeal to some minds, many corporate leaders would agree that corporate performance involves much more than current share price.

Seventh, one of the omissions of the shareholder-centric model of the firm is that public company shareholders are not held accountable in any way for the effects of whatever policies they encourage corporations to take. As Joseph Bower and Lynn Paine argue, "shareholders have no legal duty to protect or serve the companies whose shares they own and are shielded by the doctrine of limited liability from

¹⁴⁷ For further discussion of firm-specific investment by other stakeholders, see Margaret M. Blair and Lynn A. Stout, "A Team Production Theory of Corporate Law," *Virginia Law Review*, Vol. 85, No. 2, pp.248-328, March 1999, p.250 and fn. 5.

¹⁴⁷ Margaret M. Blair, "Corporate Law and the Team Production Problem" (April 9, 2012). Vanderbilt Law and Economics Research Paper No. 12-12, p.13.

legal responsibility for those companies' debts and misdeeds. Thus, by elevating the claims of shareholders over those of other important constituencies, "without establishing any corresponding responsibility or accountability on the part of shareholders who exercise those powers," managers succumb to increasing pressure "to deliver ever faster and more predictable returns and to curtail riskier investments aimed at meeting future needs and finding creative solutions to the problems facing people around the world."¹⁴⁸

Eighth, and finally, the economists' revisionist theory of the firm is detached from evolving ideas about the legal status of shareholder claims on the public corporation. It is axiomatic in the world of capitalism that those who have placed risk capital into an enterprise through their shareholdings deserve a satisfactory return on that capital (the minimum return determined by the riskiness of the investment). It is less axiomatic, but nevertheless supported by an array of legal scholars, organization theorists, and practitioners that the interests of other constituencies comprising the firm need to be "justly" served as well (whatever that means in case-specific situations) to ensure corporate stability and perpetuity.¹⁴⁹

* * * * *

For those sharing a broader vision of corporate purpose, capital remains the "dominant constituency" (why else would anyone want to become an investor/shareholder?), but the assumption that capital is the only legitimate constituency that the purposes of the firm should serve seems unrealistic and impractical to an increasing number of institutional investors and asset managers. This expanding pool of investors and asset managers who support a more inclusive vision of corporate purpose argue that managers have an affirmative, moral obligation not to subordinate public and other constituency interests to the sole interests of shareholders for the simple reason that the authority of managers and their boards of directors to pursue private profit is conveyed by corporate charters granted by the state—and because corporations receive many publicly funded benefits such as tax breaks and subsidies.

Over the years, a variety of legal opinions and legislation have supported the plural obligations and responsibilities of the corporation. As a result, corporate law does not today impose upon management an

¹⁴⁸ Joseph L. Bower and Lynn S. Paine, "The Error at the Heart of the Corporation," *Harvard Business Review*, May-June 2017, pp.50-60.

¹⁴⁹ See, for example, Margaret M. Blair and Lynn A. Stout, "A Team Production Theory of Corporate Law," *Virginia Law Review*, Vol. 85, No. 2, March 1999, pp.247-328; Stout, *The Shareholder Value Myth*, op. cit.; Chester A. Barnard, op. cit.; R.E. Freeman, op. cit., and Lynn Paine, *Value Shift: Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance* (McGraw-Hill, 2003) among many others.

exclusive profit-maximizing duty, but merely links directors' and managers' fiduciary responsibilities to the corporation's and stockholders' long-term interests. While Delaware's *corporate statute* (directly relevant to the sixty percent of publicly traded corporations that are incorporated in the state of Delaware) is not totally precise on the matter of corporate purpose, the statute does declare that directors owe fiduciary duties of care, loyalty, and good faith to both the corporation and its shareholders. The state's *case law* conveys a more precise opinion on the matter. For instance, after the court affirmed in the Revlon case that corporate directors must put the interests of shareholders first in the case of takeovers and competitive takeovers bids (by accepting the highest price offered once they decided to put the company up for sale), it clearly left the door open for a more pluralistic conception of corporate purpose if doing so serves the interests of non-shareholders in a way that is rationally related to shareholder interests.¹⁵⁰ This accommodation of plural interests is perfectly consistent with subsequent court opinions validating non-maximizing shareholder value in the short term in order to achieve corporate success in the long-run, such as in the Eastman Chemical Co. case.¹⁵¹ Indeed, what Delaware case law has revealed is a definite preference for corporations focusing on longevity rather than current shareholder value maximization.

It is clear that the Supreme Court is largely in agreement with the Delaware court. As Justice Samuel Alito noted recently, "While it is certainly true that a central objective of for-profit corporations is to make money, modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else, and many do not do so."¹⁵² Consistent with Alito's views are OECD Guidelines for Multinational Enterprises and the OECD Corporate Governance Principles supporting the idea of corporations considering non-shareholder interests.

¹⁵⁰ Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. (1985)). See also eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1 (Del. Ch. 2010). For a legal review of these two cases see David G. Yosifon, The Law of Corporate Purpose, 10 *Berkeley Bus. L.J.* 181 (2013).

¹⁵¹ According to Vice Chancellor Travis Laster, "The fiduciary obligation to maximize the value of the corporation for the benefit of its stockholders does not mean that directors must sacrifice greater value that can be achieved over the long term in pursuit of short-term strategies, and it certainly does not mean that directors must attempt to maximize the public company's stock price on a daily or quarterly basis. The fiduciary relationship requires that directors act prudently, loyally, and in good faith to maximize the corporation's value over the long-term for its stockholders' benefit." 18 *Virtus Capital L.P. v. Eastman Chem. Co.*, Civ. A. No. 9808-VCL, 2015 WL 580553, at *16 n.5 (Del. Ch. Feb. 11, 2015). See discussion of this directive in J.B. Heaton, "Corporate Governance and the Cult of Agency," available at <https://ssrn.com/abstract=3201934>.

¹⁵² *Burwell v. Hobby Lobby Stores, Inc.*, 2014 WL 2921709 - Supreme Court 2014.

For all these pragmatic moral, economic, and legal reasons, one can argue that a more pluralistic vision of capitalism and corporate purpose has substantial merit—as long as managers and directors do not use “stakeholder” reasons to justify strategic decay due to underinvestment in the business and poor company performance.

Appendix B

The Anatomy of Crony Capitalism

As every experienced detective knows, not every reported crime is, in fact, a crime. And not every seemingly benign event is, upon inspection, benign.

Similarly, not every public claim of cronyism capitalism is, in fact, accurate. Nevertheless, cronyism is clearly a problem in contemporary American capitalism, and perhaps an intensifying one. But characterizing all manner of controversial relationships between government and business as crony capitalism doesn't make them so.

One example of mischaracterization is the popular portrayal of the government bailout of American International Group (AIG) as “crony capitalism at its worst.” This reading emphasizes nefarious collusion between business and government, wherein public funds were unjustifiably and carelessly used to protect this insurance giant and its trading counterparties—mainly Wall Street investment banks—from insolvency and financial collapse.¹⁵³

However, such a reading ignores the extensive historical record on the AIG bailout. What a careful examination of the full record reveals is a highly improvised approach to risk management by the Federal Reserve Bank of New York and the U.S. Treasury, pursued by officials feeling extreme anxiety about the chances of a global credit market collapse. This risk-management operation—rolled out over a five-month period in response to the ever-changing financial condition of AIG and global credit markets—was greatly hindered by two notable conditions.

First, officials at the New York Fed and the Treasury found themselves forced to create and implement policy that was far outside their realm of experience. Second, in the early days of the financial crisis, neither New York Fed nor Treasury officials had any direct regulatory authority over failing investment banks and insurance companies. Under those conditions, New York Fed officials may have

¹⁵³ See, for example, David A. Stockman, *The Great Deformation: The Corruption of Capitalism in America* (Public Affairs, 2013).

made mistakes in their unfamiliar role as AIG's chief restructuring officers, but that is far different from calculated corruption favoring domestic and foreign banks vulnerable to an AIG collapse.¹⁵⁴

But just as apparent crony capitalism is commonly mischaracterized, so is true cronyism often ignored or misunderstood even when in full view. One clear example of crony capitalism at work is the U.S. sugar industry, referred to in my essay, where domestic sugar producers have long received generous federal price support and import protection in response to massive lobbying and large-scale campaign contributions. Because of these price supports and protections, U.S. sugar prices have been 64–92% above world prices in recent years, on average. The annual cost of these supports—paid by consumers—was \$3.7 billion in 2012.¹⁵⁵

The big question, of course, is how this highly favorable deal for sugar producers lasted so long. Part of the answer lies in the industry's political influence. Lobbying by the sugar industry has accounted for more than one-third of all funds spent on lobbying by U.S. crop producers—despite the fact that sugar production accounts for only 1.9% of the value of all U.S. crop production. Donations to political action committees (PACs) from sugar companies also exceeded those of all other U.S. crop producers combined.¹⁵⁶ In 2013, for example, the sugar industry spent about \$9 million on lobbying, with the top client—American Crystal Sugar—paying about \$1.10 million in lobbying fees.¹⁵⁷ Meanwhile campaign contributions from the industry to Republican and Democratic congressional candidates alike totaled just over \$5 million in 2012, with American Crystal Sugar contributing \$2.1 million of that amount.¹⁵⁸

Of course, many other seemingly self-sufficient industries are also tainted with cronyism, having pursued lobbying and provided campaign funds on a similar scale, and having benefited grandly from

¹⁵⁴ Malcolm S. Salter, "Annals of Crony Capitalism: Revisiting the AIG Bailout," Edmond J. Safra Research Lab Working Papers, No. 32, December 5, 2013, <http://ssrn.com/abstract=2364090>.

¹⁵⁵ Agralytica, "Economic Effects of the Sugar Program."

¹⁵⁶ Alison Meyer, "Chart of the Week: Crony Capitalism Leads to Higher Sugar Prices," *Daily Signal*, April 22, 2012 (citing a chart originally prepared by The Heritage Foundation), <http://dailysignal.com/2012/04/22/chart-of-the-week-crony-capitalism-leads-to-higher-sugar-prices/>

¹⁵⁷ Center for Responsive Politics, "Sugar Cane & Sugar Beets: Top Contributors 2013-2014," <https://www.opensecrets.org/industries/indus.php?ind=A1200>. American Crystal Sugar is an agricultural cooperative that produces about one-third of the nation's beet sugar and sells about 15% of all U.S.-consumed sugar.

¹⁵⁸ Center for Responsive Politics, "Sugar Cane & Sugar Beets: Top Contributors to Federal Candidates, Parties, and Outside Groups," <http://www.opensecrets.org/industries/contrib.php?ind=A1200.&Bkdn=DemRep&cycle=2012>.

government favoritism.¹⁵⁹ In 2014, for example, the Senate Finance Committee approved corporate tax breaks totaling \$48 billion. Yet there is always a back-story to such largesse and other apparent examples of crony capitalism, making identifying true cronyism and estimating its economic cost less than straightforward.

First, the line between corrupt cronyism and legitimate bargaining among self-interested parties in the halls of government is not always as brightly illuminated as in the sugar industry case. Second, although we can measure the costs to taxpayers of direct and even indirect subsidies, quantifying the cost of violations of the principle of equal treatment by government, the distortion of market mechanisms, and the undermining of public trust in government and business is vastly more difficult. Finally, there is the question of denial. There is no more vigorous disavowal of the presence of cronyism on Capitol Hill than among sitting members of Congress. The common refrain of members faced with questions about cronyism is: “What cronyism? What influence on policy? What corruption?”

For all these reasons, proving or disproving claims of cronyism—and the resulting blight on market-based capitalism and the public interest—can be a delicate and meticulous task. Part of the challenge is that “crony capitalism” has an insidiously corrupt sound. Standing alone, “crony” connotes a buddy, chum, or confidant. But when placed before “capitalism,” “crony” takes on a more cunning and sinister tone implying accomplices, co-conspirators, or collaborators working together in an underhanded manner. Much of that connotation is correct.

As referenced earlier, David Stockman, former director of the Office of Management and Budget under President Reagan, subsequent Wall Street banker, and a libertarian critic of contemporary capitalism, defines crony capitalism as “stealing through the public purse in ways that reward the super-rich.”¹⁶⁰ Painting with a wide brush, he constructs a portrait of a class of Wall Street financiers and corporate CEOs who believe that government exists to do “whatever it takes to keep the game going and

¹⁵⁹ The writing of the annual “tax extender” bill provides other classic examples. In this heavily lobbied process, Congress lumps temporary tax deductions and credits for a few sound projects with others that are totally obscure, such as a tax break for rum makers in Puerto Rico and the Virgin Islands, and still others that are indefensibly parochial, such as a tax break for auto racetracks. See Editorial Board, “Congress Needs a Fiscally Responsible ‘Tax Extenders’ Bill,” *Washington Post*, January 20, 2014, http://www.washingtonpost.com/opinions/congress-needs-a-fiscally-responsible-tax-extenders-bill/2014/01/20/ed881552-7fb8-11e3-9556-4a4bf7bcd84_story.html.

¹⁶⁰ Stockman offered this definition when discussing his book, *The Great Deformation: The Corruption of Capitalism in America*, at Harvard’s Safra Center for Ethics on September 26, 2013.

their stock price moving upward.”¹⁶¹ And, as also referenced above, Charles Koch, the politically active CEO of Koch Industries, has offered a similarly colorful definition, characterizing cronyism as “nothing more than welfare for the rich and powerful.”¹⁶²

As saucy as these definitions of crony capitalism may be, my goal in this Appendix is to add precision and nuance to our understanding of this form of corruption. I do so by exploring these definitions and calling attention to highly effective the toolkit of crony capitalism.

Defining Crony Capitalism

Stripped to its essential characteristics, crony capitalism conveys a shared point of view—sometimes stretching to collusion—among industries, their regulators, and Congress that results in business-friendly policies and investments that serve private interests at the expense of the public interest.¹⁶³

As discussed above, crony capitalism is a special type of moneymaking that economists call “rent seeking.” Rent seekers pursue privileged advantages that typically show up as targeted exemptions from legislation, advantageous rules by regulatory agencies, direct subsidies, preferential tariffs, tax breaks, preferred access to credit, and protections from prosecution. The ultimate goal of rent seekers is “grabbing a bigger slice of the [economic] pie rather than making the pie bigger.”¹⁶⁴

Crony capitalism is a problem when innovation, economic efficiency, market pricing, and equal access to government decision makers—that is, fairness—are compromised, and when well-placed

¹⁶¹ Ibid.

¹⁶² Charles G. Koch, “Koch: I’m Fighting to Restore a Free Society,” *Wall Street Journal*, April 2, 2014, <http://online.wsj.com/news/articles/SB10001424052702303978304579475860515021286?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303978304579475860515021286.html>.

¹⁶³ This definition contrasts markedly with that from the Association of Government Relations Professionals: the “principal elements [of lobbying] include researching and analyzing legislation or regulatory proposals; monitoring and reporting on developments; attending congressional or regulatory hearings; working with coalitions interested in the same issues; and educating government officials but also employees and corporate officers as to the implications of various changes.” See Association of Government Relations Professionals, “What is Lobbying,” <http://grprofessionals.org/about-lobbying/what-is-lobbying/>.

¹⁶⁴ “Planet Plutocrat,” *Economist*, March 15, 2014, <http://www.economist.com/news/international/21599041-countries-where-politically-connected-businessmen-are-most-likely-prosper-planet>. In technical terms, “an economic rent is the difference between what people are paid and what they would have to be paid for their labor, capital, land (or any other inputs to production) to remain in their current use. In a world of perfect competition, rent would not exist.”

persons invest their vast fortunes in teams of lawyers, accountants, lobbyists, and political contributions to ensure that the system continues to work on their behalf.

Put somewhat differently, crony capitalism is a form of corruption wherein private parties make undue profit from abuse of public authority—benefiting from the public purse by virtue of their group membership and relationships with public office holders, rather than their “individual and universal citizenship.”¹⁶⁵ This form of particularism lacks legitimacy in any governance regime claiming to be democratic. It is corrupt because it undermines integrity in the discharge of duty by public officials.¹⁶⁶

But as straightforward as this definition sounds, behavior in the real world is rarely so neatly characterized. Most troublesome is the fact that the public interest in matters involving subsidies, tax preferences, and legislative loopholes is often difficult to discern and agree on.

I have already discussed the illustrative case of wind farms. Most would not be economically viable without a tax credit. But when developers of wind energy started receiving a production tax credit in 1992, was that cronyism? Not if the federal government wanted to foster energy independence—presumably in the public interest, and perhaps justifiable under the general welfare clause of the Constitution.¹⁶⁷ Viewed in this light, tax breaks for wind farms escape the taint of cronyism. However, some critics, including Senator Lamar Alexander (R-Tenn.), claimed that the tax breaks unfairly and inappropriately undercut coal and nuclear power, waste money, and promote an industry that “destroy[s] the environment in the name of saving the environment.”¹⁶⁸ Senator Alexander was particularly incensed over the fact that the tax credit was sometimes worth more than the energy it subsidized. So is the wind tax credit an example of appropriate national energy policy or a financial windfall for wealthy investors at the expense of the national budget?¹⁶⁹

¹⁶⁵ For an enlightening discussion of ethical universalism in governance regimes, see Alina Mungiu-Pippidi, “Becoming Denmark: Historical Paths to Control of Corruption,” presented at the annual meeting of the American Political Science Association, 2013, <http://ssrn.com/abstract=2301329>.

¹⁶⁶ When lobbyists effectively corrupt an administration for the benefit of a particular party, they are serving as “corruption entrepreneurs” who are “masters of social network manipulation,” according to sociologist Mark Granovetter, who has called such manipulation “network corruption.” See Granovetter, “The Social Construction of Corruption,” in Victor Nee and Richard Swerdling, eds., *On Capitalism*, Stanford University Press, 2007, p.168.

¹⁶⁷ Article 1, Section 8.

¹⁶⁸ Lamar Alexander, “Wind-Power Tax Credits Need to Be Blown Away,” *Wall Street Journal*, May 7, 2014, p.A17.

¹⁶⁹ Recent approval of \$150 million in federal loan guarantees for the Cape Wind project in Nantucket Sound suggests a strong policy interest in wind farming, even though the power generated in this project will be some of the most expensive in New England. Utilities NStar and National Grid have agreed to purchase 77.5% of the power from the project at a price well above

Or consider the even more complex tax rule—some would say loophole—on “carried interest”: the share of investment gains, typically 20%, that private-equity and hedge funds pay their general partners. The rule allows managers of these funds to defer federal taxes until profits are realized on their assets. At that point, the gains are taxed at the capital gains rate of 15%, rather than the income tax rate, which could be 39.6%.¹⁷⁰

Some critics argue that carried interest should be taxed at the higher rate because these partners are basically earning a management fee for their labor. These critics also contend that this highly preferential tax rate—along with extensive borrowing based on cheap money and the short time horizons of executives—creates excessive risk-taking, and that the personal payoffs from taking outsized risks dwarf the costs of failure.

Critics also claim that the preferential tax rate leads to excessive compensation for executives, even though carried interest is paid only from a fund’s profits. Supporters of this tax regime counter that no one knows how much carried interest private-equity funds will pay, and that partners’ compensation should be considered a return on a risky investment—that is, a true capital gain, not a management fee.

Which side is correct? The debate has continued in law journals, tax journals, and Congress for over two decades. Strenuous lobbying by private-equity, real estate, and hedge funds has so far preserved the status quo. Is this crony capitalism at work? It all depends.

Whether a public policy or rule qualifies as cronyism depends on factors such as unique access to public decision makers by beneficiaries, their overwhelming financial resources in lobbying public officials and financing their campaigns, and other means of crowding out opponents’ views—or even, in the worst case, implicit quid pro quos. In the case of the carried-interest tax rule, the investment industry lobbied heavily for its introduction and preservation. According to Bloomberg, the private-

typical wholesale prices. Cape Wind waited more than five years for this federal backing. Given the lengthy process for approving the project, the returns for Cape Wind investors must be high. Given the financial risks now borne by U.S. taxpayers, the public benefits must also be high. See Erin Allworth, “Federal Backing Lifts Fortunes of Cape Wind,” *Boston Globe*, July 2, 2014, <http://www.bostonglobe.com/business/2014/07/01/federal-loan-guarantee-lifts-fortunes-cape-wind/hS5k4uc4iOSxDhyM06F05N/story.html>.

¹⁷⁰ For a more detailed discussion, see Peter R. Orszag, “The Taxation of Carried Interest,” testimony before the Senate Finance Committee, July 11, 2007, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/83xx/doc8306/07-11-carriedinterest_testimony.pdf.

equity firm Blackstone alone spent \$5 million as early as 2011 in lobbying Congress, including on this issue. Other private-equity players spent \$80,000 to \$150,000 each in just the fourth quarter of 2011.¹⁷¹

Even more important was the quality of the lobbyists that the investment industry hired to press its case. Blackstone's top lobbyists included Wayne Berman, an assistant commerce secretary under George H.W. Bush; Drew Maloney, staffer for former House majority whip Tom Delay (R-Tex.); and Moses Mercado, deputy chief of staff for former House majority leader Dick Gephardt (D-Mo.). Private-equity firm Kohlberg Kravis Roberts hired former Representative Vic Fazio (D-Calif.). And Bain Capital hired Joseph O'Neill, chief of staff for former Senate Finance Committee chair Lloyd Bentsen (D-Tex.), and Paul Snyder, legislative assistant for former Speaker Tip O'Neil (D-Mass.).¹⁷²

The complete history of the carried-interest rule (loophole) remains to be written. But two things are clear. First, it's not only the amount of lobbying money that matters; it's also the quality of the lobbyists. Second, carried-interest rules favor high-net-worth individuals—a constituency that Congress listens to when raising campaign funds.¹⁷³ We shouldn't be surprised that this highly debatable tax preference has many of the markings of cronyism.

The Crony Capitalism Toolkit

As we have seen, business-friendly legislation and regulatory rule-making result from three potentially perverse relationships between business and government. Although these relationships may be perfectly legal, they compose the crony capitalism toolkit: (1) campaign contributions to elected officials, (2) heavy lobbying of Congress and rule-writing agencies, and (3) a revolving door between government service and the private sector. I discuss each of these in more depth as potential corruptions of democratic capitalism—where business-friendly public policy results from non-representative forces, leading to a diminution of public trust in our leading institutions of business and government.

As I have noted above, campaign contributions and lobbying have often played essential roles in

¹⁷¹ Steven Sloan, "Private-Equity Lobbying Helped Protect Romney's Tax Benefits," *Bloomberg*, February 7, 2012, <http://www.bloomberg.com/news/2012-02-07/private-equity-lobbying-protected-romney-s-tax-benefit-of-carried-interest.html>.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

the functioning of American democracy. Campaign contributions by private individuals, corporations, industry associations, labor unions, and PACs have long enabled elections to occur without government funding. Lobbying has similarly long fed information to legislators at no monetary cost to the public.

At first blush, this seems like an efficient arrangement. However, when campaign funding by specific business interests directs the priorities of elected officials away from the broader public interest, and when massive lobbying crowds out the voice of other interests before Congress and regulatory agencies, opportunities for crony capitalism multiply, and the prospects for truly democratic capitalism narrow.

The revolving door between business and government has the perverse effect of multiplying the ill effects of campaign contributions and lobbying, when continuous movement of employees between the public and private sectors leads to a shared ideology favoring business interests over the public interest. This phenomenon is referred to as “cultural capture” by James Kwak, a law professor at the University of Connecticut, and “regulatory capture” by economists before him.¹⁷⁴

Corruption Based on Campaign Contributions

As a stand-alone tool in the cronyism kit, campaign contributions appear to be effective for “purchasing” business-friendly policies. The key word here is “appear,” because precisely how specific campaign contributions influence specific public policies or pieces of legislation is often difficult to determine. One thing is clear, however: the sums flowing into the campaigns of congressional candidates from both parties are huge and growing. For example, the total amount of campaign contributions at the federal level by individuals donating more \$200 (such donations must be reported to the Federal Election Commission) and political action committees rose from \$500 million in the

¹⁷⁴ James Kwak, “Cultural Capture and the Financial Crisis,” in Daniel Carpenter and David Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press, 2013), <http://www.tobinproject.org/books-papers/preventing-capture>. Kwak defines “cultural capture” as situations where regulation is directed away from the public interest and toward the interests of the regulated industry through mechanisms such as group identification, status, and relationship networks. Economist George Stigler first described regulatory capture in 1971: “As a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit.” See Stigler, “The Theory of Economic Regulation,” *Bell Journal of Economics and Management Science* 2.1 (1971), pp. 3–21, <http://www.jstor.org/stable/3003160>.

1990 election cycle to \$6.6 billion in 2012.¹⁷⁵ These totals do not include donations under \$200. Nor do they include super PAC spending, which would add another 20% to this total.

Since 2012, the *total* cost of Congressional and Presidential races has sky-rocketed, rising from \$8.0 billion to \$16.4 billion. According to OpenSecrets. These numbers have been adjusted for inflation.

An important source of these funds is interest groups that want something from government. Table 1 below shows some of the most significant sources and recipients of these contributions for the 2019-2020 election cycle.¹⁷⁶

¹⁷⁵ Open Secrets data, compiled by Solomon Kahn into this database: https://github.com/Solomon/opensecrets_to_postgres. OpenSecrets.org, the most comprehensive resource on campaign contributions and lobbying, is produced by the Center for Responsive Politics.

¹⁷⁶ See <http://www.opensecrets.org/industries/index.php> for a continuing update of this table.

Table 1: Campaign Contributions by Industry Sector

Sector Totals, 2019-2020*

Sector	Amount	Total to Parties & Candidates	Total to Outside Groups	Dems	Repubs
Other	\$2,376,455,088	\$2,053,404,887	\$319,840,069	49.72%	49.87%
Finance/Insur/RealEst	\$2,012,471,022	\$1,039,185,838	\$980,987,436	51.98%	47.68%
Ideology/Single-Issue	\$1,844,262,841	\$1,086,994,931	\$749,257,845	73.16%	26.29%
Misc Business	\$777,401,318	\$511,898,942	\$265,861,222	53.73%	45.84%
Health	\$683,224,697	\$490,816,339	\$193,577,035	62.45%	37.00%
Communic/Electronics	\$627,034,373	\$438,099,943	\$191,275,449	80.59%	18.68%
Lawyers & Lobbyists	\$380,712,517	\$360,819,198	\$20,237,776	77.20%	22.28%
Labor	\$261,275,954	\$80,917,092	\$182,089,539	88.00%	11.67%
Energy/Nat Resource	\$230,322,648	\$153,018,535	\$77,840,018	30.54%	69.15%
Construction	\$211,238,186	\$190,485,481	\$20,763,651	32.17%	67.53%
Agribusiness	\$197,826,383	\$145,472,091	\$53,386,594	32.14%	67.51%
Transportation	\$157,022,469	\$148,724,806	\$8,105,221	34.64%	65.07%
Defense	\$51,490,947	\$49,038,981	\$2,359,117	45.48%	54.28%

* The numbers in this table are based on contribution of \$200 or more from PACs and individuals to federal candidates and from PACs, soft money (including directly from corporate and union treasuries) and individual donors to political parties and outside spending groups, as reported to the Federal Election Commission. Donations to Democrats, Donations to Republicans, and the associated percentages are based solely on contributions to candidates and parties. Independent expenditures and electioneering communications are not reflected in the breakdown by parties.

Within industry sectors, large corporate interests have actively financed elections for more than a century. For example, the largest contributor in the agriculture sector in 2013-2014 was the aforementioned American Crystal Sugar, which made contributions totaling \$1.8 million and received some \$280 million from the government in sugar subsidies that year.¹⁷⁷ The return on American Crystal Sugar's investment looks very attractive for that year.¹⁷⁸

The second-largest contributor in the agricultural sector for 2013-2014 was Altria, formerly Philip Morris. Altria made \$2.4 million in campaign contributions during the 2012 election cycle.¹⁷⁹ Finding data on federal subsidies for tobacco, if any, is difficult. However, the federal government has long struggled to regulate tobacco advertising and products effectively—including, most recently, electronic cigarettes.

In most industries, uncovering direct relationships between campaign contributions and special treatment of contributors is difficult. One prominent example is the drafting of Section 619—known as the Volcker Rule—of the Dodd-Frank financial reform legislation of 2010.¹⁸⁰

In the 10 years leading up to the 2008 financial crisis—a period of significant deregulation of the financial sector—financial, insurance, and real estate interests contributed \$1.7 billion to congressional campaigns, according to Simon Johnson and James Kwak.¹⁸¹ The foremost recipients of these funds were Senator Christopher Dodd (D-Conn.), chair of the Senate Banking Committee, and Representative Barney Frank (D-Mass.), chair of the House Financial Services Committee.

Section 619 of the Dodd-Frank bill prohibits large, federally insured banks from proprietary trading: that is, trading for the house account rather than clients' accounts. However, two exclusions to

¹⁷⁷ See Center for Responsive Politics, "Agribusiness: Top Contributors 2013-2014," <http://www.opensecrets.org/industries/indus.php?Ind=A>. American Crystal Sugar is an agricultural cooperative that raises approximately one-third of the nation's sugar beet product and sells about 15% of America's sugar. It has a reputation for innovative farming practices.

¹⁷⁸ Charles Abbott, "Low Prices Mean Highest U.S. Sugar Subsidy Cost in Decade," *Reuters*, October 24, 2013, <http://www.reuters.com/article/2013/10/24/usa-sugar-forfeit-idUSL1N0IE1MZ20131024>.

¹⁷⁹ See Center for Responsive Politics, "Altria Group." Altria also spent \$10.6 million on lobbying during the same period. *Ibid.*

¹⁸⁰ Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown*, Pantheon Books, 2010, p.93. Johnson and Kwak strongly argue that regulatory and cultural capture is precisely what happened in the banking industry in the years leading up to the 2008 financial crisis.

¹⁸¹ *Ibid.*, 90–91.

this general rule allow large banks to (a) engage in “risk-mitigating activities,” or trades designed to reduce specific risks related to their overall holdings, and (b) trade securities issued by Ginnie Mae, Fannie Mac, the Federal Home Loan Bank, two federal agricultural banking institutions, and states and municipalities. The first, heavily lobbied exemption is a source of particular controversy because permitted “risk-mitigation” hedging for banks’ entire financial holdings could easily be used as a cover for proprietary trading by federally insured banks, which is expressively prohibited, in the interest of maintaining financial stability for the country as a whole, by Section 619.

While this may seem like an obvious example of cronyism driven by campaign contributions, there are far too many unknowns to substantiate a claim of direct influence or quid pro quo, and Johnson and Kwak make no such claim. To substantiate it, we would need answers to several questions: How much campaign assistance did Dodd and Frank receive directly from specific Wall Street banks and bankers? What special access to these members of Congress did these contributors gain and use, and what issues did they discuss? Given that both Dodd and Frank announced during the legislative process that they would not run for reelection, were the exemptions for large banks thank-you notes for past campaign contributions?

A similarly ambiguous case involves Senator Max Baucus (D-Mont.), head of the Senate Finance Committee during the writing of the 2010 Affordable Care Act. From 2009 to 2013, Baucus received \$5.67 million from the insurance and health services industries, according to OpenSecrets. About half that amount came from large private contributors, and half from PACs.¹⁸² However, no evidence shows that these contributors had any direct influence on the legislation coming out of Senator Baucus’s committee.

A link between campaign fundraising and corruption can occasionally be documented, however. Daniel Newman—who heads MapLight, a nonprofit that investigates money in politics—writes about how California Democrat Senator Leland Yee was indicted for bribery after he wrote a letter supporting a software firm in exchange for a \$10,000 contribution from the owner. Yee allegedly agreed to this trade in a taped conversation with an FBI agent posing as the contributor.¹⁸³ Still, such

¹⁸² See Center for Responsive Politics, “Sen. Max Baucus,” <https://www.opensecrets.org/politicians/summary.php?cid=N00004643>.

¹⁸³ Daniel G. Newman, “Campaign Fundraising Is Bribery,” *Al Jazeera America*, April 11, 2014, <http://america.aljazeera.com/opinions/2014/4/mccutcheon-lelandyeecampaignfinancebribery.html>.

direct evidence of quid pro quo corruption, if proven, is rare.

MapLight has produced several detailed reports on campaign funds directed to elected officials writing important pieces of legislation. For example, in March 2014, the House approved legislation prohibiting the federal government from retaining water rights when allowing private interests to use publicly owned land. Opponents of this provision claimed that it “threatened the federal government’s ability to regulate water use and maintain the health of the natural ecosystem.” Agricultural and recreation interests countered that they needed water rights to continue to operate. MapLight reported that representatives voting in favor of the measure averaged 4.7 times the campaign contributions from the livestock industry, resorts, and local public agencies compared with representatives voting against it.¹⁸⁴

The unspoken implications of this report are clear: financial contributors purchased business-friendly legislation. However, as in many other instances, MapLight researchers can claim only circumstantial evidence.¹⁸⁵

Quid Pro Quo Corruption

Although proving quid pro quo corruption is difficult, rejecting the overall proposition that campaign contributions can and often do have a corrupting influence on Congress would be a serious mistake. Although the influence is often out of sight, research and analysis support this claim. For example, two major reviews of studies of the effects of campaign contributions on public policy and legislative voting show strong support for the proposition that money does indeed influence votes.¹⁸⁶

¹⁸⁴ Donny Shaw, “House Sides with Ski Resorts and Agribusiness in Private Water Rights Bill,” MapLight summary report, March 17, 2014, <http://maplight.org/content/73428>.

¹⁸⁵ Despite these ambiguities, direct influence on policies protecting business interests is, of course, a longstanding tradition in American political and economic life. Indeed, by the late 19th and early 20th centuries, oil, railroad, meatpacking, and other trusts used campaign contributions and other payoffs to gain a firm financial grip on many U.S. senators, who blocked attempts by President Theodore Roosevelt and other Republican and Democratic reformers to regulate these trusts in the public interest. Since then, industry after industry—including sugar, corn, and milk producers; steelmakers; automotive manufacturers; oil companies; homebuilders; and banking—have used campaign financing to control the political process and ensure that it supports prices, protects markets, and preserves subsidies.

¹⁸⁶ See Douglas D. Roscoe and Shannon Jenkins, “A Meta-Analysis of Campaign Contributions’ Impact on Roll Call Voting,” *Social Science Quarterly* 86.1 (2005): 52-68; and Thomas Stratmann, “Some Talk: Money in Politics—A (Partial) Review of the Literature,” *Public Choice* 124.1/2 (2005), pp.135-156.

Some researchers counter that there is “no smoking gun, no systematic relationship between campaign contributions and policy success.”¹⁸⁷ However, Clayton Peoples, a sociology professor at the University of Nevada-Reno, who has himself done empirical work on the subject, responds, “The literature that purportedly shows that contributions don’t matter actually shows that contributions significantly influence legislative voting.”¹⁸⁸

Into this cacophony of voices enters Lawrence Lessig, law professor at Harvard and former director of its Edmond and Lilly Safra Center for Ethics, with an extensive analysis of links between campaign contributions and congressional corruption.¹⁸⁹ By examining the ways of Congress, testimony by retired members from both parties, and virtually all research on the subject, Lessig makes a strong case that campaign contributions influence policy.

He acknowledges the lack of consensus among political scientists that a strong connection exists between contributions to political campaigns and legislative voting patterns, and the many denials of politicians that campaign cash could ever influence their judgment. But he pushes back by noting that we are all essentially hard-wired to value and practice reciprocity of all kinds—and that reciprocity guides our subconscious as much as conscious thoughts. “We reciprocate without thinking,” and then often deny it. In other words, Lessig argues that reciprocity is our normal condition. Lessig not only cites behavioral research supporting this claim, but also cites alarming anecdotal evidence—interviews with retired members of Congress about the influence of money in politics—showing that reciprocity deniers are simply not credible.¹⁹⁰

Polls show that Lessig does not stand alone. About 75% of Americans believe that campaign contributions buy results in Congress—a view confirmed by many former members.¹⁹¹

¹⁸⁷ See Frank R. Baumgartner, Jeffrey M. Berry, Marie Hojnacki, David C. Kimball, and Beth L. Leech, *Lobbying and Policy Change: Who Wins, Who Loses, and Why* (University of Chicago Press, 2009), 194; and Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, Jr., “Why Is There So Little Money in U.S. Politics?,” National Bureau for Economic Research Working Paper, No. 9409, December 2002, <http://www.nber.org/papers/w9409.pdf>.

¹⁸⁸ Clayton D. Peoples, “Yes, Contributions Really Matter,” Edmond J. Safra Center for Ethics Research Lab blog, <http://ethics.harvard.edu/blog/yes-contributions-really-matter>; and “Contributor Influence in Congress: Social Ties and PAC Effects on U.S. House Policymaking,” *Sociological Quarterly* 51.4 (2010): 649-677.

¹⁸⁹ Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It*, Hachette Book Group, 2011.

¹⁹⁰ *Ibid.*, p.132-133. These interviews were conducted by the Center for Responsive Politics.

¹⁹¹ *Ibid.*, p.133-134.

Lessig's description of the inevitable pressures on elected officials to reciprocate contributions and favors from major donors is only part of the larger picture he paints of the corrupting impact of campaign finance. He adds critical details by elaborating three "inevitable effects" of our approach to financing elections.

The first effect is the "distraction" from normal deliberations that perpetual fundraising by members of Congress creates. If members spend 30 to 70% of their time hustling for money, which they do, they have less time to master the substance of legislative initiatives and provide services to constituents. A drop by more than half in the number of committee meetings in the House and Senate from the 1970s through the millennium tells this story in stark terms.¹⁹²

The second adverse effect is the "distortion" created when campaign contributions create a gap between what "the people" believe about an issue and what Congress does about it. Lessig calls this substantive distortion. Campaign contributions can also create agenda distortion—a gap between what the people want Congress to work on and what it actually works on.¹⁹³

Lessig reviews a compelling body of research on these twin distortions: most notably, by Princeton professor Larry Bartels, who has demonstrated that "senators appear to be considerably more responsive to opinions of affluent constituents than to the opinions of middle-class constituents," and by his colleague Martin Gilens, who "was [also] able to demonstrate a significant difference between the likelihood that a measure would be enacted if the rich supported it and the likelihood when the middle class or poor supported it."¹⁹⁴

The third effect is a loss of trust in Washington. The public's perception of elected officials is now at an all-time low. According to research at the University of Michigan cited by Lessig, "Whereas in 1964, 64% of respondents believed that government was run for the benefit of all and 29% believed that government was run for the benefit of a few big interests, in 2008, only 29% believed government

¹⁹² Ibid., p.139.

¹⁹³ Ibid., p.151.

¹⁹⁴ Larry M. Bartels, "Economic Inequality and Political Representation," August 2005, <https://www.princeton.edu/~bartels/economic.pdf> and Lessig, *Republic, Lost*, discussing Martin Gilens, "Inequality and Democratic Responsiveness," *Public Opinion Quarterly* 69.5 (2005), pp.778 and 781-782.

was run for the benefit of all, and 69% believed it was run for the benefit of a few big interests.”¹⁹⁵ Such beliefs, Lessig argues, mean that fewer and fewer of us engage in the practices of democracy, even as campaign contributions confer privileged access and opportunities for influence peddling for a few with members of Congress.

In Lessig’s framework, the distraction, distortion, and distrust bred by our campaign finance system are as corrupting as the invisible links between this system and policy outcomes—both of which bend the government in the direction of major funders and against the interests of the people.¹⁹⁶

Corruption Based on Lobbying

Lobbying of Congress and federal regulators by corporations and industry associations has the obvious intent of extracting preferential policies, even at the expense of other parties and interests. Lobbying is a constant companion of campaign contributions and has long been at the epicenter of most efforts to influence rule-writing that affects businesses. There is, of course, nothing unlawful here, because the First Amendment guarantees the right of “the people” to petition the government.¹⁹⁷ However, lobbying can seriously subvert the public interest while conferring private benefits.

As with campaign contributions, the scale of congressional lobbying by businesses is large and, by some measures, getting larger. According to OpenSecrets, there were 12,555 registered federal lobbyists in 2023, up from 11,500 in 2014. The total lobbying dollars spent at the federal level in 2023 was \$3.1 billion, up from \$2.4 billion ten years earlier in nominal dollars.

Business groups employ vastly more lobbyists than any other sector. From 2000 to 2010, for example, businesses hired 30 times as many Washington lobbyists as trade unions, and 16 times as many lobbyists as labor, consumer, and public interest groups combined. Business and trade groups also spent \$28.6 billion from 1998 to 2010 on lobbying, compared with \$488.2 million spent by

¹⁹⁵ Lessig, *Republic, Lost*, p.167.

¹⁹⁶ *Ibid.*, pp.162 and 157.

¹⁹⁷ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, **and to petition the Government for a redress of grievances.**”

labor—a nearly 60-to-1 advantage.¹⁹⁸ The financial sector alone spent \$3.4 billion on congressional lobbying from 1998 to 2008—on top of the industry’s \$1.7 billion in political contributions. Securities firms spent \$600 million of the \$3.4 billion.¹⁹⁹ It is difficult to view these lopsided patterns as a recipe for balanced consideration of public policies and regulations.

The Dodd-Frank Act again provides an instructive example. As the bill was working its way through Congress in 2010, there were “1,537 lobbyists representing financial institutions registered in D.C., and lobbying to affect this critical legislation—twenty-five times the number registered to support consumer groups, unions, and other proponents of strong reform,” according to Lessig.²⁰⁰ And interests opposing reform spent “more than \$205 million” on lobbying, compared with \$5 million spent by interests supporting reform.²⁰¹ Any system so widely skewed inevitably distorts legislative results, he notes. In this case, the distortion left many opportunities during the final writing of the bill to subvert its intent: curbing risk in the global financial system.

Consider the lobbying efforts of JPMorgan Chase. The bank lobbied heavily to allow banks—again under Section 619—to engage in proprietary trading if their foreign subsidiaries assume the risks and trade securities held abroad. This exclusion, beyond the two mentioned above, allows JPMorgan, Goldman Sachs, Morgan Stanley, and Citigroup to compete with their foreign counterparts and pocket comparable gains from trading. However, it also exposes U.S. financial institutions (and their shareholders) to significant trading losses—as in the JPMorgan “London Whale” case, in which a London trader made a series of unsuccessful bets designed to hedge the bank’s large bond portfolio and then tried to hide some of the massive losses by deliberately giving inaccurate values to the securities involved in the trade. It is entirely conceivable, and even probable, that this exclusion under Section 619 will merely move the next global financial crisis from New York to London or other financial center outside the reach of Dodd-Frank. And the exclusion appears to seriously subvert the goal of financial reform to reduce risk in the global financial system.

A decade before Dodd-Frank, the business-led repeal of the Glass-Steagall Act—which separated

¹⁹⁸ Hedrick Smith, *Who Stole the American Dream?* Random House, 2012, pp.xvii-xix.

¹⁹⁹ Johnson and Kwak, *13 Bankers*, pp.90-91.

²⁰⁰ Lessig, *Republic, Lost*, p.147.

²⁰¹ *Ibid.*, p.189. Lessig’s research also shows that campaign contributions by groups opposed to Dodd-Frank were “more than \$25 million, two and a half times the contributions of groups supporting the reform.”

commercial and investment banks for nearly seven decades—was another case where lobbying and campaign contributions by the finance industry compromised the public interest. The repeal of Glass-Steagall—engineered by the 1999 Gramm-Leach-Bliley Act—followed 25 years and \$300 million worth of lobbying and campaign contributions by commercial banks seeking to merge with entities that trade securities.²⁰² The repeal was based on the argument that banks were now operating in financial markets where the distinctions between loans, securities, and deposits were no longer clear.

On the surface, that is true. However, the repeal of Glass-Steagall had the extraordinarily perverse effect of increasing risk in the global financial system and jeopardizing the financial security of ordinary citizens. Federally insured banks were now free to merge into larger, more complex, and more leveraged institutions—the better to exploit greatly expanded profit opportunities in high-risk, high-return investment banking and securities trading. Commercial banks were also free to participate in the booming real estate market, by providing financing for mortgage brokers and issuers of mortgage-backed securities while also underwriting their own risky mortgage-backed securities. The result was that banks played a major role in the systemic risks that drove the 2008-2009 real estate bubble.²⁰³

These contrasting stories invite a closer look regarding whether the repeal of Glass-Steagall is a classic case of corruption based on lobbying, legislative capture, and cronyism. In light of history, it certainly looks that way.

The principal architect of Gramm-Leach-Bliley was Senator Phil Gramm (R-Tex.), who chaired the Committee on Banking, Housing, and Urban Affairs from 1999 to 2001. In 2002, Gramm left the Senate and promptly joined UBS, a large Swiss bank, as vice chair of its investment banking unit. His role was to provide advice to major corporate and institutional clients and work with governments around the world on behalf of UBS. Gramm registered as a lobbyist as early as 2004, advocating for the banking industry while continuing to work at UBS.

Gramm's employment history and activities make it difficult to discard suspicions that he had

²⁰² Barry Ritholtz, "Repeal of Glass-Steagall: Not a Cause, But a Multiplier," *Washington Post*, August 4, 2012, http://www.washingtonpost.com/repeal-of-glass-steagall-not-a-cause-but-a-multiplier/2012/08/02/gJQAuvvRXX_story.html. The repeal was lobbied most publicly by Sandy Weill of Citigroup, a direct beneficiary, and championed by Fed Chair Alan Greenspan, Senator Phil Gramm, and Treasury Secretary Robert Rubin, a former Goldman Sachs partner. President Bill Clinton, whose re-election campaign was heavily financed by Wall Street bankers, also supported the repeal of Glass-Steagall.

²⁰³ See Simon Johnson, "The Quiet Coup," *Atlantic Monthly*, May 2009.

developed great sympathies for and deep relationships with the financial industry during intense interactions with lobbyists and their clients—relationships that paid off handsomely for the senator. While in the Senate, Gramm earned lots of points with the industry by turning down virtually every attempt to provide the Securities and Exchange Commission (SEC) with more funds for its skyrocketing enforcement workload.

He also opposed SEC attempts to prohibit accounting firms from getting too close to the companies they audited. He also introduced huge exclusions into the 2000 Commodity Futures Modernization Act, written with the help of industry lobbyists, which exempted newfangled credit-default and other swaps from regulatory oversight. Because of this exemption, a \$62 trillion market—nearly four times the size of the entire U.S. stock market—remained utterly unregulated. That meant no one was making sure that the banks and hedge funds that traded swaps had the capital to cover their potential losses.²⁰⁴

The commodity futures legislation also contained a provision—heavily promoted by Enron, a generous contributor to Gramm—that exempted energy-linked financial products from regulatory oversight.²⁰⁵ That enabled Enron to experiment, unfettered, with all sorts of financial instruments and derivatives contracts, many of which it eventually hid in off-balance-sheet entities when market values plunged.

Lobbying on the Affordable Care Act

Blocking new business-threatening rules and policies is, we have seen, just as important a lobbying mission as repealing existing policy. In the case of the Affordable Care Act, insurance companies, pharmaceutical firms, and hospital chains spent hundreds of millions of dollars lobbying Congress to block a public insurance option and other reforms that threatened corporate profits. With industry lobbyists “swarming all over Capitol Hill”—in 2009 there were six registered healthcare lobbyists for every member of Congress—a partner in one of Washington’s most powerful lobbying firms admitted

²⁰⁴ David Corn, “Foreclosure Phil,” *Mother Jones*, July/August 2008, <http://www.motherjones.com/politics/2008/05/foreclosure-phil>.

²⁰⁵ Eight years before Congress approved this exemption, Gramm’s wife Wendy Gramm, chair of the Commodities Futures Trading Commission, had already pushed through a rule exempting Enron’s energy futures contracts from regulatory oversight. She later joined Enron’s board of directors, earning hundreds of thousands of dollars in directors’ fees.

that money from healthcare interests “has a lot of influence . . . that is morally suspect”²⁰⁶

According to Robert Reich, labor secretary in the Clinton administration, the Obama White House was acutely aware of how the health industry had killed off President Clinton’s attempts at healthcare reform nearly a decade earlier. This history, coupled with massive lobbying by the industry, contributed greatly to what Reich has characterized as “a Faustian bargain with big pharma” to ensure passage of the Accountable Care Act. The administration scuttled profit-squeezing regulations, such as caps on drug prices and, even more alarming to insurance companies, public health insurance—both in return for industry promises not to oppose reform.²⁰⁷

Since 2010, industry spending has not abated as the government has drafted rules and regulations that will guide implementation of the act. Small changes in the wording of rules can have enormous effects—both positively and negatively—on the bottom lines of many companies. According to OpenSecrets, the industry spent more funds lobbying Congress and the federal government than any other sector in both 2012 and 2013—just short of \$500 million (down from \$650 million in 2009, the year before the Affordable Care Act passed).²⁰⁸ More than 2,400 individuals are registered as lobbyists for the healthcare sector—a figure that probably understates the true total.

The crucial question is whether all this bargaining and lobbying is corruption at work in blocking profit-sapping rules, or perfectly legitimate horse-trading by the White House and the industry to push a needed bill through Congress. There’s a fine line between the two. Whether the success of healthcare lobbyists in keeping caps on drug prices out of the final bill totally compromises the objective of reducing the long-run costs of U.S. healthcare without sacrificing quality of care is not completely clear. Reich would probably predict the affirmative. In contrast, drug companies would no doubt argue that this White House compromise appropriately preserves their ability to produce new efficacious and possibly cost-effective treatments by preserving their R&D budgets. Despite these differing views, there is little doubt that heavy lobbying by healthcare companies succeeded in capturing the sympathies

²⁰⁶ Chris McGreal, “Revealed: Millions Spent by Lobby Firms Fighting Obama Health Reforms,” *Guardian*, October 1, 2009, <http://www.theguardian.com/world/2009/oct/01/lobbyists-millions-obama-healthcare-reform>.

²⁰⁷ Ibid.

²⁰⁸ See Center for Responsive Politics, “Health,” <http://www.opensecrets.org/lobby/indus.php?id=H>. This total includes spending by all health professionals, health services companies and HMOs, hospitals and nursing homes, and pharmaceutical and health products companies.

of a majority of members of Congress. (In 2023, the Biden administration succeeded for the first time in capping prices on 48 Medicare prescription drugs via provisions in the Inflation Reduction Act.)

So, too, is there little doubt that the return on investment in lobbying is very high for many business groups? Lessig cites research at the University of Kansas showing that the return on lobbying for tax benefits for business in the 2004 American Jobs Creation Act was 22,000%.²⁰⁹ He also cites a 2009 paper showing that firms reap \$6 to \$20 for every \$1 they spend on lobbying for targeted tax benefits.²¹⁰

With respect to healthcare lobbying, Big Pharma reportedly spent \$116 million on the aforementioned effort to keep Congress from authorizing Medicare to bargain down prescription drug prices. As a result, Big Pharma saved—according to United Republic, a non-profit organized to end “money in politics corruption”—\$90 billion in future profits, representing a return on investment of 77,500%.²¹¹

Corruption Based on the Revolving Door

The third item in the toolkit of crony capitalism, the revolving door between public service and the private sector, is also a potentially corrupting source of business-friendly policies. “Revolvers” breed public distrust and anger when they ignore conflicts of interest when serving in government, and when they exert undue influence when representing business.

Calculating the number of people who pass through the revolving door is a daunting prospect, attempted so far only by the Federal Reserve Bank of New York. That institution found that some 3,500 people moved from state and federal agencies regulating the banking industry to the private sector in 2013.²¹² However, the revolving door actually includes several traffic flows.

²⁰⁹ Lessig, *Republic, Lost*, p.117, note 82.

²¹⁰ *Id.*, 117, note 83. Similarly, according to United Republic, a non-profit that uncovers the influence of well-financed interests in American politics, multinational companies spent \$283 million on lobbying in 2004 for a tax break on repatriated profits, which they got. This tax break is worth \$63 billion—again yielding a return on investment of 22,000%. Cited by Aimee Duffy, “Should Companies Do More to Disclose Their Lobbying Efforts?” *The Motley Fool*, April 5, 2014, <http://www.fool.com/investing/general/2014/04/05/should-companies-do-more-to-disclose-their-lobbyin.aspx>.

²¹¹ Duffy, “Should Companies Do More to Disclose Their Lobbying Efforts?”

²¹² David Lucca, Amit Seru, and Francesco Trebbi, “The Revolving Door and Worker Flows in Banking Regulation,” Federal Reserve Bank of New York, Staff Report No. 678, June 2014. The authors created profiles of 35,604 people who had worked for

Flow 1: From Government Service to Lobbying

Perhaps the largest cohort flowing through the revolving door is composed of congressional and agency employees who leave government service for lobbying firms, where their legislative or regulatory experience is eminently “bankable.” This traffic pattern helped ensure the tax breaks for private equity cited earlier, for example.

The financial incentives to switch from government service to lobbying are steep. Salaries for members of Congress have remained at \$174,000 between 2009 and 2013.²¹³ Senate staff and legislative assistants earn a median pay of \$30,000 and \$35,000, respectively—significantly lower than Senate janitors and parking-lot attendants.²¹⁴ The average legislative counsel in the House made \$56,000 in 2012.

In marked contrast, the average salary for lobbyists in Washington ranges from \$68,000 for an assistant lobbyist to \$133,000 for a senior one during that period.²¹⁵ Salaries of lobbyists who are well-connected to members of Congress averaged \$177,000, according to one study.²¹⁶ These are averages, of course, so the tail of this distribution was higher for more valuable lobbyists. If the consulting business is any guide, principals of lobbying firms took home many times those amounts.

Different studies of the gap in compensation for congressional employees versus lobbyists use different methodologies and come up with slightly different numbers.²¹⁷ But whatever the precise gap,

federal or state regulators. The number of people who flowed from regulatory agencies to the private sector in 2013 was twice the number of a decade earlier. These figures are based on Figure 3, p.42.

²¹³ See Ida A. Brudnick, “Congressional Salaries and Allowances,” Congressional Research Service 7-5700, January 7, 2014, http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%270E%2C*PL%5B%3D%23P%20%20%0A.

²¹⁴ Luke Rosiak, “Congressional Staffers, Public Shortchanged by High Turnover, Low Pay,” *Washington Times*, June 6, 2012, <http://www.washingtontimes.com/news/2012/jun/6/congressional-staffers-public-shortchanged-by-high/?page=all>. The average salary of parking-lot attendants is \$49,000, and that of college-educated workers in the D.C. area is \$93,000. Data are from Legistorm, <http://www.legistorm.com>.

²¹⁵ Jordi Blanes Vidal, Mirko Draca, and Christian Fons-Rosen, “Revolving Door Lobbyists,” *American Economic Review* 102.7 (2012), pp.3731-3748

²¹⁶ *Ibid.*

²¹⁷ See, for example, studies by Sunlight Foundation (a nonpartisan non-profit committed to promoting and catalyzing via the internet greater government openness and transparency). Lee Drutman and Alexander Furnas, “K Street Pays Top Dollar for

it is significant. And given that staffers, especially, work for substandard wages, they clearly have real incentives to enter the revolving door after establishing “street cred.”

How Many?

After passage of the Affordable Care Act, companies such as Delta Air Lines and UBS, and healthcare giants such as United HealthCare Group and Blue Cross Blue Shield, hired more than 30 former administration officials, members of Congress, and staffers to help them navigate rules the former public employees wrote into the legislation.

During the writing of Dodd-Frank, 47 of 50 Goldman Sachs lobbyists, 42 of 46 JPMorgan Chase lobbyists, and 35 of 46 Citigroup lobbyists had held government positions.²¹⁸ Not unexpectedly, these lobbyists punched out many controversial provisions and exemptions—such as exemptions from prohibited proprietary trading activities that include market making-related activities, trading on behalf of customers, risk-mitigating hedging activities, trading in certain government obligations, and underwriting, among others.

While determining the share of the lobbyist population composed of people moving from Congress and government agencies is difficult, we do have a rough sense of the proportions among leading lobbyists. A 2007 story in *Washingtonian* identified half of 50 “top lobbyists” as having such connections to the federal government: 13 were former members of Congress, and 12 were ex-congressional or ex-agency staffers.²¹⁹

Similarly, according to Howard Brody, director of the Institute for Medical Humanities at the University of Texas, nearly half of 675 lobbyists employed by the pharmaceutical industry to influence legislation before the 2004 elections had worked for the federal government. Of those, 26 had been members of Congress.²²⁰ The lobbying clout of the industry essentially guaranteed that the government

Revolving Door Talent,” Sunlight Foundation, January 21, 2014, <http://sunlightfoundation.com/blog/2014/01/21/revolving-door-lobbyists-government-experience/>.

²¹⁸ Nomi Prins, *All the President’s Bankers: The Hidden Alliances That Drive American Power* (Nation Books, 2014), 415. Prins’ source of data was OpenSecrets.org. See www.opensecrets.org/lobby/index.php.

²¹⁹ References in Vidal, Draca, and Fons-Rosen, “Revolving Door Lobbyists.”

²²⁰ Howard Brody, *Hooked: Ethics, the Medical Profession, and the Pharmaceutical Industry*, Rowman & Littlefield, 2007, pp.238-239.

would not compromise its interests, such as by lowering the prices of drugs covered by formularies and Medicaid, according to Brody.²²¹

At most, these figures are suggestive. But even if we were to assume that the share of lobbyists across all industries that is composed of ex-government employees is far lower, the claim that an elite center of influence is at work with and on Congress is plausible.

In recent years, there have been various legislative efforts to constrain the activities and increase the reporting on Congressional staffers and other public employees-turned-lobbyists. The 1995 Lobbying Disclosure Act, the 2006 Legislative Transparency and Accountability Act, and the 2007 Honest Leadership and Open Government Act constrained the activities of federal employees turned lobbyists, and increased reporting on those activities. For example, Senators are now prohibited from lobbying Congress for two years after leaving office; senior Senate and House staffs are subject to a one-year “cooling off period.” This legislation was spurred by enduring concern that the outward migration of elected officials and government employees to powerful Washington lobbying firms has led to “a disparity of access and influence over elected representatives,” which in turn “perpetuates the impression that Washington is controlled by a tightly knit elite, thus undermining popular support for democratic institutions.”²²²

Flow 2: From Government Service to Industry

A smaller and less easily documented flow through the revolving door is composed of former employees of Congress and regulatory agencies who move to executive positions at firms and industry associations related to their previous work. These refugees may seek employment in the business world for many reasons—not least of which is simply to increase their income and net worth.

The pharmaceutical and bioscience industries often recruit former civil servants for senior positions in their trade associations, according to Jennifer Miller, executive director of Bioethics International, which encourages ethical decision making in healthcare, life sciences, and biotech. For example, Billy Tauzin (R-La.) was a key architect of the Medicare prescription drug benefit, which

²²¹ Ibid., p.239.

²²² Vidal, Draca, and Fons-Rosen, “Revolving Door Lobbyists.” Center for Economic Performance, Discussion Paper No 993, August 2010, p.3 at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cep.lse.ac.uk/pubs/download/dp0993.pdf>

prohibited the agency from using its volume purchasing power to negotiate discounts on drug prices, before he became president of the Pharmaceutical Research and Manufacturers of America in December 2004. And Jim Greenwood (R-Pa.) served in the House and the Pennsylvania legislature for many years before walking through the revolving door to become president of the Biotechnology Industry Organization.²²³

The financial industry does the same. In *Flash Boys*, prominent journalist Michael Lewis writes that “more than two hundred SEC staffers since 2007 had left their government jobs to work for high-frequency trading firms or the firms that lobbied Washington on their behalf.”²²⁴

The question is whether such career transitions inadvertently or intentionally compromise the democratic process. Two claims of adverse effects are common. First, refugees’ specific knowledge of the workings of government help firms and industry associations influence, retard, or game policies designed to serve important public interests. Second, the prospect of high-paying jobs in the business sector may influence the judgment and decisions of members of Congress, regulators, and administration officials, who see few advantages in making enemies among potential employers.²²⁵

James Kidney, a trial attorney at the SEC who won its first jury trial on insider trading and many such cases thereafter, spoke at his retirement dinner about the reluctance of senior colleagues to pursue Wall Street leaders after the 2008 credit crisis. The SEC, he said, had become “an agency that polices the broken windows on the street level and rarely goes to the penthouse floors,” because senior officials are more focused on getting high-paying jobs after government service than on bringing difficult cases.²²⁶

²²³ Jennifer E. Miller, “Bioethical Standards in the Pharmaceutical Industry? A Proposal for How to Marry Theory with Praxis” (IF Press, 2014), 183-187.

²²⁴ Michael Lewis, *Flash Boys: A Wall Street Revolt* (W.W. Norton, 2014), p.12.

²²⁵ Johnson and Kwak, *13 Bankers*, 96.

²²⁶ Robert Schmidt, “SEC Goldman Lawyer Says Agency Too Timid on Wall Street Misdeeds,” *Bloomberg*, April 8, 2014, <http://www.bloomberg.com/news/2014-04-08/sec-goldman-lawyer-says-agency-too-timid-on-wall-street-misdeeds.html>.

Flow 3: From the Private Sector to Government

This flow—the reverse revolving door—occurs when business executives move into policy-sensitive areas of government related to their industry loyalties and even financial interests. OpenSecrets lists dozens of former lobbyists now employed by lawmakers of both parties.²²⁷

The office of Senator Max Baucus, Chairman of the Senate Committee on Finance, again provides a graphic example. Much of the final wording of the Affordable Care Act was written by Liz Fowler, Baucus' top health policy advisor for health care reform, counsel to the Finance Committee and former vice-president of WellPoint, the nation's largest health insurer, a principal beneficiary of the law.²²⁸ The movement of industry veterans into important government positions tends to cement close personal, financial, and ideological ties between firms and their regulators, and gives industry privileged access to legislators—the most direct way to introduce private interests into public decision making.

A friendlier picture would note that cross-pollination of ideas between the public and private sectors enables informed oversight and sensible regulatory policy in industries with rapidly evolving technologies and markets. As a long-time professor at a leading U.S. business school, I can attest that a significant share of my best students aspire to work in government and for the public interest at some point in their business-denominated careers.

However, concerns about the reverse revolving door remain. Reporter Sheila Kaplan has documented a classic case involving Stephen Sayle, a lobbyist for oil, gas, and chemical interests. As CEO of Dow Lohnes Government Strategies, Sayle was known to secure the best deals on Capitol Hill for his clients, and *The Hill* named him one Washington's top lobbyists in 2012.²²⁹

Sayle left Dow Lohnes for the influential job of staff director for the House Science, Space and Technology Committee's Subcommittee on Energy, which now devotes much of its time to attacking

²²⁷ See Center for Responsive Politics, "Revolving Door," <http://www.opensecrets.org/revolving/>.

²²⁸ Chris McGreal, "Revealed: Millions Spent by Lobby Firms Fighting Obama Health Reforms," *Guardian*, October 1, 2009, available at <https://www.theguardian.com/world/2009/oct/01/lobbyists-millions-obama-healthcare-reform>

²²⁹ Sheila Kaplan, "On Capitol Hill, The Door Swings Both Ways," Investigative Reporting Workshop, December 11, 2013, <http://investigativereportingworkshop.org/investigations/Revolving-doors/story/door-swings-both-ways/>.

efforts by the Environmental Protection Agency (EPA) to regulate oil, gas, and chemical companies. Sayle's professional journey has included several rotations between congressional staff positions and industry lobbying. As Rep. Bradley Miller (D-N.C.) mused to Kaplan, "Can a lobbyist shift his outlook from protecting business interests to protecting the nation's interest so quickly?"²³⁰

Kaplan points out that in contrast to rules on people's professional activities after they leave the Hill, no explicit ethics rules govern the reverse revolving door. Some knowledgeable observers, such as Robert Kelner, chair of Covington & Burling's election and political law practice group, contend that rules limiting the reverse revolving door would block the transfer of specific knowledge to government, and that onerous regulations in general invite noncompliance. However, in interviews with Kaplan, John Walke, clean air director for the Natural Resources Defense Council, and Jay Feldman, executive director of Beyond Pesticides, which advocates a toxics-free environment, make a compelling case for the other side.

Walke, who generally does not have a problem with employees who move to the private sector after gaining "invaluable experience" at the EPA and the Justice Department, draws the line at reverse migration: "The problem comes when someone works at government and continues to represent private interests and corporate interests while causing the public good and public health to suffer." Feldman echoes Walke: "The regulatory process is overwhelmed by previous [industry] employees who know how to delay and undermine the decision-making process."²³¹

The industry with the most noticeable flow to government is finance. In the last 40 years alone, at least 10 treasury secretaries have come from the business community—predominantly from Wall Street. Many of these appointees had been top-tier fund-raisers for the presidents they served.

Symptomatic of the flow of leaders from this industry to government is the roster of bankers from a single firm: Goldman Sachs. According to a Hunter Lewis, 5 Goldman employees spun through the reverse revolving door into the Clinton administration, 14 into the Bush administration, and 10 into the Obama administration.²³² For example, Gary Gensler, head of finance at Goldman, became assistant

²³⁰ Id.

²³¹ Id.

²³² Hunter Lewis, *Crony Capitalism in America: 2008-2012* (AC² Books, 2013), 85-88. Johnson and Kwak refer to this as the cultural capture of government by bankers in *13 Bankers*.

secretary and then undersecretary of the Treasury under President Clinton, and then chaired the Commodities Futures Trading Commission under President Obama.

Former Goldman executives who became government officials under President George W. Bush include Treasury Secretary Henry Paulson; Robert Steele, undersecretary of the Treasury for domestic finance; Stephen Friedman, director of the National Economic Council; William Dudley, senior executive at the New York Fed; Joshua Bolton, director of the Office of Management and Budget and Bush's chief of staff; and many other Treasury employees.

Former Goldman employees also include Henry Fowler, treasury secretary under President Johnson; John Whitehead, deputy secretary of state and chair of the New York Fed under President Reagan; Gerald Corrigan, president of the New York Fed; and 10 former Goldman employees who served in various European governments.

Former Wall Street executives in the Clinton administration included Roger Altman of Lehman Brothers and the Blackstone private-equity group, who served as deputy treasury secretary, and Lee Sachs of Bear Stearns, assistant treasury secretary.²³³

At one level, the movement of extraordinary talent from Wall Street to government can be seen as a gift to the nation. However, its scale means that Wall Street's worldview inevitably spreads to the corridors of power.²³⁴

As in the case of Stephen Sayle, who has moved back and forth between the EPA and industry, Kaplan shows how the revolving door can spin in both directions. While we do not know the precise size of this "round-tripping" cohort, the practice seems to be common in finance, healthcare, and chemicals, providing many opportunities for cronyism to take root.

Dr. Tracey Woodruff, a former EPA scientist who directs the program on reproductive health and the environment at the University of California-San Francisco's School of Medicine, warns, "When people leave EPA for industry, they take with them valuable inside knowledge that their new companies, or clients, can use against the agency. This happens in both scientific research and the

²³³ Hunter Lewis, *Crony Capitalism in America*, AC 2 94.

²³⁴ *Ibid.*, p.96.

regulatory arena, and it weakens EPA's ability to do its job. And when they come back to the agency, after working in industry, it's reasonable to question where their loyalties lie.”²³⁵

The Costs of Cronyism

We can crudely estimate many of the direct costs of crony capitalism, such as from targeted exemptions from legislation, advantageous rules by regulatory agencies, preferred access to credit, direct subsidies, preferential tariffs, tax breaks, and protection from prosecution. Other costs—including diminished public trust in democratic capitalism, and lower GNP growth because of a lower propensity of favored firms to make risky, transformational investments—defy systematic quantification, although they are arguably among the most important long-run costs of cronyism.

Imagine a system of tax breaks and subsidies that totaled \$222.7 billion from 2008 to 2010, when the nation faced the steepest recession in more than 50 years. Also imagine a system in which 56% of these subsidies went to just four industries: finance, utilities, telecommunications, and oil, gas, and pipelines. Finally, imagine a system in which the most profitable industries receive the biggest subsidies. Your rich imagination might lead you to wonder about how such an arrangement could exist in our widely acclaimed democratic society. Your wonderment might turn to shock if you discovered that this imagined reality is, in fact, true—which it is, according to an analysis by Citizens for Tax Justice and the Institute on Taxation and Economic Policy.²³⁶

Partly because the financial industry's effective tax rate was 15.5% from 2008 to 2010, financial companies are especially profitable and account for a growing share of U.S. corporate profits, according to this analysis. Given that the corporate tax rate is nominally 35%, this amounts to a tax subsidy of about \$34.5 billion.²³⁷ And that figure does not include the bailouts by the federal government that kept large banks afloat during the recession. At least twenty other industries had effective tax rates below 20% as of January 2014, with effective tax rates in the single digits for many

²³⁵ Kaplan, “On Capitol Hill, The Door Swings Both Ways,” *op. cit.*

²³⁶ Robert S. McIntyre, Matthew Gardner, Rebecca J. Wilkins, and Richard Phillips, “Corporate Taxpayers & Corporate Tax Dodgers,” Citizens for Tax Justice and the Institute on Taxation and Economic Policy, November 2011, 8, <http://www.ctj.org/corporatetaxdodgers/CorporateTaxDodgersReport.pdf>. The \$222.7 billion is the difference between the \$473 billion that 280 companies in these industries would have owed had they reported all their profits to the IRS and paid the 35% corporate tax rate, and the amount of taxes they actually paid.

²³⁷ *Id.*, 7. According to Aswath Damodaran, a professor at New York University, the average tax rate across all firms by 2014 was 18.37% (with the effective rate for only money-making firms was up to 32.54%). See Damodaran Online, <http://pages.stern.nyu.edu/~adamodar/>.

high-tech industries.²³⁸

The federal government spends almost \$100 billion annually on direct and indirect subsidies to business, the Cato Institute recently reported, based on a detailed analysis of the federal budget. These subsidies include those for farms, small businesses, R&D, trade, and energy, railroad, and maritime interests, as well as tax preferences and favorable regulations.²³⁹

Tax credits for the highly profitable oil and gas industry—which subsidize drilling costs and, oddly, compensate companies for the declining value of wells—total \$7 billion a year, according to another recent estimate.²⁴⁰ A somewhat higher estimate pegs federal subsidies for fossil fuels from 2002 to 2008 at \$72.5 billion.²⁴¹ Some of the industry’s tax write-offs have been in effect for nearly a hundred years. And the oil industry can expect profits to remain healthy, given that the price of oil is expected to remain near \$100 a barrel for the near future because of instability in the Middle East and rising global demand.

Former Texas governor and President George W. Bush provocatively commented that these subsidies have little justification.²⁴² Partly in response, leading Republicans as well as Democrats are

²³⁸ See Damodaran Online. See also, Binyamin Appelbaum, “Corporate Taxes: More Winners and Losers,” *New York Times*, January 27, 2011, <http://economix.blogs.nytimes.com/2011/01/27/corporate-taxes-more-winners-and-losers/>.

²³⁹ Tad DeHaven, “Corporate Welfare in the Federal Budget,” Cato Institute Policy Analysis, No. 703, July 25, 2012, <http://www.downsizinggovernment.org/new-paper-federal-business-subsidies>.

²⁴⁰ Jordan Weissmann, “America’s Most Obvious Tax Reform Idea: Kill the Oil and Gas Subsidies,” *Atlantic*, March 19, 2013, <http://www.theatlantic.com/business/archive/2013/03/americas-most-obvious-tax-reform-idea-kill-the-oil-and-gas-subsidies/274121/>. See also Seth Hanlon, “Big Oil’s Misbegotten Tax Gusher,” Center for American Progress, May 5, 2011, <http://www.americanprogress.org/issues/tax-reform/news/2011/05/05/9663/big-oils-misbegotten-tax-gusher/>. Regarding the profitability of the oil and gas industry, 2013 profits of the big five oil companies—BP, Chevron, ConocoPhillips, ExxonMobil, and Shell—totaled \$93 billion. In the second quarter of 2014, the sector posted profits representing slightly more than 21% on shareholder equity—a very healthy return for a capital-intensive industry. One startling indication of the industry’s profitability and excess cash is that even with lower profits in 2013, four of the big five oil companies used 30-50% to repurchase shares rather than investing them in the business. Data are from Daniel J. Weiss and Miranda Peterson, “With Only \$93 Billion in Profits, the Big Five Oil Companies Demand to Keep Tax Breaks,” Center for American Progress, February 10, 2014, <http://www.americanprogress.org/issues/green/news/2014/02/10/83879/with-only-93-billion-in-profits-the-big-five-oil-companies-demand-to-keep-tax-breaks/>; and CSIMarket.com, “Energy Sector,” http://csimarket.com/Industry/Industry_Profitability.php?s=600.

²⁴¹ H.R. 601, Ending Big Oil Tax Subsidies Act, sponsored by House Democrat Earl Blumenauer of Oregon and 30 other members of Congress, summary online at http://blumenauer.house.gov/index.php?option=com_content&view=article&id=1788.

²⁴² McIntyre, Gardner, Wilkins and Phillips, “Corporate Taxpayers & Corporate Tax Dodgers, 2008-2010,” Citizens for Tax Justice & the Institute on Taxation and Economic Policy, November 2011, p.8.

now beginning to signal—albeit in vague terms—that they could support a rollback of these credits.²⁴³ How enduring that bipartisan sentiment might prove to be is highly questionable, however, given that the oil and gas industry spent about \$70 million on congressional campaigns in 2012.²⁴⁴ The industry also employed 737 lobbyists and spent about \$140 million on lobbying—much of that aimed at heading off curbs on carbon emissions.

The costs of subsidies are equally shocking in other sectors. Recall the example of the sugar industry, whose political connections and lobbying ensure that U.S. consumers pay prices 65–85% above those of the global market, yielding \$3.7 billion annual subsidy.

The whiff of American-style crony capitalism is widespread, and growing recognition of its high costs forces the critical question of how we could contain it.

²⁴³ Seth Hanlon and Daniel J. Weiss, “Eliminating Big Oil Tax Loopholes Won’t Lead to a Tax Increase,” Center for American Progress, May 16, 2011, <http://www.americanprogress.org/issues/green/news/2011/05/16/9640/eliminating-big-oil-tax-loopholes-wont-lead-to-a-tax-increase>.

²⁴⁴ See Center for Responsive Politics, “Oil and Gas,” <https://www.opensecrets.org/lobby/indusclient.php?id=E01>. Many of the campaign finance expenditures in 2012 were aimed at warding off potential curbs on carbon emissions, supporting construction of the Keystone pipeline, and expanding offshore drilling. The total includes contributions from gas producers and refiners, natural gas pipeline companies, gasoline stations, and fuel oil dealers. Some 90% of these contributions went to the GOP, according to OpenSecrets.org.

Appendix C

Power Sharing and Negotiating Forums

Reciprocity by means of power sharing typically involves negotiations and consensus building in some sort of social setting or forum. Power sharing (and negotiating) forums come in a variety of forms, and the most effective ones are carefully thought through before being commissioned into action. In this appendix, I identify the principal types of forums resident in our political economy, comment briefly on issues involved in establishing a forum, offer a few rules of operation that can shape the results of a forum, and call attention to ten important aspects of agreement-making that are common to most negotiating and power sharing processes.²⁴⁵

Definition of a Forum

Most generally, a forum is an arrangement to bring together, on a recurrent basis, representatives of different organizations or groups with different interests for stated purposes ordinarily including discourse and an attempt to achieve some accommodation under generally specified or recognized procedures. This very general formulation excludes a variety of meetings—an academic conference, a classroom meeting, a political rally, an annual meeting of corporate shareholders, a local union meeting, a talk show, a commercial transaction, etc.—that may on occasion lead to the generation of a forum. The concept of a forum is broad enough, however, to include such diverse mechanisms as legislative bodies, negotiated rulemaking in government, corporate merger negotiations, the relations among health insurers and groups of doctors or hospitals as preferred providers, labor-management negotiations or joint consultation, and employee and citizen committees of all sorts.

The essential features of a forum are: (1) recurrent meetings, (2) organizations or groups with some different and conflicting interests, (3) a commitment to discourse and a serious effort to

²⁴⁵ I wish to acknowledge my former colleague John T. Dunlop who made significant contributions to my thinking as we jointly developed and taught a joint Harvard Business School—Kennedy School of Government course (*Industrial Governance and Corporate Performance*) that covered many of the matters summarized in this appendix.

achieve accommodation of differences or resolution of conflict on some questions, and (4) specified or recognized procedures that govern the activity.

Types of Forums

In our political economy, there are two broad types of governance forums: authenticated forums and ad hoc participatory forums.

Authenticated forums operate under government-prescribed procedures, interventions, or participation. Forums involving formal industrial relations undertaken by business enterprises and labor organizations are a good example. These forums operate under rules pre-set by legislation and regulatory agencies of government. Similarly, forums involving the regulatory activities of legislative or executive government agencies operate in much the same way that regulatory forums additionally include a mandate to serve some vision of the public interest.

Ad hoc participatory forums operate in the absence of administrative law, pre-set procedures or designated participants. They include a wide range of impromptu issues that bring together citizens, members of various advocacy groups, and representatives of business, labor, government organizations to solve problems affecting their joint and separate interests. Both types of forums have been in use for a long time. What I have referred to above as a power sharing forum falls into the category of ad hoc participatory forums.

We are all familiar with forums focusing on industrial relations. The succession of collective bargaining agreements negotiated between General Motors and the United Automobile Workers (UAW) in accordance with general procedures specified by the body of labor law is one illustration. An example of joint consultation in the labor relations setting is the work-level labor-management committees first established in the basic steel industry in the 1960s to increase productivity, reduce scrap and enhance quality.

Examples of forums focused on regulatory activities may be less generally known. Various government agencies (including environmental, occupational safety, health, and others) have

long used "negotiated rulemaking"²⁴⁶ to establish regulations that are more prompt, more acceptable, and less litigated by affected parties. The EPA and OSHA use procedures as endorsed by the Administrative Conference of the United States to formulate regulations relating to benzene, pesticides affecting farm workers, and other regulatory issues. Comparable methods may be used as well in the legislative process. The National Commission on Social Security Reform, appointed in 1982, included representatives of business and labor, as well as key members of both houses of Congress from both parties. That forum crafted a consensus package that was enacted into the Social Security Amendments of 1983.

Other examples of ad hoc participatory forums include the group that designed the Chrysler Corporation "bail out" in 1979; it involved the company, the unions, and the executive and legislative branches of the federal government, and local municipalities. A similar example that showcases innovative forms of problem-solving and power sharing took place in the Saturn Project Study Team (described above) that led to the creation of Saturn Corporation, co-created by GM and the UAW to manufacture a truly competitive small car. In addition, ad hoc forums springing from the public sector cover a wide range of citizens advisory groups, composed of a cross-section of citizens and interest groups, that are often charged with reviewing and revising policies and practices related to the economic, environmental, educational, and governance practices of states and municipalities.

Design of Forums

There is a very considerable difference between using an existing forum to resolve familiar issues and designing and establishing a new forum. The creation of new forums requires preliminary discussion of the following issues: what types of questions are to be considered, what parties will participate, the level of those participants from organizations selected to join the forum, the authority of the forum, the private or public nature of the deliberations, and the allocation of any financial costs incurred. Oftentimes, forum designers need to resolve whether a neutral chairman is to be used, or whether only the involved individuals and organizations have a

²⁴⁶ For a good discussion of negotiated rulemaking, see Henry H. Perritt, Jr., "Negotiated Rulemaking Before Federal Agencies: Evaluation of Recommendations by the Administrative Conference of the United States," *The Georgetown Law Journal*, August 1986, Vol.74.

role at the "table." A decision to involve government officials triggers further issues concerning ratification processes, open meetings, and publicity. While a new forum requires consideration of purpose and procedure before beginning work, the substantive work and composition of a forum will often evolve by proceeding on a case-by-case basis.

Particularly when relationships among participants are sensitive and untried, exploring these design questions often requires a great deal of time and informal consultation. Indeed, how well a forum subsequently operates may be influenced significantly by the care with which these preliminary questions are explored and by the operating consensus that develops.

Virtually all nongovernmental forums appear to have a limited half-life. The problems which generated the interest, the personalities in the respective organizations that developed the initiative, and the organizations themselves may have disappeared or shifted their concerns. Accordingly, ad hoc forums either shift in focus or disappear. In addition, their preoccupations and interests tend to go in phases.

Operating a Forum

Despite their diversity of purpose and largely voluntary character, forums of all types tend to operate in certain common ways and patterns. These features shape the results of the forum:

- (1) A forum often requires the assembly and evaluation of complex factual data. This vital step is often assigned to a staff group or to a separate subordinate table that reports to the principal members of the forum. Such professional staff work is often essential to policy discussion, problem solving, and, ultimately, power sharing. Consider a discussion seeking serious solutions to health care costs and coverage, the federal deficit, the alleged lack of competitiveness of an industry, environmental degradation, or food insecurity. Imagine chief executive officers, labor leaders, heads of health organizations, cabinet officers, and citizen advocates tackling these problems without such preparatory staff work. One or two, off-the-cuff sessions might be interesting, but after that, systematic staff work becomes essential. Such preparation is a prerequisite to advancing consensus.

- (2) A continuing sequence of sessions is essential to consensus development. Very few issues can be resolved in one or two sessions. If they can be, they must not have been very difficult. Forums are a continuing arrangement over a considerable period, although some may have a single-issue assignment, while others have a larger scope.
- (3) One critical rule of forum operation concerns whether the discourse and working papers are public and, on the record, or private and off the record. Among private organizations, forums are invariably conducted in private. The difficulty with public processes is that representatives of constituent organizations feel compelled to express previously adopted positions. They face internal risks if they deviate from established policy. Yet the purpose of the forum is to consider an accommodation with others that doubtless requires some change in previous positions. Moreover, leaders of organizations may wish to explain any change in position to members and associates, rather than have them learn of changes from the press or media. Private forums permit internal communication, explanations, and political preparation for any change within the organization.

In the case of forums with government agency representatives, open meeting laws and advisory committee legislation often require that discourse and accommodation take place in public. Such a format seriously constricts consensus building. Indeed, the chances of fruitful operations are substantially reduced. As a practical matter, a variety of devices are typically used to reduce public exposure: subcommittees may be exempt from the public rule; the real work is done in informal discussion, and public sessions are simply used for formal announcements; meals and social occasions may be effective occasions for serious exchange of views.

- (4) Forums tend to learn that it is possible to reach consensus on some issues and remain opposed on other issues. It may be difficult for some groups or organizations to reach limited agreement and proceed, rather than to remain adamantly hostile in the absence of full agreement. The separability of issues, or parts of related questions, is always a significant problem. A public statement of the Labor-Management Group (assembled and

headed by John T. Dunlop) on March 4, 1981, expressed an essential attitude: "It is destructive to society and to business and organized labor, if in our legitimate adversarial roles, we question the right of our institutions to exist and perform their legitimate functions. In performing these functions, we recognize that both parties must respect deeply held views even when they disagree." The point is that consensus building in any forum is likely to be possible on some issues but not on others.

- (5) Developing methods for implementing an accommodation worked out in a forum is a significant step since, in the absence of careful collaboration, conflict may re-emerge, or insiders or outsiders may damage the understanding achieved.

Negotiations, Consensus Building, and Power Sharing Processes

Any of these multi-party engagements conducted on a continuing basis are difficult to characterize. The variety of participants, issues, and situations that come together in forums defy neat categorization. But the following overview of the engagement process reflects a first approximation of common experiences across forums in diverse settings.²⁴⁷

- (1) *Internal agreement within each side.* In two-party engagements, it takes an agreement within each side and agreement across the table; that is, it takes three agreements to make one. In three-party negotiations, the number of required "agreements" escalates even further.
- (2) *Initial proposals.* Initial proposals are typically extreme compared with eventual agreements. Priorities for participating parties are often established only during the engagement.

²⁴⁷ For the "bible" on negotiating and consensus building, see John T. Dunlop, *Dispute Resolution, Negotiation and Consensus Building*, Auburn House, 1984, Chapter 1.

- (3) *Art of changing positions.* All forms of negotiations, including power sharing, involve the process of changing positions and making concessions or sacrifices from initial positions in the process of moving toward some agreement or consensus.
- (4) *Role of deadlines.* A natural deadline or a designed one is an essential feature of effective negotiating, consensus building, and power sharing processes. Time is not neutral in its effects on the relative position of participants.
- (5) *The endgame.* The end-stages of negotiating, consensus building, and power sharing processes are delicate when issues are limited and the distances between parties is not large. Private discussion between one or two key persons participating in the process is often useful in closing the gap in the absence of a facilitator or mediator.
- (6) *Engagements with overt conflict.* Engagement processes and serious conflict may be carried out simultaneously. The purpose of the overt conflict is typically to serve as a tool of agreement-making, although the conflict and its results may affect the objectives and priorities on the participants.
- (7) *The need for secrecy.* Agreement-making does not often flourish in public, with press and media attention, because serious interactions require that designated (or even self-selected) leaders first communicate directly with their constituents concerning an agreement and explain their recommendations in terms of the internal political life of their organization or group.
- (8) *Interpretation of an agreement.* An agreement typically reflects the need for a recognized procedure to resolve questions on the meaning and application of the agreement or to fill in lacunae.
- (9) *The personality factor.* Be aware that the personalities of forum participants and the way participants relate to each other can affect outcomes in some instances.

In addition, neutral parties (such as expert facilitators or mediators) can play a pivotal role in achieving agreement through impartial fact-finding and by controlling the flows of information to participants, using these flows to encourage agreement, engender understanding, exert moral authority, or reflect public interest in the resolution of conflicts that arise.