



# RIGHT TO OWN.

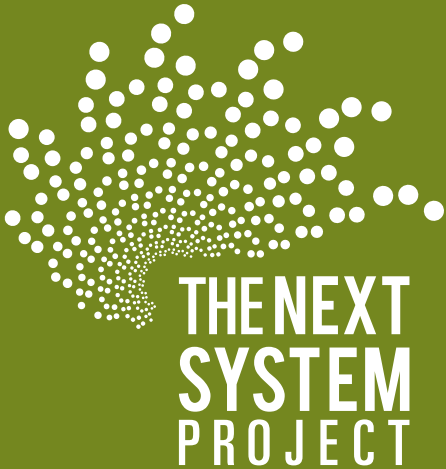
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**A Policy Framework  
to Catalyze Worker  
Ownership  
Transitions**

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**Peter Gowan**  
The Next System Project





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# Introduction

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**What is the way forward for worker ownership?** At a time of profound political crisis and looming ecological catastrophe that threatens death and destruction to millions around the planet, it can sometimes seem insufficient to concern ourselves with age-old questions of ownership, control, and distribution in our economy.

And yet they remain as important as ever. It is the relentless drive for private profit and the political power of an entrenched ownership class that drives the extraction that is destroying our planet, and it is an ideology of ruthless competition between individuals and communities that promotes the narrow-minded racism and xenophobia that have poisoned our political culture.

It is time for us to repair our society, to foster the creation of communities and workplaces driven by values of solidarity, cooperation, and justice. This repair is not one that can be accomplished with any one tool. This is a *systemic* project requiring a diverse toolkit and a broad social movement. Workplace democracy and worker ownership are crucial, powerful tools that can and should play an important role in the next economic system.

Critics of worker ownership rightly point to long-running difficulties in striking a balance between maintaining the values and aims at the core of worker



ownership, and the desire to bring worker ownership to scale. Often the most quantitatively successful models of worker ownership are also the most integrated into the competitive and extractive value system, with little role for true democratic decision-making or regard for the welfare and development of the wider community.

It is not that these firms are any worse than their privately owned counterparts; it's that their transformative potential is, in many ways, not being realized under the current political-economic system, and new infrastructure and legislation will be needed to unlock the capacity of worker ownership as a foundational component of a systemic transition.

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There is already a long-standing policy agenda for worker ownership that has become a powerful and effective consensus in many countries. It is motivated by the truth that these companies currently operate as businesses, and there is a case that can be embraced by free-market conservatives, moderates and progressives alike that regulations, access to finance and technical assistance, and tax laws should be modernized to treat these firms on a level playing field with privately owned firms.

This is the agenda behind the Employee Share Ownership Plan in the 1974 Employee Retirement Income Security Act, which made available additional tax privileges throughout the next decade and allowed Ronald Reagan to join John Lewis and Karl Marx on the list of those who made public statements in favor of worker ownership.<sup>1</sup> It is also the agenda behind both the recent tax incentives for employee ownership trusts passed in the United Kingdom,<sup>2</sup> and United States Sen. Kirsten Gillibrand's recently passed 2018



legislation extending Small Business Administration assistance for worker cooperatives and ESOPs.<sup>3</sup>

This agenda has produced real improvements for countless workers, but it can only take us so far. Progressives—not just in one country, but around the world—need to develop a policy agenda for worker ownership compatible with the systemic change we know we need on a global scale. If we want to transition to an economy that does not drive catastrophic climate change; dispossession and violence against people of color and the developing world; and gross inequalities of power, income, and wealth, then we need to develop a vision of worker ownership that can contribute to that transition, rather than one that aligns the interests of worker-owners with the shareholders of extractive private corporations that are the problem in our society.<sup>4</sup>

These efforts have transferred substantial amounts of capital into the hands of workers and developed a vibrant employee-owned sector, but one that has to compete in a liberalized market economy; and therefore one subject to the logic and constraints of such an economy. For this reason, there is some skepticism in progressive circles about the merits of worker ownership *as a whole*. This view is misplaced; we do not need to jettison the powerful idea that workers deserve to control the place they spend half their waking hours, and have a compelling interest in the product of their labor. We simply need to find a vision for worker ownership and control that is relevant to today's need for a broad-based systemic transition.

The initial section of this paper is a review of relevant policy models, including Italy's decades-old Marcora framework, Washington, D.C.'s Tenant Opportunity to Purchase Act, and the legislative history of existing worker ownership models in the United Kingdom and United States. These will lead us on to a discussion about the principles that should underlie a progressive policy agenda for worker ownership.





The second section of this paper—the policy proposal itself—describes a set of institutions and laws that could enable a substantial share of the economy to transition to democratic worker ownership with “sheltering institutions” that provide a countervailing force against the rigid demands of the market. We aim to offer a path forward for worker ownership for those of us who believe that system change is necessary.

We provide a generalized technical model of a pluralistic “institutional ecosystem” to surround worker-owned businesses; a legal framework that provides an effective right of first refusal to workers to purchase sites and companies that are being closed or sold; and a discussion of the limits of our proposal and an outline of an interlocking mechanism that could fill the most significant of these gaps—especially capital-intensive, publicly traded, and large employers—with an ‘inclusive ownership fund’ that would gradually increase democratic ownership over these key institutions in our economy.

The ultimate goal is twofold—to massively broaden the pool of candidate companies and sites that can be legally transitioned to democratic worker ownership if given the resources (through the right of first refusal) and to substantially deepen the financial and technical resources available to workers at companies and sites within that “candidate pool” to transition their workplace to democratic ownership.

This paper offers tools to activists and lawmakers to promote economic transformation in their own jurisdictions. The appendices offer additional suggestions and implementation details to expand our general model in two countries—in the United States, where we are based, and in the United Kingdom where similar ideas are advocated by Labour Party policy as the “right to own”—a term that we also use to describe the full proposal in this paper.<sup>5</sup>

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With these policies in place, societies will be far better positioned to prevent mass layoffs as a result of the so-called “silver tsunami” of retiring baby-boomer owners of small-to-medium business enterprises, many of whom currently close their companies at retirement or sell them to extractive vulture capitalists who asset-strip the firms with little protection for workers. In many localities, extensive legal, financial and technical supports for worker ownership is the best option for maintaining community stability in the face of an inevitable and significant economic transition—one that can be reprogrammed to serve the interests of the many in order to prevent it being exploited by the few.





## Part 1: Existing Models

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**The technical model outlined in Part 2 of this report does not exist in its totality anywhere in the world.** However, there are comparable policies and institutions that we have used as inspiration. In this section, we review the literature surrounding employee-owned businesses in the United Kingdom and United States, discuss the Marcora framework for cooperative buyouts at moments of firm crisis in Italy, and examine the Tenant Opportunity to Purchase Act, which grants a right of first refusal to tenants whose homes are being sold in Washington, D.C. These discussions will offer precedents and analogous situations from which to begin the design of a right to own framework that can be applied to multiple jurisdictional contexts.

### The Marcora Framework

The Marcora legislation in Italy, initially passed in the 1980s and amended several times since, gives workers in companies and sites that are being shut down access to a range of financial supports to convert their business into a worker cooperative.<sup>6</sup> It has been especially successful in promoting worker buyouts in the “Made in Italy” regions of northeast and central Italy, with its greatest success in Emilia-Romagna.



Readers with a passing familiarity of the international literature on employee ownership may already be aware of the Marcora framework. This section will summarize the original law for those who are not familiar, but even those readers may not be aware of considerable new evidence from a half-decade of research by the European Research Institute on Cooperative and Social Enterprises (Euricse) published last year. We are indebted to Marcelo Vieta and his team at Euricse, who produced an extremely authoritative analysis of this topic.

Euricse's research is more detailed, recent and comprehensive than other studies of the Marcora framework that we could identify. It was carried out over half a decade, using data from 1979-2014 with extensive access to the resources of the CFI federation of cooperatives (a key participant in the buyout process). Their final report on Marcora worker buyouts was published in 2017, and this section largely draws upon their findings.<sup>7</sup>

## Legislative Developments

What is often referred to as the “Marcora Law” is now multiple pieces of legislation, passed over four decades, that have created a unique framework for promoting worker cooperatives and buyouts. The original law—*Legge Marcora*, Law 49/1985 (subsequently “Marcora 1”)—granted employees the right to bring forward their CIGS (*cassa integrazione guadagni straordinaria*) benefits (temporary layoff benefits) in a lump sum to finance the start-up of a new worker cooperative. The workers were permitted to exercise a right of first refusal to buy out their workplace before it was liquidated, or could use the funding to start another new cooperative business.<sup>8</sup>

The funding provided from workers' advance on their CIGS benefits would be topped up by public funds to be administered by nonprofit financing agencies. These are known as “institutional investors” in the Italian cooperative movement, the largest being CFI while a smaller one, SOFICOOP, has



participated in some buyouts.<sup>9</sup> Institutional investors would provide grants worth up to three times the workers' collective investment. In addition to this, public loans were made available through the agency Foncooper, which allowed new cooperatives access to debt financing.

After a successful initial phase, Marcora 1 was suspended in the mid-1990s because of an infringement procedure carried out by the European Commission, which considered its provisions to be excessively generous and prejudicial to competition. The Commission's ruling found that the state was providing too much aid to cooperatives through Marcora 1.<sup>10</sup>

Thus the Italian government passed Article 12 of Law 57/2001 (Marcora 2) in 2001. This bill reduced the maximum ratio of funding provided by institutional investors—CFI and SOFICOOP—from 3-1 to parity with the workers' individual investments. It compensated for this by allowing workers to borrow against a wider range of public benefits upfront—extending this right from the CIGS temporary layoff benefits to also include their *Iden-nità di Mobilità* unemployment insurance. It also allowed workers to mix the upfront benefits with their severance pay or personal savings to form the initial amount that would be matched by institutional investors, and un-suspended the framework.<sup>11</sup>

The grant-based financing structure was changed to a risk capital financing structure, which meant that institutional investors would temporarily buy equity in the cooperative, and the workers are required to buy it back within 10 years (and to pay off any loans from Foncooper during the same period).<sup>12</sup>

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The expansion of workers' own funding sources in Marcora 2 mitigated the lack of access to startup capital and expanded the pool of workers capable of participating in Marcora cooperatives (as not all workers received CIGS benefits) but also increased the potential risk to those participating—as benefits drawn for this purpose could not be accessed again for three years, even if the cooperative folded.<sup>13</sup>

The Marcora 2 reform also allowed workers to buy out businesses and assets seized as part of the proceeds of crime—a provision that has been used to clean up firms that were owned by organized criminals in the southern *Mezzogiorno* regions.<sup>14</sup> The right of first refusal appears not to have applied to buyouts using *Idennità di Mobilità* payments or other personal finance in the original Marcora 2. This was rectified in the 2013 *Destinazione Italia* reform, which granted an expanded right of first refusal to Italian workers.<sup>15</sup>

The Italian budget for 2017 authorized the country's Sustainable Growth Fund to offer subsidized-interest loans to Marcora cooperatives, expanding their access to cheap debt financing, and a 2017 resolution passed by the Italian parliament (though not brought into force) has suggested another range of measures that could expand support for cooperatives.<sup>16</sup> It appears that the Marcora framework remains popular across the political spectrum, and is considerably more likely to be expanded than contracted.

## Summary of Empirical Data

There have been at least 257 worker buyouts in Italy over the course of the years 1979-2014; these are just those that could be identified by Euricse's team.<sup>17</sup> Euricse estimate that these buyouts have saved, at a minimum, 9,500 jobs through co-op conversions.<sup>18</sup> This is, when adjusted for population size, ten times larger than the *entire* US co-operative sector workforce, even though it excludes cooperatives created *de novo* with or without Marcora assistance.<sup>19</sup>



The average worker buyout in Italy had 36 workers as of 2014.<sup>20</sup> The majority are small employers (10-50 workers), most of the remainder are medium-size employers (50-249 workers), and almost all the remainder are microenterprises (less than 10 workers). Only two buyouts were carried out in firms with over 250 employees during this period.<sup>21</sup>

A slim majority of worker buyouts (131 firms) initiated since 1979 were still operating as of 2014—and the average open firm has been around for 13.9 years. Most of those that closed (126 firms) were open for a significant period of time before their closure—the average closed firm had remained open for 11.9 years.<sup>22</sup> This compares extremely favorably with the longevity and survival rates of comparable privately owned companies—after six years, the private companies averaged about 60 percent survival while the worker buyout survival rate was well over 70 percent.<sup>23</sup>

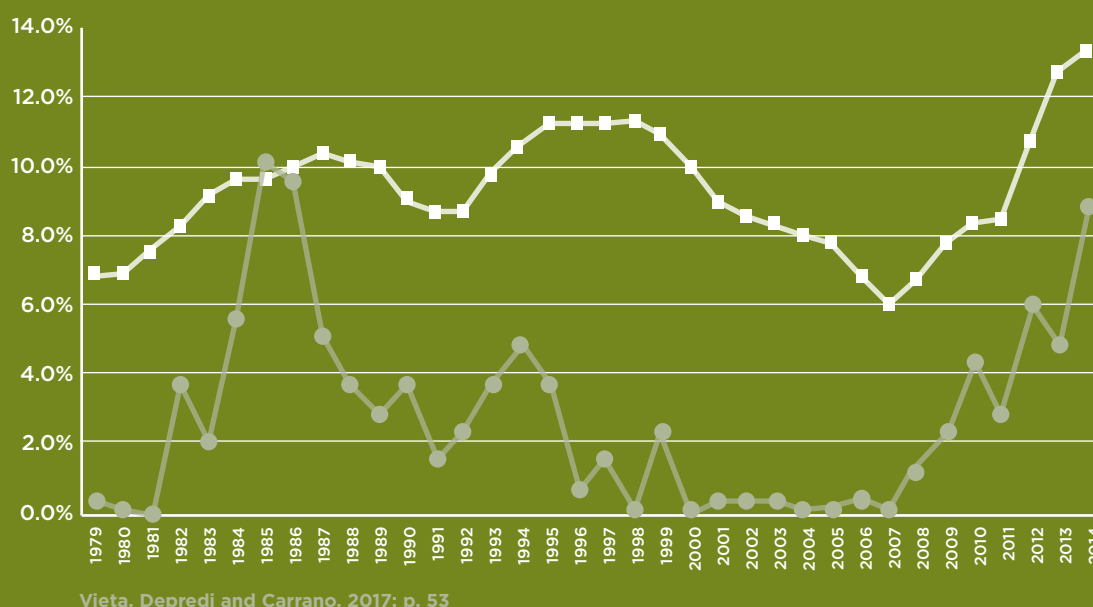
Worker buyouts tend to emerge in specific areas—the northeast and central parts of the country. These regions together account for 191 out of 271 buyouts, and 56 out of 81 buyouts since the Marcora 2 law was passed (essentially all of these were during 2008-14).<sup>24</sup> These are areas with a strong cooperative tradition and an existing sector that is of sufficient size to support new entrants to the market.<sup>25</sup>

Eurisce's team were able to obtain a sample of 162 worker buyouts with sectoral information. As of December 31, 2014, 68.52 percent of worker buyouts happened in the manufacturing sector, 11.11 percent happened in the information, communication, and business services sector, 9.26 percent happened in the commercial wholesale and retail sector, 4.94 percent happened in construction, and 3.09 percent happened in transport and storage.<sup>26</sup>

Eurisce found that worker buyouts are more likely to emerge in labor-intensive, skilled jobs in areas where people are rooted in their communities and



## THE RATE OF UNEMPLOYMENT AND THE EMERGENCE OF WBOs IN ITALY



sectors. This aligns with the findings of similar research into worker-recuperated enterprises in Argentina.<sup>27</sup>

The Marcora framework has had two waves of success, punctuated by a complete halt over the period from 1996 to 2007. The above chart compares the unemployment rate (red) with the proportion of total worker buyouts over the period that were initiated in each year (blue).

The actual date of the law's passage is not the beginning of the Marcora framework here, as cooperatives formed beforehand were provided with funds retrospectively and the law was being discussed through the early 1980s (indeed, the eponymous Giovanni Marcora, who initiated the proposal as Minister for Industry from 1981-82, died before its official passage).

What is more important to note is that buyouts tended to happen at times when unemployment was rising. The huge wave of buyouts in 1985 and 1986 may have been anomalously high due to the novelty of the law, but the



reduction until 1991 and subsequent rise through 1994 correlates strongly with unemployment rates.

The mid-1990s European Commission intervention saw a sustained fall in worker buyouts to near-zero levels, which was *not* reversed immediately upon the passage of Marcora 2 in 2001, but a new wave began *immediately* with the onset of the global financial crisis, reaching near-record levels by 2014, the most recent data we have available.

The Marcora framework is specially oriented towards assisting buyouts at moments of firm crisis. It appears to be an effective tool for doing so, though it is a less effective tool than what the Marcora 1 law provided. It requires a considerable degree of risk on behalf of its participants—as we will discuss later—but for what is now probably more than 10,000 worker-owners, it has provided them with stable, secure, and democratic employment.

The Right to Own proposal goes further than the Marcora legislative framework, proposing to extend its rights from moments of firm crisis to also cover ordinary sales. The specific traits of Marcora—its sectoral composition, counter-cyclical, and regional focus—are not necessarily what will be found in a law centered around moments of ownership transition as well as firm crisis.

Instead, the institutions we set up to surround the legal framework will structure and shape the usage and uptake of the law. This should be kept in mind as we move on to discuss our detailed policy proposal in Part 2.

## Tenants' Right to Buy in Washington, D.C.

The Tenant Opportunity to Purchase Act (TOPA) is a law in the city of Washington, D.C. that grants tenants in rental housing a right of first refusal over the properties in which they live in the event of a sale. The TOPA



process requires that sellers of rental properties provide their tenants with an offer of sale before a contract with a third-party buyer is settled, including relevant accompanying documentation wherever requested (within one week). This period initiates after the tenants are given an opportunity to challenge the transfer on legal grounds; they are not concurrent.

If a tenants' association already exists, it can submit documents indicating that it wishes to negotiate with the seller, and if it does not exist then tenants are afforded a limited amount of extra time to form one and initiate this process. The minimum negotiation period lasts between three and four months (depending on whether the property has from two to four tenants or five or more tenants). If the seller wishes to agree to a contract with a third-party buyer, the tenants are given a 15-day right of first refusal period in which they have the right to accept or decline that offer. The 15 days are added on to their minimum negotiation period.

If the tenants accept a right of first refusal offer or agree to terms with the seller, then they are provided with either 90 days (if there are two to four tenants) or 120 days (if there are five or more tenants) to secure financing for the transaction. If a financial institution or other lender indicates that the finance will become available, then tenants can be afforded extensions of between one and four months.

The District of Columbia government provides financial and technical assistance to TOPA conversions in cases where low-to-moderate income residents are threatened with displacement because of the sale of their building. This assistance takes the form of seed money, earnest money deposits, and acquisition funding, and specialized organizational and

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development services (including structuring the tenant association, preparing legal documents, and writing loan applications).<sup>28</sup>

TOPA was amended, effective July 2018, to exclude single-family homes and accessory dwelling units.<sup>29</sup> This appears to have been as a result of the legislation's provision that the tenants are permitted to sell their rights under TOPA to other private buyers in exchange for commitments, rent reductions, or other payments. The sale of TOPA rights in single-family homes (especially where the individual concerned was a single individual in an accessory dwelling unit, typically a basement under the house) was viewed by the D.C. council as an abuse of the legislation, which inconvenienced homeowners who wished to make a sale and were faced by tenants who delayed the transaction on the pretext of intending to purchase the property, only to allow another private buyer to intervene and receive the benefits.

This is not a persuasive justification for the amendments; indeed, it appears that tenants were using the legislation the way it was intended, using their rights to prevent evictions and rent hikes in the event of a sale. Indeed, the effort to repeal the legislation shows that the legislation did in fact have teeth—if TOPA were an ineffectual dead-letter law, or merely replicating existing conditions where tenants would occasionally purchase their home off their landlord, then pressure to repeal or amend the legislation would likely have never arisen.

It does show some political-economic risks of such legislation—specifically, the uncertainty surrounding the length of time to make a sale is viewed as an onerous burden by sellers. Complaints often centered around sales that fell through at the last moment, leading to a long and burdensome repeated effort to unload the property. Strong consideration should be given to a legal framework that guarantees a greater amount of certainty in the time window it will take to sell an asset, and which guarantees that a sale



to *someone* will go through after that time window has elapsed. Our policy proposal addresses this issue.

As a whole, the TOPA framework preserved 1,400 units of affordable housing in a city of less than 700,000 people between 2002 and 2013.<sup>30</sup> Clearly there are distinctions between housing and other businesses that are relevant to policy design—but the success of TOPA in advancing the interests of vulnerable tenants shows that this form of provision is consistent with a functioning housing provision system and has not resulted in a catastrophic withdrawal of landlords from the D.C. housing market. It has recently been described by housing policy analyst Jarrod Green as a “unique law” that grants tenants “an opportunity to prevent residential displacement and enable community control of land and housing ownership.”<sup>31</sup>

## Worker Cooperatives, Employee Ownership Trusts, and ESOPs

Employee Stock Ownership Plans (ESOPs) are a type of retirement trust that exists in many US for-profit companies, owning part or all of a company’s equity on behalf of the workers’ retirement income security. Employees cash out from the ESOP when they retire or leave.<sup>32</sup> Owners of companies who sell at least 30 percent of stock to an ESOP are permitted to defer capital gains tax by rolling over the proceeds into qualified replacement property<sup>33</sup> and, depending on the circumstances, may also obtain significant tax benefits elsewhere.<sup>34</sup> The Publix chain of supermarkets is the largest example of a majority ESOP-owned firm.

Workers at ESOP firms in the US tend to enjoy some significant benefits compared to their counterparts—they make an average of 5 to 12 percent more in wages than workers at comparable traditional firms, studies have found that their retirement accounts are an average of 2.5 times larger, and they are one-fourth as likely to be laid off.<sup>35</sup> These are substantial benefits,



and should not be dismissed as meaningless even if we recognize their limited nature.

We often speak of the recent growth of the employee ownership movement in ways that are either too optimistic or too pessimistic. There is a trend among some on the political left to speak of employee ownership—and especially worker cooperatives—as an embryonic form of socialism.<sup>36</sup> In this characterization, the process of conversion into a cooperative is a revolution in miniature, in which the workers seize control of their means of production. The worker cooperative is seen as a shadow of the post-capitalist economy, and advocates hope that the conversion process can be replicated until a critical mass is obtained and the institutions of capitalism can be replaced or dissolved.<sup>37</sup>

This notion has been criticized. Gar Alperovitz writes that “operating in a market system, worker cooperatives are subject to many of the problems of any enterprise operating in competition with others: They must externalize and reduce costs when under pressure, which can lead to environmental depoliation and, as we see with many coops today, the use of wage labor.”<sup>38</sup>

At least in the context of the United States, certain research has found that worker ownership inhibited the development of egalitarian values, as in Greenberg’s 1986 study of plywood cooperatives in the Northwest.<sup>39</sup> More recent research has called that finding into question: A 2017 survey with 14,000 respondents in 27 countries found that “maximum voice” in the organization of workplaces had a large and significant effect on political participation, both in terms of voting and civil society participation.<sup>40</sup> If worker ownership increases participation but, under existing conditions, can fail to promote socially oriented values and environmental sustainability, then what is needed is a model that can maximize the benefits in terms of participation while reprogramming the incentives around worker-owned businesses towards solidaristic and sustainable practices.



In the United Kingdom, the birthplace of the worker cooperative, progress in the past has been slower. Significant attention has been paid to the “John Lewis model” of employee-ownership trusts, which appear to offer an intermediate step between the ESOP and cooperative forms. The Liberal Democrat-Conservative coalition government commissioned the Nuttall Review of employee ownership, which proposed (among many other technical changes) additional incentives for a trust-based, “off the shelf” model of employee ownership, and a “right to request employee ownership” that would require businesses to respond to a proposal for introducing employee ownership if 10 percent of their employees requested that they do so.<sup>41</sup>

The former proposal was implemented in 2014 with the creation of statutory employee ownership trusts (EOTs)—and business owners were given a 100 percent capital gains tax exemption on share sales in the year that an EOT attained majority ownership of the target company.<sup>42</sup> The ‘right to request’ was never implemented.

The employee ownership trust was the most significant consequence of the Nuttall Review, and their use has recently been advocated in the US by employee ownership practitioner Christopher Michael, who argues that they are “a practicable alternative to an ESOP that embodies the traditional principles of employee ownership” while noting that “Congress should take action to level the playing field between EOTs and ESOPs” by qualifying them as tax-exempt trusts, treatment equivalent to S Corp ESOPs, and permitting owners to avail of the 1042 rollover, which would allow them to defer taxes on the receipts of a sale to an EOT.<sup>43</sup>

All of these measures have been, or would be, beneficial to the general health of the employee ownership sector as it currently exists—but none of them are fully consistent with a wider agenda for systemic change. Readers outside the employee ownership community should not dismiss or belittle the hard work and efforts for incremental change of thinkers like Michael,





Nuttall, and others—and those who are working within the existing system should keep an open mind to proposals that move beyond the existing paradigm and point towards a new model of employee ownership that is less dependent on the active buy-in of capital owners, which will allow worker ownership to scale even more effectively, and which will promote the agency of workers themselves in establishing their own democratic workplace.

## Principles of a Progressive Agenda for Worker Ownership

What is certain is that workplace democracy—like other forms of democracy—is shaped and disciplined not just by its internal rules, but also by external forces that limit or expand its potential. This means that what we need is a systemic transitional approach to the political economy of worker ownership, one that is optimistic about its future, but also recognizes and incorporates valid critiques from those who study the topic.

This approach does not need to consider worker ownership the sole form of enterprise under the next economic system, but if we believe that it has a significant role to play in the new economy then we should have a concrete agenda outlining feasible transitional goals to promote the type of workplace democracy we desire.

At that point, it becomes incumbent upon us to offer a path forward for progressive change—policy alternatives that provide sources of finance and revenue that are not dependent on ruthless, profit-driven competition; technical assistance and expert knowledge on a broad basis to worker-owners and those in the process of considering a transition; and mechanisms to encourage solidarity between worker-owned

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businesses and an expansionary orientation of individual businesses and the sector as a whole.

In our examination of the literature, we have identified measures that could potentially overcome specific obstacles to the creation of a large, transformative, democratic worker-owned sector in the parts of the economy where such enterprises are most viable and beneficial. The British Labour Party is moving in this direction—its manifesto pledges to double the size of the co-operative sector, establish a range of new public supports for worker-owned enterprises, and establish a “right to own,” which would grant workers a “right of first refusal” at the point where a closely held company or site is being closed or sold—this would also include initial public offerings on the stock exchange.<sup>44</sup>

We see the right to own framework as having five necessary legal components, backed up by five more necessary economic and institutional components:

1. The right to buy out a company that is being dissolved.
2. The right to buy out a company that is being sold.
3. The right to have the first opportunity to buy shares that are being floated on the stock exchange.
4. The right to buy out a workplace/plant that is being closed.
5. The right to buy out a workplace/plant that is being sold.

It is widely recognized that simply stating this right without additional sheltering and enabling institutions would have little effect on the economy. We will discuss what those institutions might look like, but the right to own framework must, at a minimum, guarantee:

1. The right to the time necessary to prepare potential buyouts.
2. The right to access expertise necessary to prepare a buyout.



3. The right to access an institutional ecosystem that can provide financial assistance necessary to carry out a prepared buyout.
4. The right to technical assistance and education necessary to operate a financed buyout.
5. The right to access sources of finance and expertise that are structured to promote values of cooperation and solidarity instead of profit-maximization and individual greed.

A framework based on these principles is desirable and viable, but it will require significant attention to detail. The policy proposal that follows is a general technical model for implementing the right to own principles above, based on insights from our review of Marcora, TOPA, and existing worker ownership models. If implemented by an ambitious and visionary government, these principles could provide the basis for a 21st century political economic model of worker ownership, fit for a new democratic economy. This is our contribution to that debate.





## Part 2: The Right to Own

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**Our headline policy is the right of first refusal—a shift in the nature of property rights over shares in closely held businesses and workplaces, which would grant workers a first opportunity to purchase ownership stakes in the place in which they work if it is being closed or sold.** However, it is impossible to avoid the conclusion that without additional financial and technical support to assist them in exercising this right, the policy would be a dead letter. As such, we should first consider the foundation it must be built upon.

We will first detail an “institutional ecosystem” that would surround and support worker buyouts, then discuss the technical details of how the legal process of selling a company should be changed. Subsequently, we will discuss the potential limitations of this policy and how they might be addressed with the assistance of an inclusive ownership fund (designed to interact effectively with this policy), and in the appendices we will discuss particular concerns in the United States and United Kingdom regarding the implementation of this proposal.



## Institutional Ecosystem

The importance of expanding (and indeed creating, in many jurisdictions) the institutional ecosystem that worker-owned businesses and cooperatives need to flourish cannot be overstressed. There are any number of potential components to this institutional ecosystem, which can reflect the priorities and aims of the government creating it. This has value whether or not we are implementing the broader right to own, but as we will discuss later, the right to own can multiply its effectiveness if we get the institutions and financing right.

This section deals with specific proposals for supportive institutions. There are other proposals in an excellent report recently produced by the United Kingdom's New Economics Foundation<sup>45</sup> and a US Marcora framework proposal by The Century Foundation.<sup>46</sup> The ideas that follow detail a series of institutions that would be immensely helpful in providing financial support and technical assistance to worker buyouts under the right to own framework. This is not an exhaustive list, and proposals could be modified, but a large and varied plurality of institutions would be the best way of ensuring a healthy and supportive ecosystem for the democratic economy.

### Regional Employee Ownership Centers

These already exist in many parts of the world—notable centers exist in Ohio<sup>47</sup> and Scotland,<sup>48</sup> for example—but where they do not exist, they should. Employee ownership centers are important providers of technical assistance and institutional knowledge to business owners and workers involved in a transitional process. The value of these institutions is significant—and they should be established in each local jurisdiction implementing an employee ownership strategy, to ensure a specialized source of information and resources for that area. Even where a national center exists, in a federal system like the United States, or a devolved system like the United



Kingdom, it makes sense to have regional assistance available. Additionally, it ensures that there is help nearby.

These centers will be a valuable source of aid and technical assistance to workers and business owners about the law and the institutions, and how to structure buyout transactions. In general, policymakers interested in employee ownership are already aware of these centers and there is a significant pre-existing literature on their benefits, so we will not belabor the point other than to say this: In areas where employee ownership centers do not exist, we consider their immediate creation low-hanging policy fruit due to the significant value for money that can be achieved simply through establishing and resourcing an institution of this nature.

## Tax Code Incentives

It is difficult to define the correct tax code structure for promoting democratic ownership in a general model applicable to numerous countries. However, we would generally argue that it is possible to minimize ongoing business opposition to the structural change if the tax code favors transfers to employee ownership over transfers to third-party private owners. The most ambitious version of this would be a tax exemption on the proceeds of a sale to a worker cooperative or democratic employee ownership trust that subsequently holds a majority of shares in the company.

A less ambitious version in some countries could mimic the “1042 roll-over” in United States law, which permits business owners to roll over the proceeds of their sale to employee owners into qualified replacement properties, thus deferring taxation.<sup>49</sup>

Many countries, including the United States and United Kingdom, already have tax benefits to promote employee ownership. Where possible, it might be desirable to further deepen these incentives, especially in the case of





ownership structures that are more democratic. However, the scope for change here may be limited. We have included later a broader range of supportive institutions that do not rely on tax code changes.

## Mutual Solidarity Fund

Certain cooperatives already devote a portion of their profits to fund investment in cooperative development. The Evergreen Cooperatives in Cleveland, Ohio set aside 10 percent of profits for a common fund used to finance growth and new cooperative startups, and the members of the Valley Alliance of Worker Cooperatives in western Massachusetts set aside 5 percent of profits to a development fund.<sup>50</sup> We should be institutionalizing mechanisms like these and structuring them in a way that promotes an expansionary attitude among worker-owners—a notion that their own workplace will become more healthy and prosperous if other workplaces transition to democratic ownership.

A Mutual Solidarity Fund could be established by placing a large proportion of corporate tax receipts from cooperatives and worker-owned businesses into a central pot. Ideally this would be larger than the similar funds in Italy, which are capitalized with a levy of 3 percent of pretax profits on “prevalently mutual” cooperatives.<sup>51</sup> A suggested target is 10 percent of pretax profits, so if the effective corporate tax rate is 25 percent, then 40 percent of taxes would be diverted into this fund. For businesses where worker-owners are in the minority, the rate would be applied to the proportion of the company that the ESOP or trust owns. (However, these businesses would not be able to draw on the MSF except to assist workers in a buyout of the remaining shares required to obtain a majority stake.)

“

A large and varied plurality of institutions would be the best way of ensuring a healthy and supportive ecosystem for the democratic economy.

”



The Mutual Solidarity Fund would be used to provide peer financing to:

- (a) new cooperatives and worker-owned ventures;
- (b) worker buyouts;
- (c) cooperatives and majority worker-owned businesses that require assistance to avoid layoffs or closure;
- (d) joint ventures and new projects involving multiple cooperatives and/or majority worker-owned businesses.

The assistance would be preferential in nature—subsidized or forgivable loans, or even grants. The aim would not be to maximize returns to the pot, but to use its funding to grow the sector and protect companies within it. This distinguishes it from, for example, ESOP loans provided by major private banks.

The Mutual Solidarity Fund would set a defined ratio between assistance to new companies and assistance to existing companies. It would create an incentive for companies in the sector to support new entrants by connecting the size of a funding source devoted to the expansion of the sector to the size of a funding source devoted to providing a safety net and capital assistance to existing firms.

It would also be possible to introduce a tax relief for additional voluntary contributions to this fund over and above the mandatory contribution,<sup>52</sup> but there is a compelling case for ensuring that *all* democratically owned firms pay into the pot. In this case, a worker buyout at a profitable firm would guarantee a larger safety net for the rest of the sector, increasing incentives for these firms to promote awareness, organization and reforms to bring healthy firms into democratic ownership.

Mutual Solidarity Fund assistance could and should be made conditional upon introducing into the trust or cooperative's governing documents



strong protections against demutualization. It would not be just or desirable for firms to receive assistance for the purposes of mutual aid between democratically owned firms, only to turn around and cash out immediately.

## Public Priority Conversion Funds

British workers at a large aerospace company in the 1970s developed an alternative corporate plan—known as “the Lucas Plan”<sup>53</sup>—that would have seen the company’s considerable resources repurposed from the creation of war machinery to producing medical technologies, innovations in public transport, and renewable energy.<sup>54</sup> Drawing from the ideas of the Lucas Plan, the Public Priority Conversion Funds (PPCF) would be a nationwide network of locally administered funds that would award grants to address local priorities and social needs. The boards of each fund could involve multiple stakeholders, including an elected chair (possibly multiple elected members), representatives from local government, local trade unions, civil society and community groups, and anchor institutions.

The purpose of the funds would be to provide “social contracts” to worker buyouts and existing worker-owned and cooperative companies that would provide cash assistance with no expectation of a *financial* return in the form of dividends or loan repayments, but which *would* expect a return in the form of providing (or diversifying away from) a particular product or service. These “social contracts” could be suggested by workers in a company, or could be prepared by the PPCFs themselves.

The funds should, within reason, be allowed to roll over their funds across years—to “save up” for a big project they wish to finance, or if few useful proposals are made in one year. Despite this, the aim of these funds is to push money into socially useful projects on a continuing basis. They ideally should be required to spend no less than half their funds every year, and



that the last three years' rolling average of funds spent would have to be greater than or equal to the annual amount received during that period.

For example, if workers at a polluting factory proposed a buyout, the local Public Priority Conversion Fund (PPCF) could offer to assist in exchange for the company ceasing to use certain chemicals in its production processes and opening its books and sites to inspections by environmental groups. Workers could collectively suggest ideas for meeting public priorities or new socially useful ideas during the buyout process, which could be incorporated into the agreement for a buyout bid (see later in this report). The assistance could also be made conditional upon introducing strong protections against demutualization into the employee ownership trust or cooperative's founding documents.

The grants could be recapturable if the goal was not met. This could involve negotiations between the special purpose vehicle and the PPCF over what constitutes a breach of the agreement, and what the penalties would be.

In this way, production for need rather than profit can be promoted in a democratic, participatory manner. Additional funding for the PPCFs could eventually come from the Inclusive Ownership Fund in a later section.

## Employee Ownership Bank

The concept of a publicly owned financial institution with a mandate to support worker ownership has seen some attention on both sides of the Atlantic recently. Sen. Bernie Sanders has proposed the creation of a US Employee Ownership Bank,<sup>55</sup> and the New Economics Foundation in the United Kingdom recently proposed the creation of a dedicated wing within a proposed national investment bank that would focus on promoting democratic ownership.<sup>56</sup>



An independent institution, as suggested by Sanders, could be more effective as a mission-oriented organization that has its own dedicated funding stream. Regardless of structure, however, public banks oriented both towards strategic investment in the whole economy *and* the expansion of the democratic economy should exist, and worker buyouts should be able to apply to both for patient risk capital financing.

The bank could primarily involve itself in worker buyouts at the level of medium-sized businesses—those in the 50-to-250-employee range. This would limit its caseload substantially and ensure it primarily involves itself in viable, substantial takeovers that will provide a return.

The Employee Ownership Bank should be mandated to take account of other institutions within the ecosystem in providing risk capital, rather than focusing narrowly on profits: If society commits to assisting firms on the basis of the autonomy and security they provide workers, and their serving the needs of the community, then firms accomplishing those objectives are less risky investments and should be treated as such.

In performing its due diligence, the bank should take account of the capacity of the workers involved to accomplish key social goals and integrate itself into the support structures of the democratic economy, looking more favorably at bids that are likely to benefit from an economic transition and less favorably at bids that rely upon the structures of the status quo.

## Mutual University

Governments should and could establish publicly funded higher and continuing education colleges specifically devoted to serving the democratic and cooperative ownership sector.<sup>57</sup> These institutions would offer degree and modular courses both onsite and through distance learning, specifically oriented towards the different specializations required by the



sector—training new generations of employee ownership-specialized accountants, lawyers, finance professionals, economists, project managers, mediators, organizers, communicators, and union representatives and officials.

It would additionally offer a forum for new research and development around forms of organization, best practice, and academic debate around emerging issues affecting the movement. Any government that takes the opportunity to be an ambitious “first mover” here would have the opportunity to attract leading scholars in the sector to offer their perspectives and expertise. That’s a strong incentive.

**“ Governments should and could establish publicly funded higher and continuing education colleges specifically devoted to serving the democratic and cooperative ownership sector. ”**

Mutual universities should not merely focus on degree courses, but should also offer short-term practical training for those involved in buyouts and new worker-owned or cooperative ventures. They should therefore offer a range of “crash courses” with variable lengths, and publish their research and course materials online for free as a public service.

These universities should also offer direct, active technical assistance in cases where a conversion or project is highly technical and requires a substantial amount of detailed sector-specific expertise. They could help work out novel strategies or work out details in particularly large or important conversions that require an independent, expert, and well-funded body.

## Anchor Strategy

The procurement power of locally rooted public institutions, such as health systems, educational institutions, and local government could be leveraged to support local cooperatives and worker-owned businesses, including



buyouts. The Democracy Collaborative has published substantial research elsewhere on anchor institutions and procurement strategy—including successful initiatives on both sides of the Atlantic in Cleveland<sup>58</sup> and Preston.<sup>59</sup> A broad anchor strategy could work in cooperation with the PPCFs and other parts of the institutional ecosystem to provide projects and investments for new buyouts.

Of course, these institutions can only use their purchasing power to boost a limited number of companies at any point in time—and in developing anchor strategies it will be necessary to balance any role in promoting democratic ownership with other commitments to the public. Still, anchors could provide (in concert with other supportive institutions) a valuable local source of assistance for emerging democratic enterprises.

## Worker-Owner Finance

The Marcora method of advancing welfare benefits for worker buyouts is neither economically ideal or socially just. It is almost certainly preferable to the total absence of similar supports, but the downside risk is huge. Workers are asked to borrow against one potential funding stream—social insurance. The only situation in which this will harm them is in the event of a firm failure that would lead to their needing to draw on social insurance again, and in that case their prior borrowing causes the workers and those who depend upon them immense economic harm.

There is no reason in principle why workers cannot be allowed to borrow against a *different* potential funding stream—future earned income. Countries like the United Kingdom have previously implemented income-contingent loan schemes for third-level education, where borrowers are only required to make repayments once they have a certain level of income.<sup>60</sup> In this form, the scheme is often a way of intruding on universal provision of free or low-cost education; however, the model could be



repurposed as a way of marrying the notion of “skin in the game” that makes the Marcora framework attractive to policymakers, with our desire to avoid ownership transitions that create extreme poverty for certain individuals in failed attempts to rescue companies.

If policymakers would prefer to avoid using worker-owner finance entirely and instead use other supportive institutions to finance the whole transaction, that could also be a good option, but we recognize that a significant amount of the public appeal of the Marcora framework is the notion that the workers are required to take on some amount of personal risk in order to obtain their reward. The argument that this is economically necessary is dubious to me, but if it is *politically* necessary, or would add a helpful top-up to other sources of funds, then a guaranteed, low-interest, income-contingent loan system is a far superior model.

## Further Institutions

The institutions described here are not intended to be an exhaustive or prescriptive list of what should exist. In each area and country, there may be innovative ideas developed by activists and policymakers that could add to the list, or replace another institution described here while performing a better service. What is required is a *plurality* of supportive institutions—multiple sources of financial and technical assistance that will be capable of assisting the construction of creative, multi-stakeholder bids for worker-led buyouts of companies.

In some areas, the local government might find it useful to involve itself directly in the buyout process—leading to worker-public partnerships where employees and municipalities each own a temporary or permanent stake in the company. In others, community or environmental groups might take a lead. Commitments and corporate plans could be pushed to include any number of objectives—whether that be a commitment to buy locally, stop





polluting, change practices to repair inequalities of race and gender, or invest a larger proportion of profits into community-led initiatives.

The list of potential means of embedding democratic and socially oriented values into worker ownership is huge. But if left neglected, it is also possible to waste this potential.

## Legal Reforms for Ownership Transitions

This section outlines a framework model for reforming laws surrounding business ownership transitions. We base our recommendations around the principle that workers—who typically spend half their waking hours working for a company at a particular site—have a compelling interest in the future of that company and site and should generally have the right to assume ownership over the company or site if the owner wishes to sell or close it, if it is technically feasible to do so, and if they are capable of raising funds sufficient to strike a voluntary deal with the owner, or to match the terms of a deal struck with a third-party buyer.

The actual impact of the process would inevitably depend upon whether a supportive institutional ecosystem could be designed to maximize uptake of buyouts and ensure democratic governance and cooperative incentive structures for firms. Skeptics would likely be proven correct if this legislation were passed without any additional institutional reforms; it is designed to maximize the scope and impact of a new system for financing and structuring worker buyouts. Resources must be made available in order to avoid a dead-letter law.

The policy outline in this section describes a two-track process for implementing these principles. The first would be a *de jure* right of first refusal process, in which a third-party buyer agrees to terms with the seller, the money is held in escrow, and a trustee prepares a buyout bid in conjunction



with supportive institutions that workers are given the right to accept or reject. The second describes a process in which the workers are the first port of call for the seller—they negotiate a price with a trustee who then prepares a similar bid in conjunction with supportive institutions that workers get the right to accept or reject. If the workers reject the terms, the seller would have the right to sell to a third party immediately, for any amount equal to or less than the amount in the rejected bid.

## The “Right Per Se” Process

The “right of first refusal, *per se*” (hereafter the “right *per se*”) process would, in principle, work like a legally mandated and structured right of first refusal clause in a contract. It would apply to the sale of any eligible sites, or any shares in eligible companies.<sup>61</sup>

Once a price formula (which should include a base amount, varied up or down based on defined forward-looking criteria that include maximum and minimum prices) is agreed between a private buyer and a seller for the sale of shares or assets in a company, the buyer will deposit the maximum payable amount in an escrow account (which would pay interest to the private buyer regardless of the outcome) at an agency, here called the Sales and Closures Office (SCO). Upon completion of the process, the seller will be paid their due amount, either by the private buyer (via the escrow account) or the employees (via a prepared bid) upon the completion of the process, which can take between six and twelve months under the proposal.<sup>62</sup>

The SCO will act as a receiver<sup>63</sup> for the shares while the process is ongoing, immediately notify the workers that a sale is in progress, and offer them the opportunity to constitute a special purpose vehicle and appoint a professional trustee themselves. In a unionized workplace, this would be constituted by any unions that wish to participate; otherwise it would require at least 10 percent of workers to request this within one month, and



membership of the vehicle would have to be open to all workers in the company or site (with a one-member one-vote decision-making process). If recognized unions already exist in the firm, they should be given the option to take control of the process of appointing a trustee, and unions could choose to hire individuals to offer trustee services to other workers or the SCO.

During this month-long period the SCO will compile a dossier of all relevant information on the package being sold—the components that would be included in a full valuation as well as information about intangible assets and liabilities of the firm, equity stake, or site in question.

The trustee will have between four and ten months (with extensions granted by the SCO if it believes the process is likely to succeed) to prepare and agree a bid, assembling together various actors from within the supportive institutional ecosystem to consider and agree to contributions in the form of technical and financial assistance. They will also consider what organizational form the post-buyout company should take. It may be possible for a recognized union or a special purpose vehicle constituted by workers to direct the trustee on their preferences, but the final bid will be prepared by the trustee and those they hire to assist them. The trustee's work would be funded out of the profits of the firm while in receivership and any remaining profits will be released to the original seller. The government will pick up the tab (within reason) if profits are insufficient to cover the trustee's requirements.

Once the bid is complete, the trustee will make the workers aware of its terms. The trustee will be required to prepare the best possible bid, even if they think it is a bad deal, but will be permitted to inform the workers of their considered opinion about the bid (whether it is a great offer, a good but risky proposal, or a terrible one).<sup>64</sup>



Workers can vote in favor by signing cards to join the special purpose vehicle and its obligations, and if a simple majority of workers in the company or site sign up within the next 30 days, the bid will be implemented.

If there is a difference between the minimum and maximum sale price in the original contract, the SCO will now release the difference between the *actual* sale price and the minimum share price from the escrow account to the seller.

If the proposal passes, the remaining money in escrow will be released back to the original private buyer, and the SCO will instead sell the shares, company or site to the special purpose vehicle and release the proceeds to the seller.

If the proposal fails, then the original private buyer will obtain the shares, company or site, and the SCO will release the remaining money in escrow to the seller.

### **Right of First Refusal: A Practical Example**

Laura's Bread is being sold by its owner, Laura. She agrees to sell the company to Derek, and after a valuation they agree on a price of \$3 million, minus \$5,000 for each month of delay, which is lodged with the Sales and Closures Office. Derek is required to place \$3 million in escrow with the SCO.

The Shares and Closures Office acts as a receiver for the shares, and immediately notifies the 200 workers of Laura's Bread that a sale is in progress. The existing managers remain in place. The sale price and information about the firm is not made available to workers at this point, but will be given to a trustee appointed on their behalf. Profits made while the company is held in escrow will first be used to pay



the costs of the trustee's work, and any remaining profits are released to Laura as the original seller. If the profits do not cover the trustee's work, the state will cover the balance.

There is one union at Laura's Bread, which has 30 days to decide whether to participate in the process. It decides that it wants to create a special purpose vehicle and guide the process, and votes to hire Tom (who has been certified and trained previously) as trustee for the workers. They also pass a resolution that directs Tom on their preferences for the bid: They would like to minimize loan payments, and they suggest trying to get funding from the local Public Priority Conversion Fund in exchange for investing more in the local community.

The SCO prepares all documents necessary to turn over to Tom once he is appointed, including the sale price and various operational and valuation-related documents. They hand these over to Tom once the 30 days are over.

Tom initially has four months to contract professionals, assemble various parts of the "institutional ecosystem," and prepare a bid. In this case the Mutual Solidarity Fund requires more time to agree on a contribution, so Tom as trustee agrees to a two-month extension with the SCO. The trustee is permitted to negotiate with key employees and the union, and gauges opinion in general terms about what (if any) personal contributions workers would be willing to make to assist a buyout.

After six months of preparation (seven months since the initial agreement) the bid is prepared, including a subsidized loan up to \$1,240,000 from the Employee Ownership Bank, a \$500,000 unconditional grant from the Mutual Solidarity Fund, a \$500,000 "social



contract” with the local Public Priorities Conversion Fund in exchange for an agreement to buy wheat from local small farmers, and \$750,000 in contributions to be shared equally between worker-owners (for which income-based loans will be made available for those who request them). The new company under the bid will be structured as an employee ownership trust.

The bid includes a dossier of technical information, a proposed corporate plan for the company, and information about worker ownership as it relates to their company. The trustee explains the plan to the workers, and offers her informed opinion about the benefits and risks of the plan. Tom believes it should be accepted and shares that view with the workers. The workers then get a month to discuss the proposal among themselves.

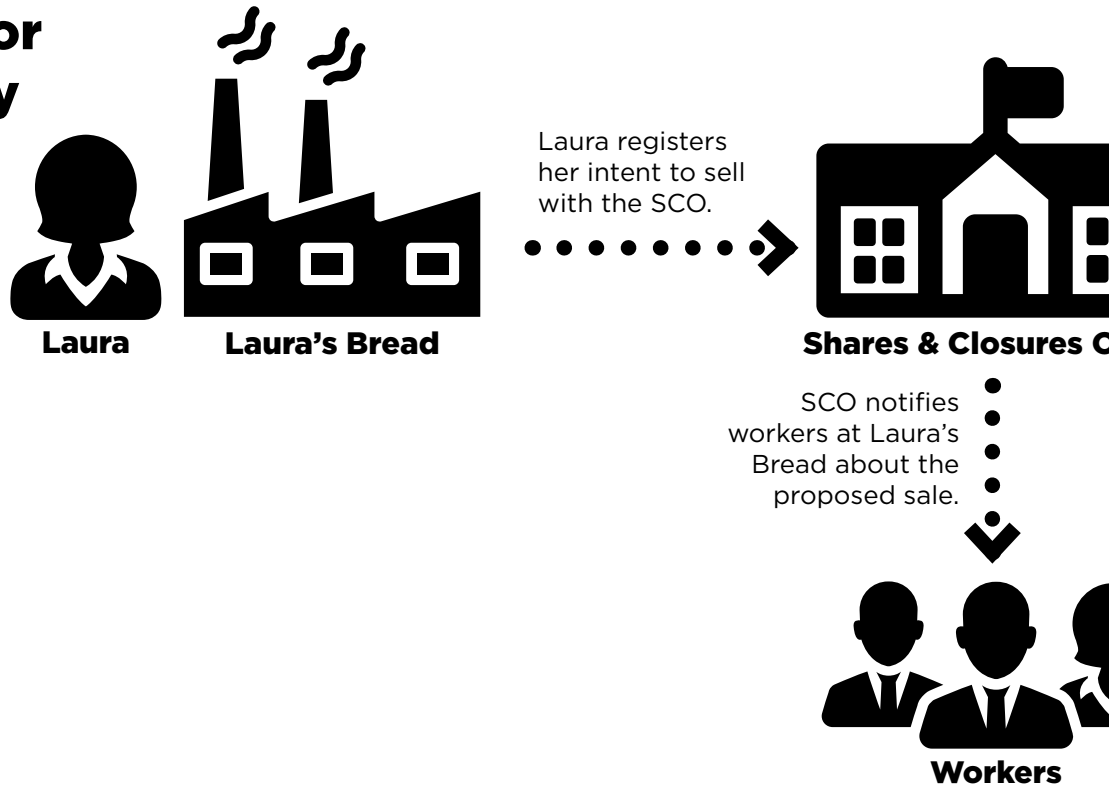
In the case of Laura’s Bread, the plan requires a \$750,000 contribution to be shared equally among worker-owners. People vote by signing cards to join the special purpose vehicle, which commits them to pay if the proposal is accepted. The proposal gets the vote of 60 percent, or 120, of the workers. Subsequently, another 30 workers who initially voted against choose to join as worker-owners, thus creating 150 new worker-owners, each of whom contributes \$5,000 (some of whom pay through income-based loans).

As there was a two-month extension, Laura only receives \$2,990,000 per the terms of her contract. Derek’s \$3 million (plus interest) is released back to him from escrow and the special purpose vehicle buys Laura’s Bread for \$2,990,000. In accordance with the terms of its agreement in the bid, Laura’s Bread converts into an employee ownership trust owned by the 150 workers.

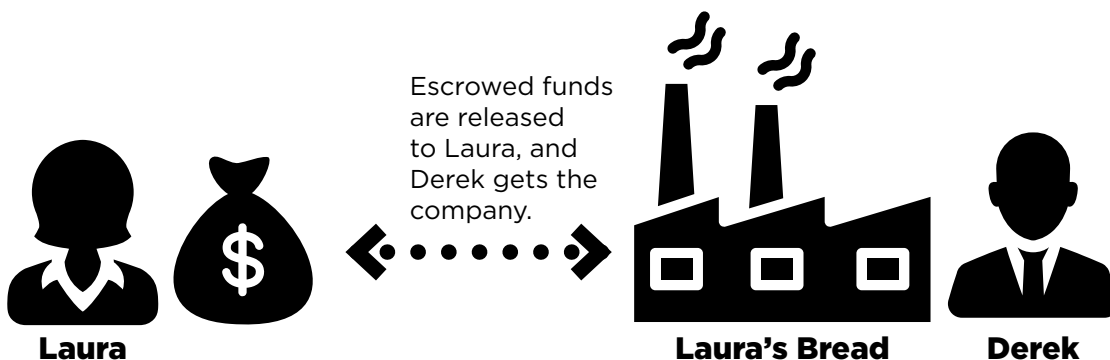
## 1) Intent to sell announced.



## 2) Opportunity for workers to buy created.



## 3) Workers choose whether or not to use this opportunity.

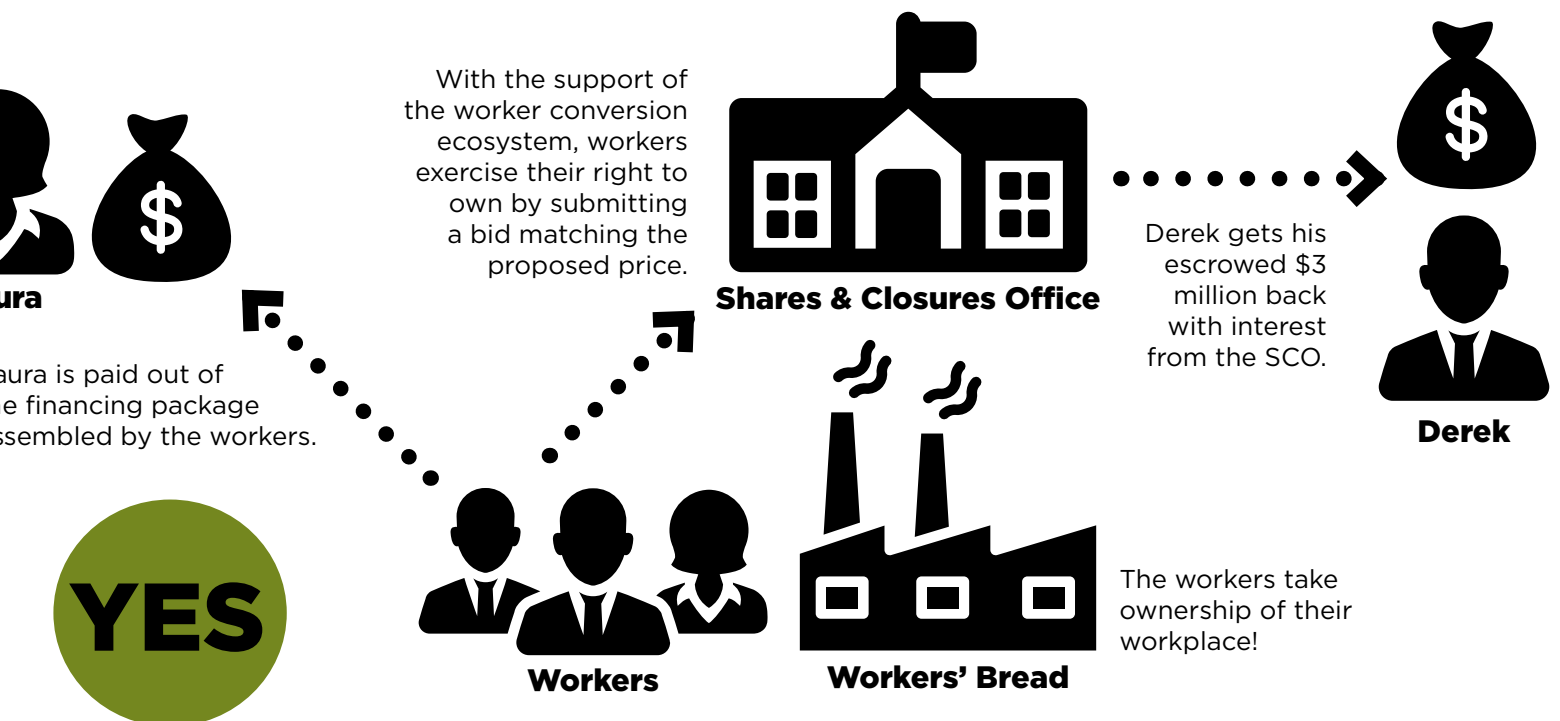
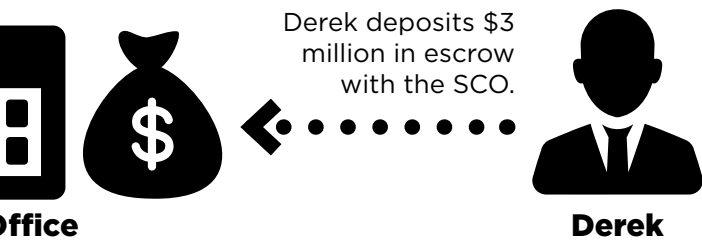


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# RIGHT TO OWN: THE BASIC MECHANISM

A simplified overview of the right of first refusal, *per se*







## The “Buyer of First Resort” Process

There is a certain amount of political *jiu-jitsu* involved in structural reforms to the economy. When conservative politicians wish to restrict union rights, they often don’t state up front that they want to crush the unions; they instead make arguments about free speech, worker rights or democracy that are converted into harsh legal restrictions, such as barriers to union elections in the US or strike turnout thresholds in the UK—neither of which theoretically prevent unionization or strikes, but both of which make the process more difficult and reduce their incidence.

The “right *per se*” process outlined above will exist, and it is *important* that it exists, but it will not and should not be the process by which all companies will be sold in future.

Instead, we are seeking to structure the market such that the voluntary preferences of actors, within the new legal boundaries, result in a significantly higher rate of conversions to worker ownership. This means that business-owners will not feel so aggrieved, as they will simply be following the ordinary rules and regulations of selling a company.

How do we do this? We make it far more desirable to negotiate with your employees *before* you try to sell to a third party. It will be harder than before to sell to a third party, but much easier to sell to your employees.

The way that this is accomplished is quite simple: In a “buyer of first resort” process, we exempt companies from the “right *per se*” process if they have made a better-than-market offer to their employees but the employees reject the offer. What this means is that the firm would effectively reverse the order of operations. The company would first notify the Shares and Closures Office, which would notify employees of the sale. The workers would get the same opportunity to organize a special purpose vehicle and elect a trustee



themselves, as in the “right *per se*” process, but if this did not happen the SCO would appoint its own trustee.

“  
It will be harder  
than before to  
sell to a third  
party, but much  
easier to sell to  
your employees.  
”

The trustee would then negotiate a price. The owner would have a strong interest in making a generous offer; if an existing owner offers to sell a business for \$3.5 million to her workers and they turn down the offer, and the most attractive third party buyer is only willing to pay \$3 million, the third party sale would have to go through the “right *per se*” process and the owner’s benefit in terms of time and hassle (and potentially the third party’s willingness to buy in the first place) of conducting a “first resort” sale would be lost. That reality could lead to discounts on perceived market value for workers interested in becoming owners; it would probably have been better for the owner to offer to sell to the workers for \$2.99 million in the first place if she was ultimately willing to sell to a third party for \$3 million.

Either during price negotiations or after agreement on a price is reached, the trustee carries out the same effort to assemble a bid. They can apply to the SCO for additional time (again, up to six months) if necessary. The workers will approve or reject the proposal in the exact same way.

If the workers reject an offer of \$3 million under this process, then the owner can immediately sell the shares, firm or site to anyone, in the same way she could under the status quo, as long as she charges \$3 million or more. This window could be time-limited, but a fairly long period (a year or more) is recommended to create a significant incentive to make the workers the “buyer of first resort.”



This means there will be two markets for private buyers—one set of companies that they can purchase right away (shares, companies and sites that have been first offered up to workers) and one set for which they will have to put money in escrow and then wait and see whether the workers will exercise their right of first refusal.

What is likely is that private buyers will change their behavior in response to the existence of the right of first refusal process and the exemption for firms that have gone through the “buyer of first resort” process. They will not want to deal with the uncertainty, risk from price fluctuations, and lengthy escrow periods that are required by the “right *per se*” process, and as such will either refuse to buy firms, shares, or sites that have not been offered to employees first, or they will demand a substantial discount in exchange for their inconvenience.

If the workers accept the offer, then the owner sells the shares to the workers’ special purpose vehicle according to the terms of their bid. There is, of course, no escrow account because there is no third-party buyer. It is a voluntary sale, and actors are only bound by what they agreed to during the process (including any deals the special purpose vehicle made with supportive institutions).

For many business owners this will become their ideal succession scenario: because workers will have access to subsidized sources of finance, there will be no issues over escrow, they can plan the transition internally over a longer time without releasing information externally, and have the option of a waiver of the right of first refusal process in the event of the transaction falling through. The option of selling to workers should become the gold standard in terms of business succession.



## Workplace Closure

In cases when a firm, site or workplace closes, the “right *per se*” process would apply. In this case, the package would be treated simply as a sale to nobody. Workers would not be required to purchase the company’s debt, which would remain with the previous owner, but the SCO would negotiate a fair price for the assets being purchased, which would be returned to the previous owner. The bidding process would focus instead on gathering the capital required to purchase the assets, kickstart the site, and turn it into a viable worker-owned business. The process could be accelerated if the SCO believes this would result in a more desirable result.

The Sales and Closures Office would decide whether it would be better for the site to continue operations while the bid is being prepared. If the site is mothballed during the process, the workers should be permitted to draw on redundancy payments or unemployment insurance, or a new benefit could be created to support people under these circumstances.

## Additional Details

It may be prudent to scale the lengths of each period to the size or sector of the firm involved, but that is not a question this report seeks to address. It may also be desirable to allow more rapid sales in emergency situations, but this should take into account the risk of owners attempting to provoke such conditions intentionally to facilitate a sale, so such a provision should be tightly limited.

A process could be fashioned in consultation with unions to determine the difference between a sale made to keep the lights on and a sale made so that owners can cash out (including situations in which the owner intimidates workers into consenting). It may be possible to work out these procedures through sectoral bargaining agreements, giving business owners



in underunionized sectors like tech, where buyouts are frequent, a new incentive to engage in collective bargaining.

It is certainly not possible to implement the right to own while maintaining anything approaching the existing level of liquidity in privately held firms. This is not necessarily a bad thing; we should be seeking to *promote* investments that are oriented towards the long term, that take account of all the stakeholders within a firm rather than creating short-term shareholder value and then flipping the company. It is probably possible to shorten the periods suggested in this report, but this would make bids more difficult to prepare and thus will inherently create a trade-off.

It is likely that the loss of liquidity in ownership of the productive economy will displace some short-term-oriented investors, who will invest their money elsewhere (whether in different financial products, in companies that are exempted from the law, or in other countries). This could create some one-time disruptions or adjustments upon implementation of the law. However, over time the economy that remains will be more rooted, more democratic, and more resilient than what came before.

It will be necessary to develop a large number of practitioners and professionals capable of exercising responsibilities as receivers and trustees during both the “right *per se*” and “buyer of first resort” periods. This role could be served by the mutual universities as proposed in the “Institutional Ecosystem” section, which could train people from scratch and also provide top-up courses for professionals who seek to move into this major new sector. Dedicated enterprises and resources could grow up around this new industry, which it would be prudent to provide with support.

The upper bound of coverage of firms in the law is an open question, one discussed in the next section. However, firms with fewer than 10 employees should be exempted entirely, and it would be desirable to create a shorter



timeframe for the right of first refusal for firms with between 10 and 50 employees; with step-up thresholds in between. This recognizes that few buyouts are viable for firms with 10 or fewer employees, that buyouts for small firms are likely to be less complex endeavors, and to prevent a “hard cliff” that would unduly discourage staffing over a certain level.

### Why is this necessary if we already have the supportive institutions?

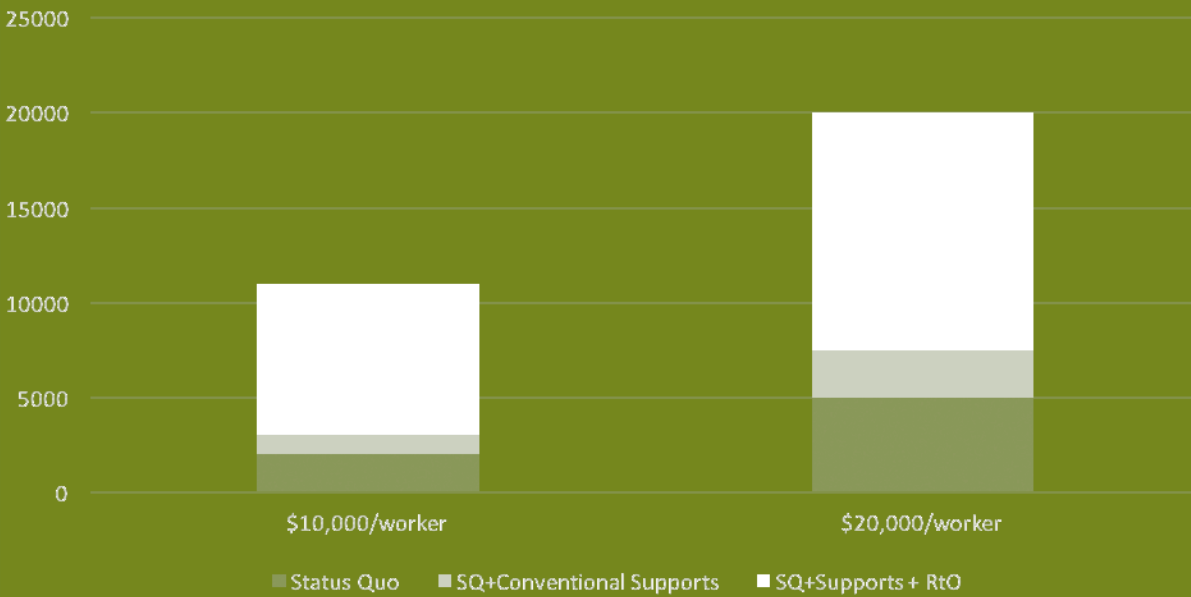
The purpose of the model on a jurisdiction-wide scale is to massively expand the number of workers in candidate companies (i.e. those firms that can be converted to worker ownership, given a particular legal structure and a particular amount of financial and technical assistance)—the “conversion pool.”

Under the right to own model, this pool of candidates is massively increased, and the institutional ecosystem can use its resources more efficiently—transferring more workers or more capital into democratic ownership than they would be able to if the right did not exist. An extremely simple model of this works as follows.

A hypothetical jurisdiction has 2,000 workers in companies that are willing to sell to their employees for an average cost of \$10,000 per worker.<sup>65</sup> It has 1,000 workers whose owners would sell to them for \$10,000 per worker with the additional awareness and resources provided by a supportive ecosystem. And it has 8,000 workers in companies being sold on to third-party buyers that would be covered by the right to own framework.

Additionally, it has 5,000 workers in companies that are willing to sell to their employees for an average cost of \$20,000 per worker. It has 2,500 workers whose owners would sell to them for \$20,000 per worker with the additional awareness and resources provided by a supportive ecosystem.

## CONVERSION POOL UNDER 3 SCENARIOS

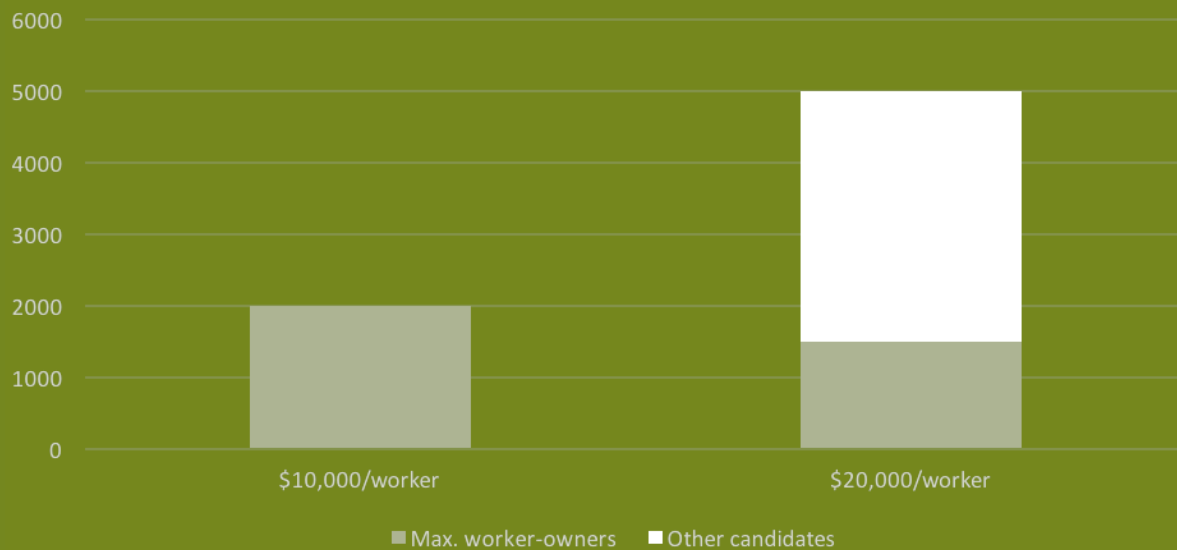


And it has 12,500 workers in companies being sold on to third-party buyers that would be covered by the right to own framework.<sup>66</sup>

We can see this displayed on the following chart. In a real-world scenario, there would obviously be countless price points, which would be depicted in a curve, but the two bars shown here allow us to demonstrate easier. The jurisdiction currently has \$50 million in funding for worker buyouts, and the supportive institutions proposed would boost this total to \$100 million.<sup>67</sup>

The first chart here shows the “pool” of workers available under each scenario. The blue values in this chart show the workers in candidate companies under the status quo, and how much they would cost to convert to worker-owners. The orange values show the workers in candidate companies if the supportive institutions are added, and the grey values show the workers in candidate companies if both the supportive institutions and the right of first refusal are added, i.e. the right to own is implemented. This is what would be described as the “conversion pool.”

## STATUS QUO SCENARIO (\$50 MILLION BUDGET)

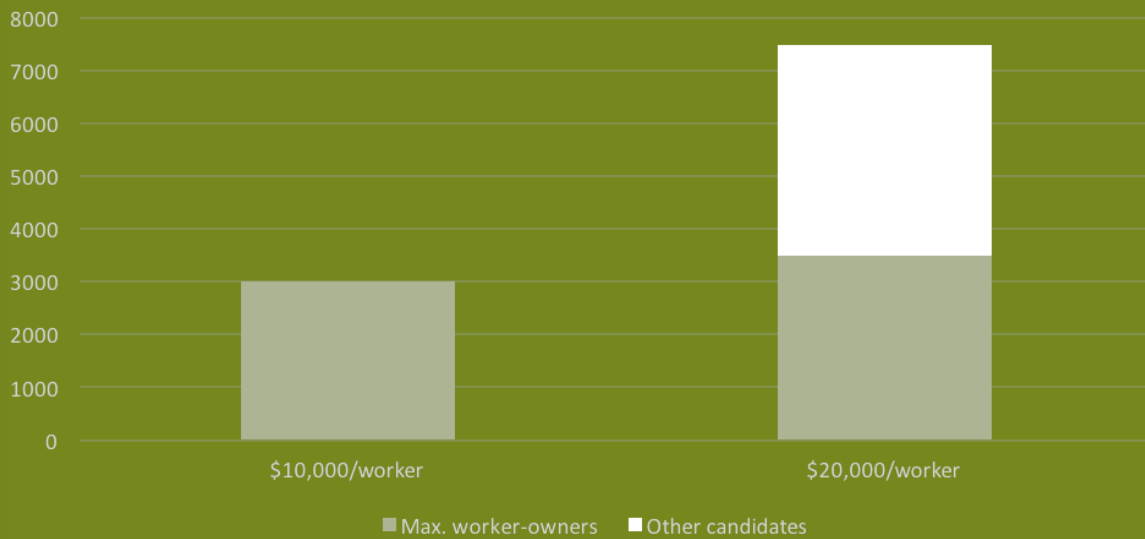


The next chart shows how workers are drawn from the conversion pool under the status quo. The blue represents those workers who can be converted into worker-owners using the \$50 million in funds available. Remember, we are assuming that all these companies are of equal value and the only difference is how expensive they are to transition to worker ownership. In practice, more variables would be considered here.

As can be seen, \$20 million is spent on exhausting the \$10,000-per-worker pool by converting 2,000 workers to worker-owners, while the remaining \$30 million is spent in the \$20,000-per-worker pool by converting 1,500 workers to worker-owners.



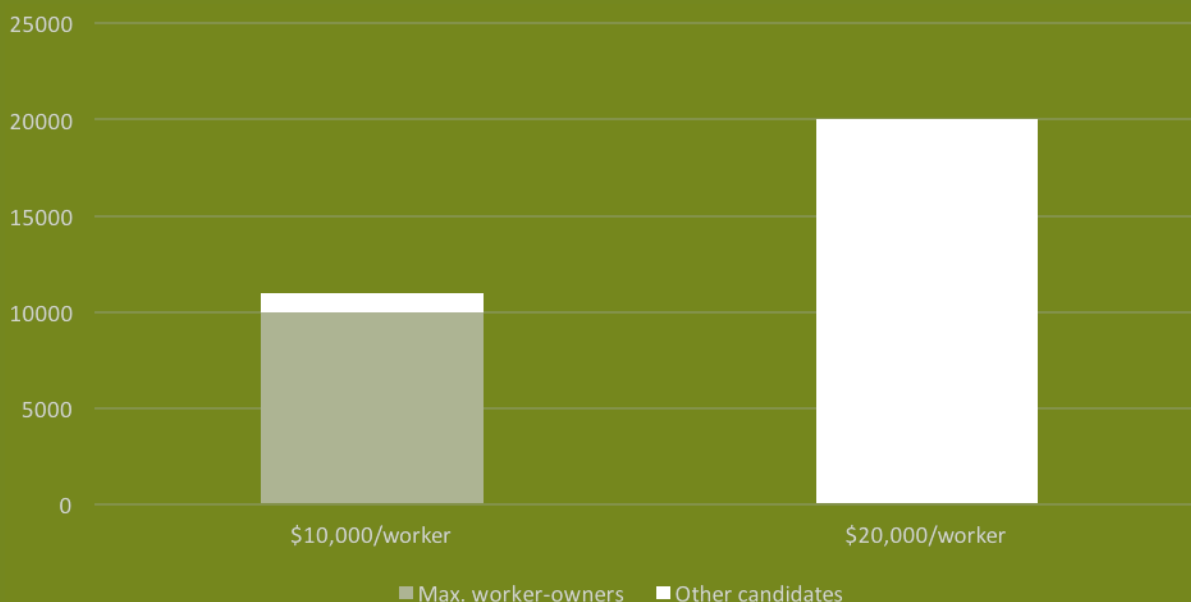
## ADDITIONAL SUPPORT SCENARIO (\$100M)



The next chart shows the scenario where additional supportive institutions are added, doubling the budget, but conversions remain entirely voluntary, thus creating only a moderate increase in the size of the conversion pool at each price point as owners become more aware of the potential to convert to worker ownership, and more workers request to become owners as a result of having more resources available.

As you can see, there are now 3,000 workers at the \$10,000 price point, which cost \$30 million to convert to worker-owners. The remaining \$70 million is spent on converting 3,500 workers to worker-owners at \$20,000 per worker. Despite the moderate increase in the size of the candidate pool, the overall program is now less cost-efficient than before—3,500 worker-owners for \$50 million before; 6,500 for \$100 million after.

## RIGHT TO OWN SCENARIO (\$100M)



This is a core problem with scaling the rate of conversions—the more you spend, the harder it is to find good candidates for conversion. The right to own framework resolves this problem by creating a gigantic conversion pool—it makes *almost all* firm sales available for consideration on these metrics. The next chart shows how big an impact this can have.

Without adding any additional funding, the right to own scenario has increased the maximum possible number of worker-owners created from 6,500 to 10,000 simply by expanding the conversion pool to an extent that allows all \$100 million to be spent in the \$10,000-per-worker pool.

What is key to understand here is that workers' right to own allows democratic ownership to scale in a way it might not be otherwise capable of doing in a cost-effective manner. It does not force owners to sell, and it does not force workers to buy. It instead requires owners to give workers the *opportunity* to buy before any transaction is completed with a third-party buyer on equal or better terms than those offered to the workers.



In economic terms, this is why we describe right to own as a systemic, transitional approach to worker ownership. There is no purpose to implementing this policy without making funding available to use the larger conversion pools it creates. However, if you are planning on making a large amount of funding available with the intent of shifting a *significant sector of the economy* into worker ownership, then policymakers will quickly run up against the shallowness of the conversion pool at feasible price points—not just in terms of cost per worker, but also in terms of such factors as the health of the businesses involved and their desirability for industrial policy or capital intensity.



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## Large, Capital-Intensive, and Publicly Traded Firms

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**One limitation of any worker buyout policy is that the external investment per worker rises as the firm becomes more capital intensive.** All else being equal, financing buyouts of capital intensive firms will come at the cost of *not* financing buyouts for a *larger number of workers*.

There is at least one recent case of a successful worker buyout of a capital-intensive firm. The Fenix Pharma cooperative in Italy was formed in 2011 under the Marcora framework when a branch plant of Warner Chilcott was shut down, saving 41 jobs and creating 39 worker-owners. It is instructive to examine the *quantity* of worker financing that was required in this case. The worker buyout purchase was accomplished with €390,000 of capital from the worker-owners (€10,000 each). To this was added €125,000 in interest-free loans from five of the founders (€25,000 each), and €340,000 in interest-free loans from the other 34 worker-owners (€10,000 each). Institutional investors added a substantial amount more—institutional investor CFI added €200,000 in risk capital and Legacoop’s “mutualistic fund” added €300,000.<sup>68</sup>

In this case, €500,000 was acquired externally while €855,000 was acquired from the worker-owners, of which €465,000 was interest-free loans.



Vieta et al. found that in 2017, Fenix Pharma was still a successful company billing millions of euro a year. However, it was still considerably smaller than the 151-employee plant that existed beforehand. The resultant business is an outlier—and not necessarily one reproducible at scale. The overwhelming majority of successful worker-initiated buyouts are labor-intensive small-and-medium enterprises, and while there are a couple examples of worker-initiated buyouts in relatively large labor-intensive firms, and several cases of worker-initiated buyouts in capital-intensive small-and-medium enterprises, I have been unable to find a large capital-intensive firm being transferred to worker ownership in this way.

A very large quantity of grant capital or interest-free loans could be provided to facilitate such buyout attempts. Different approaches to collective capital formation could also be pursued for the largest firms. It is already implicit that right to own policies will have a much more limited impact on publicly traded firms (for reasons discussed later).

## The Inclusive Ownership Fund

It cannot be overstated how beneficial the use of multi-stakeholder funds capitalized through mandatory profit-linked share issuances—what Lawrence, Pendleton, and Mahmoud refer to as an “inclusive ownership fund” (IOF)<sup>69</sup>—would be in addressing these questions.

The larger and more capital intensive a firm becomes, the more structurally important it becomes to its sector, region, and the wider economy. It is obvious that the workers within such a firm have a special claim to an outsized influence over its operations, but it is less clear that we should (as a matter of public policy) be pursuing the full ownership of Boeing, ExxonMobil, or Barclays by their respective workforces.



Instead, ownership of large and capital-intensive firms could be channeled through an inclusive ownership fund. Following the Meidner Group, large firms would be required to issue new voting shares equal to a proportion of their profits—they suggest 20 percent—every year and transfer them to the IOF.<sup>70</sup> This “clearing fund” would hold the legal title over the shares, but the associated rights would not be administered centrally. The two main issues here are disbursal of profits and control rights over internal matters such as corporate plans and appointment of directors.

The former—how to spend yields from the funds—is a practical question with many potential answers. A rapidly growing set of proposals for social wealth funds, including those proposed this year by Lansley, McCann, and Schifferes (Friends Provident Foundation, 2018<sup>71</sup>); Roberts and Lawrence (IPPR, 2018<sup>72</sup>); and Bruenig (People’s Policy Project, 2018<sup>73</sup>), have included some form of citizen’s dividend—following James Meade (1964)—either as a universal basic dividend, a one-time payment upon reaching some age, or both.

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Meidner does not wholeheartedly support this proposal with respect to the employee funds idea that we are discussing here. He believed an inclusive-ownership-type fund should concern itself with progressively extending inclusive ownership and control. The policymakers and thinkers spoken to about this idea for this report have, however, tended to agree that some immediate payoff for individuals and households may be necessary to ensure the longevity and political buy-in the proposal requires.

This would not be a serious detriment to the policy so long as it is ensured that if a social dividend is paid, it should only come from the



yields—and it should only be a portion, while the rest is dedicated as a funding stream for further economic democratization.

Meidner’s proposed uses for the fund included the provision of education in business economics and political economy, research and development in work organization, resourcing local unions in enforcing agreements and laws, and purchasing additional shares. To that should be added transfers to the Public Priority Conversion Funds and the Mutual Solidarity Fund—that is, providing direct assistance to institutions established to address social needs through grant capital provision that grows the democratic economy and reduces its dependence on purely profit-oriented planning.

IOF share transfers should be implemented for all firms that are not candidates for public assistance in implementing the legal right of first refusal, and that the border between the two could scale with the number of employees and the capital intensity of the business (with the most labor-intensive firms having a threshold of 250 employees and the most capital-intensive firms having a threshold of 100 employees).<sup>74</sup> Larger firms are more likely to have diverse ownership and a workforce that is more difficult to organize for a buyout in the first place, and our evidence has shown that even in cases of firm crisis such buyouts are rare. The IOF offers a separate, more tailored way to introduce a democratic “heartbeat” into large and capital-intensive firms that increases social ownership over time.<sup>75</sup>

## Publicly Traded Firms

The IOF also presents an opportunity to solve a key issue surrounding the right to own and companies that are being floated on the stock exchange.

It is viable that a company being floated on the stock exchange could be required to go through the legal right of first refusal process once (with the fixed price being the initial sale price) before being released onto the open



market, but liquidity is foundational to publicly traded shares. Workers—like everybody else—have the ability to purchase shares on the stock exchange already, so long as they beat the market price. The institutional ecosystem can support them in these efforts, but once an open market price “exists” then alternative methods will be required.

This presents a problem: if companies want to avoid selling to workers, they can simply issue a very small number of shares at their IPO, then issue a larger subsequent offering at market rates. One could partially get around this issue by requiring that all IPOs be of a certain size, but even then, the sums of money will be very large and actual buyouts using this method will be rare or nonexistent.

However, one could simply define that *all publicly traded firms are covered by the IOF*. Indeed, if policymakers are following our prior suggestion that any firm not targeted by the legal right of first refusal should be covered by the IOF, then this naturally follows. At this point you could, if desirable, design rates such that we balance out the average welfare loss to private shareholders as a result of the new share issues in firms covered by the IOF against the average welfare loss to private shareholders in firms covered by the legal right of first refusal and its consequent reduction in share liquidity.

One could also levy a financial transactions tax on public trades in the form of a small proportion of the equity being sold being transferred to the IOF. This would mirror the point-of-sale nature of the right to own policy while also benefiting from mandatory equity issues in large profitable firms.<sup>76</sup>

Additionally, a separate social wealth fund such as the ones that Bruenig; Roberts and Lawrence; or Lansley, McCann, and Schifferes propose could be set up. This would expand in a manner similar to the wealth funds of Norway, not through mandatory issuances but through voluntary purchases after being capitalized through some dedicated funding stream. This would





add another institution to promote social ownership in publicly traded firms, while the IOF and the right to own expand democratic ownership over privately held firms. There is no reason to limit ourselves to one institution for promoting economic democracy. We should create many, and see which ones thrive.

## Additional details

In large, capital-intensive, and publicly traded firms the closure or sale of workplaces or sites should still be covered by the legal right of first refusal. This is necessary in order to avoid private investors asset-stripping their own firms to avoid IOF takeovers. It would have a salutary effect in terms of preventing asset-stripping in general, but the interaction with the legal right of first refusal and the institutional ecosystem would ensure that the government could prioritize finance for assets being sold or shut that appear to be as a result of this dynamic.

The previous sections have focused on the benefits of the IOF to the legal right of first refusal, but this is a massive potential benefit of the legal right of first refusal to the IOF. The institutions are highly complementary—indeed, the more effort is given to establishing institutions based on democratic principles that can support each other, the more likely each individual one is to succeed.

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economic  
democracy.  
”**



## Conclusion

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**Designing the shape and structure of the new economy is no easy task.** This paper is offered to attempt to drive the discussion forward on technically feasible and achievable steps to revitalize the transformative capacity of worker ownership as a means of promoting economic democracy and social solidarity. It is not the first intervention in this debate, and nor will it be the last—but what this report has aimed to provide is a credible technical model for the implementation of a policy framework that is ambitious, challenging, and increasingly discussed on both sides of the Atlantic.

The right to own framework as presented here could massively increase the pool of candidate companies for worker buyouts, provide a range of financial sources that will increase the proportion of those candidates that actually transition to democratic employee ownership or cooperatives, and establish a network of institutions that promote cooperation and solidarity within this sector, sheltering them from the pressures and constraints of the liberalized market. Importantly, it also puts clear blue water between approaches to employee ownership that depend on an unequal distribution of resources and extracting the best candidates from a shallow conversion pool, and approaches to employee ownership that can coexist with a genuine society-wide transition



to a new economic model—i.e. ones that deepen the conversion pool as well as expanding the resources available to draw from it.

There are some remaining questions for researchers to examine; this paper is an initial attempt to construct a viable model for a demand that is gaining increasing attention. In the future, researchers should consider whether small equity sales should be exempt, and if so, how we could prevent repeated small equity sales from becoming a loophole. It will also be necessary to examine what, if any, upper and lower bounds should be placed on firm size. Should the bounds be based on number of workers, capital intensity, or a combination of both? If bounds are placed on the right to own, should they be soft bounds on access to supportive institutions or size-based exemptions on the actual legal processes of the right of first refusal and buyer of first resort processes?

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Since this proposal has had limited academic attention in the past, researchers also should examine basic questions about the political economy of worker ownership, and whether our model would be sufficient to overcome them. Would the institutional ecosystem we have described be sufficient to overcome the tendency among worker-owned firms to remain the same size instead of seeking to grow? If not, could additions to the institutional ecosystem change that? Would the institutional ecosystem we have described be sufficient to overcome the tendency among worker-owned firms to operate according to the cold logic of the capitalist market? If not, could additions to the institutional ecosystem change that?

Finally, there is a question about the scale and jurisdictions in which this policy could be implemented. Should sub-national implementations of the right to own be mandatory or incentivized? Are sub-national implementations



desirable at all? Are certain countries more appropriate targets for a policy like this than others?

There is no one-size-fits-all solution to dismantling a deeply embedded economic system, and alternative models of ownership—public, municipal, worker, community, nonprofit, and combinations of the above—should be viewed as complementary at a point in time where the vast majority of wealth is held in the hands of private companies and individual economic elites. The right to own should not be pursued as a substitute for other measures that increase social control over capital; it should be one significant pillar of a broad pluralistic strategy.

Still, the number of firms we could target, and the quantity of workers and capital in those firms, is *huge*. If implemented, we could move toward worker ownership for the many, not the few. That alone should be enough for us to believe that a right to own should be a key component of a new progressive agenda for economic democracy.





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## Appendix 1:

# United States Implementation

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### Federal policy

**There is broad scope in the United States for implementing at the federal level a very ambitious version of this program.** The federal government has immense power over corporate governance, and could enact legislation establishing these institutions either separately or in tandem with other legislation, such as the corporate governance reforms envisioned in the Accountable Capitalism Act by Sen. Elizabeth Warren of Massachusetts.<sup>77</sup>

Shannon Rieger at the Century Foundation recently published a case for the adoption of a US version of the Marcora framework, which would be financed through the Self-Employment Assistance Program (SEAP) and a new Employee Ownership Bank as proposed by Sen. Bernie Sanders of Vermont, with technical assistance provided through the existing network of employee ownership practitioners and the existing model of employee ownership centers.

Rieger proposes that a US Marcora framework utilize the existing legal framework, but promote greater democracy in the employee ownership sector. She would include additional tax incentives above and beyond the Section 1042 rollover for worker cooperatives and “democratic ESOPs”, as suggested by the Democracy at Work Institute: a capital gains tax *exemption* (as opposed to a



rollover) for sales that result in more than 50 percent of the company being owned by the ESOP, and more than 50 percent of the board being elected on a one-worker-one-vote basis.<sup>78</sup> Additionally, democratic ESOPs would have access to the deductible loan and principal payments currently provided to C Corp ESOPs and the exemption from federal income taxes that is currently provided to S Corp ESOPs on retained earnings corresponding to the percentage of the company held in the democratic ESOP.

This would undoubtedly provide some assistance—indeed, it corresponds closely with many of the tax expenditures that were highlighted as key aims by practitioners in the US employee ownership sector who were consulted during the drafting of this report. Linking additional tax benefits to substantive worker democracy in the employee ownership sector could provide an avenue to implementing these policies in the United States without reinventing the wheel.

Rieger’s policy essentially aims to copy the principles behind Marcora, and as such the policy does not aim to capture the wider goal of expanding candidates for worker buyouts of successful firms undergoing ownership transitions, which this policy paper has aimed to address. Nonetheless, it is useful in its treatment of existing institutions and how they might be expanded.

The Main Street Employee Ownership Act (passed in August 2018 after Rieger’s paper) reformed employee ownership law in the United States further, granting the Small Business Administration responsibility for providing substantially easier access to loan guarantees for ESOPs and worker cooperatives.<sup>79</sup> Since our proposal, and our examination of the Marcora framework, has indicated that medium-sized workforces (typically not too far below 50, and not too far above 250) are the prime targets for worker buyouts, the SBA might be an ideal candidate to administer the legal components of a federal-level program. SBA technical assistance and loan



guarantees could also clearly be one component of the institutional ecosystem contributing to a buyout proposal.

A federal law ought to fund and mandate the establishment of employee ownership centers in every state, and possibly expand those centers over time into full educational institutions such as the mutual university proposal above.

Public priority conversion funds could be connected to the Community Development Block Grant program—the federal government could increase the size of CDBGs but require the new portion of funds be used to capitalize local PPCFs, and could provide matching funds to top up additional allocations made by local or state governments to their PPCFs.

As noted above, the employee ownership bank proposed by Sen. Bernie Sanders would provide loan and equity financing to worker buyouts.<sup>80</sup> This legislation already contains a Marcora-like provision, but could be expanded further into a full right to own law that includes expanded legal rights for worker buyouts and additional institutions for a broad-based supportive institutional ecosystem.

If alternative legal forms were on the table, Christopher Michael has written a law review article advocating greater use of UK-style employee ownership trusts.<sup>81</sup> Policymakers interested in expanding this model may be well advised to reach out to experts on these legal forms, including Michael himself and Graeme Nuttall, who carried out the British government's review of employee ownership that led to the creation of tax exemptions for EOTs. Alternatively or additionally, reforms to ESOP law should be considered that provide for trustees to pursue a broader range of worker-directed goals instead of the narrow financial obligations they are currently expected to pursue (with severe consequences if they fail to do so).





## State and local policy

There are clear imperatives in implementing this on a federal level. The United States is the largest economy in the world, and structural reforms to its business regulation are in general less likely to provoke capital flight than adaptation. State and especially local governments are more limited in what they can achieve without federal assistance—it is difficult to design a one-size-fits-all model for subnational jurisdictions in the United States, as they vary in size by orders of magnitude.

Nonetheless, it is possible to make some general conclusions. State and local taxes are relatively higher in labor-friendly jurisdictions, and therefore the potential to incentivize worker buyouts through tax expenditures is proportionally greater. Local and state government could immediately begin developing an institutional ecosystem around worker buyouts and democratic worker-owned firms that limit the pressures of the market on those companies.

The example of the District of Columbia’s Tenant Opportunity to Purchase Act would suggest that applying a legal right to buy out sites that are being shut or sold is also workable on a local or state level, as those facilities are rooted in place rather than footloose and capable of being moved with the stroke of a pen. The combination of these two measures would create something akin to a localized Marcora framework, with the addition of the right to buy out physical sites that are being sold.

Implementing this proposal fully would require finding a means to determine which companies should be covered—and whether coverage would be beneficial given their local circumstances. One could define that any company with more than 10 workers in a particular state, and its workers in that state constitute either a plurality of its US workforce or at least 20 percent of its total US workforce, would be required to undergo the legal



right of first refusal or buyer of first resort processes in order to continue doing business in that state. However, this would carry the risk of causing layoffs by business owners who want a quicker sale, and could create a tendency over time to place fewer jobs in states and localities that implement such laws.

A more moderate alternative would be to create a significant financial penalty for not undergoing this process—possibly creating a business sale tax that would be waived in the event of compliance with one of the two processes described in the general model. The level of this tax could be scaled to incentivize sales to workers as much as possible without causing wider economic damage.

States and localities could coordinate their efforts on a regional level—preventing relocations just across jurisdictional lines while targeting the same urban or regional markets. If, for example, the six states of New England implemented a common policy around worker buyouts it would be a lot easier to enforce a more ambitious policy than if the policy applied to just one of those densely packed states.





## Appendix 2:

# United Kingdom Implementation

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**The right to own policy has found its largest audience in the United Kingdom and many of the details of the policy were initially developed with its system of government in mind.** The UK has a strong parliamentary system, with devolved parliaments in Northern Ireland, Scotland, and Wales. However, business law and many parts of taxation policy are reserved matters that can only be legislated on by Parliament—allowing the government to avoid the potential of member countries of the UK being used as “havens” to avoid these policies. This should be a UK-wide law.

Worker-owner finance in the form of income-contingent loans should be especially easy to accomplish in the United Kingdom since a facility for issuing such loans already exists in the English third-level education system. Labour already plans to scrap third-level fees if they assume control of government; if they implement this policy they could simply repurpose much of that existing bureaucracy for this purpose.

Thought should be given to ensuring that the institutional ecosystem is equally available across the UK, and that companies headquartered in British territories or other jurisdictions are not capable of evading the law. A number of progressive policies that have given rise to a partial institutional ecosystem already



exist in Scotland and Wales, especially in the form of employee ownership centers. Additionally, the employee ownership trust form created in 2014 is a good vehicle for enabling a large number of transfers.

The approach to larger firms should differ depending on whether the recommendations of this paper on an inclusive ownership fund, or something similar, are being followed. If no such fund is being established, then any size limits should be increased or removed entirely, and alternative measures to deal with publicly traded firms will have to be devised. Labour is already considering the inclusive ownership fund approach, which would be more appropriate to this sector of the economy.

For the same reason that it is viable to pursue this on a UK-wide scale, because powers over company law are reserved to Westminster, it is probably not viable to pursue the right to own from a devolved government level. Nonetheless, governments in Scotland, Wales, and Northern Ireland should deepen the level of support and assistance for worker ownership through a voluntary institutional framework and cooperate closely with any future efforts from Westminster to introduce this model by assisting with its integration into their legal and institutional frameworks.

On the EU level, it is important for us to remember that the Marcora Law faced significant hurdles in overcoming EU opposition, and had to be re-drafted to limit grant financing and require more borrowing against future benefits. It is worth noting that this occurred in the context of Italy's bid to join the Eurozone, but it still shows a hostility to ambitious preferences for the democratic economy at a European level. The European Court of Justice (if it still has jurisdiction) could represent the largest legal obstacle, with challenges based on competition law, state aid and property rights possible.

Politicians should seriously consider whether any systemic transitional approach will be consistent with actually existing European Court of Justice



jurisprudence—and if not, whether they believe single-market membership is more important than creating the new economic model they desire. The outcome of the Brexit negotiations could well have a significant impact on whether this policy can be fully implemented or not. At the time of writing, we did not know the final outcome of this process.



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- 37 This view is often ascribed to political economist Richard D. Wolff, though his writing is sometimes unclear about it. He has stated in interviews that a "cooperative enterprise is the key, decisive alternative to a traditional capitalist enterprise" (<https://www.counter-punch.org/2013/04/16/cooperatives-and-workers-self-directed-enterprises/>) but it seems that Wolff's points are more strictly centered around "worker self-directed enterprise," which need not necessarily be owned by a cooperative but could, for example, be publicly owned and worker-directed, as he notes in a paper for the Next System Project (<https://thenextsystem.org/start-with-worker-self-directed-enterprises>).
- 38 Alperovitz, 2016.





- 39 Edward Greenberg, 1986. *Workplace Democracy: The Political Effects of Participation*. Cornell University Press: 152.
- 40 Budd, John W., Ryan Lamare, and Andrew R. Timming, "Learning About Democracy at Work" in *ICR Review* 71(4).
- 41 Nuttall, Graeme, 2012. *Sharing Success: The Nuttall review of employee ownership*. Web: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31706/12-933-sharing-success-nuttall-review-employee-ownership.pdf).
- 42 Michael, Christopher, 2017. 'The Employee Ownership Trust: An ESOP Alternative' in *Probate and Property* 31(1): p. 46.
- 43 Ibid, pp. 46-47.
- 44 The Labour Party, 2017. *For The Many, Not The Few*. Web: <http://labour.org.uk/manifesto>.
- 45 Lawrence, Mathew, Andrew Pendleton, and Sara Mahmoud, 2018. *Co-operatives Unleashed: Doubling the Size of the UK's Co-operative Sector*. New Economics Foundation: <https://neweconomics.org/uploads/files/co-ops-unleashed.pdf>.
- 46 Rieger, Shannon, 2016. *Reducing Economic Inequality Through Democratic Worker Ownership*. The Century Foundation: <https://tcf.org/content/report/reducing-economic-inequality-democratic-worker-ownership/>.
- 47 The Ohio Employee Ownership Center, see their website at <http://www.oeockent.org/>.
- 48 Cooperative Development Scotland, see their blog at <http://cdsblog.co.uk/>.
- 49 Kelly, Marjorie, Steve Dubb, and Violeta Duncan, 2016. *Broad-Based Ownership Models as Tools for Job Creation and Community Development*. The Democracy Collaborative: p. 8.
- 50 Kelly, Marjorie, Violeta Duncan, and Steve Dubb, 2016. *Strategies for Financing the Inclusive Economy*. The Democracy Collaborative: p. 13.
- 51 Vieta, Depredi, and Carrano, 2017, p. 40.
- 52 Lawrence, Pendleton and Mahmoud, 2018 propose a tax-exemption for voluntary contributions to a similar fund as well as a cooperative's indivisible reserve. I agree with them about this exemption, but believe there should be a mandatory minimum contribution to the collective fund (named the MSF here, a co-op development fund in their proposal).
- 53 Gowan, Peter, 2018. 'Own the Future' in *Jacobin Magazine*. Web: <https://jacobinmag.com/2018/07/labour-party-corbyn-manifesto-nationalization-democracy>.
- 54 Wainwright, Hilary and Dave Elliott, 1981. *The Lucas Plan: A New Trade Unionism In The Making?* Allison and Busby: London.
- 55 Sen. Sanders, Bernard, 2017. 'S. 1082: US Employee Ownership Bank Act'. Web: <https://www.congress.gov/bill/115th-congress/senate-bill/1082/text>.
- 56 Lawrence, Pendleton and Mahmoud, 2018, pp. 35-36.



- 57 A cooperative university already exists in Mondragon, in the Basque Country—integrated into the broader Mondragon Corporation. It is not the exact model we are describing here—these universities would be publicly owned and funded, and would provide *education* specifically for the worker ownership sector, rather than being worker-owned and providing a more general set of educational services to the public of a particular region.
- 58 Alperovitz, Gar, Thad Williamson, and Ted Howard, 2010. ‘The Cleveland Model’ in *The Nation*: <https://www.thenation.com/article/cleveland-model/>.
- 59 O’Neill, Martin and Joe Guinan, 2018. ‘The Institutional Turn: Labour’s new political economy’ in *Renewal* 26(2): <http://renewal.org.uk/articles/the-institutional-turn-labours-new-political-economy>; Brown, Matthew and Martin O’Neill, 2016. ‘The Road to Socialism is the A59: on the Preston Model’ in *Renewal* 24(2): <http://renewal.org.uk/articles/the-road-to-socialism-is-the-a59-the-preston-model>.
- 60 See the UK regulations for their student loans for an example of how one potential model might work. The thresholds and rates of repayment could easily be changed. [http://www.studentloanrepayment.co.uk/portal/page?\\_pageid=93,6678571&\\_dad=portal](http://www.studentloanrepayment.co.uk/portal/page?_pageid=93,6678571&_dad=portal).
- 61 We are aware this process will be time-consuming for private buyers. This is unavoidable in practice, but the next section will provide alternative routes to selling a company that will allow people to buy companies without a time-consuming process.
- 62 The time periods contained within this model are estimates and can be changed. It would be prudent for policymakers in a situation where this law may be implemented to consult widely to ascertain the appropriate time period that strikes the right balance between liquidity of shares and the need for a sufficiently long window to prepare worker buyout bids effectively.
- 63 The term ‘receiver’ here is used to indicate a structure similar to that which firms undergoing other court-appointed processes such as those involved in bankruptcies and where a person is incapable of managing their affairs. Many countries have similar procedures with alternative names, and in some it may be prudent to create a new process better suited to this task. I still find that the analogy to receivership is helpful for comprehension even if it is necessary to modify it.
- 64 This is similar to how trade unions can choose to present contract proposals, say for example a note accompanying a ballot on a contract saying that this might be the best deal on offer, but the leadership believe that members should vote it down and pursue industrial action instead.
- 65 The model assumes that all conversions to worker ownership are of equal value, apart from the price per worker—obviously this is not the case in the real world. Some companies are better candidates than others even if their cost per worker is higher. RtO will increase the quantity of those companies that are candidates as well. Similarly, if we



wanted to target specifically manufacturing companies, the number of manufacturing companies that are candidates would increase.

- 66 I view these as a reasonable set of assumptions. The voluntary supports (i.e. government spending on technical assistance and supportive institutions) can considerably increase the amount of financial resources available to carry out buyouts, but one is likely to hit diminishing marginal returns in terms of outreach to business owners. The right of first refusal expands the pool to essentially all companies being sold at any moment in time, regardless of outreach to owners.
- 67 Our policy proposal includes a range of institutions, but for clarity here we are consolidating them all into one. This figure *should not* be taken as a proposal for how much to increase spending on worker ownership—it is just a hypothetical.
- 68 Vieta, Depredi and Carrano, 2017, p. 143.
- 69 Lawrence, Pendleton and Mahmoud, 2018, p. 42
- 70 Meidner, Rudolf with Anna Hedborg and Gunnar Fond, 1978. *Employee Investment Funds: An Approach to Collective Capital Formation*. London: George Allen and Unwin.
- 71 Lansley, Stewart, Duncan McCann and Steve Schifferes, 2018. *Remodelling Capitalism: How Social Wealth Funds Could Transform Britain*. Friends Provident Foundation: <http://www.friendsprovidentfoundation.org/wp-content/uploads/2018/05/Remodelling-Capitalism-Report-How-Social-Wealth-Funds-could-transform-Britain.pdf>, p. 6.
- 72 Roberts, Carys and Mathew Lawrence, 2018. *Our Common Wealth: A Citizens' Wealth Fund for the UK*. IPPR: <https://www.ippr.org/files/2018-04/cej-our-common-wealth-march-2018.pdf>, p. 11.
- 73 Bruenig, Matt, 2018. *Social Wealth Fund for America*. People's Policy Project: <https://www.peoplespolicyproject.org/projects/social-wealth-fund/>.
- 74 If the right to own framework were *not* being implemented, I would suggest that the IOF should cover all firms with more than 50, maybe 100 workers—I have previously written about a standalone proposal, see Peter Gowan and Mio Tastas Viktorsson, 2017, 'Tackling Wealth Inequality Like A Swede', People's Policy Project: <https://www.peoplespolicyproject.org/2017/08/21/tackling-wealth-inequality-like-a-swede/>.
- 75 Lawrence, Pendleton and Mahmoud, 2018, p. 42.
- 76 This proposal should be credited to my colleague at the Democracy Collaborative, John Duda, who suggested the idea to me.
- 77 Durkin, Erin, 2018. 'Elizabeth Warren unveils bold new plan to reshape American capitalism' in *The Guardian*: <https://www.theguardian.com/us-news/2018/aug/15/elizabeth-warren-accountable-capitalism-act-richest-companies>.
- 78 Rieger, 2016: <https://tcf.org/content/report/reducing-economic-inequality-democratic-worker-ownership/?agreed=1>.



- 79 US Federation of Worker Cooperatives, 2018: <https://usworker.coop/blog/usfwc-main-street-employee-ownership-act/>.
- 80 Sanders, 2017: <https://www.congress.gov/bill/115th-congress/senate-bill/1082/text>.
- 81 Michael, 2017: <http://cmichael.ws.gc.cuny.edu/files/2017/01/Michael.-2017.-The-Employee-Ownership-Trust.pdf>.



**The Next System Project** explores system solutions to systemic crisis, as part of The Democracy Collaborative, a research and development lab for the democratic economy. Learn more at **[thenextsystem.org](http://thenextsystem.org)** and **[democracycollaborative.org](http://democracycollaborative.org)**.

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