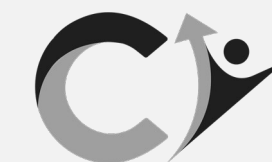


THE
I84I
FOUNDATION

2024
TAX
ANNUAL
SUMMIT

Lo que importa no es solo cuánto, sino qué tipo de regulación.
John Chisholm



CLUBDEINVERSORES.COM
BY CARTA FINANCIERA

BRIDGEFORD
Trust Company

SUPPORTER
Sponsor



What Matters is Not Just *How Much*, But *What Kind* of Regulation

John Chisholm
2024 Tax Annual Summit
The 1841 Foundation
21 November 2024

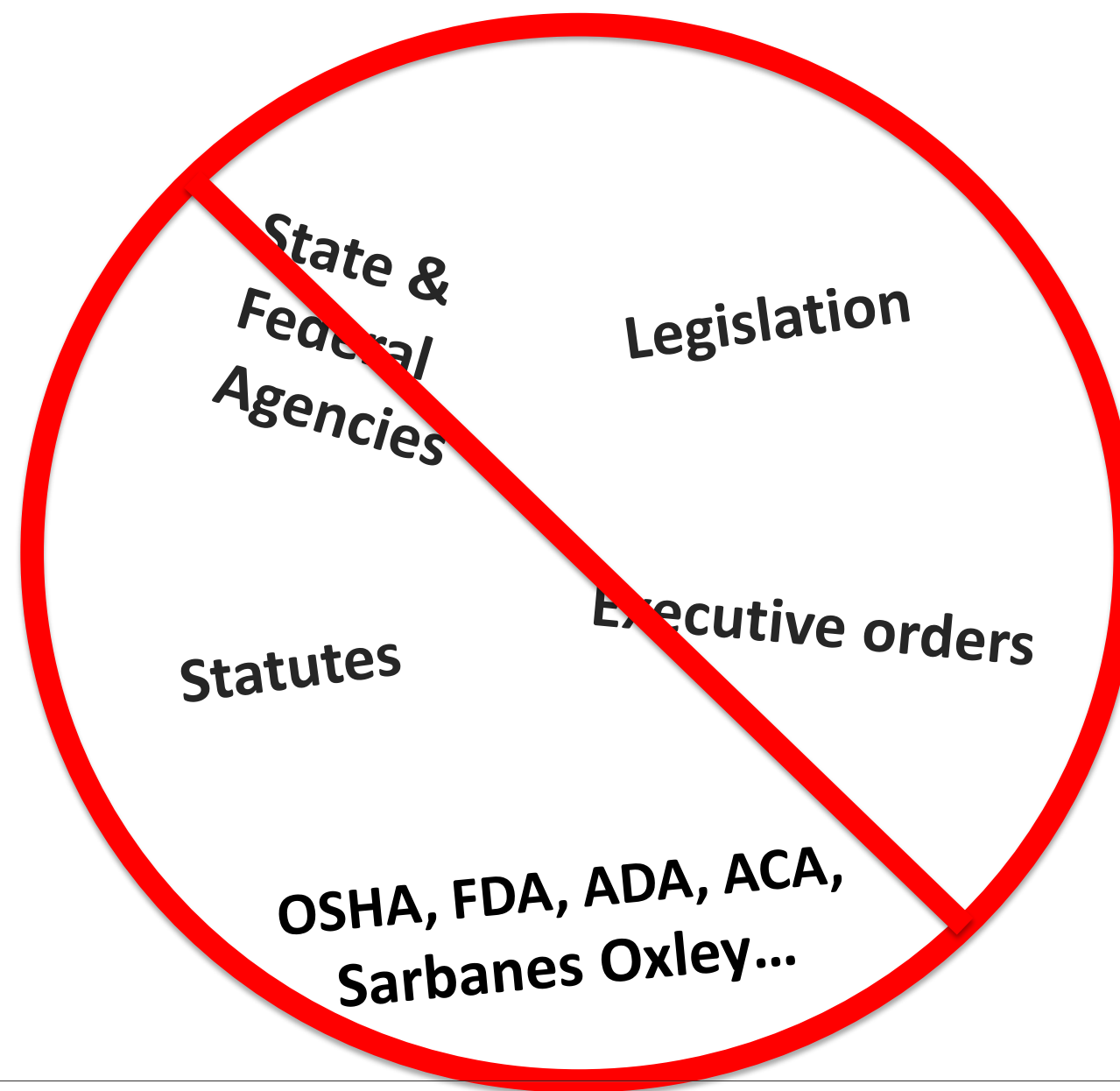


2024
TAX
ANNUAL
SUMMIT



SUPPORTER
Sponsor

Regulation: What do you Think of *First*?



THE
I84I
FOUNDATION

Instead, think of *Nature*.

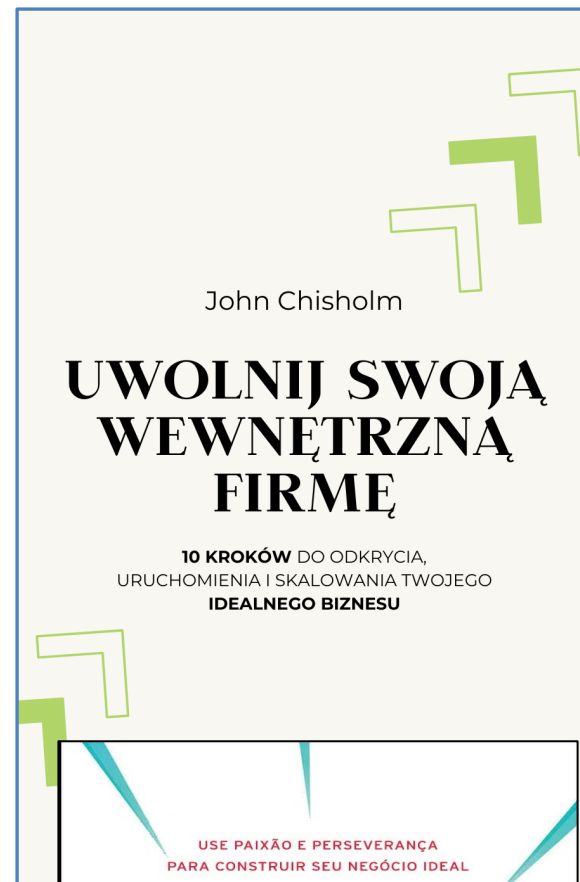


2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor



**Chapter 25:
“Regulations:
The Hidden Roadblocks
to Your Success”**



2024
TAX
ANNUAL
SUMMIT



SUPPORTER
Sponsor

Much, maybe Most, Societal Regulation Arises *Organically*



Notions and behaviors of:

- Affection
- Childrearing
- Conversation
- Courtesy
- Courtship
- Diet
- Fairness
- Hospitality
- Injury
- Insult
- Neighborliness
- Nuisance
- Property
- Propriety
- Trade...



2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Societal Regulation Arises *Organically*

From cooperation, often implicit:

- To avoid conflict (courtesy, property rights)
- For mutual benefit (trade, markets)

From mimetics (copying our friends & neighbors)

Customs and norms *evolve continuously, e.g.*

- Texting reduced frequency of phone calls
- The “pill” increased public acceptance of non-marital sex

Organic regulation is *inescapable*

- Even in totalitarian states, forbidden languages and underground/black markets arise

Organic Regulation of Societies Long Pre-dates Humanity



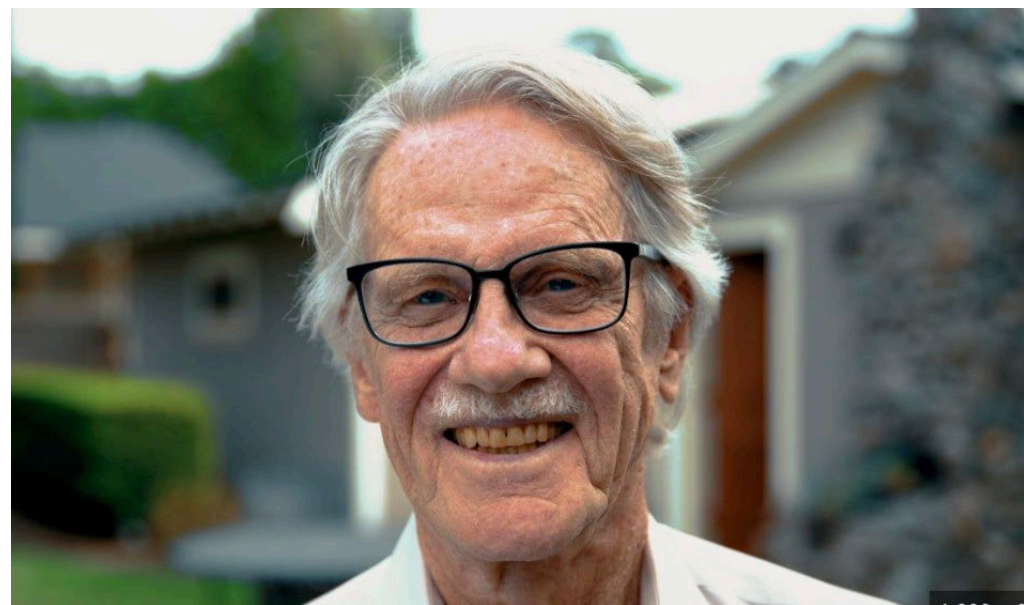
Packing behavior in wolves



Pecking order in chickens

2024
TAX
ANNUAL
SUMMIT

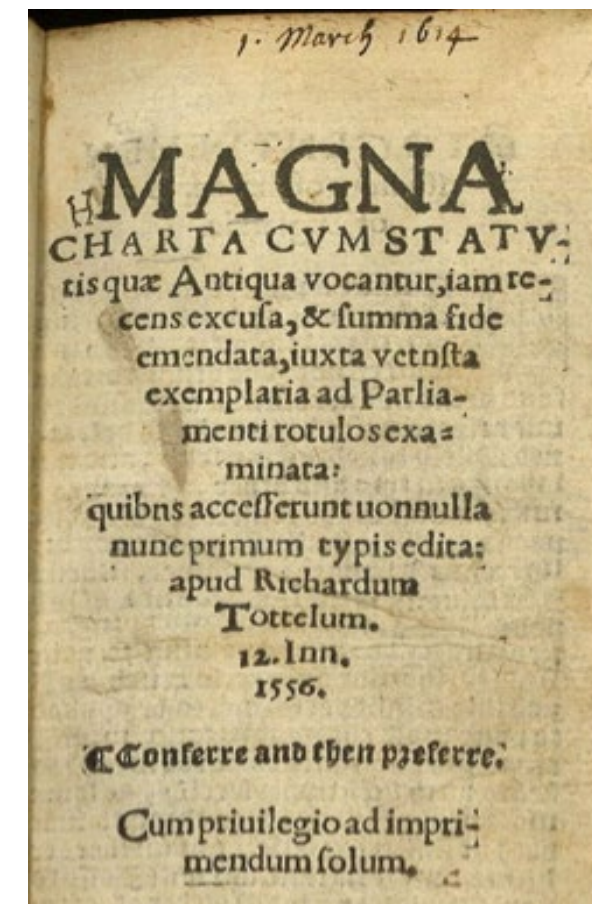
As with Customs, Property Rights, Trade, and Markets Also Emerge Spontaneously



Experimental Economics
Nobel laureate (2002) Vernon Smith

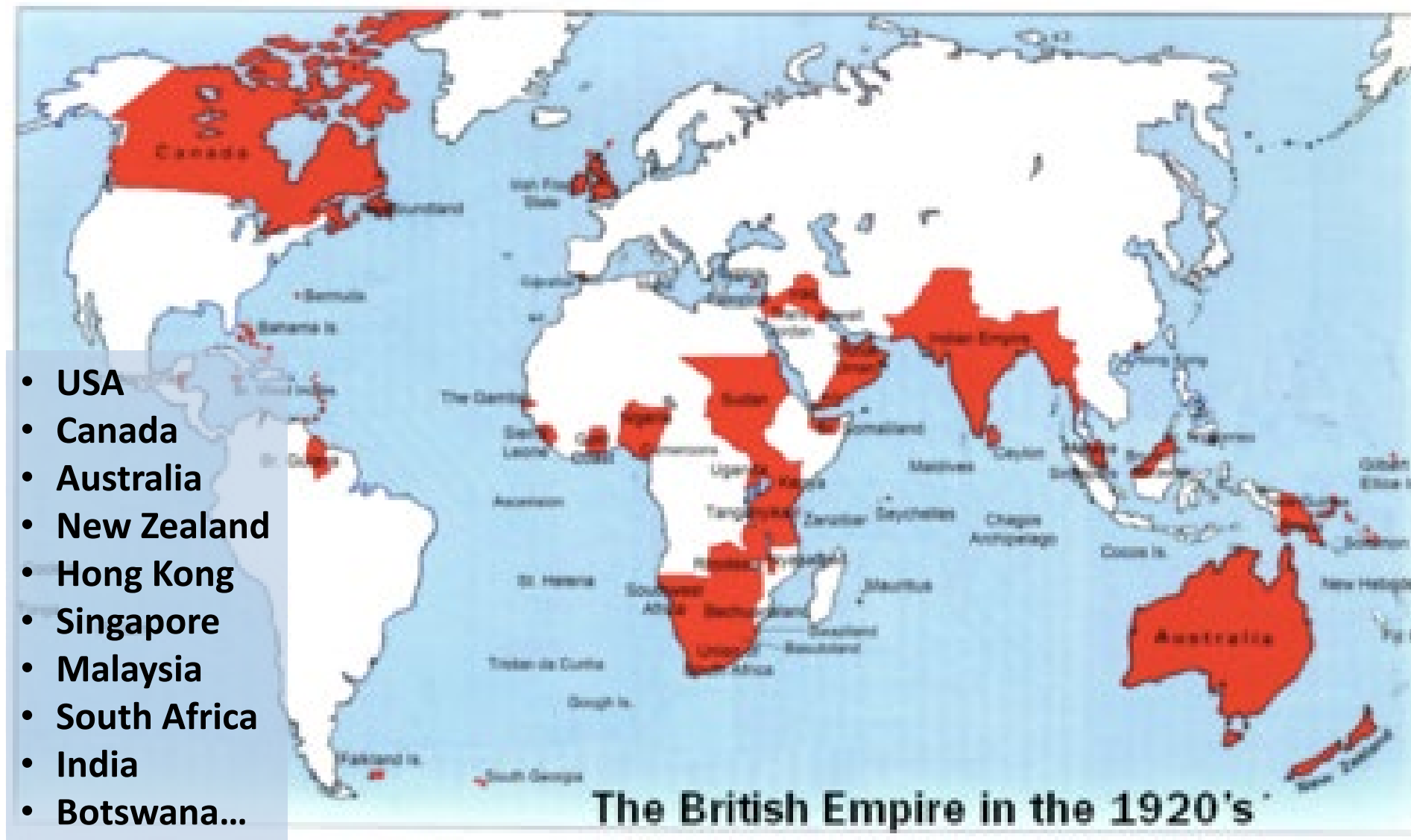
Also emergent: Common Law. What is it?

- **History traced to Magna Carta (1215)**
 - Limited rights of the Crown over barons and later, commoners
 - Private property; juries of peers;
no taxation without representation
- **Open-ended and Solutions-oriented**
 - Seeks best resolution for litigants
 - Resolved disputes (only); consensus-oriented
 - No attempt to predict future concerns or set policy
- **Real-world-grounded and Emergent**
 - Uses the “Reasonable Man/Person” standard
 - Exists only in judge & jury decisions (uncodified)
 - Co-evolves with decisions, customs, technology
 - Provides guidance & standards, not hard rules



As recently as 1920s, US & UK were primarily common law countries

Some 60 Former British Colonies/Protectorates Have Inherited Common Law Traditions



Economies & Societies are Regulated Organically

Organic regulation			

Economies & Societies are Regulated Organically

Organic regulation	Customs	Markets	Common law

Economies & Societies are Regulated Organically

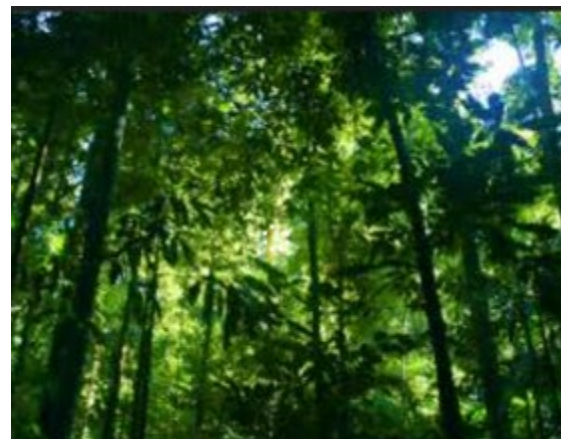
Organic regulation	Customs	Markets	Common law
How they emerge and evolve			

Economies & Societies are Regulated Organically

Organic regulation	Customs	Markets	Common law
How they emerge and evolve	From social interactions	From buyers and sellers exchanging for mutual benefit	Variation (by thousands of judges) and selection (by higher courts)

Many decision-makers make system more robust; harder to corrupt overall

Like Rainforests, Coral Reefs and the Human Brain,



Societies & Economies are *Complex Adaptive Systems*

Complex

- Bottom-up order
- Dynamic
- Non-equilibrium
- Non-linear/chaotic
- Unpredictable

Adaptive

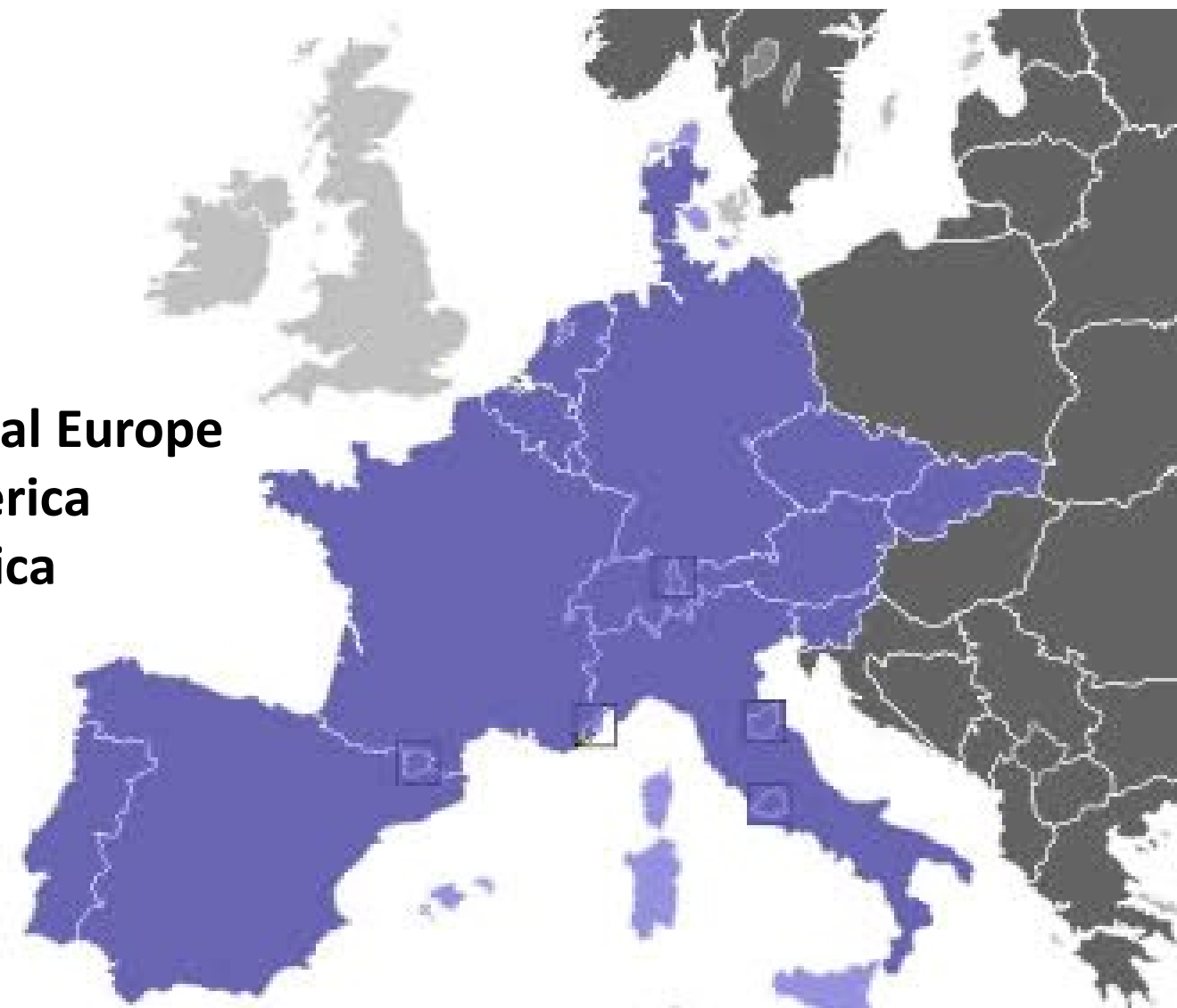
Adjusts to:

- External forces/shocks
- imposed constraints

In contrast,
France, Spain, Portugal, Germany, Netherlands, Belgium,
Italy and their former colonies inherited *Civil Law* Traditions

Most of:

- Continental Europe
- Latin America
- North Africa
- Asia



Civil Laws – Statutes, Regulations, Executive Orders – are *Imposed*

- By legislatures, parliaments, agencies, presidents, dictators
- Originated with Roman emperors & legislatures
- Advanced in early 19th century with the French Napoleonic Code
 - Brought clarity/consistency but disempowered judges
 - Helped Napoleon consolidate power
- “Policy-implementing” vs. “dispute resolving”



→ Legal regime of choice for politicians & despots worldwide

Civil Law

– *Imposed* Regulations –

Lie on Top of Organic Regulation

Imposed regulations			
Organic regulation	Customs	Markets	Common law
How they emerge and evolve	From social interactions	From buyers and sellers exchanging for mutual benefit	Variation (by thousands of judges) and selection (by other judges and higher courts)

Civil Law

– *Imposed* Regulations –

Lie on Top of Organic Regulation

Imposed regulations	Wage & Price Controls		
Organic regulation	Supply and Demand; Word of Mouth		
How they emerge and evolve	From social interactions	From buyers and sellers exchanging for mutual benefit	Variation (by thousands of judges) and selection (by other judges and higher courts)

Tend to accumulate; they evolve not continuously but at irregular intervals through amendments, negotiating, and horse-trading by legislators

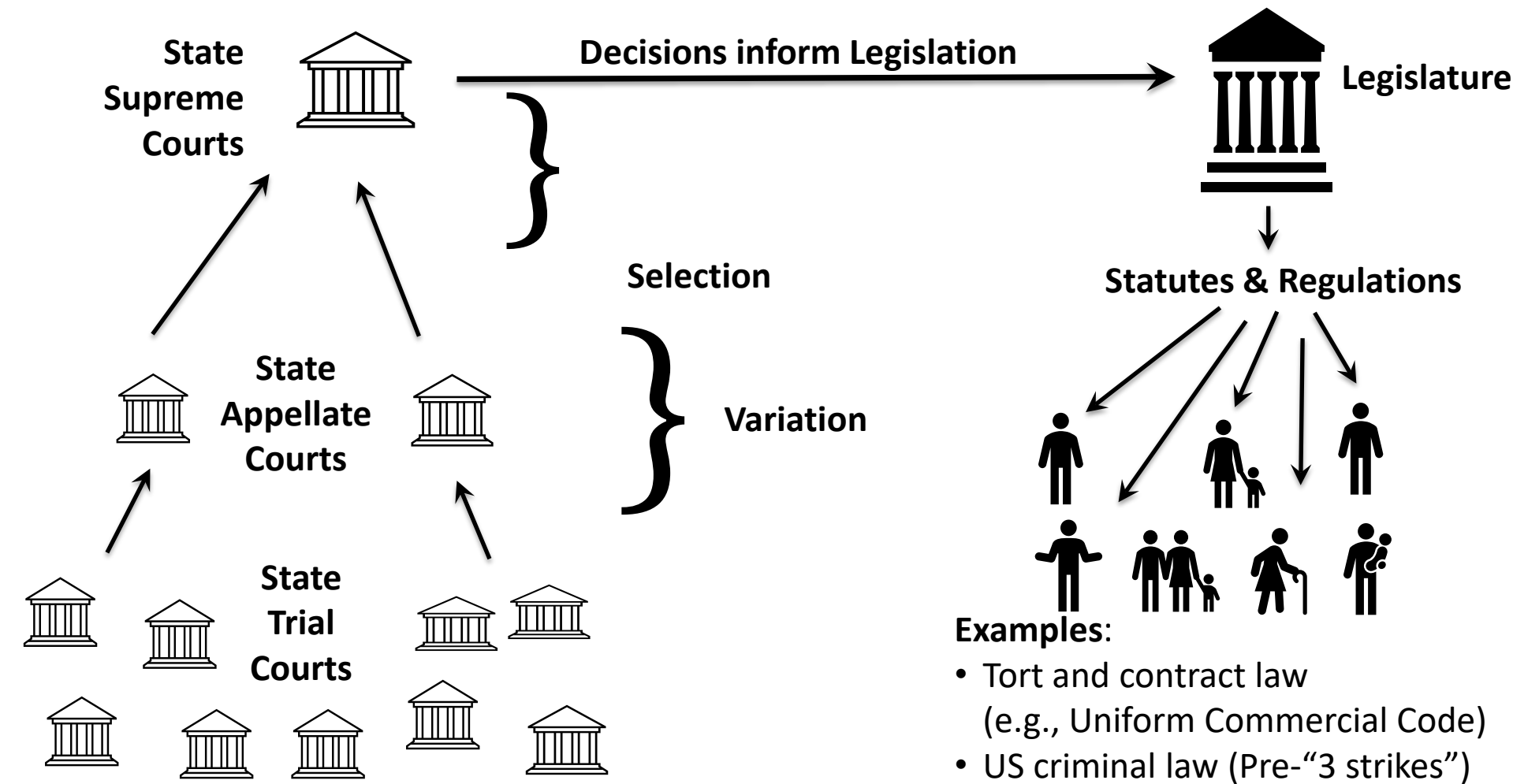
A central decision-making body = single point of failure, vulnerability to corruption

Why Statutes/Civil Law/Imposed Regulations?

- **Predictability (short-term)**
- **Efficiency (avoid many trials)**
- **Property right boundaries intangible
(noise, water, air, climate, space)**
- **Uniformity across jurisdiction(s)**

Common Law has long *Informed* Civil Law

Codifying common law has restrained civil law from overreaching



But Civil Law has *Public-Choice* Concerns

(Issues other than public welfare drive legislation)

- **Laws provide benefits to select groups to get officials (re-)elected**
- **Protect preferred businesses/industries from competition (cronyism)**
- **Empower and generate revenue for agencies through licenses, penalties, and exemptions**
- **Insulate bureaucracies from risk**

Many Human Impulses to Create & Impose Civil Laws

- **Take action, demonstrate power**
 - Sense of accomplishment
 - Virtue signaling
- **Appease vocal constituents**
- **Avoid risk/uncertainty/
delay**
- **Unawareness/dismissal of
unintended consequences**

A cartoon-style text graphic with the words "THERE OUGHTA BE A LAW!" in large, bold, yellow letters with a thick black outline and a slight 3D effect. The text is set against a background of faint, stylized architectural lines.

A Few Examples from the US

- **Can't buy or sell beer in 64-oz reusable containers (FL)**
- **License required to teach how to apply makeup (NV)**
- **Computer repair technicians need private investigator's licenses (TX)**
- **Online ride-sharing (Uber, Lyft) often prohibited**
- **FDA approved AIDS drugs only after public outcry**
- **License required to braid hair (half of 50 states)**

THE
I84I
FOUNDATION

Even Braiding Hair...



2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Empirical Advantages of Common over Civil Law

- **Better investor protection and access to finance; higher ownership dispersion**
- **Less corruption; better functioning labor markets; smaller black markets**
- **More independent judiciaries; more secure property rights; better contract enforcement**

La Porta, Lopez & Shleifer, "Economic Consequences of Legal Origins" (2007)

- **More than .5% per year greater growth in GDP/capita for common law than civil law countries**

Mahoney, "Common Law and Economic Growth" (2001)

2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor



Use of Common Law Correlates with Economic Growth

$$(1.006)^{250} = \underline{4.46}$$

(Slightly more than .5%/year difference in GDP/capita compounded over the last two and a half centuries)

Botswana: Fastest-growing Economy Worldwide, 1965-1995

- British protectorate after 1885
- Gave stature to tribal law
- Gained independence in 1966



7.7%/year
Average
Annual
Growth
Rate

Combines 2 Forms of Common Law: Tribal & British

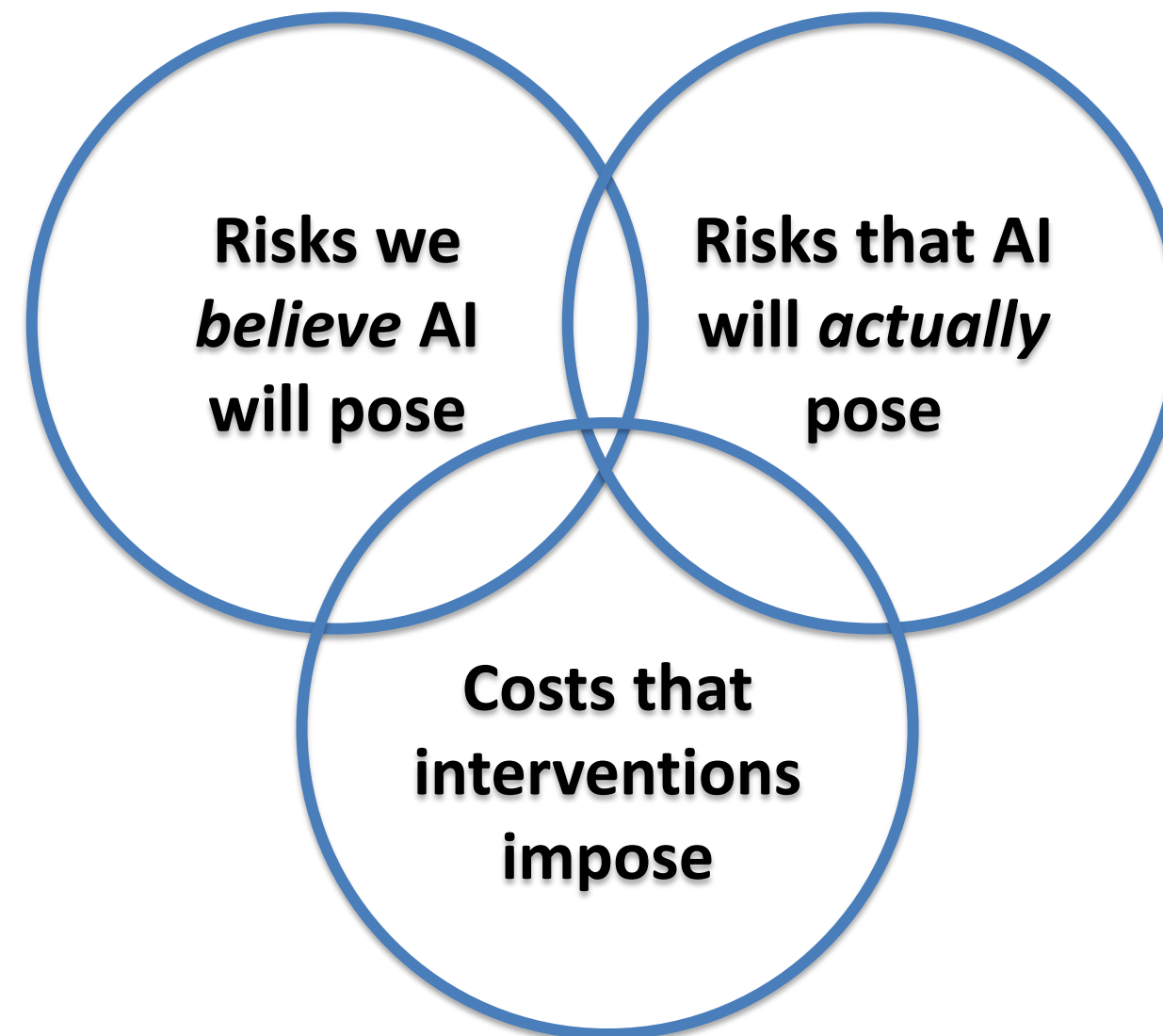
2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

The Problem with Precautionary Regulation



**Only through real-world experience
can we discover unknown risks and costs**

Case Study: Drones

Civil Law vs. Common Law Approaches

Applications

- Deliveries
- Farming
- Construction
- Filmmaking
- Security
- Sports

Risks

- Falling
- Collision
- Privacy



Current US Regulation of Drones

Federal Aviation Admin (FAA)

- Well away from airports
- Up to 400 feet in altitude
- Dedicated operator
- Within visual sight of operator
- During daylight hours only
- For noncommercial purposes

Outcomes

- Top drone manufacturer worldwide: DJI Technology Co. (Shenzhen)
 - **DJI** owns 2/3 of US market over \$1000
 - #2 vendor, 3D Robotics, abandoned h/w; now software only

Innovation Disincentived

- Recognizing airborne objects
- Extrapolation/avoidance
- Peer-peer Communication

Common-Law Regulation of Drones

would foster advances in intelligence, safety, utility

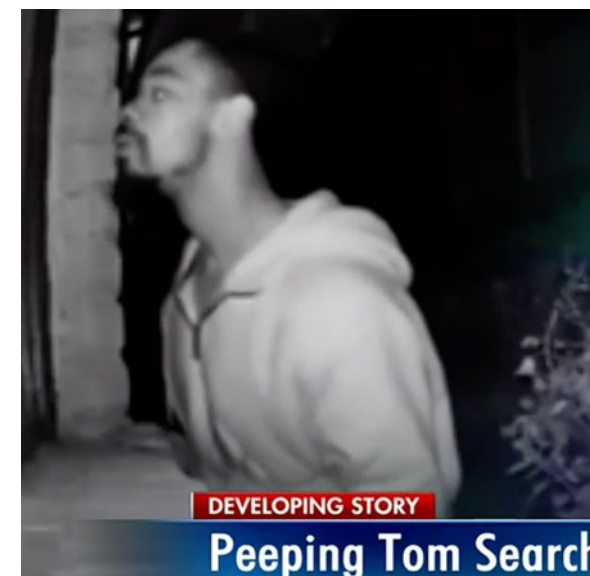
Dangerous Animal common law

- Owners responsible for controlling/restraining dangerous animals to protect life and property



Peeping Tom common law

- Illegal to secretly peep into, photo, or video an occupied room



Common Law also provides for:

- Liability for negligence/willful misconduct
- Strict liability for defects (independent of negligence or intent)

Economic Stagnation and Greater use of Civil Law *Reinforce Each Other*

More
civil law
increases
stagnation



More
stagnation
invites more
civil law

E.g. Europe today

2024
TAX
ANNUAL
SUMMIT

How US Civil Law Has Supplanted Common Law

Common Law

Civil Law

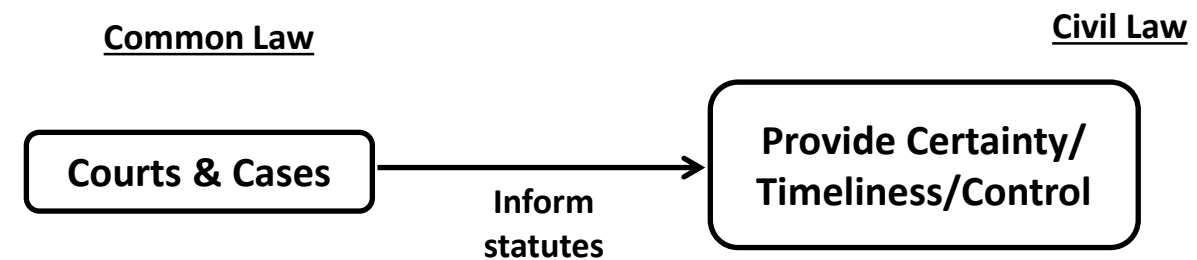
2024
TAX
ANNUAL
SUMMIT



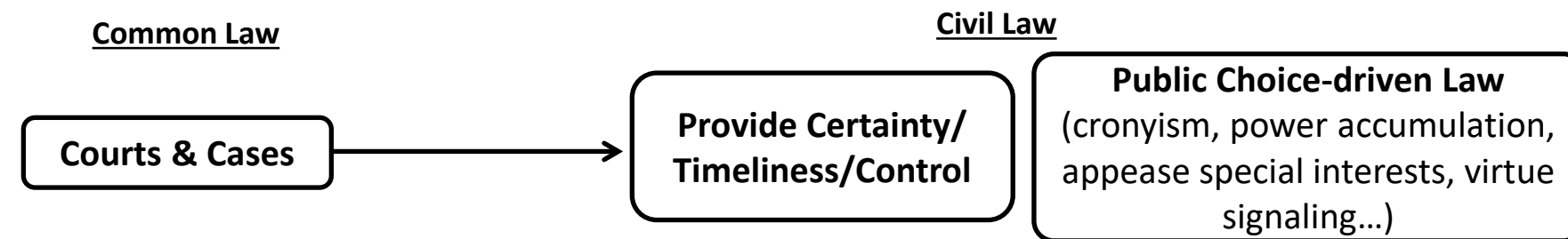
BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

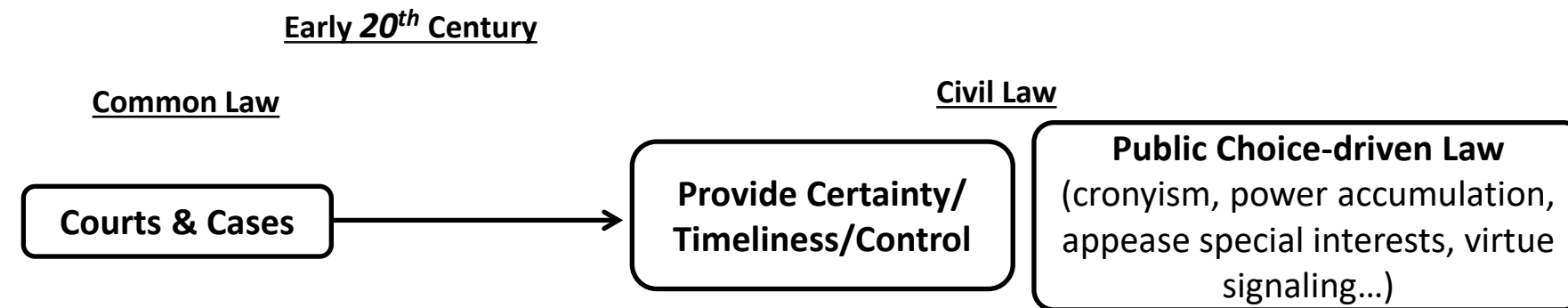
How US Civil Law Has Supplanted Common Law



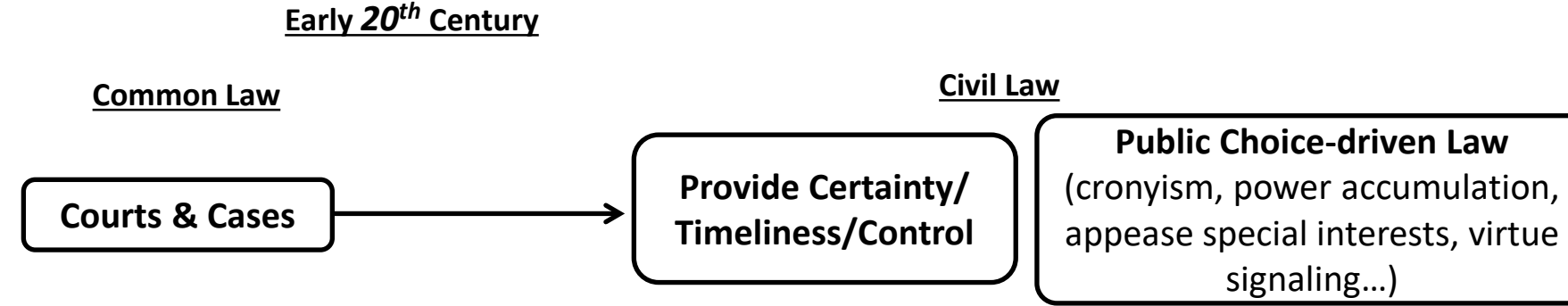
How US Civil Law Has Supplanted Common Law



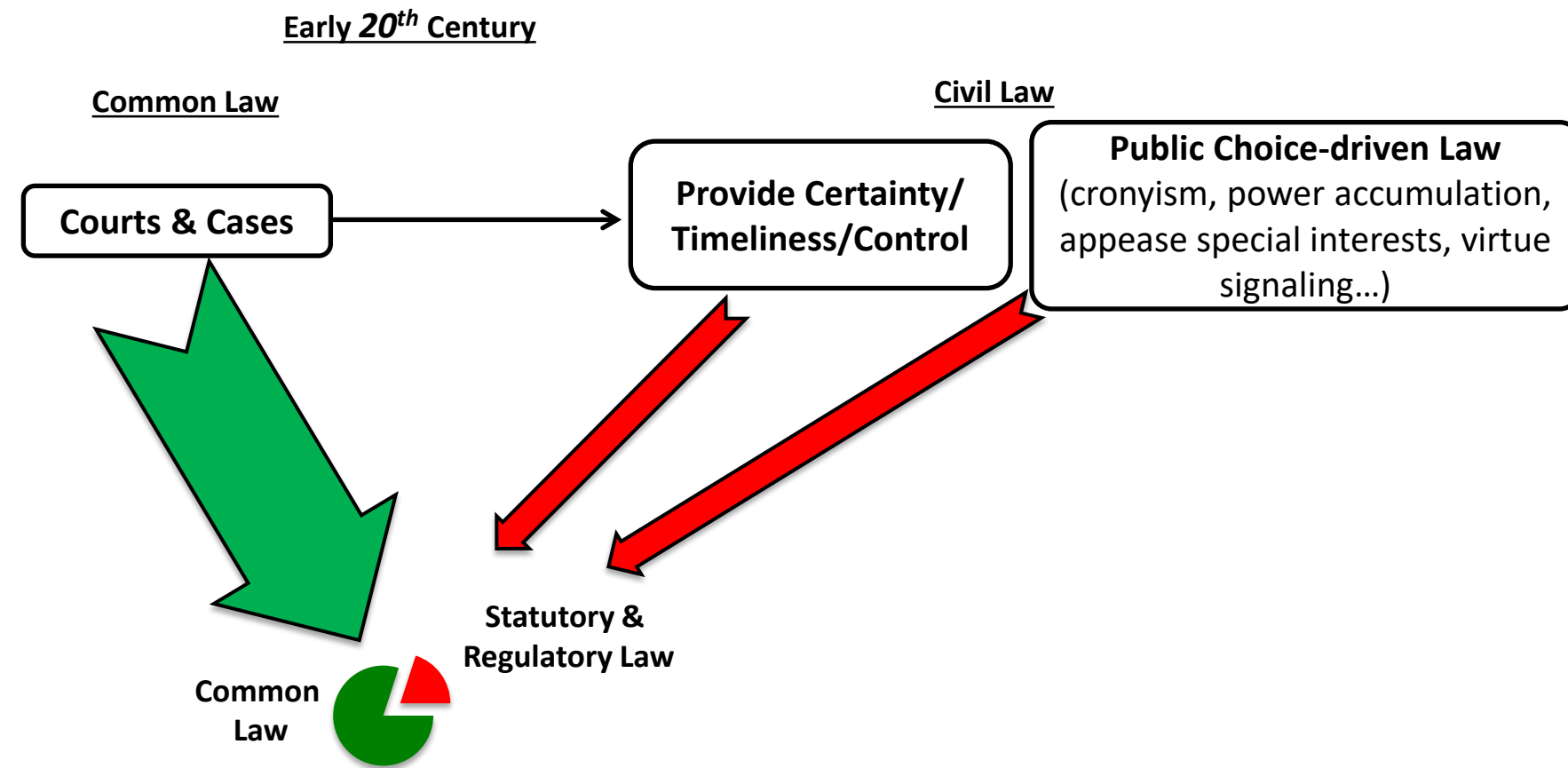
How US Civil Law Has Supplanted Common Law



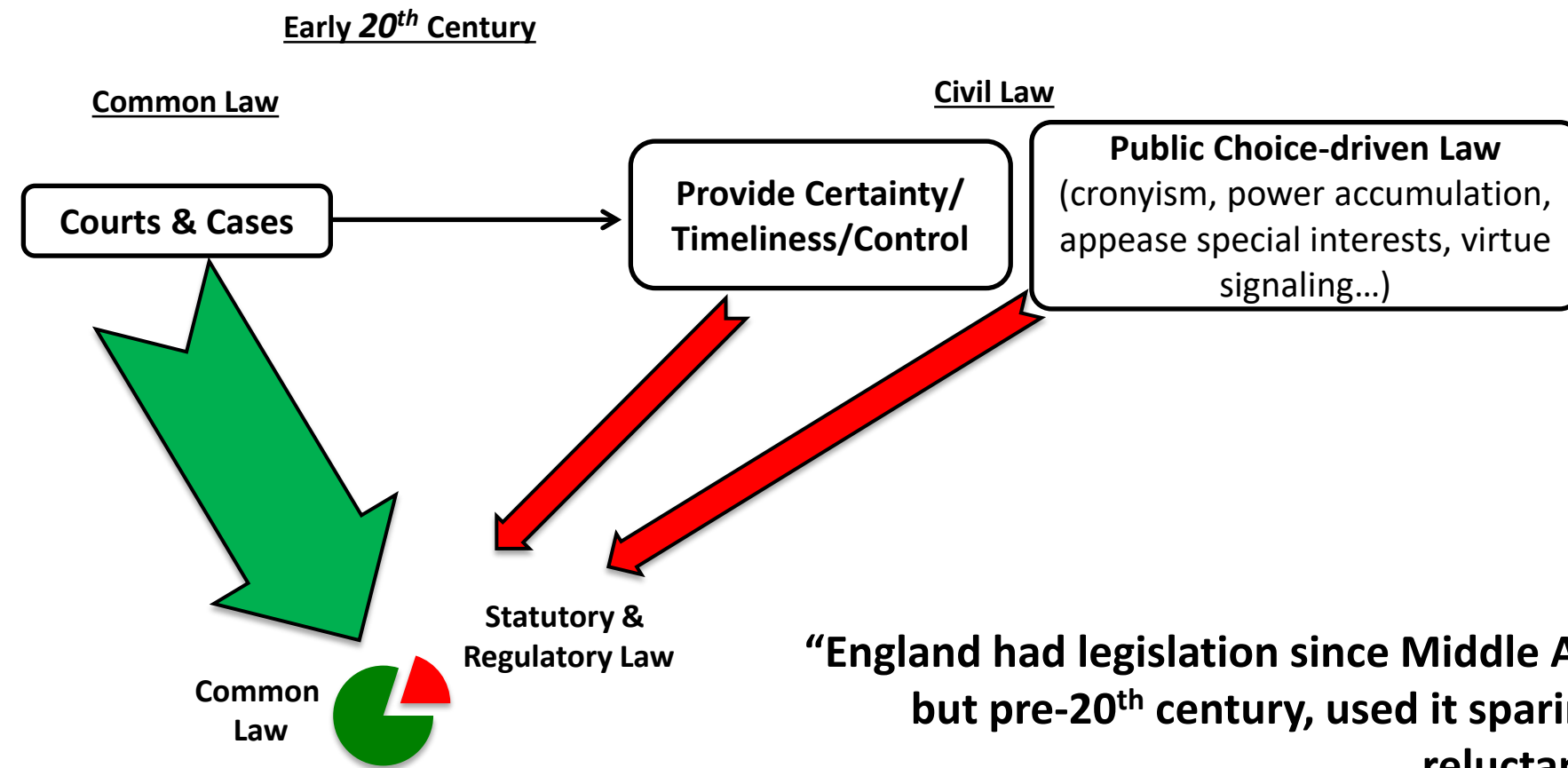
How US Civil Law Has Supplanted Common Law



How US Civil Law Has Supplanted Common Law

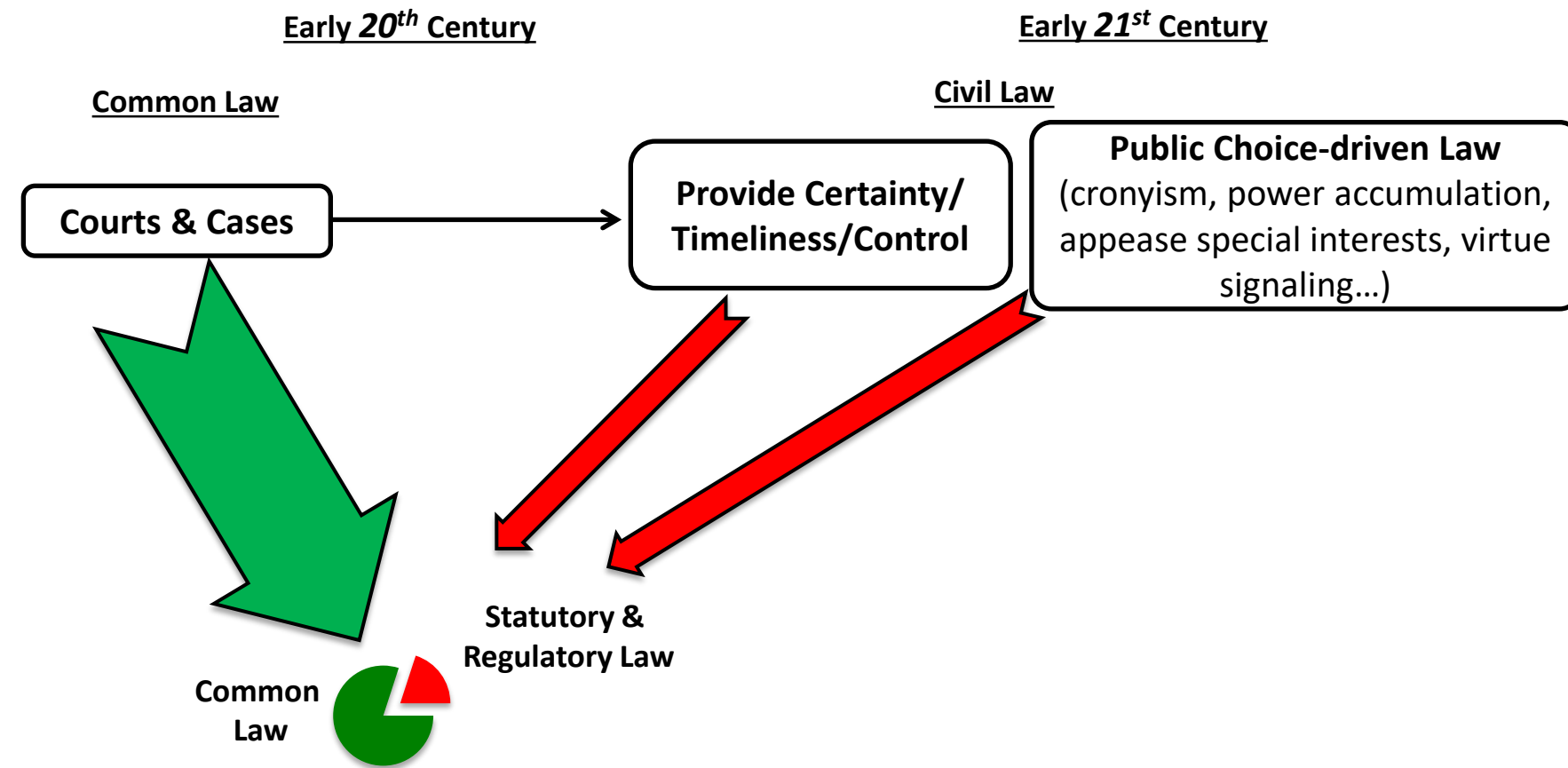


How US Civil Law Has Supplanted Common Law

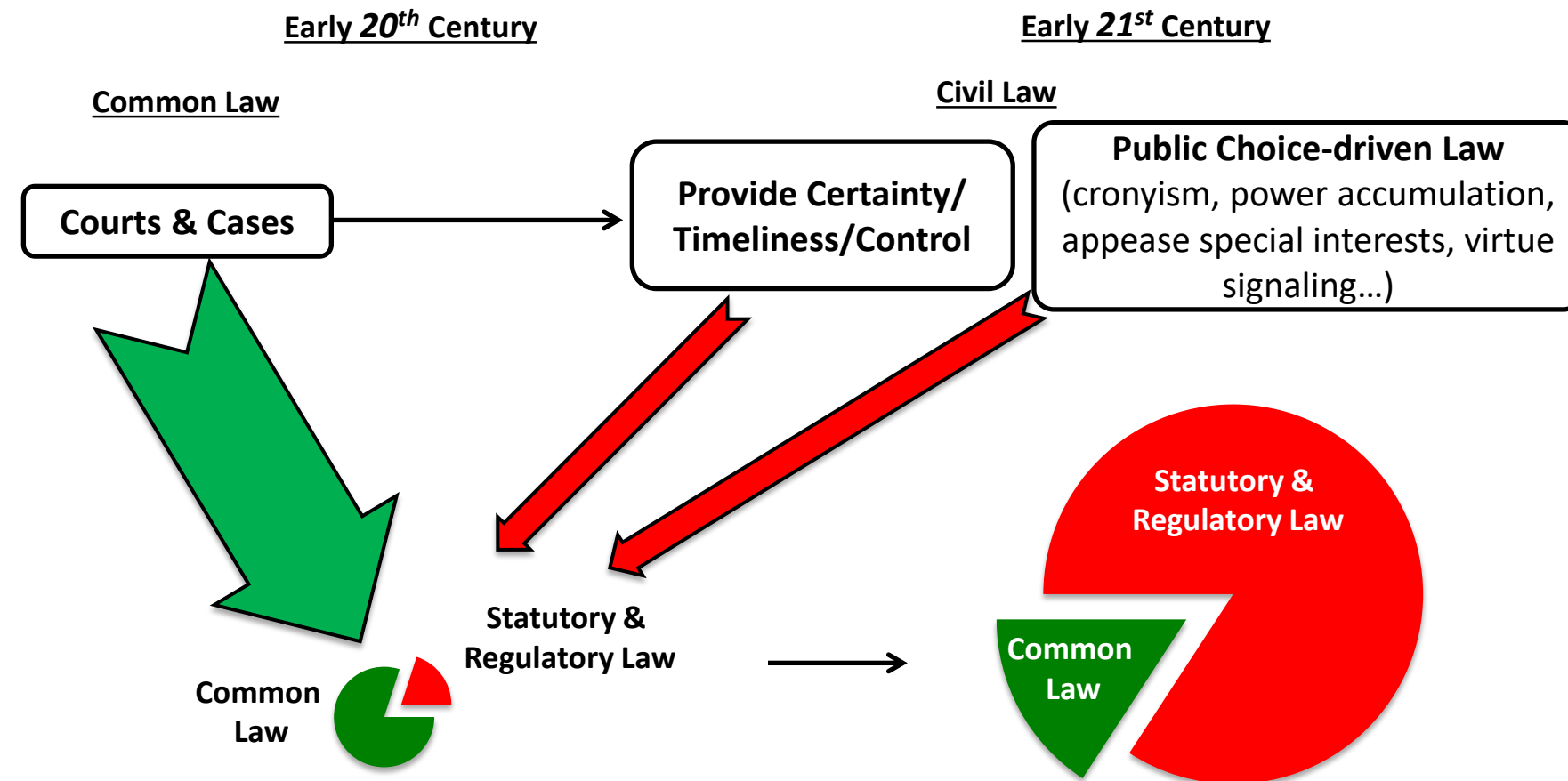


“England had legislation since Middle Ages,
but pre-20th century, used it sparingly,
reluctantly”
-- Ponzetto, Fernandez

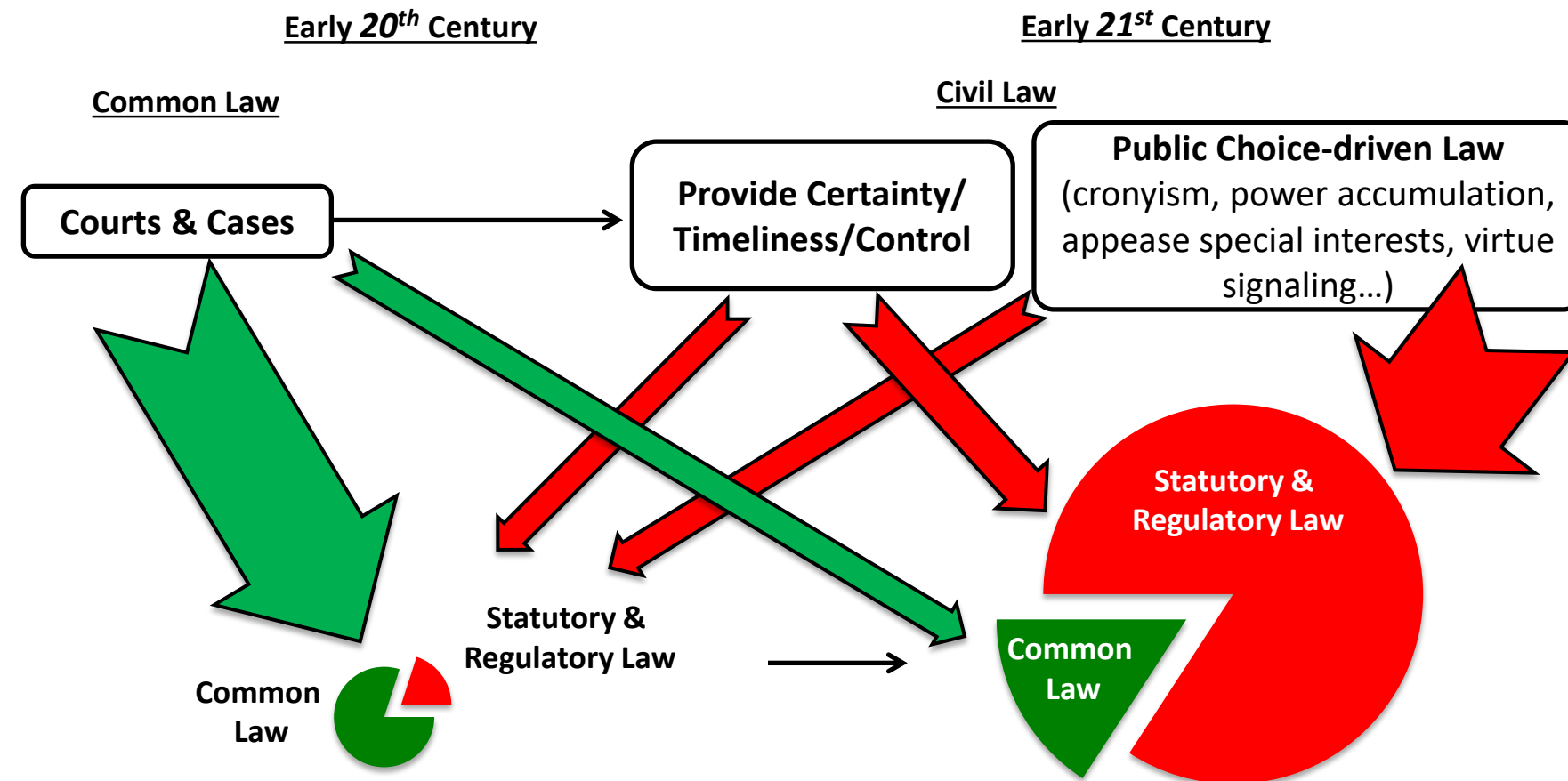
How US Civil Law Has Supplanted Common Law



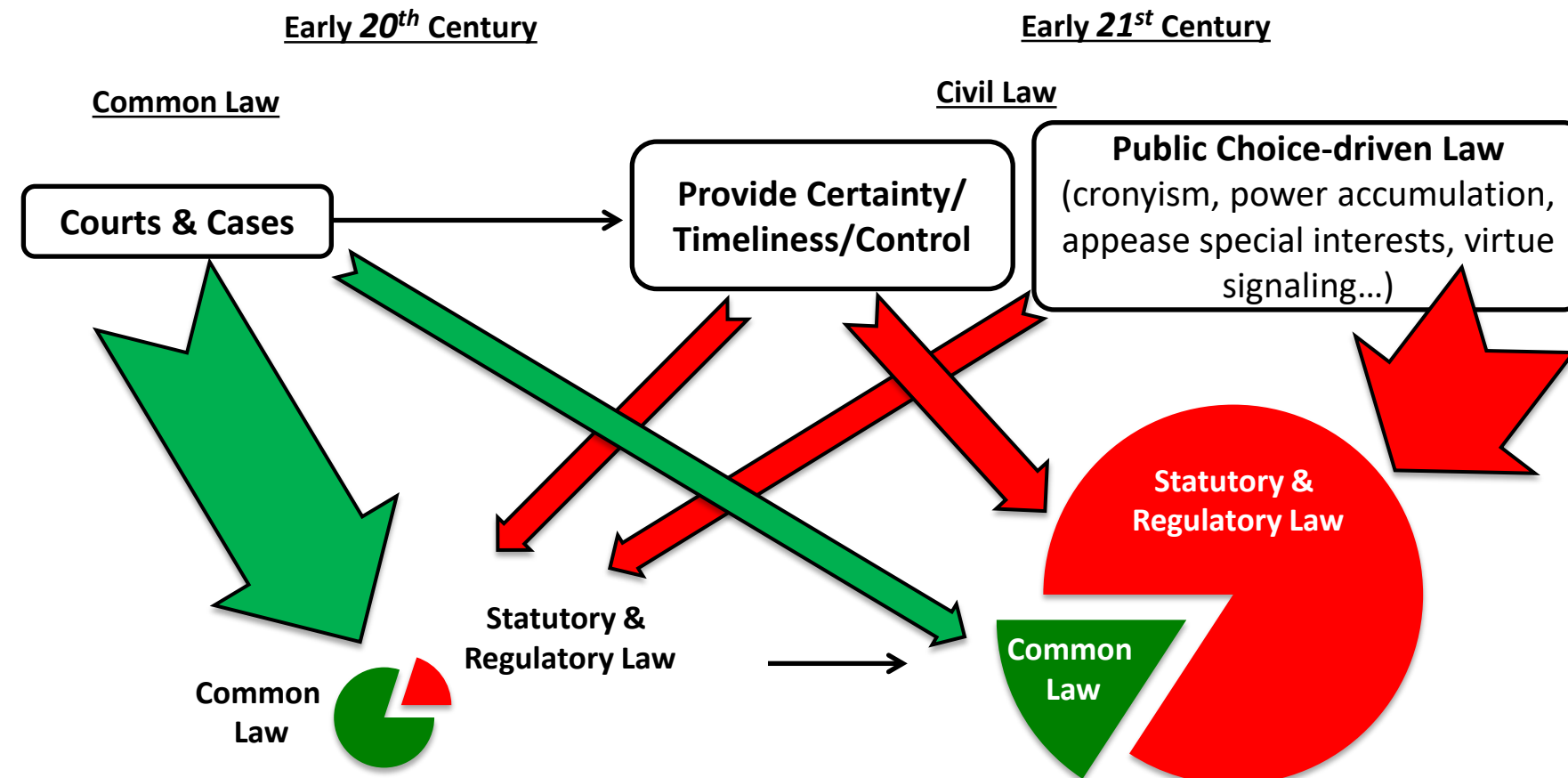
How US Civil Law Has Supplanted Common Law



How US Civil Law Has Supplanted Common Law

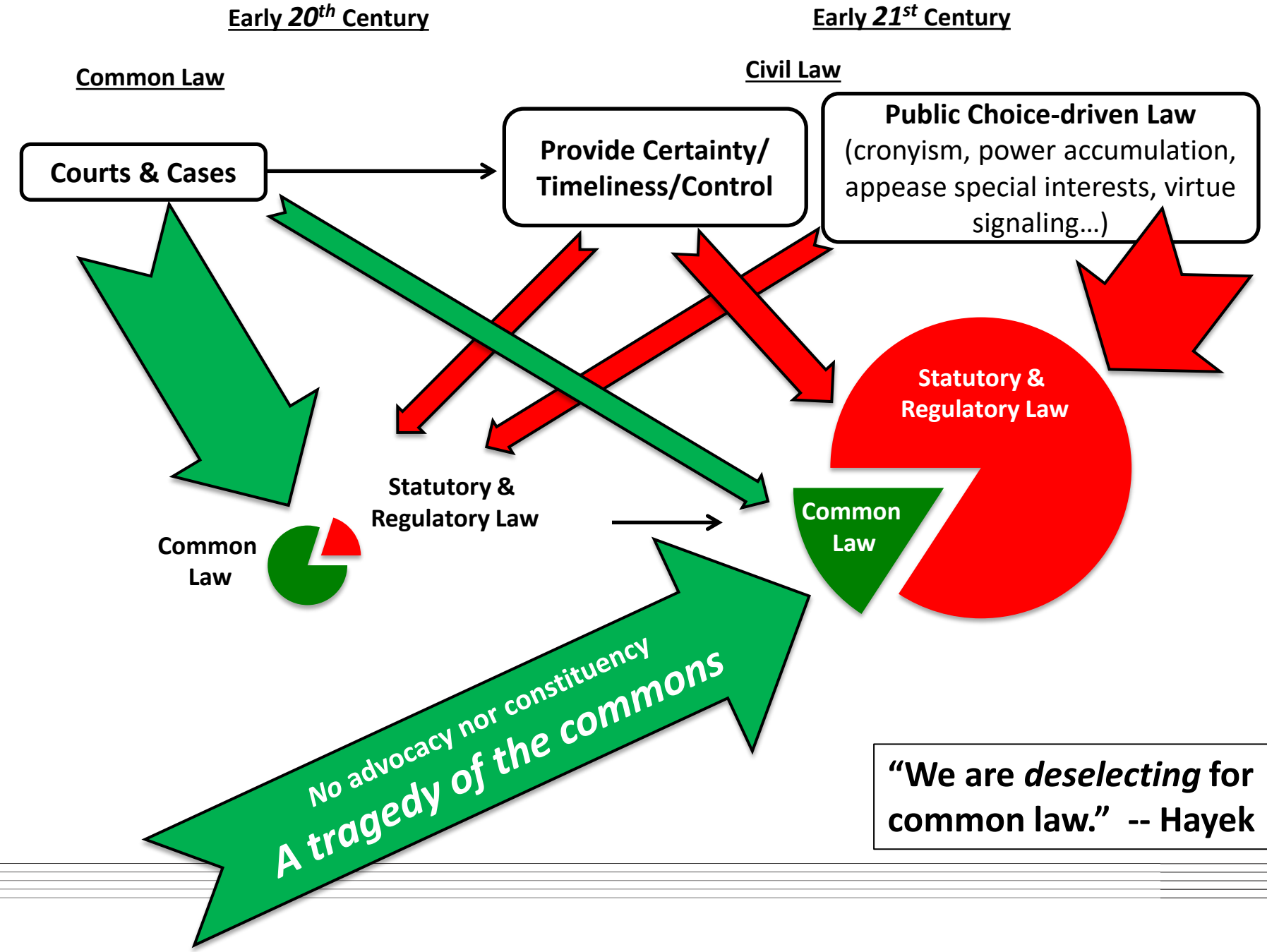


How US Civil Law Has Supplanted Common Law



- 1) As legislation (especially federal) *imposes* on more private matters (OSHA, FDA, ADA, ACA....)
- 2) As regulatory and criminal *enforcement* has grown

How US Civil Law Has Supplanted Common Law



2024
**TAX
ANNUAL
SUMMIT**



SUPPORTER
Sponsor

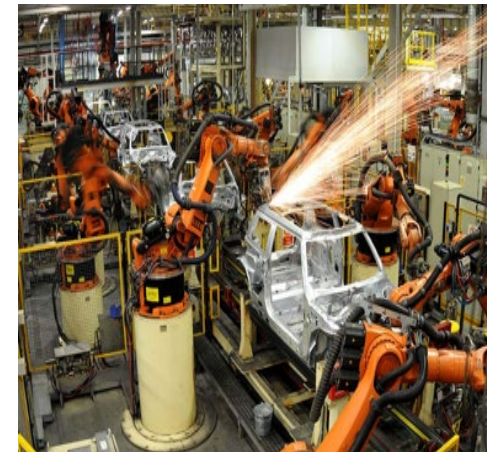
The Exploration-Exploitation Model is used throughout the Social Sciences



Foraging for food



Oil & gas drilling



Product-market fit &
manufacturing scale-up



Portfolio management

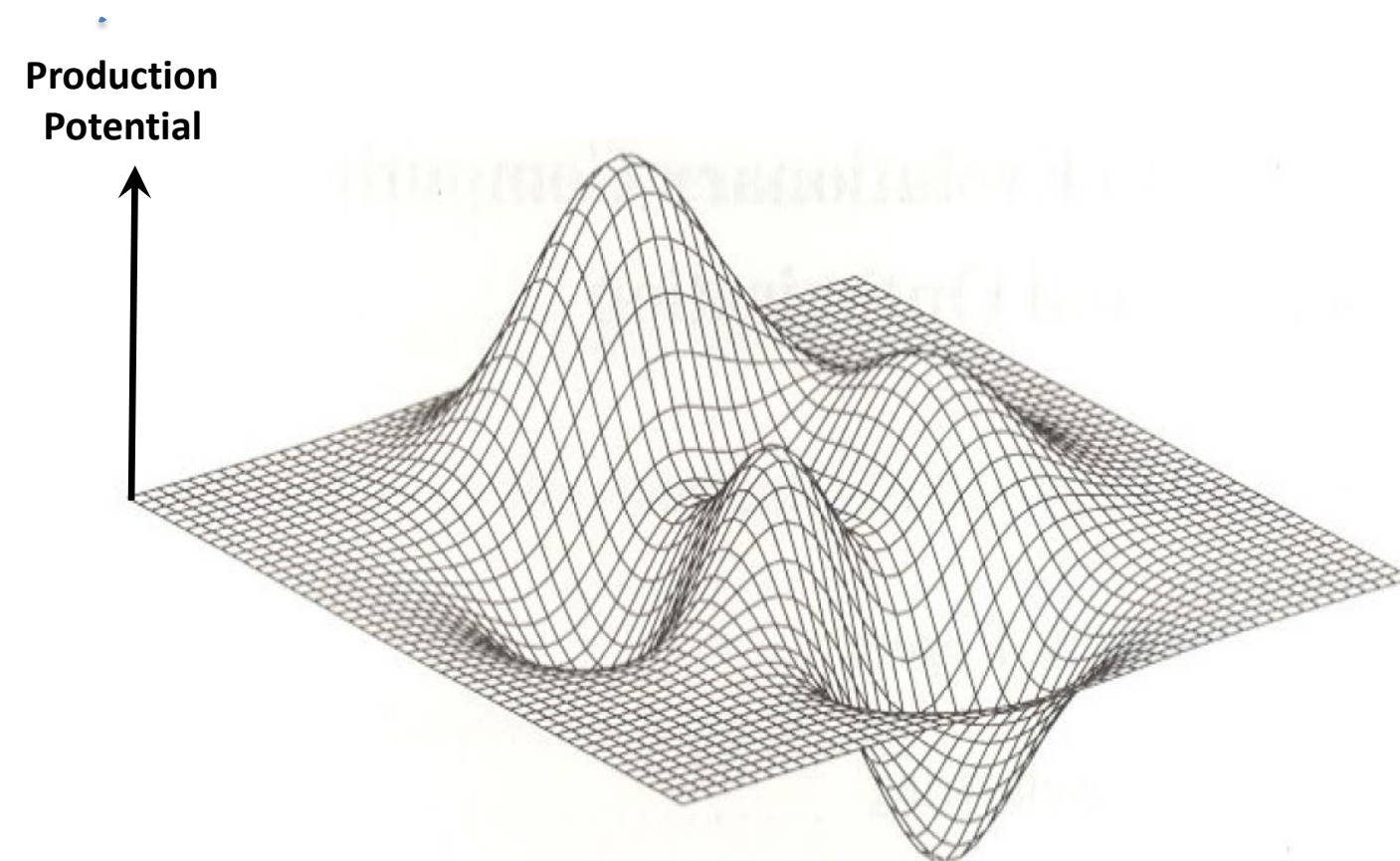
- Exploration/learning *informs* exploitation/standardization/scaling
- Goal is to *optimize a fit* (survival & reproduction, revenue, profit...)
- Challenge: find the optimal mix
 - Over-explore: Much upfront expense, minimal pay-off
 - Over-exploit: Rapid scale-up, poor/uncertain product-market fit

Exploration-Exploitation Optimization Model: Forager Ants



- **A few ants continuously seek new food sources (Explore)**
- **Most ants, after learning of the food, deliver it to the colony, straighten the paths, cut shortcuts, and maintain the paths (Exploit)**

Exploration = Searching a “Landscape”



“Landscape” = natural ecosystem, farmland,
financial markets, product markets, military terrain...

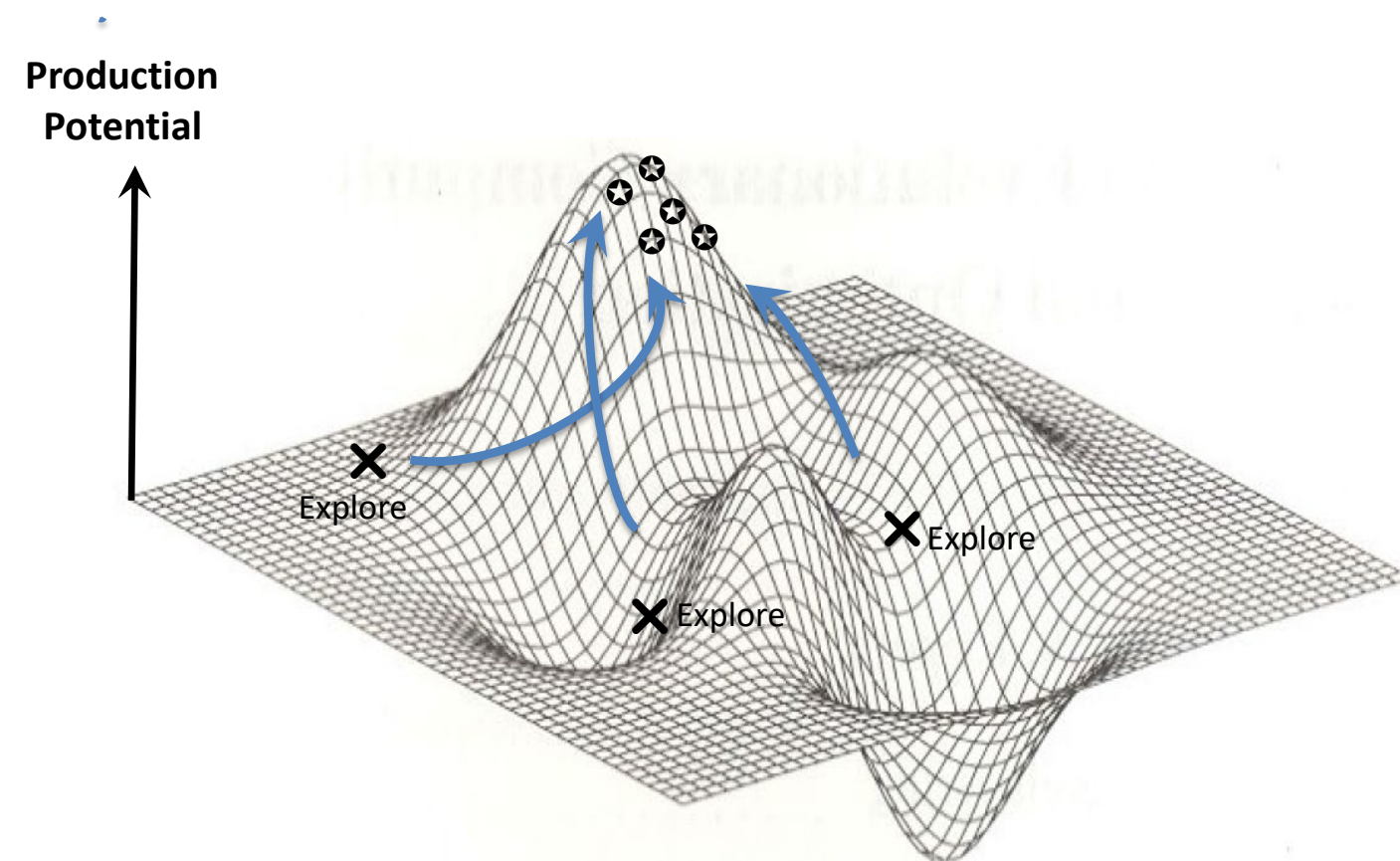
2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Exploration = Searching a “Landscape”



“Landscape” = natural ecosystem, farmland,
financial markets, product markets, military terrain...

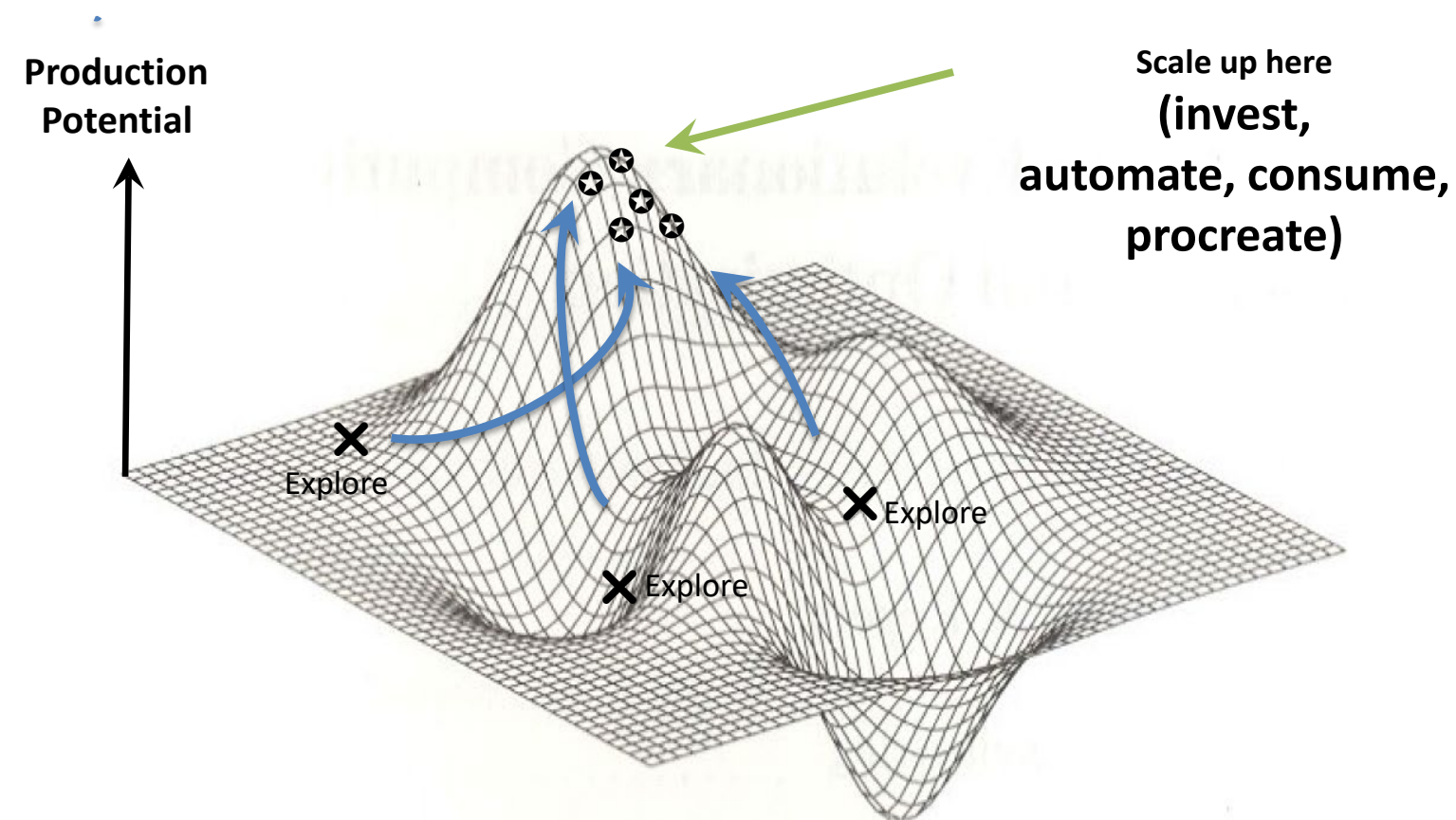
2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

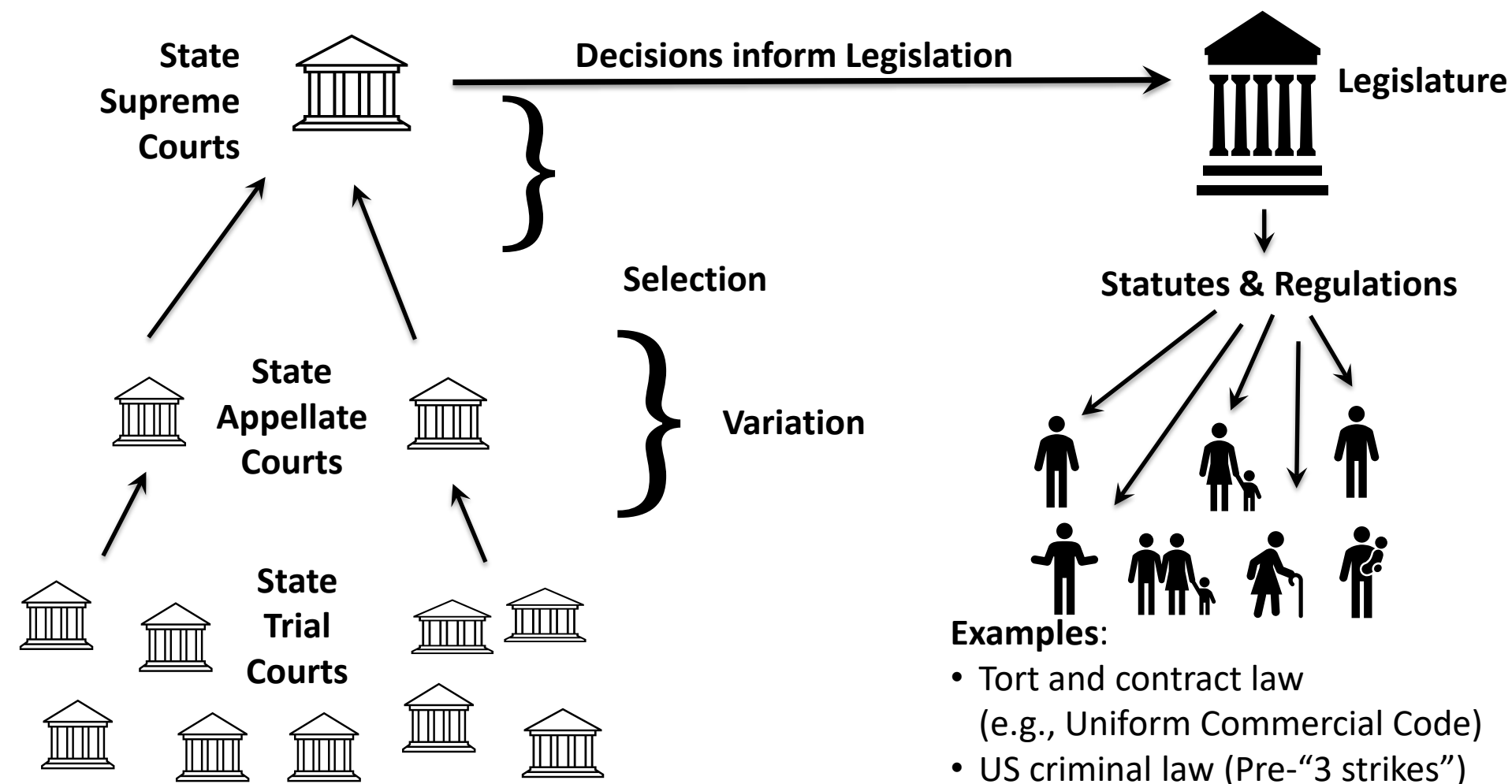
SUPPORTER
Sponsor

Exploration = Searching a “Landscape”

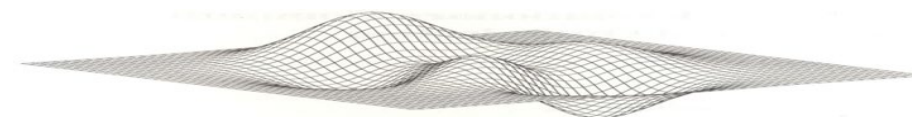


“Landscape” = natural ecosystem, farmland,
financial markets, product markets, military terrain...

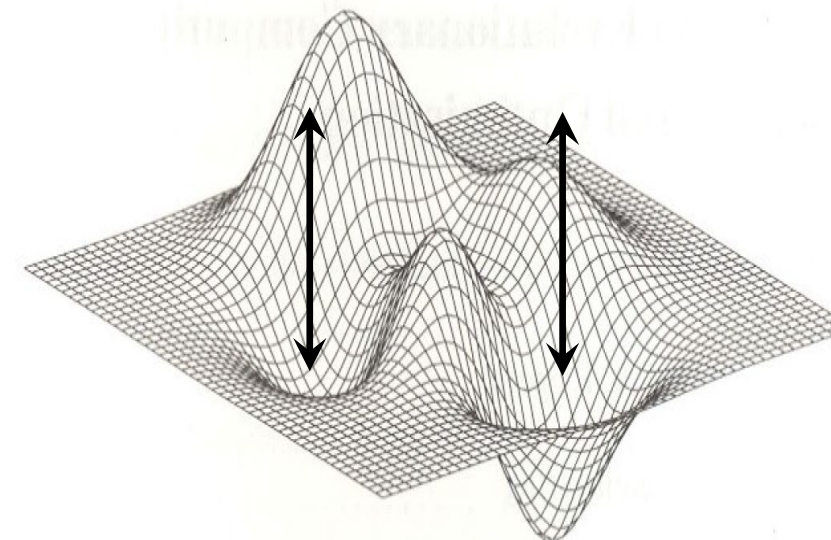
Common Law is Exploration/Discovery; Civil law is Exploitation/Scaling Up



What The Model Tells Us (1 of 3)



Smooth/stable
landscapes need *less*
exploration.



Varied/dynamic landscapes
need *more* exploration.

**“When an environment is sufficiently *homogeneous and static*,
statute law is superior;
but when more *heterogeneous and dynamic*, *case [common] law* is superior.”**

--- “Statute Law or Case Law?”, Anderlini, et al.
London School of Economics, August 2008

2024
TAX
ANNUAL
SUMMIT

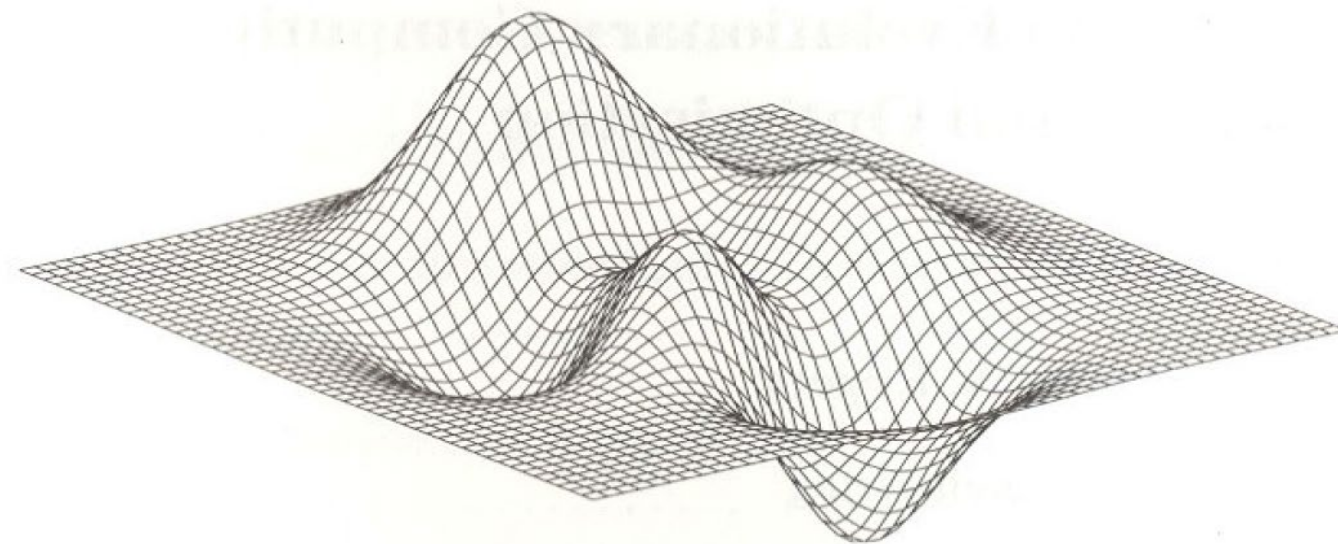


CLUBDEINVERSOES.COM
BY CARTA FINANCIERA

BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

What The Model Tells Us (2 of 3)

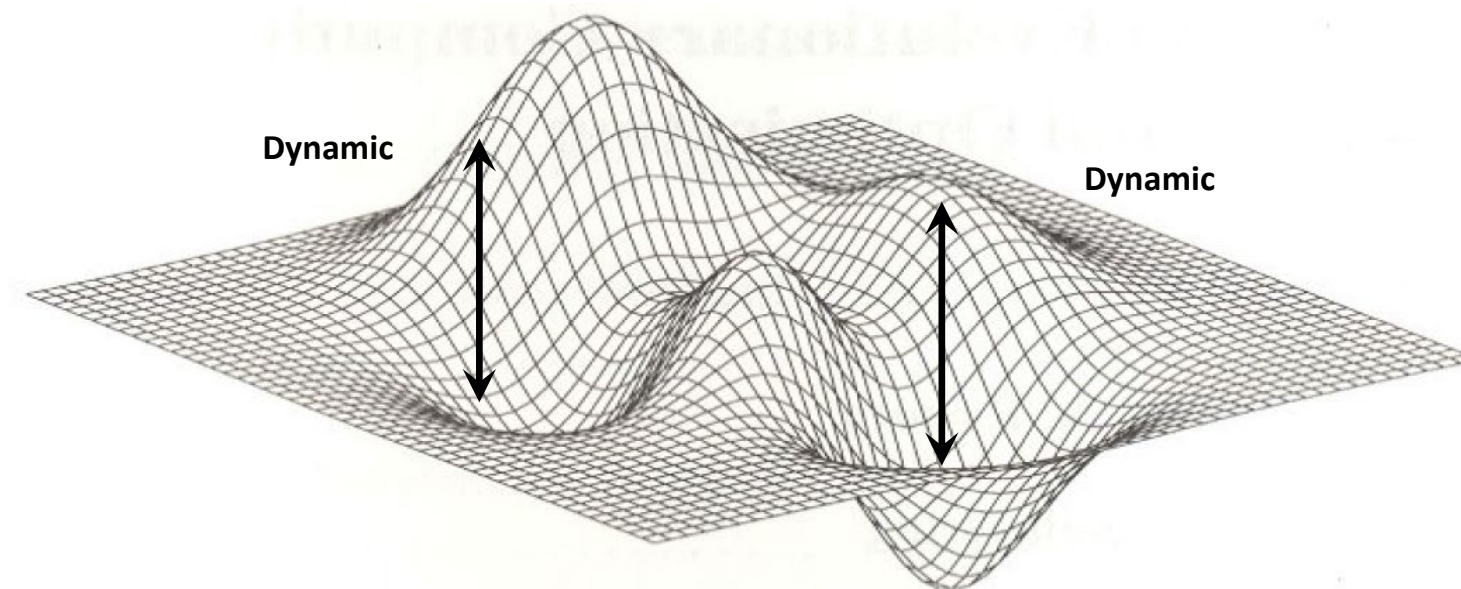


For:

- *Greater* noise and uncertainty
- *Broader* territorial expanse
- *Longer* potential payoffs

} *More*
exploration
optimal

What The Model Tells Us (3 of 3)



**Continuously-changing landscapes
need *continuous* exploration**

2024
TAX
ANNUAL
SUMMIT

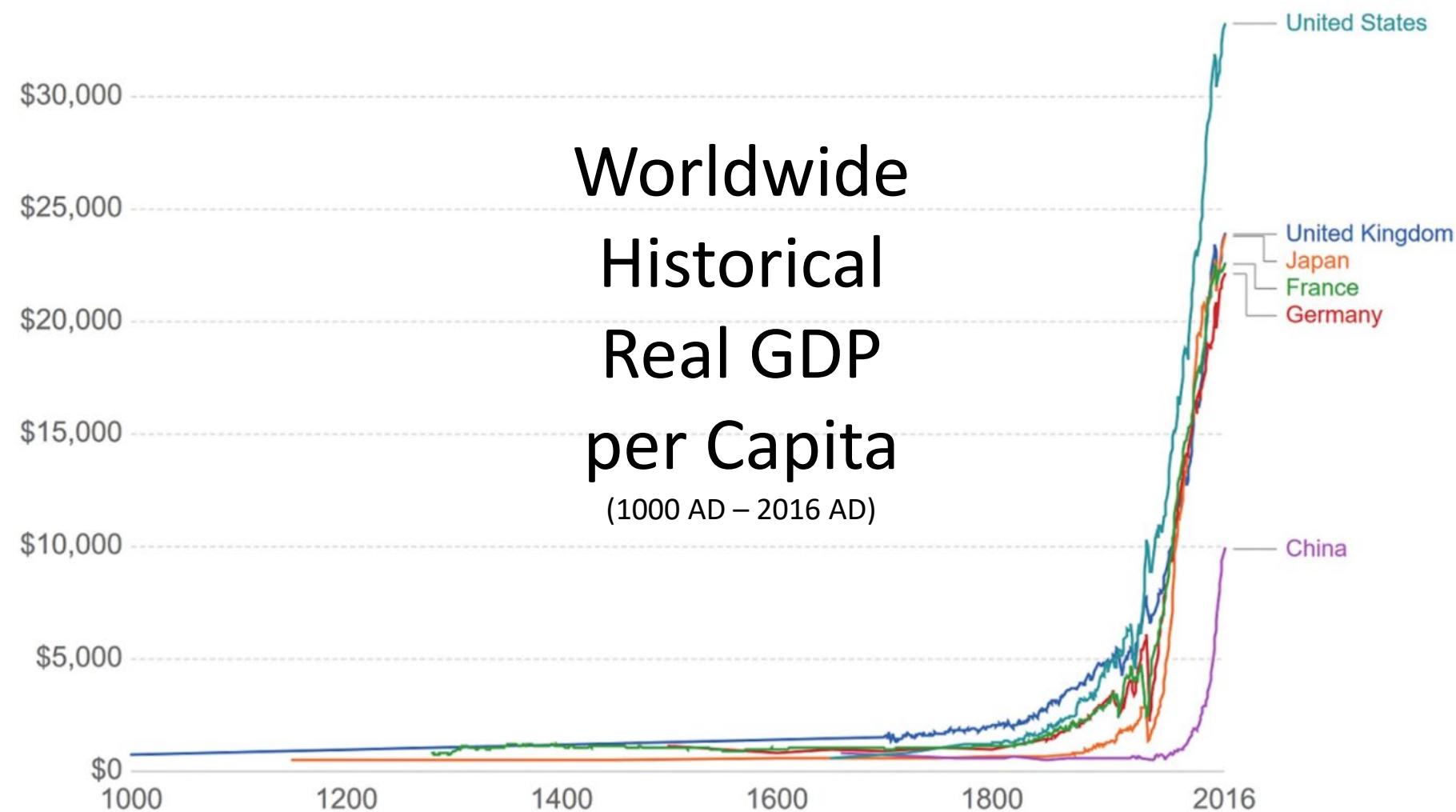


BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Increasing Change/Uncertainty (1 of 5)

Dierdre McCloskey's "Great Enrichment"



Source: Maddison Project Database (2018) tinyco.re/19274920 • Powered by ourworldindata.org
Note: The units of measurement is '1990 US dollar' which is used to compare Purchasing Power Parity and GDP across countries over time.

2024
TAX
ANNUAL
SUMMIT



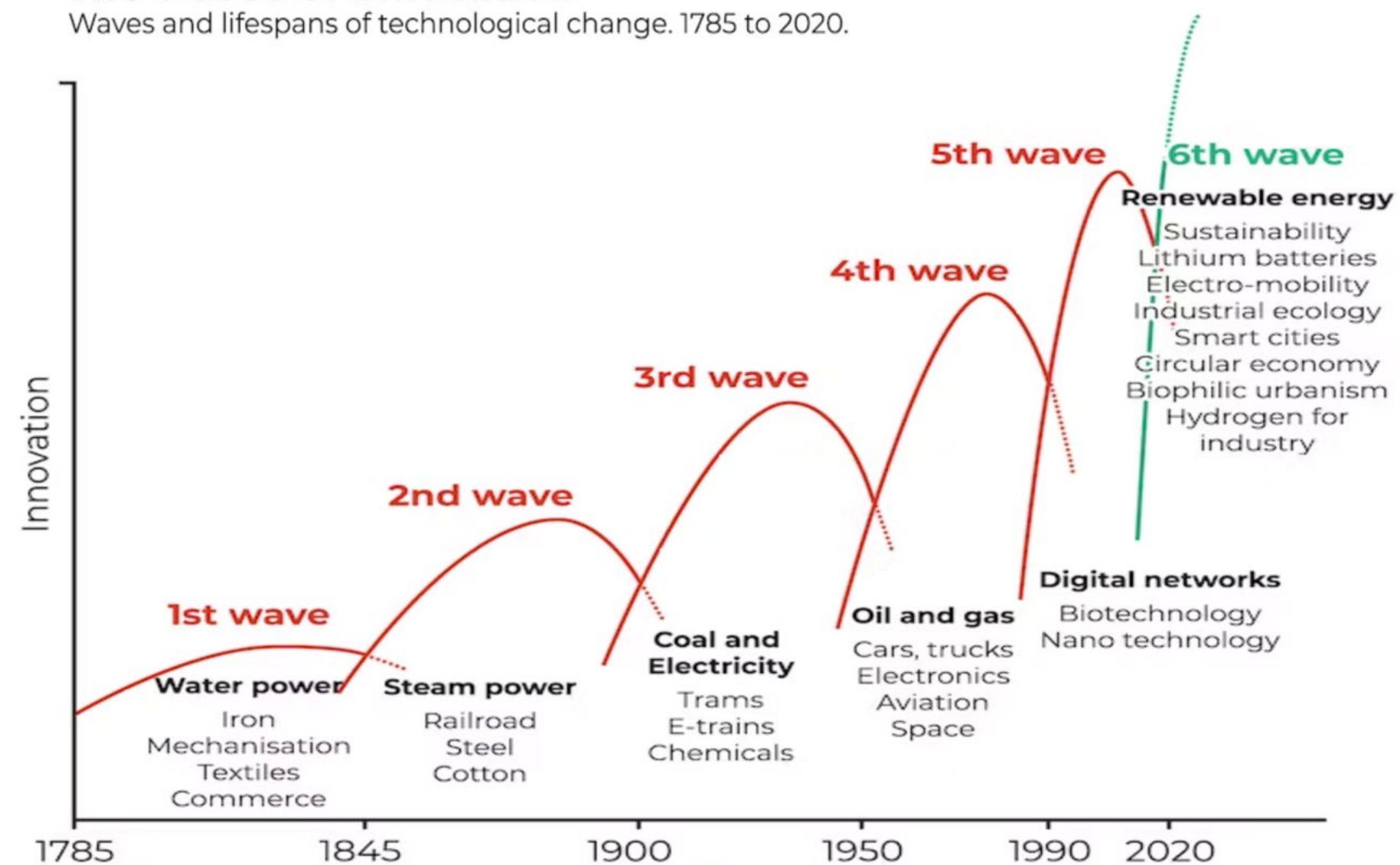
BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Increasing Change/Uncertainty (2 of 5)

The waves of innovation

Waves and lifespans of technological change. 1785 to 2020.



2024
TAX
ANNUAL
SUMMIT

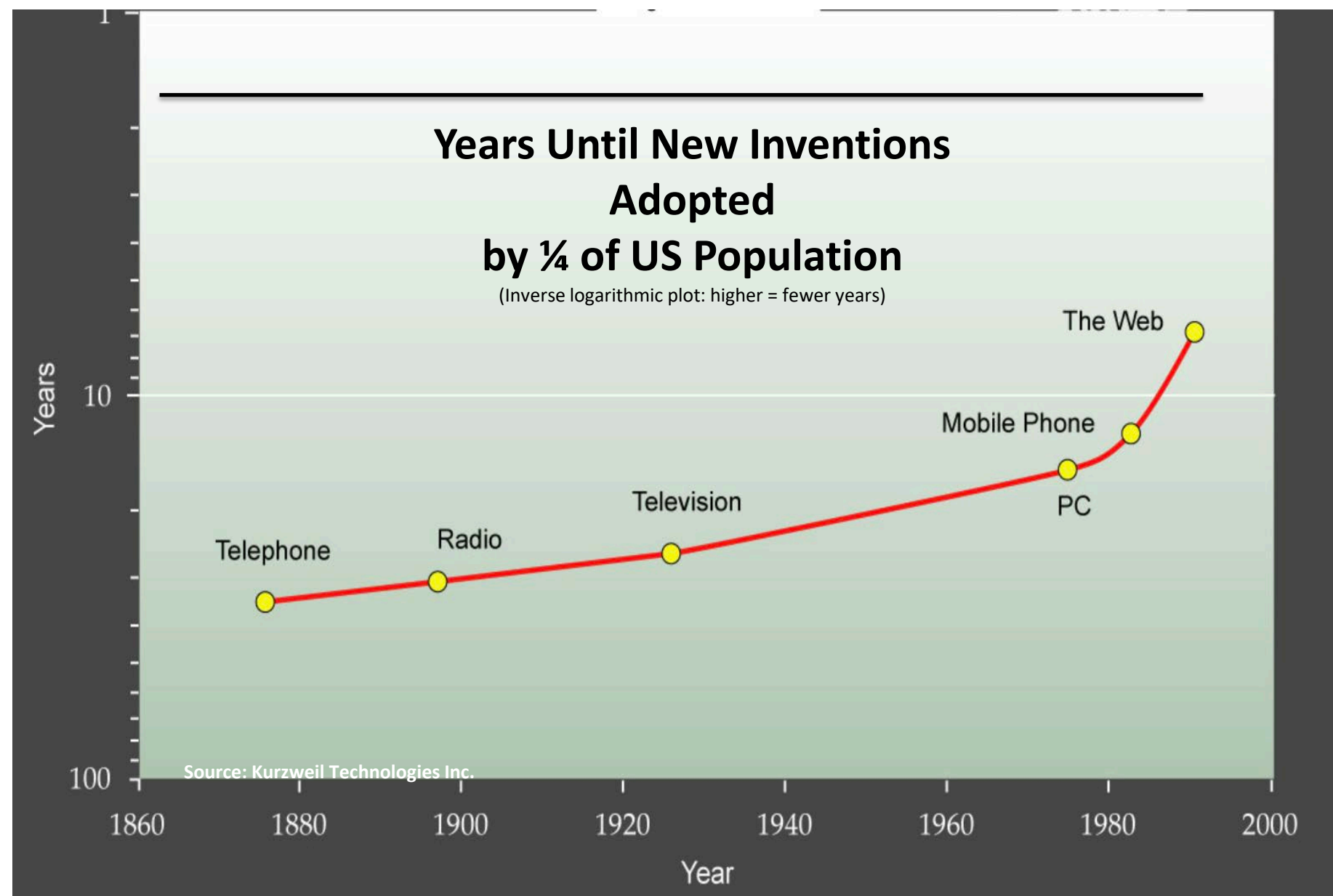


CLUBDEINVERSORES.COM
BY CARTA FINANCIERA

BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

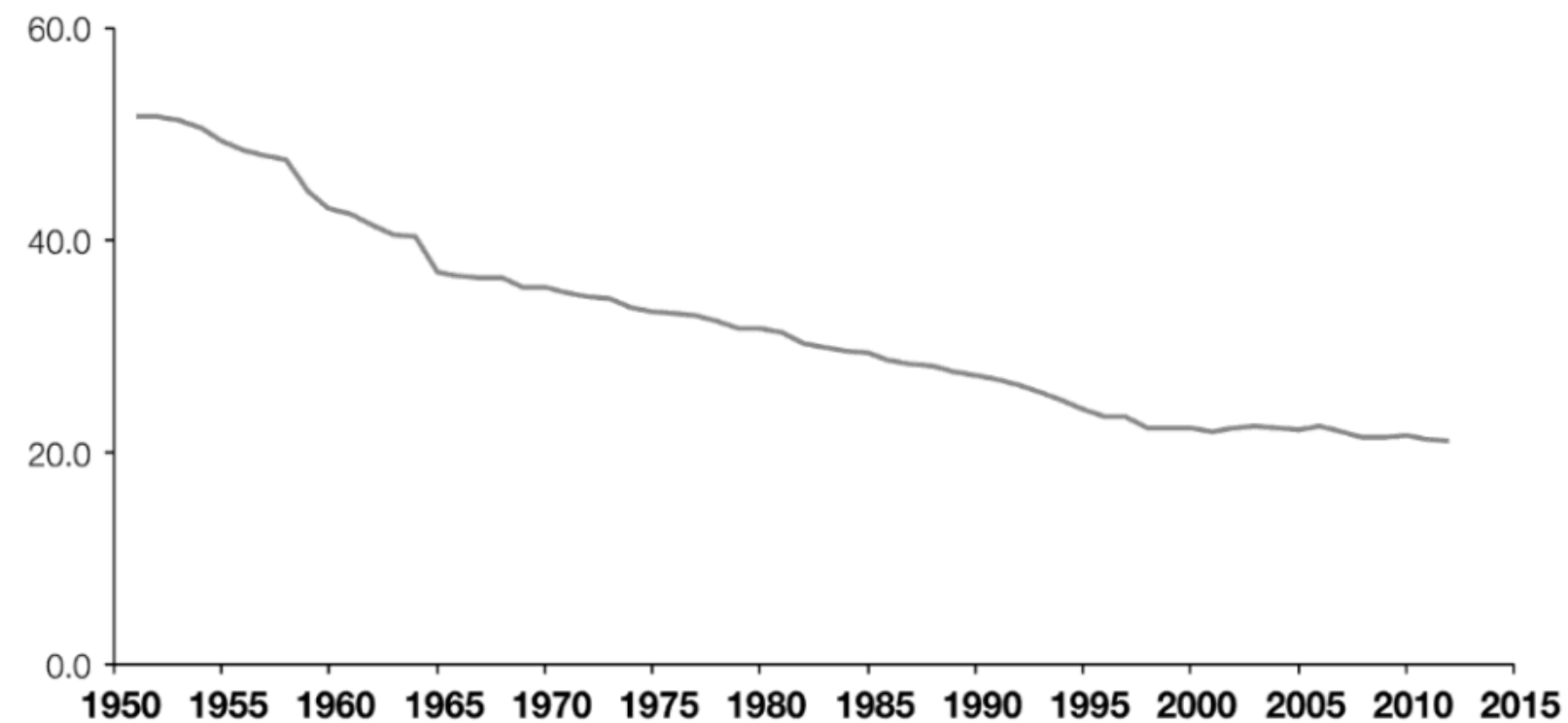
Increasing Change/Uncertainty (3 of 5)



Increasing Change/Uncertainty (4 of 5)

Decreasing lifetime of companies

Average span of public listing for companies active in a given year



Source: BCG Strategy Institute analysis (September 24, 2014), Compustat.

Note: Cross-industry analysis based on thirty-four thousand companies in seventy industries (unweighted average), excluding companies with unknown start or end of public listing (listed and reporting sales in 1950 and/or still listed and reporting sales in 2013) and companies never reaching peak sales of greater than \$2 billion.

2024
TAX
ANNUAL
SUMMIT



CLUBEINVERSORES.COM
BY CARTA FINANCIERA

BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Conclusions (1 of 4)

- The more dynamic the economy and society, the harder they are to predict, and the more *common law* is needed for law both to directly reflect and track evolving societal norms and innovation, and to inform civil law.
- As the rate of technological innovation and societal change rises, our mix should be shifting to greater discovery, i.e., *greater use of common law*. *Yet just the opposite is happening.*

Conclusions (2 of 4)

- **Greater use of civil law and slower economic growth negatively *reinforce* each other.**
- **When the impulse to create new laws or regulations arise, suggest instead: “Let’s first give courts-of-law a chance to discover the best real-world resolutions to the concerns, so we’re not shooting in the dark.”**
- **If your country has no common law tradition, impose statutes provincially, not federally.**

Conclusions (3 of 4)

- **Treat new statutes as *experiments* until proven effective: make them of limited scope and duration (sunset clauses). Before they are renewed, insist upon “post-mortem” reviews of their cost and effectiveness.**
- **Many forces are driving the shift from common law to civil law (no advocacy, large central government, public-choice concerns, virtue signaling).**

Conclusions (4 of 4)

- **Societies and economies are complex, and interventions have unintended consequences that we cannot predict. *Intellectual humility* is needed.**
- **Let's constantly remind and re-educate leaders, scholars, educators, journalists – *everyone* – on common law's essential role in aligning law with our ever-evolving society, economy, and technologies.**

Gracias!

**Civil Law
without
Common
Law**





- Chapters 25 & 26
- Appendix E



*International Journal of
Entrepreneurship and Small Business*
(2018)

**“Drones, Dangerous Animals,
Peeping Toms:
Impact of Imposed vs. Organic
Regulation
on Entrepreneurship, Innovation,
and Economic Growth”**

[www.johnchisholmventures.com/
regulation](http://www.johnchisholmventures.com/regulation)

The Steady Erosion of Common Law Worldwide

Two British judges quit Hong Kong's top court



The Economist
Apr 2nd 2022

2024
TAX
ANNUAL
SUMMIT



BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

Imposed Regulations Deter Entrepreneurship in 3 Ways

- **Getting started**
 - E.g., Licenses
- **Innovating**
 - R&D budgets applied to circumventing regulation
 - E.g. Restaurant and commercial kitchen ventilation
- **Expanding**
 - Zoning and building codes
 - Tax, ACA, and other provisions that apply when company reaches 50 or 100 employees

More Entrepreneurs Are Blocked By Regulation Each Decade



■ Entrepreneurs blocked by regulation

"Overall ratings of entrepreneurs" based on their skills, passion, perseverance, self-confidence, ambition, resources, etc.

2024
TAX
ANNUAL
SUMMIT

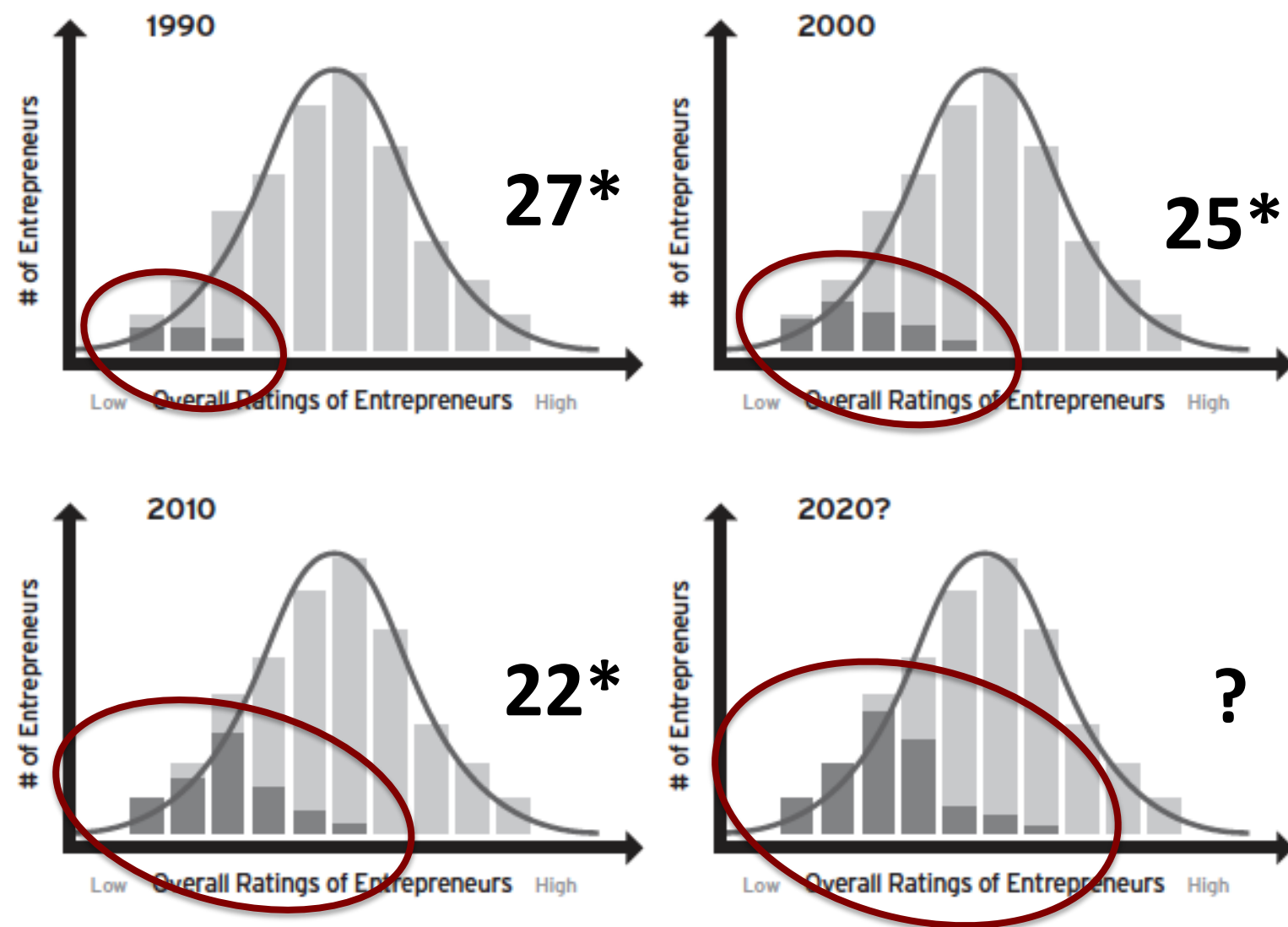


CLUBDEINVERSOES.COM
BY CARTA FINANCIERA

BRIDGEFORD
Trust Company

SUPPORTER
Sponsor

More Entrepreneurs Are Blocked By Regulation Each Decade



*Number of new businesses created for every 10,000 working-age Americans

Imposed Regulations: Design Guidelines

Focus on objectives, not specifications

E.g., “Drones will operate safely” (vs. “Drones will operate within visual sight of their operators during daylight hours only”)

Start general, evolve to to reflect (organic) court case outcomes

- 1) “Drones will not harm people or property” (encourages development of sensing and avoidance)
- 2) Later: “Drones will be able to sense and avoid other objects”

Provide large spaces for social learning

E.g., “Drones may freely operate between 20-400 feet staying at least 10 feet away from other objects” (enables experimentation)

Imposed Regulations: 7 General Recommendations

1. Bound regulations' applicability
2. Limit # of words and pages
3. Create regulation-free zones (SEZs)
4. Require Innovation Impact Assessments
5. Test first on a small scale for unintended consequences
6. Include sunset clauses
7. Use *organic* regulation

***Not* The Precautionary Principle**

- Definition: The burden of proof of the safety of a product or service for people and the environment is on *those promoting the use* of the product or service

But:

- We can't *prove* safety. We can only prove *harm*.

And:

- Regulators are *inherently risk-averse* (No positive payoff for approving a success; big negative payoff for approving a failure)

➤ Regulators have both the *power and incentive* to postpone approval of innovations *indefinitely*

DIAMOND

GOLD



LUNCH

GLOBAL CONNECTIVITY

TAILORED



LANYARD

MEDIA PARTNER

SUPPORTER



SPONSORS