10 Conclusions

It is often said that there is too little market competition. At the same time, it is customary to assume that financial intermediaries are vital for the effective functioning of capitalism. In this book, it is argued that financial intermediaries benefit from a regulatory framework that effectively shields financial intermediation as an industry from competition and enables financial intermediaries to extract rents at the cost of retail investors, firms, public stock markets, and society as a whole. A regulatory framework designed with the interests of financial intermediaries in mind has kept the number of companies with publicly-traded shares too low, contributed to a shift from public stock markets to private markets, and increased financial polarisation.

A much larger number of companies with publicly-traded shares would be needed to rescue public stock markets and also to address the vast gap between pension savings and promised pension benefits. Moreover, retail investors' direct share ownership and people's capitalism are proposed as ways to increase competition and reduce the growth of financial inequalities.

We have studied ways to increase the number of companies with publicly-traded shares and retail investors' direct share ownership. Because of powerful societal and economic trends, it will be very difficult to reach such goals. However, it would be possible to improve the current regulatory regime for listed companies and to create an alternative regulatory regime based on regulatory dualism.

The concrete actions proposed in this book mean the use of three kinds of design principles. Policy principles lay down the values. Strategic design principles set out regulatory actions in broad terms. Operational design principles are intended to be applied at a concrete level. The proposed design principles indicate, by their very existence, that it is not necessary to design the regulatory framework primarily for the benefit of financial intermediaries. It is possible to imagine alternatives that might benefit society more.

Improving the existing regulatory regime. States can and should improve the existing regulatory regime.

The most fundamental issue is how to increase the number of good firms. This will require more than changes in company and securities law: "[T]he primary issue is not how to get companies to market, which may merely create a false supply, but how to create a regulatory and market environment that fosters growth in small companies."[1]

1 Rose P, Solomon SD (2016) p 127.

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In any case, company law should preferably distinguish between the firm (das Unternehmen, l'entreprise), the legal entity, and shareholders. The interests of the company should be interpreted as the interests of the firm. Company law should primarily be aligned with the interests of the firm rather than the interests of shareholders or other stakeholders. This is not revolutionary in the light of the fact that the notion of the firm is well-established in continental European company law.

The principal-agent theory should be disconnected from legal notions of English common law. For the purposes of company law, the most important principal of the principal-agent theory should be the firm.[2] Over-reliance on public disclosures should be replaced by increased reliance on structures, in particular by the separation of functions and by mixed monitoring. Monitoring by short-term shareholders should be replaced by a governance model that builds on self-enforcement and facilitates innovation.

Securities law and stock exchange law can be changed to reduce the direct and indirect costs of a stock exchange listing for the firm. Again, regulation should be aligned with the interests of the issuer-firm rather than with the interests of short-term shareholders or financial intermediaries.

Any form of start-up funding will help. Angel funding, venture capital, and crowdfunding can contribute to a more dynamic and prosperous economy in the long run. But the participation of venture capital tends to keep firms private. Successful growth firms do not need a stock exchange listing for funding purposes in today's markets. There should be a viable alternative to venture capital.

It should also be made easier for successful firms to enter public stock markets. At the moment, the direct and indirect costs of a stock exchange listing can be too high for firms that want to prevail in competition in the long run. On one hand, the decline in the number of companies with publicly-traded shares may indicate that traditional stock exchanges and listings have become outdated. On the other, the popularity of SPACs indicates that the process can be simplified and made more flexible for firms.

Creating an alternative regulatory regime. While incremental improvements are necessary for the evolution of the existing regulatory regime, they do not seem to be enough to cure the most fundamental problems. States should therefore consider more radical changes to the regulation of companies and stock markets. In practice, this would require regulatory dualism.

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2 For the agency costs of debt from the perspective of the lender-firm, see Mäntysaari P (2010c) pp 16 – 17.

States should apply regulatory dualism and create an alternative regulatory regime for the issuing of shares to retail investors and for public trading in shares. This would require many legislative actions and steps.

The first step should be to limit and reduce the scope of the traditional regulatory regime in order to leave more room for the development of an alternative to the current financial intermediation industry. In practice, this would also mean rethinking the policy of creating a "level playing field" for all market participants. The policy of creating a "level playing field" can reduce competition and facilitate rent-seeking by preventing potential inter-industry competition. A "level playing field" means that all players are forced to play the same game without any competition between alternative games.

The second step should be to facilitate alternative direct equity investment regimes. This requires a large number of concrete legislative changes.

For example, we propose ways to make it easier for retail investors to invest in existing foreign stocks directly ranging from limiting the scope and extraterrorial effect of securities laws to the mutual recognition of investor protection regimes. The mutual recognition of investor protection regimes could increase retail investors' direct cross-border investment. There should be a transatlantic stock market for retail investors in order to give retail investors more choice.

Moreover, we propose a new kind of marketplace as an alternative to stock exchanges for trading in the shares of SMEs and growth companies. The proposed microexchange would be a simple marketplace for trading in the shares of one issuer only. The microexchange would belong to the issuer, but it should be made possible for the firm to outsource many of the trading venue's functions. The necessary technology could in practice be provided as a service by various competing operators of fintech platforms. Fintech would even help to combine many microexchanges at the retail investor level and create the experience of a bigger market. We propose a particular company form – the small public limited-liability company – for firms that want to use the microexchange.

The microexchange might help to move trading in shares from centralised stock exchanges to decentralised microexchanges and centralised fintech platforms. With some luck, this could help to increase the number of companies with publicly-traded shares and enable retail investors to participate in value creation in more firms.

The availability of microexchanges could provide a new way to facilitate retail investors' direct investment. A simple marketplace for secondary trading could help retail investors to participate in the equity funding of companies at an earlier stage, provide early equity investors an exit, and postpone the point in time when a growth firm needs to turn to venture capital investors or is

sold in a trade sale. Such issuers might also become eligible to a traditional stock exchange listing.

Jobs and savings. Households will not be able to invest in shares unless they have money to spare. People need employment opportunities and decent wages. They need affordable education and healthcare. There should be social security and a mandatory pension system as back-up systems. To make this possible, a better company law regime should foster the interests of firms and increase the number of good firms. Moreover, there should be better investor education for all. Since financial literacy is a public good, investor education should start in schools.

The method. The chosen goals and the work process – a single-author monograph based on a holistic perspective – have influenced the findings. It would not have been possible to do this in a single peer-reviewed article published in a mainstream journal. The results indicate that stock exchange law, company law, and securities law should be studied as a whole, comparatively, and over a longer time period in order to understand complex issues of market organisation and to find ways to address them.

Behind the method of this book is a theory according to which parties as rational actors try to use legal tools and practices to reach their objectives. Such a theory seems to reflect corporate and market practice. The book started with the choice of value-based purposes for the study (Chapter 1). The first part of the book was intended as a qualitative historical study of regulatory *technê* with scientific ambitions (Chapters 2–5). It was also a way to anchor the fundamentally value-based choices of the second part of the book in scientific research. The second part was intended as *technê* and as an exercise in what could be "practical wisdom" in the regulation of people's capitalism (Chapters 6–9). The second part started with the choice of values and was followed by a study of design principles for reaching the value-based purposes of the book (Chapter 6). The second part would not have been a rational and systematic exercise in how to reach goals without the choice of the underlying values and goals.

The fact that this book project could result in many proposals could also indicate that legal science can and should produce potential answers to major societal problems. In fact, "the rules of the game" discussed in this book consist of very complex legal frameworks that cannot be properly understood without a holistic research approach and the study of a broad range of legal tools and practices. Since the problems are caused by a large number of detailed norms, there will be no reasonable answers without a large number of relatively concrete and detailed proposals about how to change them.