Radical Securities Law

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Book Review: Paddy Ireland,
PROPERTY AND CONTEMPORARY CAPITALISM (2024)

Introduction

Recent empirical work underscores how dramatically wealth has concentrated in contemporary capitalism.[2] For the wealthiest households, accumulation "has far outpaced that of all other U.S. wealth groups" in recent years[3]—an outcome not merely of market dynamics but of legal design. One way to understand this trend is as a shift in the function of property itself: no longer grounded in tangible things or productive labor, property now increasingly operates as a legal mechanism for extracting value from the economic and affective labor of others.

In legal scholarship, the concentration of wealth is often defended on grounds of allocative efficiency. Drawing from law-and-economics theories, the dominant view holds that capital formation and liberalized markets enhance productivity and growth—even if the benefits are unequally distributed. In this framework, the law's role is to facilitate private investment by protecting property rights and minimizing interference with capital flows.[4]

Paddy Ireland's new book, PROPERTY IN CONTEMPORARY CAPITALISM, challenges this narrative.[5] A critical corporate law scholar based at the University of Bristol (UK), Ireland argues that property law does not merely protect ownership; it actively constructs it. He contends that modern property

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2. *See* Thomas Piketty, Emmanuel Saez & Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States**, 133 THE QUARTERLY JOURNAL OF ECONOMICS 553 (2018), https://doi.org/10.1093/qje/qjx043 (last visited Sep 15, 2021); *see also* Edward J. McCaffery, *Piketty Revisited: The Meaning of Capital in the Twenty-First Century*, 2021 MICH. ST. L. REV. 31 (2021).

3. *See* Juliet Chung, *$1 Trillion of Wealth Was Created for the 19 Richest U.S. Households Last Year*, WALL ST. J., Apr. 23, 2025, https://www.wsj.com/economy/1-trillion-richest-families-wealth-increase-bc13874a (last visited Apr 23, 2025) (noting that the top tenth of a percent of households, or "roughly 133,000 households each worth at least $46.3 million," had "accumulated an average $3.4 million a year since the third quarter of 1990").

4. *See infra n*ote 18 and accompanying text.

5. *See* PADDY IRELAND, PROPERTY IN CONTEMPORARY CAPITALISM (2024). In-line parenthetical citations are to the book.

rights—especially those linked to capital assets like shares of stock, debt instruments, and intellectual property—are not static entitlements but legal claims on future income produced by others. These claims, organized and enforced through corporate and financial institutions, are abstract and intangible, but no less powerful for it. By foregrounding the legal construction of these entitlements, Ireland reframes property not as dominion over things, but as a contested terrain of social relations and political power (157). To Ireland, property rights define the rules of the capitalist game. By rewriting those rules, law can influence the game itself.

At the heart of Ireland's argument is a shift in perspective from thinking of property as exclusionary control over objects, to seeing it as a bundle of enforceable rights that shape who gets what, and why. The "bundle of rights" or "social-relational" principles he espouses are not novel to property law theory, yet his work develops these principles to expose how law facilitates rent extraction by transforming future income streams into proprietary claims. What's more, these rights are sustained through legal infrastructure—from corporate governance rules to securities regulation to administrative policymaking. As a result of this transformation, property has become the central vehicle for wealth accumulation and class stratification in our current political economy. In the ongoing debate over how to regulate global capital flows,[6] Ireland's argument brings much-needed clarity to why capital owners fight so fiercely to maintain legal structures that guarantee them privileged access to future income.

Although the book is conceptually ambitious and interdisciplinary, it occasionally moves more like a set of linked essays than a unified theoretical narrative. That does not detract from its significance, but it suggests the need for further scholarly work to systematize and extend Ireland's claims. Indeed, Ireland's argument resonates with urgent social and economic challenges: the erosion of democratic institutions, deepening inequality, and the expansion of private control over public goods.[7] His framework provides a critical lens for understanding how legal regimes enable these trends—and a foundation for thinking about how they might be undone.

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[6]. *See*, *e.g.*, Claire Hill, *The Rhetoric and Reality of Shareholder Profit Maximization*, 99 CHI.-KENT L. REV. 39 (2024); William J. Moon, *Beyond Profit Motives*, 122 MICH. L. REV. 1059 (2024); TOM C.W. LIN, THE CAPITALIST AND THE ACTIVIST: CORPORATE SOCIAL ACTIVISM AND THE NEW BUSINESS OF CHANGE (2023); Stavros Gadinis & Amelia Miazad, *A Test of Stakeholder Capitalism*, 47 J. CORP. L. 47 (2021); Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have A Purpose?*, 99 TEX. L. REV. 1309 (2021); Steven L. Schwarcz, *Misalignment: Corporate Risk-Taking and Public Duty*, 92 NOTRE DAME L. REV. 1 (2016); Jill E. Fisch, *Securities Intermediaries and the Separation of Ownership from Control*, 33 SEATTLE U. L. REV. 877 (2010).

[7]. *See* Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

Because the returns to owners of intangible property are contingent upon favorable legal and political conditions, there is incentive to entrench these conditions permanently. This contradiction reveals the stakes of institutional design: when law valorizes abstract capital claims, it forecloses democratic control over how wealth is generated, distributed, and governed.

Building on Ireland's framework, this book review makes two novel contributions. First, it connects Ireland's theory of property-as-capital to the contemporary dismantling of the administrative state. I argue that legal efforts to hollow out regulatory institutions are not incidental to capitalism's current form; they are central to preserving the legal conditions under which returns can be extracted from property-as-capital. The weakening of regulatory constraints enhances the certainty of future revenue streams enabled by externalizing the business's costs onto workers, communities, and the environment. In today's financialized capitalism, the state no longer merely protects existing property rights; it actively constructs new forms of property that are optimized for rent extraction. These are not natural extensions of property; they are political choices, with profound distributional consequences.

Second, the article links Ireland's work to emerging scholarship on movement law and emancipatory legal change. Drawing on this literature, I propose that rethinking property in relational and democratic terms opens new paths for imagining non-reformist reforms in corporate and securities law—reforms that don't just constrain capital but empower communities, workers, and the collective authors of economic value. It enables us to ask not simply whether economic regulation is efficient or market-facilitating, but what kind of economy—and society—those laws are building. To that end, this book review complements Ireland's descriptive power with a theory of change drawing on the work of sociologist Erik Olin Wright and the movement law scholar Amna Akbar. In this spirit, Ireland's work should be celebrated not only for its contribution to critical corporate law but for its invitation to push the Overton window: It dares legal academics to reimagine corporate law not as the handmaiden of shareholder value, but as a terrain of struggle over who gets to claim the future economic surplus—and why.[8]

This book review proceeds in two parts. Part I introduces Ireland's core critique of modern property regimes. It outlines how intangible assets—shares, intellectual property, debt instruments—function as legally enforceable claims on others' productive activity. This part also situates Ireland's argument within ongoing debates in property theory, contrasting his relational and distributive account with formalist and efficiency-driven

[8]. *See infra* note 67. On the mechanisms of the shifting "Overton window," see Kyle Langvardt, *Imagining Change Before and After Citizens United*, 3 ALA. C.R. & C.L.L. REV. 227 (2012).

approaches. Part II extends Ireland's work by asking how law might support more democratic economic arrangements. Drawing on movement law, political economy, and recent empirical studies, this part explores how dismantling regulatory structures has reinforced property-as-capital—and what an alternative, solidarity-based legal regime might look like. The goal is not only to critique the role of property in enabling wealth extraction, but also to imagine a legal future where ownership serves collective life rather than private accumulation.

I. Property-as-Capital in Contemporary Capitalism

Ireland's central critique targets the enduring idea of property as "thing-ownership." He calls this view empirically misleading and conceptually narrow. Property, he argues, must be understood as a socially constructed institution embedded in particular economic relations (2–3). Yet property theory often universalizes specific forms of capitalist ownership, obscuring alternative arrangements and reifying private property in productive resources (3).

The book opens with wealth distribution data, using these fluctuations to expose the constructed nature of "property-as-capital," a property "category that overlaps substantially with . . . property considered to be wealth" (4). Where classical legal thought imagined property as dominion over objects—à la Blackstone's "sole and despotic dominion" (4–5, 15)[9]—Ireland emphasizes the primacy of intangible, revenue-generating forms like corporate stock (or "shares" in British company law), intellectual property, and debt instruments (21–22). These instruments expose the relational nature of ownership: they empower some to profit from the labor of others.

Ireland critiques "new essentialist" theories and some strands of law-and-economics—especially those committed to neoclassical formalisms—for naturalizing the status quo. He argues their formalism and abstraction veil the political and distributive consequences of property rules (106, 128). This framework recycles trickle-down rationales through Kaldor-Hicks efficiency: so long as winners could compensate losers, the outcome is treated as normatively sound—even when they do not.[10] These abstract theories, Ireland contends, obscure how property systems actually operate—especially those based on rentier claims rather than use or stewardship (115–116, 146, 149–50). Drawing on legal history, he shows how English law adapted to accommodate intangibles like negotiable instruments and copyrights, refuting simple notions of physical dominion (21–23). Law likewise transformed contractual

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[9]. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 1 (1765).

[10]. *See*, *e.g.*, Caroline Cecot, *Efficiency and Equity in Regulation*, 76 VANDERBILT LAW REVIEW 361, 367 n.22 (2023) (citing, e.g., Zachary Liscow, *Redistribution for Realists*, 107 IOWA L. REV. 495, 509–10, 529 (2022)).

claims into marketable property, not through economic inevitability but through political and institutional choice.[11]

The upshot is that property rights are not natural but state-constructed: they legally entrench power over both resources and people (48). Drawing on the work of Wesley Hohfeld and the early legal realists,[12] Ireland reframes property not as "thing ownership" but as enforceable claims backed by institutions. He aligns with historical-materialist critiques of capital fetishism, showing how property appears to yield profit autonomously, masking its dependence on subordinated labor and collective infrastructures (73).[13] This perspective challenges the misleading simplicity of classical theories that emphasize abstract property rights without addressing their socio-economic foundations.

Ireland also examines how modern property-as-capital depends on profiting from the "efforts of others." The Supreme Court's 1946 decision in *SEC v. W.J. Howey Co.*[14] introduced a now-canonical, functional test for when an investment falls within the federal securities laws even if not labeled "stock" or "bond."[15] For Ireland, the *Howey* test reveals how financialized property depends on future returns generated by others' labor (68–73).[16] From rents on real estate to dividends or interest, passive investors of a firm earn future returns from the efforts of those who actively participate (74–78). Even in the smallest firms, wealth creation depends on an inherently social dimension of cooperative human endeavors—often on an enterprise's workforce, intellectual input, logistical networks, or infrastructure.[17] The framework is not merely a functional tool for protecting unsophisticated investors

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[11]. *See also*, *e.g.*, Margaret M. Blair, *Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century*, 51 UCLA L. REV. 387 (2003).

[12]. *See*, *e.g.*, Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710 (1917); Wesley N. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE LAW JOURNAL 16 (1913); Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470 (1923); *see also* Paddy Ireland, *Property and Contract in Contemporary Corporate Theory*, 23 LEGAL STUDIES 453, 488 (2003).

[13]. *See*, *e.g.*, Duncan Kennedy, *The Role of Law in Economic Thought: Essays on the Fetishism of Commodities*, 34 AM. U. L. REV. 939 (1985); CÉDRIC DURAND, FICTITIOUS CAPITAL: HOW FINANCE IS APPROPRIATING OUR FUTURE (2017).

[14]. 328 U.S. 293 (1946).

[15]. *Id.* at 298–99 (predicated on whether an arrangement involves "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party").

[16]. *See*, *e.g.*, Margaret M. Blair & Lynn A. Stout, *Team Production in Business Organizations: An Introduction*, 24 J. CORP. L. 743 (1999).

[17]. *See*, *e.g.*, Shlomit Azgad-Tromer, *Corporations and the 99%: Team Production Revisited*, 21 FORDHAM J. CORP. & FIN. L. 163 (2016). Ireland can be justifiably criticized, however, for extending "efforts of others" as metaphor beyond what the underlying doctrinal test would support. *See infra* notes 72–74.

through federal securities law; it also helps legally construct the boundaries of "investment" and "ownership." The *Howey* framework, while ostensibly technocratic, thus shapes which financial claims count as protected property—normalizing capital's entitlement to economic surplus (10, 87–90, 200).

Ireland identifies how this conception undergirds the neoliberal property regime, tracing contemporary political and social problems to the institutional dominance of property-as-capital. He argues that neoliberal legal frameworks disproportionately benefit financial elites, while marginalizing democratic concerns, environmental sustainability, and social welfare (87-92, 201–03). In this context, he says, law and economics approaches help entrench capital's power—particularly those emphasizing shareholder primacy as a neutral or efficient outcome (146-150). Ireland provides concrete examples, notably corporate shares, as illustrating the hybrid legal status of property-as-capital, functioning both as residual proprietary claims and as intangible, market-traded rights separate from the tangible assets of corporations (69, 198). This complexity underscores how contemporary capitalism privileges financial property, reinforcing socio-economic stratification by enabling significant financial gains largely decoupled from direct productive activities (87, 91-92).

To fully engage this ideology, however, Ireland also addresses the functional claims advanced by proponents of shareholder primacy: that it reduces agency costs, ensures accountability, and encourages investment. While these aims are theoretically appealing, Ireland questions whether they are consistently achieved and points to evidence that privileging shareholders often entrenches short-termism and externalizes costs (146–77). Yet a more granular analysis of law and economics would strengthen Ireland's argument. While he rightly critiques its dominant strands for legitimizing market-based distributions and naturalizing property claims—describing it as "little more than the story of [how] obstacles to development of . . . capitalism" (186)—not all law-and-economics scholarship shares this ideological alignment. Behavioral law and economics, for example, highlights systemic biases and bounded rationality; public economics addresses market failure and distributional concerns. These approaches differ from the formalist models that dominate corporate and property law. Ireland's critique is aimed at the particular deployment of economic theory that legitimizes property-as-capital by cloaking it in the rhetoric of neutrality and inevitability: what is presented as economic logic is often a normative defense of concentrated power. By clarifying

that his critique targets specific variants, Ireland could have better avoided flattening the field and bolstered the credibility of his broader claims.[18]

Ireland joins Katharina Pistor and others in showing how law constitutes capital (e.g., 64–66, 102–03, 231–32). Legal "coding" transforms rights into capital-generating assets, constructing the boundaries of ownership and control: whose interests are recognized, what duties exist, and who gets the gains.[19] Shareholder primacy, especially as entrenched in Delaware corporate law, reflects this dynamic. Corporate directors are generally expected to run the corporation in the interests of its shareholders.[20] As corporate law scholar Ann Lipton noted in a recent book review in HARVARD LAW REVIEW, "legal interventions have enabled shareholders—and share prices—to exert far greater control over managerial conduct than they did even thirty years ago."[21] One consequence of the legal principle favoring shareholder welfare, as well as the associated cognitive framing, is to foreground the power of

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[18]. From a law and economics perspective, one might question whether Ireland's focus on "property-as-capital" fully accounts for the efficiency gains that can arise when property rights are clear and enforceable—even if they allow owners to capture returns from the "efforts of others." In mainstream law and economics, the presumption is that strong and alienable property rights minimize transaction costs and encourage investment. Such an approach would see the legal classification of intangible property (*e.g.*, shares, debt, IP) as an evolution that reduces uncertainties in the marketplace—fueling innovation, gains from trade, and social welfare. Law-and-economics-oriented scholars are likely to see Ireland's critique—that these rights confer disproportionate power over others—may be seen as overlooking the broader utility gains.

Another related question is whether Ireland's emphasis on social relational aspects oversimplifies the benefits of capital markets in spreading risk and fostering entrepreneurial ventures. If individuals can buy and sell rights to future revenue streams, the argument goes, society can better allocate capital to productive uses. From this perspective, doesn't Ireland's framework ignore that empowering capital owners is a byproduct of risk-bearing and capital allocation that has at least plausibly prosocial benefits? While the "bundling" and "unbundling" of property rights can concentrate wealth at the top, readers might call for more data on net harm to overall welfare to support, rather than to presume, the claim that intangible property rights are socially destructive.

[19]. *See* KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY (2019). Ireland also critiques Pistor's theory for underemphasizing the underlying class and social dynamics, cautioning against views suggesting that legal coding alone can create wealth independently from productive labor (230–31).

[20]. *See* Ann M. Lipton, *Book Review: Will the Real Shareholder Primacy Please Stand Up?*, 137 HARVARD LAW REVIEW 1584, 1592 (2024) (citing, *e.g.*, Frederick Hsu Living Tr. v. ODN Holding Corp., No. 12108, 2017 WL 1437308, at *20 (Del. Ch. Apr. 14, 2017); In re Trados Inc. S'holder Litig., 73 A.3d 17, 37 (Del. Ch. 2013)). The business judgment rule nonetheless creates a gap between conduct and liability—policing corporate decisions "at the extremes, namely, in situations that present intolerable risks of self-dealing." *Id.* at 1588.

[21]. Lipton, *supra* note 20 at 1592

those who own capital (shares) to dictate the corporation's goals.[22] The corporation holds active property (the business assets) while shareholders hold passive property (shares, which are an "attenuated bundle of rights" detached from direct use of the assets).[23] The law frames shareholders as residual claimants and controllers, even though they relinquish most traditional ownership incidents. Shareholders became "money capitalist rentiers," with abstract, financialized claims to the firm's surplus (69).[24]

For a time in the mid-20th century, the "managerial turn" in American business—combined with dispersed shareholding and strong labor unions—meant passive owners had weaker influence, hinting that production was becoming more "socialized" (145–46). But because law left the core shareholder rights intact and exclusive, dramatic re-concentration of ownership restored their power.[25] Today's reality vindicates Ireland's warning: institutional investors (giant asset managers, index funds, etc.) now dominate corporate ownership.[26] The three largest index fund providers alone—BlackRock, Vanguard, State Street—collectively voted a bit more than 25% of the shares in S&P 500 companies from 2008–17 and are projected to increase this proportion over the next two decades.[27] Ireland calls this a "new aristocracy of finance" wherein a small group of asset managers wields outsize control with minimal accountability.[28]

If index funds epitomize passive rentiers, private equity (PE) firms represent active capital-as-property. PE funds acquire companies using debt-

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[22]. *See* David Million, *Radical Shareholder Primacy*, 10 U. ST. THOMAS L.J. 1013 (2012).

[23]. Ireland calls this the "myth of shareholder ownership," a myth that nevertheless guides real decisions. Paddy Ireland, *Company Law and the Myth of Shareholder Ownership*, 62 MODERN L. REV. 32 (1999). It allows a narrow slice of economic contributors (shareholders and top managers aligned with them) to claim the value created by organizations that are, in reality, collective enterprises consisting of many contributors.

[24]. *See also* KARL MARX, CAPITAL VOL. 3 436 (1977).

[25]. *See* Shlomit Azgad-Tromer, *The Case for Consumer-Oriented Corporate Governance, Accountability and Disclosure*, 17 U. PA. J. BUS. L. 227, 279–80 (2014).

[26]. *See*, *e.g.*, Jan Fichtner, Eelke M. Heemskerk & Javier Garcia-Bernardo, *Hidden Power of the Big Three? Passive Index Funds, Re-Concentration of Corporate Ownership, and New Financial Risk*, 19 BUS. & POL. 298 (2017).

[27]. *See* Lucian Bebchuk & Scott Hirst, *Big Three Power and Why It Matters*, 102 B.U. L. REV. 1547, 1560 (2022) (recounting "voting power" figures for 2008–17 of roughly 27%, and estimating that "the Big Three will hold . . . 40.8% of S&P 500 votes in 2038").

[28]. *See* Paddy Ireland, *The Corporation and the New Aristocracy of Finance*, *in* MULTINATIONALS AND THE CONSTITUTIONALIZATION OF THE WORLD POWER SYSTEM (Jean-Philippe Robe, Antoine Lyon-Caen, & Stéphane Vernac eds., 2016); *cf.* William W. Bratton & Michael L. Wachter, *Shareholders and Social Welfare*, 36 SEATTLE U. L. REV. 489, 491 (2012) ("Given the shareholders' elite societal position, framing corporate politics as a democratic uprising against oligarchic hierarchs is quite simply inaccurate.").

financed capital structures and treat them as disposable assets. Resources such as workforce, real estate, and revenue streams are controlled as property, despite little productive involvement by the fund itself. The fund enjoys ownership rights in one of their portfolio companies without having built it, gaining control by purchase, financed largely by debt they typically need not personally repay thanks to shareholder limited liability. This legal structure permits PE to extract maximum value at others' expense.[29] Studies show PE-driven firms often face greater financial distress, with costs borne by workers and communities; the model's imperative for high short-term returns accelerates labor precarity, degrades service quality, and undermines firm longevity.[30] The relentless drive to grow returns to capital finds legal support in corporate and securities frameworks that treat capital's purchasing power as inherently deserving of full ownership rights.[31]

Under current law, PE's strategies are largely permissible, even encouraged. Delaware corporate law and the broader M&A legal framework treat a buyout as just another transaction between consenting parties. Most public companies are incorporated in Delaware, which reinforces this principle through doctrines like the *Revlon* duty in change-of-control scenarios.[32] Even for non-public companies, boards have strong incentives (and maybe duties) to accept a high-priced takeover offer, regardless of long-term consequences, because their primary legal obligation is to maximize shareholder value in that moment.[33] Securities law, meanwhile, itself imposes very few substantive checks on acquisitions; it mainly requires disclosure to the selling shareholders. Thus, the legal structure facilitates the PE model: it upholds the notion that if you can pay the price to buy the company (or borrow the money to do so), you essentially deserve the full bundle of ownership rights—including the power to reshape or break the firm as you see fit, and walk away from a

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[29]. *See* William Magnuson, *The Public Cost of Private Equity*, 102 MINN. L. REV. 1847, 1850–51 (2018).

[30]. For example, PE owners frequently saddle acquired firms with massive debt (through leveraged buyouts and dividend recapitalizations), then use the borrowed money to pay themselves dividends or fees. These tactics drain the firm's coffers, forcing cost-cutting, layoffs, outsourcing, and wage suppression to keep the company afloat under its new debt load. *Id.* at 1859–60.

[31]. *See* Shi-Ling Hsu, *The Rise and Rise of the One Percent: Considering Legal Causes of Wealth Inequality*, 64 EMORY L.J. ONLINE 2043 (2015).

[32]. *See* Revlon v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986); *see also* Association of Corporate Counsel, *Delaware Seeks to Avoid a "Dexit" of Corporations*, 3/31/2025 ACC DOCKET (WL) 1 (2025).

[33]. *See* Lipton, *supra* note 20 at 1597 (noting "in most scenarios … the real drivers of corporate decisionmaking are found not in a courtroom, but in the balance of power between shareholders and managers").

bankruptcy with limited liability. This reflects Ireland's critique that law valorizes capital's claims above all else.[34]

These dynamics reveal how the legal architecture reshapes corporations from productive institutions into platforms for financial extraction. Shareholder-centric governance—often justified through agency theory or efficiency claims—produces externalities including inequality, precarity, and ecological harm (157–159). These costs are not accidents, but design features of neoliberal legal regimes. Law's compartmentalization of economic, legal, and political spheres masks how property entitlements are constructed, allocated, and enforced (190–91, 218–19).[35]

Securities law, in particular, exemplifies this transformation. Although framed as a protective regime for investors, it also normalizes asset-holding as the dominant economic role. It offers consumer-protection for capital, reinforcing property-as-capital as the organizing logic. Ireland asks whether this form of ownership should dominate economic coordination and social provisioning at all. His normative vision surpasses mainstream corporate theories that treat shareholder primacy as either neutral or optimal. By revealing the moral and political stakes of financialized ownership, Ireland raises the deeper question: what institutional designs can democratize economic power?[36] This is where Ireland's analysis moves beyond critique and starts to gesture toward prescriptions—albeit ones requiring a significant shift in both legal structure and public consciousness, a topic we return to in Part II.

He answers this partly by emphasizing the administrative state's role. Neoliberalism has weakened regulatory institutions under the guise of efficiency, stripping away protections for labor, health, and the environment. Ireland makes clear that intangible property depends on legal infrastructure: it must be transferable, enforceable, and recognized as property. In hollowing out the administrative state, capital undermines the very scaffolding on which its rights depend. The contradiction is clear: abstract capital thrives on legal certainty while resisting the regulation that gives it form. Yet these protections also extend beyond preventing physical expropriation to maintaining social practices and relationships conducive to future revenue streams, exemplifying neoliberalism's prioritization of capital interests over broader societal concerns (199-203). Because the value of securities are exposed to "changes in government policy that impact the income streams accru[able] into" capital wealth—in other words, on expectations of future productivity

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[34]. *See also* Jessica A. Shoemaker & James Fallows Tierney, *Trading Acres*, YALE LAW JOURNAL (2025).

[35]. *See*, *e.g.*, Britton-Purdy et al., *supra* note 7.

[36]. *See* Richard Mitchell, Anthony O'Donnell & Ian Ramsay, *Shareholder Value and Employee Interests: Intersections Between Corporate Governance and Labor Law*, 23 WISCONSIN INTERNATIONAL LAW JOURNAL 417, 434–35 (2005) (discussing Australian example).

and policy decisions—controlling or constraining political and social change becomes central for preserving those revenue streams (202–03).[37] If the protection of property-as-capital relies on capacity to extract returns from the "efforts of others" (through intangible claims), then steering regulatory constraints helps secure and expand those returns.

Despite the ambitious scope of Ireland's work, he could have made a more significant contribution by further theorizing the political-economy implications of his framework. Today the state no longer merely protects existing property rights; it actively constructs new forms of property that are optimized for rent extraction. Consider the proliferation of income-generating rights—*e.g.*, in toll roads, student debt, or carbon credits—backed by state coercion but owned by private entities.[38] The same trend can be seen in efforts to shape a captured federal government to eliminate forms of regulation that prohibit or inhibit the collection of nonsalient rents.[39] These developments demonstrate that law is not neutral: it can institutionalize either exploitation or solidarity.

To resolve this, Ireland's framework offers a lens for understanding efforts at dismantling the administrative state.[40] Regulations that internalize costs, from labor protections to environmental rules, are stripped away in the name of efficiency. Yet intangible property depends on the very legal scaffolding that such deregulatory moves undermine—such as ensuring property

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[37]. As Ireland explains, "protecting financial property entails taking steps to ensure not only that expectations about future revenue streams are not manipulated, but social relations and practices conducive to the generation of those income streams are maintained" (202).

[38]. *See*, *e.g.*, BRETT CHRISTOPHERS, OUR LIVES IN THEIR PORTFOLIOS: WHY ASSET MANAGERS OWN THE WORLD (2023).

[39]. Consider two illustrative examples. First, making it easy to subscribe to digital subscriptions, but hard to unsubscribe (without calling customer support or other burdensome steps), is a prime business model of extracting shrouded or non-salient rents in the digital attention economy. The Federal Trade Commission proposed regulations under the Biden Administration, *see* Final Rule, Negative Option Rule, 84 Fed. Reg. 90476 (Nov. 15, 2024), and those regulations are now under challenge before the Eighth Circuit by trade associations claiming the FTC lacked authority to regulate the collection of these nonsalient rents. *See*, *e.g.*, Shweta Watwe, *Attack on Click-to-Cancel Rule Is 'Empty Rhetoric, FTC Says*, BLOOMBERG LAW NEWS, Mar. 18, 2025. Second, my own work on gamification and mobile-app-mediated retail-investor stock trading involves a business model of commission-free trading where order flow is sold to those who want to take the other side of the deal. *See*, *e.g.*, James Fallows Tierney, *Investment Games*, 72 DUKE L.J. 353 (2022). Some of these are behaviorally driven, but then law protects business models that take advantage of these kinds of behaviors, so across many different kinds of domains, we see efforts to shape legal rules in ways that enable the extraction of economic surplus.

[40]. *See*, *e.g.*, Gillian E. Metzger, *Foreword—1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1 (2017); Jack M. Beerman, *The Never-Ending Assault on the Administrative State*, 93 NOTRE DAME L. REV. 1599 (2018); *see also*, *e.g.*, James Fallows Tierney, *Jarkesy's Stakes for the SEC*, DUKE L.J. (2025).

rights' transferability, enforceability, and status as property in the first place.[41] When the administrative state is undermined, the cost-internalizing features of health, safety, labor, and environmental regulations tend to weaken or disappear.[42] Ireland gestures toward a vision where administration constitutes alternative ownership forms and enables democratic economic coordination (253–56). A social-relational property regime would require an administrative framework that empowers labor, sustains community interests, and integrates ecological values into economic governance. Regulation, in this view, is not merely a constraint but an institutional condition for solidarity-based forms of property.

Ireland concludes by endorsing institutional redesign: redefining shareholders as creditors, reconceptualizing corporations as public institutions, and developing participatory organizational models (*e.g.*, 253, 256–59). While the book stops short of fully theorizing these alternatives, it insists that legal imagination must accompany critique. Worker cooperatives, community trusts, or public asset banks illustrate the plausibility of noncapitalist property forms. For Ireland, reform means reconstituting law's role in structuring property, not just restraining its excesses. This transformation would democratize control over the economy, challenging the structures that currently concentrate wealth.

II. From Radical Critique to Radical Reform in Corporate Law

Ireland's perspective reminds us that unless we reimagine how property is defined and enforced, we will remain hostage to a model that not only preserves, but continually expands, the privileges of and financial returns to capital ownership. As Ireland shows, progressive corporate law scholars excel at exposing how capitalism concentrates power and how law entrenches hierarchy.[43] Yet a persistent limitation in left-wing legal scholarship is the tendency

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[41]. *See* Moon, *supra* note 6 at 1061. According to one economically informed framework, "property under the rule of law is the only framework for business activity in heterogeneous societies which best allows individuals to develop resources and at the same time to promote the maximum wealth of nations." O. Lee Reed, *Law, the Rule of Law, and Property: A Foundation for the Private Market and Business Study*, 38 AM. BUS. L.J. 441, 471 (2001).

[42]. *See*, *e.g.*, Elizabeth G. Thornburg, *Contracting with Tortfeasors: Mandatory Arbitration Clauses and Personal Injury Claims*, 67 LAW & CONTEMP. PROBS. 253, 271 (2004) (describing how shifts in indirectly related legal rules, like enforcing "arbitration clauses that provide slanted processes or limited remedies," can "undermine the efficiency goal" of tort law to the extent it "reduce[s] the anticipated cost of" the company's "accidents significantly, and thereby decrease[s] the deterrent effect of tort law").

[43]. *See* David W. Kennedy, *Law and the Political Economy of the World*, 26 LEIDEN J. INT'L L. 7, 12, 28 (2013) (describing "analysis of relations between 'centres' and 'peripheries' in socioeconomic systems and analysis of the role of law in the background

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to diagnose more than to offer institutional design. This reflects the broader challenge of moving from critique to implementation—of developing a theory of change, or how we get from "here" to "there."[44]

A serious theory of change must contend with entrenched obstacles: oligarchic control, regulatory capture, and the political economy of mass "forced capitalists."[45] Today, wealth and policymaking power are tightly held by financial elites who often shape legal reforms to their advantage.[46] Courts and regulators—shaped by decades of neoliberalism—tend to protect corporate prerogatives.[47] Meanwhile, securities law scholars are—by at least one measure drawing from campaign contributions—among the most conservative in the legal academy, just behind military law.[48]

Acknowledging these obstacles are not enough; reform strategies must anticipate elite resistance and build countervailing power through movements, coalitions, and public institutions. At the same time, many ordinary people are embedded in the capitalist system in ways that blunt radical impulses and dampen opposition. As Leo Strine, former Chief Justice of the Delaware Supreme Court, has observed: millions of workers are "forced capitalists," their pensions and savings tied to market performance.[49] This

distribution of bargaining power," and noting that these kinds of critical moves "are deployed more often to criticize than to focus policy proposals"); Martha T. McCluskey, *Thinking with Wolves: Left Legal Theory After the Right's Rise*, 54 BUFFALO LAW REVIEW 1191 (2007); *see*, *e.g.*, Paddy Ireland, *Finance and the Origins of Modern Company Law*, *in* THE CORPORATION: A CRITICAL, MULTI-DISCIPLINARY HANDBOOK 238 (Andre Spicer & Grietje Baars eds., 2017).

[44]. As one antitrust scholar has observed, "today every theory of jurisprudence worth contemplating incorporates a theory of change." Herbert Hovenkamp, *Evolutionary Models in Jurisprudence*, 64 TEX. L. REV. 645, 646 (1985); *see, e.g.*, Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward A Demosprudence of Law and Social Movements*, 123 YALE LAW JOURNAL 2740, 2756 (2014) (describing a demosprudence theory of change, "expand[ing] beyond litigation-centric social change," which has a "tendency . . . to migrate from tactics to strategic centrality in [legal left] theories of change"); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821 (2021).

[45]. *See* Dorothy S. Lund, *Toward A Fair and Sustainable Corporate Governance System: Reflections on Leo Strine, Jr.'s Writing on Institutional Investors*, 24 U. PA. J. BUS. L. 835 (2022); Leo Strine, *Toward Common Sense and Common Ground—Reflections on the Shared Interests of Managers and Labor in a More Rational System of Corporate Governance*, 33 J. CORP. L. 1 (2007).

[46]. *Cf.* Stephen J. Choi, *A Framework for the Regulation of Securities Market Intermediaries*, 1 BERKELEY BUS. L.J. 45, 80 (2004) (noting that "where a small group of investors suffers a very visible and concentrated harm[,] . . . public demand for a stringent regulatory solution will not be far behind.").

[47]. *See*, *e.g.*, Lee Epstein & Mitu Gulati, *A Century of Business in the Supreme Court, 1920–2020*, 107 MINN. L. REV. HEADNOTES 49 (2022).

[48]. *See*, *e.g.*, Adam Bonica et al., *The Legal Academy's Ideological Uniformity*, 47 J. LEG. STUD. 1 (2018).

[49]. Strine, *supra* note 45.

complicates interest convergence and political alignment: those who might challenge corporate power are financially dependent on it. Any democratic reform agenda must engage these mass investors—without reinforcing elite control—by building pathways for them to support a more accountable, pluralist financial system. As the rest of this Part II elaborates, any democratic reform agenda must engage these mass investors—without reinforcing elite control—by building pathways for them to support a more accountable, pluralist financial system. A more democratic theory of property and securities law must take seriously the voices, experiences, and aspirations of these mass investors, not only the preferences of institutional capital.

Recent work in law and sociology underscores that durable transformation requires confronting structural power. Sociologist Erik Olin Wright's "real utopias" framework offers one model: reforms that meet present needs while weakening capitalism's foundations and empowering alternative forms of ownership.[50] Wright argues for strategic changes that meet immediate social needs while simultaneously eroding the structural dominance of capital—a growing of solidaristic practice within the interstices of capitalism, empowering new forms of ownership and governance with an eye toward a gradual displacement of capitalist structures. In this respect, Wright's framework is distinct from merely "taming" capitalism with regulations or smashing it via revolution.[51]

Rather than simply regulating markets or calling for rupture, Wright urges scholars to assess proposals along three dimensions: desirability, viability, and achievability.[52] These criteria—moral vision, institutional feasibility, and strategic realism—help distinguish transformative reforms from well-meaning but ineffectual ones. For legal reformers, this means rigorously specifying how reforms would function. For example, stakeholder governance may be desirable for democracy and viable where worker co-ops or codetermination already exist. But is it achievable? In what jurisdictions? Through what legislative vehicles? Grounding proposals in successful precedents or pilot programs (e.g., municipal banks, worker takeovers) makes them less utopian. If we can point to a city or country where a policy worked, it shifts reform from aspirational to plausible—expanding what the public sees as

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[50]. *See* ERIK OLIN WRIGHT, ENVISIONING REAL UTOPIAS (June 14, 2010).

[51]. *See Id.* at [●]

[52]. *See Id.*; ERIK OLIN WRIGHT, HOW TO BE AN ANTI-CAPITALIST IN THE TWENTY-FIRST CENTURY (2019). As an aside to the reader: you may find these criteria useful more broadly, such as in forming easy pick-up questions during seminars or faculty workshop to assess scholarly reform proposals. Almost every scholarly project could use more development of a theory of change—how we get from our present conjuncture to the proposed reform—and your colleagues who don't think often about theories of change may think these are great points!

politically possible. Like the Overton Window, today's fringe ideas can become tomorrow's mainstream through norm shifts and iterative practice.

Of course, such sweeping changes don't arise in a vacuum; they require organized constituencies and leverage, which is why aligning legal reform with social movement strategy is crucial. Wright's criteria can guide movement messaging: show that a democratic economy would be more just and function better than the status quo. Examples like Mondragón's cooperative network or U.S. worker buyouts help make alternatives legible.[53] These stories counter neoliberal fatalism by demonstrating that democratic firms can be competitive, durable, and socially rooted. When ordinary people see peers successfully managing businesses or investments democratically, it chips away at the notion that "there is no alternative."[54]

The movement-law scholar Amna Akbar has extended this vision through recent work on "non-reformist reforms," or structural changes that don't just mitigate harm but undermine capitalist power structures and empower different constituencies.[55] Non-reformist reforms, she says, "aim to undermine the prevailing political, economic, and social order, construct an essentially different one, and build democratic power toward emancipatory horizons."[56] Unlike technocratic reforms that patch up the system, non-reformist reforms meet immediate needs while also chipping away at capitalist power structures, undermining the existing order and expanding democratic control. Akbar urges legal scholars and lawyers to center these popular struggles and place reform ideas within broader political projects.[57] Progressive

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[53]. *See* WRIGHT, *supra* note 50 at 240–46; Nick Romeo, *How Mondragon Became the World's Largest Co-Op*, THE NEW YORKER, Aug. 27, 2022, https://www.newyorker.com/business/currency/how-mondragon-became-the-worlds-largest-co-op (last visited May 7, 2025).

[54]. *See* Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 2014 LAW & CONTEMP. PROBS. 71, 94 (noting that former British prime minister "Margaret Thatcher even coined the slogan … 'there is no alternative'" in underscoring the logic of neoliberal hegemony and "denying the possibility of another logic"). On current public views, see Andrew K. Jennings, *The Public's Companies*, 29 FORDHAM J. CORP. & FIN. L. 191 (2023); Diego Marconatto, Wagner Junior Ladeira & Douglas Wegner, *The Sustainability of Solidarity Economy Organizations: An Empirical Investigation*, 228 J. CLEANER PROD. 1122 (2019).

[55]. *See* Amna Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2528–29 (2023).

[56]. *See Id.* at 2507. Akbar draws on the framework introduced by the French Austrian philosopher André Gorz, who sought to ask whether it would be "possible from within [capitalism] . . . to impose anti-capitalist solutions which will not immediately be incorporated into and subordinated to the system," and which achieve "intermediate objectives *by means of which socialism can be seen as possible*." ANDRÉ GORZ, STRATEGY FOR LABOR: A RADICAL PROPOSAL 4, 6, 11–12 (Martin A. Nicolaus & Victoria Ortiz trans., 1967) (emphasis added); *see also* Amna Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 103–06 (2020).

[57]. *See*, *e.g.*, Akbar, Ashar, and Simonson, *supra* note 44.

corporate law can contribute by elaborating structural reforms that chip away at shareholder primacy, expand community and worker ownership, and redesign legal defaults around solidarity and participation. If property and capital are social relations encoded in law rather than sacred objects (*e.g.*, 182), then we are free to rewrite those social relations through law. Non-reformist reforms seize that freedom to rewrite.

But legalism alone is insufficient.[58] Transformative change depends on movements.[59] Reforms like codetermination or public banking won't arise from law review articles; they require pressure from unions, communities, and public campaigns. Contrary to assumptions that change will come through court decisions, scholars, or enlightened policymakers,[60] in fact major shifts (like labor protections, civil rights, or environmental laws) have typically required grassroots agitation and coalition-building. Scholars should therefore place their reform ideas in the context of democratic struggle: Which constituencies will push for this? How to galvanize unions, community groups, or consumers to demand these changes? Progressive corporate law ideas won't advance in a vacuum; they need public pressure from informed and motivated citizens. Legal scholars can support these efforts by translating technical ideas into accessible language, framing legal reforms as stepping stones, and collaborating with organizers. Non-reformist reform depends on public engagement and strategic coalition-building, not elite consensus.

None of this means abandoning bold goals. On the contrary, realism about resistance helps inform the design of better reform strategies.[61] Modest reforms—like launching a state bank or chartering public asset funds—are not aimed at ending financial capitalism, but at eroding its monopoly and building capacity for future change. Legal doctrine should reinforce this trajectory by identifying leverage points where shifts in law can empower new actors. Meanwhile, these efforts must anticipate pushback: for example, constitutional entrenchment or international coordination may be needed to defend against rollback or capital flight.[62] In sum, theorizing pathways for

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[58]. *See* Amna Akbar, *A Horizon Beyond Legalism: On Non-Reformist Reforms*, LPE PROJECT (2023), https://lpeproject.org/blog/a-horizon-beyond-legalism-on-non-reformist-reforms/ (last visited Apr 22, 2025) ("redressing structures of exploitation required popular contestation of power … and organized struggle from below").

[59]. *See Id.*

[60]. *Consider* Akbar, *supra* note 55 at 2524–26 (citing, *e.g.*, Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 1994 (2017)).

[61]. *See* DEEPAK BHARGAVA & STEPHANIE LUCE, PRACTICAL RADICALS: SEVEN STRATEGIES TO CHANGE THE WORLD (2023).

[62]. *See*, *e.g.*, William C. Philbrick, *The Paving of Wall Street in Eastern Europe: Establishing the Legal Infrastrucutre for Stock Markets in the Formerly Centrally Planned Economies*,

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transformation demands blending legal knowledge with power analysis: understanding not just the law in books, but who has incentives and capacity to fight or champion changes in practice.[63]

Jurisdictional specificity matters. Some proposals—like corporate charter reform or public banking—are most feasible at the state or municipal level. Others—like redefining fiduciary duties or regulating index fund power—require federal legislation or administrative rulemaking. A strategic approach should differentiate venues, match reforms to institutional capacities, and test change through subnational experimentation. In addition, international constraints also shape reform feasibility. Capital mobility, trade agreements, and investor-state arbitration may limit domestic policy space. Structural reforms that alter investor rights—such as debt caps or new charter duties—would need to be designed with these transnational risks in mind. Our current conjuncture has disrupted the neoliberal consensus around, among other things, the United States' regulatory and economic role in the world—and presents opportunities to articulate a vision of a different order beyond the current one.[64]

A radical securities law would keep sight on one such vision: an economy where democracy, not concentrated capital, is sovereign. That particular end vision "does not mean abolishing private property and personal possessions" (257), but rather a steady chipping away at the structural power of capital so that capital no longer equals unaccountable power.[65] In a non-reformist framework, today's call for codetermination could evolve into tomorrow's demand for employee or community majority ownership. A campaign to restrict index funds' voting power could open the debate toward: why not public ownership of some of those shares? This reorientation in law is ambitious and fraught with resistance, but it is not *utopian*. As contemporary debates in law and political economy illustrate, there is a growing recognition that issues like

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25 L. & POL'Y INT'L BUS. 565 (1994) (discussing capital flight); *see also*, *e.g.*, James Fallows Tierney, *Reconsidering Securities Industry Bars*, 29 STAN. J.L. BUS. & FIN. 134, 195–97 (2024) (describing "blowback" or "backlash" theory of regulation).

[63]. *See* JANE MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE 3, 11 (2016).

[64]. *See* Luke Herrine, *On Writing Down Our Dreams During a Living Nightmare*, LPE BLOG (Feb. 10, 2025), https://lpeproject.org/blog/on-writing-down-our-dreams-during-a-living-nightmare/ (last visited May 6, 2025).

[65]. *See* Samuel Arnold, *Socialisms*, *in* THE ROUTLEDGE HANDBOOK OF PHILOSOPHY, POLITICS, AND ECONOMICS 276 (C.M. Melenovsky ed., 2022); *see also, e.g.,* Akbar, *supra* note 55 at 2575 (noting the "fundamental distinction from reformism" is that "non-reformist reforms are about who has power . . . over all aspects of the economic, social, and political domains—far greater than what liberal legal discourse considers"); Akbar, *supra* note 58 (noting one end goal of an economy where businesses are accountable to the public good, prosperity is shared, and democracy triumphs over the "dictatorship of profit") (citation omitted).

inequality, labor precarity, and democratic decline are tied to how we legally organize economic power.[66] Ideas that once languished at the margins—wealth taxes, public banking, charter accountability—have moved into mainstream discussion, often propelled by social movements and insurgent political campaigns.[67] The tone of this scholarship has been diagnostic in acknowledging the entrenched role of law in our current predicament, but transformative in suggesting that law can be a tool to dismantle and rebuild.

Ireland's critique thus gains traction when situated in a strategic, multilevel theory of transformation. With this in mind, the review closes with some thoughts about the kind of non-reformist reforms that would challenge the "property-as-capital" framework.

First, an ambitious reform would be to overhaul corporate governance so that shareholders are no longer the only constituency with ultimate say.[68] This could mean mandating stakeholder representation on corporate boards: for example, reserving a significant portion of board seats for employees, elected by the workforce (a model of codetermination as practiced in Germany, but potentially even broader).[69] Some states also already have so-called constituency law requiring directors to consider the interests of employees, customers, and the community, not just shareholders, but these typically are only triggered in scenarios where control of the company is changing hands; a more broadly applied stakeholder orientation could help dilute the current governance dominance of capital owners. This kind of legal change has been championed by segments of the labor movement and left policymakers. For instance, proposals to allow workers to elect a portion of directors in large companies (as in the U.S. Accountable Capitalism Act proposed in 2018) are steps in this direction.[70] While still reformist on the surface, they carry a non-reformist promise of cultivating a power shift inside the firm, helping reinforce the idea that finance capital's governance rights are not absolute.[71]

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[66]. *See* Britton-Purdy et al., *supra* note 7; PISTOR, *supra* note 19.

[67]. *See* Daniel Hemel, *Capital Taxation in the Middle of History*, 99 N.Y.U. L. REV. 1554 (2024) (wealth tax); Saule T. Omarova, *Public Banking as an Institutional Design Project*, 41 YALE J. ON REG. 1128 (2024) (public banking); Moon, *supra* note 6 at 1062 (charter accountability).

[68]. *See* Matthew Bodie & Grant Hayden, *Codetermination: The Missing Alternative in Corporate Governance*, LPE BLOG (Jan. 13, 2022).

[69]. *See* Grant M. Hayden & Matthew T. Bodie, *Power, Primacy, and the Corporate Law Pivot*, 24 U. PA. J. BUS. L. 1 (2022); Matthew T. Bodie, *The Next Iteration of Progressive Corporate Law*, 74 WASH. & LEE L. REV. 738 (2017).

[70]. *See*, *e.g.*, S. 3348, Accountable Capitalism Act, 115th Cong. (2018).

[71]. *See*, *e.g.*, Jens Dammann & Horst Eidenmüller, *Corporate Law and the Democratic State*, 2022 U. ILL. L. REV. 963; Leo Strine, Aniel Kovvali & Oluwatomi O. Williams, *Lifting Labor's Voice: A Principled Path Toward Greater Worker Voice and Power Within American Corporate Governance*, 106 MINN. L. REV. 1325 (2022).

A related securities-law reform would be to account for interests of the "others" whose efforts create profit—including labor, suppliers, communities, and voluntary and involuntary creditors of all sorts. The *Howey* test is aimed at protecting passive, non-participating outside capital investors who rely on the efforts of the active business operators to create profit.[72] As a result, it does not extend to scenarios in which the owner-operator is making their own managerial and entrepreneurial decisions (even if also deriving profit from the efforts of others, in the sense of the labor theory of value).[73] Despite Ireland's invocation of the metaphor, *Howey* protects investors from promoters, and has little to say about the non-managerial efforts of others who participate in the enterprise as non-management labor, suppliers, and creditors.[74] An ambitious, radical securities law agenda might think about reconceiving this area of law to implicate broader rights beyond consumer protection for wealthy investors. That would be an important step on a path toward shareholders no longer being the constituency with ultimate say.

Non-reformist reform also means removing the structural levers that enable predatory value extraction through private equity strategies. Laws could cap debt ratios in leveraged buyouts, limit dividend recapitalizations, or mandate more stringent solvency protections. More ambitiously, governments could grant workers or communities a statutory "right of first refusal" (ROFR) in buyouts backed by public financing to democratize firm ownership, as some states have begun experimenting with municipal ROFRs in residential housing markets.[75] This injects democracy into what is currently an elite-driven market: instead of the only rescuer for a struggling company being a Wall Street firm, the people who depend on the company could collectively become its owners. These measures would redistribute opportunity and block value-stropping at the point of transfer.

Second, what if securities law treated concentrated financial power itself as a threat to democracy, analogous to how political law treats concentrated

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[72]. *See* THOMAS LEE HAZEN, TREATISE ON THE LAW OF SECURITIES REGULATION § 1:50 (2020).

[73]. *See Id.* at § 1:52.

[74]. *See Id.* at § 1:51.

[75]. *See, e.g.*, Conner Eversole, *Legal Analysis: Colorado's Municipal Right of First Refusal and Right of First Offer on Multifamily Properties*, MONDAQ (2024), https://www.mondaq.com/unitedstates/real-estate/1516338/legal-analysis-colorados-municipal-right-of-first-refusal-and-right-of-first-offer-on-multifamily-properties (analyzing Colorado's Affordable Housing Right of First Refusal law, HB23-1190 (2023)); Tom Llewellyn, *Real Estate for Radicals: Co-Ops, Community Land Trusts, Communes, and Squats*, RESILIENCE (2023), https://www.resilience.org/stories/2023-02-14/real-estate-for-radicals-co-ops-community-land-trusts-communes-and-squats/.

political donations?[76] A non-reformist reform here could involve introducing public interest criteria for large financial holdings or transactions. For example, when an investor acquires beyond a certain percentage of a systemically important company, it might trigger a review not just for antitrust, but for broader economic impacts—similar to how some countries screen foreign investments for national interest.[77] More radically, we might consider democratizing capital markets by creating public options: for instance, a public asset management agency that competes with BlackRock and Vanguard but is mandated to invest with social objectives and moderate the profit-only approach.[78] This would give pensioners and savers an alternative that doesn't reinforce the concentrated private power of today's Wall Street giants. Such an institution could gradually accumulate stakes and exercise voting power in trust for the public, acting as a countervailing force to purely private capital.

Third, reviving the state's chartering power could help discipline firms. Corporations owe their existent to public authorization, and the evolution into their current role reflects a series of political choices.[79] As corporate law scholar William Moon wrote in a book review in MICHIGAN LAW REVIEW last year, the "new concession" theory of corporate law "reveals that the people—through state institutions—should be able to demand certain obligations of corporations that may clash with the profit-seeking function of business enterprises."[80] Laws could once again condition charters, especially for larger or systematically important corporations, on periodic public interest reviews. Charter revocation, rarely used today, could become a tool for enforcing social obligations—especially where firms engage in egregious harm.[81] While this sounds dramatic, it's essentially using old tools (charter revocation powers that states technically have but almost never use[82]) in new ways to discipline capital's power. This might well restore the corporation's public character and reconnect its privileges to democratic oversight.

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[76]. *See* Samuel Issacharoff, *On Political Corruption*, 124 HARV. L. REV. 118 (2010); Richard H. Pildes, *The Constitutionalization of Democratic Politics*, 118 HARV. L. REV. 28 (2004).

[77]. *See*, *e.g.*, Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549 (2023) (describing and criticizing CFIUS national security review).

[78]. *See*, *e.g.*, James Fallows Tierney, *Reg BI+: Algorithmic Conflicts in Financial Advice*, 2024 MICH. ST. L. REV. 947, 1031.

[79]. *Cf.* David Ciepley, *The Corporation As A Chartered Government*, 51 HOFSTRA L. REV. 815 (2023).

[80]. *See* Moon, *supra* note 6 at 1062.

[81]. *See* Moon, *supra* note 6; *cf.* Tierney, *supra* note 62 (offering a normative framework for thinking about debarment sanctions from the stockbroker licensing authority FINRA, including for prohibiting future work in the industry for sufficiently egregious harm).

[82]. *See* Moon, *supra* note 6.

Conclusion

Paddy Ireland has for decades made significant contributions to leftist British company law scholarship that have nonetheless tended to get overlooked in the historically more conservative milieu of American securities regulation. For a new generation of progressive property, corporate, and securities law scholars, however, putting Ireland's work in dialogue with movement-law principles offers a path to move "beyond critique," toward a future informed by "moral economy" or a democratized vision of who the economy is ultimately for.[83] To entertain Ireland's scholarship is not, however, to engage in utopian dreaming. Emerging debates about public banking, fiduciary reform, and corporate accountability show that what's needed will be sustained experimentation, vigilant pressure, and creative legal design. The path forward blends critique with construction, vision with strategy. Ireland's book suggests that law can help unwind the braid of property and capital—if we learn to use it differently.

[83]. *See* Luke Herrine, *At the Nexus of Antitrust & Consumer Protection*, 2023 UTAH LAW REVIEW 849, 853 (2023) (explaining that a moral economy approach "motivate[s] a shift . . . away from correcting for discrete market failures or maximizing a monetized measure of net social benefit and toward imposing substantive standard of fairness that balance the interests of different market participants," which he says offers a "more avowedly political—and, for its left-leaning advocates, democratic—vision of administrative governance").