On The Many Flavors of Capitalism *or* Reflections on Schumpeter's Ghost

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For those of us who grew up in the Fifties and early Sixties there was only one variety of capitalism. While it may have seemed to some as a time that instantiated "The End of Ideology,"[1] the reigning, deeply entrenched ideology contrasted a simplified capitalism with a monolithic socialism. That is what was taught to high school students and even to undergraduates taking introductory classes in economics—all I ever enrolled in[2]—at reputable institutions. There was, of course, that odd middle category, the regulated economy, but it was reasonably apparent that such was a compromise, seen by some as a dangerous deviation from, and by others as a necessary taming of, the real thing. A check with my children, high school students in the Nineties, indicates that such was the essence of what they were taught and at a quite good high school.

When I reached law school at the University of Chicago in 1964 there was only one capitalism too. The early sprouts of what became Law and Economics, visible only in the anti-trust class, were seen by many of us as but an ideologically driven simplification of a more complex, but uniform, oligopolistic capitalism, the only capitalism we could conceive of. And though actively involved in the Critical Legal Studies movement in the late Seventies and early Eighties and so exposed to many variants of Marxian,

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1. DANIEL BELL, THE END OF IDEOLOGY: ON THE EXHAUSTION OF POLITICAL IDEAS IN THE FIFTIES (2d rev. ed. 1962).

2. Both courses—micro and macro—were taught by the late Robert Eisner, a steadfast Keynesian. He was surprised when thirty-five years later I told him that these courses had kept me in good stead for all those years.

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and so socialist, understandings of economics, it still never occurred to me that there might be multiple varieties of capitalism. Although intellectually I knew of the Marxian notion of capitalism's three periods—commercial, industrial, and financial—somehow that historical narrative never managed to penetrate my thick skull as an opening in the direction of understanding that there might be multiple forms of capitalism extant at the same time. And though I am singularly pig-headed, I doubt that it penetrated many other skulls in that way either. Indeed, it was not until the late Eighties, when on a sabbatical in Spain, that I began to see in the International Herald Tribune's coverage of the various European economies the possibility that there might be multiple flavors of capitalism. This proposition became increasingly clear with the growth, and temporary demise, of the "Asian Tigers."[3] Still, little in the public or law school press has recognized this fact.

This protracted episode of ideological blindness can be traced back to the 1880s political opposition to "godless" socialism on the part of America's industrial elite. Still, I doubt whether such blindness provided the entire reason why academic economics seems never to have been able to accommodate the notion that there might be other than one capitalist system.[4] The scientific imperative that dominates contemporary academic life is likely also to have played some part in this collective obtuseness of which my life is only a small part. While it might be interesting to investigate intensively the respective contribution of this longstanding ideology of capitalism and the norms of scientific inquiry to the decision of most economists to

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3. Hong Kong, Singapore, South Korea, and Taiwan are the generally agreed members of this group. At various times arguments have been made for including variously Malaysia, Thailand, and Indonesia.

4. ANDREW SHONFIELD, MODERN CAPITALISM: THE CHANGING BALANCE OF PUBLIC AND PRIVATE POWER (1965), starts a small literature on comparative economic systems that has continued to occupy some academics. That said, it is a literature that has had very little impact on the vast majority of neo-classical economists and draws more interest from the political scientists. Some parts of the popular press have caught on; books such as DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD (1998) implicitly understand. Law and economics scholars have not focused on these questions, since few work outside the model of perfect competition deformed only by government regulation in the service of special interests.

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assume a single type of capitalism with a tolerably competitive market, doing so is a task for others. All I can offer in this context is a brief outline of the role in contemporary economic thought of what David Hollinger once called the "scientific ideal."[5]

In the name of building a science, or so it is said, academic economic models since the 1950s have expressed a radically simplified, singular capitalism in order to yield predictable results. Paul Krugman, for example, has asserted that one of the reasons that the field of development economics has not prospered is that it could not build the testable mathematical models that provided equilibrated, and so determinate, results upon which economic science has been built.[6] He has also noted that this mathematical deficiency likewise undermined work on oligopolistic competition. A sophisticated modeling of oligopoly might have led toward a simple binary model that contrasted oligopolistic and perfect competition as different species of the genus capitalism. It is sad that it did not, just as it is sad that Galbraith's work on this topic got normalized into an argument about the proper degree of regulatory intrusion into *the* "free market."[7] Scientism is what such a methodological constriction of the knowable is usually called.

Whatever the reason or reasons that further investigation might disclose for the continued devotion of academic economics to a singular capitalism, given this devotion it is particularly notable when a mainstream economist of the age and station of William J. Baumol, admittedly with the help of two substantially younger colleagues, produces a book, *Good Capitalism, Bad Capitalism*,[8] based on the recognition that there are multiple varieties of capitalism. A more heterodox scholar with a strong affinity for political economy, Robert B. Reich, has recently authored a different, more sequential

5. DAVID A. HOLLINGER, MORRIS R. COHEN AND THE SCIENTIFIC IDEAL (1975).

6. *See* PAUL KRUGMAN, DEVELOPMENT, GEOGRAPHY, AND ECONOMIC THEORY 5-6 (1995).

7. *See, e.g.*, RICHARD PARKER, JOHN KENNETH GALBRAITH: HIS LIFE, HIS POLITICS, HIS ECONOMICS (2005).

8. WILLIAM J. BAUMOL, ROBERT E. LITAN & CARL J. SCHRAMM, GOOD CAPITALISM, BAD CAPITALISM, AND THE ECONOMICS OF GROWTH AND PROSPERITY (2007).

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differentiation of capitalisms, *Supercapitalism*.[9] And, Peter A. Hall and David Soskice, political economists whose disciplinary roots are in political science, somewhat earlier offered their own differentiation of capitalisms.[10] So, it is an appropriate time to take advantage of the opening these scholars have provided and make an initial attempt at understanding what one might learn from thinking about a capitalism that is multiple, not singular. Perhaps, such a discussion will help to push tired old arguments about capitalism and socialism to the edge of the table around which contemporary economic debate is had—I doubt that they can be pushed off—in order to open a space for a broad discussion better tied to current circumstances.

It is difficult, for me at least, to approach this topic linearly. I doubt whether any economy is a linear structure and my mind does not naturally work by imposing linear structures on diffuse phenomena anyway. However, in an attempt to help the reader navigate a path through my brambles, let me provide this modest roadmap. I begin with a discussion of the constructed nature of markets, the importance of market systems or structures, and of financings—the inter-temporal transfer of value, the factor distinguishing capitalism from other forms of a market economy. Thereafter, I turn to four articulations of the varieties of capitalism.

The first is the classic Marxist one; the second, Reich's. After presenting each of these understandings I look at its strengths and weaknesses. The third articulation is Hall and Soskice's. An examination of the strengths and weaknesses of this understanding requires a long inquiry into Douglas North's notion of "institution"[11] and a similar, through briefer, inquiry into the concept of "efficiency." The fourth articulation is that of Baumol and his associates. Their support for the common idea that technological change is a driver of innovation leads to a discussion of

9. ROBERT B. REICH, SUPERCAPITALISM: THE TRANSFORMATION OF BUSINESS, DEMOCRACY, AND EVERYDAY LIFE (2007).

10. *See* Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, *in* VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE 1 (Peter A. Hall & David Soskice eds., 2001).

11. *See infra* note 40.

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Schumpeter's romantic vision of the entrepreneur and the place of change in economic life.

Next, I look at how all four of these understandings of the varieties of capitalism manage change, a discussion that leads quite directly to an exploration of socialism, its relationship to capitalism, and the way it did and might have managed economic change. I finish with two suggestions. First, capitalisms probably vary on far more dimensions than are suggested by the four understandings of it that I have reviewed. Second, the question of how any specific capitalism handles economic change is both crucial to an understanding of that capitalism and a quite telling insight into the nature of the society in which it is embedded. Perhaps the second suggestion will encourage humans to think about this aspect of their lives and others' when considering what variety of capitalism they wish to construct for themselves.

To begin, it is important to look theoretically at what might possibly hold together the genus *capitalmus*. Discussions of capitalism always assume that the participants have a solid understanding of the notion of a market. Though it is crucial to understand this notion, it is anything but unproblematic. Much discussion proceeds as if markets are naturally occurring phenomena, something like the seasons or the phases of the moon. The iconic image is often of two hunter-gatherer bands meeting quite randomly at a stream and, having once peacefully exchanged goods, returning every year thereafter. This is a silly notion. Markets are among the more complicated things that humans have constructed, a word I use quite intentionally. Markets are also games that people play.

First, markets, like games, need rules. Those rules may be customary, negotiated or imposed privately, and/or negotiated or imposed by governments of all kinds. Unlike many traditional games, the rules of a market change from time to time. But without rules there can be no markets. Of course without rules there can be casual exchanges. However, even here it would not be inappropriate to note that behind every casual exchange lies some notion of ownership and thus of property, and maybe of contract. This too implies a rule system.

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Standing alone, however, rule systems do not bring markets into existence either. Rule systems are like garage sales. Just because such a sale is announced, and even a table full of goods provided, does not mean that anyone will show up to buy. For example, even today futures or options exchanges regularly establish rules that define markets for products that too few people want to trade and so are soon shut down. So, second, not only do markets need rules, they also need an economic environment where people, not just one or two, but many, might wish to trade whatever the market might be structured to offer. The absence of such people has led to much of the late financial unpleasantness.

The existence of rule systems that establish markets in which people will come to buy and sell, a place, not necessarily physical, where people may play their game, does not, however, imply capitalism. For capitalism there need to be not only rule systems and participants, but also financings.[12] As my friend Bert Westbrook never tires of explaining to students, a financing is the form of economic activity that facilitates the inter-temporal transfer of value.[13] To make such a transfer requires access to capital, hence the name, capitalism. For example, if I use savings, i.e., my own accumulated capital, to buy goods with the expectation, really a hope, of reselling them at some future time for more than I paid, I am participating in capitalism. Same with taking orders for goods to be delivered in the future. In both cases I am attempting to transfer my present value to some point in the future, a point when I

12. Hardly a repository of great wisdom, but nevertheless indicative of the general middle brow understanding, Wikipedia defines capitalism as "the economic system in which the means of production are owned by private persons, and operated for profit and where investments, distribution, income, production and pricing of goods and services are predominantly determined through the operation of a free market." Wikipedia, http://en.wikipedia.org/wiki/capitalism (last visited Sept. 15, 2008) (citations omitted). When defining a "market" economy, its definition distinguishes a "planned" economy and offers two theoretical alternatives to a "capitalist" market economy—"laissez-faire" and "anarcho-capitalism" while noting that all capitalist economies are "mixed" economies. *Id.* Now, none of this is stupid, but the relative isomorphism between capitalism and market economy called "mixed" indicates that little analytic work is being done by these terms, but much ideological work. After the collapse of the Iron Curtain, public discourse is still fighting battles against socialism. This is not a serious activity.

13. David A. "Bert" Westbrook, Floyd H. & Hilda L. Hurst Faculty Scholar and Professor, University at Buffalo Law School.

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hope to secure more value, but risk having less. Though the point is clearer to most people if such hypothetical examples use lenders of value, the crux of capitalism remains the same. My piggy bank or a commercial bank are simply different sources for the value that it is hoped I will be able to transfer from now to some future time.[14] Financings are thus the mechanism that instantiates the abstract calculus of risk and reward that is implicit in capitalist activity.

Now, I suppose that all of this went by a bit quickly so let me recap. Markets always require that rules combine with a form of economic life in which a significant number of people will be willing to act within the set of rules established. At the same time, the existence of a market does not in and of itself imply the existence of a capitalist economy, for capitalism requires the widespread use of financings, the attempt to move value from one point in time to another with the hope of earning more in the future than one has in the present, but always with the risk that one may earn less.

Start again with rules. That markets require rule systems means that there is no such thing as a (rule-)free market. A claim that one prefers the "free market" to a potential regulatory regime is only shorthand for avoiding the task of explaining why one particular rule system is preferable to another, for all markets, and thus all capitalist economies, are constructed.[15] Markets can be created, and so games

14. It is here important to note, but unessential to elaborate, that financings may transfer future value to the present. Any stream of future periodic payments has a present value and might be sold to another for the present value of those payments. The recurrent ads for J. G. Wentworth, hawking "cash now" for "your structured settlement" are a homey, if annoying, example of such a financing. *See* http://www.jgwentworth.com (last visited Sept. 15, 2008).

15. My friend José M. Gabilando, Associate Professor of Law, Florida International University, offers the following explanation of how he came to understand this point.

> One of the things I found most interesting about working in Washington was learning how "engineered" markets and their institutions were. I had a friend who was a senior official at the International Monetary Fund. His job was to go around the world designing central banks, currencies, and legal regimes, and getting these markets off the ground. He once sent me an IMF working paper on government securities markets. What struck me about the report and, indeed, the IMF, was that market structure was something to be "determined" or "invented" by some combination of fiat and negotiation

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can be played, under all manner of rule systems. Prices may be established by law or not. Fraud may be prohibited or not. Minimum capital requirements may be imposed or not. Maximum, minimum, or uniform size of transactions may be essential or not. Elaborate disclosure regimes for sellers and/or buyers in a market might be legislated; instead, some entity might be permitted to certify, and thus sometimes to exclude, goods that may be traded in the market. Days and times of operation might be set or not. Governments might participate in markets or not. Under all or any combination of these and dozens of other possible rules a market might possibly be established. And thus, in any circumstance where someone opposes or advocates a change in the existing rule system, all that person is saying is that she or he does or does not approve of the results that the present rule system allows to take place in the market in question.

Because so many people have a difficult time understanding this point, let me try it yet one more time. The notion of the free market, a market free of the cost imposed by government regulation, surely dates back to Adam Smith, who knew first hand the cost of such regulation in the British economy of his day. But, what he and his followers saw as a preferred set of rules for their economy has changed from being the slogan that captured the set of reforms they championed to an ideal or ideal type or ideology, and for perfectly understandable reasons. Soon after the implementation of these reforms, the English economy began an unbelievable expansion. Though causal contribution is a tricky subject, the causal link was customarily made and the free market ideal loosed on the world. Later, those changes were seen to have entailed effects with respect to poverty and worker exploitation that the society was unwilling to endure. Further, changes were

> with interest groups rather than "found" in nature. Why awareness of this is not more widespread is that although we all play in these games, the way in which the games are invented never comes into view, except for those who make the games (and their knowing critics, I guess). I came to appreciate how contingent, rather than natural, market structure was because I observed all these people going about their professional lives as though this were true. The IMF is a game-maker of the first magnitude because it is the consummate repeat player and its games are so hard to understand.

I wish I had had such a wondrous experience instead of figuring this point out the hard way.

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made. These changes were again based on arguments about what the preferred set of rules should be. However, the ideal continued in pubic discourse. This thumbnail story demonstrates that political dispute about economic matters is always about figuring out what set of rules is appropriate to a market or an entire economy. A market free of governmental regulation will of course reduce the costs of such regulation to zero with some gain to some people. And probably some loss to others. The question that remains, however, is not where the balance lies, though that is always relevant, but how society wants an individual market or an entire economy to work. This is never an easy question. It is not made any easier by calls to arms on the side of less or even more rules. The understanding of markets that I advance here embodies an attempt to avoid such sloganeering.

Next, remember the existence of a rule system does not in and of itself create a market. Rules may establish a game that is so boring that no one will play. Likewise games can be so rigged to favor one party—or the house—as to entice few players. Thus, enough people need to be willing to show up to act within the terms of that rule system, to trade goods or money or promises for goods or money or promises, to exchange one thing of value for another, for there to be a market. Those people are willing to come because the nature of the market established by the rule system at a time and place allows them to believe that participating in it is to their own advantage, that the potential reward is worth the risk. Thus, markets have histories. Some are effectively stillborn. Others, such as the great Champagne fairs of the thirteenth century, grow, but eventually die. Some die because trade routes or modes of transportation change. The grain market in Buffalo is an example. Others die because the economy changes in such a way that the product traded is no longer needed and so not wanted. The New Bedford market for whale oil died out as manufactured gas became available for domestic lighting. This was long before most whale species were dangerously depleted.

Nevertheless, the existence of markets in which there are games that people are willing to play does not imply capitalism. Capitalism requires financings—the attempted transfer of value from one time period to another.[16] The

16. A word of clarification needs be inserted here as, despite my best efforts

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sellers of bread and ale at the Champagne fairs were not participating in capitalism and not because they did not wish to earn a profit. They probably profited handsomely. Though the question of whether one is engaging in a financing is always a slippery one, as the existence of a market in "overnight funds" for bank members of the Federal Reserve system ought to make clear, only in the weakest sense were the activities of these provisioners an example of a financing. The risk of using accumulated capital to buy wheat, even a week's supply at fair time, to make bread or even barley for beer a month ahead, was quite limited, and risk is always implicit in a financing. Had the baker borrowed money to buy wheat, or the brewer, barley, the risk surely would be greater. But however much greater, and thus on whatever side of an invisible line denoting a financing we may put such a borrowing, the risk was surely less than that of the Venetian trader who went to the Levant to buy pepper and spices, and having done so traveled to the fairs to sell these goods or even to trade them for woolen and linen cloth. Whatever his source of capital, he was engaging in a financing and so was participating in capitalism, as of course was the Venetian banker had the trader borrowed the money to buy the pepper and spices in the first place.[17]

in this initial discussion, my text seems to have confused otherwise astute readers. In order to be able to choose to play or to forego playing the games that make up any particular capitalism, one needs either a personal source of value that makes financings possible or the ability to secure that value from others. Without a source of value one cannot play whatever game the rules may structure. Thus, many will simply be unable to play or worse, as is the case with most wage earners, find themselves trapped in a game that others play. Such people will be swept along with whatever currents carry them in whatever variety of capitalism their society has. They may profit or they may sink, but they will never have the chance to play and so to be one of the masters of the universe. Indeed, even the fact that one has access to a source of value does not mean that one may not be trapped as a bystander, necessitous or not, in a game others are playing. Here, consider my situation with respect to that large portion of my wealth that is locked in my TIAA-CREF retirement account or the situation of most of middle management in any large American corporation.

17. Betty (Elizabeth) Mensch, Distinguished Teaching Professor, University at Buffalo Law School, notes that the medieval Church's prohibition of usury makes it quite obvious that financings were common even earlier than the thirteenth century. Indeed, various sees, abbeys, congregations, and other religious bodies actively lent money to finance local royal courts.

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These are the Venetian dance steps to the ballet of risk and reward that is endlessly replayed in any capitalism.[18]

I am sure that this stripped down definition of capitalism—rules + players + financings—will meet with less than universal applause. It is regularly suggested that capitalism requires some or all of private property, freedom of contract, the price system, and the rule of law. On and on the list extends. The difficulty with all of these additions is that they tend to load the answers given to questions about capitalism in ideologically suspect ways. Take private property. The most important question with respect to private property is: "How much?" Even in Russia in the Thirties, the existence of the crime of theft of state property suggests that there was some property that was not state property. What else could it have been than some species of private property? So, if one needs to get out beyond the Stalinist terror to find the absence of private property, one is pretty far into the dystopian literature. Similar observations are possible with respect to freedom of contract. The relevant question is: "To what extent are contracts enforceable?" That they might be reviewable for fairness may suggest that the range of bargain may be narrower, and so possible transactions more limited, than would be the case were they not subject to such review, but that fact does not limit freedom within some zone of fairness.

Consider next the price system. Here too, this is a matter of more or less. At some point administered prices and quality control might be so total as to make plausible the assertion that no markets exist in a society. However,

18. Steve Marshall objects that the example of the Champagne fairs is not clear enough to make my point about capitalism and financings. I confess to a certain perverseness in my choice of an example here, derived as it is from my love of Fernand Braudel's description of the fairs in 3 THE PERSPECTIVE OF THE WORLD, CIVILIZATION AND CAPITALISM: 15TH TO 18TH CENTURY (Siân Reynolds trans., 1984). The question of when capitalism emerged is a controversial one, probably unnecessarily so. At the margin, financings are always matters of more or less, and so capitalism in such circumstances is always more or less. In Champagne, bread and beer were probably subject to a fair price regime and so are an example of local cartel behavior. Pepper, spice, and cloth probably were not so subject. This difference makes a big difference in risk, for me enough to turn a difference in degree to a difference in kind. Others may argue to the contrary. However, I doubt whether anything turns on this question of where the line is drawn.

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short of that extreme, some markets will exist even if competition is only over quality, as surely was the case at the Champagne fairs and in all sorts of circumstances where market conduct was governed by fair price regimes. Of course, a price may be set so low and black markets suppressed so effectively that no goods are produced for sale. Still, all of these possibilities are part of a multi-dimensional field that may turn out to be sufficient for the development of an active market that will bring forward financings, and so capitalism. As for the rule of law—the notion of reasonable administrative regularity—that state of affairs is obviously also a matter of degree, as ought to be clear from the willingness of major international corporations to invest in regimes with quite shaky administrative apparatuses, not to mention the occasional scandals about their failure to comply with the Foreign Corrupt Practices Act.

Taken as a whole, what makes this entire list of the necessary conditions to the existence of capitalism fascinating is the degree to which it conflates the idea of a market with particular visions of what capitalism *must be*—of the ideologies of capitalism. Markets require remarkably little to begin to function. My favorite story in this respect is one told by Norville Morris when I was in law school. He recounted that he was an officer in the European theater during World War II, and accompanied the advance troops of the British forces on the first day the Western Allies reached Berlin. Driving through that city on the second day, Morris was hailed by someone selling a newspaper and purchased it with the local currency—cigarettes. The newspaper had a classified ad in it offering canned peaches for sale at a given address. Getting out a Berlin street map that he had been supplied with, Morris directed his driver to the location where he believed the address would have been had the area not been bombed out. There he found a gentleman who had cans of peaches lined up on a scrap of board stretched between piles of rubble. The price, again in the local currency, was neatly lettered on a sign. Morris bought some. There was neither an official currency nor a court system to enforce contracts. The only rule of law was the gun. Morris respected private property, though it was not clear how many hungry people in the city would do so as well, and so paid the indicated price.

Had Morris discovered an example of capitalism in action? I rather doubt it. Clearly no financings were going on.

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But this was equally clearly an example of a rudimentary market. This distance from capitalism is important to note, for capitalism will not arise in just any market. Measures, if only implicit, of the balance between risk and reward take into consideration the structure of the market in question that include questions about property, contract price, and administrative regularity. At some point, for some persons, with some resource endowments, that balance will become positive and financings will be undertaken.

At the same time, it is important to remember that the existence of a functioning market here and another there with financings taking place whenever, may be evidence of capitalism, but no more than that—evidence. As Charles E. Lindblom makes clear, for a functioning capitalism, markets of many kinds need to be braided together, turned into a market system[19] or what I sometimes call an economy—"a persistent market structure" that fuses "an understanding of economic life with the patterns of behavior within the economic, political, and social institutions that enact that understanding."[20] The differences between persistent market structures or market systems define different economies, the varieties of capitalism that are the subject of this somewhat over-extended essay.[21]

19. CHARLES E. LINDBLOM, THE MARKET SYSTEM: WHAT IT IS, HOW IT WORKS, AND WHAT TO MAKE OF IT 4 (2001).

20. John Henry Schlegel, *Law and Economic Change During the Short Twentieth Century*, *in* 3 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 563, 564 (Michael Grossberg & Christopher Tomlins eds., 2008).

21. Despite all that Lindblom's work has done to inform my thinking about economic life, I confess that from the beginning I have been uncomfortable with the "system" part of the "market system." For me, that word denotes relatively more than less order, even the possibility that within the system equilibrium will be reached. I prefer "structure," for structures may be more or less ordered, even amorphous, and many will never reach anything like equilibrium. For some readers, "structure" alone implies that the character of the whole influences that of the parts, an aspect of any set of social practices that I believe is important to understand in this context, whichever word is chosen. Moreover, I find that it is too easy for readers to slip from the market system to capitalism, as if that were a unitary phenomenon, not that Lindblom believes it to be such. I am quick to acknowledge the confusion that may result from my rejecting his more careful language, and instead speak of market structure meaning either or both the structure of a single market or of the web of markets that makes up an economy or variety of capitalism. Unfortunately, most of any author's writing is limited to what fits comfortably on that writer's tongue. "Structure" fits better on mine, though in this piece I have used the words together when their meanings overlap.

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It is in this and only this sense that the overall structure or system of markets—what the rules are and so whether under these rules players will participate in financings—can be said to be properly conflated, not with a unitary capitalism, but with particular varieties of capitalism. Thus, if one wants more of a particular variety of capitalist activity or even a different variety of capitalism altogether, one alters the structure or system of markets that one has; if one wants less of a particular variety, one likewise alters the structure or system of markets that one has. In either case one is always hoping that the alteration will have the intended effect, while knowing from experience that, at best, one is likely to get but a distant cousin of that intent. As my friend Ken Davidson is wont to say: "In economics, intent has a nasty way of not controlling outcomes."[22]

With this all clear, at least to me, it is possible to turn to various articulations of possible varieties of capitalism. Here I wish to start with one of the oldest of them—the Marxian tripartite division of capitalism into commercial, industrial, and financial. While there are hints of this tripartite division in Marx's great corpus, the first full explication of financial capitalism is by Rudolph Hilferding in a book called *Finance Capital*, published in 1910,[23] that provoked an expansion and critique by Karl Kautsky in 1911.[24] Thereafter, in the words of my friend Karl Klare: "Each of the three categories went through successive revisions, mutations, critiques, and reassessments by subsequent generations of Marxists, neo-Marxists, and post-Marxists."[25] The details of this later history are not important for present purposes.

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22. Kenneth M. Davidson was once a faculty member at UB Law, spent many years at the Federal Trade Commission, and having retired from that job, has a small consulting business. *See* http://kennethdavidson.com.

23. RUDOLF HILFERDING, FINANCE CAPITAL: A STUDY OF THE LATEST PHASE OF CAPITALIST DEVELOPMENT (Tom Bottomore ed., Morris Watnick & Sam Gordon trans., 1981) (1910).

24. Karl Kautsky, *Finance-Capital and Crises*, 15 SOCIAL DEMOCRAT 326 (July-Dec. 1911).

25. Karl E. Klare is the George J. & Kathleen Waters Matthews Distinguished University Professor at Northeastern University School of Law.

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One can see some sense to the progression of economies from commercial to industrial to financial. Trading cultures antedate all but the tiniest workshops, and while bankers appear before large workshops, not to mention the modern industrial factory, the development of modern investment houses mostly follows the development of the early forms of the industrial corporation. Coincident with this historical pattern is the structural one in which trade allows the accumulation of capital that can be invested in industrial enterprises whose growth by the accumulation of capital allows investors to do their own capital accumulation. For these reasons, the historian in me has always been partial to this tripartite division, despite the fact that I could never accept the labor theory of value on the basis of which Marx began to understand the sequence. However, there are certain problems with the sequence and thus the division.

Consider the American economy for which the notion that the commercial capitalism of New England traders preceded the industrial capitalism of large Mid-Atlantic and Mid-Western manufacturers that was followed by the great Wall Street bankers of the Gilded Age makes a certain amount of sense. How much is the question. The initial difficulty with this sequence is that the final form—financial capitalism—is a "stutter," unless it is understood that the adjective qualifying the noun "capitalism" in this case is there for academic symmetry since capitalism is defined by financings. However, the more significant difficulty is that this abstract historical sequence implies a concrete progression from the trader Marshall Field to the manufacturer Andrew Carnegie to the banker J.P. Morgan. Such a procession is difficult to support given that these men were contemporaries, just as were Venetian traders, workshop owners, and bankers.

Today, one might identify Sam Walton as the classic contemporary version of Field, Bill Gates or Steve Jobs as perfectly good versions of Carnegie, and Robert Rubin or Henry Paulson as, if not Morgan, then the banker/Treasury Secretary, Andrew Mellon. It thus would be more plausible to suggest that at most times all three species of capitalism have co-existed, perhaps even before the thirteenth century, and so that dominance is a relative matter. Thus understood, each species description would be seen not to identify a particular point in a historical sequence, but rather the dominant form of activity of the capitalists

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assembled at a particular time and place. Such an understanding is already a good distance from the Marxian one, based as it is in labor theory and the expropriation of surplus value from labor.

A still more significant difficulty, however, is that, if the defining characteristic of capitalism is financing, then while the focus on change over time in what is to be financed is intuitively sensible, it is difficult to defend analytically given the temporal co-existence of forms. The questions of risk and reward that at any point in time drive a financing derive from the structure of the relevant market and the other opportunities available in the overall economy. It is underlying questions such as these that will tend to direct financings into one or another sector of the economy, only one of which is the nature of that sector. Indeed, it seems to me that it is no more sensible to postulate sectoral differences as the root of the various species of capitalism than it would be to postulate organizational differences in the sources of capital—family capitalism, partnership capitalism, corporate capitalism—as the root of capitalism's species. Each misses the fact that for capital, both sectoral and organizational questions are always present and need to be accounted for when engaging in any financing. They are part of an estimate of risk and reward, but are surely no more important than questions of overall market structure or system that always need to be accounted for as well. Indeed, given that both sectoral and organizational alternatives are largely uniform over many types of overall market structure or system, it is at least arguable that, as I have asserted above, concerns related to overall market structure or system are dominant when distinguishing species of capitalism.

This is not to say that sectoral considerations are irrelevant to understanding changes in capitalism over periods of time or even at a given point of time. The Marxian categories remain very useful for diagnosing what is going on in an economy, for example, the current much ballyhooed, and so over-hyped shift from manufacturing to service in the American economy. And, if one were to rescue agriculture from the obscure debates over primitive capitalist accumulation, Marxian sectoral analysis would be even more helpful. However, standing alone, this analysis is not likely to differentiate species of capitalism. Other

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considerations need to be taken into account. I will examine a work that looks at some of these considerations, next.

Robert Reich attempts to combine sectoral considerations with organizational ones when offering an historical account of the post-war American economy. He distinguishes between the "democratic capitalism" of the Fifties and Sixties and the "supercapitalism" of today.[26] The democratic part of the distinction flags Reich's real interest, redressing democratic deficits in American political economy today, but, this matter aside, the distinction makes a certain amount of historical sense. However, his focus on oligopolies in manufacturing and their decline discloses other problems.

For Reich, democratic capitalism was the result of "a complex and continuous set of negotiations" between oligopolistic industry groups, unionized labor, and government that took advantage of the "large economies of scale" in industrial plants designed for "high productivity."[27] Such plants supplied "tens of millions of steady jobs" while generating "significant profits" that executives, acting as "corporate statesman," widely distributed "downward to blue-collar workers and outward to smaller communities, farmers, and other constituents."[28] All of the beneficiaries of this statesmen-like conduct comprised the "millions of consumers who used this largesse to purchase the goods and services produced in ever larger quantities, thereby stabilizing the economy for large-scale production. The result was a large and growing middle class . . . ."[29]

Unfortunately, Reich cannot give an equally clear account of supercapitalism, for it is essentially a negation of what came before it. For him, "emerging technologies," such as containerized shipping and computers, "allowed the creation of global supply chains" that facilitated the production of goods "at low cost without large scale" and the distribution of "services over the Internet," all of which "shattered the old system of large-scale production and

26. REICH, *supra* note 9, at 13-14.

27. *Id.* at 47.

28. *Id.* at 47-48.

29. *Id.* at 47.

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dramatically increased competition."[30] Simultaneously, large retailers were able "to aggregate consumer buying power and push companies . . . harder for bargains," while financial firms similarly helped "investors to put their savings into" investment vehicles that "pressured companies for higher returns."[31] As a result, "intensifying competition . . . put pressure on companies to cut payrolls, hitting unionized workers especially hard" and "corporate statesmen lost whatever capacity they had to weigh the interests of their communities and employees."[32]

I cannot object to the general outlines of this story. After all, about ten years ago I authored a similar outline of this period of American economic history that has now appeared in print.[33] I called the Fifties economy "Associationalist"[34] and the Nineties, "Impatient."[35] Mine was a descriptive enterprise and lacked the focus on democracy that drives Reich's analysis. Thus, for the most part, I eschewed a causal analysis. Reich claims to do so as well, though the technological determinism that he nominally rejects seems, to me at least, to permeate the way he chronicles this transformation.

One might subdue technological determinism were Reich to offer a strong explanation for the drive for lower prices and higher returns on the part of American consumers and investors. As it is, all that supports this drive are background assumptions about *homo economus* and a capitalism relentlessly searching for profits, a somewhat surprising picture for a writer concerned about democracy. Such an analysis is implausible and unfortunate. No capitalist wants to be caught in a perfectly competitive market. Living in a world where marginal cost, including the marginal cost of capital, equals marginal revenue is very, very scary. When patent protected or resource-based monopolies are not possible routes for avoiding competition, oligopoly is the preferred fall back.

30. *Id.* at 86-87.

31. *Id.* at 87.

32. *Id.* at 86-87.

33. Schlegel, *supra* note 20.

34. *Id.* at 571.

35. *Id.* at 586.

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Product differentiation through branding, and defensively through line extension, comes in a weak, though today a common, third. Competition is a feared "also ran."

Something on the demand side has made it unfortunately important for capitalists today to court living on the marginal cost knife-edge. My suspicion is that, in the late Sixties and Seventies, as productivity declined and inflation picked up, the newly expanded middle class, and especially its children, found that it was increasingly difficult to live as well as their parents had. They also learned that moving up the social ladder required an expensive education for their children and a long time horizon. In such circumstances, circumstances that I know from being there, specialty retailers such as Pier 1—how exciting was my first visit to one in San Francisco in 1968—and auto makers such as Toyota, that imported relatively inexpensive, good quality merchandise, helped to stretch budgets. In so doing, they added just enough pressure on oligopolistic competitors to create cost-cutting as a plausible response and so to fracture the cozy old-time oligopolistic structure that protected both local retailers and Detroit's Big Three automakers.

Such an explanation does not, however, deal with the fact that Reich, for all of his interest in the structure of politics and his largely structural understanding of what makes for democratic capitalism, is both rather thin on the details of his economic structure and even thinner on his capitalism. From his story, one would think that economies were never before upset by changes in technologies of transportation, as if the clipper ship, then the railroad, and finally the steamship, did not reduce the cost of freight significantly enough to make the transport of some goods over a long distance notably less expensive and so to make those goods newly available in distant, previously protected markets. It is just possible that containerization is more symbol than cause of a shift in economic structure.

Arguably, the prosperous democratic capitalism of the Fifties was dependent on the United States being, effectively, an economic island for the years that encompass the time it took for the European and Japanese economies to recover from the economic devastation of World War II. At the least, it surely is an interesting coincidence that just as these economies began to hit stride with the production of goods from their manufacturing facilities outfitted with the

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newest processes, the old American oligopolies began to crumble, aided, of course, by Lyndon Johnson's guns and butter policy during his part of the Vietnam War, a policy designed in part to extend the good times of the Fifties a few more years at the cost of tolerating a certain amount of inflation.

Equally troubling is the curious late appearance of capitalism as financings in Reich's story. It is not surprising that a partisan of organized labor should focus on manufacturing in a story of the past sixty years, yet even manufacturing requires financings. There were two great financial oligopolies in the Fifties economy. One, commercial banking, was heavily regulated and supplied almost all of the short term capital that manufacturers needed; the other, investment banking, separated by law from commercial banking, handled long term financing—both debt and equity. Both were white-shoe, relationship-driven enterprises, sleepy but lucrative, just like the elite practice of law in these years.

However, it was not only regulation that kept financings simple. It is important to remember that at this time modern portfolio theory was largely unknown. This theory was developed as a result of the effort, funded by the Ford Foundation, to increase the quality, seemingly understood as rigor, of management school education. Math was seen as rigorous, more rigorous than the other parts of a business school education. Whatever one may think about portfolio theory as a representation of the world, and I for one think that the assumption of normal distribution of events, while mathematically understandable, is pretty lame, it made newly thinkable all sorts of financial engineering that were unimaginable before. Give toys to boys and they will play, as we have learned recently to our collective displeasure.

What do these defects, if they are such rather than simply omissions, in Reich's understanding of our two economies, one of recent memory and the other of present unhappiness, suggest? Just this, I think. First, to understand any species of capitalism one needs to pay attention to overall economic structure or system in more than a local sense and in a deeper way than it is explicated in the economic press. People's homes and fears as well as their knowledge base are a significant part of any understanding of an economy. Second, an island economy is an anomaly in the

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sweep of recent economic history. A case made on the basis of such an economy needs be treated cautiously. And, third, it is probably better to look across countries when trying to identify constant structures or systems of capitalism, because without comparison the peculiarities of one nation's economic history may be taken to account for too much of what should be told as part of a more general story.

These last two points are addressed by the work of Hall and Soskice. Their distinction between coordinated market economies and liberal market economies neatly parallels Reich's distinction between democratic capitalism and supercapitalism. However, by looking at many economies in both Europe and North American during the same, late twentieth century time period, they avoid the problems of both economic islands and singular case studies. Having taken care of these problems, however, another appears.

Hall and Soskice begin by developing a typology that follows from their assumption that the firm in a capitalist economy depends on its "capacities for developing, producing, and distributing goods and services profitably" and so must address "coordination problems," "both internally, with its own employees, and externally, with a range of other actors that include suppliers, clients, collaborators, stakeholders, trade unions, business associations, and governments."[36] From these premises they proceed to examine five spheres of coordination—industrial relations, vocational training and education, corporate governance, inter-firm relations, and employees.[37] For their examination they use data relevant to these spheres, covering the period between 1950 and 2000 from various groupings of nineteen, mostly North Atlantic countries, though focusing on Germany and the United States. Then they distinguish groups of countries with similar economic structures or systems, developing two ideal types—"liberal market economies" where "firms coordinate their activities primarily via hierarchies and competitive market arrangements" and "coordinated market economies" where "firms depend more heavily on non-market relationships to

36. *See* Hall & Soskice, *supra* note 10, at 6.

37. *Id.* at 7.

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coordinate their endeavors with other actors."[38] Anglo-American countries influenced by the common law comprise the first group and continental European civil law countries, the second, though interestingly remarkably little is made of this legal difference.

Given all of the support that Hall and Soskice adduce across countries and continents for their identification of these two varieties of capitalism, I am convinced that their distinction has been soundly established. Some might object that it cannot be the case that Reich is correct that the United States morphed from being, in Hall and Soskice's language, a coordinated market economy to a liberal market economy and that those two gentlemen are correct in seeing both forms as coexisting in the same period. However, I am not particularly bothered by this objection. Indeed, Hall and Soskice readily admit that their ideal types are merely end points on a continuum. After all, it is not like the American economy is not regulated in the interest of securing cooperation with governmental priorities. Americans simply prefer carrots to sticks, as any close perusal of the history of federal income taxation would make clear. Nor are social supports for old age, infirmity, even unemployment altogether lacking in this country, not to mention all of the social services that supply employment to legions of college graduates. And it is not like German firms abjure contractual or hierarchical relations.

A more difficult problem, however, follows from the concession that the ideal types are merely end points on a continuum. Is there then any reason to believe that these are separable species rather than modest differentiations within the category of the regulated economy from my college course in economics? A case for species differentiation would have to be made beyond that of the ability to isolate ideal types. Chemistry roots the differentiations that comprise the elements of the periodic table in atomic structure. Geology, rock types in the three basic processes for their creation and the idea of successive deposition. Botany, speciation in the morphology of plants, particularly their methods and structures of reproduction. Zoology is much the same in its focus on morphology and reproduction. What social, structural, and/or political factors might

38. *Id.* at 8.

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account for Hall and Soskice's differentiated species? What might play the same role that technology plays for Reich in explaining his historical discontinuity of forms?

Looked at dispassionately, I rather doubt that Hall and Soskice have an account for the differentiation of the species of capitalism, though their use of Douglas North's understanding of "institutions" obscures this absence.[39] North understood that "the market," the timeless, spaceless entity beloved by economists, does not provide a sufficient context for describing economic life. He therefore argued that the market was not a faceless plain, but rather that it was a terrain delineated, given features, by its institutions.[40] This is an interesting idea and North is justifiably famous for it. Except that the word he chose for those features, "institutions," has been used by him and others to mean quite a grab bag of things.

An example of the grab bag can be found in Hall and Soskice's text. They say, "Following North . . . we define institutions as a set of rules, formal or informal, that actors generally follow, whether for normative, cognitive, or material reasons, and organizations as durable entities with formally recognized members, whose rules also contribute to the institutions of the political economy."[41] Then they note "markets are institutions that support relationships of particular types, marked by arm's-length relations and high levels of competition."[42] After next recognizing that hierarchies are also part of a firm's economic activity in liberal market economies, they try to identify the "distinctive" "types of organizations and institutions [that] support the distinctive strategies of economic actors" in coordinated market economies.[43] They conclude, "[t]ypically, these institutions include powerful business or employer associations, strong trade unions, extensive networks of cross-shareholding, and legal or regulatory systems designed

39. *See* Hall & Soskice, *supra* note 10, at 9.

40. DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990).

41. *See* Hall & Soskice, *supra* note 10, at 9.

42. *Id.*

43. *Id.*

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to facilitate information-sharing and collaboration."[44] They thus put forth as "institutions" a mixture of formal rules—"legal or regulatory systems," organizations—"business or employer organization" and "trade unions," and possibly informal rules—"networks of cross-shareholding,"[45] although perhaps not, for when they get to discussing informal rules, cross share-holding is not mentioned; instead, history and culture are identified as molding institutions.

Now none of this confusion should cause one to reject Hall and Soskice's observations out of hand.[46] Still, it suggests the difficulties that accompany any scholar's appeal to institutional forms as part of structural or systemic differentiations, difficulties that might be understood as threefold, all of which are rolled together in Hall and Soskice's single sentence expressing their allegiance to North's work. First, drawing on a confused early twentieth century economics literature, "institutions"—textualized understandings of normative regimes—has been used to describe bodies of legal doctrine—contracts, property, anti-trust, etc.—and political concepts—the rule of law. This is North's most narrow construction of the term and, unfortunately, his most counter-intuitive use because such rule systems are difficult to separate from the people who do things in their name—lawyers, judges, title examiners, zoning commissioners—and so both instantiate, and beg, the ancient question about separating the dancer from the dance.[47] Is the institution the system of rules, or

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44. *Id.* at 10.

45. *Id.*

46. Though, as Bert Westbrook has suggested, it does seem to render the argument tautological. Is it true that the market, an aspect of society, is defined by its institutions, the forms of that society? Yes, always.

47. It has been suggested to me that this reference to William Butler Yeats, *Among Schoolchildren*, *in* THE COMPLETE POEMS OF W.B. YEATS 215, 217 (Richard J. Finneran ed., rev. 2d ed., Scribner Paperback Poetry 1996) (1983) is less helpful than I think it might be. The relevant passage at the end of that poem

> O chestnut tree, great rooted blossomer,
> Are you the leaf, the blossom or the bole?
> O body swayed to music, O brightening glance,
> How can we know the dancer from the dance?

makes clear, to me at least, that often a separation of parts from wholes is impossible and so it is foolish of thinkers such as Plato or Aristotle or

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the humans' actions, or can one not be described without the other? Second, there are the institutions formally organized as such—investment banks, commercial banks, mutual funds, lobbying groups, the New York Stock Exchange, the Securities and Exchange Commission—that Hall and Soskice sometimes, but not always, refer to as organizations. Here the dancer and dance problem gets transmuted into principal and agent, but at least the institutions have a vaguely corporeal feel. And third, there are the metaphorical institutions such as the stock market, a non-place where institutions in the second sense and their constitutive real people—though mostly as agents, not principals—engage in economic activity that is informed by institutions in the first sense, and their equally real people.[48] Here, however, it is important to remember that institutions in this third sense play out as patterns of repetitive, expected, and so institutional, behavior that is somehow distinct from the behaviors described by either the first sense or the second sense, but that nevertheless from time to time includes them. This is not a clean theory or even a particularly coherent description.

It strikes me as unfortunate that in the world's largest language we cannot find different words for these three groups of things we call institutions. If all three groups deserve the same name, it is because each combines a rule system, more or less formal and explicit, with the actions of humans, more or less interlaced with that rule system in such a way that to pull apart the rule system and the actions of humans is an interesting exercise, but one that should be engaged in cautiously, not reflexively. Seen this way, it is implausible to treat "property" as an institution. It is no more plausible to treat "contract," or competition law—the system that might be designed "to facilitate information-sharing and collaboration,"—or "the rule of law" as institutions either. Each is a rule system whose instantiation requires the actions of countless people within and without bureaucratic entities of various sizes. These

Pythagoras, all mentioned earlier in the poem, to try to make such separations. This too is true of law and economy. The academic intellectual enterprise is possible, but highly artificial. Yeats's image of wholeness is, of course, what the poet and the essayist, including this one, try to convey, but never fully succeed in doing.

48. José Gabilondo helped me with this set of definitions.

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entities are in turn marked by express rules, only some of which are formally adopted as law, and implicit rules that are routine ways of doing, or even thinking, about things. Thus, the first group of institutions, the textual ones, taken together can be seen as coextensive with the second group of institutions, the formal ones, taken together,[49] the difference being that the first are grouped by legal category and the second by bureaucratic entities. In this way the institution of "property" covers steel mills and a steel manufacturer's association, and a steel mill and a steel manufacturer's association participate in property, though in different ways. And then the third group of institutions, the metaphorical ones, is distinguished from the second in that they are not formal bureaucratic entities, though we treat them as if they were.

Now it would be foolish of me to believe that I could force a disentanglement of these three aspects of "institution" by proposing separable names for each. Indeed, it would be a waste of time trying any harder than I have, for I doubt that the distinctions are all that important. Thus, I hope that I can be forgiven for not taking the category "institutions" seriously. Property and contract and the rule of law are not institutions in any plausible sense. Similarly the SEC and the stock market are not different kinds of institutions in any but a formally legal sense. Here, law confuses people's thinking by separating rule systems, as well as bureaucratic entities, from the actions of the people that instantiate them. Each of these academic abstractions can be understood as simplifying inquiries by narrowing them in the interest of making the narrowed fields of inquiry separable and special, and so of crucial importance for the human understanding of social life. Such episodes of intellectual, insecure self-centeredness are understandable, but not therefore helpful to thought.

That said, it is likewise important to understand that North's, and derivatively Hall and Soskice's, emphasis on institutions as crucial determinants of markets is generally consistent with the understanding of markets as a combination of rules and willing participants set forth at the outset. Markets are not faceless plains. They are created by humans for humans and so institutions in all

49. Or at the very least a large sub-set of them.

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three senses of this protean term. There are differences between these two ways of seeing markets, however. Most obvious ought to be that "institutions" suggests things that, like ancient trees, are just there. The word thus implies less of a role for state intervention, indeed less of a sense of human intentionality, even intentionality that goes awry, as most often it does, than does the notion of structures.

This difference is important. It is a canard of the Party of the Right that markets are just there, that they are free and just need to be left alone to do their work. "Institution" is too close to this canard for my taste. Institutions may be in the background of economic life. They may arise mysteriously and do their work silently. They do not therefore need to be left alone to work as they please. Their work can and will be altered by human intervention. The alteration may be no more than a random reaction to a current unpleasant situation, the efficacy of which is limited. Perversely, the alteration may even make the situation worse. Still, that alteration—said to be an intervention in the (free) market—will not result in the loss of that fabled benefit, the obvious good called "efficiency."

To understand why this is so, one needs to be reminded again that markets are not natural objects endowed with an a priori set of properties that are themselves perfect, any deviation from which brings a decrease in "efficiency." Just as there is no hypothetically free market because all markets are structured by rules and embodied in the activities of people with various capacities and endowments, there is no hypothetically efficient market. Efficiency is whatever happens in a market at equilibrium given the structure of that market and the resource endowments that the participants in that market bring to it.[50] Change the structure—or the endowments—and the equilibrium will change, but the solution will still be the efficient one. So, if one does not like the results of market activity at equilibrium, then one can change either or both the structure or endowments, and if one is lucky—after all, people may simply refuse to participate in the market—the

50. I first came to understand this point in a conversation with Duncan Kennedy, Carter Professor of General Jurisprudence at Harvard Law School, many years ago. I believe he said it first. I suspect that he agrees.

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change will bring results at equilibrium closer to something one likes better. Thus, the assertion that introducing or expanding regulation in a market will decrease, or reducing regulation will increase, the efficiency of a market is simply the expression of a preference for one result at equilibrium as against another and should be discussed in those terms, not in terms of some hypothetical or phantom state of affairs, the allegedly free market.

As was the case with my critique of the notion of a "free market" made earlier, so many people have a difficult time understanding the limits of the notion of "efficiency" that I will try it one more time. In public discussion, "efficiency" has come to mean something like lowest cost or lowest cost per unit of production. Such is but one possible meaning of the word. I have been told that somewhere out in Scholarshipland there is an article documenting over twenty meanings for the word. All of these meanings are attempts to avoid the problem with the idea of efficiency that derives from the fact that there is no natural state of affairs called the market, free or otherwise, against which to determine efficiency. This is because markets are not natural things, unless one wishes to treat humans as part of nature.[51] The notion of efficiency, just like that of the free market, assumes a distinction between man and nature. Thus, all understandings of efficiency are subject to contentious arguments about what is meant by cost—marginal cost, fully distributed cost, fully distributed cost accounting for all externalities, fully distributed costs accounting for all externalities, but assuming that all possible cost-reducing transactions will be undertaken, fully distributed cost assuming that only the most plausible cost reducing transactions will be undertaken.[52] The easiest way out of

51. This is a proposition that I heartily endorse. However, it is one that will destroy the underpinnings of both modern environmental science and law, built as they are on the distinction between man and nature, and so should be adopted only with caution. With respect to efficiency, accepting man as part of nature would mean that any change in the rules of the market by humans would be natural and so efficient. The text above presents a less radical alternative.

52. There is a technical literature about these possibilities that revolves around the notions of Pareto efficiency, Kaldor-Hicks efficiency, Bayesian efficiency, and various criticisms and purported improvements in each. This discussion does not solve the problems adverted to in the text. It only attempts to avoid them more elegantly.

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this mess is to abandon the attempt as unworkable and recognize that markets always struggle towards the efficient solution in the state of affairs in which they find themselves. My usage attempts to make this recognition easier.

At this point, good friends regularly object that surely I am wrong. More goods and services, especially if delivered at a lower cost, are a good thing. Prices need to be paid attention to, as well as who sets them, for price sends important signals to both consumers and producers about the use or consumption of scarce resources. I must confess that I am not at all sure that more is always an unalloyed good and I know that lower price is clearly not always good, as administered prices of staples have caused serious problems for fiscal stability in many countries. Moreover, price, something that is seldom uniform because markets seldom reach equilibrium, is at best a dubious measure of value. It is most often so influenced by transaction costs, especially the costs of transportation and information, not to mention market structure, as to be a weak signal at best. However, all of these concerns are besides my point.

"Efficiency," as used commonly, means "good" and so its use hides questions of good and bad—of whether more or lower price is always a good thing or what actual transaction costs and market structures are doing to the pricing mechanism in place. Linguistically, because efficiency means good, it turns "legal regulation" into meaning "bad." This is a bizarre, but politically potent, result, given that legal regulation is ubiquitous because all markets, as well as the entire market structure or system, are constituted by rules. Thus, the important question is what set of rules does a society want for this or that market, or for the structure or system as a whole. My usage then is designed to preserve, indeed to foreground questions of good or bad that might otherwise be suppressed, and I defend it as such.

Equally troubling as the implicit impression that institutions are natural things whose operation can reach some hypothetical efficiency is an absence that accompanies the notion of markets as constituted by institutions—people living in an existing economy. Just as North's notion of institution allows elision of the active work of humans in structuring markets, so too it assumes that economic actors are faceless, unknowable creatures of whom it might be said, "If you build it, they will come." Precisely the opposite

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is the case. Not only may no one come, but also who comes, if at all, and with what resource endowments, is both determinable in practice and different for different markets, or the same markets in differing economies, or the same economy at differing times. And who comes will make a difference in outcomes at equilibrium.

A market with many, many small participants—the market envisioned under the notion of "perfect" competition—will operate differently from a market with only a few large participants who have fairly good ideas of each other's positions in the market and so the ability to "pile on" when one participant has a concentrated losing position, as well as implicitly to agree to not make waves in such situations—the oligopolistic competition that Hall and Soskice call coordinated market economies and Reich calls democratic capitalism. And both will operate differently from a market with players of different sizes and resource endowments. These are some of the real world permutations that the game theoreticians might attempt to model for their own purposes, though again the math may be too complicated.

All this said, let me reiterate something. The analytic deficiencies in the notion of an institution do not therefore make it, and any work that relies on it, impossible of rendering insights into capitalism any more than the deficiencies in the Marxian scholars' analysis of three capitalisms or Reich's implicit technological determinism render these analyses worthless. Trading in goods is a different activity that implies different financial concerns, and so different financings, than manufacturing goods, and financing either, or financing financings, implies yet a third set of considerations. Sectors matter. Technology does make some things possible that were not before. The extent of collaboration between competitors is very important for how markets operate, as Adam Smith observed many years ago. Thus, it is important to understand that sectoral differences and technological possibilities and competitor collaboration all are important to take into account when trying to understand how an economy operates. At some level at least, all are likely to be associated with institutional, or as I put it, structural, or as Lindblom would have it, systemic, differences. Similarly, institutional or structural or systemic differences, at some level at least, are likely to be associated with economic outcomes. And so I turn next to

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another analysis that purports to recognize the importance of institutions for understanding the varieties of capitalism.

Baumol and his associates begin with the assertion that *as an empirical matter* there are four species of capitalism alive and well in the world: state-guided capitalism, oligarchic capitalism, big-firm capitalism, and entrepreneurial capitalism.[53] Set aside for the moment the question of what might be the distinguishing characteristics of each of these species. Instead, note that the first two species of capitalism—state-guided and oligarchic—are the bad capitalisms of their title, though the oligarchic form is clearly the worst, and the second two—big-firm and entrepreneurial—are the good capitalisms, though the entrepreneurial form is clearly the unsurpassable best. Thus, the empirical claim has in it an evaluative aspect, as made clear by the fact that it is only the state-guided and the big-firm species that get formally presented as having strengths and weaknesses. The other two are just black or white.

This evaluative aspect is rooted in the common macroeconomic concern with growth. For the authors, technological advance yields economic growth when entrepreneurial innovation is translated into large-scale production of the resulting products or services. The mechanics of this observation turn on two things. The first is a distinction between replicative entrepreneurial activity—think of an additional McDonald's franchisee in 1970—and innovative entrepreneurial activity, the creation and introduction of disruptive technology that brings forth Schumpeterian "creative destruction." The second is the importance of the large-scale firm for the commercialization of entrepreneurial innovation. Thus, capitalisms are good to the extent that they allow or encourage both innovative entrepreneurial activity and the translation of the fruits of innovation by large-scale firms into salable products or services so as to facilitate economic growth. Capitalisms are bad capitalisms to the extent that they hamper innovative entrepreneurial activity and its translation into new products or services so as to impede growth.

53. BAUMOL, LITAN & SCHRAMM, *supra* note 8, at 60-92.

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One might be forgiven for seeing in this formulation of economic growth a technological determinism similar to Reich's, were it not that Baumol and his associates, like Hall and Soskice, present a static model. So, while like Reich, Baumol and his associates have a problem of explaining the roots of differences between capitalisms, they need not explain change. Interestingly though, they, unlike many economists, do not use some mathematical index of growth to identify degrees of good and bad capitalism. Instead, like Hall and Soskice, Baumol and his associates use North's idea of economic institutions as the root of their explanation of differences between their four species of capitalism.

They start with the assertion that "state-guided capitalism exists where governments . . . decide which . . . individual firms should grow. Government economic policy is then geared to carry out those decisions . . . ."[54] The model here is the economy of post-war Japan—though designating individual firms, rather than sectors, for growth seems not to be what Japan did—as extended by the rest of the Asian Tigers: Hong Kong, Singapore, South Korea, and Taiwan, maybe also Malaysia, Thailand, and/or Indonesia. In these countries the mechanism of administrative guidance—and occasionally ownership—of banks, allows governments to target resources for expansion toward preferred segments of the economy, often export directed, and accompany those resources with facilitative measures such as tariff protection and tax policy. Prices are not state-dictated, though the existence of facilitative measures such as tariff protection and non-tariff barriers to trade have the effect of limiting the ability of foreign firms to enter a market. This means that domestic prices may tend to be higher than might otherwise be the case were the government to adopt different measures and policies, though interestingly Japan apparently had rather vigorous domestic competition in its favored export markets such a automobiles and electronics.

In oligarchic capitalism "government policies are designed predominantly or exclusively to promote the interests of a very narrow (usually very wealthy) portion of the population or . .

54. *Id.* at 62-63.

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. the interests of the ruling autocrat and his (or her) friends and family . . . ."[55] The model here is a composite of parts of Africa and South America, the various "stan" ex-Soviet republics, Indonesia under Suharto, Iraq under Hussein, and Syria under Assad *père*. In these countries, often resource rich, the main influence on government policy is not primarily economic growth, though some is often essential to keep the larger populace from open revolt, but rather the maintenance and enrichment of the economic position of the oligarchy, often including government officials themselves. Such economies usually show wide disparities in the distribution of wealth, a large informal economy and a relatively high degree of corrupt behavior on the part of public officials.

Big-firm capitalism features "large, established enterprises" with both "the resources to finance creative activity" and "positions in their markets large enough to earn profits sufficient to make the investment in the development of innovations worthwhile."[56] The model is Western Europe and the United States during the Twenties through the Fifties, a relative of Reich's democratic capitalism and Hall and Soskice's cooperative market capitalism. Ownership is disbursed so that professional managers lead what were once companies dominated by their founder, bureaucratic organization is necessary because of the size of the enterprise, and markets characteristically support "only a few competitors who may be able to take advantage of any significant economies of scale provided by the current technology."[57] These markets tend to be oligopolistic, showing modest control over price, and to be a bit sluggish in capitalizing on innovation.

In entrepreneurial capitalism "large numbers of the actors within the economy not only have an unceasing drive and incentive to innovate but also undertake and *commercialize* radical or breakthrough innovations."[58] The model is the current United States, Reich's supercapitalism and Hall and Soskice's liberal market capitalism. Entrepreneurs tend to be single individuals or new firms. Overall, few among them are wildly successful while most

55. *Id.* at 71.

56. *Id.* at 79.

57. *Id.* at 80.

58. *Id.* at 85-86.

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are failures, but those who are successful bring significantly disruptive change to whatever portion of the economy their innovations are focused on and tend to earn outlandish returns on their investments. The disruptiveness of an economy in which openness to technological innovation tends to destroy firms utilizing old technology leads to the establishment of social "safety nets that [partially] shield some of the victims of change from its harsh impacts . . . ."[59]

It would be easy to complain about the stereotypical, almost cartoonish rendering of these four species of capitalism. For such a complaint to form, one needs only to recognize that the United States endures a level of income inequality higher than all OECD countries including Turkey and remarkably close to that of several archetypical South American oligarchies—Bolivia, Ecuador, and Uruguay.[60] Likewise, one might remember that our economy is rife with oligopolies that dominate the production of many consumer goods, from toothpaste to gasoline. Indeed, some might be tempted to criticize the entire book as little but an exercise in shilling for the American style of entrepreneurial capitalism. However, doing so would waste the opportunity that the book provides for furthering inquiry into the aspects of the varieties of capitalism. For this purpose the division of capitalism into four types by Baumol and his associates is wholly adequate, more adequate than the Marxism's three, or Reich's and Hall and Soskice's two, all discussed earlier.[61] So, I wish to continue this inquiry into the varieties of capitalism with the analytical lever—technological advance, work at what is repeatedly and romantically called the "economic frontier," yields economic growth—that Baumol and his associates use.

At the outset, it must be remembered that every economist is in favor of economic growth. Unfortunately, what is meant by the term is anything but obvious. One might initially suspect that growth, seen as an increase in

59. *Id.* at 91.

60. *Id.* at 72.

61. Brian Holland helped me to notice that all four typologies fail to encompass either the current South or East Asian varieties of capitalism or the Russian one.

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quantity, is merely a synonym for good, except that suburban growth is said to be an example of sprawl and thus bad. Gross Domestic Product and Median Family Income are most often used when considering national or large regional economies, particularly by international and other governmental agencies and economic think tanks. Also popular are employment rates and changes in labor or total factor productivity. These measures ignore the distribution of income among citizens (and non-citizen residents). Whether this limitation discloses a deep ideological bias or is just a matter of data availability—both are asserted—is not clear. What is clear is that such statistics are regularly supplemented with measures such as infant mortality and poverty rates, where decreases are good, and childhood vaccination and life expectancy, where increases are good, not that these measures do not also disclose potential ideological bias. Years in school is also a common measure, though no one has yet suggested that a society consisting of only professional degree holders and their not yet professionally accredited children would possess the perfect economy. Also popular are environmental measures—air and water pollution, where decreases are good, and recycling, renewable energy production, and species protection, where increases are good. This list goes on and on and is no less freighted with not so hidden meaning. Finally, there are the truly crazed who see an increase in asset prices such as homes and securities as a measure of economic growth, as if inflation from the effects of limitations in supply only occurred in goods destined for short term consumption.

As best as I can tell, all of the preceding measures imply that economic growth is good, but also that people cannot agree about what kind of economy they believe growth ought to lead to. All likewise demonstrate the confusion/conflation of economic growth and economic health, not wholly surprising in a species subject to the second law of thermodynamics, but still not helpful. Perhaps all that one can say with confidence about economic growth is that it brings economic change that when somehow measured might be good or bad.

The rabid Schumpeterians who measure potential growth by counting patents issued on the assumption that more patents mean more new technology and more new technology means economic growth, offer the occasion for

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critically looking at the understanding of technology that Baumol and his associates favor. Here again, one uncovers difficulties with what every economist believes, for technology is often an ambiguous force in the lives of humans. Consider the following story.

I started practice back before the invention of the personal computer. I would hand-write my letters, documents, pleadings, and briefs, then turn them over to my shared secretary for typing. While she (I have known only one male secretary in my life) typed, I had time to read the paper and my mail, return phone calls previously carefully logged by the receptionist, and even start the next writing project. When my typing came back, it was easy to edit because it was in a physical form I did not recognize. Moreover, while I waited I had been forced to do something else and so had forgotten what I actually had written, if only a bit, but still remembered what I had intended to say, an additional help when editing.

Today I share my secretary, not with one other person, but with five other faculty members. She mostly does work significantly below her skill level because we all do our own typing, in my case proving each day that the "C" I earned in a typing class taken one summer during high school was given in recognition of my regular attendance alone. The pace at which work is expected is such that only classes and family life come between one draft and another; phone calls regularly interrupt writing as I answer my own phone. Editing is now much harder intellectually, though not physically, since when I once waited between drafts, now the printer allows me to start over in a few minutes and the font remains the same unless I intentionally change it, a change that makes the process of inputting editorial changes physically more difficult.

Clearly, I have experienced a significant technological advance in the conditions of my writing over these 35 years. Has this innovation yielded economic growth? Put aside the question of whether over time my written output has increased, or more likely declined, in value. It is obvious that my output costs less by one-third of a secretary and maybe one-twentieth of a receptionist. If economic growth is measured by summing costs for a given amount of output, growth has surely occurred. But such sums do not exhaust the value question. Here I do not wish to speak of the amortized cost of my computer and networked printer as

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against my share of the amortized cost of a typewriter. Rather, there is a cost to me of switching from having an office and half a secretary to having an office and one sixth of a secretary, if only the loss of humility from having to admit to that secretary who had patiently typed and returned to me the latest draft of the opening pages of a book chapter I had been working on, that on reading her efforts, it was obvious, even to me, that after five summers my work was still shit, for I still had no idea what I was talking about. Now, the only creature who may know that a similar project has again gone nowhere is the family cat who prefers this outcome since, in such circumstances, he can claim more of my attention.

However, set me aside, a good idea on many grounds. Consider the social costs of the diminution in status of my secretary's role. When I started working, secretarial work provided mostly clean—in all honesty I should not suppress the stains from carbon paper and mimeograph ink—white-collar jobs for bright lower-middle class girls with high school educations, or at most a year or two of community college. Such jobs brought money home, if not always independence from family, before, and while awaiting children after, marriage, not to mention for a much longer time period if marriage never happened or was never wanted or was not permitted. These jobs were part of the backbone of lower middle and working class ethnic communities. Today, their equivalent in terms of status and independent dependence—the administrative assistant—is a less numerous occupation that requires a college degree, a significant outlay for families in such communities. It is not clear, to me at least, in what sense the demise of many such secretarial jobs and the creation of fewer administrative assistant ones is the kind of increase in economic health meant to be indicated by the term "economic growth." Perhaps here too all that one can say with confidence is that new technologies bring economic change that, when measured, somehow might be either good or bad.

Now, I should not be here read as waxing nostalgic about my Fifties childhood and late Sixties young adulthood, for I spend much of my time fighting such nostalgia. I wish only to suggest that in a relative democracy humans might possibly prefer to live in the older world that I experienced where industry-wide bargaining

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with entrenched oligopolies created comfortable bureaucratic lives for many people. Indeed, I find it odd that, given the overriding concern for consumer sovereignty in the economic literature of the last thirty years, economists who champion economic growth and technological innovation, as all economists do, never mention the possibility that, when choosing the kind of capitalism they wish to live under, some, many, most, or almost all citizens might prefer something other than a single-minded focus on economic growth, whatever that might be and however measured, and whether derived from technological innovation or not. Thus, one of the ways to understand the differences between capitalisms might be that in a relative democracy humans could support—design is too strong a word—institutions that would forego, or at least postpone, a certain amount of the economic growth that derives from technological advance.

Why might that be so? Schumpeter, from the comfort of his tenured academic appointment, hailed capitalism for the creative destruction that it brings. Now his vision of that agent of capitalism, the entrepreneur, as destroyer, was a romantic, perhaps even an aesthetic, not a utilitarian one, much as was the case with Veblen's vision of the engineer as innovator. Oddly, given how Schumpeter's famous phrase has come to be understood, he believed that the bureaucrats would take over management of the economy from the entrepreneurs and so smother capitalism. Still, whatever one might have been his intention, today entrepreneurial creative destruction is a value widely shared.

Evidence of this sharing appears in the oddest of places. A provost at my university had a sign on his door echoing Schumpeter. It read, "Change is Good." The securely comfortable academics who labored under this provost's real care and concern did not buy into the message conveyed by this sign even a bit. Indeed, their attitude toward change, however implausible, was remarkably close to the legend on a t-shirt I see on undergraduates from time to time—"Life's a bitch and then you die." Though many humans, even some academics if they may be categorized as such, enjoy gambling as a form of entertainment, when it comes to the structure of their lives, academics, like most humans, are significantly risk averse. They like stability and fear change. Indeed, one of the collateral attractions of

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socialism for late-nineteenth and early-twentieth century workers was the fact that it promised some shelter in their lives from the maelstrom of change that accompanied the growth of industrial capitalism in those years. That attraction remains for many contemporary workers, industrial or otherwise, who know little about socialism beyond what they were delivered in their ideologically blinkered high school and/or college courses, and so who would never consider a socialist alternative.

Only a fool would believe that Schumpeterian entrepreneurial capitalism respects stability and dampens change. At the same time, even a fool would have to admit that this brand of capitalism has brought improvements to daily life. The Provost's sign is thus correct. Change is often good for the society as a whole . . . but not therefore for all members of that society. However much city life improved from the decline in the number of horses, the amount of the associated waste, and the rats who came along for the fun, and however much the mobility of Americans, especially rural Americans, increased, the rise of the horseless carriage did not bring joy into the hearts of either buggy whip or carriage manufacturers and their respective employees. Neither hatters nor haberdashers rejoiced when John F. Kennedy chose to go hatless to his inauguration. They too could see that change was coming and it would not be personally rewarding.

Whether change is technological or only sartorial, though it may bring general economic improvement in the form of economic growth measured someway, contrary to what the economists tell us over and over, the economic tide rarely, if ever, raises all boats, much less all boats equally. For some humans the long run will never come. Remember: Life's a bitch and then you die. For some, maybe many, flood tide will be seen only by their children who may or may not have a boat, but surely would have had a better chance of floating in one had their parents not had to sell their boat when the ebb tide left them high and dry. Faced with such short-run effects, societies might easily differ in either their openness to change or their response to it or both. Based on such differences in attitude, they might build, or just let flourish, institutions or structures that shape markets in particular ways, that differentiate species of the genus capitalism. Thus, while institutions may be very important for understanding the various capitalisms,

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this grab bag of disparate things, that might be modified or cast over in the pursuit of supposed economic growth, may be of most importance as constituting, or being indicative of, a society's response to economic change.

Having puzzled over the notion of economic growth, questioned the belief that technological change brings growth, and noted the unsurprising aversion of humans to technological, as well as other change, it is appropriate to reconsider several matters urged earlier. The recognition that one can alter the rules and institutions that make up a given structure of capitalism does not imply that any such alteration will have no impact on economic growth. All possible economic structures or market systems do not foster growth equally. Incentives make a difference when it comes to risking capital by engaging in financings bottomed on the hope for future gain. Risk and reward are always and intimately related when it comes to the willingness of people to undertake a financing. Structures or systems that make up an economy act to manipulate risk and reward. They both directly and indirectly work to make economic growth harder or easier.

For example, the institution of a freer trade regime will make certain financings seem more plausible than before—those that depend on access to less costly foreign goods—and certain financings less plausible—those that depend on the unavailability of those foreign goods. These alternatives are seldom symmetrical. In most cases the freer trade regime will foster increased growth measured somehow, at least if equilibrium ever is reached, though all people will not experience that growth as good. Still, one might deal with the underlying asymmetricality of experience by not accepting a freer trade regime or by ignoring it or by redistributing some, most, or all of the gains derived from growth through taxation and spending.

The case of technological innovation is similar. It will create some new possibilities in the lives of some Americans, and at the same time end certain actualities in the lives of some Americans. The possibilities gained and actualities lost are seldom symmetrical. In many, perhaps most, cases technological innovation will foster growth that is perhaps evidence of economic health. And again one might deal with the underlying asymmetricality of experience by rejecting the new technology either by the manipulation of intellectual property law or taxation or

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other forms of regulation or by embracing the new technology or by redistributing some, most, or all of the gains from growth through taxation or spending.

Though formally these are real choices that face any society, as a Marxian would recognize, the history of that society changes, and so over time limits by making more or less plausible, the range of possible choices. Still, the basic point remains the same. A society might act intentionally, if not therefore effectively, to limit or retard what is conventionally understood and so measured as growth, and specifically growth from technological innovation, as a way of dealing with the asymmetrical effects of such change.

What then can one say about the many flavors at capitalism's ice cream store? Let me start with the four that Baumol and his associates offer up for our delectation. Consider first the big-firm capitalism that Reich as well as Hall and Soskice in their different ways recognize as part of the landscape. A big tree provides the most shade. The big firm, especially in an oligopolistic industry, is guaranteed to be bureaucratic. Bureaucracy proliferates jobs, slows all processes, including change, and most importantly, provides many a place to hide. Bureaucracy may be frustrating for people trying to get something done, but ultimately it is warm. Tenures lengthen; wages rise. The wolf will, of course, come to the door, but there will be a lot of doors and retirement may come before he gets to yours. Pensions are comforting, retiree health benefits too, and yes, the money to pay either may run out, but who knows, maybe you won't be around when that happens.

A society that chooses, or accepts as a good default rule, the big-firm model of capitalism sees change as best managed down, worked out so that the last person leaving may turn out the lights. Equally important, such a society recognizes that the period for returning an investment in capital goods is significantly shorter than a working life. For individual workers, skills do not accumulate over a working life in the way that invested capital is supposed to accumulate. Redeploying capital after ten to twenty years is far easier than redeploying labor after the same number of years. In the no more than five-year horizon of the private equity crowd, redeployment of labor is impossible, except for the most flexible of recent college grads in low-level

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administrative jobs and computer jockeys, once the love of the venture capital crowd, both of whom share an even shorter attention span. This is not a matter of old dogs and new tricks, but of sunk costs that have created a life that, though fragile to the cosmos, is solid to the humans in question. Thus, in a big-firm capitalism it is important that the last person leaving will have lived a working life to that last day and that last task. Such a society is willing to trade less of what is conventionally seen as economic growth for longer periods of individual, and so social, stability. This is not a dumb trade, however difficult it might be to pull off in practice.

Societies that espouse big-firm capitalism often support various types of social insurance, especially unemployment insurance and old age pensions. Here one may see at work the democratic element of a society—both the aspect of a society's psyche that rhetorically supports more citizen participation in governance and those citizens who work to assure such—though seldom the egalitarian element—both the aspect of a society's psyche that rhetorically supports greater equality, especially economic equality among its citizens, and those citizens who work to assure such. The democratic element seems to recognize that the economic world does not consist only of big trees and that big firms are not wholly to be trusted to provide shelter until the last person retiring can turn off the lights. Change will be slowed, but no one expects it to be halted. Accordingly, some of life's risks need to be borne through somewhat collective mechanisms.

That there is an implicitly political/governmental aspect to my intentionally distanced sociological prose is made explicit by a fork in the road that leads from big-firm capitalism to either the state-guided or the oligarchic form. Consider next the state-guided form. Change may be encouraged, welcomed, or even forced by the state apparatus. However, the state-guided form suggests that, at least at election time, there will surface a certain obvious worry that corporate bureaucracies are narcissistic, that left to their own devices, oligopolistic firms may forget their role of providing shelter, and so in managing change.

This form, which can be found with relatively limited auxiliary social programs as in the case of Japan, could be

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seen to imply a rather stronger democratic element to a society than is the case with the big-firm form. The existence of state-guidance might suggest that the state will keep large economic actors from straying too far from their sheltering role, as the German state has done under its version of large-firm capitalism. On the other hand, the lack of concern for those whose economic activities are outside the areas of state guidance might suggest that such a society has a rather weaker democratic element than is the case with big-firm form. And some observers note that both species of capitalism can easily deform into a world where those included within the ambit of concern, those who are shut in, receive all of the intended benefits of that concern, but those without the ambit of concern for whatever reason—alienage, employment sector, ethnicity, gender, etc.—those who are shut out, receive almost none. So, in some sense, the question of a stronger or weaker democratic element in either species of capitalism may not be all that important. *Cela dépend.*

Contrast the oligarchic form of capitalism, which might exist in a familial form, as in South and Central America, but also may encompass a political oligarchy (lately called a kleptocracy), or even a big-firm oligarchy, as might be the case in natural resources rich countries. Here change is not welcomed, but when it comes, concern for the impact of change is centered in the oligarchy, the portion of the society that needs it least. Thus, all three oligarchical variants imply a relatively weaker democratic element to the society. The peasants will always be with us.

Turning finally to the entrepreneurial form of capitalism that Baumol and his associates trumpet, Reich laments, and Hall and Soskice treat with studied neutrality, some might argue that this form shares with the oligarchic one a sense that the peasants will always be with us. Here some care needs to be paid to the relationship between economic "details" and political rhetoric. Entrepreneurs tend to come from the upper portions of the middle classes. The destabilizations their innovations cause bring change to all. The upper classes can, however, ride out those changes more easily; that is the nature of being possessed of some capital, both financial and human, and so of being the upper classes. And it is often the case that portions of their financial capital are what support the big-firm commercialization of innovation coming from the

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middle classes. Still, this is significantly different from there being an oligarchy that resists innovation.

The lower classes, the peasants as it were, by definition lacking capital other than the modest human capital that is their labor skills, cannot ride out, much less profit from, change in this manner. Here is where the relative strength of the democratic element of a society needs to be carefully understood. Democracy has an interesting history, whatever might be said for its putative intellectual content. Historically, the democratic element was bourgeois. Today it is centered in the broader middle classes. There is a difference between an economic or political oligarchy defending its own interests and the middle classes doing the same thing—even though the peasants experience no difference in their lives. Class matters, though not in simple ways. Still, the existence of a broader democratic element in a society in no way implies that this element is egalitarian; anything but.

A return to history of the American economy over the past thirty or forty years that I sketched earlier would make this clear. Ours is properly seen as a bourgeois democracy, though of wider extent than the bourgeois democracies of nineteenth century Europe. During recent years our middle classes have experienced a level of economic insecurity that, though hardly unprecedented, they feel is unacceptable to their status. The result of this insecurity is a significant reduction in support for the progressive income tax and the modestly progressive real property tax; even grudging support of the regressive sales tax is down. Accompanying this increased reluctance to pay taxes is a willingness to reduce governmental services directed at other than the middle classes, a hostility toward unionized and immigrant labor, a continuous search for maximizing investment income—with dubious results in many cases—and a growth in indebtedness. All of these preferences have the effect of maximizing the disposable income that is part of maintaining a middle class status and so is anything but egalitarian. Taken together they suggest a plausible addition to the usual political bromides. A bourgeois democracy under stress is not a pretty sight.

Now to shift focus from relative democracy to egalitarian considerations ought immediately to raise a

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glaring absence in Baumol and his associates' typology, not to mention Reich's and Hall and Soskice's—socialism. Socialism is, of course, the alternative to capitalism, *n'est pas*? The assumption that by altering the ownership of the means of production one avoids capitalism is deeply engrained in political economy worldwide. Both the capitalists and the remaining socialists harp on this difference in their economic models. Indeed, Baumol and his associates and other economists repeatedly stress that with the fall of the Iron Curtain in 1989, the socialist ideal has been proven to be an inadequate economic alternative. However, before one concludes that questions of socialism, and so of the ownership of the means of production, have been swept off the table by the fall of a wall in Europe, one might say of socialism, what Shaw said of Christianity, that it has never been tried and so cannot be found wanting. State socialism of the Soviet form is, at best, but one form of the socialist ideal, just as American entrepreneurial capitalism is but one form of the capitalist ideal. Thus, it is sensible to look more carefully at what aspects of an economy socialism assumes.

Though it is not wrong to distinguish "capitalism" from "socialism," as those terms are understood in debates over political economy, by focusing on the ownership of the means of production, to use the private ownership of those means as the mark of capitalism is quite problematic. Capitalisms of all kinds are marked by the use of financings to shift value between time periods. Socialism in no sense implies an exclusively barter economy, the trading of present goods and/or services for present goods and/or services. Indeed, the iconic and much maligned Five-Year Plan implies that in state socialism there will be recurrent questions about financings. Less statist, more communal socialisms will face these questions too.

Once the ubiquity of financings among the various socialist alternatives is recognized, it is at least arguable that socialism is simply another species of capitalism, but one where the decisions with respect to a society's stock of goods and the direction of that society's available services, and so decisions with respect to what financings are to be undertaken, are questions to be answered by some group other than would be the case were that stock of goods and available services "privately" owned. Concomitantly, if those financings are successful, the profits, should there be

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any, that the chosen financings may bring might be captured by that other group; they have not simply been forgone. Losses might be similarly shared.

Given the fundamental participation of socialist societies in capitalism, it is clearer that the classic distinction between socialism and capitalism is not about the ownership of the means of production. Indeed, the historical differentiation of socialism from capitalism was, and remains, a rhetorical device, much like that of Baumol and his associates, for separating good (socialistic) capitalism from bad (individualistic) capitalism. This differentiation is about the private control of the productivity of labor, not about the core of capitalism as an economic institution. Wage slavery and economic inequality are the real and important issues, not financings.

By suggesting that socialism is a species of capitalism I am not trying by sleight of hand to reduce important questions to a definitional quibble. To thus understand socialism is to understand better the range of considerations that might distinguish economic forms. Like the other capitalisms, socialism needs to confront questions of financing, of the role of the democratic element of society, and of managing economic change. Consider first financings in the form of socialism that we know best.

The Iron Curtain did not necessarily fall because socialism is an implausible economic scheme. On reflection, it seems to have fallen because it could not solve its financing problems. This may have been due to economic isolation imposed by the West, though some of that isolation was self-imposed, but this is surely not the entire story. Financings in any society, socialist or capitalist, will come from some combination of profits earned and/or wages foregone and/or taxes collected, plus a bit of inflation. Financings may be directed in the hope of what is conventionally seen as economic growth or not, but if not, and if a steady state economy cannot be constructed, eventually the economy of that society will contract.

As Mancur Olson has argued, once Stalin achieved control, the Soviet system financed its economy by collecting all of the profits of the country's enterprises centrally and maximized those profits by setting workers' piece rates in a way that increased the wage earner's

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incentive to produce.[62] These centrally gathered profits were then redirected to support the growth of capital-intensive industry. Productivity grew at fantastic rates. In the end, however, sclerosis set in. This was because after the end of the Stalinist terror, bureaucrats and eventually workers colluded against the central planners to skim off profits for themselves. Financings became increasingly problematic as a parallel economy arose alongside the official one. And so, the parallel economy came to undermine the economy as a whole.

Thus, in the end, the Soviet state apparatus was not earning enough from such financings as it could undertake to avoid economic implosion. However, such is not the necessary end game of a socialist society. Whatever might be the case in the historical record, a socialism might pay attention to its profits locally, choose to invest them in a mixture of entrepreneurial and social welfare projects, and produce at least a steady state economy.

Consider next the role of the democratic element in a society. Returning to allegedly first principles, "socialism," like "capitalism," posits that the profits from any financing are to be captured by the owners of the means of production. It is just that in socialism ownership will be communal or state centered or some set of alternatives in between, and deployed in the future by those owners, presumably, though hardly necessarily, in the interests of some broader group of citizens. Thus, the question of ownership can be reduced to a question about the role of the democratic element in the society and the implicit assertion that by so structuring ownership the democratic element may be fused with the egalitarian ideal.

However, increasing the democratic element in the direction of the egalitarian ideal still does not eliminate the question of financing. The egalitarian socialist society might finance on the basis of communal profits and/or wages forgone and/or some scheme of state taxation, but financings there will be. Indeed, the endless, surely occasionally apocryphal, stories about the Soviet production of goods that no one wanted are simply evidence of financings that didn't work out. Financing heavy industry

62. *See* MANCUR OLSON, POWER AND PROSPERITY: OUTGROWING COMMUNIST AND CAPITALIST DICTATORSHIPS 114-19 (2000).

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or not, the production of consumer goods or not, agricultural export production or not are all choices about financings.

Similar questions arise when considering the question of change and its management. The choice to favor technological innovation that disrupts existing socialist investments or not is nothing more or less than a choice of where to direct financings. The success of the financings chosen will have something to say about economic growth and popular welfare. It will also say something about the various possible choices with respect to managing the inevitable personal costs of disrupting current economic relationships, of managing change. However, these are the same choices that various possible "capitalisms" make in their own ways too. It is thus ideological bias that leaves the socialist alternative out of the range of possible capitalisms, a bias that can be seen on the part of "socialists" and "capitalists" alike.

All of which is not to say that there really is no difference between capitalist capitalism and socialist capitalism. As Bert Westbrook regularly reminds me, there is no joy in socialism, no animal spirits such as might make the metaphor of players and game appropriate. Socialisms are sober, not playful. They do not wish to recognize the transformation in a person's status that accompanies economic success, the becoming one of the masters of the universe. Socialisms are also chary of risk, seeing that it is best born widely and so rewarded widely. Players, however defined, in socialist games are quite cautious when they choose whether to play or not, as well as in how they play. None of this should be surprising in a social theory born in the multiple dislocations that accompanied the shift from a predominantly agricultural to a more industrial society. However, to emphasize caution when undertaking financings is not to forswear capitalism, but rather to make a choice among various possible capitalisms.

And likewise, as Betty Mensch equally regularly reminds me, serious problems with incentives, and so signaling, are likely to be found in any system of administered prices such as may be part of some possible socialisms. The Stalinist attempt to build and direct capital accumulation for the development of heavy industry that was mentioned earlier is a long way from the medieval notion of fair price, tied as it was to notions of social justice inherent in the great chain of being. The two justifications

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for administered prices signal quite different schemes of value and so imply far different capitalisms.

Still, by understanding the basic affinities between supposedly different, even antagonistic, economic systems one might then be able to see that none of the forms of capitalism, including that capitalism that is socialism, imply any tight relationship to, or attitude toward, economic change, though they may imply a loose relationship to the democratic element of government.[63] As I noted earlier, I doubt that there are linear paths here. Which is not to say that someone could not attempt to imply one. The form of capitalism that is seen as the socialist ideal implies the strongest possible democratic element to government and so a linear relationship might be drawn back from it through state-guided capitalism to big-firm capitalism.[64] However, the existence of the various forms of oligarchical capitalism and so the possibility—which I suspect is an actuality—of various forms of state-guided capitalism suggests that such a relationship would be difficult to support. Indeed, extending the putative linear relationship through entrepreneurial capitalism into socialism's *bête noir*, laissez-faire capitalism, suggests the degree to which a political narrative, an attractive one I might add, is overriding a rather more chaotic set of

63. Here I might note that no one should be surprised were it to turn out to be the case that the socialist forms of capitalism would share an aversion to change similar to that of the oligarchic ones. The very large overlap of political power and the economic beneficiaries of capitalism in either society is likely to produce such aversion, lest lives of the powerful be disrupted. Still, this is anything but a necessary relationship for capitalism, as the vaguely socialist economies of the Scandinavian countries demonstrate. And the problem is hardly unknown within other varieties, witness the endless confrontations of an effective monopolist—Microsoft—with the European Union competition authorities over intellectual property. Power does tend to dislike being dislodged.

64. Such line-drawing exercises bring to the fore the question of the distinction between socialist capitalism and state-guided capitalism. If one assumes that socialist capitalism is the state socialist variety, then the difference is just one of degree, as guidance slides imperceptibly into direction and then more and more into ownership. The communal forms of socialist capitalism that might be envisioned are more difficult to place into a pattern with contemporary forms. They seem to me either to hearken back to Jefferson's yeoman farmer or to Veblen's more recent idealization of the engineer. The intermediate steps in the change of forms to something more recognizable today are not easy to understand, but they are unlikely to include state-guided capitalism.

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alternative approaches toward economic change, including not just the extent of the democratic element, but also something that has only peripherally appeared in this discussion, the size of the units of economic life. And it is the putative attachment to such a narrative that leads me to my earlier, harsh suggestion that Baumol and his associates are acting as shills for entrepreneurial capitalism, since there are lots of possible capitalisms that vary on multiple axes. Still, as was the case earlier with the various possible understandings of "institution," I see no reason to suggest my own names for the various possible varieties of "capitalism" to be found in that multi-dimensional space either. Indeed, I even eschew theorizing about the totality of possibilities. No one will listen.

By now it ought to be apparent that I am not at all convinced by the typology of capitalisms argued for by Baumol and his associates. And the fact that both Reich and Hall and Soskice agree on the existence of two of these species, though with a different political valence to be sure, cuts no ice either. If forced to choose I prefer the Marxian tripartite division with all of its problems, especially if the stutter is removed and the third variety of capitalism is seen as service capitalism. The concepts commercial, industrial, and service tie into the notion of institution in a significantly more consistent way than do the concepts at the root of Baumol's division. State-guided capitalism has the state as its central institution; oligarchical capitalism, the family or The Families; big-firm capitalism, democratic capitalism or coordinated market economies, the eponymous big-firm; and entrepreneurial capitalism, supercapitalism or liberal market economies, the entrepreneur. A political entity, a filial or social relationship, a subspecies of the corporation and an attitude toward technology can be gathered together in no particularly consistent way. However, I have no interest in arguing this point beyond what I have already done. That form of capitalism called socialism is still a tough sell; Marxism is too.

At the same time I do not wish to suggest that the problems with division of capitalism into four species by Baumol and his associates, or the simpler division's of Reich or Hall and Soskice, renders these efforts worthless any more than did the deficiencies in North's category

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"institutions." To have engaged in the enterprise alone is valuable, for doing so raises important questions about economic organization that have been suppressed for ideological reasons for far too long—at least over 100 years. Still, I would like to think that I have at least provided a basis for suggesting that it is possible that the product of all of these authors' efforts is better when treated as a diagnostic tool for understanding the political economy of various societies than as a description of the type of capitalist economy shared by those societies.[65]

To ask what kind of capitalism is found in this or that particular society is to focus on something very important in that society . . . how it is organized, where political power is located, what values are expressed by various portions of the society, how it treats change, how it keeps stasis from turning into ossification. These are not the only questions that might be asked of a society, but they are important ones, ones that might help to decide what variety of capitalist economy might fit that society. At the very least, answers to these questions might help to understand why a society has the variety of capitalist economy that it has.

It would be a mistake, of course, to assume that the answers given to these questions reflect intentionality in the narrowest sense. Human enterprises misfire in an astonishing variety of ways all the time. Still, if one comes to understand the choices that various societies appear to have made with respect to their economic organization, that knowledge might provide a basis for suggesting an alteration in one's own, and after all, that is the point of books such as *Supercapitalism*,[66] *Varieties of Capitalism*,[67] and *Good Capitalism, Bad Capitalism*.[68] Here then might be found the payoff for the individual interested in doing policy from learning that perhaps these authors have worked backwards—from economic policy to society. After all, done by adults, which may seldom be the case but still

65. Christina Falk, an astute field botanist, prompted me to articulate this aspect of my response to these authors' work.

66. REICH, *supra* note 9.

67. Hall & Soskice, *supra* note 10.

68. BAUMOL, LITAN & SCHRAMM, *supra* note 8.

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ought to be the standard, it is a lot of work to articulate policy prescriptions, work that is often Sisyphean in nature. One might alter the nature of the enterprise and possibly improve the result were one to work from society to policy rather than to use any of these authors' templates as a basis for deciding what that society's economy ought to look like, especially if one takes marginalism in economics seriously.

Reich, the seasoned political economist and experienced bureaucrat, has little difficulty in understanding the implications of marginalism.[69] In contrast, why Baumol and his associates, like most economists, the self-appointed custodians of marginal price theory, can only accept marginal social change reluctantly is one of the great mysteries of intellectual life.

Examples of such reluctance can be seen in passages in the second half of *Good Capitalism, Bad Capitalism* where the authors present a series of policy prescriptions designed to help various economies become more entrepreneurial and so grow more quickly. These prescriptions are not surprising as they follow from much of the literature on entrepreneurism, but are also not stupid for they recognize that economic policy analysis, unlike legal policy analysis, lacks a judicial mechanism that uses the notion of rights as a trump card that makes things seem to happen instantaneously, and so they offer their suggestions quite conscious of the potential political opposition to change. As a result, the authors explicitly engage in a real assessment of the costs, benefits, and incentives necessary for change to occur, rather than, as law professors do, shadow boxing with hypothetical, abstracted interests, old favorites such as security of transactions, fairness, compensation for injury, blah, blah, blah.

Interestingly, this modest, real world constraint means that because their policy prescriptions will result in disrupting established economic/political relations, Baumol and his associates recognize that most policy change will come incrementally and at the margin, and so economic change will come slowly as well, absent an economic crisis severe enough for citizens to be willing to question existing policy decisions wholesale. After all, most humans enjoy

69. *See generally* REICH, *supra* note 9, at 127-28.

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growth, but surely prefer it without change; they love the exhilaration of bubbles, but wish them regularly pricked by regulators.[70] These authors are not therefore happy with this constraint.

Consider the following. Baumol and his associates acknowledge the resistance of workers to accelerated economic change and so the necessity of providing them with some form of wage insurance in order to secure their approval of an entrepreneurial capitalist society. That this is but a concession to political necessity, and a grudging one at that, can be seen from the fact that such wage insurance is to be for a rather short duration—two or three years, far less than it might take for an average individual's investment in employment specific skills to work its way down toward zero. Likewise, these authors' recurrent dismissal of any behavior designed to secure legal protection from economic change as "rent-seeking" seems to me to be related to their implicit unhappiness with marginal change. After all, one man's rent-seeking behavior—tariff protection for a declining industry or regulator protection from an emerging competitive technology—may easily be another's protection from the storm of economic change, an attempt to acquire modest support by invoking the democratic element in a society for insulation from the effects of such change. Similarly grudging is the authors' recognition, again born of practical politics, that existing, other than entrepreneurial economic structures are unlikely to be dismantled all at once.[71]

In defense of their unhappiness with marginal social change, Baumol and his associates from time to time deploy everyone's friend, The Public Interest, in an attempt to capture the high ground of argument. Reich does something similar though he hides it in the cloak of appealing to our interests as citizens, rather than as consumers and investors. However one phrases it, The Public Interest provides no high ground, except rhetorically. The integrity

70. Steve Marshall came up with this lovely way of describing a recurrent pattern of human behavior when confronted with economic change.

71. Of like tenor is their general argument in favor of a shift toward a more entrepreneurial capitalist economy on the grounds that it is the only way existing social insurance programs can possibly be funded given current demographic trends, a threat directed at the middle classes if ever I have seen one.

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of the public/private distinction as an empirical matter has been pretty much discredited. Each word may or may not mean "good" in the hands of various people with respect to various political/economic disputes, since by definition, if there is a private, even rent-seeking, interest there cannot, as an empirical matter, be a public interest because some portion of the actual public is opposed to that interest. Thus, though it is implausible to expect economic discourse to eschew the use of "public" and "private" and speak only of interests, the authors' suggestion that fostering entrepreneurial capitalism is in the public interest deserves more than a little disaggregation into a discussion of discrete sub-groups of the public and their differing attitudes toward, if not interests in, economic change.

A disaggregatative view might suggest that Baumol and his associates' preference for a more entrepreneurial economy and thus for greater economic change, a preference that I happen to share, says little or nothing about the degree to which some, most or all of the democratic element in a society supports their preference. It also fails to attend to the conditions under which this element might increase or decrease such support.[72] At the very least, these economists ought to recognize that, not only is support for their implicit assumptions about the value of entrepreneurial capitalism anything but a technical economic issue of growth in gross national product, but that the degree of protection for the victims (and I use that word carefully) of Schumpeterian creative destruction is a relevant question that might be decided in numerous ways. And this is not just because there are economic trade-offs. It is because there is no stable background outline of what might be termed entrepreneurial capitalism against which those trade-offs might be measured, any more than there is a naturally free market or an ideally efficient one.

72. Mark Bartholomew, Associate Professor, University at Buffalo Law School, asks why, as a society, the United States gets so much change, if so many of us wish stability. Reich spends the last half of his book commenting on the failures of democratic process that he attributes to the pervasiveness of change at a time when there is a longing for stability, or at least protection from the storm that change brings. I have a different explanation, though pursuing it in detail is inappropriate in this context. However, review of the brief discussion of the American class structure that I offer on page 1008 above would suggest the content and direction of my thought.

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Here then is the importance of the understanding about markets with which I began this excursion. Economy and society have no natural state. We are making up the existing state of affairs all the time, hopefully with good arguments and not with assumptions that manage to avoid hard issues. Institutions in the first sense—textualized understandings of normative regimes—such as property and contract, could be different and there still could be capitalism. Likewise, the rule of law, after all is said and done nothing more that a sensible preference for bureaucratic regularity, could take multiple bureaucratic forms, though by no means with identical results. Similarly, institutions in the second sense—those formally organized as such—could take multiple forms. The large investment bank is hardly an essential part of a capitalist economy, as we seem to be learning these days. Indeed, in continental Europe its job once was largely done by commercial banks. Stock exchanges don't have to trade all stocks during the entire business day; stocks could trade just once each day. A securities commission might pass on the suitability of debt and equity instruments for sale in a manner similar to the way that the motion picture industry's private regulator does. Capitalism would not crumble. Financings would still take place, though surely a different range of financings, and equilibrium would still denote that the market had reached the efficient solution to problems of supply and demand.

Reich seems to understand all of this, though he does not make himself, as Richard Nixon always did, perfectly clear. He also understands one of the great strengths of Marxist economic analysis—history has a ratchet effect, it limits and changes the possibilities for going forward. Hall and Soskice seem to understand both points as well, though their pose as practitioners of the science part of political science keeps them from offering policy prescriptions and so of being perfectly clear as well.[73] Baumol and his associates do not, and I suppose that my criticism is likely to be hard for them as economists to understand, when coming much less accept, from a mere lawyer.

Economists live in a world where markets are good, growth is good, and lowest cost, their meaning of efficient,

73. *See generally* Hall & Soskice, *supra* note 10, at 54-60, 62-66.

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is good too. I happen to like this much of their world. But they also live in a world where the distribution of entitlements is taken off the table because this topic is contentious and makes the mathematics that is at the root of contemporary economics impossibly complex and where the distribution of gains and losses is presumed to be fair because it is the result of allegedly neutral market processes. I do not like this part of their world, however much it supports their claim, similar to that implicitly made by Hall and Soskice, to be doing science. The human subjects review people keep reminding us, far too pickily for my taste, that one doesn't do science with humans where life or welfare might be implicated. That no humans are maimed or killed when economics is done ought not to be enough for economists who presumably believe that wealth ought to count for something. Rather than a focus on institutions, or even on the dominant forms of economic activity, a focus on lives and sacred fortunes, to mangle a quote from our founding fathers, might just be a better place to start an analysis of the various flavors of capitalism.

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There is almost no sentence in this article that I would be unable to trace back to some conversation with a colleague or friend were I to try to do so. Acknowledgements, and so potential targets of blame, are thus difficult to contain. First there is the "whole sick crew" of finance types at the Law School—Tom, George, Phil, Tom, Phil, Amy, and Bert. Then there are other past and present colleagues including Jim, Diane, Ken, Bob, Bill, Fred, Isabel, Martha, Betty, Frank, Rob, and Jim. Regrettably Alan can no longer denounce the results of his instruction; Big Al's distance will protect him from viral contagion. Four good Marxist friends, Susan, Abbie, Wythe, and Karl, have helped more than they might have wanted to had they known to what end their help would lead. The anger produced by the teaching of Kenneth Dam, Aaron Director, Ed Kitsch, and Phil Neal at the University of Chicago Law School, as well as the scholarship of Henry Manne, Richard Posner, and many other members of the Law and Economics movement, has kept the kinds of questions that I treat here in the forefront of my mind for now over forty years. For that they also bear responsibility, as do Desi, George, Fred, Duncan, Richard, Nathalie and Chris, each of whom helped at some period of my life. Charles E. Lindblom, The Market System (2001), came at just the right time it now turns out. Mark, Ken, José, Tom, Tom, Brian, Ed, Janet, Steve, Betty, Athena, and Bert read one or more of my drafts and asked the hard questions I was evading. Dozens of students, including my son, Steve, have forced me to clarify to this limited extent my thought. Liz may be absolved because she never asked, and Jo, because she never listened. In all of these ways I have been endlessly blessed.

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METHODILLOGICAL NOTE

Good, even treasured friends caution, a gracious word for object, that my choice to treat capitalism as marked by financings, rather than, for example, any of the various varieties of exploitation possible in the world where many humans are necessitous and a far lesser number are not, needs to be addressed. Others object to my omission of a discussion of politics or power. Still others fault my blithe unwillingness to specify what I mean by value. And then there is my lack of specificity with respect to the actors in an economy. For these and similar readers, I append this note, knowing full well that it is not likely to provide a satisfactory answer to any of their cautions.

I choose a seemingly technical understanding of capitalism because I am convinced that most, if not all of the more common definitions tell me more about the political preferences of the individuals proffering them than they do about the beast. This is not to say that such definitions are wrong, but only that they are not right. They are so freighted with value that they tend to obscure the details of the processes that interest me and that I hope I can interest others in as well. And so I choose a less freighted definition in order to bring some of these details to the fore.

To say that something is not wrong, but is not right, is, of course, consciously to take a stand with respect to contested methodillogical matters. I firmly believe that no foundational positions are possible in political economy any more than in law, or economics, or what have you, and this piece acts on the basis of that belief. None of the ancient and honorable dichotomies—labor/capital, politics/economy, individual/group, freedom/necessity, power/dependency, objective value/subjective value, capitalism/socialism, know/believe—are more than quite leaky buckets of thought. None expresses ordinal significance. And each, once deconstructed through the process of critique that all of us know how to do, does not leave one term standing, but both wounded and staggering. All denote answers to unspecified questions, and for me it is those questions that are more interesting, even more useful, than the answers tendered.

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This set of intellectual circumstances, often (but incorrectly, for it has always been the case) labeled the post-modern condition, does not mean that we as citizens or scholars cannot talk about law and economy, but only that one is always talking partially, provisionally. An author when recognizing the absence of a firm foundation for his or her conclusions is not therefore stating a mere personal opinion or belief, but to the extent that such person is communicating to another human, is stating something rooted in (always partially) shared meaning, the only rooting that one can have, even after the good Bishop Berkeley has kicked a stone and so stubbed his toe.

In my pursuit of an understanding of the American economy I could have spent my time unraveling the things that people value in great and wondrous detail or the many and often creepy varieties of the ways that necessitous dependency compromises freedom when having no choice but to defer to power. I might have expanded on work previously done by looking at the many and various ways that politics shapes economies world-wide or contributed to the continuing debates about methodological individualism that litter the academic countryside. But I need not to have done these things in order to speak on economy. Partial critique of course leads, at best, to partial understanding, but partial understanding is, I am afraid, all we ever will have, for even the Greeks and Romans understood that rhetoric was never more than partially, limitedly grounded. They, of course, were afraid of rhetoric for just that reason and ever since in Western philosophy we have sought to assuage that worry by separating rhetoric from knowledge, sometimes known as truth. Given the history of conflict involving the West since at least the Ninth Century, it is probably better to fear that rhetoric that claims to represent truth than to be worried about that rhetoric that is chaste in its satisfaction with partial understanding alone.

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As the acknowledgements make clear, most of this essay is the result, not of reading books, but of talking with people. So, much of what I have argued above could not be traced in detail to the books on the following list. This list is of books that over the past ten years were either helpful to me or good foils for my growing ideas. I hope they may prove to be suitably helpful or good foils for interested readers as well. For such readers' convenience I have included some of the books cited in the footnotes.

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