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Constitutionalizing Property-Owning Democracy

Abstract: This paper explores how a regime recognizable as a Rawlsian property-owning democracy might be enshrined constitutionally in the context of the U.S. Five specific constitutional amendments are proposed: establishing an equal right to education, establishing a guaranteed social minimum, clarifying the legitimacy of regulating corporate political speech for the sake of political equality; establishing an individual right to a share of society's productive wealth, and assuring communities of significant size the right to remain economically viable over time. The substance and reasoning behind each proposal is discussed in length, and the paper also briefly discusses why a focus on constitutional amendments may be helpful both in clarifying how a property-owning democracy might be realized in practice and in establishing clear goals for social movements motivated by the aim of establishing a more equitable distribution of wealth, power, and opportunity in the United States.

1. Introduction

This paper seeks to address the question of how a regime recognizable as property-owning democracy could be enshrined constitutionally. Famously, John Rawls argued that beyond a minimum income and preservation of the fair value of the political liberties, decisions about how to institutionalize and legislate a just regime ought to be left to legislatures. But there are good reasons to think Rawls was too cautious on this point. First, as Alan Thomas has argued, it is hard to see how the justice of background institutions can be assured in the absence of institutional guarantees; otherwise, the hopes for justice rest on faith that democratic legislatures will consistently and faithfully uphold fair equality of opportunity and the difference principle (Thomas 2012). Given what we know about the operation of democratic legislatures even in regimes nominally committed to (for instance) equal opportunity, this is an unpromising strategy, and one that Rawls (like other liberals) would not tolerate with respect to the basic political liberties. Second, as a practical matter, given a 'regime choice' of either property-owning democracy or liberal socialism, achieving either such regime in practice likely requires some institutional fixity over time. Such institutional fixity can be secured while also leaving plenty of scope for practical, flexible judgment by legislatures as to the details of policy implementation as well as the development of non-constitutionalized institutional vehicles.

The concept of property-owning democracy has been extensively explored in recent scholarship (see Krouse/McPherson 1987; O'Neill/Williamson 2012 (eds.)). In a nutshell, property-owning democracy consists of a system combining political democracy with a market economy, but with explicit measures in place to broaden the distribution of capital and property as widely as possible and prevent domination of the economy (and state) by a small elite. Many recent articulations of the idea also call for establishing in effect a right to a meaningful share of property (be it cash, housing, and/or productive capital) for individuals or households. A property-owning democracy is intended to realize effective political equality, fair equality of opportunity, and an economy that lifts the position of the least well off group over time to a much greater degree than do even the best forms of welfare state capitalism.

In the American context, there is good reason to doubt that property-owning democracy can be achieved under the existing Constitution (especially as presently interpreted by the Supreme Court majority). I have in mind here not, primarily, the obvious defects of the U.S. Constitution with respect to political equality—such as the extraordinary overrepresentation of rural, often more conservative states in the U.S. Senate, at the expense of larger, more diverse and urban states—defects which have been catalogued by Robert Dahl and other political scientists (Dahl 2003). These defects in the mechanics of the American system are serious, and in general tend to harm the practical possibility of achieving a politics of property-owning democracy (or other conceptions of social justice), but I leave them aside here. Instead, I focus on the question of what social and economic rights would need to be constitutionally guaranteed if a fully realized property-owning democracy were to be established in the United States.

There are two more particularly ‘American’ elements of this essay that should be identified at the outset. First, as compared to many other nations, social inequalities and the perpetuation of a regime that systematically violates fair equality of opportunity have a clear spatial component in the U.S. Part of this spatial component has to do with the political and demographic composition of American metropolitan areas (the traditional pattern of a high-poverty, high racial minority central city surrounded by more affluent, whiter suburbs), and part has to do with the dependence of American localities on mobile business capital.¹ (Broad regional inequalities and inequalities between states are not wholly irrelevant, but are generally less significant.) These spatially based inequalities—to put it more precisely, social inequalities embedded in spatial arrangements—are significant enough to require constitutional remedy.

Second, the version of property-owning democracy I wish to promote here is not solely based on Rawls’s concept of the idea, but also on the complementary conceptions of a ‘Commercial Republic’ (developed by Stephen Elkin) and a ‘Pluralist Commonwealth’ (developed by Gar Alperovitz), both of which place strong importance on the practice of local democracy as a requirement of sus-

¹ On spatial inequality at the metropolitan level see Williamson 2010 and Macedo 2011; on the relationship between localities and mobile capital see, for instance, Williamson/Imbroscio/Alperovitz 2002.

taining larger-order democratic norms (Elkin 2006; Alperovitz 2011[2005]). The topic of local democracy is not one Rawls engaged with (and indeed there is a healthy suspicion of localism among many liberal egalitarians), but many other observers of the practice of American democracy such as Tocqueville and Dewey have identified the locality as the indispensable teacher of democratic habits, skill in deliberation, and skill in judging leaders capable of advancing justice and the public interest (Tocqueville 1835; Dewey 1927).

Elsewhere, I have sketched accounts of property-owning democracy, and also promoted an ‘egalitarian interpretation’ of the idea that involves an explicit long-term scheme to distribute productive wealth directly to all adult citizens, with the long-term aim of assuring that practically all households control at least \$100,000 in net assets. Clearly, it would not be necessary or wise to hard wire such a scheme in any detail into an actual constitution (Williamson 2009, 434–53; 2012, 225–48).

Here I am concerned with property-owning democracy in a more general form: a regime that seeks to secure (in Rawlsian terminology) the fair value of the political liberties, fair equality of opportunity, and either the difference principle or some other reasonable limit on inequality by distributing human and productive capital as widely as feasible. The intended contrast is with regimes in which control of productive capital is dominated by a tiny minority of citizens (i.e. the top 1%, who now control nearly two-fifths of all wealth in the United States), in which human capital (and also, often, effective political agency) is also distributed in a lopsided fashion, and that rely primarily on redistributive taxation to achieve a measure of social justice (Williamson 2012b, 287–306).

In the American context, realizing property-owning democracy in a stable form will require five constitutional guarantees:

1. A right to an *equal* public education.
2. A right to a minimum income and/or the means for supporting one’s self at a minimal level of social acceptability.
3. Explicit limitations on corporate political activity and provision of a public system of campaign financing.
4. An individual right to a share of society’s productive capital and/or wealth.
5. A *community* right to sufficient productive capital to sustain a viable local democratic community.

Below, I discuss the justification for each of these constitutional guarantees.

Before proceeding, however, it is important to clarify why addressing constitutional issues is a useful exercise. It is not my claim that implementation of all, or indeed any, of these amendments is required to continue to advance important experimentation consistent with a Pluralist Commonwealth vision, or to build public support and strong political movements in favor of such a vision. Nor do I claim that these proposed amendments ought to be imposed over the objections of the majority (or a strong minority) of Americans so as to foreclose democracy in the name of justice. Instead, my claim is that if we take either property-owning democracy in general or the Pluralist Commonwealth in particular as models of alternative *regimes* that are to work on fundamentally different principles than the existing system, then political movements must at

some point confront the question of how to permanently alter the architecture of the U.S. political system in ways that would facilitate the full development of an alternative regime (i.e. political-economic system). The five proposed amendments are designed to either remove serious impediments to the realization of a meaningful property-owning democracy in the U.S. or to enshrine key institutional elements of the alternative regime. It is assumed that adoption of each of these amendments could take place only after a long period of public debate and building understanding of the logic of a property-owning democracy model, in which a firm democratic majority came to recognize these proposed amendments as desirable and essential. Such democratic majorities, of course, do not exist at present. But concrete constitutional proposals can at least stimulate the public discussion that is needed if such majorities are ever to emerge.

2. Equal Public Education

Why should a discussion of broadening property distribution begin with a discussion of education? Here I accept the conventional view that ‘human capital’ is itself an extremely important form of property. The skills and abilities that one carries in one’s person, including in particular the capacity to continually learn new skills, have lifelong impacts on the ability of individuals to flourish in modern economies. To be sure, in existing capitalist economies there is a tiny class of people who can convert access to large material wealth into a comfortable and lavish (though not necessarily respected) life, without having to actually do anything substantial by their own efforts. But for the vast majority of the population, what one can *do* is at least as important as what one *has* in shaping lifetime economic prospects, and this would continue to be true in a property-owning democracy. Large inequalities in human capital—a situation in which some people have had ample opportunity to develop their capacities and skills in many directions, while others have had a minimal, stripped-down education, and in which some young people have access to enormous development resources (i.e. college) and others do not—are a recipe for long-term inequality at least as consequential as differences in assets or incomes.

In addition, there are strong reasons of justice to begin with education. Provision of a quality education to all so as to counter-act the advantages of class is a primary requirement of what Rawls termed ‘justice as fairness’ (Rawls 2001). Sociologically, the very existence of distinct social classes and the differences in the care and training imparted to children of different socio-economic backgrounds by their parents makes assuring literally fair life chances impossible. But the public is obliged minimally a) to devote equal public resources (in quality and quantity) toward the education of all children as a matter of right and b) to devote additional resources to those known to be severely disadvantaged as a consequence of (for instance) high poverty, the experience of childhood trauma, the existence of a disability. In short, a just society both shows equal moral concern for all children and makes whatever investments are necessary to assure that the especially disadvantaged have an effective opportunity to develop their

own talents and abilities. The sum result of this process is unlikely to eliminate the intergenerational transmission of class status altogether, but properly executed it can play a crucial role in reducing it. It can also play a crucial role in assuring that the bulk of the population develops sufficient education and civic skills to act as effective political agents.

The American system of public education falls criminally short of these normative standards. Epoch-making federal cases in the early 1970s (e.g., *San Antonio v. Rodriguez*) established that: a) gross disparities in the funding of schools within the same state are not violations of the equal protection clause of the 14th Amendment so long as states have some plausible rationale (such as the desire to maintain ‘local control’ over public schools); and b) that states are not obliged to end racial segregation in schools within metropolitan areas that results from the clustering of white students in suburban school districts that are separate entities from the urban school districts with minority (specifically, African-American) children (see *Milliken v. Bradley*; also, *Bradley v. Richmond School Board*). These cases codified the Court’s view that *Brown v. Board of Education* had *not* in fact established a national right to an equal education (even within states). As Justice Thurgood Marshall remarked at the time in a bitter dissent, the Supreme Court’s decision in the *Milliken* (Detroit) case consigned generations of children in many metropolitan areas to public schools that are effectively segregated by race and class, and divided up American city-regions into areas that have ‘good’ schools and those that have ‘bad’ schools that middle-class families will refuse to attend (Ryan 2010).

School inequity in the United States thus has three dimensions. The first is inequality of educational provisions between the different states. The second is inequality of funding between school districts in the same state. In recent years, 44% of local school budgets have been funded by locally generated sources—namely, local property taxes. 44% of local budgets are funded by the individual states, and just 12% by the federal government. In a well-understood dynamic, this method of funding makes it much easier for richer, more affluent communities with higher property values to generously fund the local schools, at a tax rate that does not deter residents from moving to the community (Macedo 2011). The third and most profound source of inequality, however, are demographic differences in the composition of schools resulting from a) residential segregation by race and class, and b) allowing each locality/county to maintain a separate school system.

From the standpoint of justice as fairness, this unacceptable situation has essentially zero hope of being rectified within the current structure of public education. Recent ‘reform’ efforts such as *No Child Left Behind* have arguably exacerbated many of the problems by promoting the adoption of testing-based teaching regimes, to the detriment of the development of critical thinking and civic skills (Ravitch 2011). Many U.S. urban public schools resemble mini-authoritarian regimes in which students who cannot comply with disciplinary rules are sequestered in quasi-prison ‘correctional schools’ or expelled altogether. Seizing on the visible failures of urban public education, neoliberal reformers have energetically promoted charter school and privatization strategies, gaining control

of some entire school systems such as New Orleans and Detroit. Other reformers have attempted to develop new models of holistic education that explicitly redress the problems associated with poverty, combining social services and resource centers for parents with traditional educational activities (Tough 2009). All current U.S. reform efforts take for granted the existence of permanent race and class segregation rooted in residential stratification.

There is essentially no hope for realizing property-owning democracy in any substantive sense unless this set of problems is redressed. Hence I propose that the U.S. Constitution be amended so as to provide an explicit federal guarantee of an equal public education. An ‘equal public education’ is to be understood as one that provides equal public resources (qualitatively and quantitatively) to children not defined as ‘special need’, and further additional resources to children who have one or more special needs. What are special needs? These can be defined as a disability, a diagnosed learning disorder, suffering from emotional problems related to abuse or other experiences of trauma, and/or simply as growing up in a poverty household. Schools ought to be given additional resources proportionate with the number of special need children in attendance. How many additional resources? This is a question that must be settled at the legislative level, but the underlying principle should be to provide sufficient resources to allow all children to achieve a high level of functioning and capability development.

Provision of an equal public education must be understood as more than equalizing schooling resources. It also must encompass the inequalities that result from the mere fact of the clustering of affluent students into affluent school zones and poor children into poor school zones. Specifically, a constitutional amendment should overturn the reasoning in the *Milliken v. Bradley* decision and provide a legal basis for challenging systemic inequalities within metropolitan areas. One promising approach would focus on the fair distribution of high-needs children across all the schools in a given metropolitan area. For example, in a metropolitan area with a child poverty rate of 15% (matching the national average for all persons), all districts might be required to have a student poverty population between 12–18%, and all individual schools might be required, wherever feasible, to have a student poverty population between 10–20%.²

In the context of residential segregation, achieving such socio-economic balance across schools would likely require either a scheme of busing poor students, or a scheme for facilitating the movement of low-income families from high poverty to low poverty school zones. But this strategy also poses difficult problems. For instance, the experience of busing imposes a burden on poor children, and some children and their families may legitimately prefer to be educated at their higher-poverty neighborhood school rather than a far-away low-poverty school. Further, some suburban schools in the U.S. are located an hour or more

² A full-blown scheme of property-owning democracy should essentially eliminate poverty as it is currently defined and measured in the United States (as a bundle of goods needed to meet a household’s basic needs). However, relative poverty would likely persist indefinitely (i.e. the existence of households making less than one-half of the median household income). In the scheme described here, ‘poverty’ should be understood as relative poverty (using the common OECD definition). Clearly, this proposed scheme would face many complications and challenges in implementation, discussion of which is beyond the scope of this article.

away from the central city, making it logistically difficult to include them in a scheme of balancing poverty across schools.

These challenges might be met by a twofold approach. First, children in high poverty neighborhoods should be given the *option* of attending any low or moderate poverty school in the metropolitan area (up until the point where that school has a 20% poverty population), and be provided free transportation to support such a choice. They should not be forced to attend an out-of-neighborhood school. All schools with a poverty rate under 20% are obliged to accept applications from these children (up until the point that the school reaches full capacity). Second, at the end of this process, districts that have a total poverty rate below the 12% threshold should be required to pay compensation into two funds: one a fund to support and subsidize the movement of low-income families into their districts (i.e. to weaken class-based residential segregation), and second, a compensation fund that directly benefits those schools in the district that have poverty rates above the 20% target threshold. Note that this approach would provide incentives to low-poverty districts to add more school capacity to accommodate applications from high-poverty areas, since reductions in poverty disparities across districts would lead to corresponding reductions in compensation owed.

This approach has several advantages. First, it ties all the schools in a metropolitan area together without literally forcing the merger of school systems. Second, it effectively opens up all schools in the metro area to low-income families, offering them a version of ‘school choice’. Third, it does not rely on the involuntary busing of any children. No one is to be forced to attend a school out of their neighborhood (although busing or other transportation is to be freely available for those who want it). Fourth, it requires more affluent districts to directly compensate neighboring lower-income districts for the added costs of educating a disproportionately high number of poor children. Fifth, over time this approach will increase the number of schools in socio-economic balance, and reduce the number of schools that are overwhelmed by poverty. Sixth, it will preserve a measure of local control over the content of education, so long as all localities are willing to do their fair share of educating poor children (or pay compensation for not doing their fair share).³

³ This approach, taken alone, still leaves a difficult problem: the significant likelihood that in some cases instituting a program of free school choice for children in high-poverty areas will lead to the most promising students with supportive parents exercising mobility, leaving those kids who remain in schools with even higher concentrations of poverty. A full functioning property-owning democracy would need to implement policies designed to attack extreme poverty and bring effective full employment to all geographic communities. Instead of imputing likely behavior from current urban conditions in the U.S. where many neighborhoods are in extreme poverty, we should think about how these dynamics would work out in a situation where extreme poverty has been addressed, all enjoy a social minimum, and the issue is one of *relative* poverty. In that circumstance, it is reasonable to expect that many people, even given the choice, would choose to stay in their own neighborhood school, particularly if there were assurances that their school would get equal resources as schools in more affluent areas as well as additional resources to compensate for the cost of educating more special needs children.

Adoption of this approach would require creation of new metropolitan-wide institutions—not metropolitan school boards, but school oversight boards. Any metropolitan area failing to implement this approach could be sued with the creation of unified metropolitan school systems a likely legal remedy. Existing metropolitan planning organizations (MPOs) might be used for this purpose, or new bodies might be called into being.

Given the inevitable complexity of any serious proposal to rectify educational inequalities in the United States, a fair question is whether it is really a good idea to embed any particular rectification strategy in the constitution itself. The approach I would favor is having a constitutional amendment specifically affirm a) a general right to a substantively equal public education guaranteed by the federal government but implemented by the states and localities, understanding the substance of that right to require b) substantively equal funding of schools within the same state c) compensation for the costs of educating special needs children and d) balancing to the extent possible the distribution of high-need (impoverished) children across school districts and individual schools. This amendment would give each child the right to an education, the right to be educated in a school that is funded at the same level as other schools in one's state (with allowances for the additional costs of educating high-need children), a right to receive appropriate resources to address any special needs one may have as a public school student, and a right to attend a school with a moderate level of poverty (relative to local norms), if one chooses. This, probably, is enough for a constitutional amendment: strong enough to overturn the existing disparities in metropolitan education in the United States, but without permanently enshrining a one-size-fits-all institutional remedy.

3. Guaranteed Social Minimum

A property-owning democracy must seek to provide a guaranteed social minimum, for a variety of reasons. First, some people in our societies, for a variety of legitimate reasons, are unable to support themselves through market activities (paid employment). These include people literally unable to work or to keep a steady job, and also people who can work enough hours to earn a livable income only by shortchanging or violating other responsibilities (such as parenting).

Second, many people who are willing and able to work are nonetheless unable to find steady work, and hence must live on the margins of the formal economy. In the United States, this category increasingly includes middle-aged people who have been downsized or laid off and whose skills are considered out-of-date, as well as many young people—including a fair few with college degrees—who are unable to find a steady first job.

Third, in the context of affluent, consumerist societies, a minimal level of consumption is not just a matter of meeting permanent human needs; it's also a requisite of participating in the larger society as a social equal. We thus might judge that people should all have decent housing, access to health care, and sufficient food to sustain themselves: this minimum level of consumption is

needed if people are to enjoy the full range of capabilities, including the most basic one (the top of Martha Nussbaum's list), a life of normal length (Nussbaum 2011). A person who lacks this minimum typically lacks the capacity to act as political agent on equal footing with others. Indeed, a person who is destitute and deprived is unlikely to regard themselves or be regarded by more affluent others as a social equal. This is an old point recognized as early as Adam Smith, who spoke of the importance of proper shoes in citizens' self-respect (Smith 2011[1776]). But in the context of consumer society, we might say that equal social and political status requires that all have the ability not only to meet their basic needs, but to participate in consumer society at least in some modest way. A social minimum in consumerist societies probably should be understood as encompassing not just the obvious basic needs but also as providing enough money to permit at least some participation in the goods of consumer society.

Fourth, the very existence of poverty is a standing violation of the principle of fair equality of opportunity. Ample empirical evidence shows that children who spend time in poverty have worse long-term life outcomes than children who have never experienced poverty. It is not reasonable to think children growing up in households that are unable to meet the basic needs of all its members will develop their capabilities to their fullest extent.

How should a social minimum be implemented? As Erik Olin Wright and Joel Rogers point out, there are three logical possibilities. The first is to provide basic human needs in kind through public provision. Health care, public housing, food stamps and public transportation might be provided in sufficiently generous quantity and quality to meet the basic needs of even persons with a very small market income. The second possibility is to provide cash support to allow individuals to purchase these items on their own. The third possibility is to provide guaranteed employment to all willing to work, with government serving as employer of last resort (Wright/Rogers 2010). Here we might note that there is a strong case for guaranteeing a right to work not just as a mechanism for providing a social minimum but also as a requirement of equal social and political citizenship (Shklar 1998).

In the American case, there are particularly strong reasons for making a right to employment the centerpiece of a constitutionally guaranteed social minimum. First, it honors the widespread belief that if you want to eat, you should (if you are able) work. Importantly, it should be possible to honor that principle without also narrowly defining productive contribution in terms only of market work. Second, relying primarily on a work strategy may foster a sense of achievement and social inclusion among those taking the jobs. Third, the work strategy more plausibly leads to the development of capabilities (especially for younger workers) than do the alternative approaches. Fourth, the work strategy has greatest promise of reducing the social waste (wasted people, wasted productivity) associated with chronic unemployment and underemployment. Fifth, U.S. opinion polls have consistently revealed strong support for the idea of government as employer of last resort.

Guaranteed employment cannot be the only vehicle for providing the social minimum, however. Significant supplemental spending via in-kind provision or

cash allowances will also be required. The choice between these alternative methods can generally be made on pragmatic grounds. To the extent that the aim is to assure that basic *needs* are met, the public provision strategy has much to recommend it—not just out of a paternalistic concern that people might spend a cash provision on non-essentials, but because the private market often does not provide high-quality affordable goods in reliable quantity (especially in the case of housing). Conversely, as noted giving low-income households sufficient cash income to participate in at least a minimal way in consumer society is crucial to the purposes of a social minimum: not just meeting material needs, but fostering social inclusion and self-respect.

From the standpoint of crafting a constitutional amendment, we might say that such an amendment should affirm: a) a right to the provision of sufficient quality and quantity of food, shelter, clothing, and housing to assure a healthy subsistence, to be provided either by direct public provision, cash payment, or a combination thereof and; b) a right to government-provided employment at a wage commensurate with skill for all persons willing to work, with options for both full-time and part-time employment, combined with a right to needed support services (such as training, transportation and child care).

These constitutional requirements might of course be supplemented by other legislative measures intended to combat poverty: expansion of *Head Start*, a higher minimum wage, the *Earned Income Tax Credit*. A guaranteed right to employment, properly implemented, would in fact go a long way towards addressing the cluster of problems associated with long-term poverty currently. This fact speaks to the importance of constitutionally guaranteeing a right to employment: currently, full employment is an officially stated goal of macroeconomic policy at the federal level, but in practice the good of full employment is traded off against other goods (such as, classically, the good of low inflation rates). A constitutional amendment would make access to productive remunerative employment a fundamental right, not a matter of political calculation or bargaining.

4. Redefining Corporate Personhood and Financing Elections

Current U.S. legal doctrine treats corporations as persons having similar free speech rights as individual human beings. Yet as corporations are legal creatures of the state, the state is free to define their rights and privileges. The purpose of a constitutional amendment would be to clarify that corporations are not to be treated as persons with respect to rights of public advocacy. Without such an amendment, under current doctrine there is little to block corporations from exerting unlimited influence on the political process, in ways detrimental both to justice and to the public interest.

Note that such an amendment need not deprive corporations of all political rights whatsoever. For instance, company officials *qua* company officials would remain free to testify before public bodies, to write opinion pieces, to send let-

ters to elected representatives. Some lobbying activities, within tight bounds, should be legitimately permitted, insofar as hearing the views of corporate entities might make a reasonable contribution to the deliberative process; but when such lobbying activities systematically bias the deliberative process, they should be curtailed. Corporate participation in electoral activities (financing candidates or financing election-season ads) should be banned entirely. Corporate lobbying of public opinion on public policy issues is a gray area; at a minimum television and radio channels accepting paid advertisements concerning public policy matters from corporate interests might be obliged to offer (free) public airtime to groups wishing to challenge the claims of such ads. The point of the amendment is not to resolve all such issues, but to establish beyond doubt the constitutional legitimacy of regulating corporate political speech in order to secure a deliberative process that serves the public interest.

Ending corporate personhood does not completely solve the problem of guaranteeing what Rawls termed the ‘fair value of the political liberties’, however. There is also the issue of inequalities in the effective political voice between high-income and low-income households. Existing regulatory approaches seek to cap the amount of funds individual donors may contribute to campaigns. But this approach does not redress the gap between those who can afford to give and those who cannot. One attractive way to solve this problem is the proposal of Bruce Ackerman and Ian Ayres to give all registered voters a disbursement of (say) \$50 per electoral cycle that can be donated to any candidate they see fit (Ackerman/Ayres 2004). This is a system of public financing that would preserve some of the putative virtues of the existing American system, by rewarding those candidates who can reach out to the grassroots and by distinguishing viable from non-viable candidates. It also would dramatically enhance political equality, and the total amount of money involved—in the billions of dollars—would likely dwarf the amount of money politicians now raise, even in presidential campaigns. Citizens would still be able to make their own contributions beyond \$50 out of private funds, but the ratio of private funds to public funds would be capped at one-third of total spending. There is good reason to inscribe a plan of this kind into the constitution: incumbent politicians have strong reasons not to adopt campaign finance rules that strongly promote political equality and competitive elections.

5. Right to a Share of Society’s Productive Capital and/or Wealth

We now come to the most distinctive feature of property-owning democracy: the broad distribution of capital. Rawls’ version of property-owning democracy relied (following James Meade) on incentives for owners of large estates to distribute shares of their estate widely via gifts. Estate taxation in general aims at the same end. The version of property-owning democracy I endorse goes farther and aims not just to break up existing concentrations of wealth but to guarantee each household of meaningful share of each of three forms of capital assets: real

property (housing), cash reserves, shares in productive enterprises (via business or stock ownership).

There are a number of possible mechanisms for assuring each citizen either a right to capital and/or a right to a dividend from capital. The Alaskan state constitution, for instance, guarantees to each citizen a share of the royalties from oil drilled on public land in the state, payable each year as an annual dividend. Treating publicly owned natural resources as well as other publicly owned goods (such as the airwaves and revenues from government-funded patents) in this fashion could generate a stream of additional income for all citizens. Now consider the possibility of the public owning shares of stock (with dividend rights) in private firms. Market socialist proposals aim to secure public ownership of large corporations in general, along the lines of John Roemer's coupon socialism (1994); but we might more modestly start with the restructuring of those 'private' firms whose existence and profits are directly parasitic on the state, such as private defense contractors. Corporate entities that do annual business with all levels of government exceeding \$100 million might be required to issue new stock equivalent to 49.9% of the company. This stock would be owned as a public trust on behalf of all citizens, and all citizens might be given an annual share of the dividends due on this stock. A related approach is the Meidner (share-levy) plan which requires corporations to issue new stock each year that are controlled by the firm's workers, leading over time to gradual worker control of corporations.

Now consider how a scheme such as my own proposal to spend \$455 billion (and rising) a year to provide an annual capital allowance equivalent to \$2,000 a year for all U.S. citizens under age 45 and \$1,000 a year for citizens between ages 45 and 64 might be implemented (O'Neill/Williamson 2012 (eds.)). I have shown how this scheme, if kept in place for decades, would allow all citizens to accumulate at least \$50,000 in capital (usable for different distinct purposes) by age 18. A major concern is that a friendly government might implement such a proposal, begin funding it for a few years, then lose political power, with the new government shutting down or scaling back its implementation. Hence a constitutional guarantee might be particularly important to this scheme, which is essentially a generation-long plan to transfer to all American adults a meaningful amount of capital through gradualist methods. How could this work? The most direct method would be a constitutional guarantee stating that: a) annual transfers into citizens' individual capital accounts equivalent to a fixed percentage of annual GDP (say 3%) are to be paid; and b) money for these transfers are to be raised via taxation schemes that assure that at least 90% of the population have a net financial benefit from the overall scheme. That guarantee assures that the transfers will take place every year, that they will involve progressive redistribution, and that everyone can be reasonably assured the scheme will work as promised.

Can or should the constitution really lock legislatures into maintaining such a long-term scheme of expenditures? What if conditions change, new problems emerge that are more urgent than assuring all a stake in capital, and it would be socially rational to end the scheme? These are legitimate questions. We

might observe however that state constitutions guaranteeing public education already commit states to long-term permanent expenditures, though the expenditure total is a matter of legislative judgment. Analogously, we might make the constitutional guarantee of capital transfers substantially lower than the overall desired scheme—1% of GDP as opposed to 3%, with the intent of assuring that *some* such scheme exists and has permanent funding while making the exact level of funding a matter of political debate and legislative judgment.

In this case I am persuaded that the aim of a constitutional amendment should be to establish both a principle of universal shares in productive resources and to establish and protect some clear mechanism for achieving that end. Further details as to the level of funding and the precise system of how capital accounts are to be organized should be left to the legislative process.

Why have a constitutional guarantee at all? Two key reasons emerge. First, as noted, attractive and plausible schemes of the gradual transfer of substantial productive assets to the majority must operate over a long period of time, and need firm protection in order to achieve their goals. Second, in this case it is particularly important to enshrine the *moral* principle that society's accumulated wealth is to be viewed at least in part as a common asset. Universal agreement on such a principle will never be attained, but an amendment would reflect and codify strong majority support for the idea. (This is not to say such majority support now exists; my assumption is that debate over this amendment would be protracted and controversial, just as debates over amendments to end slavery and enfranchise women were in earlier periods of U.S. history.) A constitutional guarantee of a right to productive capital would mark a decisive break between the period of untrammelled inequalities of wealth accumulation and a regime in which all are to have a meaningful share of the wealth generated by an advanced, affluent nation. The constitutional amendment fixes both the scheme constituting and the moral understanding underlying the new regime.

5. Community Right to Productive Capital and Economic Stability

I now turn attention to another peculiar feature of American federalism, namely the fact that the United States, despite the fact that over 80% of the population lives in urban areas and that there are over 300 distinct metropolitan areas, lacks a rational urban policy. Why does this matter for property-owning democracy? First, cities and states often view themselves as in competition with one another, in particular competition to attract capital and business investment and to some extent the highly educated 'creative class'. Often times, this competition takes a zero-sum form. Between 1950 and 2008, fully one-half of the 112 largest U.S. cities actually lost population, even in the context of dramatic overall population growth (Alperovitz/Williamson/Dubb 2012). This is what it means not to have a national urban policy: some communities slowly die due to disinvestment and capital flight. Pitting communities against one another in a battle for survival

is at odds with the Rawlsian idea of society as a cooperative venture for mutual advantage (Williamson/Imbroscio/Alperovitz 2002).

Second, the dependence of localities on private economic investment for economic survival severely biases local politics in almost all U.S. cities towards the interests of business groups. This generalization has been confirmed countless times by empirical studies of the politics of American cities (Stone 1989). The 'fair value of the political liberties' is simply not realized at the local level, because business groups have privileged access to local elected officials resulting from the anxiousness of public officials to retain and attract business investment. Progressive regimes that rely on power bases other than business interests are not entirely unknown in American urban politics, but they are quite rare and difficult to produce in the absence of favorable conditions (such as the presence of large public universities or other large stabilizing institutions).

Third, the economic instability of cities harms not only the quality of local democracy, but it also places at risk the value of small properties such as homes and small business. A property-owning democracy aims to allow all households to acquire their own home (if they wish), and to provide capital funds that might be used to invest in small businesses or to start their own firms. The value of residential real estate is obviously and directly connected to the overall health of the community in which one lives. Likewise, the prospects for starting or an investing in a small business are highly connected to the overall economic climate of one's community. In places where the community has a permanent, stable economic anchor and full employment, small businesses can thrive and rise and fall on their merits; in declining communities, new small businesses rarely stand a chance. Equally significant, small businesses do not long survive the closure of large employers in the local community.

There are other reasons why the United States in particular needs an explicit policy to guarantee capital to communities. Effective ecological planning (especially for the transition to a low-carbon economy) will require effective economic planning to stabilize urban populations. Likewise, the spatial concentration of U.S. poverty means that a transition to property-owning democracy will need to pay particular attention to the residents of communities marked by decades of disinvestment.

Specific policies that might address these problems include a) guaranteeing the continuing economic viability of all communities of significant size via an extensive regional planning system, include provision of capital to communities experiencing or threatened by disinvestment and b) deliberately targeting capital and investment to communities, particularly in urban areas, that are now experiencing accumulated distress. Implementation of a full employment policy should aim to bring jobs to where people are, and should be oriented around the goal of reviving distressed communities (particularly in urban, but also in some suburban and rural areas).

The specifics of this policy approach need not be constitutionalized. What should be in the constitution is an explicit guarantee that: a) communities above a certain size (25,000 or higher is a reasonable threshold) have a right to continue to exist and to receive the resources necessary to allow them to continue to exist

as viable communities; and b) that employment opportunities be provided within the reach of all job-seeking residents of distressed communities.

Provision A should contain some flexibility. For instance, residents of shrinking communities struggling to maintain 25,000 residents might be allowed to vote via referendum to ‘de-commission’ the community in return for one-time transitional payments to all residents; likewise there should be a mechanism for enrolling newly growing communities as guaranteed communities. Provision B can be interpreted as an extension of the constitutional right to full employment outline above. Its implementation would require that government take all reasonable measures to create sufficient jobs near where the jobless actually live so that they can access employment without being required to move. Taken together, the principle being enshrined here is a right to find employment in the community that one lives in, and the right of that community to remain economically viable over time. If implemented, it would also help shift the balance of local politics in ways favorable to democratic engagement and the pursuit of a public interest not so thoroughly shaped by the desires of business interests and the imperative of maintaining the city’s economic viability.⁴

Taken together, these five amendments would amount to a significant overhaul of the American political regime. These amendments interrupt the traditional transmission of intergenerational inequality via unequal public education; they alter the relationship between local government and mobile capital; they change the rules altering the political process; they establish a social minimum; and they establish a right to property.⁵ These measures in themselves are not adequate

⁴ One reviewer has raised a concern that this proposal might in effect freeze in place “the existing distribution of income and production across cities”. This is very unlikely to be the case in the context of the United States which continues to have significant population growth; in the U.S. context, securing an employment floor for declining communities need not imply a hard limit on economic or population growth in other metropolitan areas. The objection might have more weight in European countries at or near zero population growth. In any cases, the policies enacted could be tied to local unemployment rates rather than absolute employment numbers to allow for some spatial mobility of capital and employment over time, if this is viewed to be beneficial for efficiency reasons. In general however I am skeptical that the current rate of capital mobility in the U.S. can be justified on efficiency grounds: many capital moves in the U.S. from state to state are to secure cheaper labor, greater subsidies, and more favorable regulatory environments, not to realize genuine efficiency gains. Moreover the benefits of any such gains must be weighed against the costs imposed on workers who must relocate communities or lose their jobs, as well as those workers in secondary firms who lose their jobs when firms close due to the (negative) multiplier effect, and finally the overall implications for local democratic politics of giving private employers the ability to substantially impact a locality’s viability (see Williamson/Imbroscio/Alperovitz 2002 for lengthy discussion of these issues). These issues are of great interest and merit further exploration, because they are directly related to Rawls’s striking claim that a just political economy should not regard growth (or efficiency) as a primary end in itself, and his related claim that over the long-term a property-owning democracy might also tend towards being a steady-state economy. The line of thought is that in designing just political economic institutions, efficiency (while surely important) should not trump either distributive justice or the functional requirements of an effective democratic regime.

⁵ One reviewer raises the question, understandably, of why these proposals need to be framed as amendments rather than as simple legislation and suggests the focus on amendments reflects a distrust of the mass public. Here I offer a fourfold response: first, given the special role and meaning of the Constitution in American political culture, framing these reforms as

to realize a fully developed property-owning democracy, but they establish the right moral principles and effect a redistribution of resources and power likely to boost momentum towards further development of a more just political economy over time. In the immediate future, speaking of constitutional amendments also provides some concreteness to discourse about alternative regimes and system change. To communicate ideas about system change to a broader public, specific concrete proposals need to be placed on the table, and the most compelling of these need to become the focal points of campaigns and advocacy. To be sure, each of these proposals are deeply controversial in the context of current American politics, and could only gain approval after a long period of campaigning, advocacy, and education, comparable in scale and energy to the campaigns that established (for instance) women's suffrage in early periods of U.S. history. But for social movements aimed at altering the distribution of power and wealth to have staying power, clear goals need to be established. This essay offers several candidate proposals for restructuring and reforming the American system in lasting, concrete ways over the course of the 21st century.

Bibliography

- Ackerman, B./I. Ayres (2004), *Voting with Dollars: A New Paradigm for Campaign Finance*, New Haven
- Alperovitz, G. (2011[2005]), *America Beyond Capitalism*, Boston
- /T. Williamson/S. Dubb (2012), Anchoring Wealth to Sustain Cities and Population Growth, in: *Solutions* 4, 50–57
- Dahl, R. (2003), *How Democratic Is the American Constitution?*, New Haven
- Dewey, J. (1927), *The Public and Its Problems*, New York
- Elkin, S. (2006), *Reconstructing the Commercial Republic: Constitutional Design after Madison*, Chicago

Amendments helps make clear exactly what is at stake here: these Amendments are an effort to fundamentally redesign the way the political-economic system works. These are not mere reforms, but the building blocks of an architecture of a different system, that would shift how American democracy operates in ways comparable to the impact of the Thirteenth, Fourteenth, and Fifteenth Amendments enacted after the Civil War. (For this reason, there is merit in the suggestion that these Amendments might be introduced as a package in a Constitutional Convention; while I assume that the more traditional Amendment process which would require each of these to be passed separately is a more plausible route forward, I am not wedded to this assumption.) Second, in some cases (such as corporate political speech), there is not a meaningful legislative way forward due to the interpretations of the Constitution favored by the current Supreme Court majority. Third, as a practical political fact, because these proposals involve a direct challenge to concentrated wealth and power, they would likely be fragile and subject to severe counter-attacks, including no small amount of business-funded propaganda, should they be passed as simple laws. The ferocity and considerable effectiveness of the Right's attacks on 'Obamacare' legislation in the U.S. since the law's passage in 2010 offers fair warning on this point. Fourth, some degree of mistrust of democratic publics underlies the very idea of constitutional thinking itself, so to the degree I am a constitutionalist I stand guilty as charged. But my specific concern here is a worry about the way democratic publics can be deliberately led astray by elites seeking to exploit racial and ethnic differences, regional variations, cultural and religious differences and the lack of a well-organized working class in order to further their own interests, a worry that is informed by nearly the entirety of American history hitherto.

- Krouse, R./M. McPherson (1987), Capitalism, 'Property-Owning Democracy', and the Welfare State, in: Gutman, A. (ed.), *Democracy and the Welfare State*, Princeton, 79–106
- Macedo, S. (2011), Property-Owning Plutocracy: Inequality and American Localism, in: Hayward, C./T. Swanstrom (eds.), *Justice and the American Metropolis*, Minneapolis, 33–58
- Nussbaum, M. (2011), *Creating Capabilities: The Human Development Approach*, Cambridge/MA
- O'Neill, M./T. Williamson (2012) (eds.), *Property-Owning Democracy: Rawls and Beyond*, Chichester
- Ravitch, D. (2011), *The Death and Life of the Great American School System*, New York
- Rawls, J. (2001), *Justice as Fairness: A Restatement*, Cambridge/MA
- Roemer, J. (1994), *A Future for Socialism*, Cambridge/MA
- Ryan, J. (2010), *Five Miles Away, A World Apart: One City, Two Schools, and the Story of Educational Opportunity in Modern America*, New York
- Shklar, J. (1998), *American Citizenship: The Quest for Inclusion*, Cambridge/MA
- Smith, A. (2011[1776]), *An Inquiry into the Nature and Causes of the Wealth of Nations*, London
- Stone, C. (1989), *Regime Politics: Governing Atlanta, 1946–1988*, Lawrence
- Thomas, A. (2012), Property-Owning Democracy, Liberal Republicanism, and the Idea of an Egalitarian Ethos, in: O'Neill/Williamson (eds.), 101–128
- Tocqueville, A. (1835), *Democracy in America. Volume One*, Paris
- Tough, P. (2009), *Whatever It Takes: Geoffrey Canada's Quest to Change Harlem and America*, Boston
- Williamson, T. (2009), Who Owns What? An Egalitarian Interpretation of John Rawls's Idea of a Property-Owning Democracy, in: *Journal of Social Philosophy* 40, 434–453
- (2010), *Sprawl, Justice and Citizenship: The Civic Costs of the American Way of Life*, Oxford
- (2012a), Realizing Property-Owning Democracy: A Twenty-Year Strategy to Create an Egalitarian Distribution of Assets in the United States, in: O'Neill/Williamson (eds.), 225–248
- (2012b), Is Property-Owning Democracy a Politically Viable Aspiration in the United States?, in: O'Neill/Williamson (eds.), 287–306
- /D. Imbroscio/G. Alperovitz (2002) (eds.), *Making a Place for Community: Local Democracy in a Global Era*, New York
- Wright, E. O./J. Rogers (2010), *American Society: How it Really Works*, New York