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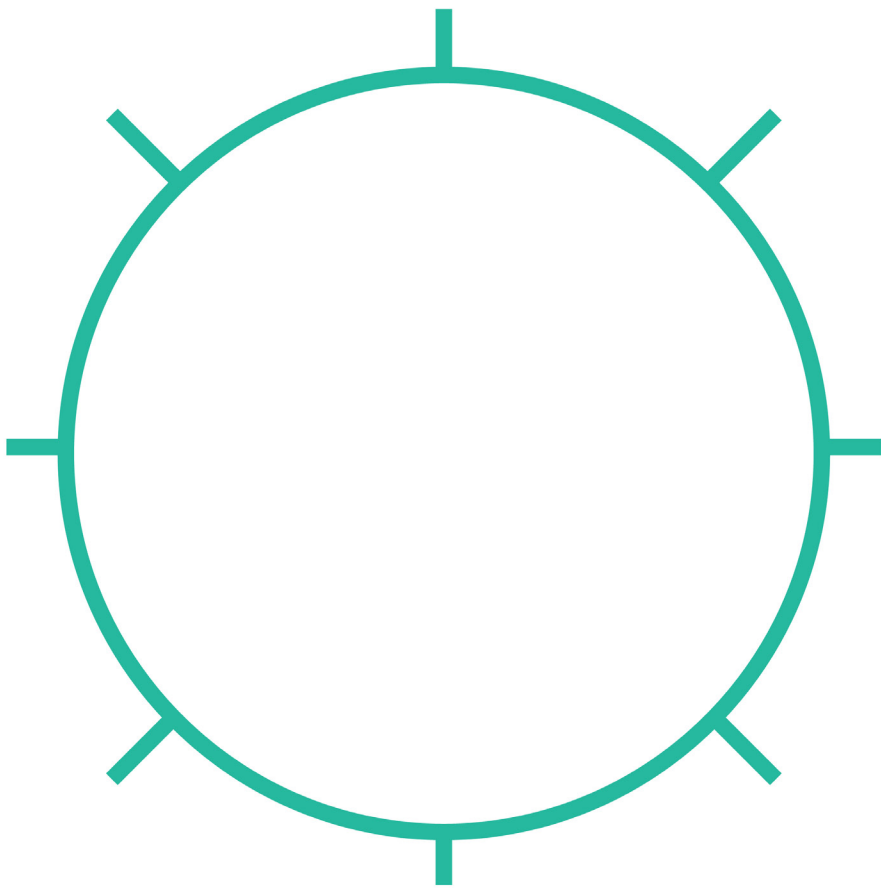
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# Commoning the Company



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April 2020

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**C19** 

**COMMON  
WEALTH**

# Summary

A devastating public health crisis, Covid-19 has also triggered a profound crisis of the company: from vast multinational corporations to the small firms that are the lifeblood of local economies. The unprecedented economic fallout from the virus has exposed the inefficiencies and injustices embedded in the company's operation – limitations that stretch back decades. Our response to this crisis cannot ignore these limitations when we emerge from the period of economic hibernation. Instead, it must reimagine the company so that it is democratic, resilient, and sustainable by design – and rebuild a new economy centred on meeting the needs of society and the environment.

Since the 1970s, the company has transformed from an institution focused on production – even if still one laced through with hierarchy and injustices – into an engine of increasing wealth extraction and growing financialisation, funneling cash to shareholders and executive management in the form of dividends, share buybacks and share-based pay awards. This has been driven by key shifts in the legal, managerial, and ownership structures of the corporation, with an increasing share of corporate earnings redirected to investors and management over workers or re-investment. Shareholding has concentrated and corporate debt has soared, with UK listed company debt reaching record levels by 2018;<sup>01</sup> mergers and acquisitions have created dominant oligopolies in key sectors; managerial power has grown; and labour has been subject to a relentless squeeze on wages, autonomy, and security in order to boost short-term profit.

Corporate earnings have in turn been redirected to shareholders in the form of rising dividends and share buybacks, rather than re-invested in the productive capacity of the firm or in rising real wages, with corporate cash shifting from productive to financialised use. In the 8 years between 2011 and 2018, the 100 largest UK-domiciled non-financial

companies paid out over £400bn in dividends – the equivalent of 68% of their net profits over the period – and an additional £61bn in buybacks.<sup>02</sup> In 2019 alone, dividend payments from FTSE100 listed companies, a slightly different cohort including financial companies and non-domiciled corporations, hit a record £110.5 billion – a rise of 10.7% over 2018 and more than double the £54 billion paid out in 2009.<sup>03</sup> And executive remuneration has become entirely disproportionate to performance. As of latest filings, just over 700 executives at 86 of the 100 largest non-financial UK companies held a collective £6 billion in equity at their respective corporations, representing nearly £8.5 million per director.<sup>04</sup>

Workers, companies themselves, and the public have lost out. Corporate behaviour has left our economy ill-prepared for crisis – less resilient as a whole and with income, wealth, and power intensely concentrated, leaving many acutely vulnerable. What's more, absent intervention, the crisis will likely result in a further consolidation in ownership, with distressed firms purchased on the cheap by large corporations and private equity, accelerating the concentration of wealth and power.

This is not inevitable. The corporation is an entity with a separate legal personhood endowed by the law with extraordinary privileges to organise production. It is not a fixed, 'natural' institution, but rather constituted by politics and law. Economic coordination rights in the corporation are currently assigned exclusively to capital via property; labour is excluded from the government of the company. Yet these rights and powers are publicly granted, legally defined, and re-codable; the corporation is not a space of private contract and property whose actions should be shielded from democratic intervention, but rather one undergirded and made possible by public power. The crisis, like so many before it, has underscored this codependency and the inseparability of the economic from the political. If the corporation is the original and vital public-private partnership, long captured by elite shareholder interests and managerial power, we can still transform it from an

institution of extraction to a generative entity: purposeful and democratically governed, where all its stakeholders have stake and a say in the wealth we create in common.

## — Recommendations

1 Company bailouts should be conditional on working for the public good

- **Guarantee job security** for all workers in bailed out companies during the crisis.
- **Cash should be in exchange for equity** to create a strategic public ownership stake and grow public wealth post-crisis, as well as ensuring shareholders bear their share of costs.
- Tackle value extraction by **banning dividends and share buybacks during the crisis**.
- **Fair pay** at the top and bottom, including maximum pay ratios.
- **Ensure tax justice**, requiring Fair Tax Mark accreditation for bailed out companies.

2 Create a state holding company to secure a pluralistic business landscape

- **A state holding company** should be created to purchase viable SME-class businesses now facing acute distress that would otherwise collapse or be acquired by private equity, safely mothballing them during economic hibernation, before re-floating them when the economy re-emerges.

3 Create a social wealth fund to broaden ownership and improve outcomes

- The UK should create a **social wealth fund** via a public sector debt-

financed acquisition of a broad range of assets – including equity and bonds – on behalf of the population. Taking advantage of low public borrowing costs and the collapse of share prices, the fund would grow public wealth, democratise capital at scale, and provide a long-term strategic lever to improve company behaviour.

4 Rewrite the rules to democratise the company

- **To reshape company purpose and end shareholder primacy**, Section 172 of the Companies Act 2006 should be amended to make the promotion of the long-term success of a company for the benefit of its key stakeholders, including employees, the primary duty of its directors, not the maximisation of shareholder interest.
- **To democratise corporate governance**, 45% of a company board should be elected by the workforce, 45% by the shareholder body, with the remainder representing social and environmental interests.
- **To rebalance power at work**, sectoral collective bargaining should be established in law and all workers, regardless of classification, should enjoy rights from day one on the job.
- **To extend the economic franchise to workers**, workers as a collective should be entitled to a minimum of twenty five per cent of the total voting rights in their company and have the right to be registered as a member of their company.
- **To give workers a share in the profits they help create**, mandatory profit sharing for workers in companies above 50 employees should be introduced, as in France.
- **To democratise capital markets**,

there should be codetermination in capital and pension funds, with a prohibition on asset managers voting without instruction.

5 Build resilience to future crisis by embedding ambitious net-zero targets in the design of the company

- **To ensure companies are pursuing ambitious net-zero targets**, a new duty should be introduced requiring company directors to align company strategic and investment plans with a 1.5 degree pathway to embed sustainability.

All crises buckle and reshape the order of things; in what direction and in whose interest depends on politics and the balance of power within society. The immediate challenge is to rapidly scale up healthcare capacity while taking measures to ensure households and businesses can securely remain in economic hibernation for as long as the public health crisis demands. But it is critical we simultaneously prepare for an agenda of ambitious reconstruction for the post-crisis period: one that builds a new economy fit for human flourishing, rather than simply re-inflating the inequalities and insecurities of the old. The transformation and democratisation of the company must be fundamental to this.

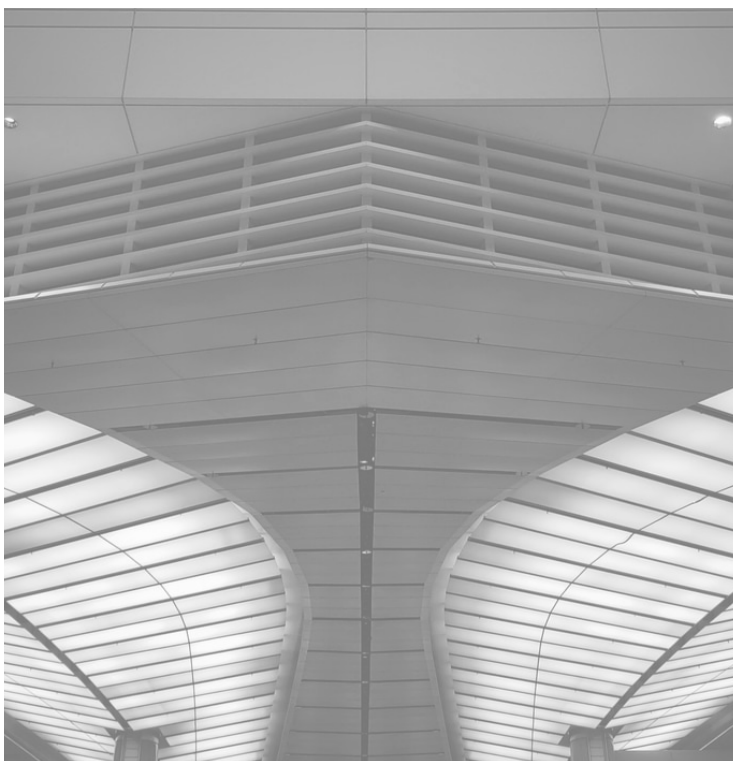
# 1 Introduction:

“I got to figure...  
We all got to figure.  
There’s some way  
to stop this. It’s  
not like lightning  
or earthquakes.  
We’ve got a bad  
thing made by men,  
and by God that’s  
something we can  
change.”

—John Steinbeck, *The Grapes of Wrath*

## — A systems crisis requires a systemic response

The Covid-19 global public health emergency has triggered an unprecedented economic crisis. Whereas the Global Financial Crisis was driven by a crisis in the over-leveraged balance sheets of systemically vital financial institutions, which triggered a macrofinancial heart attack at the centre of Anglo-American capitalism that swiftly mutated into a recession in the real economy, today a public health emergency has necessitated a sudden, severe and deliberate contraction of the real economy. This contraction has quickly metastasized into the biggest economic, social, and financial crisis facing the UK and the world since the Second World War.



Critically, in many instances the pandemic's impacts have revealed, not created, profound failings in our social settlement. From the insecurities hardwired into modern labour markets and social security systems, to the self-defeating effects of a decade of austerity and the sharp inequalities in how we value – and who undertakes – the work of social reproduction<sup>95</sup> and the foundational economy,<sup>96</sup> Covid-19 is amplifying long-standing structural weaknesses and inequalities. This amplification is distinctly pronounced in the crisis of the company: in how it operates and in whose interest, how it distributes risk and apportions reward.

While this is a moment of deep collective trauma, it is also a potentially transformative juncture: old assumptions and settled conventions are being challenged by the scale and speed of both the crisis and the response to it, which have exposed the limitations and weaknesses of financialised capitalism and neoliberal governance. From record levels of global debt<sup>97</sup> and stagnant productivity growth, to historic, volatile asset bubbles and a monetary system already at the limits of conventional firepower, the unresolved tensions of the financial crisis and our economic model are being laid bare in striking fashion. In turn, an unprecedented global recession erupting in an already deeply dysfunctional and unequal world economy has prompted an unprecedented policy response, from wage subsidies to the rapid deployment of extraordinary monetary firepower.

If Covid-19 has buckled the pre-crisis policy status quo, our response must be ambitious transformation, rather than limited restoration. Building a society of mutual care, solidarity, and universal security will require deep and imaginative reshaping of our institutions and infrastructures. Emergency triage by the state to stabilise the economy, while vital and necessary, is not the same as putting in place the foundations for ambitious restructuring. Instead, we should meet a systems crisis with systemic change spanning every sphere of the economy, from state to market, household to commons. In place of the economics of enclosure and extraction, a 21st century commons – natural and digital – founded on stewardship; in

place of markets defined by concentrated ownership and economic power, common ownership of collective wealth and democratic governance; against austerity, an ambitious mission-oriented, investment-led state; and a reimagined household economy that dismantles the inequalities hardwired into existing infrastructures of social reproduction. The reimagination of the company – as a fundamental unit of economic coordination and production, one currently laced through with political relations of domination and hierarchy – must be central to this transformation.

### — **Three stages of crisis: demobilisation, hibernation, reconstruction**

Structural change must be embedded in an evolving public response, with policy tailored to each stage of the pandemic: to help mitigate its effects, particularly on the most marginalised, and to rebuild our economy to emerge from the crisis more resilient and rooted in justice and sustainability.

#### **The first stage is 'rapid demobilisation'.**

Here, to prevent health systems becoming overwhelmed, the priority is the rapid demobilisation of all non-essential forms of economic activity. This must be combined with measures to support economic security for all households and businesses, as well as an unprecedented scaling up of healthcare capacity that can only be achieved at the speed and scale required through public-led economic planning for the sector, from reorienting production toward medical equipment to nationalising private health care, even if only on a temporary basis (as has been achieved in Spain and Ireland).

The managed demobilisation of the economy must be maintained for as long as public health requirements demand via the second stage: an economic objective of **'sustained hibernation'**. This will mean keeping the economy on life support for an as-yet unknown period, and will require the maintenance of incomes for those that cannot work with an ambitious and universal social security system as well as ongoing support for businesses facing unavoidable losses. This must not only build on recent measures

by the Chancellor, but go further; for instance, measures could include introducing a minimum income guarantee,<sup>98</sup> greater support for carers,<sup>99</sup> targeted action on living costs such as temporary freezes on rent and utility bills, and zero-rated loans for business. It will also necessitate the extension of democratic planning and public control of key utilities and services to ensure needs are met throughout economic hibernation.

To sustain an expansion of public support, effective coordination between fiscal and monetary authorities is vital. Already, the Bank of England, European Central Bank and the Federal Reserve have pumped vast liquidity into the financial system, and credit swap-lines created in the financial crisis have been reopened. Even greater ambition will be required in the months ahead, including an asset purchase programme by the Bank of England of UK government bonds to enable a substantial growth of public debt while keeping its cost sustainable.

The period of hibernation will also require a newly confident democratic statecraft. The economic and public health crisis is also a crisis of the neoliberal state, not just in its diminishment of the public realm, but in the limitations of its governance techniques. Nudges and enforced marketisation cannot safely address the pandemic – or wider structural crises of environmental breakdown and stark inequality. This will only be overcome by a renewed confidence in our ability to collectively govern and plan the future.

Critically, triage and hibernation are about applying an emergency brake to the economy in an effort to maintain its productive capacity for the future, rather than an immediate injection of demand or the scaling up of economic activity (outside certain key sectors). In this sense, the economic policy response is unique, reflecting the distinctive challenge – social and economic – that Covid-19 has triggered. However, at some point, when it is safe for society to emerge from enforced hibernation, the third stage of policy response must be an **ambitious programme of reconstruction**. This must aim to not just repair the harms of a sharp economic contraction, but also put in place

the foundations for a new economy, one that is democratic, equitable, and sustainable by design. Unlike after the Great Financial Crisis, where global carbon emissions quickly resumed their upward trajectory and the engine of financialisation was restarted, we should not accept a return to ‘normal’ as the limits of our ambition: of stark inequality, economic insecurity, and an accelerating climate emergency. In this context, to return to a status quo driving crisis would be the true extreme, and ambitious reconstruction simply common sense.

The reconstruction phase must be anchored by a Green New Deal: a public-directed programme of rapid decarbonisation through a step-change in the quality and volume of investment, and a green industrial strategy that creates secure, decent forms of work, building the foundations for a post-carbon future of shared prosperity. Joining together climate justice and social justice, a Green New Deal should enable new forms of freedom and guarantee universal security through the extension of universal basic services and decarbonisation of the institutions and infrastructures of the carbon age. Accompanying this should be efforts to inject low-carbon demand into the economy, including potentially through ideas previously considered heterodox, such as helicopter money direct to households. The timing of such measures will be critical, to support an economy emerging from demobilisation and nurture a more democratic and prosperous future.

### — The corporation, captured

Fundamental to long-term reconstruction must be the reimagination of the corporation. In the past half century, the corporation – a legal, economic and political institution for coordinating labour and capital for production, undertaken through the economic organisation of the firm – has been transformed from an entity focused on production into an engine of wealth extraction and inequality. This has been driven by a series of structural shifts in the organisation of the corporation: changing patterns of shareholding, with the rise of powerful institutional investors and the asset management industry; new regimes

of executive management that have vastly increased managerial power; the dominance of the corporate governance doctrine of shareholder primacy, which asserts that shareholder interests should be given first priority relative to all other corporate stakeholders; the deliberate weakening of organised labour; and the increasing financialisation of the corporation, whereby financial logics and activities come to dominate corporate behaviour.<sup>10</sup>

The analysis below displays the scale of wealth extraction and financialisation of the largest UK corporations over the past decade, as companies have focused on distributing corporate earnings – often also taking on debt to do so – rather than reinvesting them to

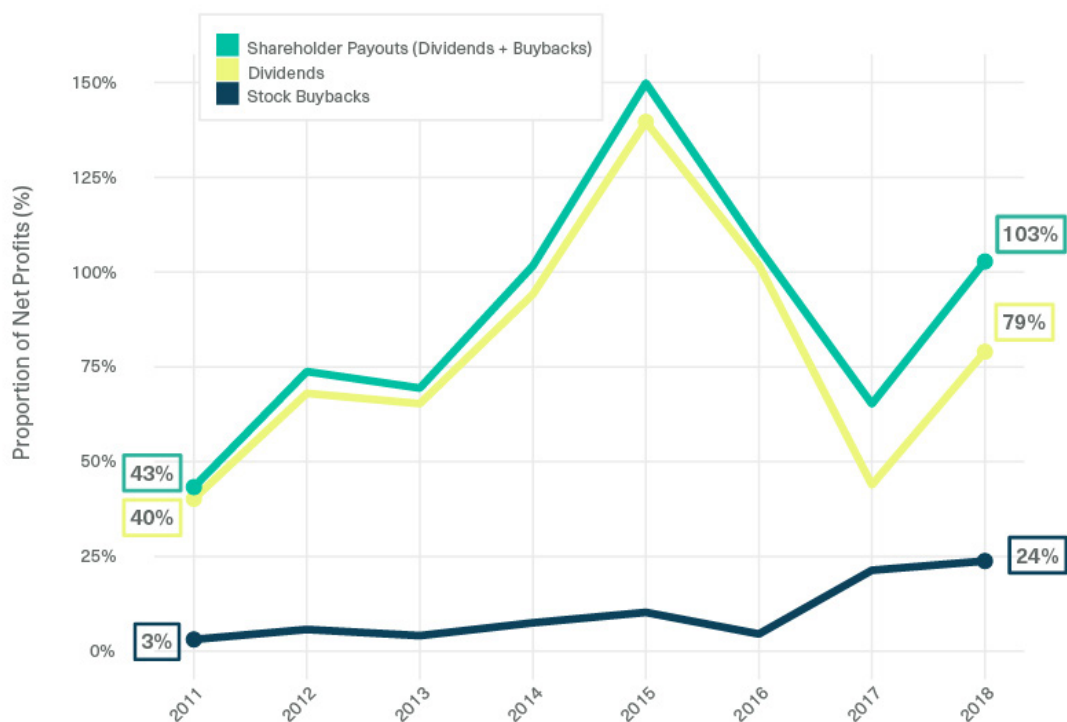
grow the company's productive capacity or increase real wages.

As shown in Figure 1, the dividends and total shareholder payouts (defined as dividends in addition to share buybacks) from the 100 largest UK-domiciled companies<sup>11</sup> have varied substantially; however, the overall trend is one of significant growth in dividends and stock buybacks relative to company income over the past decade. As the chart shows, in 2018, overall total shareholder payouts among these 100 companies stood at just over 100% of net profits, compared with 43% in 2011. Dividend payouts peaked in 2015 at a staggering 140% relative to net profits. For full details, see Tables 1 and 2 of the Appendix.

Figure 1

## Maximising Shareholder Value

Shareholder payouts of the 100 largest UK companies as a proportion of net profits have increased over the past decade



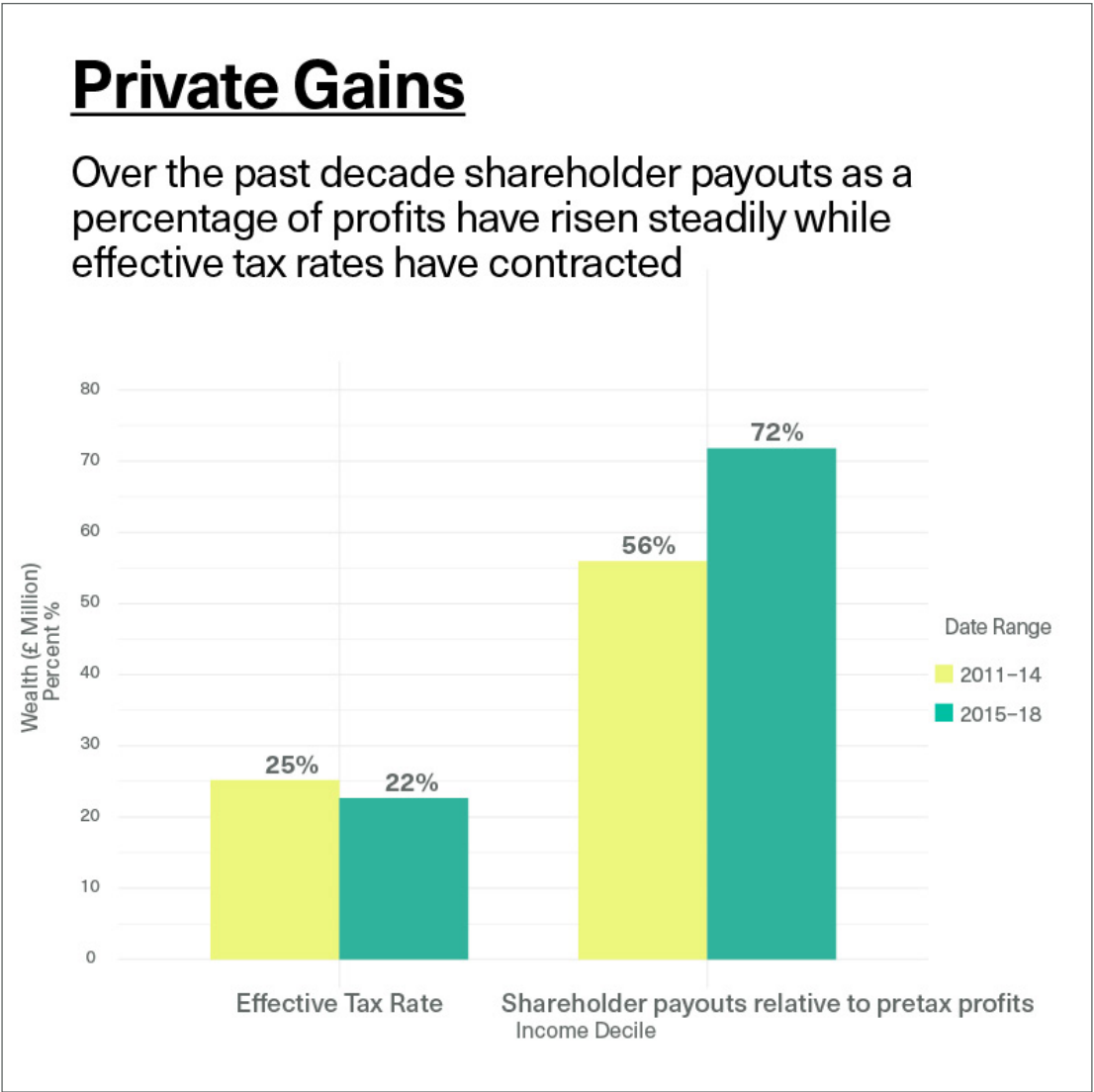
Source: Orbis & Zephyr databases

Notes: Aggregate data for the 100 largest non-financial companies domiciled in the UK

Figure 2, below, compares corporate behaviour in the first and second halves of the decade following the Global Financial Crisis, revealing a measurable increase in total shareholder payouts relative to pre-tax

profits<sup>12</sup> among these 100 listed companies, from 56% on average in the years 2011-2014, to 72% on average between 2015-2018. At the same time, the effective tax rate paid by these companies modestly declined.

Figure 2



Source: Orbis & Zephyr databases

Notes: Aggregate data for the 100 largest non-financial companies domiciled in the UK

In contrast with the extractive behaviour of the largest US corporations, among which stock buybacks have in recent years become an increasingly dominant use of corporate profits,<sup>13</sup> in the UK dividends remain the primary means of delivering cash to shareholders. Indeed, the 100 companies analysed paid out a staggering £400 billion in dividends between 2011 and 2018, with an additional £68 billion used for stock buybacks.<sup>14</sup> However, as shown in Figure 1 above, stock buybacks among these 100 companies have increased measurably as a proportion of net profits, from 3% in 2011 to

24% in 2018. Dividends from companies listed on the FTSE100, a slightly different group to the cohort analysed above including financial companies and non-domiciled companies like Glencore, meanwhile, hit a record high in 2019, paying more than £110 billion – a rise of 10.7% over 2018. Critically, if dividends to FTSE100 shareholders had grown in line with inflation the figure would have been £73 billion,<sup>15</sup> with shareholder payouts outstripping inflation even as workers experienced the worst decade for real earnings growth for over two centuries.<sup>16</sup>

**Table 1. Key Financial Metrics of 100 UK Domiciled Non-Financial Companies, 2011-2018 (Aggregate)**

Year	Dividends / Net Profits	Stock Buybacks / Net Profits	Total Shareholder Payouts / Net Profits	Total Shareholder Payouts / Pre-Tax Profits	Effective Tax Rate
2011	40%	3%	43%	31%	27%
2012	68%	6%	74%	46%	35%
2013	65%	4%	69%	98%*	11%
2014	94%	7.5%	102%	76%	22%
2015	140%	10%	150%	97%	35%
2016	102%	5%	106%	88%	27%
2017	44%	21%	65%	57%	10%
2018	79%	24%	103%	69%	31%

\*It is noted that for this year group net profits exceeded pre-tax profits. While this is not generally anomalous on an individual company level, at the group level in 2013 this was likely driven by Vodafone, whose £130bn sell-off of Verizon was not liable for UK tax.<sup>53</sup>

A common counter to criticism of high shareholder payouts is that the majority of us are indirectly shareholders in these companies, primarily through our participation in pensions but also through schemes such as Stocks & Shares ISAs. However, these forms of wealth are highly unequally distributed in the UK. According to the ONS, the top 10% of the UK population by income owns more wealth in Stocks and Shares ISAs than the bottom 80% combined.<sup>17</sup> This is similarly reflected in employee-owned shares and share options, for which the top 10% own a staggering twenty times more than the bottom 50% combined.<sup>18</sup> And, as shown in Figure 3 below, UK private pension wealth is highly unequally distributed; according to the most recent ONS Wealth and Assets Survey, the top 10% of the population by income own nearly half of all pension wealth in the UK – 7 times more than the bottom 50% combined.<sup>19</sup> Together, the top two income deciles hold

nearly 70% of all private pension wealth. And although the proportion of the UK public with active private pensions has been increasing since the implementation of auto-enrollment in 2012, as of 2018 47% of individuals in the UK still did not have active private pension wealth.<sup>20</sup>

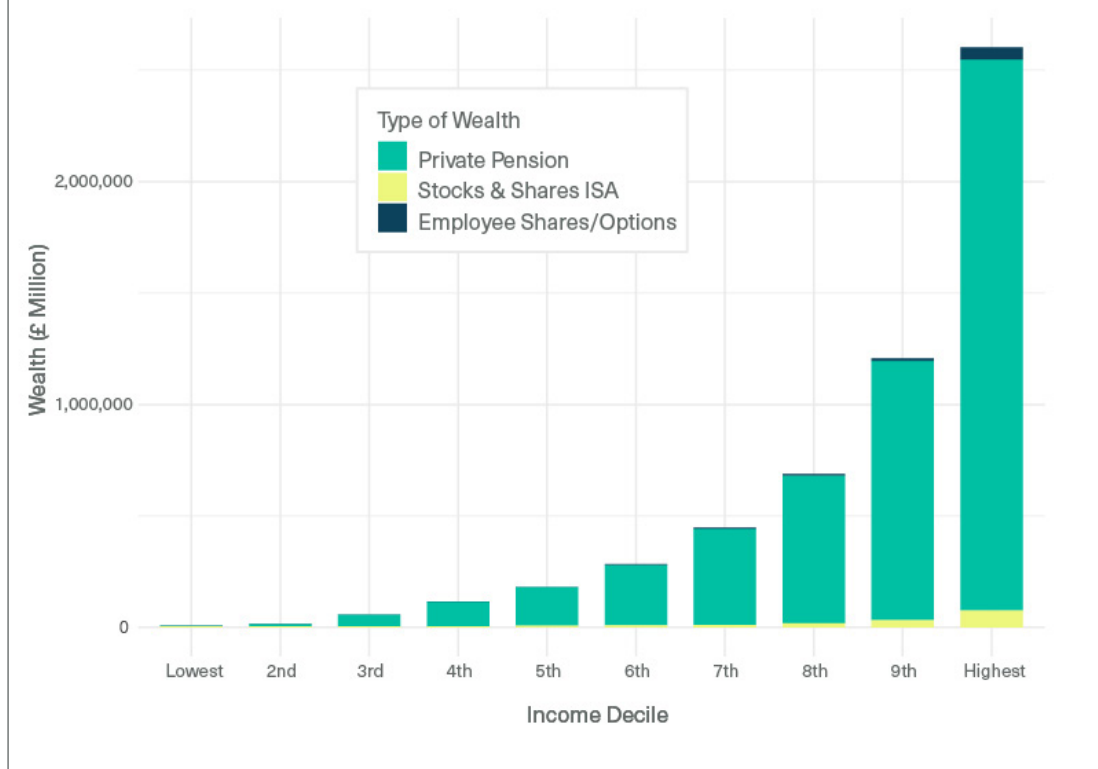
At the same time, there has been a marked shift in overall allocation by asset managers in the past 15 years. In particular, analysis by Mercer shows average equity allocation fell from 68% in 2003 to a low of 20% in 2019.<sup>21</sup> By contrast, the average bond holding has risen from 31% to 54% reflecting the search for a safe yield. Strikingly, 'other' grew from 1% to 26%, reflecting the diversification into property and allocation to hedge funds, among others. In other words, the average UK pension has significantly less exposure to UK equity as a result.



Figure 3

## A Shareholder Democracy?

UK wealth in private pensions and Stocks & Shares ISAs is deeply unequal



Source: ONS

Even if the trend toward greater pension enrolment continues, driving a gradual equalisation of pension wealth, the control rights attached to shareholding in major public corporations would nonetheless remain very narrowly concentrated. Indeed, a highly limited number of immensely powerful institutional investors currently monopolise voting rights in the UK's companies, as well as in public companies elsewhere. Namely, the two largest asset managers operating in the UK – BlackRock and Legal & General<sup>22</sup> – together own 5% or more of shares in 70 of the 100 largest non-financial companies in the UK; they own 10% or more of roughly 1 in 3.<sup>23</sup>

These investors exercise voting rights as well as engage with companies on behalf of pension beneficiaries, often with no means for

beneficiaries to express their preferences over asset manager conduct and voting decisions at company annual general meetings. Thus, even with a more equitable distribution of pension wealth, without significant democratisation of pensions and companies, power would remain highly concentrated in the economy.

Importantly, asset managers and institutional investors use their outsized share of voting rights within companies to block collective worker voice, support executive pay increases, and slow action on climate change. Asset managers routinely oppose worker representation on boards and between 2014 and 2018, 'shareholders approved every single FTSE 100 company pay policy put to AGMs.'<sup>24</sup> And alongside the portfolios of

the 15 largest asset managers remaining misaligned with key Paris Agreement targets,<sup>25</sup> two of the largest, BlackRock and Vanguard, 'have opposed over 80% of climate-related shareholder motions at fossil fuel companies between 2015 and 2019.'<sup>26</sup> Their voting policy reflects a wider inertia-bias towards the status quo. Analysis by Pensions & Investment Research Consultants (PIRC) of just under 6,000 votes exercised in 2019 by Legal & General Investment Management (LGIM), one of the UK's largest asset managers, in respect of UK equities in the FTSE350 showed LGIM voted in support of executive remuneration policy in 78.95% of cases it voted on, voted to accept the Annual Report and accounts in 98.67% of cases, and supported 95.98% of share buyback resolutions. Given LGIM has a reputation and history of careful stewardship and investor engagement, it is a striking sign of the extent to which the concentration of voting rights among major institutional investors and asset managers appears to support extractive company strategies.

These trends – which extend far beyond the set of 100 companies analysed for this report – have also been accompanied by increasingly extreme executive remuneration. This is perhaps most clearly exemplified by increasingly expansive ratios between executive salaries and those of their average worker, with FTSE 100 Executives earning 117 times that of their average worker in 2018.<sup>27</sup> It is also reflected in substantial remuneration packages such as Long-Term Incentive Plans and stock options, which gradually reward executives through equity in the company. As of latest filings, just over 700 executives at 86 of the 100 largest non-financial UK companies held a collective £6 billion in equity at their respective corporations, representing nearly £8.5 million per director.<sup>28</sup>

A significant expansion of corporate debt has also been a defining feature of the decade following the Great Financial Crisis, driving a global corporate debt bubble worth up to £15 trillion, as estimated by the IMF. Indeed, the IMF recently projected that nearly 40% of the debt among corporations in the world's 8 largest economies, including the UK, was at risk of becoming unserviceable in the context of an economic downturn half as

severe as the Great Financial Crisis.

Among the 100 largest UK companies,<sup>29</sup> between 2011– 2018 the companies' total debt relative to assets remained consistent at roughly 20%; however, debt relative to revenues rose from 33% to 39% over the same period. This is in keeping with a decade of low profitability for much of the economy, during which the debt held by UK listed companies as a whole soared to record highs, reaching nearly £400 billion by 2018.<sup>30</sup> As the Financial Times notes, this growth in debt was largely used to support high dividend payments.<sup>31</sup> As of Q3 2019, the value of total credit to non-financial corporations in the UK was equivalent to 81.5% of GDP.<sup>32</sup>

In the context of the COVID-19 induced economic downturn, heavily-leveraged smaller and mid-sized firms, which generally have less cash with which to weather the storm than their larger corporate peers, are left highly vulnerable; indeed, it was recently estimated that up to 1 million – or roughly one fifth – of the UK's smaller businesses did not have sufficient cash to survive the crisis.<sup>33</sup> However, against the backdrop of record corporate debt, government support for business has come almost exclusively in the form of loans to be paid when the crisis subsides, leaving debt-burdened firms saddled with additional debt post-crisis, and therefore less resilient to another shock. A likely consequence of this crisis will therefore be the consolidation of an already concentrated corporate sector, with large and powerful firms emerging from the crisis more powerful than they were before, and with predatory forms of capital acquiring distressed firms on the cheap.

The transformation of the corporation into an institution for funneling cash to shareholders in the form of dividends and buybacks and executive management in share-based remuneration has been bad in aggregate for workers, society and the environment, and indeed for corporate performance. Even as corporate profits have grown, a focus on distributing corporate cash to shareholders has kept business investment rates sluggish and productivity growth anaemic. Real wages have failed to keep pace with surging dividend payments, with real

GDP per head still below 2008 levels when estimated using consumer prices, even as remuneration at the top has reached dizzying levels.<sup>34</sup> And the dramatic rise in corporate debt – often to funnel money to investors instead of investing in the productive capacity of the firm – has weakened the capacity of corporations to effectively manage risk. This transformation in corporate behaviour has not occurred because it is more efficient or improves production; instead it has been reshaped to benefit the interests of shareholders and executive management, which in turn overwhelmingly benefits the wealthy, who dominate share ownership.

We cannot build a fairer, stronger economy without addressing these behaviours, behaviours that at present are hardwired into the company. To emerge from the crisis into a more equitable, prosperous future, it is time to reclaim the company.

#### — The corporation, reclaimed

A complex architecture of ownership and governance currently ensures the corporation is organised to maximise shareholder wealth by extracting as much money as possible from the company when times are good, while minimising the amount of shareholder money at risk when things go wrong.<sup>35</sup> Addressing this will require reshaping how economic and political rights are allocated within the firm, challenging the control exercised by shareholders, particularly institutional investors and major shareholders, and executive management.

Critically, the governance of the firm is dominated by the corporation. The corporation is the legal vehicle to structure capital investment and organise production; the firm is the economic organisation of the business, a larger, more complex entity than the corporation. Yet the corporation rules the firm in terms of strategic decision-making and in whose interest the business is run. And the corporation is ruled exclusively by capital investors: its shareholders and their managerial agents. The company's executive – the Board – are appointed by its legislature: its shareholder body. Those who invest their labour are excluded from decision-making, lacking a collective voice

in corporate governance or voting rights. Capital is sovereign in the government of the corporation, its control oligarchic in nature, based on wealth via shareholding and managerial power. Economic coordination both within the firm and the wider economy remains rooted in capital ownership and geared towards the interests of asset-holders. As such, a fundamental institution of capitalism stands in tension with democratic justice<sup>36</sup> and is structured toward unequal patterns of wealth extraction from the company.

Yet the corporation is not simply a private nexus of contracts, an institution of voluntary and discrete associations whose actions should be shielded from policy intervention. Granted extraordinary privileges to organise production, it is undergirded and made possible by public power, its rights legally defined and thus re-codable. Indeed, given the crisis has (once again) laid to rest the myth of a clear division between the public and private sector, there is fresh urgency in the need to re-examine the corporation as a publicly sustained entity organised for the public good. This need is all the more pressing given climate change and environmental breakdown, among other disruptions, will likely necessitate state support on a vast scale in the relatively near future.

Nor are shareholder rights absolute. The corporation, critically, has separate legal personhood. Shareholders own part of the company's capital as constituted by their shareholdings, which represents a bundle of rights and liabilities, including the right to receive a proportionate share of the company's profit when dividends are declared and distributed, and the right to share in any surplus available at the point of company liquidation. In return, shareholders in theory are expected to hold the residual risk of the company they hold shares in, though in practice labour is more at risk if companies fail: while investors typically diversify their risk, holding positions in many companies, if a firm collapses the negative effects of unemployment are concentrated among its workers. If a crucial public policy question facing us is how to distribute the costs of an enforced economic hibernation,

shareholders should therefore be first in line for any loss because a critical function they are (theoretically) supposed to perform is to bear economic risk.

The corporate form grants shareholders an extraordinary privilege – limited liability – which shields them from ‘liability for the actions the corporation took on the shareholder’s behalf’ and ‘shifts the risks of the corporation from the shareholders to the corporation’s employees, creditors, and the state.’<sup>37</sup> It is a form of public insurance for shareholders enabled and maintained by the state. The justification for ‘providing this insurance is to induce wealthy shareholders to bear risk for the economy as a whole: the shareholders bear the first loss in exchange for being assured that that loss is limited, and reaping significant rewards if the corporation has profits instead of losses.’<sup>38</sup> Shareholders must therefore take a substantial part of the economic costs of the crisis, whether through falling equity prices or the reduction of the distribution of corporate earnings, over and above workers, the public or the state. Failing to do so would confirm the position of the modern institutional shareholder as more akin to a rentier than an active, risk-taking allocator of scarce capital and certainly does not justify a status quo in which their interests override that of all other stakeholders in the company.<sup>39</sup>

Far from a Hayekian institution of ‘spontaneous ordering’, then, the company is an institution that is produced and maintained by public action and is therefore contestable. Indeed, as with markets and wider infrastructures of social reproduction, the corporation is not ‘natural’, but constituted by politics and law, mediated via political organising. As such, politics can reclaim the company, transforming it from an institution of extraction to a generative entity: purposeful and democratically governed, where all its stakeholders have stake and a say and share in the common wealth. This would better reflect the reality of the firm: instead of something controlled by and for property holders, it is an incorporated body that brings together a range of stakeholders—including capital investors, labour, suppliers and customers—for the purpose of enterprise within a web

of relationships that are far more than just a series of discrete contracts. If companies are legally constituted by multiple stakeholders, with labour core constituents of the process of production, its exclusion from economic and governance rights or company membership is unjustifiable.

Such an endeavour will require democratising the firm’s constitution and reallocating the rights and powers of stakeholders, including downgrading the present oligarchic power of shareholders and executive management to rule the corporation. Instead of assigning coordination rights based solely on private share ownership, we can reimagine the company as an institution of the commons: a social institution with multiple constituencies who share overlapping economic and political claims on the resources of the company, which at present is unjustly enclosed and extracted, but can be reorganised to better steward the underlying resources and value of the company, distributing economic and political rights democratically and broadly, and guaranteeing key stakeholders voice and control rights.<sup>40</sup> Fundamental to this must be a transformation in both ownership and governance.

In turn, that will require a strategy for institutionalising economic democracy and co-operation in the firm through a new legal infrastructure. If politics and the economy are inseparable, law is the mediating institution that ties them together, acting as a social coding system, defining the terms of economic competition and co-ordination, how wealth is produced and distributed, and how inequalities are (re)produced. Law has an ideological character of its own, one that can preclude its progressive repurposing, placing limits on how it can recodify and construct a democratic economy. Yet nonetheless, a critical legal approach – helping to transform the institutional, managerial and ownership architecture of the company – will be vital to reconstructing and democratising our economic futures.

# 2 Recommendations

Our recommendations are divided into two stages: a trio designed for the phase of economic hibernation to extend economic security and leverage structural change, and a pair of proposals for reconstruction that seek to transform the company, making it democratic and sustainable by design.

## — Sustained hibernation

- 1 Bailouts should work for the public good

With a historic, deeply painful recession underway, many companies are facing a serious and potentially fatal decline in revenue. As a result, without public support, many are likely to collapse. Absent intervention, the consequences would be extreme: a dramatic increase in unemployment, a sharp contraction in the UK's capital base, and the destruction of many otherwise viable businesses, with dangerous knock-on effects for the wider financial system as businesses default on financial obligations. As such, it is important that a simple, effective system of support is rapidly extended.

This should be done with clear conditions: any public support package should focus on bailing out the corporation rather than its shareholders, retaining its workforce and productive capacity for post-crisis. At the same time, bailouts should seek to permanently transform corporate governance to reorient the corporation toward the public good. In other words, there should be no 'no-strings attached' bailouts in the weeks and months ahead and rescue packages must ensure private sector creditors and

shareholders bear their share of the losses. In particular, we recommend the following requirements should be met by companies seeking access to public funds:

- **Guarantee job security in the crisis:** As a condition of receiving public support, bailed out companies should guarantee no lay-offs for staff during the crisis, using the newly announced Coronavirus Job Retention Scheme where necessary, and those routinely if irregularly employed should be retained and brought into formal employment. Maintaining, as far as is possible, current employment levels and job security, albeit furloughed if necessary, should be a critical goal of intervention.
- **Cash for equity to provide strategic leverage and grow public wealth post-crisis:** Public cash should be in exchange for equity within the bailed out company. Equity for investment is common sense and what most other investors would demand in similar circumstances. In general, equity taken should be held as a strategic, permanent public stake to create a powerful form of leverage and grow public wealth in the long-term. The rights associated with the public's equity stake should not be dischargeable via bankruptcy to minimise the risk of companies taking public money and then declaring bankruptcy. Government cash should be exchanged for new equity issued by the bailed out corporation. The total value of the shares issued should be equal to the cash injection as a proportion of the bailed out company's market capitalisation average over the last 12 months. If, for example, the bailout was worth 5% of the market capitalisation, averaged over the last 12 months prior to the cash injection, the state share of equity *after* new share issuance should be 5% of the total post-bailout. Cash for newly issued equity would moderately dilute the

wealth of existing shareholders but provide the corporation with liquidity to survive the crisis. While this would reduce shareholder wealth, this is reasonable and fair: without intervention, shareholders' losses would be much greater, potentially absolute, while the argument that shareholders should receive an investment return over other stakeholders within the firm is based on the claim that they carry the residual risk.<sup>41</sup> Any equity issued should be held in a newly created social wealth fund, as detailed in recommendation five. The fund should exercise shareholder voting rights associated with the public equity stake as a mechanism to ensure good company behaviour: high-productivity, high-wage business models that are democratic, purposeful and operate sustainably, with strong and fair supply chains, that serve social and environmental needs. And, importantly, once the initial economic shock wanes, the public should receive a windfall from their investment in the form of rising equity prices and dividends.

- **Ending unbalanced value extraction from the company:** Corporations should not be able to issue dividends or pursue share buybacks while the Coronavirus

Job Retention Scheme is open, and until the end of 2020 if the scheme is closed before then. This should apply to all public companies at a minimum, not just bailed out entities. Once this period is over, the distribution of dividends to the entire shareholder body – with the public stake receiving a share proportionate to its share of equity – should be allowed to resume.<sup>42</sup>

Alongside this, we support the call of the High Pay Centre for the following conditions to apply to any bailed out company:

- **Fair pay at the top:** including a maximum pay ratios between the highest paid and median employees of bailed-out companies of 10:1 to begin.
- **Fair pay at the bottom:** including a commitment to set a timeframe to paying the real living wage, an independently accredited hourly wage level (currently set at £9.30 across the UK and £10.75 in London).
- **Ensuring tax justice:** including requiring bailed out companies to commit to Fair Tax Mark accreditation and pursue responsible tax practices more broadly.

- 2 [Create a network of holding companies to secure a pluralistic post-crisis business landscape](#)

To support smaller companies, a state holding company, or network of regional or national holding companies, akin to the Reconstruction Finance Corporation during the Great Depression, should be created. The need is urgent: according to the British Chamber of Commerce, 57% of firms having three months' cash in reserve or less and nearly 20 percent of all UK firms have less than a month.<sup>43</sup> Due to a Covid-19 induced cash flow crisis they are now acutely vulnerable to collapse or hostile acquisition. Absent intervention, the result is likely to be a more concentrated business landscape with wealth and power narrowing.



As both The Democracy Collaborative *and* the IMF have floated in recent days,<sup>44</sup> we propose the creation of a state holding company that would purchase otherwise viable businesses now facing acute distress that request support, safely mothballing them during economic hibernation, before re-floating them when the economy re-emerges. This will help protect them from being purchased by private equity and avoid the obliteration of an SME class. There is also the opportunity to re-float these businesses under worker ownership, or other diverse ownership structures, transforming and pluralising the business landscape.

Other measures should also be considered to provide temporary support, including the financing of existing credit facilities for up to six months – subject to review and potential extension – at a zero interest rate, while new credit facilities up to an equivalent of 3 months' revenue priced at zero interest rates might also be necessary in the period ahead.<sup>45</sup>

### 3 Create a social wealth fund to grow public wealth and transform corporate behaviour

Given shares prices continue to decline in the short-term and public borrowing costs are reaching record lows, a social wealth fund should be established to purchase a broad range of assets via a public sector debt-financed acquisition to be held on behalf of the population as a whole.<sup>46</sup> This would help challenge inequalities of resource and control in the economy, transform private wealth into equally shared public wealth, and ensure that returns to capital are more equally shared across society. A social wealth fund would also be an important institution to improve corporate governance and ensure companies better – and more quickly – meet ambitious environmental and social goals.

To that end, the UK government should issue new Treasury bonds and use the cash raised to purchase a broad range of assets to endow the Fund. Potentially complementing this, though secondary, newly created money through the Bank of England's quantitative easing programme could be used to purchase

corporate equity. Other sources of future capitalisation could include hypothecating wealth taxes, scrip taxes, or consolidating and transferring public assets into the fund.

As Mark Blyth and Eric Lonegran have argued, 'the purely economic and financial case for this hinges on the simple observation that in a world of low inflation the government's cost of capital is countercyclical and the private sector's is pro-cyclical.'<sup>47</sup> This is playing out to dramatic effect today: yields on government bonds have fallen to extremely low levels, even as equity prices have collapsed and private sector credit spreads have widened. The creation of a social wealth fund can therefore play an important role in macroeconomic management – as well as provide an institution for the extension of public wealth. By buying equity and other assets at substantially reduced prices, while borrowing costs are low, a newly created social wealth would help stabilise financial markets while also ensuring that if and when there is a sustained recovery in share prices after the recession has passed, the public should secure an economic windfall from their investment.

The fund should seek to achieve return on capital at least equivalent to the capitalising government's medium term cost of capital across its investment portfolio, but should not be profit maximising because it should pursue social and environmental goals as its priority. It should be a collectively owned investment vehicle held in trust for all, its mandate defined by the UK government but with operational independence.

A growing social wealth fund would be a vital institution post-crisis to achieve a number of goals:

- To grow net public wealth, increasing the resources available to the population as a whole – and ensuring we all have a collective economic stake, democratising a growing share of wealth
- To provide an investment vehicle capable of addressing key social goals, from investment in decarbonising infrastructures to

providing affordable housing

- To act as a force for convergence, socialising a growing share of corporate and institutional wealth and therefore reducing sharp inequalities in wealth
- To increase intergenerational fairness by transferring some resources from current to future generations
- To shift the allocation of resources toward long-term investment over current consumption

Returns to the fund should be split between reinvestment to continue to grow the Fund over time and returning benefits to the fund's owners, the public at large, whether through distributing an annual universal capital dividend to the population as a whole, a 'demogrant' targeting an annual capital grant at specific demographics, such as when people turn 18, or to help meet ongoing public liabilities.

#### — **Ambitious programme for reconstruction**

##### 4 Rewriting the rules to democratise the corporation

To build a post-crisis economy that is democratic and sustainable by design, we need to transform how the corporation operates and for whom. This must be for the long-term, not just the period of crisis. Marginal tweaks will not be enough nor will systemic change in corporate behaviour occur if only companies seeking public support are subject to reform. Fundamental to enduring transformation must be a wider institutional turn in ownership, governance and control to reshape company purpose, redistribute wealth, and restructure and democratise decision-making. To that end, the following changes should be applied to all large companies<sup>48</sup> and publicly traded companies through amendment of the Companies Act 2006 and associated legislation for post-crisis reconstruction:

- **To reshape company purpose and end shareholder primacy,**

Section 172 of the Companies Act 2006 should be amended to make the promotion of the long-term success of a company for the benefit of its key stakeholders, including employees, the primary duty of its directors, not the maximisation of member, i.e. shareholder, interest. A redrafting of directors' duties should ensure that the interests of shareholders, while important, do not take priority over the interests of employees or responsibilities to other stakeholders, including the environment, customers, and supply chains. In doing so, it should shift corporate governance from its focus on shareholder value maximisation to a stakeholder model of purposeful enterprise.

- **To democratise corporate governance,** 45% of a company board should be elected by the workforce and 45% elected by the shareholder body, ensuring that those that invest their labour have equal representation with capital investors in determining the composition of the board and setting the strategic direction of their company. Unless we do so, the oligarchic nature of company governance – with representation on the board and voice in company meetings proportionate to wealth in the form of shareholding, not participation through labour on a one person one vote basis – will remain. The remaining 10% of the board should be directors elected by wider stakeholders of the company. This could, for example, be elected from key elements of a company's supply chain or customers, or appointed to represent environmental interests.
- **To rebalance power at work,** sectoral collective bargaining should be rolled out, workers should enjoy rights from day one on the job, and elected work councils with binding rights should be established. While this would mark a change from recent labour relations in the UK, the

response to the crisis has shown rapid institutional transformation is possible. Moreover, evidence suggests an upgrade in collective and individual labour rights would improve wages and conditions for ordinary workers, and would better equip employees and companies to respond to a changing world of work, instead of relying on inflexible statutory minimums as the basis of negotiation, that favour capital over labour.

- **To extend the economic franchise to workers**, the outsized voting rights that monopoly shareholders currently enjoy at company meetings – such as at annual general meetings and other shareholder resolutions – should be ended. Instead, all workers should have the right to be registered as a member of their company. Workers as a group should be entitled to a minimum of twenty five per cent of the total voting rights in their company, exercised democratically as a bloc; the rest should be allocated to institutional investors and individual shareholders as a proportion of their shareholding. This would give the workforce an important, guaranteed stake in the government of the company alongside other stakeholders and enable workers collectively to exercise important corporate governance rights. This democratisation should apply regardless of the kind or size of company or firm to ensure that all workers have a powerful collective voice in company governance.<sup>49</sup> Guaranteeing membership and significant control rights for workers is vital, not just because the extension of democratic principles into the economic realm is the 21st century frontier of democracy. It is also important for the long-term health of the company. Shareholders – and the doctrine of shareholder value maximisation – are currently failing, in aggregate, to steward the corporation toward long-term
- success and hold management to account, a supposed key function of theirs, not least because they vote overwhelmingly with management. The expansion of democracy within the firm is particularly important in the context of potential consolidation of the corporate sector following the crisis, which would see power in the economy further concentrated among a shrinking number of increasingly powerful firms and institutional investors.
- **To give workers a share in the profits they help create**, mandatory profit sharing for workers in companies above 50 employees should be introduced, as in France. This would guarantee collective income rights for the workforce as a whole to company earnings, broadening who has a claim on the surplus. As in the French model, the total share should be determined based on a legal formula taking account of financial variables, including taxable profits, net equity, wages and added value, though how the share is distributed – whether flat or progressively – should be determined by an all-staff vote.
- **To democratise capital markets**, there should be codetermination in capital and pension funds. This should involve a prohibition on financial intermediaries voting on the money of the ultimate beneficiary without instruction, either directly or indirectly, from the saver.<sup>50</sup> Though many trustees would likely end up de facto delegating to asset managers their votes, this would at least change the default position to being that the beneficiary should have control. Pension trusts should be democratised, with at least half of the board being elected by the beneficiaries on a one-person, one-vote basis.

5 [Embed net-zero in the design of the company](#)

Among other impacts, the conjoined climate and environmental crisis poses a systemic risk to the economy. Tackling them will require reorienting the purpose and environmental impact of the company. The pandemic and severity of its economic impacts have demonstrated the vital importance of mitigating known systemic risks, as well as proactively building resilience into the economy. Given the scientific consensus on the scale of damage posed by the climate crisis and environmental deterioration, companies should take all feasible steps to minimise the risks posed to their long-term sustainability. Companies should be required to hardwire a just transition into their operation through new legal duties,<sup>51</sup> as follows:

- **To ensure companies are pursuing ambitious net-zero targets**, a new duty should be introduced requiring company directors to align company strategic and investment plans with a 1.5 degree pathway to embed sustainability.
- **To ensure compliance, a new 'green golden share' class should be considered in key carbon-intensive sectors**; this would be deemed to be a majority of votes on any issue connected only to the elimination of fossil fuels in the company's production and investment plans, providing a clear veto over policies that are not compliant with ambitious net-zero strategies.

The immediate and urgent task is to ensure everyone who can 'economically hibernate' can do so securely, and that frontline workers and the healthcare system receive the support and investment that is needed to respond to the emergency.

But all crises buckle and reshape the order of things. In the wake of the financial crisis, states and central banks radically re-engineered fiscal, monetary, and macro-prudential regimes. This was and remains a deeply political project, one with sharply inequalitarian effects. As the full scale of the public health emergency and consequent economic crisis prompted by Covid-19 escalates, society is once again undergoing rapid, sharp change, with the horizon of the possible radically expanded.

The challenge is to ensure transformation is anchored in the expansion of democratic power and the building of sustainable, fairly shared prosperity. Fundamental to this must be a reimagining of the company so it is fit for the decades ahead.

Many proposals for economic change such as universal basic income and wealth taxes were deemed radical until only recently; the current economic crisis has revealed them to be common sense.<sup>52</sup> This is similarly true of the transformation of the company. The company is an institution whose rights, powers and extraordinary privileges are publicly defined and maintained. The question is therefore not whether we should intervene; we already do. Rather, the question is whether the design of the company is generating good or bad outcomes for society. Viewed in this way, the true radicalism would be to continue with the status quo post-crisis, which hoards wealth and power for a few, leaving us all more vulnerable. Instead, we must reimagine how the company operates to better serve the common good.

## 3 Conclusion

## Appendix

**Table 1. Key Financial Metrics of 100 UK Domiciled Non-Financial Companies, 2011-2018 (Aggregate)**

Year	Dividends / Net Profits	Stock Buybacks / Net Profits	Total Shareholder Payouts / Net Profits	Total Shareholder Payouts / Pre-Tax Profits	Effective Tax Rate
2011	40%	3%	43%	31%	27%
2012	68%	6%	74%	46%	35%
2013	65%	4%	69%	98%*	11%
2014	94%	7.5%	102%	76%	22%
2015	140%	10%	150%	97%	35%
2016	102%	5%	106%	88%	27%
2017	44%	21%	65%	57%	10%
2018	79%	24%	103%	69%	31%

\*It is noted that for this year group net profits exceeded pre-tax profits. While this is not generally anomalous on an individual company level, at the group level in 2013 this was likely driven by Vodafone, whose £130bn sell-off of Verizon was not liable for UK tax.<sup>54</sup>

**Table 2. Key Financial Data of 100 Largest UK Domiciled Non-Financial Companies, 2011-2018 (Aggregate)**

Year	Revenues	Net Profit	Pre-Tax Profit	Dividends	Stock Buybacks	Corporate Income Tax Paid
2011	1,160,211	103,924	143,441	41,779	3,229	39,138
2012	1,264,141	69,452	110,994	47,247	3,989	39,216
2013	1,196,173	120,480	84,898	78,674	4,955	9,301
2014	1,217,721	49,574	66,325	46,672	3,719	14,421
2015	1,103,292	33,562	51,739	46,857	3,440	17,920
2016	1,177,810	42,267	50,826	43,039	1,926	13,616
2017	1,296,543	112,621	129,327	49,415	24,056	13,248
2018	1,369,173	65,407	96,759	51,674	15,566	29,580
Sum	9,785,064	597,286	734,310	405,358	176,440	60,880

Note: All values in GBP million

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