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Investing for a Property-Owning Democracy? Towards a Philosophical Analysis of Investment Practices*

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1. Introduction

When John Rawls published *A Theory of Justice* in 1971, most philosophers assumed that he was defending a variant of welfare state capitalism (Schweickart 2012), i.e. what Robert Heilbroner (1992, 46) dubbed a "slightly imaginary Sweden". However, later writings by Rawls (1999[1971]; 2001), as well as closer analyses of his work (e.g. O'Neill/Williamson 2012 (eds.)), made clear that Rawls proposed something more radical: a *property-owning democracy* (hereafter POD). In a POD, society does not merely redistribute money to those worst off for their personal consumption. The main point is that capital should be widely dispersed (Rawls 1999[1971]; 2001). Individuals could then invest this capital either in a business project of their own or into bigger corporations and get a fair share of the "advantages from social cooperation" (Rawls 1999[1971], 6) through returns on these investments.

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Despite the key role of investments, political philosophers have hardly examined this topic so far, especially the question of how investments should be organised. Most of them think about distributive questions only in terms of redistribution through taxation (e.g. Murphy/Nagel 2002). This is a serious gap in philosophical research because investments have the potential to influence the basic structure of society without being subject to democratic control. Investments exhibit a tension between property and democracy that is particularly relevant to a POD, given the role that investments play in such a socioeconomic system. As Thad Williamson (2012, 240) notes, "more work needs to be done to establish what the financial architecture of fully realized property-owning democracy might look like".

One notable exception, which tackles the question of how investments should be organised, is John Roemer (1994), who puts forward the idea of a *coupon economy*. Coupons are similar to normal shares in that they pay dividends and can be traded against more promising coupons on the "coupon stock market" (Roemer 1994, 76). However, everybody gets an equal amount of coupons and they are redistributed after one's death. Moreover, coupons cannot be traded against money. This ensures that the rich do not buy up most coupons. They just have to put their money on a saving account (or spend it). In this scheme of things, banks that are publicly owned provide capital to corporations (Roemer 1994). Roemer thus resolves the tension between property and democracy by placing control over capital in the hands of banks that are accountable to the public.

Roemer develops an *ideal theory* about how investments should be organised. He designs institutions (coupons, publicly owned banks, etc.) from scratch rather than starting from existing institutions and how they constrain future developments (Simmons 2010). Such a "realistic utopia" is of crucial importance as it "provides a long-term goal of political endeavour" (Rawls 1993, 128). However, ideal theory does not tell us what gradual steps are necessary to reach this 'realistic utopia', which is a serious limitation. Ideal theory must therefore be complemented by *non-ideal theory*, which focuses on how existing institutions could be transformed (Simmons 2010). In this article I therefore engage in non-ideal theorizing to address the question of how investments should be organised. Thus, starting from existing investment practices I pose the following research question: could existing investment practices be transformed so that they bring society closer to a POD—and can such a transformation be justified?

This question combines descriptive elements (i.e., is a transformation possible?) with normative elements (i.e., is such a transformation justified?). To tackle it, I will proceed in three steps. The first step involves documenting how investment practices influence income distribution. More specifically, in *section 2*—which is descriptive—I will look at how investment practices have been fundamentally transformed over the past 40 years with the rise of investment practices that force corporations to maximise shareholder value, which hereafter I will refer to as 'shareholder value investing'. Empirical research suggests that this investment practice has increased income inequalities; for example, by forcing corporations to redistribute corporate profits from employees

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to shareholders (Lazonick/O'Sullivan 2000) or by encouraging very high executive compensations (Davis 2009). By contrast, there is evidence that socially responsible investing (hereafter SRI) has the *potential* to bring society closer to a POD. Indeed, this investment practice has grown substantially in recent years and now has market shares of about 10% in Europe and the US (EUROSIF 2012; US SIF 2012).

The second step involves illustrating how financial regulation fosters investment practices: in *section 3*, which is also descriptive, I reconstruct the process through which regulatory changes facilitated the rise of shareholder value investing. Since then, the primary goal of such changes is to protect investors and their property rights. Nevertheless, financial regulation could also be aimed at influencing investment decisions and, as I will show, there are regulatory ideas for fostering SRI. For example, SRI could be made the default option in retirement arrangements, or investment funds could be required to offer every non-SRI investment strategy in an SRI variant as well. However, one problem with such regulatory ideas is that many people in the public discourse would see them as exceedingly patronising.

In the third step of my argumentation, presented in *section 4*, I outline how political philosophers can evaluate financial regulation. This part of the article is normative. Political philosophers justify private property either as a special right (Locke 1988[1689]; Nozick 1974) or as a general right (Hegel 1967[1820]; Waldron 1988) or instrumentally (Rawls 1999[1971]). Each of these justifications of private property (Waldron 1988) legitimises a different type of financial regulation. The justification of property as a special right implies that financial regulation should primarily protect investors and their property rights. This view is widespread in the public discourse. By contrast, if property is justified as a general right or instrumentally, it becomes legitimate to influence investment decisions. On those grounds, I will argue that, in the context of SRI, it would make sense for proponents of a POD to develop regulatory ideas that foster SRI and to stand up for these ideas in the public discourse. *Figure 1* illustrates the connections between the concepts discussed in the different sections of the article.

In *section 5*, the article concludes with a look at where a rise of SRI might bring society. More precisely, I will argue that powerful SRI funds should be accountable to the public through the inclusion of diverse stakeholders on their boards of directors and by being subject to the scrutiny of NGOs and the media. In certain respects, such SRI funds could play a similar role as Roemer's public banks.

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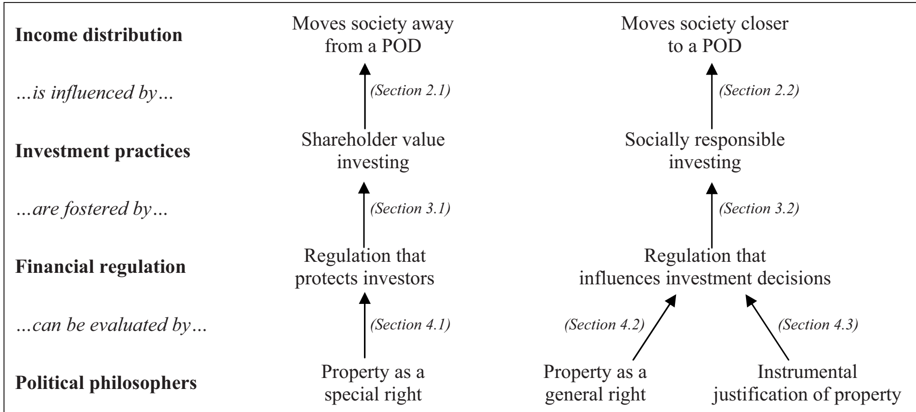

Figure 1: Thematic interconnections in the article

2. How Investment Practices Influence Income Distribution

Income inequalities have risen massively in the US since Rawls published *A Theory of Justice* (Congressional Budget Office 2011; Smeeding 2005). Between 1971 and 2010, the income share of the top 1% rose from 9.4% to 19.8%, while the income share of the top 0.1% rose from 3.0% to 9.5% (Saez 2012). As a result, the top 1% captured 58% of real economic growth in the period between 1976 and 2007 (Atkinson/Piketty/Saez 2011). A similar trend can be seen in other English-speaking countries, in Nordic and southern Europe, as well as in developing countries (Atkinson/Piketty/Saez 2011). What is remarkable is that "a significant fraction of the surge in top incomes since 1970 is due to an explosion of top wages and salaries" (Saez 2012, 4). For instance, in the US, in 2007 the top 1% earned 12.4% of the total wages and salaries, up from 5.1% in 1970 (Saez 2012). This means that today's rich do not consist only of "coupon-clipping rentiers", but have been joined by the "working rich" (Wolff/Zacharias 2009). To explain this increasing income inequality, one has to take into account many factors (Atkinson/Piketty/Saez 2011). Here, I focus on one important factor; namely, investment practices.

2.1 The Rise of Shareholder Value Investing

The relation between investors and corporations has been fundamentally transformed over the last three decades. In what follows I focus primarily on the US because here the transformation has been most pronounced; it should be added, however, that the same trend characterises most developed countries (e.g. on France, see Morin 2000). In the US, up to the 1970s investors had little influence on corporate activities: on the one hand, they were widely dispersed, which undermined their ability to influence corporations (Berle/Means 1967[1932]; Davis

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2009). On the other hand, the large and powerful corporations that dominated the US economy were largely self-financing and thus did not depend on investors (Davis 2009). At the time, this gave widespread credibility to the claim of Adolf Berle and Gardiner Means (1967[1932], 8) that the modern corporation had led to the "dissolution of the old atom of ownership into its component parts, control and beneficial ownership". Managers were in control of corporations, which "left the corporation's nominal owners holding merely a partial claim on uncertain future cash flows" (Davis 2009, 6).

This, however, ceased to be true in the 1980s, when that relation changed (Blackburn 2006; Davis 2009). One reason for this change was that the ownership of corporations shifted from individual investors to institutional investors (Davis/Thompson 1994). The control of institutional investors over the average corporation's equity in the US rose from 15.8% in 1965 to 42.7% in 1986 (Useem 1993) and to 61.2% in 2001 (Ryan/Schneider 2003). This made it easier for investors to exert pressure on corporations. At the same time, the position of managers was weakened through the emergence of a market for corporate control in the US. New types of bonds (so-called 'junk bonds') allowed outside investors to raise enough money to take over corporations that were not managed in the best interest of shareholders and whose shares were trading at a low price (Davis/Stout 1992). These corporations were then put under new management, restructured, and resold at a profit. Between 1980 and 1990, 144 out of the 500 corporations listed in the 'Fortune 500' were subject to takeover attempts, which made corporate takeovers "perhaps the most significant events on the organizational landscape during the 1980s" (Davis/Stout 1992, 605). This is a fundamental shift in investment practices: from individual investors with little influence on corporations to institutional investors who force corporations to maximise 'shareholder value' (Rappaport 1998). As already mentioned, I have therefore termed this new practice 'shareholder value investing'. In what follows I outline two ways in which this investment practice influences income distribution.

First, shareholder value investing creates downward pressure on the wages of employees. Before the rise of this investment practice, corporations in the US pursued a strategy of "retain and reinvest", which benefited different stakeholders; for example, workers would "get paid higher wages and have better employment stability and working conditions" (Lazonick/O'Sullivan 2000, 25). However, pressure from shareholders changed the "hierarchy of management objectives" and corporations had increasingly to "satisfy professional fund managers and meet the expectations of the capital market" (Williams 2000, 6). In response, corporations adopted a strategy of "downsize and distribute" (Lazonick/O'Sullivan 2000, 18). In the 1980s and 1990s corporate downsizing of the labour force contributed to an increase in the rate of job losses in the US (Lazonick/O'Sullivan 2000). Meanwhile, corporate profits were increasingly distributed to shareholders. While in the 1970s US corporations paid out 42.3% of their profits as dividends to shareholders, this share rose above 49% in the period from 1980 to 1998 (O'Sullivan 2000). In addition, corporations started to distribute their profits to shareholders through massive stock repurchases. In 1989, US

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corporations used more than 20% of their profits to buy back their own shares, which increased the effective pay-out ratio to over 81% (Lazonick/O'Sullivan 2000).

Second, shareholder value investing favours very high management compensations. In the 1970s, the average CEO in the US earned $1.56 million in today's money (Frydman/Saks 2010). Their compensation, as Jensen and Murphy pointed out (1990, 138) was "virtually independent of performance", which led to the famous argument that such compensation schemes make "CEOs act like bureaucrats rather than the value-maximizing entrepreneurs companies need" (Jensen/Murphy 1990, 138). In order to better align the interests of CEOs and shareholders, CEO compensation was increasingly tied to the performance of the corporations' stock. This 'pay for performance' led to a massive increase in CEO compensation. In the years 2000–2005, the average CEO earned $12.27 million in today's money, which is an almost eightfold increase compared to the 1970s (Frydman/Saks 2010).

These two points suggest that shareholder value investing contributes to the increase of income inequality. The rise of shareholder value investing, however, also makes clear that investment practices are not fixed but change over time and may even be replaced by very different practices. This means that there is plenty of scope for developing alternative investment practices that could move society closer to a POD. This brings us to SRI.

2.2 Socially Responsible Investing as a Potential Alternative

SRI is an investment practice which does not just consider the financial return of an investment but also takes into account environmental and social issues. SRI has grown substantially over the last two decades. In the US, assets under management by SRI funds rose from $639 billion in 1995 to $3,744 billion in 2012 (US SIF 2012). When the overall growth of assets under management is taken into account, this represents a rise in the SRI market share from 7.2% in 1995 to 11.3% in 2012 (US SIF 2012). In Europe, the SRI market shares are similar (EUROSIF 2012). Furthermore, over 1,000 financial firms with $32 trillion in assets under management (about 20% of the volume of global capital markets) have signed the 'Principles for Responsible Investment' (PRI), which were developed in partnership with the United Nations (PRI 2012).

SRI funds use various investment strategies (see EUROSIF 2012). First, the strategy of *positive social screening* means that SRI funds only invest in corporations in exemplary sectors, such as that of renewable energy, or in corporations that are leaders in their sector—for example, the most sustainable oil producers (EUROSIF 2012). Also, SRI funds might screen corporations based on whether they comply with international standards and norms such as the 'Global Compact' (EUROSIF 2012). A second strategy, that of *negative social screening*, involves the exclusion of certain corporations from the investment portfolios of SRI funds. Traditionally, these have been corporations that produce tobacco, alcohol, weapons or—to take a more recent example—invest in Sudan (Soederberg 2009). A third strategy is *shareholder activism*, which means that SRI funds try

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to influence the management of corporations of which they hold shares. This can be done either by initiating a dialogue with management or by filing proxies at the general meetings of shareholders (Sparkes/Cowton 2004). A fourth SRI strategy, *impact investing*, involves financing specific projects that combine financial returns with a positive social impact, such as microfinance or social entrepreneurship (EUROSIF 2012).

Next I revisit the two ways in which investment practices influence income distribution to show that SRI has the potential to offer an alternative to shareholder value investing if it would be more widely adopted. To be clear, the goal is not to go back to the era before shareholder value investing; this era serves as an orientation point only insofar as shareholders had less influence. Apart from that, one cannot wish back a corporate system that is run by a small elite of managers with little accountability and transparency (Davis 2009; Mills 1956). An alternative to shareholder value investing has to combine the incontestable progress in corporate accountability and transparency with a more limited influence of shareholders.

First, SRI could improve the situation of employees and other stakeholders. If SRI were more widely adopted, SRI funds would be in the position to set standards for corporations. In such a scenario, failing to live up to these standards would become as problematic for corporations as failing to "meet or exceed" the quarterly earnings that financial analysts expect (Degeorge/Patel/Zeckhauser 1999, 13). This would inevitably make managers focus more on environmental and social issues (Matten/Crane 2005; Scherer/Palazzo 2007). More specifically, SRI funds as rule-setters could reduce the pressure on corporations to "downsize and distribute" (Lazonick/O'Sullivan 2000, 18). In turn, easing the pressure on labour costs would improve working conditions (especially in developing countries). At the same time, if corporations had to pay lower dividends to shareholders, this would give corporations leeway to take into account the interests of other stakeholders. To a certain degree this is already the case today, as SRI funds sometimes manage to bring environmental and social issues on the corporate agenda by joining forces with the biggest players in financial markets, which are pension funds (The Economist 2008).

Second, SRI could reign in very high management compensations. Many financial economists (e.g. Fama/Jensen 1983; Jensen/Meckling 1976) argue that even very high compensations are modest sums compared to the shareholder value that a good CEO creates. It thus literally pays for shareholders to pay very high compensations to management. Nevertheless, even if this were the case (doubts exist; e.g. Bebchuk/Fried 2004; Khurana 2002), SRI funds would still have good grounds for opposing such compensations. An argument that can be used against very high management compensations is that they are a "public bad" because they engender a "lack of community", as well as other negative societal effects (Roemer 1994, 56). Applying positive screening, SRI funds could thus invest only in corporations that adopt certain standards in management compensation. Additionally, they could push such standards through shareholder activism. Today, management compensation is already among the "most prevalent governance criteria" that SRI funds commonly consider (US SIF 2012,

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13). In Switzerland, for instance, one of the best known SRI funds, 'Ethos', was a key player in the recent general meetings of the bank UBS. In 2012, it managed to mobilise 37% of shareholders against UBS's management compensations (Schäfer 2012).

3. How Financial Regulation Fosters Investment Practices

So far I have shown that political philosophers (particularly proponents of a POD) should take a greater interest in investment practices because such practices have the power to move society closer to a POD—or further away. An obvious question is: how can political philosophers evaluate investment practices from a normative perspective? The most straightforward way would be to evaluate investment practices at the *individual level*. This would require them to evaluate the responsibilities of individuals when they invest their money (for an interesting discussion on this issue see Hussain 2012). This, however, as Rawls argued (1999[1971]), might morally overburden individuals and thus not be very effective. For that reason Rawls (1999[1971], 6) focuses on the *institutional level*, pointing out that societal institutions should be the "primary subject of justice". Financial regulation is one such societal institution and in this section I will show that it is of key importance to investment practices. More specifically, I will argue that, by focusing on financial regulation rather than on the responsibilities of individual investors, political philosophers can evaluate investment practices at the institutional level.

The rise of shareholder value investing is closely connected to changes in financial regulation. The main purpose of such financial regulation is to protect investors and their property rights. However, as I will discuss at length below, through a different set of changes financial regulation could help foster SRI by influencing investment decisions. For example, investment funds could be required to state their policy on SRI or SRI could become the default option in retirement arrangements. These examples show that there are regulatory ideas that can foster SRI—the problem is that many people in the public discourse would find such regulatory ideas too patronising.

3.1 Investor Protection as the Main Purpose of Today's Financial Regulation

Financial regulation is of key importance for investments because every investment practice occurs in a highly regulated context. Financial regulation makes individuals act in certain ways through rules, laws and sanctions and thus helps to institutionalise specific investment practices (Scott 2008). The passivity of shareholders before the rise of shareholder value investing was thus no coincidence but was fostered by specific financial regulation (Davis/Thompson 1994).

For example, until 1992 shareholders in the US had to gain approval by the Securities and Exchange Commission (SEC) before engaging in "communications aimed at influencing the votes of more than 10 other shareholders"

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(Davis/Thompson 1994, 148). This made it very burdensome for shareholders to promote their interests. Groups of shareholders that owned more than 10% of shares were moreover subject to insider-trading rules, which required "monthly disclosures of their purchases and sales of company stock as well as liabilities for 'short swing' profits" (Davis/Thompson 1994, 148). This illustrates how shareholder passivity was fostered "by a complex web of legal rules that [made] it difficult, expensive, and legally risky to own large percentage stakes or undertake joint efforts" (Black 1990, 523).

Overall, protecting society from too powerful investors seems to be the main purpose of such financial regulation. This is in line with the general attitude towards investors that prevailed in the decades that followed the Second World War (Davis 2009). In the mid 1950s, the economist Carl Kaysen (1957, 313) stated that the management of the then modern corporation was "[no] longer the agent of proprietorship seeking to maximize return on investment". Thus, "stockholders in effect [became] holders of perpetual bonds" (Kaysen 1957, 312). Financial regulation ensured that shareholders stuck to that role.

Since then, regulatory changes have substantially strengthened the position of investors. For example, in the US the "scope of issues open to proxy votes is primarily determined by the legal standards of the company's state of incorporation and by the SEC" (Davis/Thompson 1994, 157). Financial regulation thus determines what issues can be raised by investors at the annual general meetings of shareholders. In this case, regulatory changes that have been implemented since the 1980s eventually broadened the scope of issues that could be voted upon (Davis/Thompson 1994). Another example is the increase in the requirements for listed corporations that was introduced by exchanges such as the New York Stock Exchange (Wintoki 2007). As a result, today corporations have to quantify all aspects of their business operations and to adopt corporate governance structures that allow investors a high level of control. Such regulatory changes—which continue to this day—tend to increase investors' control over corporations.

3.2 Public Concerns over Regulation that Tries to Influence Investment Decisions

As the previous account shows, protecting investors and their property rights seems to have become the main purpose of financial regulation. Nevertheless, financial regulation could also foster the investment practice of SRI. In what follows I propose two ways in which regulatory changes could boost SRI and thus bring society closer to a POD.

One way would be to help investors express their latent SRI preferences. This proposition builds on the insight that many people care about what is done with their money, e.g. about whether their dividends come from child labour. A recent large-scale survey that measured "self-proclaimed interest in SRI" in the US found that 10% of respondents "mostly agree" with the idea of SRI and 38% "somewhat agree" (Peifer 2012, 115). This is a strong indication that

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there is a discrepancy between "self-proclaimed interest in SRI" and actual SRI engagement. Financial regulation could help reduce this discrepancy.

For example, regulatory changes could increase the visibility of SRI issues through the requirement that investment funds take a stand on SRI issues, as is done in certain countries: since 2000 all occupational and local government pension funds in the United Kingdom are required by law to state their policy on SRI and the same applies to all pension funds in Australia since 2002 (Sparkes/Cowton 2004). In France, such a disclosure is required for *all* investment funds since 2012 (EUROSIF 2012). Such changes make SRI more visible and thus increase the likelihood that individuals take into account SRI issues when making their investment decisions. Regulatory changes could also promote SRI by increasing the availability of SRI funds. Some individuals may not engage in SRI simply because they do not have the option of SRI funds in their pension plan (Landier/Nair 2008). Here, other countries might follow the example of France, which since 2008 requires pension plan providers to offer at least one SRI fund option (EUROSIF 2012). Higher visibility and availability might thus help investors to express their latent SRI preferences.

A second way in which regulatory changes could promote SRI is by nudging investors into more responsible investment decisions. This builds on the insight provided by behavioural economists that individuals do not always act rationally when deciding how to invest (Shiller 2005; Thaler/Sunstein 2009). For example, individuals tend to give too much weight to recent returns, invest too little abroad and pay insufficient attention to management fees (Cronqvist/Thaler 2004). Moreover, many individuals do not save enough for their retirement (Thaler/Benartzi 2004). Behavioural economists therefore stress that "good choice architecture" is crucial to making sound decisions and that individuals should be "nudged" into investment decisions that are beneficial to them (Thaler/Sunstein 2009, 13). However, financial regulation could go beyond this by trying to nudge investors into investment decisions that are beneficial to society as a whole; that is, nudge them into SRI.

For example, behavioural research indicates that individuals tend to choose the default option (Samuelson/Zeckhauser 1988). This may be partly because of laziness but also because "the default option comes with some implicit or explicit suggestion that it represents the normal or even the recommended course of action" (Thaler/Sunstein 2009, 83). Now, it would be possible to draft financial regulation that makes use of this preference for the default option in order to foster investments that are beneficial to society as a whole, rather than merely to the investors themselves. This could be done by mandating that SRI funds must be the default option in retirement arrangements. Individuals would still be able to choose a traditional investment fund (or a very ambitious impact investment fund), but if they did nothing, their monthly contributions would be invested in some moderate SRI fund. Behavioural research also suggests that individuals tend to "spread their contributions evenly across the investment options" offered to them in their retirement arrangements (Benartzi/Thaler 2001, 96). Given this tendency, financial regulation could force investment funds to offer every non-SRI investment strategy in an SRI variant as well. For example, the SRI

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variant of a "passive management fund" could hand over the voting rights to a specialised NGO that actively uses these to lobby for environmental and social concerns. This would not only increase the visibility or SRI funds (as discussed above) but would also nudge individuals into SRI. With SRI funds representing more than 50% of the options open to investors, investors would allocate more of their resources to SRI through "naive diversification" (Benartzi/Thaler 2001, 79).

This overview shows that there is no shortage of regulatory ideas that could help promote SRI. Such ideas, however, are hardly brought up in the public discourse, neither by the media nor by politicians (for the public discourse around financial markets see Davis 2009; Fraser 2005). This might be due to the "everyday libertarianism" identified by Liam Murphy and Thomas Nagel (2002, 34, my italics): "[W]e are inclined to feel that what we have earned belongs to us *without qualifications*." State interferences with property are thus seen as problematic. Murphy and Nagel (2002) focus on taxation, but a similar argument can be made for financial regulation. Many people feel that their capital belongs to them without qualifications: this makes regulatory ideas that promote SRI unappealingly patronising for them. They object that the purpose of financial regulation is not to influence investment decisions or that such attempts are an intrusion by the state into decisions that are ultimately private. At this point, political philosopher can enter the discussion. By relating financial regulation to different justifications of private property, political philosophers can show that such regulatory ideas are not as absurd as they might seem at first sight.

4. How Political Philosophers Can Evaluate Financial Regulation

Political philosophy hosts a long-standing debate on whether and how to justify private property. Jeremy Waldron (1988) distinguishes between three approaches to justifying private property. First, private property may be justified as a *special right* that results from past acts of appropriation; this approach was expounded by John Locke (1988[1689]) and Robert Nozick (1974). Second, following Georg Wilhelm Friedrich Hegel's arguments (1967[1820]), private property may be justified as a *general right* on the grounds that "property is something everybody needs in order to develop his freedom and individuality" (Waldron 1988, 351). Third, private property can be justified *instrumentally* to the degree that this institution serves society's worst off, as Rawls (1999[1971]) argued.

In this section I show how political philosophers can build on these different justifications of private property to evaluate financial regulation. The point is that each justification has certain implications for financial regulation. Justifying private property as a special right legitimises financial regulation that focuses on protecting investors. By contrast, justifying private property as a general right or instrumentally legitimises financial regulation aimed at influencing investment decisions.

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4.1 Private Property as a Special Right

The probably most famous argumentation strategy in the property debate is the justification of private property as a special right (for a critical discussion see Waldron 1988). Special rights "arise out of special transactions between individuals or out of some special relationship in which they stand to each other" (Hart 1955, 84). Individuals do not simply possess special rights—as is the case with general rights—but acquire them through things they have done in the past. John Locke (1988[1689]) justifies property as a special right that emerges because individuals have mixed their labour with an object. This justification of private property determines the rights and responsibilities of property owners. All that matters from this perspective is whether the *initial* appropriation was justified. After that, property owners do not have any responsibilities: they have acquired the right to do with their property whatever they please, as long as they stay within the limits of the law (Nozick 1974). These "particular rights over things fill the space of rights" so that "no room" is left for other individuals to have justified claims on someone's property (Nozick 1974, 238).

What holds for property in general also holds for financial assets in particular. The justification of private property as a special right has thus direct implications for the rights and responsibilities of investors: if investors have acquired their money by legal means (e.g. not by fraud), then they have the right to invest their money however they please within the limits of the law. This also means that investors have no responsibilities towards other individuals when they make their investment decisions.

This has clear implications for financial regulation: if investors have the right to invest their money however they please, then financial regulation should not interfere with their investment decisions. It would not be legitimate, for example, to influence investment decisions by making SRI funds the default option in retirement arrangements. Instead, financial regulation should protect investors and their property rights. Thus, the justification of private property as a special right helps legitimise the currently prevalent financial regulation.

4.2 Private Property as a General Right

Private property can also be justified as a *general right*. This builds on Hegel's argument (1967[1820]) that freedom and individuality should not be understood as purely subjective states but need to be *objectified* in the world (Waldron 1988). It is only through this process that freedom and individuality become concrete and thus recognisable to oneself and to others (Waldron 1988). From this, Waldron (1988, 351) draws the conclusion that "property is something everybody needs in order to develop his freedom and individuality". This justification of private property points to a different interpretation of the rights and responsibilities of property owners. While individuals have a right to private property to develop their freedom and individuality, this right is not absolute. This is because the right to property of those without property creates responsibilities for those with abundant property. For Hegel (1967[1820]) it would be immoral

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if those with abundant property clung to the last bit of their property, while others had no property. Waldron (1988, 349) uses this as an argument for redistribution: an individual is not justified in insisting “against the state that [...] his right to property should remain inviolate” if others need property to develop their freedom and individuality.

Waldron’s argument, however, can also be used as an argument for responsible investing: if individuals with abundant property used their capital in ways that undermined the chances of other individuals to acquire property, that would be as immoral as opposing the principle of redistribution. Nevertheless, shareholder value investing does exactly that: it increases the share of investors at the expense of stakeholders who often lack sufficient property to develop their freedom and individuality. From the viewpoint of Waldron’s arguments, individuals with abundant property thus have a responsibility to use their capital in ways that do not undermine the possibility that the have-nots accumulate property over time.

This throws a different light on the purpose of financial regulation. In the public discourse, financial regulation that tries to influence investment decisions would be seen by many as an intrusion by the state into decisions that are ultimately private. From the perspective of justifying property as a general right, however, such financial regulation only pushes investors towards investment decisions that they should make anyway, given their responsibilities. Following this rationale, it becomes evident that regulatory changes which, for example, make SRI the default option in retirement arrangements, should not be seen as patronising, but as a means of helping individuals live up to their responsibilities.

4.3 An Instrumental Justification of Private Property

According to the instrumental justification, the state grants private property because this benefits society. Various authors have developed such a justification (e.g. Demsetz 1967), but here I focus exclusively on Rawls. For Rawls, while personal property is part of the “equal basic liberties” (1999[1971], 53), the means of production should be distributed according to the ‘difference principle’. This leads to a different view of the rights and responsibilities of property owners. In that view, on the one hand, individuals do not have a “natural right of private property in the means of production” (Rawls 1999[1971], xvi); such rights are granted by the state to the degree that this benefits society’s worst off. On the other hand, once these rights have been granted, individuals do not have any responsibilities when it comes to how they use this property. They only have the “duty of justice”, which requires them “to further just arrangements not yet established, at least when this can be done without too much cost” to themselves (Rawls 1999[1971], 99). In the context of property, this means that property owners should support institutions that benefit society’s worst off.

This also applies to the rights and responsibilities of investors. Investors have no direct responsibilities while investing, but the ‘duty of justice’ requires that they support financial regulation that serves the worst off. Now, what type of financial regulation serves the worst off is an empirical question. Some economists

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argue that focusing on shareholder value leads to a more efficient economy and that a rising tide will lift all boats, so to speak (Friedman 1970). They furthermore point out that stock ownership has become more widespread: "When we realize that the shareholders are not 'them' but are 'us', the case for shareholder value becomes even more compelling." (Rappaport 1998, 11) According to this argument, financial regulation can serve the worst off by fostering shareholder value investing. However, the empirical evidence presented earlier (see *section 2*) suggests that shareholder value investing has failed to live up to the promise of 'lifting all boats' and benefiting all layers of society. To serve the worst off, financial regulation should rather try to foster SRI.

This brings us back to the question of what financial regulation is allowed to do in order to foster SRI. Ideally, financial regulation should target the sweet spot where the compensation given to investors can be minimised without destroying their incentive to invest. To achieve this, a broad range of strategies can be employed, such as nudging investors into SRI by making SRI the default option in retirement arrangements or by requiring that investment funds offer every non-SRI investment strategy in an SRI variant as well. Rawls's justification of private property refutes the objection that such regulatory ideas are patronising: first, there exists "no natural right of private property" (Rawls 1999[1971], xvi) that could be violated by such regulation. Second, property owners have a "duty of justice" (Rawls 1999[1971], 99) to support just institutions and thus should uphold financial regulation that ultimately benefits society's worst off.

The above overview points to a tension between the public discourse and political philosophy. In the public discourse, many people have intuitions which chime with the justification of private property as a special right (Davis 2009; Murphy/Nagel 2002). They thus see investor protection as the main purpose of financial regulation. By contrast, because many political philosophers (particularly proponents of a POD) justify private property either as a general right or instrumentally, it should be easy for them to see the purpose of financial regulation in a different light; namely, to perceive that the purpose of such regulation should be to promote investment practices such as SRI which serve society's worst off. *Figure 2* summarises how proponents of a POD can critically engage in the public discourse about what financial regulation should do.

5. Conclusion

The main argument I have put forward in this article is that existing investment practices could be transformed so that they bring society closer to a POD, and that there are legitimate ways of facilitating this transformation through financial regulation that influences investment decisions (if one justifies private property with Hegel or Rawls). I first discussed how investment practices influence income distribution. Showing that shareholder value investing increases income inequality I argued that, by contrast, SRI has the potential to bring society closer to a POD. Furthermore, I sketched how financial regulation fosters investment practices and indicated ways in which SRI could be boosted if

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financial regulation aimed to influence investment decisions. In the last part, I outlined how political philosophers can evaluate financial regulation. I argued that, if private property is justified as a general right or instrumentally, it is legitimate for financial regulation to influence investment decisions and showed why this should not be seen as excessively patronising, as many people in the public discourse would object.

	Special right justification	**General right justification**	**Instrumental justification**
Justification of property	Property results from acts of appropriation that do not worsen the situation of others	Individuals need private property to develop their freedom and individuality	Private property is legitimate only to the degree that this benefits society's worst off
Rights and responsibilities of investors	Investors have the right to invest however they please within the limits of the law	The rights of individuals without property create responsibilities for those with abundant capital	Investors have no natural rights and a duty to support just financial regulation
Implications for financial regulation	Regulation should protect investors and their property rights	Regulation should try to influence investment decisions (e.g. by helping investors to express their latent SRI preferences or by nudging them into SRI)	

Figure 2: Justifications of property and their implications for financial regulation

I conclude this article with a brief look at the impact of a potential rise of SRI. If socially responsible investing practices became the *new normality*, SRI funds could set standards for corporations. This would make managers focus more on environmental and social issues and would make it easier to ban exceedingly high management compensations. Sometimes, investments will be controversial: for example, pressure by SRI funds might force unsustainable industries to go out of business; this would destroy jobs. Such controversies make it necessary that SRI funds themselves are checked through various mechanisms of strong societal control. Such mechanisms might include the obligation to have diverse stakeholders on the boards of directors of SRI funds (Scherer/Baumann-Pauly/Schneider 2013), as well as evaluations and scrutiny from active NGOs (Guay/Doh/Sinclair 2004) and critical media (Waddock 2008).

As a new normality, SRI would not just be encoded in financial regulation; it would also have become part of how people thing. Today, even stone-hearted investment bankers do not regret that they cannot invest in slave trading anymore even though this might have boosted the performance of their investment portfolios. To disregard such investments has just become "part of the habit of thought of most of those who live in the capitalist liberal democracies" (Murphy/Nagel 2002, 188). Gradual changes in financial regulation could bring about a similar "(p)rogress in moral thinking" (Murphy/Nagel 2002, 188); investors would start to take it for granted (again) that other stakeholders also have legitimate claims on the residuals produced by corporations.

An economy dominated by SRI funds could move society closer to a POD. In certain respects, SRI funds under strong societal control resemble Roemer's public banks: both reduce the tension between property and democracy by

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limiting the power of investors. It is my hope that the ideas presented in this article provide the proponents of a POD with a strong argument for developing regulatory ideas that foster SRI and standing up for these ideas in the public discourse.

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