
The Abolition of Class Government

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It is a critical time to discuss the resurrection and possible entrenchment of social democracy, although it might not seem like it at first. Since 2014, the need to stop liberal democracy from sliding into authoritarianism has appeared much more urgent. Progressives and social democrats expected growing popular dissatisfaction with the failures of liberal democracy – including rising inequality, global trade inequities, systemic corruption, and political responsiveness to elites. But, rather than gains for labour and the left, popular dissatisfaction has led to a resurgence in racism, sexism, xenophobia, vehement nationalism, religious intolerance, disdain for the rule of law, and ‘strongmen’ type leaders. With illiberal populists on the extreme right outperforming electoral expectations, undoing their nations’ democracies from within, the fate of liberal democracy has become the most salient issue of the day.

The fate of social democracy, by contrast, has appeared to be sealed for some time. In 1993, Cambridge University Press published a new translation of Eduard Bernstein’s 1899 work *The Preconditions of Socialism*, probably the seminal book on social democracy. Citing the end of communism, a reviewer noted that it was an opportune time to consider the viability of social democracy.¹ But the outcome of that moment of history soon became a matter of public record. The globalisation of democracy that occurred in the 1990s turned out to be, for the most part, synonymous with the globalisation of capitalist democracy – commodification, privatisation, deregulation, austerity, and the like. As of the turn of the century, a consensus emerged that social democracy had ended, at least outside of Scandinavian countries.² The record reflects social democracy’s golden age from roughly 1945 to 1970 and its status as an endangered political species shortly thereafter.

Under these circumstances, however, social democracy’s decline bodes in its favour. Neoliberalism rose to power as social democracy fell, and now illiberal populism and authoritarianism are rising thanks to the socio-economic injustices of neoliberalism. If there were ever a political reason to reinfuse democracy with its social content, one would

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¹ V Geoghegan, ‘The Preconditions of Socialism: Eduard Bernstein’, edited and translated by Henry Tudor (Cambridge, Cambridge University Press, 1993); (1996) 22 *History of European Ideas* 153, 153–4.

² See, S Berman, ‘The Roots and Rationale of Social Democracy’ in EF Paul, FD Miller Jr, and J Paul (eds), *After Socialism* (New York, Cambridge University Press, 2003) 113.

not have to look past these trends to find it. But of course an urgent matter of political ecology bodes in social democracy's favour as well, namely the game of 'chicken' playing out between government in the private interest and catastrophic climate change.³ Social democracy could prove itself liberalism's rightful heir by deposing neoliberalism and illiberalism, and begin a new era by creating a green economy and responding to climate change.

And yet, even Jeremy Corbyn as Prime Minister, Bernie Sanders as President, Alexandria Ocasio Cortez as Senate Majority Leader,⁴ and a global reversal of all offending laws and policies might make little difference in the medium to long term. That is because of the elephant in the room: social democracy's track record of succumbing to everything from revolutionary Marxism to economic libertarianism. That colossal failure of the ideology, the movement, and the associated political parties to identify and entrench their own foundational principle within the constitutional order would have to be remedied. Otherwise there is no realistic scenario in which social democracy could endure.

By 'foundational principle,' I mean a core structural prescription about how the economy and the state are supposed to operate. Take the abolition of private control of the means of economic production and the establishment of communist party control over the means of political production – those foundational principles define Marxism and communism. Or consider the abolition of public control of the means of economic production and the consolidation of private control of the means of political production – those foundational principles define capitalist democracy. If it ever wishes to be resuscitated and entrenched, I believe social democracy must define its own foundational principle.

In this chapter, I propose a foundational principle for social democracy: the abolition of private control over the means of political production, including elections and appointments, campaign and party finance, rights of popular participation, and legislative and policy-making processes. Or, for short, the abolition of class government.

To alter a foundational principle is to move from one political system to another, and to alter history in the process. That is what social democracy began to do when it revised orthodox Marxism by eschewing violent revolution in favour of enhanced democracy and regulating capitalism in the public interest instead of expropriating private property and nationalising industries. And social democracy began to alter history once more when it revised capitalist democracy by securing labour rights, safer working conditions, a minimum wage, public health care, public education, pensions, and other social programs and entitlements. But, social democracy failed to prevent Stalinism, Maoism, and Soviet Communism. Similarly, it failed to prevent Reagan's and Thatcher's conservative revolutions, and the neoliberal global order that followed. For all its success in revising the foundational principles of other political systems, social democracy never seemed to identify and entrench its own.

There are many seemingly foundational arrangements that fall short of being definitive in the way I have in mind. Take, for example, such legal foundations as a parliamentary system, a presidential system, a common law system, a civil law system, a full separation of powers, voting systems such as mixed member proportional or first past the post, or

³ Neither appears prepared to swerve – not the fossil fuels oligarchs and their allies in government, nor atmospheric chemistry. The former will be dead and out of office, while the latter thrashes and torments posterity for millennia if not a mega-annum.

⁴ (Until she's old enough to be President.)

even a written constitution. However entrenched and influential, such arrangements are not definitive of the political system on the whole. Political systems are defined by matters of authority and power, which depend, at base, on control of economic production (supply of goods, services, and ultimately wealth) and control of political production (supply of office-holders, law, policy, and ultimately authority). Pharos, emperors, kings, queens, theocrats, and dictators all knew that effective political authority depended on control over economy and state – perhaps that is why such rulers merged them and did not dare emancipate either one from vertical compulsion. Systems of political rule on the basis of divine favour, royal birth, and military control are all based on entrenched power structures.

Private control of the means of economic production is exactly that: a power structure (underlying capitalism); the same goes for state control of economic production (underlying Marxism). Social democracy's balance between the two is just a compromise between power structures, not an actual political system. And it leads to incessant rent seeking – constant pressure from short-term vested interests (over and above diffuse and long-term interests) for favourable laws and policies. The question is, what would stop wealthy pressure groups from tipping the balance and controlling the political economy (to the effect of producing today's levels of inequality, precarity, cultural backlash, and carbon emissions)?

Social democracy opposed the abolition of private control over the means of economic production, and wisely so. But it failed to pair that stance with its necessary corollary: an unbending insistence on the abolition of private control over the means of political production. I refer to the entrenchment of a popular power structure in the form of a political sphere that is autonomous from the economic sphere, and thus unsusceptible to financial capture. This is a necessary structural condition for obtaining the fruits of that abolition of private government: political rule on the basis of consent, participation, responsiveness, representation, accountability, and ultimately sovereignty, all of a popular variety. Or to put it yet another way, the foundational principle to be guaranteed is freedom, equality, and self-governance for all, regardless not just of race, sex, religion and the like, but also property (or wealth).

The *constitution* of social democracy represents the proper framing of the issue today, but it does not invite a law and policy wish list. Rather, it invites the entrenchment of social democracy's own native power structure. Although the abolition of class government requires a strong constitutional baseline spanning the law of democracy and anti-corruption law, this chapter does not analyse present-day trends in those fields or undertake a comparative analysis of their laws. Its tasks are more rudimentary: identifying this foundational principle in the definition of social democracy, highlighting its relevance to democratic backsliding (past and present), and noting its current articulation in political theory and international agreements. I see these as the first steps on the path to a constitution of social democracy.

I. What is Social Democracy?

Social democracy is commonly defined as the things that it does, not what it is inherently. For example, it is famous for achieving certain differences in degree with liberal democracy: more regulation of the economy in the public interest, less privatisation; more social provisions by government – such as universal health care and free education all the way through the university level; greater benefits for the poor and the elderly; greater empowerment for

workers and greater rights and protections for unions; and a social democratic political party (usually under the guises of labour) that achieves a greater presence in government. Every democracy in the world could be mapped along these lines, forming a multi-dimensional spectrum. But at some point and in certain moments in history, such differences in degree correspond to an autonomous philosophy, movement, party formation, and political system. Keating and McCrone's definition, a 'third way between revolutionary Marxism and unbridled capitalism,'⁵ raises preliminary issues.

Let us begin with social democracy's relationship with Marxism, which is the focus of Sheri Berman's definition:

[T]he movement and ideology that emerged from the democratic revisionism that Eduard Bernstein and others espoused in the late nineteenth and early twentieth centuries, which itself is best understood not as an updated version of orthodox Marxism (as most accounts would have it), but as a fundamental rejection of some of its most important principles.⁶

One such principle was historical materialism – that supposed inevitability of class conflict and capitalism's collapse. When Bernstein's papers were collected after his death, there surfaced an envelope with handwritten notes on the back: 'Peasants do not sink; middle class does not disappear; crises do not grow even larger; misery and serfdom do not increase.'⁷ Economic progress in the Germany of Bernstein's day seemed to disprove Marx's mid nineteenth-century fatalism. Social democrats believed that universal suffrage could change history, further contradicting scientific socialism's determinism. The proletariat could gain representation, regulate the economy, and improve their lot. Eventually, 'The Marxist view of democracy as a "bourgeois façade" was abandoned.'⁸

Making room for human agency within the existing economic and political panorama led social democrats to abandon another core Marxist principle: revolutionary struggle. Bernstein wrote that democracy 'is a weapon in the struggle for socialism' and 'the form in which socialism will be realised.'⁹ Like other types of socialists, Bernstein wholeheartedly agitated for 'the transition from the modern social order to a higher one,' but he added the words 'without compulsive upheavals.'¹⁰ 'Social democracy,' he emphasised, 'has no enthusiasm for a violent revolution.'¹¹

That brings us to the second issue, social democracy's relationship with capitalism. Two of the reasons why social democracy does not resort to violent revolution pertain to this relationship: first, a belief in 'the necessity and instrumental value of the market'¹² and, second, a belief in the efficacy of regulation, what Andrew Levine describes as 'reforms designed to mitigate capitalism's worst features.'¹³

⁵ M Keating and D McCrone, 'The Crisis of Social Democracy' in M Keating and D McCrone (eds), *The Crisis of Social Democracy in Europe* (Edinburgh, Edinburgh University Press, 2013) 1–2.

⁶ Berman (n 2) 114.

⁷ Geoghegan (n 1) 154.

⁸ 'Social Democracy' (*Encyclopaedia Britannica*) www.britannica.com/topic/social-democracy.

⁹ E Bernstein, *The Preconditions of Socialism* (H Tudor trans, Cambridge, Cambridge University Press, 1993) 142.

¹⁰ *Ibid*, 145.

¹¹ *Ibid*, 158.

¹² Keating and McCrone (n 5) 3.

¹³ A Levine, 'The Political Theory of Social Democracy' (1976) 6 *Canadian Journal of Philosophy* 183, 192.

Implementing such reforms, social democracy brings about social capitalism, which Claus Offe calls 'organized,' 'embedded' and 'regulated' capitalism.¹⁴ Informed by 'the precepts of a social market economy,'¹⁵ Offe contrasts social capitalism with liberal capitalism – or European capitalism versus Anglo-American capitalism. Though this may be a coarse distinction, it highlights a series of key juxtapositions, including:

equality versus efficiency, collective bargaining versus individual contracting, cooperation versus conflict, rights versus resources, wage moderation versus distributive conflict, ... social partnership versus class conflict, ... associational collectivism versus individualism, social security versus competitiveness, [and] politics versus markets.¹⁶

Opting for the first choice in the pairings above, social democracy seeks to prevent profit-maximising behaviour from leading to domination by concentrated capital. It also seeks to enable ordinary people to benefit from economic freedoms and, collectively, create an economic system consistent with their needs and values (the economic system being embedded in politics and culture, after all).

Implementing such reforms, social democracy demonstrated that government could usefully regulate the market. But what could make such regulations long-lasting? Durability could only come from social democracy's prescriptions for the political system itself – the motor for producing and, later, protecting social democracy's policies.

Through critical of social democracy, Frederick Engels and Karl Kautsky pointed to its political requirement. Engels wrote:

One could imagine the old society peacefully growing into the new in those countries where a national assembly represents social power and is free to implement what it wants, in accordance with the majority of the people.¹⁷

Today, however, the notion of a representative legislative body is practically laughable. Campaign and party finance, lobbying, conflicts of interest, corruption, and the decline of countervailing power are among the structural obstacles to the kind of peaceful transformation referenced by Engels.

Also writing before Bernstein, Karl Kautsky referred to the same overarching issue of popular responsiveness and representation:

Whenever the proletariat engages in parliamentary activity as a self-conscious class, parliamentarism begins to change its character. It ceases to be a mere tool in the hands of the bourgeoisie. [Such organized political participation] is the most powerful lever that can be utilized to raise the proletariat out of its economic, social and moral degradation.¹⁸

But why would Kautsky assume that engagement and participation by the proletariat would lead to changes? What legal conditions would be required in order for participation by the

¹⁴ C Offe, 'The European Model of 'Social' Capitalism: Can It Survive European Integration?' (2003) 11 *The Journal of Political Philosophy* 437, 447.

¹⁵ Ibid, 447.

¹⁶ Ibid, 441.

¹⁷ Engels, quoted in MB Steger, *The Quest for Evolutionary Socialism: Eduard Bernstein and Social Democracy* (Cambridge, Cambridge University Press, 1997) 144.

¹⁸ K Kautsky, *The Class Struggle (Erfurt Program)* (WE Bohn trans, Chicago, Charles H. Kerr & Company, 1910) 188.

lower social classes to be a powerful lever? Just two pages earlier, Kautsky admitted that '[t]he influence of a class within a parliament depends, in the first place, on the nature of the electoral law in force;¹⁹ or, more broadly, it depends on the field now known as the law of democracy.²⁰

In the preface to the 1909 English translation of his *Evolutionary Socialism* (also translated under the title *The Preconditions of Socialism*), Bernstein ably summed up the overall point that I think Engels and Kautsky meant to communicate:

I strongly believe in the socialist movement, in the march forward of the working classes, who step by step must work out their emancipation by changing society from the domain of a commercial land-holding oligarchy to a *real democracy* ... guided by the interests of those who work and create.²¹

A subsequent translation of the same book in which Bernstein wrote his 1909 preface contains the key phrases for what 'real democracy' would entail. Here we have the foundational principle for social democracy: 'the abolition of all laws which limit the universal equality of rights,' the '*absence* of class government,'²² and the '*abolition* of class government.'²³ These formulations are shorthand for structural safeguards against oligarchy and structural guarantees for good government.

Major episodes of democratic backsliding show the urgency of those safeguards, as well as the difficulty of ever obtaining them. The episodes I have in mind feature false consciousness and fascism, historically, and their modern-day equivalents in rising populism of the illiberal and authoritarian variety. Today's authoritarianism was preceded by class government, that is, government by and for such industries as banking and finance, fossil fuels, agribusiness, and pharmaceuticals. And despite today's rising populism, neoliberalism persists across most countries that hold elections, making it still the main obstacle to social democracy. But if Karl Polanyi was right that a similar devotion to the needs of capital caused the rise of fascism in the 1920s, then we may have a historical pattern on our hands. That is an additional problem that social democracy would be uniquely positioned to solve.

II. Old-school Backsliding

The Revolutions of 1848 swept through much of Europe and even parts of South America. They induced the Prussian King to join in and forced the resignation of Klemens von Metterich, the First Chancellor of the Austrian Empire.²⁴ Workers asserted their socio-economic interests so vigorously that it appeared as though monarchies had really been

¹⁹ Ibid, 186–7.

²⁰ See KD Ewing, TK Kuhner, and J Tham, 'Editors' Preface' (2017) 28 *King's Law Journal* 161, 161–2.

²¹ E Bernstein, 'Preface to the English Edition' in *Evolutionary Socialism: A Criticism and Affirmation* (EC Harvey trans, London, Independent Labour Party, 1909) xxii–xxiii.

²² Bernstein, *The Preconditions of Socialism* (n 9) 140.

²³ Ibid, 143.

²⁴ See P Jones, *The 1848 Revolutions*, 2nd edn (New York, Routledge, 2013) 3–4. I include the 1848 Revolutions in the category of socialist movements even though the revolutionary regimes ultimately disagreed about the desirability of adding social and economic rights to civil and political ones. The Revolutions 'aroused workers into defending their social and economic interests.' 17 Arising out of a major economic crisis, the impetus was social even though the immediate results were primarily liberal.

defeated, popular constitutions firmly established, and democracy placed on the path to consolidation. But that impression was brief. As Jones notes, 'If a survey for a political map of Europe had been carried out in 1845 and then repeated ten years later it would have revealed few differences'.²⁵

The revolutionary democratic freedoms that had just been established led to an apparently popular counterrevolution. As Rapport notes, 'the public was carefully "managed" by appeals to monarchy, patriotism, religion and property against the spectre of "anarchy", "communism" and "terror"'.²⁶ Once conservative and counter-revolutionary forces gained the upper hand, 'Europe experienced a decade of iron-fisted rule which made the pre-revolutionary conservative order seem positively lax'.²⁷ This turn of events helps explain Jones' conclusion: at the end of the day, the Revolutions 'destroyed the idealistic, almost mystical, belief that universal suffrage would bring with it social equality'.²⁸ That, perhaps, was the longest-lasting impression created by the 1848 Revolutions.

France was a particularly vexing case. While the February Revolution of 1848 did succeed in ending the July Monarchy of Orleans, the June Days uprising that followed was violently repressed by the military, signalling that France would not become a democratic and social republic after all. Louis-Napoleon Bonaparte's election later that year and 'self-coup' three years thereafter confirmed the point. Napoleon III's 17-year reign as the Emperor of the French is hardly what the revolutionaries had in mind. And yet, consistent with the impression that universal male suffrage was no panacea, a large portion of the public supported a military end to the June uprising, Bonaparte won his 1848 election by a large margin, and his 1851 coup was met by public apathy, even support.²⁹

This outcome was all the more damning in light of the dictatorship and empire that followed the French Revolution (of 1789). Bernstein wrote that 'the modern socialist movement, as well as its theoretical expression is ... the product of the great French Revolution and of the conceptions of right which, through its general influence, gained general acceptance in the wages and labour movement'.³⁰ But writing in 1899, Bernstein could surely see, like Marx, that 1848 ultimately stood as a farcical repetition of the eventual outcome of 1789. What the modern socialist movement really had to wrestle with was counterrevolution and its own failure to entrench itself.

In Ann-Sophie Chambost's articulation, the failure of France's 'bold experiment in popular sovereignty ... call[ed] into question the same "people" which European radicals had sought to make sovereign ever since the French Revolution'.³¹ Such conservative 180-degree shifts in revolutionary trajectory ushered in the original *What's the Matter with Kansas* literature, the attempt of Marxists, mostly, to account for all the citizens outside

²⁵ Ibid, 98.

²⁶ M Rapport, '1848: European Revolutions' in B Isakhan and S Stockwell (eds), *The Edinburgh Companion to the History of Democracy* (Edinburgh, Edinburgh University Press, 2012) 282–92, 19–20 of pre-publication version, available at <http://eprints.gla.ac.uk/78871/1/78871.pdf>.

²⁷ Ibid, 20.

²⁸ Jones, *The 1848 Revolutions* 102.

²⁹ See A Chambost, 'Socialist Visions of Direct Democracy: The Mid-Century Crisis in Popular Sovereignty and the Constitutional Legacy of the Jacobins' in D Moggach and GS Jones (eds), *The 1848 Revolutions and European Political Thought* (Cambridge, Cambridge University Press, 2018) 112.

³⁰ Bernstein, *The Preconditions of Socialism* (n 9) 160.

³¹ Chambost (n 29) 112.

the bourgeoisies who lacked class consciousness. A large part of the blame for socialism's fragility fell on them.

For Marx, the 'Lumpenproletariat' was a 'nebulous, disintegrated mass' of wide-ranging elements, including 'roues ... ruined and adventurous offshoots of the bourgeoisie ... vagabonds, discharged soldiers, discharged jailbirds, escaped galley slaves, swindlers ... tricksters, gamblers [and] brothel keepers'.³² And according to Marx it was here, in this non-class that Louis Bonaparte, 'the chief of the lumpenproletariat', found his 'kindred element'. Together, they proceeded to 'benefit themselves at the expense of the laboring nation'.³³ Marx's description of the Lumpenproletariat as a ragged bunch of drunks and knaves was one part observation, one part hostility – the latter inspired first from the odious fact that these elements of society allowed the tragedy of Napoleon I to repeat itself in the form of Napoleon III and, second (perhaps), from the fact that the successful counter-revolutionary movement that they supported contradicted Marx's historical method.

The lack of class consciousness was a key element in explanations of such counter-revolutionary outcomes. Nicholas Thoburn highlights a central aspect of Marx and Engels' explanation. A key to the lumpenproletariat's deplorable orientation to revolutionary change lay in its existence 'outside of productive relations,' a status that spanned Engels' description of 'those who do not wish to work' as lumpenproletariat and Marx's description of the financial aristocracy as 'the lumpenproletariat reborn at the pinnacle of bourgeois society'.³⁴ The July Monarchy that preceded the French Revolution of 1848 was, in Marx's words, 'nothing more than a joint-stock company for the exploitation of France's national wealth' characterised by 'the same prostitution, the same blatant swindling, the same mania for self-enrichment – not from production but by sleight-of-hand with other people's wealth'.³⁵ Writing of crony capitalists and backstreet swindlers uninterested in serious judgments about productive relations, Marx and Engels highlighted the difficulty of initiating and maintaining popular revolutions.

Analysing Mussolini's ascent to power, Leon Trotsky grouped 'the declassed and demoralized lumpenproletariat' together in the same category with the petty bourgeoisie as 'human beings who finance capital itself has brought to desperation and frenzy'.³⁶ In the rise of fascism against the Italian proletariat, Trotsky saw much more than the counter-revolutionary turn of the 1848 Revolutions – much more than the conservative's ability to benefit from popular sovereignty through manipulative appeals to patriotism and warnings of communism and revolutionary terror. Instead, Trotsky described the use of terror to dismantle the gains made by peasants and laborers. He wrote that as of September 1920 'the seizure of factories and industries by the workers' made the dictatorship of the proletariat 'an actual fact' and that consolidation would have been possible through better organisation and analysis. But instead, 'social democracy took fright and sprang back'. And then, just two months after the revolution paused, the Blackshirts began their terrorist campaign, murdering social democratic councilmen and labour leaders, destroying the offices of the organisations they abhorred, and intimidating the general population.³⁷

³² Marx, quoted in N Thoburn, *Deleuze, Marx and Politics* (New York, Routledge, 2003) 53.

³³ Marx, quoted at *ibid*, 53.

³⁴ *Ibid*, 57.

³⁵ Marx, quoted at *ibid*, 57.

³⁶ L Trotsky, *Fascism: What It Is and How to Fight It* (London, Pathfinder Press, 1996) 9.

³⁷ Trotsky describes these events of 21 November 1920 at *ibid*, 10.

Could any form of constitutional entrenchment have saved Italian socialism from Mussolini's 'voluntary militia for national security'? There was not time for entrenchment, which was partly the fault of revolutionary socialism itself. The more the Italian socialists caused large landowners and industrialists to panic and the more they alienated former soldiers, the less time they had had for consolidation. But if Trotsky was right about 'the fascist agency ... utilizing the petty bourgeoisie as a battering ram'³⁸ and then 'strangl[ing] it within the vise of the bourgeois state,'³⁹ then 1920s Italy was not just an example of revolutionary over-reaching or false consciousness on the part of the lumpenproletariat. It was, rather, one of several notorious examples of a tyrannical union between industrialists, landowners, the military, and a charismatic authoritarian leader.⁴⁰ Trotsky alleged that once fascism prevails 'finance capital directly and immediately gathers into its hands, as in a vise of steel, all the organs and institutions of sovereignty.'⁴¹

Everyone interested in modern-day backsliding should take note of Trotsky's emphasis on a manipulative form of class conflict. He does not malign the lumpenproletariat like Marx and Engels did. Rather, he sympathises with it as having been 'entirely ruined by big capital' and laments that '[i]ts dissatisfaction, indignation, and despair are diverted by the fascists away from big capital and against the workers.'⁴²

Regarding this dynamic, Karl Polanyi believed that Von Mises and Hayek's successful overtures against popular economic input gave way to rising fascism.⁴³ In summary, advocates of a self-regulating market produce 'weakened and unresponsive democracies ... vulnerable to attack by extremist leaders bent on imposing authoritarian solutions.'⁴⁴ This mirrors Trotsky's description of a strategic use of class conflict in the service of class government: 'big capital ruins the middle classes and then, with the help of hired fascist demagogues, incites the despairing petty bourgeois against the workers.'⁴⁵ (Perhaps he had been watching Fox News and reading Breitbart.)

These historical examples are about as far as one can get from Bernstein's 'real democracy' or Kautsky's description of a politics that 'raises the proletariat out of its economic, social and moral degradation.' They provide the playbook for today's illiberal populists, a way to turn neoliberalism into a gateway for modern-day authoritarianism.

III. Modern-day Backsliding

After its 30-year 'golden age' commencing after the Second World War,⁴⁶ social democracy faltered during the 1970s and 1980s. Explanations for this decline range from a rather

³⁸ Ibid, 9.

³⁹ Ibid, 12.

⁴⁰ See M Casson, 'A Cultural Theory of Industrial Policy' in JF Peck and G Federico (eds), *European Industrial Policy: The Twentieth Century Experience* (Oxford, Oxford University Press, 1999), 404 (stating that this union was common to Hitler's and Franco's power configurations as well).

⁴¹ Trotsky (n 36) 9.

⁴² Ibid, 34.

⁴³ See FL Block and MR Somers, *The Power of Market Fundamentalism: Karl Polanyi's Critique* (Cambridge, Massachusetts, Harvard University Press, 2014) 42.

⁴⁴ Ibid, 35.

⁴⁵ Trotsky (n 36) 34.

⁴⁶ See B Jackson, 'Social Democracy' in M Freeden and M Stears (eds), *The Oxford Handbook of Political Ideologies* (Oxford, Oxford University Press, 2013) 352-3.

innocent complacency bred of success to a more nefarious combination of economic downturn and 'feisty neoliberal and right-wing populist challenges'.⁴⁷ In this section, I focus on neoliberalism and populism, which are the most relevant factors today.

In 1995, KD Ewing proposed a programme of constitutional reform based on 'fundamental goals and principles' belonging to social democracy. Those were: popular sovereignty as the basis for constitutional authority; the social, economic, and cultural welfare of citizens as the principal purposes for the exercise of state authority; and the requirement that the state's socio-economic objectives be realised in a manner consistent with individuals' civil liberties and political freedom.⁴⁸ The 1990s featured an astounding wave of globalisation, which could have made good on those goals and principles. On the surface level at least, democracy went from a minority position in 1989 to a dominant position by the turn of the century, present in two thirds of all countries. But deeper down, the spread of elections was accompanied by a form of systemic corruption unique to the democratic context.

Writing during this time period, Alexander and Rei noted that 'incredibly large monetary contributions ... have permeated the world of politics in most continents'.⁴⁹ A 2003 global survey by the United States Agency for International Development (USAID) backed up this conclusion, finding that '[p]ayback of campaign debts in the form of political favors breeds a type of corruption that is commonly encountered around the world'.⁵⁰ By USAID's estimation, 65 per cent of the 118 democracies surveyed had low or virtually no political transparency.⁵¹ All of this suggested a tremendous influx of private wealth into political processes with insufficient safeguards, which would naturally serve to oppose Ewing's public-spirited goals and principles.

That is the context for understanding the major initiatives of the time, such as the North American Free Trade Agreement (NAFTA), the World Trade Organisation (WTO), and international lending throughout the developing world. While free trade raised concerns for labour, the environment, and underdeveloped countries, international financial institutions magnified those concerns by insisting on austerity and 'structural adjustment'. And even before the consolidation of these initiatives, Ralf Dahrendorf and Anthony Giddens had announced, respectively, the impossibility of reviving any of socialism's variants and social democracy's 'defensive' if not 'moribund' status.⁵² Ewing's willingness to push the envelope of a constitution of social democracy in the mid-1990s amounted to an effort to change these realities. But his recommendations were not followed and the problem grew.

In his 2015 exposé *The Death of Social Europe*, Ewing wrote that '[t]he contemporary focus is on new economic governance arrangements and the subordination of labour rights generally'.⁵³ He noted that European guidelines and treaties increasingly emphasised 'international competitiveness', rather than a social market or social justice.⁵⁴ He characterised

⁴⁷ Berman (n 2) 114.

⁴⁸ KD Ewing, 'Democratic Socialism and Labour Law' (1995) 24 *Industrial Law Journal* 103, 105.

⁴⁹ HE Alexander and R Shiratori, 'Introduction' in HE Alexander and R Shiratori (eds), *Comparative Political Finance Among the Democracies* (Boulder, Westview Press, 1994).

⁵⁰ Office of Democracy and Governance, *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (United States Agency for International Development (USAID), Washington D.C, 2003), available at www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnac223.pdf.

⁵¹ *Ibid.*, 2.

⁵² Quoted in Berman (n 2) 113.

⁵³ KD Ewing, 'The Death of Social Europe' (2015) 26 *King's Law Journal* 76, 87.

⁵⁴ *Ibid.*, 88.

European Commission guidelines as evaluating ‘the right framework conditions for wage bargaining’ in terms of ‘competitiveness,’ which Ewing called ‘a prescription for collective bargaining deregulation by a technocratic process about which most citizens in most member states are largely unaware.’⁵⁵ He justified that claim by documenting a deregulatory trend in minimum wage and collective bargaining in Romania, Greece, and Ireland,⁵⁶ and significant deregulatory pressure in Italy, Spain, Belgium, and Portugal.⁵⁷

The Death of Social Europe was well complemented by another recent assessment, Michael Keating and David McCrone’s edited volume *The Crisis of Social Democracy*. Their diagnosis is stated in the broader terms of a ‘transformation of capitalism ... undermin[ing] many social democratic ideas and practices,’ the ‘[o]ld class divisions no longer mak[ing] sense and the idea of a ‘working class’ [being] ever more elusive, creating problems for those parties ... which rested on it,’ the decline in trade union membership and the manufacturing industry creating ‘a “missing middle” in the class spectrum,’ the political right exploiting the divisions created by the welfare state, neoliberal ideology, global free trade and a ‘race to the bottom.’⁵⁸

In light of these reports of a social democratic crisis and even more damning analyses, such as Wendy Brown’s 2015 work on the defeat of social-democratic commitments around the world by neoliberalism,⁵⁹ Ewing’s 1995 prescription should be considered prophetic. He framed a constitution of social democracy as ‘a possible restraint to future governments trying to turn back the clock of social democratic progress.’⁶⁰ Contemplating the return of ‘Thatcher-like governments,’ Ewing raised the strategically important issue of entrenchment:

[W]hether democratic socialism in power should make more responsible use of the constitutional machinery of the State to protect its gains from such easy erosion.⁶¹

That use of constitutional machinery never came to pass in most countries, but easy erosion did – indeed, widespread programmatic erosion, as those 2015 analyses made clear. And that *death of social Europe, crisis of social democracy, and undoing of the demos* was only the beginning.

Since 2015, eulogies for social democracy have been drowned out by high-decibel calls to save liberal democracy, which turns out not to have entrenched itself either. Rising illiberal populism is most obvious in the cases of Brazil, the US, Turkey, Poland, Hungary, Italy, India, Austria, and, some would say, Brexit, but Pippa Norris’ 2017 analysis points to a broader phenomenon. Illiberal populists occupy three times the number of parliamentary seats in Europe than they did in the 1960s.⁶² Norris’ estimation of a sustained threat – that populist-authoritarian growth ‘threatens liberal democracy by challenging the core values of pluralism, social tolerance, rule of law, human rights, and

⁵⁵ Ibid (emphasis omitted).

⁵⁶ Ibid, 90.

⁵⁷ Ibid, 89.

⁵⁸ Keating and McCrone (n 5) 6–7.

⁵⁹ W Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (Cambridge, Massachusetts, The MIT Press, 2015).

⁶⁰ Ewing (n 48) 107.

⁶¹ Ibid, 107.

⁶² P Norris, ‘Is Western Democracy Backsliding? Diagnosing the Risks’ (2017) *Harvard Kennedy School Faculty Research Working Paper Series* 10, accessed 22 August 2019.

freedoms' – is constantly repeated.⁶³ Bookshelves now groan under the weight of the new literature – including *The Populist Explosion*, *The Global Rise of Populism*, *How Democracies Die*, and *Fascism: A Warning*.⁶⁴ Is it time to stop grieving for social democracy and begin defending liberal democracy exclusively?

Actually, a brief review of the causes of rising illiberal populism suggests that social democracy is the solution and the effort to save democracy ought to be focused there. Surveying the literature on those causes, Tom Ginsburg, Aziz Hug, and Mila Versteeg home in on economic instability, the 'growing gap between the rich and the poor globally,' disruptive aspects of economic globalisation, and the 'subordinat[ion] of democratic constitutionalism to geopolitical ends' by the American, Russian, and Chinese empires.⁶⁵ Institutional diagnoses, such as Samuel Issacharoff's discussion of 'the accelerated decline of political parties and other institutional forms of popular engagement[,] the paralysis of the legislative branches[,] the loss of a sense of social cohesion[,] and] the decline in state competence,'⁶⁶ might simply be parsing the effects of the deeper social and economic changes highlighted by Ginsburg et al., Keating and McCrone.⁶⁷

Kim Lane Scheppelle, meanwhile, brings such institutional factors together with their social and economic precursors. She lays the blame for illiberalism and 'autocratic legalism' not just on '[r]adical political polarization[,] increasingly bad electoral choices[,] and] party systems [that cannot] handle shifts in voter preferences,' but also on 'fallout from traumatic economic shocks[,] corrupt agreements among political elites[,] and] voters who become cynical after too many failed promises ... who already voted repeatedly for moderate change only to get no change at all.'⁶⁸ The latter part of Scheppelle's diagnosis and the better part of Issacharoff's and Ginsburg's could have been lifted from a socialist or social democratic pamphlet, and yet these authors are academic observers writing from within the American liberal establishment.

The connection between social democratic thought and mainstream diagnoses of liberal democratic backsliding is even clearer in Rosalind Dixon and Julie Suk's analysis.⁶⁹ They speak of 'the extremes of economic inequality that have become commonplace in liberal democracies throughout the world[,] poverty ... on the rise *in the developed world*[,] and] the stagnation of wages and economic insecurity.'⁷⁰ They bring this description to life through intuitive reasoning about what it means '[w]hen individuals who are born poor cannot become rich, and vice versa.'⁷¹ In Dixon and Suk's estimation, that status quo

⁶³ Ibid, 10.

⁶⁴ JB Judis, *The Populist Explosion: How The Great Recession Transformed American and European Politics* (New York, Columbia Global Reports, 2016); B Moffit, *The Global Rise of Populism: Performance, Political Style, and Representation* (Stanford, California, Stanford University Press, 2016); S Levitsky and D Ziblatt, *How Democracies Die* (New York, Crown, 2018); and M Albright, *Fascism: A Warning* (New York, HarperCollins, 2018).

⁶⁵ T Ginsburg, A Hug, and M Versteeg, 'The Coming Demise of Liberal Constitutionalism?' (2018) 85 *The University of Chicago Law Review* 239, 245–6.

⁶⁶ S Issacharoff, 'Democracy's Deficits' (2018) 85 *The University of Chicago Law Review* 484, 488.

⁶⁷ Keating and McCrone (n 5).

⁶⁸ KL Scheppelle, 'Autocratic Legalism' (2018) 85 *The University of Chicago Law Review* 545, 579–580.

⁶⁹ R Dixon and J Suk, 'Liberal Constitutionalism and Economic Inequality' (2018) 85 *The University of Chicago Law Review* 369. For a US-centric analysis along similar lines, see G Sitaraman, *The Crisis of the Middle-Class Constitution: Why Economic Inequality Threatens Our Republic* (New York, Vintage Books, 2017).

⁷⁰ Dixon and Suk (n 69) 371–3 (emphasis added).

⁷¹ Ibid, 373.

discredits liberalism's claim about 'the freedom of individuals to determine their own fates' and demonstrates 'that society is an aristocracy'.⁷²

As their diagnosis progresses, it is increasingly clear that Dixon and Suk lay the blame for the crisis of liberal democracy on the demise of social democracy. They claim that '[p]olitical legitimacy, in a liberal constitutional order, depends on there being, at a minimum, substantive equality of opportunity and substantively equal forms of political participation.'⁷³ Dixon and Suk are mostly referring to the effects of financial power on political power, which goes to one of Rawls' most important claims in 1971. Rawls: 'The liberties protected by the principle of participation lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate.'⁷⁴ Dixon and Suk: 'When disparate economic power enables disparate political power, the situation is not only at odds with democracy; it is also resented.'⁷⁵

This brings us back to Trotsky's description at the end of the previous part of this chapter: the middle classes are ruined by big capital's domination of the economic and political spheres; their indignation and despair are then diverted (with the help of hired fascist demagogues) against the most vulnerable segments of the population and sympathetic elites; and, all the while, their loyalties are captured by those who are either most responsible for their predicament to begin with or the political predators who are best positioned to exploit it. By claiming to solve problems of inequality, corruption, elitism, and neoliberal hegemony, illiberal populism has stepped into the role that social democracy should occupy.

IV. Articulating the Abolition of Class Government

Bernstein's foundational 1899 work considers that different forms of society are identified not by 'their technological or economic foundations but according to the basic principle of their legal institutions.'⁷⁶ Bernstein uses the words 'feudal, capitalist [and] bourgeois' to describe the basic principles available for a legal system,⁷⁷ thus recognising that the law is shaped to meet economic prerogatives. Bernstein contrasts social democracy with the principles of feudal, capitalist and bourgeois legal orders by positing 'the idea of cooperation as its starting point.'⁷⁸ He then goes on to characterise socialism as 'a movement towards, or the state of, a cooperative order of society.'⁷⁹ Adding to the principle of cooperation, Polanyi defined socialism in terms of 'the principle of social protection aiming at the conservation of man and nature as well as productive organization.'⁸⁰ Economic and political relationships would have to be structured on the basis of these principles in order for them to

⁷² Ibid.

⁷³ Ibid, 374.

⁷⁴ J Rawls, *A Theory of Justice* (Cambridge, Massachusetts, Belknap Press, 1971) 224–225.

⁷⁵ Dixon and Suk (n 69) 374.

⁷⁶ Bernstein, *The Preconditions of Socialism* (n 9) 98.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid, 99.

⁸⁰ K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, 2nd edn (Boston, Massachusetts, Beacon Press, 2001) 138–9.

manifest. The question is how to move economics and politics away from hierarchical and exploitative principles, and towards collaborative and protective ones.

Orthodox Marxism does not frame or answer that question the same way Bernstein does, because for social democrats '[d]emocracy is both means and end[--]a weapon in the struggle for socialism, and ... the form in which socialism will be realised'.⁸¹ Beyond a basic legal principle for moving towards and maintaining a cooperative and protective social order, Bernstein searched for a legal principle that would do so democratically.

That is where Bernstein's definition of democracy comes in. Asking, 'what is democracy?' he disqualifies the standard answer of "government by the people" [as] only a very superficial and purely formal definition.⁸² He faults this definition for allowing 'the oppression of the individual by the majority'.⁸³ In opposition to that superficial, formal, and potentially oppressive definition of democracy, Bernstein defines the term 'as the absence of class government[--]a state of society in which no class has a political privilege which is opposed to the community as a whole'.⁸⁴ He specifies within democracy 'an idea of justice[:] equality of rights for all members of the community'.⁸⁵

To elucidate this idea, Bernstein posits as a central distinction between democracy and other political systems 'the absence of laws which create or sanction exceptions on the grounds of property, birth, or religious confession'.⁸⁶ Though he admits that democracy may involve laws that limit individual rights, Bernstein insists that it requires 'the abolition of all laws which limit the universal equality of rights, the equal right of all'.⁸⁷ And he later changes his initial definition of democracy from 'the *absence* of class government' to 'the *abolition* of class government' (but 'not yet the actual abolition of classes').⁸⁸

Still, returning to Bernstein's claim that each society is identified by the basic principle of its legal system, the abolition of class government would not take us into the realm of a 'socialist legal system'. Socialist law, a recognised legal tradition, served the Communist Party and such power structures as the dictatorship of the proletariat and state ownership of the means of economic production.⁸⁹ But between the second and third editions of Merryman and Pérez-Perdomo's *The Civil Law Tradition*, socialist law disappeared.⁹⁰ Naturally, Bernstein was beginning to elaborate a basic, foundational principle for social-democratic law instead.

Although the abolition of class government has yet to be constitutionally entrenched in any jurisdiction that I am aware of, it has been developed into a political theory and a human right since Bernstein's death. Bernstein's terms regarding the absence of class

⁸¹ Ibid, 142.

⁸² Ibid, 140.

⁸³ Ibid, 141.

⁸⁴ Bernstein, 'Preface to the English Edition' (n 21) 140.

⁸⁵ Ibid, 141.

⁸⁶ Ibid, 141.

⁸⁷ Ibid, 141–2.

⁸⁸ Ibid, 143.

⁸⁹ See generally Z Kuhn, 'Development of Comparative Law in Central and Eastern Europe' in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford, Oxford University Press, 2006).

⁹⁰ The second edition identifies socialist law alongside civil law and common law as a legal tradition. But the third edition does not include it in the same list. See JH Merryman and R Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn (Stanford, California, Stanford University Press, 2007).

government are well expressed by the ‘fair value of political liberties,’⁹¹ stipulated to nearly 100 years later by John Rawls. In 1996, Rawls wrote, ‘the worth of the political liberties to all citizens, *whatever their social or economic position*, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decisions.’⁹² Bernstein’s terms also ought to remind us of Rawls’ 1971 prescription, which focused more specifically on constitutional entrenchment:

[T]he constitution must take steps to enhance the value of equal rights of participation for all members of society [T]hose similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class.⁹³

A political theory such as this ought to be the first step towards the entrenchment of our foundational principle, but in this case it came after a human right based on the same concerns.

Adopted in 1948, 100 years after the Communist Manifesto and the 1848 Revolutions, the Universal Declaration of Human Rights could be called a Bill of Rights for social democracy. Had it been binding and enforced, something far more comprehensive than the New Deal would have taken effect in the United Nations Member States that cast their votes for it. (Eleanor Roosevelt did chair the drafting committee, after all.)

Article 21(3) of the Declaration elevates popular sovereignty and elections to a universal standard for governmental legitimacy:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage[.]⁹⁴

Complimenting and operationalising this standard, the Declaration announced not only rights of free expression, free assembly, and association, but also rights to equal access to public service and political participation.⁹⁵ Indeed, the two sections of Article 21 make popular sovereignty a demanding and meaningful proposition:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.⁹⁶

These provisions imply that the Declaration is serious about political participation, but is it serious about eliminating class-based distinctions therein?

Though rarely stated, the answer is more socialistic than one might think. The very next article states that ‘Everyone, as a member of society ... is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality’. The second generation rights immediately following Article 22 include

⁹¹ J Rawls, *Political Liberalism* (New York, Columbia University Press, 1993) 327.

⁹² *Ibid.*

⁹³ Rawls, *A Theory of Justice* (n 74) 224–5.

⁹⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art 21(3).

⁹⁵ *Ibid.*, arts 19 (‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’) and 20(1) (‘Everyone has the right to freedom of peaceful assembly and association.’).

⁹⁶ *Ibid.*, art 21(1-2).

the right to work and free choice of employment, equal pay, leisure, education, an adequate standard of living including food, housing and medical care, and participation in cultural life. If guaranteed in practice, such rights would reduce the class divide considerably. In the kind of society envisioned by the Declaration, even mere formal equality of political rights would be a relatively egalitarian proposition.

But the Declaration goes far beyond formal equality. Building on its impressive panoply of civil, political, economic, social, and cultural rights, Article 28 states that ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth ... can be fully realized’. The full realisation of all such rights for everyone in society would imply a serious degree of substantive equality. And, like the Declaration’s provisions for social and economic rights, that would make socio-economic class far less rigid and inequality less steep.

Despite the breadth and potential power of these provisions, the most direct path to eliminating class-based distinctions in political participation is to be found elsewhere, in Article 2. The inclusion there of one of the most important words in liberal and social democracies’ lexicons – property – has sweeping implications.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹⁷

As qualified by Article 2’s reference to property, Article 21 should be interpreted as abolishing class government.

Even in their unqualified form, universal suffrage and open standing for public office threaten the role of economic power in the political sphere by affording each citizen a say in electoral outcomes and the possibility of launching their own political campaign. Still, corporate special interests and wealthy individuals make up for lost ground by influencing elections and law-making through political donations to parties and campaigns, political expenditures, and lobbying. The overall regime of private control of the means of political production premises the financial viability of parties and campaigns on their ability to appeal to wealthy sectors of the population – including corporate and foreign interests. To that undemocratic constellation, we must add rampant conflicts of interest, trading in influence, and pro-capital media bias as a result of corporate consolidation and dependence on advertising for revenue. The intersection between Articles 2 and 21 should be read as prohibiting such plutocratic distortions of elections and political rights, because money is a form of property, not to mention a function of property.⁹⁸

This equivalency between property and financial power is supported by other versions of the Declaration. Instead of property, the French version of the Declaration uses the word ‘fortune,’ while the Spanish version uses the words ‘posición económica,’ literally ‘economic position,’ but better translated as ‘socio-economic status.’⁹⁹

⁹⁷ Ibid, arts 1–2.

⁹⁸ Assets that can be converted into cash include real property, tangible personal property, and intangible property, such as stock options. All are protected by property law.

⁹⁹ Déclaration universelle des droits de l’homme G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at www.un.org/fr/documents/udhr/index2.shtml and Declaración universal de derechos humanos, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at www.un.org/es/documents/udhr/.

The resulting principle for a constitution of social democracy can be stated in two ways: Leading with Article 21, *The right to take part in the government of one's country directly or through freely chosen representatives, and the right of equal access to public service may not be amplified for the rich or diminished for the poor through the operation of property, fortune, or socio-economic status.*¹⁰⁰ Or, following Article 2's framing, *Everyone is entitled to equal access to public service, political participation and representation without distinctions on the basis of property, fortune, or socio-economic status. And the state must ensure these rights through the necessary guarantees and prohibitions.*

Since Articles 2, 22, and 28 frame the entire instrument, it is clear that the Declaration is in reality a rights-based articulation of social democracy. So, why focus on the intersection between Articles 2 and 21 in particular? The resulting basic principle provides the democratic means for producing and entrenching social democracy, thus making the social and international order articulated in Article 28 a genuine possibility. That principle stands as the legal articulation of the non-hierarchical, non-class-based democracy for which Bernstein advocated in 1899. A democracy in which all citizens have an equal chance to affect political outcomes and even to hold political office, regardless of wealth and regardless of socio-economic class – that is Rawls' prescription in the flesh 23 years before *A Theory of Justice* and 48 years before *Political Liberalism*.

Articles 2 and 21 of the UDHR were incorporated into a legally binding instrument, the International Covenant on Civil and Political Rights (ICCPR), ratified by the world's democracies. Even so, the common-sense textual reading of these articles along Bernstein's lines has not been taken seriously. The reasons for this are embodied in Bernstein's own failure.

V. Democratic Integrity must be Entrenched

While Bernstein's theory and principles are pioneering, they are modest when it comes to entrenchment. Rather than designing a political tradition with certain core constitutional features, Bernstein wrote of the differences between countries like a bromide-encrusted professor of comparative law. He cited varying stages of 'economic, political, intellectual, and moral development,' and '[p]eculiarities of geographical situation, rooted customs of national life, inherited institutions, and traditions of all kinds [that] create ideological differences.' Although Bernstein granted the possibility of 'general political principles of Social Democracy which could claim universal validity,' his sensitivity to national variations led him to deny the possibility of 'a programme of action which would be equally valid for all countries'.¹⁰¹ That sensitivity is well placed when it comes to framing a nation's priorities and the specific laws and policies it wishes to adopt. But insofar as it prevents the framing of an essential constitutional baseline for self-government, it morphs into insensitivity, an insensitivity to danger.

¹⁰⁰ This is an exercise in reading art 21 in light of art 2, an exercise which art 2 itself demands by stipulating that '[e]veryone is entitled to *all the rights and freedoms set forth in this Declaration, without distinction of any kind.*' See above n 94 at art 2 (emphasis added).

¹⁰¹ Bernstein, *The Preconditions of Socialism* (n 9) 159.

Bernstein considered the Bourgeoisie a ‘reactionary mass because all of its elements feel themselves to be ... threatened by Social Democracy ... in their material [and] ideological interests,¹⁰² but he concluded that ‘this is no longer necessary[, because] Social Democracy does not threaten all equally, and it threatens nobody personally[...]and it has no enthusiasm for a violent revolution.’¹⁰³ Was violent revolution ever the only sufficient cause of upper-class opposition to real democracy? Even without violent revolution or threatening all members of the Bourgeoisie equally, social democracy emphatically threatened the class-based political privileges upon which every liberal democracy stood at the time. And it continues to threaten the same privileges upon which capitalist democracies and the neoliberal global order stand today. In the end, Vincent Geoghan’s 1993 criticism of Bernstein’s *Preconditions of Socialism* seems accurate: it does seem to have ‘lack[ed] awareness of the true nature of the social opposition to socialism.’¹⁰⁴

To the extent that is the case, I would argue that Bernstein’s insensitivity to opposition came from a good-natured faith in liberals’ ability to avoid or transcend the dogmatic militancy and determinism associated with Marxists. Writing nearly 50 years after Bernstein, Karl Polanyi saw more clearly how ‘economic liberalism burst forth as a crusading passion, and laissez-faire become a militant creed.’¹⁰⁵ He also saw more clearly how ‘the content of our cultural beliefs now reflects the core ideas of Western liberalism [including,] belief in the sovereignty of the self-interested, materially-motivated individual, and the sacred status we effectively attribute to a rapidly developing economy.’¹⁰⁶ The key words here are ‘creed’ and ‘sacred’ – classical economic precepts went from the realm of assumption, theory, and policy prescription to the realm of belief, faith, and theology.¹⁰⁷

Because that free market theology has persisted for 40 years (leading to the consolidation of neoliberalism, the rise of illiberal populism, and probably catastrophic climate change), there is reason to suspect that CB Macpherson supplied the last word on the future of democracy back in 1977. Asking whether liberal democracy would endure, Macpherson wrote that everything depended on what was meant by the term. In liberal democracy he located two very different types of societies: first, ‘the democracy of a capitalist market society’ and, second, ‘a society striving to ensure that all its members are equally free to realize their capabilities.’¹⁰⁸ If the first kind of society prevailed and democracy continued to guarantee the ‘freedom of the stronger to do down the weaker by following market rules,’ then Macpherson’s answer was no, democracy was doomed. If the second kind of society prevailed and democracy was reshaped to guarantee ‘equal effective freedom of all to use and develop their capacities,’¹⁰⁹ then his answer was yes, democracy would flourish and endure.

In today’s times, when democracies are trapped between *homo economicus* on the one hand and *homo exosus, indignans, et iracundus* on the other, it is essential that social

¹⁰² Ibid, 158–9.

¹⁰³ Ibid, 158.

¹⁰⁴ See Geoghegan (n 1) 154.

¹⁰⁵ Polanyi, *The Great Transformation* (n 80) 143.

¹⁰⁶ Block and Somers, *The Power of Market Fundamentalism* (n 43) 30.

¹⁰⁷ See generally RH Nelson, *Reaching for Heaven on Earth: The Theological Meaning of Economics* (Savage, Maryland, Rowman & Littlefield Publishers, 1991); and P Goodchild, *Theology of Money* (Durham, North Carolina, Duke University Press, 2009).

¹⁰⁸ CB Macpherson, *The Life and Times of Liberal Democracy* (Ontario, Oxford University Press, 2012) 1.

¹⁰⁹ Ibid.

democracy finally spell out its own foundational principle and power structure as a political system. Of course it would revise neoliberalism by rejecting government of, by, and for the wealthy, and revise illiberal populism by rejecting discrimination, fear, and hatred, as well as rejecting violations of the rule of law and human rights. But more deeply, social democracy would reject the ideological and psychological bases of these systems, which propose that problems of law and society can be solved by all-knowing markets or national greatness – that is by belief in something above and beyond a political community engaged in conscious action on the basis of freedom, equality, and self-governance for all.

In order to make that equality of rights effective and produce a state of society in which no class has a political privilege opposed to the community as a whole, social democracy would have to do more than guarantee rights to political participation (including passive suffrage) regardless of socio-economic status. It would also have to erect a democratic power structure in the form of a political sphere that is autonomous from the economic sphere. That much would be required to enable and guarantee popular participation and representation – *real democracy*. I refer back to the abolition of private control of the means of political production, which would require more than discrete legal reforms in the areas of bribery, trading in influence, political finance, lobbying, and conflicts of interest. Stricter rules in these departments, plus improvements in monitoring and enforcement, would be required, and those new provisions could not remain dispersed in separate areas, such as anti-corruption law, election law, administrative law, and ethics rules. Rather, they would have to be centralised, interlaced, and consolidated at the very beginning of a democratic constitution in the form of a structural feature: the abolition of class government and the entrenchment of democratic integrity.

Let us think back to the first two of Ewing's 1995 goals and principles: popular sovereignty as the basis for constitutional authority; and the social, economic, and cultural welfare of citizens as the principal purposes for the exercise of state authority.¹¹⁰ Ewing noted the assumptions upon which these depended, including that universal suffrage would effectively promote the interests of the masses, and that elected officials would not only heed the goals of their constituents but be transformed into public servants.¹¹¹ What warrants such assumptions? Surely the deeper constitutional baseline derived earlier from the UDHR and ICCPR: *Everyone is entitled to equal access to public service, political participation (including suffrage, speech, association, assembly, and petitioning) and to political representation without distinctions on the basis of property, fortune, or socio-economic status. And the state must ensure these rights through the necessary guarantees and prohibitions.* Naturally, that constitutional baseline, and therefore Ewing's goals and principles for a constitution of social democracy, would all require strict, carefully crafted, and dutifully enforced provisions on the role of wealth in the political process. Together, such provisions on the financing of political campaigns and political parties, corporate political spending and special interest groups, lobbying, trading in influence, and conflicts of interest would be required in order to establish social democracy and protect it from undemocratic opposition.

It is certainly the case, as Ewing stated, that '[t]hose drafting a constitution must ask themselves what type of society they wish to live in and draft accordingly.'¹¹² I believe

¹¹⁰ Ewing (n 48) 105.

¹¹¹ Ibid.

¹¹² Ibid.

the conviction at the heart of social democracy today is that one must have the rule of law, a strong, sustainable economy, and the full panoply of human rights, but that neither hegemonic global markets nor authoritarian leaders will produce or tolerate such things. To abolish class government would be to take society seriously, which would entail remedying the political powerlessness that produces illiberal populism and overcoming the economic domination at the heart of neoliberalism. In terms of what constitutional drafters must decide, this amounts to choosing a social order instead of an anti-social one, and making that choice binding, not merely symbolic. It amounts to carving out inviolable space for a community of political equals to work out its own destiny, within liberalism's venerable limits of course.