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# THE UNEASY RELATIONSHIP BETWEEN DEMOCRACY AND CAPITAL*

By Thomas Christiano

## I. Introduction

Many have had the suspicion that private capitalist firms exercise disproportionate influence over democratic policymaking. The usual worry concerns influence over the democratic process in the form of financial support of candidates in electoral processes in return for support for legislation that benefits capitalist firms. This important topic is not the one I will discuss in this essay.[1] Another important source of worry is substantially independent of the electoral process itself. The worry is that the very exercise of property rights can sometimes be a source of disproportionate influence over a political society. Some Marxists have written in this context of the "structural dependence of the state on capital" and have claimed that capitalism is incompatible with democracy.[2] We need not accept this extreme claim to think that there is a serious source of concern here.

I think this suspicion can be vindicated, though it must be attended with some significant qualifications. The basic questions I want to ask are: Can the exercise of private property rights abridge fundamental norms of democratic decision-making? And under what conditions can it do so? To the extent that we view democratic decision-making as required by justice, the issue is whether there is a deep tension between certain ways of exercising the rights of private property and that part of social justice that

* I thank Richard Arneson, Ellen Frankel Paul, Eric Mack, Jan Narveson, David Schmidtz, and the other contributors to this volume, for useful discussion of the ideas of this essay.

[1] For the classic study on this phenomenon, see Alexander Heard, *The Costs of Democracy: Financing American Political Campaigns* (Garden City, NY: Doubleday and Company, 1962). See also Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven, CT: Yale University Press, 1994). For some philosophical work, see Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton, NJ: Princeton University Press, 1989), chap. 9. See also Joshua Cohen, "Money, Politics, Political Equality," in *Fact and Value: Essays on Ethics and Metaphysics for Judith Jarvis Thomson*, ed. Alex Byrne, Robert Stalnaker, and Ralph Wedgwood (Cambridge, MA: MIT Press, 2001), 47–80. For an effort to demonstrate the disproportionate influence of the wealthy on the political system in the United States, see Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton, NJ: Princeton University Press, 2008), esp. chap. 9.

[2] See Fred Block, "The Ruling Class Does Not Rule," *Socialist Revolution* 33 (1977): 6–27, for the Marxist claim that the state is completely structurally dependent on capital. See Adam Przeworski and Michael Wallerstein, "Structural Dependence of the State on Capital," in *American Political Science Review* 83 (March 1988): 11–29, for a critique of this thesis.

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is characterized by democracy. To the extent that this tension holds, I will argue that commitment to democratic norms implies that private capitalist firms must cooperate with a democratic assembly and government in the pursuit of the aims of a democratic assembly even when this implies some diminution of the profits of the firms. The cooperation I have in mind goes beyond the norm of faithful compliance with the law. To be sure, there are limits to this requirement, as we will see in the later part of the essay. To the extent that private capitalist firms fail to do this and partially undermine the pursuit of the aims of a democratic assembly, they act in a way that is incompatible with fundamental norms of democratic governance.

There are a number of examples in contemporary politics that illustrate the phenomenon of private capitalist firms acting in ways that seem to involve their exercising a disproportionate influence over the political societies in which they operate. For example, in order to raise the welfare of the worst-off workers, the government institutes a minimum wage increase. It does this in fulfillment of a promise to raise the welfare of the worst off that was made during the previous election cycle—a promise that was fairly clearly an important reason why the current officials in the government were elected. Many economists claim that businesses would lay off workers as a consequence of this kind of policy, with the effect that the welfare of the worst-off workers would be lowered overall. I do not want to take a stand on whether this is a necessary or even likely consequence of raising the minimum wage.[3] I will discuss the question of necessity later in the essay. Another possibility is that the government reneges on its promise to raise the minimum wage on the grounds that it fears that businesses would lay off too many workers and defeat the aim of the policy. Let us suppose that another possible scenario is that at least some of the businesses institute the minimum wage, but do not lay off workers; they merely pass on part of the cost to consumers and absorb some loss in profitability. In some instances, let us suppose, the business is not ruined by this policy. The questions I am asking about this kind of case are: (1) Do businesses that fail to adopt this latter policy when they could do so without serious harm to themselves abridge basic democratic norms?

[3] For a classic formulation of the argument that minimum wage laws increase unemployment, see Paul Samuelson, *Economics,* 9th ed. (New York: McGraw-Hill, 1973), 393–94. For empirical evidence that minimum wage laws do not have the effect of increasing unemployment, see David Card and Alan Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," *American Economic Review* 84, no. 4 (September 1994): 772–93. See also David Neumark and William Wascher, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Comment," *American Economic Review* 90, no. 5 (December 2000): 1362–96, for a critique of the Card and Krueger argument, and their reply in "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Reply," *American Economic Review* 90, no. 5 (December 2000): 1397–1420.

And (2) do businesses in this situation have duties to cooperate with the democratic assembly by raising wages without laying off workers?

Another possible case is one in which the government, in order to limit the release of carbon dioxide into the environment, imposes limits on emissions by certain industries. Let us suppose that in order to avoid these controls, the industry leaders decide to invest in another country where the limits are less stringent. This also contributes to an increase in unemployment, a perennial concern for modern governments. The industry response to the regulation not only sets back the aim of emissions limitation, it also defeats other central aims of the government and the people who support it. Again, we can imagine an alternative case in which the government simply does not issue the regulations on the grounds that the industry can defeat their purpose and other purposes the government has. And let us also suppose that it is at least economically feasible for the industry to conform to the regulations, partly by spreading the costs to consumers and partly by taking a modest decrease in profitability. Once again, we can ask: (1) Do businesses that fail to take this latter route abridge basic democratic norms, at least when this route does not threaten serious harm to the business? And (2) do such businesses have duties to cooperate with the democratic assembly by accepting the regulations and taking a modest decrease in profitability?

In each of these cases, under the first option the industry is exercising property rights (however limited and complex) over certain parts of the world, and thereby defeating the aims of the government. Under the second option, it is expected that the industry will exercise this right and the expectation prompts the government not to impose the popularly desired regulation in pursuit of the popularly mandated aim. These kinds of cases are endemic in modern societies that include a substantial amount of private ownership of productive property within the population. This ownership is implicated in the great majority of regulation and taxation by the government in pursuit of economic, environmental, worker-safety, welfare, and redistributive policies. Discretion over the use of property must be limited or curtailed in various ways in order to pursue objectives mandated in general elections. Every one of these activities and aims, no matter how popular, can be defeated or set back in significant part by people exercising fairly garden variety property rights.

These kinds of cases have become ever more pressing to the extent that capital has become more mobile in the modern global trading system. The increasing ability to move capital across borders enables owners of capital to elude the kinds of regulation and taxes that government imposes, and seems to give them increasing abilities to defeat aims that are chosen democratically and pursued by governments. In the international arena, these kinds of cases suggest a kind of conflict between two principal aims of contemporary international institutions: the development of international trade, and the spread of democracy.

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In what follows, I will elaborate a framework for thinking about the issue at hand. I will discuss a recent effort to show how capitalist activity can seem to abridge democratic norms, and I will argue that this effort does not get at the crucial issues. I will discuss my own framework and then give the initial argument for the thesis that the exercise of ownership rights by capitalists can abridge the norms that underpin democracy. I will then discuss a number of mitigating factors that may soften the thesis a bit.

## II. Democracy and the Power of Capitalists: A Framework for Analysis

Brian Barry argues that capitalists have power over government (democratic or otherwise) because they have the ability to get the government to do what they want it to do by virtue of the government's belief that, if it doesn't comply, then the government is likely to experience a diminution in its reelection prospects. Barry's general definition of "power over" is that *A* has power over *B* if *A* can get *B* to do something *B* would otherwise not do in virtue of *B*'s belief that *A* could make him worse off if he does not do it. Barry thinks that given this account of "power over," it is clear that capitalists have power over governments. The kinds of examples he has in mind are cases in which the government lowers taxes despite its need for greater resources because it believes that businesses will disinvest if taxes are not lowered and that such business disinvestment will diminish economic growth and thereby diminish the reelection prospects of the government. Another case is one in which government does not raise the minimum wage on the grounds that businesses will lay off workers and increase unemployment with the increase in the minimum wage. One interesting feature of these cases is that businesses need not make threats to the effect that they will damage the government's election prospects if the government acts in the disfavored way. Businesses need not even issue a warning. Barry's definition does not seem to require either thing. All that is required is the pivotal position of private capitalist firms in being able to bring about worse outcomes when the government acts to realize popular policies.[4] In one case, they may increase unemployment in response to an increase in the minimum wage; in the other, they may disinvest in response to a failure to lower taxes.

I find Barry's definition of "power over" questionable. First, it looks as if it implies that a wife has power over her husband since he correctly believes that if he cheats on her, she will make him miserable by becoming morose and sullen for a long time after. Second, it suggests that a firm that would be driven out of business by the cost of conforming to a

[4] See Brian Barry, "Capitalists Rule OK? Some Puzzles about Power," *Politics, Philosophy, and Economics* 1, no. 2 (June 2002), 155–84.

government policy is exercising power over the government to the extent that this deters the government from acting. But it is not at all clear to me that these are genuine examples of exercises of power by the wife or the firm.

Another question that is not answered by Barry's thesis concerns whether, and to what extent, this "power over" involves damage to the democratic credentials of the government. This is odd, since the title of Barry's essay suggests that it does. "Capitalists Rule OK?" suggests that the people do not rule, but that capitalists do. This would suggest a serious defect in the democratic credentials of a government. But since Barry also claims that citizens have power over government, he needs to say a lot more than that capitalists have power over government in order to support the claim that capitalists rule. It is also odd because one of the chief theorists Barry draws on to support his argument, Charles Lindblom, also argues that the effect of business on government does damage to the democratic credentials of the government.[5]

As I said earlier, I want to explore the following question: When, and to what extent, does the exercise of private property rights over capital, or even the ability to engage in this exercise, amount to an abridgment of democratic norms? In order to try to answer this question, I think we need to get away from the framework Barry has used for discussing the issue. We must attempt to sketch some basic aspects of democratic norms, and then analyze the issue in terms of whether the exercise of property rights abridges those norms.

The issue can be clarified by placing it in the larger context of democratic theory. I want here to give as brief a sketch as is necessary to grasp the problem as I see it. Democracy is best justified by reference to a principle of political equality. The ideal of political equality is that individual citizens ought to have an equal say in how the society is to be organized. Having an equal say implies that individuals have equal votes, that there is equality in the process of deliberation, and that there is equality in the resources that go into making coalitions and bargaining over political aims and policies.[6]

Of course, such equality is hard to achieve in a large society, which requires a division of labor in the process of making decisions. A theory of democracy must say how a division of labor can be structured to maintain political equality. It must say how the kind of expertise and specialization that is necessary in political policymaking can be reconciled with equality in political decision-making. I have argued in detail elsewhere that these can be reconciled by assigning citizens the task of choosing the aims of the society, while assigning politicians, interest groups,

[5] See Charles Lindblom, *Politics and Markets* (New York: Basic Books, 1977).

[6] See Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008), for a defense of these claims.

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and administrators the task of selecting the means by which these aims are to be achieved. Politicians, interest groups, and administrators have the kinds of expertise that enable them to select and implement the means as well as possible. These people are essentially agents of the citizens as a whole, charged with the task of realizing aims over which they have no discretion. This relation between (i) the citizens in their capacity as choosers of aims, and (ii) the subset of citizens who are charged with the task of determining the means to the aims, is called the democratic division of labor.[7]

I have tried to show that one can design institutions that ensure that the principal-agent relationship required for this democratic division of labor is compatible with political equality.[8] Very briefly, citizens can choose the basic aims of the society, I argue, to the extent that political parties present themselves as offering contrasting packages of aims and trade-offs among those aims.[9] Those political parties that manage to acquire a majority presence in the legislature then act so as to bring about those aims, or if a number of parties must form a coalition, they must compromise among the different packages of aims. They do this in making law. Then administrators formulate policies in order to achieve the aims that the laws are designed to achieve. To the extent that this all takes place under the watchful eyes of many different and opposing interest groups and experts, the idea is that these groups will more or less faithfully attempt to realize the aims of citizens.

To be sure, citizens may legitimately choose aims only within a limited scope, which is bound by the basic constitutional rights afforded to each person in a society. I will discuss later in the essay the extent to which capitalists' actions can be said to be protected by constitutional rights.

When citizens collectively choose the aims, their task is to choose all the goals they wish to achieve and rank the trade-offs between those goals. They choose a preference ranking over bundles of values.[10] The task of the political system is to achieve as much as possible of this preference ranking. How much it can achieve will depend on what we might call the conditions of feasibility. The conditions of feasibility are those conditions under which it is possible to realize some ends and not others and which constrain how one is to achieve those ends. Hence, the picture of democratic decision-making that I am giving involves three components: first, the citizens collectively choose the aims; second, there are independent

[7] See Thomas Christiano, *The Rule of the Many* (Boulder, CO: Westview Press, 1996), part II, for a defense of these claims.

[8] See ibid., part III, for the theory of democratic institutional design.

[9] Just to be clear, the aims need not always specify outcomes; the aims of citizens may include imposing constraints on the pursuit of outcomes.

[10] See Thomas Christiano, "Social Choice and Democracy," in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (Cambridge: Cambridge University Press, 1993), for the argument that a democratic method of choosing aims is not undermined by the results of social choice theory.

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conditions which determine how much of these aims can be achieved; third, the government, on the basis of an assessment of what chosen aims can be achieved and how they can be achieved, enacts laws and policies as means to the achievement of the feasible aims.

Notice that the government and government officials can abridge the principle of political equality by failing to act in ways that best achieve the preferences of the citizens at least within the feasible set. When they do this, as long as it is not mere incompetence that explains the failure, they substitute their own aims, in part, for those that have been chosen by citizens. The authority of government officials is essentially instrumental on this account. It is an instrument for the realization of the aims of citizens acting together as a democratic assembly.

How does the main issue that I have described come into this picture? The problem seems to be that the capitalists influence the conditions of feasibility; they do not influence the choice of aims or even of policies directly in the examples I have discussed above. That is, they do not influence the choice of aims or policies by participating in the democratic process. What they do is make it more or less difficult (and more or less likely) to achieve certain aims. They do this by making it more or less difficult or likely that government policies will achieve the aims. In the examples discussed above, capitalist firms have not exercised greater influence in the process of choosing the aims. In the case of minimum wage laws, private firms do not influence the electoral process to stop such policies from being made; rather, their expected responses make the policies self-defeating or stop the policies from being enacted. Likewise, in the case of the carbon-emissions policy, capitalist firms need not influence the electoral process; they are merely expected to act in ways that make the policy self-defeating, and for that reason the policy may not be enacted at all. By hypothesis, they do not have more votes or more money with which to influence the electoral process. The main effect of their actions is to determine the conditions of feasibility under which policies are to have their effects, and thus to determine how much of the citizens' chosen aims can be achieved.

It is important to see that this particular effect that firms have on policy choices need not be due at all to their having greater than equal resources for influencing the legislative process (e.g., greater numbers of votes, greater resources for funding campaigns, more time to express their points of view); it is only necessary that the government is persuaded of the truth of their claims about the expected results of proposed policies. To see this, we need only suppose that in the examples discussed above, the decision-making process by which the government reached the decisions is impeccably democratic. Suppose that the electoral process by which parties and individuals are selected to rule is completely egalitarian. There are entirely publicly financed processes of election, and media outlets cooperate in ensuring that all the main points of view are given a fair

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hearing during the electoral competition, and perhaps for some significant period before. Suppose, further, that parties and public officials are properly insulated from the disproportionate influence of different groups in the making of policy, and no one has an inside track in the making of policy. Furthermore, suppose that elected officials do in fact act as best they can to pursue the aims that have been democratically chosen in the process of election. There is likely to be disagreement on the details of a fair democratic process, and there is still a lot of work to do on how to specify it, but what is striking is that any particular way of organizing the process of elections and government will not solve the problem we are discussing here.

If there is any problem with political equality in our representative cases, it must have to do with the abilities of capitalist firms to act in ways that undermine the pursuit of democratically chosen aims. In our examples, they do this by laying off workers in response to minimum wage increases or disinvesting in the case of pollution laws. Or they have an influence merely because they are expected to do these things once the policies are in place. Here the capitalists are not, by hypothesis, exercising disproportionate influence over the electoral process; they are determining the conditions of feasibility for the pursuit of aims, and thereby determining the extent to which aims are achieved. Hence, the capitalists limit the achievement of the chosen aims of the citizens, and they do this simply in virtue of being able to exercise their ordinary liberal property rights.

Let us introduce a distinction here between two aspects of equality. There is *equality in the legislative process*, which requires fair electoral competition, insulation of public officials from special interests, and fidelity of officials to the aims they promised to pursue. Further, we might say that if there is equality in the legislative process, then each citizen has a kind of *equal say* over the process of legislative decision-making (or at least the most important part of the decision-making, the choice of aims to be pursued). The issue we are confronting has to do not with the process of decision-making but with the constraints under which the aims are to be pursued and the feasibility of the pursuit of those aims.

This is why I conceive of the actions of capitalists as constraints, in the first instance, on the government. Capitalists can affect the achievement or realization of the chosen aims by undermining the government's ability to achieve them, as when they lay off workers or move their investments across borders. Or capitalists can argue that since the aim will not be achieved anyway, it is no use trying the policy. Thus, they can stop the policy by making the government anticipate the failure. This may be part of the explanation for why the minimum wage rises so slowly.

What is worrying from the standpoint of political equality is that the constraints on the pursuit of aims (or the feasibility of aims) are imposed by the intentional and usually knowing actions of agents within the

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society. These intentional actions pursue other aims distinct from those chosen by the democratic assembly, and it appears that the pursuit of those other aims is what sets back the pursuit of the democratic aims. Now the question is, if a policy has been chosen in accordance with the aims that have been democratically chosen by citizens, and the policy is blocked or self-defeating because of the actions of a subset of members within the society pursuing their own aims, does that amount to an assumption of special rights on the part of those who are responsible for the failure of the policy or for the fact that it has not been implemented?

## III. The Main Argument

The main argument for the claim that the exercise of liberal property rights can constitute an exercise of political power and abridge the principle of political equality is that the principle of political equality requires that citizens be able to choose *as equals* what aims the society is to realize (at least within a limited scope bounded by constitutional rights). If we suppose that the legislative process is egalitarian, then the realization of a democratically chosen aim, as long as it is feasible, is required by the principle that all citizens should have an equal say over the outcome. If, subsequent to the democratic choice of an aim, a person or group of persons in the society knowingly act so as to undermine the achievement of the aim, then, according to the foregoing principle, they have necessarily appropriated a special exercise of political power for themselves. That is, they have necessarily had an extra say in what aims are to be brought about.

The same argument works for the case in which the capitalist manages to head off democratic legislation by persuasively announcing that the democratically chosen aim will be defeated by her actions when the policy is in place. And what is crucial here is that while the capitalist says that the aim cannot be realized, it is because of her own actions in pursuit of her particular ends that the aims cannot be realized. If the capitalist defeats the realization of an aim after it has been chosen, then surely the ability to prevent the realization of the aim in advance is an exercise of the same kind of power.

It is important to say what has not happened in the case of the capitalist activity under discussion. First, the capitalist has not disobeyed any democratically made law. She has not engaged in civil disobedience or in outright criminal activity. We are not supposing that the democratic assembly has made a law requiring her not to change investments or not to lay off workers when costs go up. Nor has she unduly or disproportionately influenced the process of decision-making itself. And she has not acted corruptly, at least in any straightforward sense. She can be described as an upstanding citizen as far as all these issues are concerned.

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What she has done is made it more difficult to pursue democratically chosen aims; in some cases, she has made it impossible to pursue those aims. It looks as if there is an important sense in which she is interfering with the pursuit of democratically chosen aims. But we need to know more about what the term "interference" means in this context.

## IV. An Intuitive Example

Let us see if we can think about this in terms of a smaller, more manageable example. A group of friends is deciding where to go on a trip, and they want to go together. They must choose between a weekend of gambling and a weekend of camping. Let us suppose that the group decides by a significant majority to go camping, and everyone has already agreed to abide by whatever the majority decides. But the only way to drive to the campsite is through a notorious gambling town. One of the cars is driven by one of the pro-gambling faction and stops in the town for a little gambling, thus putting off the camping for a while, possibly jeopardizing the whole trip. The group had not ruled out stopping for a bit on the way, and thus no one was explicitly obligated not to stop for a bit of gambling. And no specification had been made of how long a stop would be too long. Still, we have the sense here that something has gone wrong and that the group that is doing the gambling is interfering with the trip.

We can even imagine another scenario in which, in anticipation of the events described above, the pro-camping group simply caves and agrees to a gambling trip instead. Somehow we have the sense here that the pro-gambling group, by succumbing to the temptation to gamble, or by being unwilling to resist such a temptation, is actually interfering with the overall group's project. It interferes in the sense that the project requires everyone to play a certain part, usually not fully specified by the agreement, but implied by the choice of ends to be pursued and the idea that those ends would be pursued in a reasonably efficient way.

The interference is not a coercive interference; it is similar to the interference of someone who is engaged in a cooperative project and continually fails to do her part, thereby undermining the purpose of the cooperation. In the case of games, a person who consistently flouts the rules and thereby disrupts the playing of the game is interfering with the game.

I choose this example because it seems like a relatively clear case of someone acting in a way that sets back the achievement of commonly agreed upon ends. And that person does so merely to pursue a private good. The idea in the example is that the person is somehow selfish and self-absorbed and puts herself above the rest of the group even when a commonly accepted goal is at stake. There are some conditions under which even the behavior in this example is acceptable, or at least excusable, and reflecting on these conditions may give us some ways of think-

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ing about the case of the capitalist and the democratic decision. First, it is clear that if the person is a severely addicted gambler, or gambles by some terribly powerful compulsion, such a person's activities may be excusable. The decision of the group to take the route through the gambling town may seem merely foolish in this context. Second, the group may have decided that its members could stop along the way and do whatever they wished, in which case the gambler is not acting in violation of the group's decision.

A question I have elided in the foregoing example is whether the gambler has *intentionally* interfered with the pursuit of the aims of the group of which he is a part. We might also ask whether the gambler interferes with the group action when the group decides against a camping trip and in favor of a gambling trip, because it anticipates the gambler's action even if the gambler makes no explicit threat. In the example, it may well be that the gambler has no intention of upsetting the activity but knows that it is possible that it will be upset because of his diversion. In the foregoing example, this does not seem to make much of a difference. In either case, he seems to treat his fellow group members with a certain contempt or disregard.

Some might think that this distinction matters in the case of the capitalist's actions. It might matter, for example, if the capitalist disinvests and sends capital elsewhere in order to punish the government and in the hopes that the government will not do the same thing again. If the capitalist is merely responding to the new set of relative prices and maximizing profits without any concern for changing government policy, we might think that she is not asserting herself above her fellow citizens. She is not trying to reverse the policy or trying to deter future policies from being created, and thus she is not trying to undo or unilaterally deter the democratically made choice. Still, we might think that the capitalist is advancing her interests to the detriment of the democratically chosen aim, and to the extent that this is done knowingly, it suggests a failure of adequate respect for the democratic process. And it looks as if the capitalist in this context may still be affirming her interests over those of her fellow citizens because she is still saying that she may pursue her interests even if this undermines pursuit of the democratically chosen aim. At least in the absence of mitigating circumstances, which I will review below, this looks as if it could be a public affirmation of the superior importance of the interests of the capitalist over those of others. I don't see that there is a clear difference with our intuitive case above (that is, the case of the uncooperative gambler).

In a sense, then, we can see the capitalist as abridging democratic norms of equality by failing to cooperate with the pursuit of the democratically chosen aim. The capitalist thereby replaces the democratically chosen aim with one of her own. Her aim may not be very far from the democratically chosen aim, if acting on it merely increases the cost of

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pursuing the democratic aim; but it nevertheless seems to be an abridgment of political equality.

We can see this by comparing it to our intuitive example above, in which the uncooperative gambler seems to be replacing the agreed-upon group aim with one of his own. In the intuitive case, the uncooperative gambler acts in a way that sets back an aim that he has signed onto. He may not be acting contrary to a particular rule of action he has agreed to, but he is acting in a way that is informally contrary to the obligation he has as a member of the group.

In the case of the capitalist, we can see that she acts contrary to the aim that has been chosen by the democratic assembly. To the extent that we think that the democratic assembly has authority by virtue of having resolved the disagreements among citizens in a way that is fair to all the participants, we can think that each citizen has a duty to go along with the decisions it makes. The uncooperative capitalist thus acts in violation of that informally determined duty.

We can appreciate this from a different angle, if we compare the action of the capitalist to the action of an uncooperative official in the government. A number of examples come to mind. In one case, an official allows an individual to skirt the demands of the law after accepting a bribe from that person. By doing this (and acting to advance his own aims), the official acts in violation of a duty to act as the agent of the democratic assembly and to pursue the assembly's aims. Another official, because she disagrees with the democratically chosen aims, slows down the realization of the policy that has been designed to pursue those aims. The official is a kind of agent of the people but, in effect, delays or diminishes the pursuit of the democratically chosen aim. In a third case, a judge defeats part of the aim of a democratic assembly by interpreting the law in an excessively narrow way. In all these cases, officials act contrary to a trust they have as holders of governmental power. In the first case, the official acts in a way that is simply illegal. In the second case, the official acts in a way that is clearly contrary to duty, though usually not illegal. In the third case, the judge acts in a way that is contrary to duty but not illegal.

It seems to me that the behavior of the capitalist can be very much like the last two cases of errant officials. These officials may not be acting in violation of the law, but they err nevertheless, and the underlying reason for this, especially in the case of the judge, is that they fail to respect the aims of the democratic assembly. They act in ways that undermine the pursuit of the aims of the assembly. The capitalist acts similarly in violation of a duty, though not illegally. One might object that the officials have clear duties to act in accordance with the aims of the assembly by virtue of the trust they hold as officials of the government, and that the capitalist has no such trust. However, as I see it, the foundation of the idea that officials are entrusted with pursuing the aims of the democratic society is that they are capable of undermining the pursuit of those aims.

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To the extent that capitalists are capable of undermining the pursuit of the aims of the democratic society, they too should be thought of as under duties to act in ways that do not hinder the pursuit of the aims. They have a special responsibility, by virtue of the power they hold, not to use it to pursue antidemocratic aims. These are not legal duties but rather moral duties that are owed to the rest of the society.

To be clear, this does not in any way suggest that capitalists have duties not to criticize government activities when they see fit. They always retain the right of dissent and the right to try to overturn democratic legislation by means of persuading a substantial proportion of the population of its problematic character. The thought is that once the aims have been chosen and the legislation is properly designed in pursuit of those aims, those who can interfere with the pursuit of the aims, by affecting the conditions of feasibility, have duties not to interfere, as long as they have reasonable alternatives to interference (which I will try to define in more detail in the last sections of this essay).

## V. Property and Political Equality

A main implication of the foregoing argument is that when the democratic assembly has chosen a policy with a certain aim in mind, each person has duties within the society to carry out the policy and to cooperate in the pursuit of the aim to the best of his or her ability. Citizens do this mostly by obeying the law; officials fulfill their duties by deciding on policies that, in their expert opinion, best realize the aims in the circumstances; and individuals act in ways that do not defeat the pursuit of the aims. As long as people act in these ways, subject to the qualifications I discuss in Section VI, the norm of political equality is not violated.

One implication of thinking of the matter in this way is that the norm of political equality is not best conceived of as a principle of equal power. For it is clear that political officials have more power than others to undermine the pursuit of the aims of a democratic assembly. And capitalists, at least in some circumstances, have more power than others to undermine the achievement of democratic aims. These facts do not, by themselves, undermine political equality. If each of these persons conforms with the various duties of cooperation with the democratic assembly, then it seems that the ideal of political equality is satisfied—even if, were these people to act unscrupulously, they could act in violation of the norm of political equality.

Consider, again, our intuitive example from Section IV above. Suppose that the group of friends has decided to go to a certain destination, which requires going by car. And suppose that only one of the friends knows how to drive a car. That person has more power over the group with regard to going to that destination, but that need not imply any violation of the equality of all the members in deciding where to go, unless that

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person uses his special ability to undermine the group's trip or to extract special benefits from the group in return for driving. The inequality of power does not imply inequality in the decision-making as long as individuals forbear from using their greater power to set back democratically chosen aims.[11]

I want to propose, then, that the principle of political equality implies that there is a fundamental duty on the part of capitalists not to act in ways that set back the achievement of democratic aims, subject to the qualifications I discuss below. Thus, the right of private property in a democratic society is limited by the requirement to cooperate with the democratic assembly, just as officials have duties to cooperate in the pursuit of the aims chosen by the democratic assembly.

Perhaps there is a sense in which, as Charles Lindblom argues, capitalists are holders of a kind of authority in a democratic political society. This authority is like that of officials in government and, to that extent, is subject to similar norms. Just as officials in government have a kind of instrumental authority that is charged with the task of realizing democratic aims, so the limited authority of capitalists is also charged with helping achieve democratic aims. Of course, this is not all that capitalists are supposed to do, and thus their authority is not *merely* an instrumental authority for the achievement of democratic aims, but it is that at least in part.

G. A. Cohen has argued that, in an egalitarian society, citizens have duties that go beyond the duties to maintain and support just institutions. They also have egalitarian duties that they must observe in their personal behavior. This egalitarian ethos is something like what I recommend for private capitalist firms in a democratic society. They have informal moral duties, grounded in the idea that social justice requires democratic decision-making, to avoid interfering with the aims of a democratic society, and sometimes they have positive duties to assist in pursuing the aims of a democratic society.[12] These duties are limited in ways that I will outline in what follows, but they are quite real.

One might wonder why these duties are necessary. Why not just make laws requiring capitalist firms not to lay off workers or not to disinvest when pollution regulations are imposed? I think the answer is that the law cannot be formulated clearly to handle all the situations that might interfere with the pursuit of democratic aims. This will become clearer when we discuss the various kinds of exceptions and complications to the duties I have characterized. First, legislators do not always anticipate the

[11] This gives us another reason to call into question Barry's account of the relation between capitalism and democracy. It is not the mere fact that capitalists have greater power than others that abridges democratic norms; it is their willingness to exercise that power that can sometimes undermine equality.

[12] See G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), for an account of the egalitarian ethos.

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ways in which the aims of legislation can be undermined by the behavior of members of society. Second, the exception clauses I will outline in Section VI are often too difficult to detail in pieces of legislation. We must rely on the judgments of owners of capital to determine when it is too burdensome for them to comply with the regulations or requirements while assisting in the pursuit of the democratically chosen aims. Third, the experience of the benefits of markets in generating economic growth must lead us not to interfere legally with those markets in too fine-grained a way. It seems to me that there will be many contexts in which it is preferable to leave the judgment as to how to satisfy the requirements of political equality to citizens.

One question that might arise in this context is whether all citizens may have similar opportunities to undermine the democratic decision-making process, and whether they may all have the same kinds of duties. In principle this is possible, but given the much greater power of private capitalist firms to influence the conditions of feasibility (as compared to the power held by ordinary individuals), it is reasonable to focus on the activities of capitalists. It is also reasonable, as we will see, to focus on private capitalist firms rather than individuals in their ordinary activities, because the kinds of facts that defeat responsibility for undermining the pursuit of democratically chosen aims are much more prominent in the case of ordinary individual action than in the case of private capitalist firms. We will look at some of these factors next.

## VI. Complicating Factors

There are some obvious complicating factors that can defeat charges that private capitalist firms undermine democratic aims in particular instances. I call them complicating factors because in some cases they seem to be objections to the reasoning I have outlined above, but in most cases they may merely involve an element of mitigation of the judgment I reached above. As general objections to my reasoning, I think they fail, but they do point to a number of important mitigating factors in particular circumstances.

We may class the mitigating factors as the problems of (i) inevitability, (ii) small and uncertain effects, (iii) undue burden, and (iv) democratic creation of the market.

### *A. Inevitability*

One objection to the reasoning outlined above, which is expressed in common ways of thinking about these issues, is that businesspeople will do what maximizes profit for their firms, and that is all there is to it. We must assume that this is how they are motivated, as if it were a natural

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fact about persons. The actions of laying off workers in order to maximize profit or moving to a less demanding regulatory environment are something like necessary consequences of the proposed policies. Hence, the capitalist cannot be criticized for these actions any more than the weather can be criticized when it rains on a baseball game.

Though this deterministic rhetoric is often deployed in this context, it cannot be taken seriously, and probably more often than not is a stand-in for other considerations such as those I discuss below. The reason why we need not take this rhetoric seriously is that no one offers this as a reason not to criticize violations of law or more obvious violations of moral norms. We expect participants in society to obey legal norms even when these are burdensome, and we expect them to act morally as well. The question is whether the moral norms exist, not whether they may be burdensome.

A further argument that I want to make here is that a society made up of unrestrictedly self-interested persons is not likely to be highly stable. Any conception of a just legal system or political order will require that the members be morally motivated in order for it to be stable.[13] As a consequence, no conception of a reasonably just scheme can be expected to work for a rigorously self-interested group of persons, and thus we need not suppose that persons are strictly motivated by self-interest when we are evaluating political arrangements. We can and should assume some significant degree of moral motivation on the part of persons in reasonably just societies. Moreover, there is substantial empirical evidence that people are motivated to act morally in politically sensitive contexts.[14]

### *B. Small and uncertain effects*

Another possible objection is that the actions of the individual capitalist may not have any visible impact on the pursuit of the democratically chosen aim. The case of minimum wage laws may have this character, at least if we accept the thesis that they tend to increase unemployment. An employer might think that the increase in the minimum wage requires her to delay hiring a new worker for another year. Given everything else that is going on in the economy, the employer need not think that her individual action will significantly add to unemployment. Or the employer may delay an increase in wages to other workers for a short time. The effects of these actions, taken individually, on the overall welfare of workers must be negligible when considered in isolation. Moreover, no employer

[13] See Christiano, *The Rule of the Many*, chap. 4, for this argument. See also Thomas Christiano, "Is Normative Rational Choice Theory Self-Defeating?" *Ethics* 115, no. 1 (October 2004): 122–41.

[14] See the evidence marshalled in the papers in *Beyond Self-Interest*, ed. Jane J. Mansbridge (Chicago: University of Chicago Press, 1990).

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in this context can issue a meaningful threat to government policymakers. The individual effects are simply too small to deter government officials from making policies.

There will be circumstances in which the foregoing reasoning will provide a good justification for the employer's action. In particular, in those circumstances in which virtually everyone is acting in this same way, it is hard to see why someone should think that her action of reducing work hours or delaying employment decisions would make a significant difference to the pursuit of the aim of increasing the welfare of the worst-off workers. The aim is set back by the cumulative effects of the actions of many employers. It would be unreasonable to expect any particular employer to buck the tide and take a hit to her profitability when the gains of doing so are so small.

Nonetheless, in those circumstances in which most employers are willing to take a modest decrease in profitability, the foregoing justification may not be acceptable. For the particular employer who is not willing to do this seems to be making a special exception of herself in the cooperative activity of pursuing the aim of increasing the welfare of the worst-off workers. While others undertake some burden for the purpose of pursuing the democratically chosen aim, she exempts herself.

In this respect, we see some similarity to an assurance game. Each participant ought to be willing to go along as long as enough others do, but they are not required to go along if too many others are not going along. In the case of markets, there may not be enough coordination to assure that enough others are going along. Still, it is possible for businesses to act in concert in many circumstances of this sort, and it will be the duty of employers in this situation to attempt to coordinate on a strategy that increases the likelihood that the democratic aims will be achieved.

This circumstance does not seem all that different from the case of violation of democratically made law. No individual will undermine democratically made law if he violates it, but each does take unfair advantage of the compliance of others in violating the law and thus in some way acts contrary to the principle of equality that underpins democracy. And, of course, if everyone is violating the law then one person is not taking advantage of the compliance of others when violating the law.

One difference between the law-violation case and the employment case is that in the former the requirement is at least normally fairly clear, while in the latter the requirement may be quite uncertain. How much of a hit to profitability must the employer be willing to take, if any? To what extent can the costs of compliance just be passed on to consumers? These kinds of uncertainties will likely cause each conscientious person to wonder if others are actually complying or not, and thus may make them uncertain as to whether they ought to comply.

Another kind of case altogether would be the case of very large owners of capital, whose impact on employment may be significant. Consider a

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very large firm in a small town, which opposes some local legislation on working conditions or environmental regulation and says that it will pull out if the town passes the legislation. This threatens the town with impoverishment, let us suppose. The concern with small and uncertain effects does not seem to hold here; the potential effects are neither small nor uncertain.

In some important class of cases, the concern with small and uncertain effects does not defeat the thesis that the capitalist who acts so as to defeat the point of democratic legislation may be violating the principle of political equality. In some cases, large capitalist firms do not produce merely small and uncertain effects, and in some cases, small firms can act in concert to advance or set back the democratically chosen aim.

### *C. Undue burdens*

Another class of concerns arises when we consider the possibility that the democratically made legislation, coupled with the demand that the capitalists act so as not to undermine the point of the legislation, may impose an undue burden on the capitalists. There are a number of possible types of undue burden here. First, there are some burdens that no democratic assembly has a right to impose. These are usually marked out by fundamental constitutional rights in liberal democracies. Except perhaps under extraordinary circumstances, democratic assemblies may not abridge fundamental rights of life, expression, association, or privacy. And certainly some aspects of a right to private property are similarly fundamental. Second, sometimes the imposition of minimum wage laws, coupled with the demand that small businesses absorb at least a significant amount of the cost, may make these businesses insolvent—and this may make the imposition and demand an undue burden. Third, even if the burdens do not have the sort of weight that the examples discussed above have, there may be some concern with the unfair distribution of those burdens. Consider that in the case of minimum wage laws, the laws attempt to increase the benefits of one select group, the worst-off workers. But they also, in effect, impose the cost of doing this on a small group, and it may be that at least many in that small group experience that cost as fairly weighty. So small businesses, which often live at the margins in any case, are required to pay the full cost of the society-wide concern to make the worst-off workers better off. To be sure, sometimes these costs can be spread more evenly throughout the society by increases in the prices of consumer goods, but this is not always possible for small businesses. One way to redistribute costs would be to lessen paid work hours or lessen pay at higher scales. This would not be particularly fair either, of course, since those who are less able to shoulder the burden would now be shouldering it. Notice that the imposition of the minimum wage is not itself an imposition of unfair burdens. It is only when it is coupled with

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the demand that business owners absorb most of the cost that we begin to see a case for the thesis that unfair burdens are being imposed. The trouble is that, by hypothesis, the minimum wage requirement without the demand that business owners absorb the cost may be self-defeating.

On the first kind of undue burden, the idea is that the authority of a democratic legislature runs out when it attempts to act in violation of one of the basic limits on democratic authority.[15] Serious abridgments of the freedom of expression or the freedom of association qualify as actions that are beyond the authority of democracy. And it seems to me that abridgments of basic rights of personal private property are beyond that authority. It is not clear to me, however, that the right to own capital qualifies as a fundamental right. It does not seem to be as central to the fundamental interests of the great majority of persons as the freedom of association or the freedom associated with personal private property. It is the centrality of these rights to the promotion of the fundamental interests of persons that qualifies them as grounds of fundamental rights that not even a democratic assembly may abridge. By contrast, the rights over capital, since they do not have this centrality to fundamental interests, are not basic limits to democratic authority. Hence, I do not think that requiring capitalists to cooperate with the pursuit of democratically chosen aims is an undue burden imposed on capitalists, at least in this respect.

Just to be clear, I do not make this argument because I think that having a duty to act in a certain way is inconsistent with the right to do otherwise. Without question, we have duties to use our fundamental rights of freedom of association to promote a just and reasonable society. My argument here is that there are some things a democratic assembly may not demand; such demands overstep the bounds of democratic authority. Thus, the democratic assembly may not impose duties on persons or groups of persons to do things or not to do things that fall within the scope of their fundamental rights.

On the second kind of concern, though the imposition of a minimum wage may be legitimate, it seems clear that no business is required to drive itself into insolvency in order to meet the informal demand. In any case, such a consequence would defeat the purpose of the legislation. And this consequence cannot be thought of as the intentional action of a person substituting his own aims for that of a democratic assembly. So it does seem that if a business lays off workers in response to a minimum wage law in order to remain solvent, this cannot be seen as a violation of the norm of political equality or a violation of the duty of cooperation with the democratic assembly. It may be the case that in perfectly competitive markets, businesses have little leeway to cooperate with the democratically chosen aims since earnings cover the costs of business and no more.

[15] See Christiano, *The Constitution of Equality*, chaps. 6 and 7, for a discussion of the nature and ground of democratic authority and its limits.

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But markets as we know them are generally not perfectly competitive, and many markets give a fair amount of leeway to capitalists to cooperate with democratic government.[16]

The third kind of undue burden is trickier to deal with. Part of the problem is that it is part of the task of a democratic assembly to decide the case when there is disagreement about the fairness of a particular piece of legislation. This is one of the main functions of democracy, to make decisions in a way that treats all citizens as equals when there is substantial disagreement on the substance of the decision, even on its justice. This is how democracy has authority in many cases; even if the decision is wrong in a particular case, citizens have duties to go along with it, except when the decision violates fundamental rights. Hence, one might conclude in this context that the distribution of costs is part of the choice of the democratic assembly. In its judgment, it is a fair distribution. Even when this argument works, however, it is not clear how it is to apply to the kinds of informal demands imposed on capitalists in the cases of regulation of capital. First, it is not clear how much of a burden is too much. For a burden to be considered excessive, is it necessary that the burden push the person out of business? Or is some lesser standard available? And if so, this must give a fair amount of discretion to the employer in deciding whether and when the standard is met. We can see, though, that this discretion introduces a considerable amount of haziness into our assessments of these situations. Not only is it unclear to any particular person exactly when it is legitimate not to cooperate in pursuing the democratic aim, it is also unclear to each when others are cooperating or not cooperating legitimately.

Still, it seems to me that there will be a large set of cases in modern economies in which the reasons for cooperation with the pursuit of the democratically chosen aim are decisive.

Notice that these qualifications on the idea that private firms have duties not to interfere with the pursuit of democratic aims will apply to a much greater extent to individuals acting in their ordinary capacities as citizens. It is no doubt true that the behavior of citizens in their ordinary capacities can have an effect in the aggregate on the pursuit of democratic aims. But organizing the behavior of citizens is usually much more difficult than organizing the behavior of private firms. And the actions of ordinary citizens are often within the scope protected by basic liberal rights.

### *D. The democratic creation of the market*

One last mitigating factor is that the market in a liberal democratic society can be thought of as the creation (or at least the adopted child) of

[16] See Donald Wittman, *The Myth of Democratic Failure: Why Political Institutions Are Efficient* (Chicago: University of Chicago Press, 1995), 176, for an argument that seems to me to presuppose perfectly competitive markets as a reason for thinking that capitalists have no option but to seek the profit-maximizing course of action.

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a democratic assembly. To the extent that the democratic assembly makes legislation that protects, promotes, regulates, and limits markets, it can be said to be affirming the existence of markets as part of the legal order. And to the extent that the market is democratically affirmed, we might think that the decisions of persons within the market are to be affirmed as well. This might be thought to suggest that businesses may act as they see fit for their business in the context of the market. Thus, it might be thought that there is a kind of permission extended to businesses to do whatever they see fit to maximize the profits of the firm.

We must proceed carefully here, however. The legal adoption of the market does not directly imply that persons may do whatever they see fit in the marketplace to maximize profits. Obviously, people are expected to act within the limits of the law. And it is surely part of the idea of the normal functioning of markets that persons in the market act in the interests of their firms within the limits of the law and basic norms of morality. Part of what makes markets work, when they work, is that each participant seeks to advance his or her interests in this context.

There are some difficulties with this objection. First, repeating the criticism of the inevitability objection discussed above, it does not follow from the adoption of the market that unrestrictedly self-interested action is thereby endorsed. Self-interested action is not the inevitable result of the market. So there is no reason to think that the democratic endorsement of the market implies an endorsement of uncooperative behavior on the part of capitalists, at least once we accept the limits on the duty to cooperate that we have outlined above.[17] Second, no democratic society gives unrestricted scope to market activities. Markets have been limited in every liberal democratic society (especially for the last sixty to seventy years), and they are limited purportedly for the sake of the common good. I am thinking here of the regulations imposed by the New Deal in the United States during the 1930s and the regulations imposed by social democratic states in Europe and Japan since the late 1940s and 50s. These limits have survived repeated minority efforts to overturn them, so they have quite strong democratic credentials. Third, it may be that the relatively wide scope given to market activity in modern liberal democratic societies is itself a product of anticipated uncooperative activity on the part of capitalists, so that it does not actually express a fully democratic decision. This worry need not imply that collective ownership would be the choice of a democratic people, but it does make one wonder whether the extent of market activity in modern societies is actually the choice of a democratic assembly. But this is merely a worry. Clearly, other factors may be playing roles here, such as beliefs about the efficacy of markets in

[17] See Keith Dowding, *Power* (Minneapolis: University of Minnesota Press, 1996), 72–76, for a nuanced treatment of the power and luck of capitalists in a mixed economy.

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many circumstances as well as beliefs about the importance of private property in sustaining a vibrant liberal democratic society.[18]

It seems to me that these are reasons for thinking that the democratic adoption of the market is not an endorsement of unrestricted self-interest in the market. To the extent that we think that a wide scope for market activity is genuinely democratically accepted, we may think that some of the constraints established by the market on cooperation by capitalists are legitimate. But there is also plenty of scope for a duty of cooperation with democratically chosen aims.

Does the fact that the government has passed no law forbidding disinvestment or laying off workers as responses to regulation imply that these activities are permissible? After all, the primary means by which a democratic assembly's aims are implemented is through law. So why doesn't the silence of the law imply consent to these actions? Two reasons favor rejecting this response. One is that the idea that drives Thomas Hobbes to assert the thesis that the silence of the law implies consent is one that we must not accept. Hobbes is driven to this by his view that agents are deeply self-interested and cannot be expected to comply with duties unless they are enforced. Nonetheless, I do not think we should accept this premise; I believe it is incompatible with the stability of a legal system, Hobbes's arguments notwithstanding. The second reason is that in the light of the pervasive impact which owners of capital have on the pursuit of aims in a democratic society, it cannot be assumed that a democratic legislature or the government that acts as its agent is always capable of determining all that needs to be done in pursuit of the aims. This is especially so in the light of the complexity of the considerations we have laid out for determining what capitalists are required to do in response to democratically chosen legislation. Thus, in a society in which a significant scope is given over to market activities (and the owners of capital who engage in these activities), it is reasonable to assume that there will be many cases in which there are informal duties to cooperate with a democratic government that are not specified in law.

## VII. Conclusion

I have argued that the free exercise of property rights by capitalists is sometimes incompatible with the principle of political equality. Owners of capital have informal duties to cooperate with the democratic assembly and the government that acts as its agent in pursuing democratically

[18] See Adam Przeworski, *Capitalism and Social Democracy* (Cambridge: Cambridge University Press, 1986), for a discussion of the influence of capitalists on the structure of modern liberal democratic states. See also Przeworski and Wallerstein, "Structural Dependence of the State on Capital," for a critique of the thesis that capitalists determine choices of government policy. See also Adam Przeworski, *The State and the Economy under Capitalism* (Chur, Switzerland: Harwood Academic Publishers, 1990), 92–96.

chosen aims. The suspicion that capitalists do sometimes act in ways that are contrary to democratic norms has been vindicated, though I have argued that a number of important qualifications must attend this judgment. The argument of this essay is quite open-ended and is meant as a call for further reflection on the relationship between the ownership of capital and the norms underpinning democracy.

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