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## CAPITALISM AND DEMOCRACY

*Owen M. Fiss\**

Socialism has collapsed. The long, historic struggle between capitalism and socialism has come to an end, and capitalism has emerged the victor. This turn of events was foreshadowed by the privatization movement of the late 1970s and 1980s that swept England, the United States, and a number of Latin American countries. History still awaited the renunciation of socialism by those who lived it, but that soon came in the form of the revolutions of 1989 in Eastern Europe and in the spiraling chain of events, set in motion by “perestroika,” that ultimately led to the dissolution of the Soviet Union in December 1991. China and Cuba continue to wave the socialist banner, but to most observers this seems an act of desperation — an effort to proclaim loyalty to an ideology that may be integral to their historical identity, but which all the world has now repudiated.

Capitalism permits of many definitions, but at its core it is a system designed to tap the motivational force of self-interest. It assumes that individuals are autonomous actors who advance their own self-interest. Capitalism encourages efficiency and productivity by forcing individuals to compete with one another and then differentially rewarding those who are most productive, a standard that is defined in terms of consumer satisfaction. Consumers are put to the task of choosing how to allocate their own scarce resources among the products or services offered, but they remain sovereign in the sense that the entire economic system responds to their desires. The goal of capitalism is to maximize consumer satisfaction by producing the goods and services they demand.

The central social institution of capitalism is the market, a theoretical construct in which individuals reveal their preferences, compete with one another, and exchange goods and services. Government has a role to play in this scheme, but it is a limited one. It is confined to: (a) creating a monetary system, defining property rights, and enforcing contracts so as to facilitate the system of exchange; (b) prohibiting

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\* Alexander M. Bickel Professor of Public Law, Yale University. This essay has benefitted greatly from discussions with my colleague, George L. Priest, and from the seminar we taught together at the Yale Law School in Spring 1991. I am grateful to the students who participated in that seminar. I also wish to thank Bruce Ackerman, Eric Bentley, Jr., Sarah H. Cleveland, Robert C. Ellickson, Alan Hirsch, Paul W. Kahn, and Alan Schwartz for their criticism and comments on this essay.

certain activities, such as monopolization or price fixing, that might destroy the central disciplinary mechanism of the market — competition; (c) providing a substitute for market competition in situations which permit only one producer (“natural monopolies”) or where the ordinary exchange is unlikely to take into account the full costs or value of a good or service (e.g., “externalities” or “public goods”); and (d) raising revenue through taxation or borrowing to finance its operations.

These four functions set the parameters of the capitalist state. Although state activity is conceived as minimal, each function may be understood as permitting an ever-increasing sphere of state power. For example, some have used the notion of market failure so generously as to justify state activism on almost the scale contemplated by socialism. However, at the level of ideology, capitalism insists that the state’s function be narrowly and rigorously defined, so that state interference with business decisions is the exception or a matter of last resort. Capitalism insists upon a sharp dichotomy between state and economy, allowing only incidental intrusions by the state into the economic sphere. In addition, capitalism requires the state, whenever permitted to intervene, to try to replicate the outcomes that would be produced by a properly functioning market. Thus, the capitalist state is not allowed to pursue the public interest in a way understood to be independent of consumer satisfaction; the state’s function is still defined in market terms.

In almost every contemporary capitalist society, including the United States, there are significant departures in practice from the strict capitalist model. The state does in fact intervene in the economy in ways that cannot be justified entirely in terms of protecting the market or correcting for its incidental failures. Typically, one can find laws establishing maximum working hours or minimum wages, or those protecting disadvantaged groups from discrimination on the basis of race or gender. Frequently, the state owns various industries (e.g., education and transportation) and subsidizes others (e.g., the arts). Of even greater significance, most capitalist countries have welfare programs, or what Charles Taylor has called “mechanisms of solidarity,” consisting of both cash payments and in-kind benefits (e.g., public housing). These programs are intended to maintain certain minimum standards of living or redistribute wealth in order to modulate the inequalities of wealth produced by the market.

These departures from the theoretical model of capitalism introduce an ambiguity into the historical record and raise the question — at least in the minds of some — whether the recent developments in

Eastern Europe and the Soviet Union should be understood, as I have maintained, as an unqualified victory for capitalism. Those who take a contrary view admit that the United States and Western Europe were the models for the reformers in the East, but point out that since the economic systems of the United States and Western Europe are themselves amalgams, it is unclear precisely what was guiding the reformers and what could be said to have triumphed. Was it capitalism or some hybrid, and, if the latter, why can't socialism make as strong a claim to that hybrid as capitalism? Such questions will undoubtedly consume the more philosophically inclined in the years to come, but as a matter of historical fact — as opposed to what might have been — the reformers perceived the amalgams of the West, especially because they were framed by the privatization movement that so dominated the West in the seventies and eighties, as belonging more to the capitalist than the socialist model. The reformers repudiated socialism and embraced capitalism, though, like the high priest of capitalism, Friedrich Hayek,<sup>1</sup> they never did so with a ferociousness that precluded concessions at the practical or institutional level. Capitalism was the ideal toward which they moved; and while it may have been a vaguely formed aspiration, it now provides the framework within which future debate will take place.

The appeal of capitalism was largely materialistic. Capitalism promised to produce an abundant and diverse supply of goods and services, and its triumph is directly and immediately related to its demonstrated ability to deliver on that promise. The reformers viewed the riches of the West and compared them to their own misery, and saw in this contrast a validation of the behavioral assumptions of capitalism and a refutation of socialism. To them, the contrast delivered a clear message: Workers will not work as hard, or as carefully, or as imaginatively, when their goal is public benefit rather than self-interest; consumers tend to be more satisfied when they, instead of state officials, determine what goods and services they want. Of course, the evidence is not so unambiguous. Many other factors, including natural and cultural resources and historic starting points, may account for the material achievements of capitalist societies. But the superior economic performance of the capitalist countries has been so substantial and so pervasive — of staggering proportions when countries such as East and West Germany are compared — as to suggest that more was involved. The historical record provides ample reason to believe that

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1. FRIEDRICH A. HAYEK, *THE ROAD TO SERFDOM* 36-39 (1944).

the behavioral norms of capitalism are more realistic than socialism's, and that capitalism is likely to produce greater material wealth.

To attribute the triumph of capitalism primarily to its materialistic advantages is not to belittle it; consumer satisfaction is of enormous importance and essential to the proper functioning of any society. Nonetheless, consumer satisfaction is not the only criterion for evaluating a society, and thus some consideration must be given to the impact capitalism has on other values, above all democracy. While the primary allure of capitalism may have been materialistic, political considerations also motivated a good number of the reformers in Eastern Europe and the Soviet Union. These reformers were as determined to escape from totalitarianism as they were from their material condition, and saw in capitalism the promise of achieving both goals. They fought for something called "capitalist democracy," fully believing that in the achievement of the one they would realize the other. The question remains, not only whether they will achieve both goals, but whether the one goal promotes the other — whether capitalism is likely to promote democracy, or whether instead there is a tension between the two ideologies, a dynamic within capitalism that is as antithetical to true democracy as it is to totalitarianism.

In many ways, capitalism and democracy share a number of fundamental premises, and many have commented on the historical parallels between the rise of these two systems of belief. Just as capitalism looks to the individual choice of consumers as the keystone for ordering the economy, democracy depends on individual initiative and choice as the source of political decisionmaking. Both notions are rooted in an assumption of human rationality and self-interest, and thus rely on individual freedom and autonomy as the means for achieving their ends. Capitalism and democracy are generally assumed to be the best, if somewhat imperfect, means to achieving the overriding social goals of a nation that, ideally, is composed of a universally active, engaged, and self-actualizing citizenry.

Democracy, however, also encompasses a number of principles which are either divergent from, or entirely inconsistent with, many of the fundamental tenets of capitalism. In the pages that follow, I outline five of these principles—popular sovereignty, economic independence, enlightened choice, active participation, and citizen contentment—all of which are fundamental to the healthy functioning of a democratic system. I have culled some of these principles from the socialist critique of capitalism, and in doing so my purpose is not to resurrect a now-dead ideology, but to profit from an intellectual

tradition that has peered deeper than any other into the flaws and tragedies of an economic system that is now our fate.

*Popular Sovereignty.* Popular control over government — the idea that government acts only at the behest of the people — lies at the root of democratic theory and, according to many socialist critics, represents one of the fundamental points of antagonism between capitalism and democratic values. According to the socialist critique, capitalism's abdication of economic control and decisionmaking to the private sector — the separation of state and economy — removes one of the most important aspects of modern life from popular control. Only if economic decisions are placed under the authority of the state is popular sovereignty assured.

Such a critique, of course, is an easy target from our current vantage point surveying the wreckage of socialism. Clearly, state ownership of industry — the key demand of socialism — did not in fact further democratic values. The theory of socialism presumes that state officials in charge of the economy are responsive to the populace, but world historical experience — the simple fact that the leading socialist countries of the world, specifically the Soviet Union and China, have been totalitarian — contradicts that premise. The officials who ran industry or the distributional system invariably became the masters, rather than the agents, of the people, using their power to further their own self-interest or the interests of sectarian groups. While some might be tempted to discount this historical experience on the theory that the totalitarianism of socialist countries was only an "excess" or "aberration," a product of capitalist encirclement or of a desire to accelerate economic development, such a response seems too facile. It does not sufficiently account for the strength of the correlation between socialism and totalitarianism.

The defenders of capitalism, on the other hand, do not simply point to the failures of socialism, but see capitalism itself as affirmatively furthering popular sovereignty. Socialism, they argue, nominally made the economy responsive to the people by substituting public for private ownership; but, in fact, capitalism is a more effective instrument for advancing that goal because, in a competitive market, no single producer has power to determine the price or kinds of goods to be produced — all are responsive to consumer demands. Monopolies may have to be state owned (or state controlled), but as long as we confront a competitive situation, economic power will be diffused.

The defenders of capitalism are right — the diffusion of power produced by competition does indeed further democratic values. But there is still reason for concern. Even a fully competitive market does

not distribute power in a manner consistent with the democratic ideal of "one person, one vote." Although in such a market no single firm is able to control price or determine what goods to produce, the market's organizing principle — "one dollar, one vote" — means that firms and individuals with unequal shares of power can influence market activity in a way that departs from the democratic ideal. Mobil Oil stands on a different footing from the local gas station; so does Rockefeller from the average consumer.

Such inequalities of economic power reverberate throughout the market, depending, of course, on its size, and they also have important consequences for politics. Despite the rhetoric of "one person, one vote," powerful economic interests are able to exert disproportionate political influence and are likely to capture the state apparatus and use it to their advantage. High government officials are recruited from the dominant private firms and contemplate returning to the private sector on completion of government service. Such employment practices — the so-called "revolving door"— are likely to lead government officials to view issues of public policy from the vantage of private firms.<sup>2</sup> A similar symbiotic relationship exists in capitalist countries between the economically powerful and electoral candidates. Highly expensive public relations campaigns on television and in the other media often determine the outcomes of elections, requiring candidates to become dependent upon, or at least more responsive to, those with greater wealth.

The results can be devastating for the electoral process. As proud as we in the United States are of our democratic tradition, the fact remains that those privileged by the market dominate elections. In the typical presidential campaign almost half the population does not vote and the so-called "electoral dropouts" or non-voters tend to be the poor.<sup>3</sup> Non-participation may indicate an indifference between the contenders, but it may also indicate a profound sense of alienation and helplessness among voters in the lower economic strata. The candidates and issues that most concern these voters have been removed from the agenda.

*Economic Independence.* Democracy requires more than periodic elections and a secret ballot. It presupposes a populace freely willing to criticize its government. In many ways, capitalism may promote this goal by reducing the dependency of individuals on government.

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2. CHARLES E. LINDBLOM, *POLITICS AND MARKETS: THE WORLD'S POLITICAL-ECONOMIC SYSTEMS* 201-13 (1977).

3. KEVIN P. PHILLIPS, *THE POLITICS OF RICH AND POOR: WEALTH AND THE AMERICAN ELECTORATE IN THE REAGAN AFTERMATH* 24-25 (1990).

In contrast to life in a planned economy, a citizen who does not depend upon the government for his or her job, home, or income, or who does not need government permission to take up a trade or earn a living, is much more free to criticize the state. There is, I believe, a correlation between the growth of private markets in China during the 1980s and the emergence of the democratic movement in that country. The difficulty, however, is that although capitalism may eliminate government dependence, it creates new economic dependencies all its own. One dependency is substituted for another.

Capitalism will never give the masses (or even most of the middle class) the economic autonomy contemplated by the seventeenth century political theorists, such as John Locke, who extolled the virtues of private property and looked to the landed gentry as a bastion of freedom. Capitalism produces some big winners, like Donald Trump or Rupert Murdoch. They may have the kind of independence envisioned by those who extol the democratic virtues of capitalism, but the wealth accumulated by the great majority of the population is limited. In fact, most citizens depend on the employment relationship for income. In capitalist societies most employers are non-governmental, and while this may enhance the freedom of citizens to criticize the government, their new dependency impairs their freedom to criticize their firm, their boss, or the governmental policies that sustain or support that firm. They face discharge if they speak out.<sup>4</sup> In a political system where the firm that exerts economic power over the individual employee also exerts force in the political arena, individual autonomy on a practical level is severely constrained.

Moreover, under capitalism, the power to criticize governmental authority or otherwise participate in political life is not necessarily distributed equally, for one's ability to participate in political activities or to make one's voice heard reflects inequalities in income, whether from wages and salaries or from returns on investments. Inequalities in economic power need not turn into inequalities in political power, but they are very likely to, as witnessed by the phenomenal success of the 1992 Perot presidential campaign, since political participation requires freedom from economic worries, leisure time, and the resources necessary to get a message across to the public.

*Enlightened Choice.* While democracy aspires to make government responsive to the desires of the citizenry, a question arises as to which "desires" should govern — those of the moment, or those that might be formulated under circumstances more closely approaching

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4. See, e.g., *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894 (3d Cir. 1983).



the optimum: over time, with full information, and under suitable conditions of reflection. Authoritarianism has often preyed on the distinction between the "occurrent desires" of citizens and what might be referred to as their "reflective desires." People have been enslaved on the theory that their masters know, better than they do, their true needs and desires. But a democracy predicated on an exclusive preoccupation with occurrent desires does not present an attractive social ideal. Our respect for the choice of a majority wanes considerably once we learn that the choice was made hurriedly, under considerable stress, on the basis of faulty information, or without adequate consideration of alternatives. A true democracy presupposes a measure of citizen enlightenment.

Such enlightenment is not necessarily incompatible with private ownership. There are, however, certain industries — I will call them informational — that do have a direct bearing on the enlightenment of the electorate, and operating these industries on purely capitalist principles may well endanger democratic values. One such industry is film and television. Another is the publishing industry, including newspapers, magazines and books. Still another is the education system. Subjecting all these industries to market competition, and allowing them to be driven by profit maximization, will produce programs of education and entertainment that are responsive to consumer desires. The public loves "Dallas." Yet there is no reason to believe that what the public wants by way of entertainment or even education will be sufficient to equip it to discharge its responsibilities in the political sphere.

The United States has a strong, viable commitment to state socialism in the operation of its elementary and secondary school systems. Some of the greatest universities of the nation, like the University of California and the University of Michigan, are state-financed and to some extent state-run. The more radical program to privatize the entire educational system has never caught on in the United States, though today scattered attempts are being made to revive this idea.<sup>5</sup> Yet film, television and publishing remain in private hands. Although many see this as one of the great bulwarks of democracy in America — a strong and independent voice to counter the government — the capitalist structure of ownership of these industries poses a dilemma for democracy. Public discourse will be shaped by market factors, and that will impair the public's capacity for enlightened choice.

A case in point may be television. In the United States, commer-

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5. See, e.g., MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 85-98 (1982).

cial networks and, more recently, a number of privately-owned cable stations have dominated the television industry. A public television network was established in the 1960s to broaden public discourse, but government funding has been limited, and during the seventies and eighties — at the height of the privatization movement — it became increasingly frail. Some Eastern European countries, emulating the United States, are presently seeking to privatize their entire television industry, but from democracy's perspective there is reason to be cautious.

Commercial television may satisfy consumer desires and for that reason be preferable, but the fact remains that the choices provided under market capitalism are determined by a calculation of costs and revenue, and this calculus bears no necessary, nor even probabilistic, relationship to citizen enlightenment. Commercial television may give viewers a choice between "Dallas" and "MTV," but it is not as likely to produce a program analyzing the welfare system or immigration policy. Even though the production of such educational programs may be necessary for democracy to function, they may not be profitable, especially given what viewers are prepared to pay as each decides, on his or her own, to turn on the TV for the evening.

*Active Participation.* Democracy assumes the active participation of informed and enlightened citizens in directing their own government, yet capitalism involves a hierarchical system of management in the economic sphere which is inimical to such involvement. State socialism, as well, has tended to be hierarchical, especially as practiced in the former Soviet Union, but this does not lessen the threat to democratic values posed by capitalism. The cardinal assumptions underlying all capitalist forms of organization are that the owners of capital have the right to dictate how the organization shall be run, and that they will make such decisions according to the profit motive. The owners of capital may delegate the management of the firm to persons they choose or, for that matter, to persons chosen by workers; but the decision to delegate is their prerogative, and the delegation will be limited on their terms.

In some capitalist countries, employees are given a role in directing the firm's activities. In Germany, for example, employees have a say in worker councils at the plant level and in supervisory boards at the firm level. Yet their actual role in governance remains limited, and such concessions to worker management remain a rarity in capitalist economies. (Even less common is worker ownership of capitalist enterprises.) The absence of worker management is problematic for de-

mocracy because, as Carole Pateman has argued with some force,<sup>6</sup> top-down control impedes the formation of the skills or dispositions required of the active citizen. After laboring in a hierarchically organized workplace for eight hours, without any real say in the structure or performance of his or her tasks, the citizen is unlikely to have, or be inclined to exercise, the independence of judgment and critical acuity essential to democratic politics.

Citizen participation often requires the support and aid of intermediate organizations. A number of such organizations, including political parties, advocacy groups (e.g., the ACLU and NAACP), neighborhood councils, and local parent-teacher associations, have flourished under American capitalism and have provided important schools in citizenship for the public. Many such organizations also have developed as private-sector responses to perceived failings of the capitalist system. But a tension or hostility arises between capitalism and intermediate organizations whenever these groups attempt to interfere with economic activity. Capitalism, with its ethic of competition, is highly individualistic and thus views with suspicion and hostility any organizations of producers, workers, or consumers that seek to affect the decisions of private capital.

Many capitalist economies have a trade union movement, but that movement is often limited (in the United States it embraces less than 18% of the work force) and requires strong support of the law to survive. A vibrant trade union movement might threaten efficiency and thus, as the defenders of capitalism argue, must be disempowered in order for the system to achieve higher levels of productivity. But this is only to recognize, not to reconcile, the tension between economic efficiency and democratic values.

*Citizen Contentment.* Finally, some account must be taken of the restless material dissatisfaction that capitalism breeds, for this will have some effect on the forms of political life that are able to flourish and on the stability of the democratic regime. True, capitalism aims to satisfy consumers and appears to be a superior means of achieving that goal, but it too is subject to economic dysfunctions, as indicated by the Great Depression of 1929, the inflationary spirals of the 1970s in America and, ironically, the recession in the West over the past two or three years. Downturns of the economy and inflationary spirals can plague every society, yet the ideology of capitalism may impair the capacity of national leaders to deal with these crises, since it requires a strict separation of state and economy. There is, moreover, one source

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6. CAROLE PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY (1970).

of popular dissatisfaction that is endemic to capitalism: the unequal distribution of wealth.

At its core, capitalism promises greater productivity by introducing sharply differentiated incentives. Transference of ownership from the state to private parties is defended on the ground that profit incentives will drive private parties to operate firms efficiently. Workers will be paid according to their productivity, which will vary greatly. Entrepreneurship will be especially rewarded. The result will inevitably be a sharply differentiated income structure.

From the perspective of material wealth, those persons at or near the bottom of the economic order in a capitalist nation like the United States might be better off than those at or near the bottom in a socialist nation like the Soviet Union. They might also be better off than they would be if the state owned and operated more industries. But these comparisons do not lessen the sense of dissatisfaction that comes from the most common and natural form of envy — the desire to enjoy the kind of life others in the same society are presently enjoying.

The defenders of capitalism may assert that this sense of resentment and frustration is unjustified, that such wealth differentials are merited by the comparatively greater contributions the better-off make to productivity. But resentments are resentments, justified or not, and they can produce patterns of conduct — for example, violent rebellions — that might destabilize a regime or frustrate the democratic will. We saw this recently in the rioting in Los Angeles following the verdict in the Rodney King trial or, previously, in the riots that plagued a large number of American cities in the mid- and late 1960s. These disturbances were often triggered by political events, such as incidents of police brutality, failures in the criminal justice system, or the assassination of public leaders, but they invariably reduced to violent acts aimed at neighborhood retail establishments — the institutions which possessed what those living in the poorer neighborhoods do not have, what a police officer in Los Angeles recently described as “the basic luxuries that we all take for granted.”<sup>7</sup> A similar dissatisfaction has also been expressed in the growth of illegal industries, above all the drug trade, staffed as it is by those who see trafficking in drugs as their only way of getting a BMW or otherwise enjoying the riches of our consumer culture.

Material dissatisfaction played an important role — arguably the critical one — in destabilizing the socialist regimes of Eastern Europe

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7. Seth Mydans, *Revelers Facing the Music, Or the Looter as Everyman*, N.Y. TIMES, May 7, 1992, at A1.

and in inspiring the changes that occurred in the Soviet Union. But neither the material failures of socialism nor the glitter of the West should obscure the powerful forms of material dissatisfaction, rooted in inequality, to which all capitalist regimes give rise.

An appreciation of these tensions between democracy and capitalism should lead, perhaps not to despair, but to a more skeptical attitude toward the new turn in world history. Socialism may no longer be a viable option — we may all be capitalists now — but the reformers in the East should not lull themselves into believing that robust and unmodified capitalism will necessarily and unqualifiedly further democratic values. The Pinochet years in Chile painfully warn against such an easy assumption. My warning is, however, even stronger: Capitalism is not simply compatible with authoritarianism, but in some ways may lead in that direction.

Obviously, the course of world history cannot be reversed, but, mindful of the dangers to democratic values posed by capitalism, my hope is that those shepherding the transition from socialism to capitalism will pause and consider a number of measures that would lessen those dangers. They might adopt measures to protect against growing inequalities of wealth, curb monopoly power, prevent informational industries from falling captive to the market, place ceilings on campaign contributions and expenditures, foster worker participation, protect workers who criticize their firms, and strengthen intermediate organizations that might serve as schools of citizenship.

Admittedly, some of these measures may have their roots in socialist ideals and entail significant state intervention into the economy, but they should not for that reason be rejected in a frenzied attempt to bury the past. All capitalist societies have measures comparable to these, without ever threatening their characterization as “capitalistic.” Some are departures from the theory of capitalism, conceived in abstract and formal terms, but they are limited, qualified departures, rooted in a desire to further a value — democracy — that capitalism is supposed to further.

A battle still needs to be fought. It will not be the battle that has dominated the twentieth century, between capitalism and socialism, but rather a battle within capitalism. Passions might not run as high, for the divisions are less clear-cut, but the stakes and concerns are every bit as great. Aside from the strange case of Joseph Schumpeter,<sup>8</sup> it was not a consideration of efficiency that drew most intellectuals to

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8. JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* 188-99 (3d ed. 1950).

socialism, but largely a commitment to democracy. Now the challenge is to see whether that very same ideal can be achieved within the capitalist framework: to make "capitalist democracy" a reality.