

June 2016

Why Working But Poor? The Need for Inclusive Capitalism

Robert Ashford

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Recommended Citation

Ashford, Robert (2015) "Why Working But Poor? The Need for Inclusive Capitalism," *Akron Law Review*: Vol. 49 : Iss. 2 , Article 11.

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WHY WORKING BUT POOR? THE NEED FOR INCLUSIVE CAPITALISM

*Robert Ashford**

| | | |
|------|---|-----|
| I. | Introduction | 508 |
| II. | Overview of Inclusive Capitalism Based on Binary Economics | 510 |
| | A. Productivity and Productiveness Distinguished..... | 512 |
| | B. The Work of Capital Vastly Supplements the Work of Labor..... | 514 |
| | C. Production (Work) is Income..... | 514 |
| | D. Policy Implications of Inclusive Capitalism based on Binary Economic Analysis: Mainstream and Binary Strategies Compared | 515 |
| III. | Major Corporations, Corporate Fiduciary Duties, And Broadening Capital Acquisition With The Earnings Of Capital..... | 517 |
| | A. Private Implementation of Ownership-Broadening Corporate Finance | 517 |
| | B. The Corporate Fiduciary Duty to Broaden Corporate Share Ownership..... | 519 |
| | C. Using Existing Private Institutions | 520 |
| | D. Broader Income Distribution Without Redistribution... | 521 |
| | E. The Property Interest Acquired by The Binary Beneficiaries | 521 |
| | F. Projecting Binary Growth | 522 |
| | G. Maintaining Market Share in a Growing Economy | 524 |
| | H. Some Additional Effects..... | 524 |
| | I. The First-Actor-Collective-Action Problem | 525 |
| | J. Government Facilitative Policy | 528 |
| | K. Shareholder Approval | 530 |
| IV. | What Can Advocates For Poor People Do To Help? | 532 |
| V. | Conclusion..... | 536 |

I. INTRODUCTION

In light of persistent poverty and the limited success of existing mainstream attempts to ameliorate it, this Article responds to two questions: (1) What other solutions beyond those already tried can and should be employed to reduce poverty? and (2) What can legal scholars, lawyers, law schools, law school clinics, law students, and advocates for poor people do (beyond what they are already doing) to reduce poverty?

To answer the first question, we must establish a more inclusive capitalism by democratizing “capital acquisition with the earnings of capital”¹ based on the principles of “binary economics.”² This

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He has lectured at universities and conferences in Australia, Canada, Greece, France, Italy, Switzerland, the United Kingdom, and throughout the U.S.A. In this Article, “capital” includes land, animals, structures, machines, tools, sources of energy (such as coal, oil, and solar panels), patents, copyrights, and other intangibles—anything capable of being owned and employed in production. It does not include “financial capital,” which is a claim on, or ownership interest in, real capital after liabilities incurred in the employment of real capital are paid. Thus, as used in this article, “capital” might also be referred to as “real capital” or “capital assets” to distinguish it from “financial capital.” There is considerable confusion manifest in economic and financial discourse regarding the important distinction between real and financial writing and discourse. If one were referring to “human capital” but did not use the adjective “human” the speaker would be properly criticized for being misleading. Yet, economic and financial writing and discourse frequently use the word “capital” sometimes to mean “real capital” and sometimes to mean “financial capital” (sometimes in the same sentence) without distinguishing between the two. In this article, the term “real capital” will be used occasionally to distinguish it from financial capital.

2. The approach that came to be known as binary economics (and that the author prefers to call “inclusive capitalism”) was first advanced in the writings of corporate finance attorney, investment banker, and philosopher, Louis Kelso. LOUIS O. KELSO & MORTIMER J. ADLER, *THE CAPITALIST MANIFESTO* (1958); LOUIS O. KELSO & MORTIMER J. ADLER, *THE NEW CAPITALISTS*:

democratization requires extending to poor and middle class people competitive access to the same government-supported institutions of corporate finance, banking, insurance, reinsurance and the favorable tax and monetary policies that are presently available primarily to people and businesses to acquire capital with the present and future earnings of capital substantially in proportion to their existing wealth.³ With this democratization, participation in capital acquisition with the earnings of capital by the vast majority of poor and middle class people would no longer be limited as a practical matter by their meager or even negative net worth.

This democratization would transform the existing system of corporate finance that presently functions primarily to concentrate capital ownership, into a more inclusive ownership-broadening system of corporate finance. It would require no taxes, redistribution, borrowing, or government command. Corporations would be free to continue to meet their capital requirements as before, but they would have an additional, more inclusive, ownership-broadening, and perhaps even potentially more profitable, market means to do so. This additional means could be voluntarily employed to:

1. reduce poverty, welfare dependence, and fear of poverty by substantially enhancing the earning capacity of poor and middle class people (by supplementing their labor income and any transfer payments they may receive increasingly with capital income);
2. reduce tax rates, taxes, and the need for government expenditures;
3. enhance the earning capacity of the participating companies, their shareholders, their employees, and their customers;
4. reduce unemployment, raise wages, and enhance working conditions;
5. enhance the value of equity investments and retirement plans; and

A PROPOSAL TO FREE ECONOMIC GROWTH FROM THE SLAVERY OF SAVINGS (1961); LOUIS O. KELSO & PATRICIA HETTER, TWO FACTOR THEORY: THE ECONOMICS OF REALITY (1967); LOUIS O. KELSO & PATRICIA HETTER KELSO, DEMOCRACY AND ECONOMIC POWER: EXTENDING THE ESOP REVOLUTION THROUGH BINARY ECONOMICS (1991). The authoritative and most complete source of writings by Louis Kelso can be found on the website of the Kelso Institute. *See* THE KELSO INSTITUTE, <http://kelsoinstitute.org/louiskelso/> (last visited Feb. 1, 2016).

3. Although all people, whether rich or poor, have the legal right to acquire capital with the present and future earnings of capital, without the economic understanding and market reforms advanced in this article, for the most poor or middle class people, the practical consequence of this right is trivial. Although the New York Stock Exchange (NYSE) boasts over fifty million stockholders, the median stockholder is a 46-year-old male with a portfolio worth less than \$20,000 that provides dividend income of less than \$1000 annually.

6. reduce the risk of borrowing;
7. promote more sustainable, environmentally friendly growth; and
8. enhance the creditworthiness of national governments and their ability to raise revenue.

The answer to the second question is for legal scholars, lawyers, law students, law school clinicians and administrators, and other advocates for the people (1) first to learn and to teach (a) the underlying principles of inclusive capitalism based on binary economics, (b) how this democratization of capital acquisition with the earnings of capital can be practically implemented, and (c) how this democratization is a necessary part of any systemic solution to poverty and (2) then to advocate, work for, and facilitate its implementation.

Part II of this Article provides an overview of inclusive capitalism based on binary economics and explains how (compared to the mainstream understanding of economics) it provides a deeper understanding of the cause of poverty that prevails despite the greatly increasing growth in per-capita productive capacity beginning with the Industrial Revolution and continuing throughout subsequent technological developments up to present times. Part III explains how corporate fiduciary duties call for the reform and use of existing institutions of corporate finance to achieve the results described above. Part IV sets forth additional steps legal scholars, lawyers, law schools, legal clinics, and law students can do to help. Part V provides a brief conclusion.

II. OVERVIEW OF INCLUSIVE CAPITALISM BASED ON BINARY ECONOMICS

To understand how capital acquisition with the present and future earnings of capital can be democratized to produce the results described above, it is first necessary to understand three inter-related foundational premises:

1. Both labor and (real) capital do work and (via property rights, including financial capital) distribute income;⁴

4. The assertion that (real) capital does work does not negate the fact that both capital and labor are generally needed to complete specific kinds of work or the fact that labor is needed to invent, build, install, operate, maintain, store, repair, manage, and finance capital. But the labor work involved in inventing, building, creating, installing, operating, maintaining, storing, repairing, managing, and financing capital is not the work of the capital itself. It is important emphasize that,

2. Although advancing technology is widely understood to make labor more productive, it may also be understood to make capital more productive than labor in task after task (which helps to explain why profitable corporations continually employ capital to replace and vastly supplement the work of labor); and

3. The prospect of a broader distribution of capital acquisition with the present and future earnings of capital carries with it the prospect of more broadly distributed capital earnings in future years, which in turn will provide the market incentives to profitably employ more labor and capital in earlier years. In other words, the more broadly capital is acquired with the present and future earnings of capital (through borrowing, via capital credit), the more an economy will grow.

The third of these premises (the principle of “binary growth”) identifies a distinct cause of economic growth that is based on the distribution of capital acquisition with the present and future earnings of capital. The binary approach is distinct in that it is not found in the work of Adam Smith and all other economic approaches based on its foundation.

As employed in a theory of growth, the recognition that capital does work and distributes income, is made more productive than labor as technology advances, and contributes to growth via the distribution of income is fundamentally different from the conventional view, based on Adam Smith’s understanding of growth (and continuing in the history of economic thought to the present day).⁵ This conventional view assumes that the primary role of capital in contributing to per capita economic growth is indirect by increasing labor *productivity* (thereby making labor more productive and enabling the employment of more workers). In contrast, the binary view focuses on the increasing *productiveness* of capital resulting from technological advance and the broader distribution of its ownership.⁶

according to the binary approach, financial capital does not do work, but is a claim on the work done by (earnings of) real capital.

5. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, 1776 (Edwin Cannan ed., 1976).

6. Robert Ashford, *Unutilized Productive Capacity, Binary Economics and the Case for Broadening Capital Ownership*, 10 *ECON., MGMT., & FIN. MKTS.* 11, 24-25 (2015); Robert Ashford, *Beyond Austerity and Stimulus: Democratizing Capital Acquisition with the Earnings of Capital as a Means to Sustainable Growth*, 36 *J. POST-KEYNESIAN ECON.* 179, 182 (2013); See generally Robert Ashford, Ralph P. Hall & Nicholas A. Ashford, *Broadening Capital Acquisition with the Earnings of Capital as a Means of Sustainable Growth and Environmental Sustainability*, *THE EUROPEAN FINANCIAL REVIEW* 70-74, Oct-Nov 2012. See also ROBERT ASHFORD & RODNEY SHAKESPEARE, *BINARY ECONOMICS: THE NEW PARADIGM* (1999).

A. *Productivity and Productiveness Distinguished*

Consider, for example, the work of sawing boards. Suppose a person can saw 10 boards per hour with a handsaw and 100 boards per hour with a machine saw. Working with a machine saw rather than a hand saw, the worker can saw ten times as many boards in the same time and therefore is said to be ten times as productive and to have ten times the productivity. One can also say that capital productivity has also increased by a factor of ten. But when sawing each board with the machine saw, the sawyer (i.e., the human worker) is doing much less work. Per unit of production, the sawyer's work (i.e., labor productiveness) has decreased and the work (i.e., the capital productiveness) of the saw (i.e., the capital worker) has increased. And given the total production done in one hour, the machine saw is doing essentially all of the extra work. Thus, there is another (binary) way to understand the primary role of capital in contributing to per capita economic growth: namely, to do an increasing portion of the total work done.

Thus, inclusive capitalism based on binary economics distinguishes between:

1. productivity (which is the ratio of the output of all factors of production, divided by the input of one factor, usually labor); and
2. productiveness (a special focus of binary economics, which retrospectively means "work done" and prospectively means "productive capacity").

The productiveness of capital is more clearly revealed in the work hauling sacks: (1) a person can haul one sack one mile in one hour and is exhausted; (2) with a horse, 10 sacks can be hauled four times as far (yielding a forty-fold increase in production), and (3) with a truck, 500 sacks can be hauled forty times as far (yielding a 20,000-fold increase in production). According to the binary perspective, the horse and truck do more than increase labor productivity; the horse and truck are doing essentially all of the extra work.⁷

Accordingly, per capita growth can be understood not only as capital increasing labor productivity but can also be understood as capital doing an ever increasing portion of the total work done and as being capable of distributing (via property rights) an increasing portion of the income derived from production.⁸ Thus, although the concepts of labor and capital productivity are very helpful in enabling employers to

7. *Beyond Austerity*, *supra* note 6, at 183.

8. *Id.* at 184.

decide what mix of labor and capital can be most profitably employed to produce goods and services, the prospect of “rising productivity” does not reveal how much more work each factor does and how much each factor will earn from that employment. Indeed, in recent years, measures of labor productivity have been rising; but compared to the earnings of capital, labor’s share of national income has been declining.⁹ So with the great emphasis that conventional economics places on rising productivity as a fundamental cause of growth, the conventional analysis can be very confusing and misleading to poor and middle class people and their advocates. The binary concept of productiveness more clearly reveals who or what is doing the work and earning the income. To luddites and their sympathizers,¹⁰ the focus on productiveness may seem to work contrary to the interests of poor and middle class people. However as the following analysis reveals, quite the opposite is true.

If one adopts the binary view that capital does work, then its role in production, income distribution, and growth must be clearly understood. Based on its productiveness, capital has six powers important to production, income distribution, and growth: Specifically, capital can:

1. “replace labor (doing what was formerly done by labor);
2. vastly supplement the work of labor by doing much more of the kind of work that humans can do;
3. vastly supplement the work of labor by doing work that labor alone can never do (e.g. technological devices can unleash forces that create computer chips that cannot be made by hand; chickens lay eggs and

9. Josef C. Brada, *The distribution of income between labor and capital is not stable: But why is that so and why does it matter?*, 37 *ECON. SYS.*, (2013), <http://www.sciencedirect.com/science/article/pii/S0939362513000393> (last visited Mar. 29, 2016); *See generally* Francisco Rodriguez & Ariun Jayadev, *The Declining Labor Share of Income*, 3 *UNITED NATIONS DEV. PROGRAMME* (2012), http://hdr.undp.org/sites/default/files/hdrp_2010_36.pdf (last visited Mar. 29, 2016); *See generally* Susanto Basu, Brent Nieman, *The decline of the U.S. labor share: Comment*, *BROOKINGS PAPERS ON ECON. ACTIVITY* 55 (2013); Margaret Jacobson & Filippo Occhino, *Labor’s Declining Share of Income and Rising Inequality*, *FED. RES. BANK OF CLEVELAND* (Sept. 25, 2012), <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2012-economic-commentaries/ec-201213-labors-declining-share-of-income-and-rising-inequality.aspx> (last visited Mar. 29, 2016); Loukas Karabarounis & Brent Nieman, *The Global Decline of the Labor Share*, 129 *THE QUARTERLY J. OF ECON.*, 61 (2013).

10. In response to the growing mechanization in the mid to late Nineteenth Century, displaced workers, known as “luddites,” were driven to greater poverty, and became skeptical about the long-run economic promise that technology creates more jobs than it destroys, in turn they attacked and destroyed the machines that were putting them out of work. *See generally* KIRKPATRICK SALE, *REBELS AGAINST THE FUTURE: THE LUDDITES AND THEIR WAR ON THE INDUSTRIAL REVOLUTION* (1996).

fruit trees make fruit while all farmers can do is assist in the process);

4. vastly supplement the work of labor by working without labor (as in the case of washing machines, vending machines, automatic bank tellers and toll takers, automated factories, all forms of robotics, and fruit-bearing trees);

5. pay for itself with its future earnings (the basic rule of business investment); and

6. distribute income roughly equal to the value of its output”¹¹

The first four powers concern what might be considered the “real economy” powers of capital; the latter two are powers that are most clearly revealed in a private-property, market economy with a stable credit system protected by a reliable legal system.¹² From the binary perspective, each of the productive capacities of capital contributes to per capita economic growth in ways above and beyond any increase caused by increasing labor productivity.

B. The Work of Capital Vastly Supplements the Work of Labor

From the foregoing consideration of the six identified powers of capital, it follows that characterizing the per capita growth impact of increasingly capital-intensive production as the result of the substitution of capital for labor is a fundamentally misleading concept (just as is the characterization that per capita growth is the result of increasing labor productivity). In considering the accumulating wealth of nations that Smith was trying to explain in 1776,¹³ and in explaining the far greater accumulation of wealth that has continued to the present day, the work of capital has done (and continues to do) far more than increase labor productivity and substitute for the work of labor. In reality, the work of capital not only substitutes for, but also vastly supplements, the work of labor by doing ever more of the work.

C. Production (Work) is Income

It is no less true in an economy of billions of people than on Robinson Crusoe’s island, that work (i.e., production) *is* income, whether done by labor or capital. Accordingly, capital works on both sides of the production-consumption economic equation by providing vastly

11. *Beyond Austerity*, *supra* note 6, at 187.

12. *Id.*

13. *Id.* at 188.

increased:

- (1) productive capacity and production; and
- (2) capacity to distribute income and leisure.¹⁴

The recognition that (1) technology makes capital more productive than labor in task after task and (2) production *is* income reveals that one important effect of technological advance is to ever increase the direct contribution of capital to production and the distribution of income.

D. Policy Implications of Inclusive Capitalism based on Binary Economic Analysis: Mainstream and Binary Strategies Compared

The differences in the conventional and binary conceptions of the role of capital and labor in production, income distribution, and growth lead to important policy differences regarding (1) how economic growth can be more effectively promoted, (2) how people can best participate in this growth, and (3) how the problem of poverty can most effectively be reduced.

If one adopts the conventional economic view—that the role of capital in promoting growth occurs indirectly via labor productivity giving rise to increased distribution of income via wages¹⁵—then the distribution of capital acquisition and ownership has no fundamental positive relationship to income distribution, the reduction of poverty, the fuller employment of labor and capital, and growth. This conventional economic analysis holds whether one adopts a classical, Marxist, neoclassical, or Keynesian approach. In contrast, if one adopts the binary view that with technological advance, capital is doing ever more of the work and capable of distributing even more of the income, then whether the distribution of capital acquisition, and therefore ownership and income, is broadened or remains concentrated becomes an increasingly important factor in promoting or suppressing both (1) broader income distribution to poor and middle class people; and (2) economic growth.

As long as the conventional productivity view goes unchallenged, the mainstream approach will continue to assume that the gains from technological advance for most people must come in the form of more jobs and higher wages, lower prices for goods and services, and welfare payments derived from redistributing the labor and capital income of others.¹⁶ Without sacrificing any of these gains, binary economists, on

14. *Id.*

15. *Id.* at 184.

16. *See, e.g., Statistical Brief: Higher Wages Accompany Advanced Technology*, U. S.

the other hand, see far greater potential gains for poor and middle class people by enabling them (without redistribution) to supplement their gains resulting from wages, lower prices, and welfare, by adding to their participation in the economy via capital acquisition with the earnings of capital just as well-capitalized people routinely do.¹⁷

Accordingly, until it is effectively challenged and ultimately replaced, the mainstream strategy for promoting economic recovery, fuller employment of labor and capital, and economic growth will remain a composite mainstream left- and right-wing mix of government policies to promote (1) capital acquisition with the earnings of capital primarily for corporations and well-capitalized persons (generally in proportion to their existing wealth); and (2) primarily jobs (but by no means the best or highest paying jobs) and various forms of welfare redistribution for poor and middle class people.

According to the binary view, in a market economy in which production is becoming ever more capital-intensive, sufficient earning capacity to purchase all that can be increasingly produced by increasingly capital-intensive production, cannot be distributed by jobs, job creation programs, and welfare alone.¹⁸ The missing element in these strategies (that could easily be added to the mix without redistributing or taxing anyone's income or wealth) is an understanding of the need to open the existing system of corporate finance to provide poor and middle-class people with practical, competitive access to the same institutions of corporate finance, banking, insurance, loans and guaranties, and favorable tax and monetary policy (presently routinely provided to well-capitalized corporations and people to acquire capital with the earnings of capital substantially in proportion to their existing wealth) so that

BUREAU OF THE CENSUS, (1993), https://www.census.gov/prod/1/statbrief/sb93_14.pdf (last visited Mar. 29, 2016); see also Scott Andes & Jonathan Rothwell, *Advanced Industries Drive Down Prices, Making Income More Valuable*, BROOKINGS: THE AVENUE (Mar. 27, 2015 9:34 AM) <http://www.brookings.edu/blogs/the-avenue/posts/2015/03/27-advanced-industries-drive-down-prices-andes-rothwell> (last visited Mar. 29, 2016).

17. For background and positive review of binary economics, see, e.g., Norman G. Kurland, *A New Look at Prices and Money: The Kelsonian Binary Model for Achieving Rapid Growth Without Inflation*, 30 J. SOC.-ECON. 495 (2001); Jerry Gauche, *Binary Modes for the Privatization of Public Assets*, 27 J. SOC.-ECON. 445 (1998); Stephen V. Kane, *The Theory of Productiveness: A Microeconomic and Macroeconomic Analysis of Binary Growth and Output in the Kelso System*, 29 J. SOC.-ECON. 541 (2000); Geoffrey D. Korff, *Reviving the Forgotten American Dream*, 113 PENN ST. L. REV. 417 (2008).

18. See Ashford, *Unutilized Productive Capacity*, *supra* note 6, at 20; Ashford, *Beyond Austerity and Stimulus*, *supra* note 6, at 193; Ashford, Hall & Ashford, *Broadening Capital Acquisition with the Earnings of Capital*, *supra* note 6, at 71; ASHFORD & SHAKESPEARE, *Binary Economics: The New Paradigm*, *supra* note 6; Kurland, *supra* note 17, at 504; Gauche, *supra* note 17, at 449.

poor and middle-class people can also enhance their earning capacity by way of capital acquisition with the earnings of capital but in proportions not limited by their existing wealth.¹⁹ As explained below, major credit-worthy companies are uniquely positioned to provide this inclusive access in a profitable way. Their incentives for doing so in the aggregate on the macroeconomic level are discussed below in Part III, Sections A through H. Their incentives for doing so on the microeconomic level and ways to overcome the related first-actor-collective-action impediments are discussed below in Part III, Sections I through K.

III. MAJOR CORPORATIONS, CORPORATE FIDUCIARY DUTIES, AND BROADENING CAPITAL ACQUISITION WITH THE EARNINGS OF CAPITAL

The ownership-broadening approach advanced in this Article does not require corporations to undertake a policy of inclusive, ownership-broadening “binary financing.” The decision by corporations of whether or not to broaden their ownership remains private and voluntary. Yet, in light of the principle of binary growth and the duty of corporate fiduciaries to maximize corporate wealth, there is reason to believe that as the principle of binary growth becomes more widely understood, the incentives and fiduciary duty to broaden corporate share ownership may become increasingly attractive to corporate fiduciaries and their shareholders.²⁰ This Part III explores the foregoing proposition.

A. *Private Implementation of Ownership-Broadening Corporate Finance*²¹

To understand, first on the aggregate level, how ownership-broadening corporate finance might be in the profitable interest of major

19. *Unutilized Productive Capacity*, *supra* note 6, at 20; *Beyond Austerity*, *supra* note 6, at 193; Ashford, Hall & Ashford, *Broadening Capital Acquisition with the Earnings of Capital*, *supra* note 6.

20. See, e.g., *Paramount Commc’ns. v. QVC Network, Inc.*, 637 A.2d 34 (Del. 1993).

21. For a fuller description, see *Unutilized Productive Capacity*, *supra* note 6; *Broadening the Right to Acquire Capital with the Earnings of Capital: The Missing Link to Sustainable Economic Recovery and Growth*, 39 FORUM FOR SOC.-ECON. 89 (2009); ASHFORD & SHAKESPEARE, *supra* note 6 at 236-72. For an analysis of the impact of binary financing in standard micro and macroeconomic terms, see Robert Ashford & Demetri Kantarelis, *Capital Democratization*, 37 THE JOURNAL OF SOC.-ECON. 1624 (2008). For alternate approaches to implementation of binary financing, see Robert Ashford & Demetri Kantarelis, *Enhancing Poor and Middle Class Earning Capacity with Stock Acquisition Mortgage Loans*, 11 ECON., MGMT., & FIN. MKT. 11 (2016) and see NORMAN G. KURLAND, MICHAEL D. GREANEY & DAWN K. BROHAWN, *CAPITAL HOMESTEADING FOR EVERY CITIZEN: A JUST FREE MARKET SOLUTION FOR SAVING SOCIAL SECURITY* (2004).

corporations and their shareholders, consider the largest 3,000 or so creditworthy corporations in the United States. These corporations own more than 90% of the nation's investable capital.²² At diminishing unit costs, most of these corporations could profitably produce much more of the goods and services that people would purchase if they had the earnings (market demand) to do so. Presently, almost all capital acquired by these corporations is acquired with the earnings of capital, and much of it is acquired with borrowed money repaid with future capital earnings.²³ At the same time, the ownership of this corporate wealth is highly concentrated: Approximately 1% of the people own 40-50% of the wealth; 10% own 90% of the wealth, leaving 90% owning little or none;²⁴ with many if not most deep in consumer debt.²⁵ Thus, capital returns its value at a rate reflective of its long-term (suppressed) earning capacity as it pays for its acquisition cost primarily for a small minority of the population (who do not spend enough of their earnings on the consumption needed to profitably employ the increasingly capital-intensive production).

Because present demand for the employment of labor and capital is dependent on demand for consumer goods in a future period, a voluntary pattern of steadily broadening capital acquisition promises more production-based consumer demand in future years and therefore more demand for a fuller employment of labor and capital in earlier years. Thus, if the techniques of corporate finance were opened competitively to all people, then the present demand for capital investment and employment would increase in anticipation of the broadening distribution of capital income to poor and middle class people with unsatisfied consumer needs

22. *Russell U.S. Indexes*, RUSSELL INVESTMENT, <http://www.ftserussell.com/research-insights/russell-reconstitution/market-capitalization-ranges> (last visited Mar. 29, 2016).

23. During the fourteen-year period from 1989 through 2003, in the case of major American companies, the sources of funds for capital acquisition, in approximate terms, reveal that annually retained earnings accounted for at least 70 percent or more usually 80 percent of the capital acquisition. Borrowing accounted for almost all of the rest. Sale of stock as a source of funds never exceeded five percent and was negative in most years. See R.A. BREALEY, S.C. MYERS & F. ALLEN, *PRINCIPLES OF CORPORATE FINANCE* 561-63 (3d ed. 2004).

24. See generally E.N. Wolff, *How the Pie Is Sliced: America's Growing Concentration of Wealth*, AM. PROSPECT 58 (1995); See generally E.N. WOLFF, A TWENTIETH CENTURY FUND REPORT, *TOP HEAVY: A STUDY OF THE INCREASING INEQUALITY OF WEALTH IN AMERICA* (1995); JASON GONZALES, *ECONOMICS OF WEALTH IN THE 21ST CENTURY* 1-41 (Nova Science Publishers Inc. 2011) (citing E.N. Wolff, *Recent Trends in Household Wealth in the U.S.: Rising Debt and the Middle Class Squeeze*, (Bard Coll. Levy Econ. Inst., Working Paper No. 502 (2007)).

25. It is a great and tragic irony that most poor and middle class people are awash in offers of consumer credit to enable them to acquire what they cannot afford with their limited labor earnings but bereft of the opportunity to acquire capital that would progressively eliminate the need for consumer debt.

and wants. Accordingly, a broader distribution of capital acquisition and income strengthens the promise of capital to pay for itself with its future earnings, makes profitable the employment of more capital and labor, and enhances the prospects of sustainable economic recovery, fuller employment of labor and capital, and enhanced growth. It will also therefore increase the market value of well-run corporations and the wealth of their shareholders within the growing economy.²⁶

B. The Corporate Fiduciary Duty to Broaden Corporate Share Ownership

The primary duty of corporate fiduciaries is to not to maximize share price at every moment in time (sometimes referred to as “short-termism”), but to develop and implement rational business plans over periods of time within their discretion to maximize corporate wealth.²⁷ In good economic times, and even in periods of sluggish growth or recessions, many, if not most, major credit-worthy corporations have capital acquisition plans that they might finance with (1) retained earnings (which might otherwise be distributed as dividends to shareholders), (2) borrowed money and/or (3) sale of shares. Directors are duty-bound to choose the method that optimizes corporate wealth.²⁸ Any creditworthy capital-acquisition plan can usually be financed with borrowed money, but using retained earnings and/or selling shares might often better serve corporations and their shareholders. By reason of synergistic potential between a corporation and would-be shareholders, it might be in a corporation’s wealth-enhancing interest to forgo the use of retained earnings and borrowed funds and instead raise the necessary funds for capital acquisition by selling shares to investors, for example, to Warren Buffet or Bill Gates. To purchase such shares, if Warren and Bill prefer not to liquidate existing holdings, they might borrow the money to purchase the shares; and in light of their net worth, they are in a position to do so. The share-issuing corporation would not care if the source of cash is borrowed money rather than the purchaser’s own assets. The lender would normally insist that the shares be pledged as security until the loan is repaid and would normally insist on additional security from the borrower usually via a secured interest in the borrower’s assets (collateral), but the additional security need not be

26. *Beyond Austerity*, *supra* note 6, at 194-95.

27. *See, e.g., Paramount Commc’ns*, *supra* note 20.

28. *Paramount Commc’ns*, *supra* note 20, at 44; *see also* eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) (“Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders.”).

assets of the wealthy borrower. It could instead be supplied in the form of capital-credit insurance²⁹ (payable to the lender in the event of default) with insurance premiums paid either directly by the borrower or by the lender with the cost passed to the borrower via a higher interest rate. The binary approach provides an understanding of how poor and middle class people can also obtain such insurance.³⁰

C. Using Existing Private Institutions

To acquire capital with the future earnings of capital, well-capitalized corporations and people use:

- (1) the future earnings of capital;
- (2) collateral;
- (3) nonrecourse corporate credit; and
- (4) market and insurance mechanisms to diversify and reduce risk.

They also benefit from a proactive government role in protecting individual freedom and property rights, and in maintaining public goods including physical, legal, financial, and monetary infrastructure.³¹

The same institutions that can work profitably for well-capitalized corporations and people can also work profitably as poor and middle class people are included in the capital acquisition process. Moreover, in an economy operating at less than full capacity, the principle of binary growth indicates that if capital can competitively pay for its acquisition costs out of its future earnings primarily for existing owners, it can do so even more profitably if all people are included in the capital-acquisition process.³²

Just as investment trustees can act for Warren and/or Bill, they can also act for poor and middle class people. If poor and middle class people, represented by qualified trustees (such as mutual fund trustees eager for

29. Although perhaps less familiar to some readers than other institutions that facilitate corporate finance, capital credit insurance has been available for centuries. Lloyds of London and AIG are well-known examples. And while the AIG debacle is certainly evidence that capital credit insurance can be abused and corrupted, few people familiar with the benefits of commerce are suggesting that the institution of capital credit insurance should be abolished. To the contrary, the government of the United States has taken steps to preserve and fortify that institution for the benefit of those who routinely participate in capital acquisition with the earnings of capital even as they sleep. In light of the beneficial impact of ownership-broadening capital acquisition, that benefit should also be routinely extended to poor and middle class people.

30. *Beyond Austerity*, *supra* note 6, at 195.

31. *Id.* at 196.

32. *Id.* at 187.

more business), are able to compete with existing owners for the acquisition of corporate shares representing the capital requirements of creditworthy companies, they would bring to the bargaining table synergistic, wealth-enhancing, corporate opportunities that well-capitalized people generally cannot offer (namely, a pent-up appetite to purchase the necessities and simple luxuries of life that richer people have long enjoyed from capital income). After the acquisition debt obligations are repaid with the dividends on the binary stock, the distributed earnings of capital acquired by members of poor and middle class people will create more production-based consumer demand than if that capital had been acquired by richer people. More of the capital earnings, if acquired by richer people, would be invested in investment opportunities, but the investment opportunities would not be as great in the context of a narrower distribution of capital ownership and a consequential, relatively weaker consumer demand.³³

D. Broader Income Distribution Without Redistribution

Lest one confuse the binary approach with a redistribution approach, it should be noted that if one or more of the corporations decided to sell shares to Warren rather than Bill as the most competitive offer (i.e., most consistent with corporate wealth-maximizing goals), Bill could not complain that the transaction was a redistribution. The corporate fiduciaries would simply inform Bill that his was not the most competitive (i.e., wealth-maximizing) offer. Likewise, nor could Warren, Bill, or any other would-be investors complain of redistribution if the directors determined that the sale of shares to trustees for the benefit of the binary beneficiaries is the most competitive offer.³⁴

E. The Property Interest Acquired by The Binary Beneficiaries

The initial property interest of the beneficiaries of the proposed ownership-broadening binary financing would be the interest of a trust beneficiary in the acquired shares of stock but subject to the repayment of the loan used to acquire the stock. The interest of the beneficiaries is acquired with debt owed by the constituency trust but not owed by the beneficiaries. Thus, just as wealthier people are able to acquire capital with the earnings of capital with non-recourse credit (largely in

33. *Id.*

34. *Id.* at 197.

corporate form), so too are the binary beneficiaries. The acquired shares would be “full-return” common shares of the participating corporation acquired at fair market value so that there would be no economic dilution to existing owners. These shares would pay their full return (net of reserves from revenues for depreciation, research, and development to maintain the competitive productive capacity of the capital) by first repaying the capital acquisition loan and then providing capital source income to supplement wages and welfare benefits paid to the binary beneficiaries.

Once the acquisition debt is fully paid, the stock might be distributed to the beneficiaries. However, to promote a continuing and growing income stream for the beneficiaries from the growing annual stock acquisitions, prudent legislative policy might generally require the trust to continue to hold the fully paid shares (at least for some time period) and rather distribute only the full income on the shares to the beneficiaries during that period, perhaps with exceptions for share distribution for hardship and other prescribed circumstances. This approach might prevent the problem that occurs when shares distributed to poor people with a pressing immediate need for money for necessities and/or with little experience in the long-term value of such ownership are improvidently sold to wealthier people at distress prices (as occurred, for example, in some former communist nations after the collapse of the Soviet Union).³⁵

F. Projecting Binary Growth

Figure 1, set forth below, illustrates the aggregate growth-sustaining feature of an ownership-broadening economy.

35. See generally David Satter, *The Rise of the Russian Criminal State*, PRISM (Sept. 4, 1998), http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=7177&tx_ttnews%5BbackPid%5D=220&no_cache=14 (broadly discussing the failure of privatization initiatives in the wake of the Soviet Union’s collapse, looking at the manipulation that occurred by criminal syndicates); see also Michael Alexeev, *The Effect of Privatization on Wealth Distribution in Russia*, 3-4 (The William Davidson, Inst., Working Paper No. 86, 1998) (explaining the complexities of transitioning to a private economy with investors, and therefore also owners, who have little ownership experience).

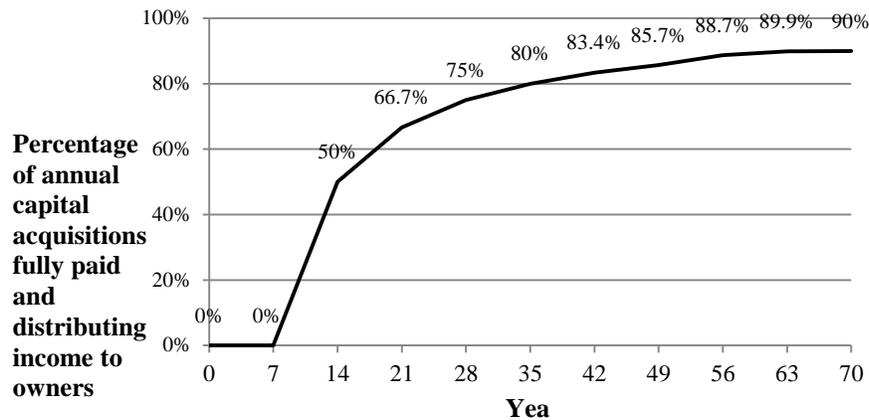


Figure 1

Based on the assumptions specified below, Figure 1 shows the number of years of annual ownership-broadening acquisitions that will have paid for themselves over time. Figure 1 assumes:

- (1) a seven year cost recovery period for capital investment;
- (2) in every year after the implementation of the binary economy, some number, N , of an economy's creditworthy companies have profitably utilized binary financing to acquire some percentage, X , of their capital investments;
- (3) the capital credit insurance is profitably priced to repay the lending banks for those financings that fail to repay their acquisition loans so that X is net of those failures; and
- (4) N , X , and the rate of return on capital remain constant throughout the period.

Although beginning slowly, the broadening distribution of capital acquisition and income will increase steadily and thereby provide the basis for binary growth. Each year after the initial cost recovery period, an additional year of binary capital will have paid for itself and will be distributing capital income to poor and middle class people. Consistent with the assumption of a seven-year capital cost recovery period, Figure 1 shows the steady growth in fully paid-for annual capital acquisitions. In the eighth year, the first annual acquisition of capital will have paid for itself and will begin paying its full return to the new owners. In the ninth year, the second annual capital acquisition will be fully paid for and will therefore begin paying its full return to the new owners. In fourteen

years, 50 percent, and in the twenty-eighth year 75 percent, of the annual capital acquisitions will have paid for themselves, and will begin paying their full annual return to the new owners, and so on. In the long run, the linkage between supply (in the form of the incremental productiveness of capital) and demand (resulting from the increasingly widespread market distribution of capital income to consumers) approaches 100 percent. The more binary financing that is undertaken, the greater the distributional growth effects. If the rate of return on capital investment increases (as binary principles predict would occur in an ownership-broadening economy) then the curve shown in Figure 1 would rise more steeply and approach the specified percentages sooner in time.³⁶

G. Maintaining Market Share in a Growing Economy

To maintain market share in the projected growing economy, based on their capital investment planning horizon, producers will have to increase production and productive capacity *before* binary income begins to be distributed to its new owners. Because present demand for capital goods is positively affected by anticipated future demand for consumer goods, the broader distribution of capital acquisition and capital income should be reflected in increased employment of labor and capital within producers' capital investment planning horizon. With a capital cost recovery period of seven years and a capital investment planning horizon of five years, market incentives for increased capital investment by producers of consumer goods might materialize for some producers in the third year. Furthermore, the producers of capital goods needed by the producers of consumer goods to increase their productive capacity may experience market incentives for increased capital spending and labor employment as early as the first year.³⁷

H. Some Additional Effects

In addition to the steadily increasing distribution of capital income to poor and middle class people, some additional effects of broader capital acquisition are set forth below:

- (1) As capital income is more broadly distributed to welfare-dependent people, welfare dependence, government transfer payments, tax rates, and taxes can be reduced.

36. *Beyond Austerity*, *supra* note 6, at 197-98.

37. *Id.* at 198-99.

(2) As capital income is more broadly distributed to individual taxpayers, they will pay more in taxes, thereby increasing government revenues and providing an additional basis for lower tax rates.

(3) With enhanced corporate profitability, wealth, and share value, private and government-sponsored retirement security will be enhanced.

(4) As poor and middle class people are enabled to participate in more capital acquisition that is insurable by capital credit insurers at premium rates that are not cost prohibitive, wealthier investors will begin to experience competition in acquiring the safest, most insurable investment. Therefore to fully invest their financial savings, wealthier investors will need to move further out on the risk curve to riskier investments thereby providing more financial capital for start-ups and other entrepreneurial investments.

(5) Greener growth: Although binary growth may raise environmental concerns, emergence of competitive ownership-broadening investment alternatives and the resultant broader distribution of capital income will make (a) greener technologies (presently unutilized and underutilized) more affordable to those consumers who would prefer them and more easily financed and (b) (with growing affluence among poor and middle class people) protective environmental regulation may become politically more affordable and achievable.

(6) The binary benefits portend a beneficial impact on widely shared long-range concerns regarding projections related to social-security solvency, rising health care costs, consumer debt and savings rates, government debt, and government credit-worthiness. This beneficial impact on these long range concerns may have an immediate, positive market effect and political effect on important issues subsumed in the national and global austerity-stimulus debates which in turn affects government policies regarding poverty.³⁸

I. The First-Actor-Collective-Action Problem

However, even with the prospect of these widely-shared benefits, a first-actor-collective-action problem would remain that inhibits ownership-broadening binary financing because there is no guarantee (and good reason to doubt) that such projected aggregate benefits from ownership-broadening capital acquisition would be enjoyed proportionally by participating corporations whose more broadly-distributed shares gave rise to the more broadly-distributed capital income. For example, if Ford Motor Company were to encapitalize its employees, customers, and neighbors, those

38. *Id.* at 199-200.

beneficiaries would likely spend much of their enhanced income at least initially on immediate needs of food, clothing, shelter, and so on, and to the extent they use it to purchase automobiles, they might purchase cars made by competitors. Nevertheless, as explained below, there is reason to believe that with cooperative planning among major corporations and with government leadership, both of these problems may be effectively addressed.³⁹

The collective-action problem would be somewhat mitigated by the encapitalization of customers in proportion to their patronage of the goods and services produced by the participating corporation with dividends paid to the customers in the form of credits against future purchases.⁴⁰ It would also be mitigated by any tax benefits given to participating corporations whose dividends on binary shares yield increased government tax revenues and reduced welfare payments. It would also be mitigated in company towns and city neighborhoods in which the greater wealth of “neighbor” residents of the participating corporations results in benefits to the participating corporations such as (1) lower property and/or other local tax rates, (2) improved neighborhoods, schools, and hiring conditions, and (3) lower crime and insurance rates. There would also be a mitigating direct benefit resulting from motivation, allegiance, and gratitude that would likely be engendered among employees from being able to acquire dividend-paying shares of stock with non-recourse credit on the strength of their employer-company’s earning capacity and from the good will that might be engendered from the public toward corporations willing to broaden their share ownership by way of the ownership-broadening trusts.

But the collective-action problem would not be wholly eliminated by these mitigating effects. Even if the binary ownership-broadening approach were widely understood and accepted as theoretically beneficial in the aggregate, it is therefore reasonable to assume that it would not likely be voluntarily instituted widely by many corporations until there is sufficient support on the part of other market participants committed to its implementation. This critical support would include (1) sufficient participation in binary financing by the producers of food, clothing, shelter, health care, transportation, communication, entertainment, and

39. *Id.* at 200-01.

40. Somewhat like many frequent-flier programs, the ownership broadening trusts could include customers who have a continuing relationship with corporations like energy utilities, telephone companies, Internet and entertainment access companies, airlines, major retailers, and banks. Like credits for mileage flown, dividends can be paid in the form of credits against future purchases.

other goods and services that poor and middle class people would purchase more of if they had the earning capacity to do so, and (2) sufficient support on the part of investors in those producers.

Nevertheless, this collective-action problem is not a prisoner's dilemma in which the actors' decisions are kept from one another. To the contrary, if the binary analysis is widely accepted and deemed a desirable approach to corporate finance in the aggregate as described above (which is admittedly unlikely to occur until the principles of inclusive capitalism are widely taught), then the expected benefits become greater as the ownership-broadening approach becomes more widely understood and implemented in a coordinated fashion. If the principle of binary growth is valid, then it would seem that most market participants would benefit from its widespread implementation; and it would be in their rational interest to promote coordinated implementation. No major, high-technology economy is without trade and business associations that regularly meet, plan, lobby, and act in concert to improve the business climate for their profit-seeking activities.⁴¹ It is noteworthy that the virtuous, public-spirited decision by CVS Pharmacy to stop selling tobacco products⁴² was widely publicized, and there has been notable pressure for other businesses to cease tobacco sales (although none yet have done so).⁴³ Similarly, consider Chipotle Mexican Grill's decision to remove all genetically modified organisms from its menu,⁴⁴ and Wal-Mart Stores's decision to stop selling Confederate flag merchandise in the wake of the shooting at Emanuel African Methodist Episcopal Church in Charleston, South Carolina, in June of 2015.⁴⁵ Based on these examples, if a single major retailer, auto-maker, pharmaceutical

41. *Beyond Austerity*, *supra* note 6, at 201-02.

42. Larry Merlo, *Message from Larry Merlo, President and CEO, CVS HEALTH*, (Feb. 5, 2014) <http://www.cvshealth.com/newsroom/message-larry-merlo>.

43. No other major pharmacies or grocery stores have ceased tobacco sales, despite a 2014 push by state attorneys to pressure them to do so. Press Release, N.Y. Att'y Gen., A.G. Schneiderman Spearheads National Effort Calling On Major Pharmacies To Stop Selling Tobacco Products (March 17, 2014), <http://www.ag.ny.gov/press-release/ag-schneiderman-spearheads-national-effort-calling-major-pharmacies-stop-selling>.

44. "If Chipotle is in front of the curve as the first to . . . remove GMOs, I think they'll be able to steal some market share . . . but I would not be surprised to see others following very quickly." Kaitlyn Ugolik, *Where Chipotle Leads, Fast Casual Follows*, INVESTOR, INST. INV. (May 05, 2015), <http://www.institutionalinvestor.com/article/3450680/banking-and-capital-markets-corporations/where-chipotle-leads-fast-casual-follows.html#.Vp7bNIMrJp8>.

45. Within a week of the shooting that claimed nine lives, self-proclaimed by the shooter as motivated by racial discrimination, Wal-Mart announced it would stop selling Confederate flag merchandise. eBay, Sears, Etsy, Target, and Amazon quickly followed suit. Andrew Lord, *6 Companies Ban Confederate Flag Sales*, HUFFINGTON POST (June 23, 2015, 7:25 PM), http://www.huffingtonpost.com/2015/06/23/retailers-ban-confederate-flags_n_7648614.html.

company, computer manufacturer, telecommunications company and entertainment giant were to adopt (and explain to the public the benefits of) an ownership-broadening financing policy contingent only on a similar decision by a critical mass of other companies, might not they soon be joined by their competitors (particularly if encouraged and urged to do so by advocates for poor and middle class people)?

J. Government Facilitative Policy

The basic logic underlying the binary benefits that seemingly flow from ownership-broadening binary financing springs from the confluence of (1) the three basic principles of inclusive capitalism based on binary economics, (2) widely accepted principles of finance, (3) the corporate-wealth-maximizing duties of corporate fiduciaries, and (4) the enlightened self-interest of investors. Nevertheless, to facilitate the benefits of broadening the distribution of capital acquisition with the earnings of capital, several government actions would be helpful and desirable.

First, the most notable facilitative government action would be to eliminate the corporate tax on corporate income paid to the ownership-broadening trusts to enable the trustees first to repay the share acquisition loans and then to pay dividends to binary beneficiaries. This tax relief can be wholly justified on grounds of both economics and justice. Because the corporations have no use of the income that it passes on to the trustees, there is no reason to tax it on the corporate level. Moreover, taxing that corporate income would retard the repayment of the acquisition debt and reduce the growing capital income paid to the beneficiaries, which is precisely the economic impetus for the benefits outlined above.

It is also noteworthy that there are many “second-round ways” that existing owners receive access to the pretax (untaxed) earnings of capital by way of investment tax credits,⁴⁶ deductions for research and development,⁴⁷ depreciation (often accelerated),⁴⁸ offshore (usually capital) income,⁴⁹ executive compensation,⁵⁰ and other strategies for

46. I.R.C. § 48 (West, Westlaw through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) 2015).

47. 26 C.F.R. §1.41-2 (2016).

48. I.R.C. § 167 (West, Westlaw through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) 2015).

49. I.R.C. § 911 (West, Westlaw through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) 2015).

50. I.R.C. § 162(m) (West, Westlaw through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) 2015).

“zeroing out” corporate income.⁵¹ These “second-round” ways benefit people by way of capital ownership once they have acquired capital but are denied to people who presently have no effective access to the “first-round” of capital acquisition with the earnings of capital that would enable them to become owners. These second-round ways provide substantial benefits largely in proportion to existing wealth. These many ways provide little or no direct benefit to people with little or no capital ownership. Taxing the corporate income would not only reduce the access of poor and middle class people to the “first round” of pre-tax capital acquisition with the earnings of capital, but would also perpetuate the denial of the second-round benefits and thereby would have the effect of increasing the severe disparity that results from denying poor and middle class people the competitive economic opportunity to acquire capital with the earnings of capital that richer people routinely enjoy.

Second, to minimize the first-actor-collective-action problem discussed above, the government might authorize dividends to be paid to the binary beneficiaries in the form of special script usable only for the goods and services of qualified producers. Once so used, the script could then be exchanged by participating corporations for general currency or bank credit.

Third, to help diversify the investment risk of employees of participating companies perceived to exist from having too much of their investment in their employer (the problem of too many eggs in one basket), the constituency trustees could be allowed to diversify the investment risk of their beneficiaries by transferring some of the shares to a “mutualized” account in which employees from multiple participating employers would own a diversified portfolio of such transferred shares.

Fourth, to facilitate the availability and reduce the cost of private capital credit insurance, the government might establish a national ownership-broadening capital credit reinsurance entity modeled after the FHA home loan reinsurance program.

Fifth, to bring down the cost of credit for ownership broadening financing, a nation’s central bank might monetize ownership-broadening loans until they are retired.⁵² To benefit from the advantages of government reinsurance and monetization, qualified binary financing might be restricted to the economic basics (the essential needs) such as

51. *Beyond Austerity*, *supra* note 6, at 202-03.

52. For a description of the financial and economic aspect of central bank monetization of ownership broadening financing, see *Unutilized Productive Capacity, Binary Economics and the Case for Broadening Capital Ownership*, *supra* note 6.

food, clothing, shelter, healthcare, education, and energy) and restrictions might also be based on ecological concerns.

Moreover, as with any government-facilitated program that extends opportunity to people, eligibility and antidiscrimination rules for determining beneficiary participation would be needed.⁵³ Likewise, rules governing the qualification and duties of binary trustees, lenders, and capital credit insurers would be seemingly desirable.

K. Shareholder Approval

Of course, depending on state law, some ownership-broadening transactions are considered extraordinary in the sense that they require shareholder approval of any such transaction recommended by a corporation's directors.⁵⁴ Although there is a sound basis for concluding that (1) corporations, as independent entities, have an inherent interest in broadening their share ownership to maximize the fuller employment of their productive capacity and thereby their wealth, and (2) corporate fiduciaries have the duty to formulate and pursue corporate finance accordingly, corporate shareholders have no such duty and may not share their corporations' ownership-broadening interest. For example, some shareholders may prefer to own 100% of a corporation worth \$100 million than to own only 60% of the same corporation if it is worth \$200 million even though in monetary terms their net wealth in the more broadly owned corporation would be greater. Thus, they may value their greater percentage ownership of the less valuable corporation more than the greater market value of their holdings in the same larger, more broadly owned corporation. More generally, shareholders may prefer being relatively richer than others (by effectively opposing ownership broadening) than growing financially richer as ownership is broadened. But shareholders are not a monolithic group. Other shareholders might well prefer the 60% share ownership in the \$200 million corporation, or

53. For example, under the federal tax code, the contributions or benefits provided under a plan must not discriminate in favor of highly compensated employees. Section 401(a)(4) contains the test for nondiscrimination that a qualified plan must satisfy. The purpose of this test is to assure that the benefits provided to highly compensated employees are proportional to those provided to non-highly-compensated employees. *See* 26 C.F.R. § 1.401(a)(4)-1 (2016).

54. Different states subject different matters to shareholder approval, but common examples include mergers and charter amendments. *See, e.g.*, MODEL BUS. CORP. ACT §§ 10.03, 11.04 (2004); *see also* Patrick L. Cusato, *The Economically Dominant Subsidiary: When Can Shareholders Maintain Control?*, 37 SYRACUSE L. REV. 949, 954-55 (1986) (remarking that extraordinary transactions at common law required unanimous shareholder approval based on the traditional theory "that the corporate board's power was limited to the management of ordinary and regular business").

might prefer being only a little richer in an economy in which poor and middle class people are considerably richer by reason of their fuller and more equal opportunity to participate in the capitalist system by being included in the process of capital acquisition with the earnings of capital. Moreover, many shareholders are institutional investors that “own the market”⁵⁵ and may believe that the macro-economy will enhance the value of their aggregate, diversified holdings if there is a systemic market solution to provide the income distribution to poor and middle class people needed to support greater market demand for consumption and therefore greater return on investment. Many such institutional investors include (1) government and private retirement funds, union funds, mutual funds that will better serve their dedicated goals with an increasingly prosperous poor and middle class and (2) charitable foundations dedicated to social causes including enhancing the interests of poor people.⁵⁶ With widespread teaching and advocacy of the binary approach to production, income distribution, and growth, shareholders will be able to make decisions regarding corporate and government policies and their relationship to income distribution, corporate profitability, and economic growth in light of a deeper and fuller economic, legal, and normative understanding and appreciation of the available alternatives open to them.⁵⁷

55. See J. Hawley & A. Williams, *The Emergence of Universal Owners: Some Implications of Institutional Equity Ownership*, CHALLENGE: THE MAG. OF ECON. AFF., 43 (2000); J. HAWLEY & A. WILLIAMS, THE RISE OF FIDUCIARY CAPITALISM: HOW INSTITUTIONAL INVESTORS CAN MAKE CORPORATE AMERICA MORE DEMOCRATIC (University of Pennsylvania Press 2000).

56. Eric Fox, *Introduction to Institutional Investing*, INVESTOPEDIA (February 11, 2014), <http://www.investopedia.com/articles/financial-theory/11/introduction-institutional-investing.asp>; see also George Soros & Fazle Hasan Abed, *Rule of Law Can Rid the World of Poverty*, FIN. TIMES (Sept. 26, 2012), <http://www.ft.com/intl/cms/s/0/f78f8e0a-07cc-11e2-8354-00144feabdc0.html#axzz3ybWnCW4s> (“Without basic legal empowerment, the poor live an uncertain existence, in fear of deprivation, displacement and dispossession.”); see also *Inclusive Economies: Inequality undermines economic opportunity and growth*, FORD FOUNDATION, <http://www.fordfoundation.org/work/challenging-inequality/our-approach/inclusive-economies/> (last visited Feb. 13, 2016). (“Economic inequality is pervasive, and in recent decades, has grown dramatically worldwide and undercut growth.”); see also *Open Society Foundations Grant Helps Move Americans from Poverty to Self Sufficiency*, OPEN SOCIETY FOUNDATIONS (Apr. 4, 2011), <https://www.opensocietyfoundations.org/press-releases/open-society-foundations-grant-helps-move-americans-poverty-self-sufficiency>. (“The Open Society Foundations awarded an \$8 million grant to Abt Associates today to support efforts to identify effective models for helping low-income, low-skilled people become more self-sufficient.”). In acknowledging its sponsorship of National Public Radio Programs, The Ford Foundation is credited with being dedicated to “eliminating inequality in all of its forms.” One can hope that eliminating the inequality in the competitive ability to acquire capital with the earnings of capital will be included as one of its priorities. *All Things Considered*, NATIONAL PUBLIC RADIO (Apr. 4, 2016).

57. Robert Ashford, *Economics, Democracy, and the Distribution of Capital Ownership*, 40 F. FOR SOC.-ECON. 361, 369-370 (2011).

IV. WHAT CAN ADVOCATES FOR POOR PEOPLE DO TO HELP?

The problem of poverty has been with us for so long, that it might be fairly said that if advocates for poor people are not doing something out of the ordinary, they may (despite their sincerest motivations) unwittingly be a part of the problem. One symptom of insanity has been identified as doing the same thing repeatedly and expecting a different result.

One of the most important duties of lawyers is to assist their clients in identifying and securing their essential rights and responsibilities.⁵⁸ To fulfill this duty it is often necessary for lawyers to identify facts, principles, and theories that those who would impede their clients' interests are *not* talking about.

Most poor and middle class adults know that there are rights to food stamps, other welfare rights, unemployment compensation, and job training.⁵⁹ Most know about prospects of raising the minimum wage, the employment benefits of education, and the helpfulness of a raise in pay.⁶⁰ The same can be said about attorneys, legal scholars, law schools and clinics dedicated to serving their rights and interests.

I believe that the most important economic right that poor and middle class people (including their advocates) need, but do not know they need, is the competitive right to acquire capital with the earnings of capital. As a consequence, they do not know to ask and press for it.

This right is not a fanciful right. Credit-worthy corporations are constantly acquiring capital with the earnings of capital. Indeed, a major purpose of corporate finance is to enable corporations to acquire capital on credit *before* they have earned the money to pay for it and then to

58. Robert Ashford, *Socio-Economics: What Is Its Place in Law Practice?*, 1997 WIS. L. REV. 611, 615 (1997).

59. For example, increased awareness of eligibility for Supplemental Nutrition Assistance Program (SNAP) (the technical term for food stamps) has been attributed for the increased enrollment among eligible individuals over the last decade or so, up to 83% in 2012. *Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP)*, CTR. ON BUDGET AND POL'Y PRIORITIES (Jan. 8, 2015), <http://www.cbpp.org/research/policy-basics-introduction-to-the-supplemental-nutrition-assistance-program-snap>.

60. Lydia Saad, *In U.S., 71% Back Raising Minimum Wage*, GALLUP (Mar. 6, 2013), http://www.gallup.com/poll/160913/back-raising-minimum-wage.aspx?ref=mn-clientservices#!mn-topics_ (“Seven in 10 Americans say they would vote “for” raising the minimum wage to \$9 per hour if given the opportunity, while 27% would vote against such a bill”); *see also New Poll Shows Political Benefits to Supporting a Federal Minimum Wage Increase in 2016 Election*, OXFAM AMERICA (Sept. 3, 2015), <http://www.oxfamamerica.org/press/new-poll-shows-political-benefits-to-supporting-a-federal-minimum-wage-increase-in-2016-election/> (“Eighty-seven percent of general election voters support at least one proposal for a federal minimum wage increase” to either \$9, \$10, \$12 or \$15).

repay the loan obligations with the future earnings of the capital acquired. By way of shareholder participation in the corporate form of doing business, this right is also realized constantly by people roughly in proportion to their existing wealth even as they sleep. But it is not realized by wages, job training, education, student loans, assistance with child care, raising the minimum wage, or ending racial, gender, or other invidious discrimination. If ever the competitive right to acquire capital with the earnings of capital is to be realized for poor and middle class people, it must first be talked about in mainstream political and economic discourse; but presently in mainstream political and economic discourse and in most legal scholarship offered to help poor people, it is definitely *not* being talked about.

And yet this “law and economic,” property-right is the essence of capitalism. For the present, younger professors, the Cold War (that largely shaped twentieth century global history) may be a fading epoch of history; but at least some of the most senior professors (and I among them) remember times when as grade school students we were taught to crouch under tables in air-raid drills in preparation for the nuclear attacks from the communist Soviet Union that thankfully never came. And some may even remember the slogans of “better red than dead” espoused by some (primarily in England) who believed capitalism was on the wrong side of history. But the leaders of the United States and its allies disagreed; their policy was “better dead than red.” For what, it should be asked, was it worth risking nuclear devastation? The answer is a cluster of personal rights that include at its economic core, the private right to acquire capital with the earnings of capital. This, at its economic and property right core, is the legal distinction between communism and capitalism—not the right to a job or to work, or to receive public education, job training, welfare or other government payments and assistance, or to own a home, car or other consumer products. These rights were all recognized in communist economies. The fundamental economic and property issue at stake during the Cold War on the grand scale of economic policy was whether the right to acquire capital with the earnings of capital should remain privatized or be outlawed. And yet in mainstream discourse, that right is almost never articulated as such. It is therefore not surprising that poor and middle class people (and their advocates) have little basis to identify this right and believe that it might be as important to their living well as it is to well-capitalized people.⁶¹

61. Binary economics has received scant critical attention from professional economists (i.e., from persons with a Ph.D. in economics from an accredited educational institution). For two recent

One reason that the right to acquire capital with the earnings of capital is not more widely accepted is that mainstream economic discourse is trapped in a prison of pre-conceptions (a pre-conceptual box) that might be called the left-right linear economic paradigm. This conceptual box recognizes two extremes (austerity and stimulus) and admits of no alternative except some mix of the two located somewhere in between. Based on this conceptual foundation, there are a series of debates that structure and polarize mainstream analysis: the stimulus-austerity debate,⁶² the regulation-deregulation debate,⁶³ the government-

favorable articles see Robert Ashford & Demetri Kantarelis, *Capital Democratization*, 37 THE JOURNAL OF SOC.-ECON. 1624 (2008). For alternate approaches to implementation of binary financing, see Robert Ashford & Demetri Kantarelis, *Enhancing Poor and Middle Class Earning Capacity with Stock Acquisition Mortgage Loans*, 11 ECON., MGMT., & FIN. MKT. 11 (2016) In *A Supply-Sider's (Sympathetic) View of Binary Economics*, 25 J. OF SOCIO-ECON. 55, 66 (1996), economist Timothy P. Roth, took a sympathetic view but found its theoretical underpinnings lacking and expressed serious concerns that government efforts to encourage its implementation would become dysfunctionally politicized. In *Democratic Capitalism vs. Binary Economics*, 30 J. OF SOCIO-ECON. 99, 99-100 (2001), Keith Wilde and R. G. Schulte, declared that the binary proposals "may be the best available instrument for preserving the open society that is essential for a stable and democratic capitalism" but lamented that this "brilliant innovation in economic policy, backed up by expertise in financial and legal principles, has been side-tracked by promoting it as an innovation in economic theory." The only critique by a professional economist to reject the binary prediction of binary growth appeared in *Binary Economics: Paradigm Shift Or Cluster of Errors*, 8 Q. J. OF AUSTRIAN ECON. 31, 41-43 (2005). In that Article, Timothy D. Terrell opined that the binary proposals would lead to a "massive credit bubble," severe inflation, and then widespread bankruptcy. From the perspective of advocates for poor people, however, the credibility of Terrell's analysis should be considered in light of the principles of Austrian Economics on which it rests, which assume (1) an economy otherwise operating at full capacity and equilibrium in which (2) all unemployment is voluntary, and (3) governmental redistributive policies to assist poor people (except perhaps regarding education) are misguided and counter-productive. The failure of mainstream professional economists to consider the binary approach does not relieve advocates of poor people from their responsibilities to their clients. In this regard, ABA MODEL RULE 2.1, Comment [4] concludes with the following admonition: "Where consultation with a professional in another field is itself something a lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts."

62. James Midgley, *Austerity Versus Stimulus: Theoretical Perspectives and Policy Implications*, 41 J. SOC. & SOC. 11, 11 (2014) ("Advocates of austerity policies urge governments to retrench public spending, ease taxes and regulations and adopt other measures that will restore business confidence prompting entrepreneurship, investment and economic revitalization . . . [o]n the other hand, advocates of stimulus policies urge governments to increase public spending through borrowing in order to create employment, maintain incomes and stimulate consumption so that demand for goods and services will increase and foster growth and prosperity.").

63. The back and forth between proponents and opponents of government regulation dates to the Civil War and continues through the present day. Proponents say that the "appropriate response to market failure is regulation because regulation not only protects entitlements, redistributes wealth, promotes economic efficiency, and responds to interest-group pressures but also is paternalistic and may shape and/or discourage certain preferences . . . Proponents of *deregulation* point to 'regulatory failure' as a justification for the market approach because regulation (1)

anti-government debate,⁶⁴ the free-trade-fair-trade-protectionist debate,⁶⁵ and of course the welfare debate between (1) those who see poverty as a structural and institutional problem and who believe that more government assistance is needed and (2) those who see more government assistance as excessive, unaffordable, and destructive of motivation and incentives for greater productivity and therefore a part of the problem.⁶⁶ Although they disagree on many things, the participants in these polarized debates share a common, albeit unarticulated, premise

suppresses innovation, (2) denies price and quality options, (3) encourages wasteful competition, (4) produces resource misallocations, (5) shelters and encourages inefficiency, and (6) encourages a wage/price spiral.” Stephen G. Wood, Don C. Fletcher & Richard F. Holley, *Regulation, Deregulation and Re-Regulation: An American Perspective*, 1987 B.Y.U. L. REV. 381, 386-88 (1987) (emphasis added); see also President George Bush, Address Before a Joint Session of the Congress on the State of the Union (Jan. 28, 1992), <http://www.presidency.ucsb.edu/ws/?pid=20544> (calling for a moratorium on anti-growth domestic regulation).

64. Susan Page, *How Big Government Should Be Stirs Debate*, USA TODAY (Oct. 11, 2014, 1:53 PM) http://usatoday30.usatoday.com/news/washington/2010-10-11-1Abiggovernment11_CV_N.htm (dissecting a Gallup poll wherein: 22% of Americans want government out of their lives while 20% want government that protects its citizens; 58% of those surveyed say the government is doing too many things that should be left to individuals and businesses while 36% say the government should do more to solve the country’s problems); see also President Barack Obama, Address Before a Joint Session of the Congress on the State of the Union (Jan. 28, 2014) (“For several years now, this town has been consumed by a rancorous argument over the proper size of the federal government. It’s an important debate . . .”).

65. Robert Howse & Michael J. Trebilcock, *The Fair Trade-Free Trade Debate: Trade, Labor, and the Environment*, 16 INT’L REV. L. & ECON. 61, 61 (1996) (“The fair trade claims that currently generate the most heated debates in the trade community are those related to environmental and labor standards. The *Economist* magazine recently noted that ‘labour standards and environmental issues are playing an increasing role in international trade disputes’ and are likely to be the central area of conflict between developed and developing countries in the next decade Most free traders see recent demands that trade be linked to compliance with environmental and labor standards as motivated by the desire to protect jobs at home against increased competition from the Third World and view many fair traders as charlatans (protectionists masquerading as moralists). Where the demands of fair traders cannot so easily be reduced to protectionist pretexts, free traders are inclined to portray the advocates of linkage as irrational moral fanatics, prepared to sacrifice global economic welfare and the pressing needs of the developing countries for trivial, elusive, or purely sentimental goals.”). For an excellent analysis of the questionable free-trade benefits flowing from the widely accepted principles of comparative advantage, see generally Robert E. Prasch, *Reassessing the Theory of Comparative Advantage*, 8 REVIEW OF POLITICAL ECONOMY 37 (1996).

66. See, e.g., Thomas Corbett, *Informing the Welfare Debate: Perspectives on the Transformation of Social Policy*, INST. FOR RES. ON POVERTY (Apr. 1997), <http://www.irp.wisc.edu/research/welreform/national/informingwd.htm> ([T]he welfare debate “touches the most sensitive of societal issues: work, family, sex, abortion, personal responsibility, and community integrity. Welfare reform has become a proxy for fundamental questions about quality of life and how to allocate personal and public responsibilities.”); see also Michael Tanner, *When Welfare Undermines Work Ethic*, N.Y. TIMES (May 5, 2013 7:00 PM), <http://www.nytimes.com/roomfordebate/2013/05/05/denmarks-work-life-balance/when-welfare-undermines-work-ethic>.

that broadening the distribution of capital income with the earnings of capital will *not* enhance the earning capacity of poor and middle class people and will *not* promote a fuller employment of labor and capital and economic growth. Otherwise, the prospect of broadening the distribution of capital acquisition with the earnings of capital would be a part of the conversation; and it is not. To adequately serve their clients, advocates for poor people need to be willing to think outside the mainstream, economic box. This in turn sometimes requires the courage and honesty to resist the comfortable social temptation to conform one's thinking to what the group thinks.⁶⁷

In light of the persistence of poverty, despite (1) the great promise of abundance and leisure seemingly offered by the Industrial Revolution, and (2) the efforts of many well-motivated people to address the appalling problem of poverty over several centuries, to those advocates for poor people who recognize that the need to do something out of the ordinary, joining the effort to learn and teach the principles of inclusive capitalism based on binary economics should have some appeal. A widely shared mission of advocates for poor people dedicated to helping include the principles of inclusive capitalism based on binary economics as a recognized and respected, indispensable place in legal education and higher education would certainly change the mainstream economic debate.

V. CONCLUSION

Once the principles of inclusive capitalism are articulated in mainstream discourse, an economic analysis of the beneficial impact of democratizing capital acquisition with the earnings of capital will convince growing numbers of people that (1) the continued concentration of this right, as a practical matter, for the benefit of people roughly in proportion to their existing wealth is a substantial unarticulated barrier to increasing the earning capacity of the vast majority of people and the alleviation of poverty, and (2) as a practical matter, this right can be democratized by way of voluntary transactions and without redistribution to extend to all people the equal protection of the same laws that present primarily benefit well-capitalized people substantially in proportion to their existing wealth. This enhanced understanding of the importance of the competitive right to acquire capital with the earnings of capital has the potential to produce systemic

67. See, e.g., Irving L. Janis, *Groupthink*, PSYCHOL. TODAY, Nov. 1971, at 43-46, 74-76.

change in the political environments so as to establish an inclusive capitalist economy structured to operate via voluntary transactions and without redistribution not only (a) to substantially enhance the earning capacity of poor and middle class people (by supplementing their labor income and any transfer payments they may receive increasingly with capital income), but also (b) to reduce unemployment, raise wages, enhance working conditions, reduce taxes and tax rates, and promote sustainable economic growth. Legal scholars, lawyers, law schools, law school clinics, and advocates for poor people have the duties to teach students and clients, to advocate, and to work to implement the principles of inclusive capitalism explained in this article.