

HOW THE INTERNATIONAL FINANCIAL INSTITUTIONS CAN HELP TO WIN GLOBALIZATION OF MORE STAKEHOLDERS – BY MAKING MORE STOCKHOLDERS *

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INTRODUCTION: THE QUANDARY OF PETER, PAUL & MARY

Global trade and investment liberalization present something of a conundrum to those who are concerned with distributive justice and human well-being. On the one hand, there seems no gainsaying that the gradual removal of transnational trade and investment barriers is resulting in more

* This piece may be viewed as the last in either or both of two, four-part sequences of articles devoted to the tasks of envisaging means of financially engineering a more just distribution of material opportunity and risk, both within polities and worldwide.

The first, worldwide sequence comprises of the following: Robert Hockett *Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions on Guarantors of Global Equal Treatment and Market-Completion*, 36 METAPHIL. 93 (2005) [hereinafter Hockett, *Three Pillars*], reprinted in GLOBAL INSTITUTIONS AND RESPONSIBILITIES: ACHIEVING GLOBAL JUSTICE (Christian Barry & Thomas Pogge eds., 2006); Robert Hockett, *From “Mission-Creep” to Gestalt-Switch: Justice, Finance, the IFIs and Globalization’s Intended Beneficiaries*, 37 GEO. WASH. INT’L L. REV. 167 (2005) [hereinafter Hockett, *Mission-Creep*]; and Robert Hockett, *Just Insurance Through Global Macro-Hedging: Information, Distributive Equity, Efficiency, and New Markets for Systemic-Income-Risk-Pricing and Trading in a “New Economy,”* 25 U. PA. J. INT’L ECON. L. 107 (2004) [hereinafter Hockett, *Just Insurance*].

The second, more domestically oriented sequence comprises of the following: Robert Hockett, *What Kinds of Stock Ownership Plans Should There Be? Of ESOPs, Other SOPs, and “Ownership Societies,”* 92 CORNELL L. REV. 865 (2007) [hereinafter Hockett, *Stock Ownership Plans*]; Robert Hockett, *A Jeffersonian Republic by Hamiltonian Means: Values, Constraints, and Finance in the Design of a Comprehensive and Contemporary American “Ownership Society,”* 79 S. CAL. L. REV. 45 (2005) [hereinafter Hockett, *Jeffersonian Republic*]; and Robert Hockett, *Whose Ownership? Which Society?,* 27 CARDOZO L. REV. 1 (2005) [hereinafter Hockett, *Whose Ownership?*].

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rapid economic growth worldwide.¹ That growth, moreover, appears to be lifting many once desperately poor persons out of their penury.² And all of this appears to be happening much in the way—pursuant to the selfsame dynamic—that students of political economy since the “classical” era of Smith, Ricardo, and Mill have predicted.

Yet now on the other hand, there also would seem no denying that global trade and investment liberalization have wrought losses at least as conspicuous as the gains. And these do not accrue solely, or even mainly, to complacent or plutocrat rascals—folk of the sort long since fingered by Smith and his “public choice” school descendants, as being always the principal advocates of “protectionist” policies of all stripes. For many, if not most, of the “victims” of globalization seem to be those who until recently occupied positions much like those now coming to be occupied by globalization’s more sympathetic beneficiaries. And this is, of course, the root of the quandary to which I refer. For what are we to think of—how are we ethically to assess and regard—a process that “robs,” so to speak, faultless Peters to pay faultless Pauls? And symmetrically, what do we make of a *status quo ante* that kept faultless Paul in his poverty while benefiting faultless Peter?

Now one might suggest various means by which to address the dilemma I mention—what I’ll call “the assessment dilemma.” One family of such means in particular has been favored historically by most mainstream economists and policy advocates since at least Bentham’s day: One suggests, for example, we seek means of commensurating the gains and the losses to Peters and Pauls, then choose such policies as yield the greatest net gains or least losses. Relatedly, as well as heuristically more conveniently, one might propose fixating on some readymade index—global GDP, say for example, accruing not only to Peters and Pauls, but now to less sympathetic, rich Marys as well—then select policies best calculated to “maximize such readymade index” it. It is truly remarkable, on reflection—and perhaps worthy of psychological study some day—how many contributors to public discussion of globalization appear to adopt points of view of this general type.

I do not think, though, that the proffered approaches to the assessment dilemma of this species are apt to prove satisfactory for long, either prudentially or ethically speaking. For as a prudential matter, perceivably “robbed,” faultless Peters cannot plausibly be expected to acquiesce in their robbery indefinitely, simply because some of the spoils assist Pauls. This seems especially so given the Peters’ own recent history of struggle to win wealth shares from less sympathetic rich Marys, who presently seem to be benefiting along *with*—and indeed even *more* than—the Pauls at the Peters’

1. See, e.g. Trade Transforms Economies, Reduces Poverty, 2007 WLNR 18740481, Sept. 24, 2007.

2. See, e.g. Fact Sheet: Case for U.S. – Columbia Trade Promotion Agreement, 2007 WLNR 17864510, Sept. 12, 2007.

expense.³ More importantly still, as an ethical matter, neither robbed faultless Peters nor *anyone* rightfully *can* accept, without alteration or emendation, a systematic transfer from hypothetically faultless Peters to undeserving Marys—if truly “faultless” such Peters and “undeserving” Marys they be. At least that seems so if some workable, ethically ameliorative alteration lies to hand.

I’d like in this Essay to design and discuss one such “alteration” that I think might be open to us. I think that we might add some plumbing, so to speak, to the processes of global trade and investment liberalization. It is plumbing that re-channels some of the gains that those processes presently channel away from the Peters to already advantaged Marys, back to those recently and now seemingly again disadvantaged Peters. Think of it as “bypass surgery,” if you like, a bit of added arterial flow to ensure the heart’s healthy functioning. And if I am correct in my supposition, it will mean that continued trade and investment liberalization can be made to benefit Pauls in a manner that does not rob Peters *or* Marys. This proposed system will be globalization that gives rise to *unalloyed* justice and wealth-gains.

“Magic?” one might ask. Well, no; finance. For the key, I believe, is to channel some shares in the Mary’s’ trade- and investment-benefited firms to the laboring Peters whom cross-border trade and investment are presently tending to displace. If globalization misemploys faultless Peters, and if only lesser paying jobs subsequently remain “”then make Peter part-owner of the firm that has’ discarded him. This is the prospect I would’ like to explore.

The Essay proceeds, then, as follows: In the next Part, I flesh out in a bit more detail who I mean here by “Peters,” “Pauls,” and “Marys,” as well as what I mean by “faultless,” “deserving,” and “undeserving” in characterizing these personages. This serves to sharpen the quandary I have been talking about, and to highlight some premises which I think underwrite that quandary—premises which empirical work can serve either partly or fully to corroborate or falsify. (My proposal can accordingly be taken as conditional in nature: *If* the premises drawn out in Part I are correct—something I believe plausible, but do not have space here to prove—*then* the proposal would seem attractive.)

Part II then elaborates the structure of a familiar firm-share-spreading prototype from which my own proposal less familiarly, but quite straightforwardly, extends: I refer now to the employee stock ownership plan, or ESOP. The ESOP, I believe, is woefully inadequate to the task for which it was originally embraced by the U.S. Congress—the provision of income security to U.S. laborers. But the financial structure of the ESOP, and that structure’s resonance with a number of deep-seated justice intuitions and behavioral-psychological regularities, I believe, render it an ideal template from which to extend when we seek means of channeling a share of the capital

3. On that recent history, see, for example Hockett, *Three Pillars*, *supra* headnote.

gains currently realized by firm-owners who benefit by trade and investment liberalization to laborers now being displaced by the same.

Parts III and IV carry out the project of analogical extension just mentioned. I proceed in two steps: Part III shows how readily the ESOP form can be varied simply by varying the patronage relations that both essentially define and ethically underwrite it. Part IV then shows how readily laborers' displacement by globalization-facilitated "outsourcing" can stand in as an ethically compelling "shadow" form of patronage. If I am right about this, then we appear to have here an elegant means both of addressing the assessment dilemma with which I have opened this discussion and of winning more friends for globalization worldwide than it currently has.

Part V then briefly addresses the central coordinating role the IFIs both can and should take in facilitating and perhaps even administering such programs as those I propose in Part IV. For, I argue, programs of this sort are not only programs in respect of which the IFIs bear comparative advantage: they also, and not accidentally, are precisely the sort of fare for which the IFIs—especially the Bretton Woods IFIs—are designed in their globalization-complementary roles. Indeed, I believe, facilitating such programs as these would confer on the IMF and the IBRD roles relative to their earlier missions quite analogous to that of the WTO relative to its stillborn forebear, the ITO as envisaged in the founding era.

In the Conclusion, I briefly address anticipated objections and look forward.

I. THE QUANDARY SHARPENED & DIAGNOSED

In order to render the considerations that prompt my proposal more fully appreciable, I will first briefly identify what I think are the sources of the assessment dilemma with which I opened. For there are, I believe, several widely held assumptions that lurk in the background of much debate over globalization. I think these assumptions both underwrite the quandary itself and point, if they're correct, toward the best means of dissolving the same. I also happen to believe they are plausible assumptions and indeed endeavor to bear them out empirically elsewhere. Here, though, I have space only to state them.

The first assumption is that there is, "out there in the world," so to speak, a global endowment of "primal stuff," or of what I shall somewhat more preciously call "ethically exogenous resources."⁴ These are things nobody has

4. This is the label I have given them, see, for example, Hockett, *Stock Ownership Plans*, *supra* headnote. Some call them *luck*, some *advantage*, and others deem them *resources*. Another name for that that I propose elsewhere is *material opportunity*. See, e.g. Hockett, *Mission-Creep*, *supra* headnote. All of these variants work, but the later suggest the user of the term is unaware that some resources, advantages, etc ... are themselves the product of responsible action on the part of the beneficiary, in which case they are ethically endogenous and not the sort

produced, and thus no one can claim credit for or ultimate ethical title to. They jointly add up to a sort of “primal given,” a substrate of basic resources from which other things are made.⁵

Informally and intuitively, we might at first pass think of this global “stuff” as including inert and insipid material substances like petroleum, gas, coal, copper, gold, and magnesium—all manner of useful, hence, valued materials to which no one initially has any more legal or ethical claim than has anyone else. At next pass, moving outward from heuristically easy examples like those, we can *enrich* the description of “global stuff” by including what might be called “cultural deposits.” Here I refer to accumulated knowledge, practical know-how, even the languages in which we generally think and through which we communicate.⁶ All things that have been left to us by our forebears, which none of us has produced and yet many of us derive value from—hence to which none of us bears any more prior ethical claim than she can assert in respect of newly discovered mineral wealth—would count here. These “deposits” too, I suspect, tend implicitly to be viewed as what I am calling ethically exogenous. Their possession or otherwise is a matter of brute luck. From an ethical point of view, they no more properly belong to one person than to another. Access to such forms of wealth owes more to good fortune in the “birth lottery” than to any form of creditably virtuous, value-additive activity.

Now if it is plausible to partition things in this way—to maintain that there *is* some such stock of ethically exogenous yet widely valued “stuff” to which no one bears ethical claims prior to anyone else’s—then it seems fair to suppose something else: It seems fair to maintain that every human person—everyone who is an appropriate subject of our ethical concern—is entitled in justice to an *equal pro rata share* of this stock. That would seem a straightforward consequence of our belief that all people are, ethically speaking, created equal—i.e., that all are equally entitled to our ethical concern. For such concern surely must include concern that persons bear access to the stuff of which successful lives are made—call this “material,” or “substantive” concern. And in the case of that portion of such stuff for the existence of which no one now living is responsible, equal such material concern would seem to amount to concern for material equality. And *this*, I suspect, is the *second* working assumption under which many people attempting to think through the ethical significance of global trade and investment liberalization operate. We tend intuitively to think of all human beings as bearing, by way of birthright, a right to equal opportunity—not just formal opportunity, but “substantive,” material opportunity as well. And so we

of thing that concerns us here.

5. Hillel Steiner has a lovely, evocative name for it. He calls it the *global fund*. Hillel Steiner, *AN ESSAY ON RIGHTS* 277 (1994).

6. For an exhilaratingly thoughtful discussion of the global advantages conferred by birth into a language community, see DAVID SINGH GREWAL, *NETWORK POWER AND GLOBAL ARCHITECTURE* (forthcoming from Yale University Press, 2008).

view them as bearing equal claims to what ever resources are out there, which nobody now living is actually creditable with having responsibly brought into existence.⁷

The first two assumptions are, of course, ethical-theoretic in nature. They serve as postulates that could certainly be argued about, but in connection with which argumentation would not involve much in the way of appeal to mundane “facts on the ground.” The remaining assumptions, by contrast, involve more melding of theoretic with empirical elements: The third assumption is that the endowment of global “stuff” to which I have referred per the first assumption is not *actually* distributed equally in the pro rata manner described per the second assumption. It is just not the case that every person actually holds her rightful pro rata share of the world’s ethically exogenous resources. Some are born into wealthy countries possessed of abundant natural and even cultural resources, the continuing *in rem* jurisdiction over or title to which is largely enshrined in international law.⁸ Some are born into wealthy families whose familial wealth is protected—and nowadays decreasingly taxed—under domestic property, tort, and even constitutional legal arrangements.⁹ Other people are faultlessly born *without* such advantages—some even born with severe handicaps for which neither domestic nor international norms backed by the force of law require or afford compensation.¹⁰ Insofar as this is the case, there are people with more than, and people with less than, what we would think their rightful pro rata shares of the ethically exogenous global endowment per the first two assumptions. Hence there is a gap between our ethical “ought” intuitions and our present day “is” impressions. So runs the third implicit assumption.

The fourth assumption amounts to a further specification of the third. It is that we can partition the class of all persons entitled to our equal ethical concern into the following four subclasses: Call the first class the “Ones.” These are all those who, per the second and third assumptions, hold more than their ethically required equal pro rata shares. They hold more than what they actually bear rights to hold, per the second assumption, of the ethically exogenous “stuff.” Perhaps they are born to rich families, in rich countries, or both. They are lucky, favored by accident, by fortune. To be sure, much—even very much—of their surplus might owe to their own laudably responsible, value-additive efforts and hence, be viewed ethically as properly belonging to them. The point here is simply that not all of it does in the case of the Ones.

The second class I’ll call the “Twos.” Twos hold more or less *precisely*

7. “God has bestowed this manna equally upon all of us,” one might say.

8. See generally Robert Hockett, *The Limits of Their World*, 90 MINN. L. REV. 1720 (2006) (reviewing Jack L. Goldsmith & Eric A. Posner, *THE LIMITS OF INTERNATIONAL LAW* (2005)).

9. *Id.*

10. It could be argued that the International Covenant on Economic, Social and Cultural Rights . . . But thus far, the treaty does not appear to have been widely read—or at any rate vindicated by state action—in so fulsome a manner. See *id.*

their rightful pro rata shares—not substantially more and not substantially less. Then there is another class, call them “Threes,” who hold substantially, but perhaps not dramatically less than their rightful pro rata shares. And finally, there are those I shall call “Fours,” who hold *much* less than their rightful shares of the global endowment. If born into, and confined to, highly arid environments or violent and impoverished ghettos or enclosed refugee camps, some Fours could even be called “Fives,” “so to speak. And if born with severe handicaps they might even be thought—depending upon whether we account genetically transmitted “human resources” among the world’s ethically exogenous resources—to be “negatively” endowed. So runs the fourth assumption, that none of the just-defined classes—especially not the Ones, Threes or Fours—is null.¹¹

Finally, I think that there are three further, more quickly characterizable implicit assumptions under which many of us who think about global trade and investment liberalization tend to operate. The fifth assumption is the class of Ones is roughly coextensive with the class of significant residual claimants on and creditors of business firms—that is, with large-scale shareholders and holders of significantly valued quantities of debt securities issued by firms. The Ones, that’s to say, are by and large substantial owners of and lenders to firms. A corollary assumption, then, might be that significant portions of these peoples’ portfolios are inherited or otherwise plausibly regarded as windfalls. But we’ll see that no such corollary is necessary to what I’ll be arguing.¹²

The sixth and related assumption is that the classes of Twos and Threes, together, are roughly coextensive with the class of minimal-shareholding or non-shareholding workers, but either white collar salary-earning or union-scale blue collar wage-earning officers or laborers for firms operating principally in countries possessed of advanced economies. These folk, particularly the high-waged and salary-earning among them, typically have been born into and matured in the more or less nurturing and encouraging environments of well-to-do households and neighborhoods, and have borne access to good educations. They accordingly possess much in the way of well-developed “human capital.” But they possess less inherited *nonhuman* capital—creditor and ownership interests in firms.¹³

The seventh, final and again related assumption is that the class of Fours is roughly coextensive with the class of *very* low-wage earners. Often or persistently unemployed and subsistence agriculturers, the Fours, by far the

12. There is substantial statistical evidence to the effect that the overwhelmingly greater part of corporate securities—both equity and debt instruments—held by Americans are inherited. See *infra* Part III; Hockett, *Stock Ownership Plans*, *supra* headnote.

13. The assumption here would not rule out non-negligible stock-holding and bond-holding—either direct, indirect, or beneficial—by Twos and Threes. It is simply to the effect that these groups’ ownership and creditor stakes are very much less than are those of the Ones. For empirical corroboration of this suspicion, as well as specifications of what direct, indirect, and beneficial firm-owning are, please see *infra*, Part III; and Hockett, *id.*

greater part of all of whom inhabit economically underdeveloped countries without access to valued resources, inherited wealth, or even effective political, economic and social infrastructures or educational and other institutions. “Social capital,” we might say, is as scarce or as maldistributed as is “natural” capital in the precincts inhabited by Fours, and so, in consequence, is “human capital” too.¹⁴

Now here is the sense in which the seven assumptions just adumbrated give rise to the quandary of Peter, Paul, and Mary with which I opened this Essay—if the assumptions are more or less correct, then global trade and investment liberalization will bear the following curious attributes: First, they will tend most immediately to benefit the Ones and the Fours—in particular, the Fours in the economically lesser developed jurisdictions where, by hypothesis, most of the Fours live. For the firms owned and lent to by the Ones are the first beneficiaries of liberalization; These benefits, realized largely by hiring desperate Fours willing to work in unregulated environments for low wages, go immediately to Ones. If that is correct, then the Ones are those whom I called the “Marys” in the Introduction, and the Fours are the “Pauls.”

Second, if the assumptions are correct, trade and investment liberalization will tend to benefit the Ones and the Fours at the immediate *expense* of the Twos and the Threes—in particular, those in the economically well developed jurisdictions where by hypothesis most of the Twos and Threes live. For as firms realize growing profits by avoiding the labor, environmental, and other regulatory regimes that once constrained them in the developed jurisdictions,¹⁵ the formerly salaried and higher-waged officers and other employees of these same firms—Twos and Threes—lose increments of salary and wage, along with other benefits, that earlier were won through precisely such domestic labor and employee benefit legislation.¹⁶ So the Twos and Threes will be those whom I labeled “Peters” in the Introduction; they largely finance the gains realized by the Pauls and the Marys.

But now, if all of this is so, then it means that global trade and investment liberalization, as presently conceived and carried out, are inherently afflicted with an acute ethical ambiguity, if not a full-blown indeterminacy. And it is precisely this ambiguity, I think, that ultimately accounts for the difficulty I have described—the quandary that many of us tend to experience in attempting to determine whether globalization is a good thing or not, and thus what kinds of conditions, if any, should be imposed upon continued or further

14. See *id.*; Hockett, *Jeffersonian Republic*, *supra* headnote.

15. It would happen, of course, in any of several familiar ways: Firms in the developed world would outsource or threaten to outsource to less regulated jurisdictions. Firms in the developing and less regulated world, for their parts, would export to the once-regulated developed world and would do so cheaply by dint of the costs saved via non-regulation. And, of course, the latter course strengthens the force of the former course.

16. I am ignoring longer-term “rising tides lift all boats” type claims for the moment.

trade and investment liberalization.

Here, more precisely, is what I mean: Insofar as we are able plausibly to restrict comparison to Ones on the one hand and Twos and/or Threes on the other, simply leaving Fours out of account in a sort of ethical blind spot, there is a straightforward ethical loss in the case of global trade and investment liberalization. At least that is so in the short term, and probably it is so for longer than that in view of both personal “retooling” costs and the relatively brief length of a working life.¹⁷ That is to say, if we forget about the Fours—if we ignore the desperately poor, most of whom operate outside of the advanced economies—it seems pretty clear that globalization is a bad thing. For we are benefiting the Ones at the expense of the Twos and the Threes. And by hypothesis, per the assumptions elaborated above, the Ones already are over-endowed, the Twos are at best adequately endowed, and the Threes are under-endowed. So redistributing from the Twos and the Threes to the Ones yields a straightforward justice-loss. I suspect that many opponents of trade and investment liberalization, at least those who oppose it without any misgivings, think along these lines. It is the Fours who are hidden in their ethical blind-spot.¹⁸

Now if, by contrast, we restrict comparison to the Twos and/or Threes on the one hand and the Fours on the other, leaving the *Ones* out of account in the ethical blind-spot, *then* we face the prospect of an unambiguous sort of justice *gain* wrought by global trade and investment liberalization. For the “degree” of global injustice—the justice-shortfall, so to speak—can be viewed in this case as being now partly made up. Ethically exogenous global “stuff” is more nearly equalized between Twos, Threes, and Fours, while before the twos were, by dint of mere luck, better off than the Threes, who, by dint of mere luck, were better off than the Fours. And if we’ve forgotten about the Ones, this greater degree of equalization—which, again, is equalization only of that which by hypothesis, per the first two assumptions elaborated above, is ethically required to be equalized, namely ethically exogenous global “stuff”—will perforce be viewed as a straightforward justice-gain.

It seems to me that it is indeed the Ones whom we tend to forget when those who advocate or defend global trade and investment liberalization say, “Well, think about all those desperate global poor.” These folk are of course partly right: We *should* be thinking about the desperate global poor—those I’ve been calling the Fours—but the *Ones* are left *out* of our account in this case, and they shouldn’t be.

17. See, e.g. Hockett, *Just Insurance*, *supra* headnote.

18. It might also be argued, of course, that they ignore the lowering of prices, which benefits “everybody.” I don’t think that’s a very good argument, though—precisely *because* everyone benefits in this sense. The benefit here is quite thinly spread, whereas the harms that these people are concerned about are quite thickly concentrated—on precisely the wrong people. He who loses his income and cannot retool is not consoled by the fact that his poisonous toothpaste or his child’s toxic toy now will cost pennies less.

On the other hand, by contrast, people *also* are right when they say, in effect, “Well, what about the local Threes, who would be Fours had it not been for the gains we have made in regulatory development, in labor legislation, and the like since only the late 19th and early 20th centuries in the “developed” countries? *They* should not be left out of our account either.” And of course *these* people *also* are right. And the fact that *both* sides are right in respect of their distinct and non-coextensive constituencies, while both sides are *wrong* in respect of the *union* of those spheres, is the cause of the quandary—what I have called the assessment dilemma.

Now, if I am right about this, then it would seem that we are ultimately faced both with a challenge of vision and, yet more urgently, with a challenge of action. For if my diagnosis is correct, then the only way adequately to address the quandary would seem to be, first, to keep *all* relevant parties—the Ones, Twos, Threes, *and* Fours—simultaneously in view when assessing and structuring global trade and investment liberalization; and second, to seek means of ensuring that Ones but not Fours share the gains wrought by trade liberalization with Twos and, especially, Threes. And that second task is in a sense more urgent than the first because, unless we can find such means, we shall never escape the quandary itself, which amounts to a case of ethical indeterminacy wrought by incomplete specification of the assessment domain—missing Ones or Fours. For there just seems no way to judge, under the aspect of justice, when a justice gain wrought by transfers from Twos or Threes to Fours is swamped by a justice loss wrought by simultaneous transfers from Twos or Threes to Ones.¹⁹

Unless we add what I called in the Introduction some “pipes” or “arteries” that connect global Ones to global Twos and Threes, then we are effectively attempting to deal with a trivalent problem by means of a two-variable formula. Only by adding a variable do we render the problem soluble. And only in that way, accordingly, do we ensure that globalization might constitute a straightforward ethical gain.

Now I think, per that last observation, that we do have the requisite “piping” at hand. In the remainder of this Essay I shall accordingly attempt to schematize it. The key is to start with a quite familiar means by which the U.K. and U.S. already endeavor to make “capital”-owners of “laborers”—if I may employ the classical terminology—and then to adapt the structure to our present purpose. I’ll do that in Parts II through IV. Then, in Part V, I shall seek to explain why I think my proposal amounts to an ideal means by which the Bretton Woods IFIs can play precisely that WTO-complementary role that the founders of all three institutions envisaged now over sixty years ago.²⁰

19. One might seek to escape the prescriptive indeterminacy by falling back upon a maximizing rule, of course, as countenanced above in the Introduction. But then one will have relinquished the effort to conform one’s prescriptions to what is distributively *just*.

20. I am, of course, treating the WTO as the embodiment, more or less, of what the Bretton Woods founders envisaged for the then planned International Trade Organization (ITO), which

II. A SUGGESTIVE BUT INCOMPLETE PROTOTYPE: THE EMPLOYEE STOCK OWNERSHIP PLAN

Intriguingly, Americans have as a society made some tentative efforts at making capital-owners of laborers. The principal means up to now has been the public favoring—through tax policy—of employee benefit plans under the Employee Retirement Income Security Act (ERISA).²¹ Yet the ultimate aim here, as ERISA's full title suggests, is mainly to encourage and protect investment for one limited purpose—retirement security.²² There is one partial exception, however: The employee stock ownership plan (ESOP) was originally designed, and continues to be advocated, at least partly, as a means to foster the *pre*-retirement owning of firms by employees. Although I describe elsewhere that this is an overly-modest aim, here I am concerned more with how the aim is affected, and why we seem willing to affect it in the manner we do. The mechanics and politics here would seem to be generalizable in ways that might benefit all of those whom I have been calling “Twos” and, especially, “Threes.” I plan to exploit that generalizability below.

A preliminary terminological point before we proceed: In speaking of ESOPs (or “plans”), one can be speaking of any of several distinct, cognate kinds of financial arrangement.²³ All, as befits their shared name and as intimated above, are meant to facilitate laborers' acquisition of shares in the firms for which they work.²⁴ By far the most common such set of arrangements, however, and the one that will engage us here, is the so-called “leveraged” ESOP.²⁵ This, as the qualifier suggests, is the plan that employs credit in the share-acquiring process.²⁶

had to wait fifty years for its effective implementation. *See generally* Hockett, *Mission Creep*, *supra* headnote.

21. Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.S. §§ 1001–1461 (1994). *See also* JOHN H. LANGBEIN & BRUCE A. WOLK, *PENSION AND EMPLOYEE BENEFIT LAW* 68-84 (3d ed. 2000). I ignore here such proposals as that to diminish or even eliminate capital gains taxation. Such proposals appear to be aimed at—and doubtless would have the effect of—more rewarding of those who already own than fostering wider ownership.

22. Congressional action culminating in the passage of ERISA was precipitated by the folding of the Studenbaker corporation, which, it was subsequently discovered during bankruptcy proceedings, had grossly underfunded and indeed *raided* its employee pension fund, leaving the suddenly unemployed pensioners doubly bereft. *See* LANGBEIN & WOLK, *supra* note 21. Those familiar with recent bankruptcies, particularly in the airline industry, might be tempted to say *plus ça change*.

23. *See* JOSEPH R. BLASI, *EMPLOYEE OWNERSHIP: REVOLUTION OR RIPOFF?* 64-84 (1988) for a brief cataloging of ESOP types.

24. *Id.*

25. *Id.*

26. The principal non-credit-employing ESOPs—so-called nonleveraged ESOPs, tax-credit ESOPs (aka TRASOPs), and payroll ESOPs (aka PAYSOPs)—are briefly elaborated in BLASI, *id.* at 78-84.

A. What: Simple Mechanics and Spread

Here is what the leveraged ESOP²⁷ does: The employing firm adopts an ESOP as a sponsored ERISA plan—a defined contribution plan.²⁸ Like other ERISA plans, the ESOP takes the legal form of a trust.²⁹ It is a distinct, even if firm-sponsored and ultimately board-directed, entity formed to acquire and hold stock on behalf of employees. Its administrator, though named and directed by the sponsoring firm's board or a committee named thereby,³⁰ accordingly bears fiduciary obligations to those employees.³¹

Partly in exchange for a promissory note, the trust borrows funds from a bank or some other commercial lender.³² It uses those funds to purchase stock issued by the sponsoring/employing firm at fair market value.³³ The loan proceeds accordingly pass through the ESOP to the sponsoring/employing firm itself—they finance it, we'll see—and the stock is then held in trust on behalf of the employees. The firm guarantees repayment of the loan by the ESOP to the lender, and the stock held in the ESOP is itself pledged as security.

Over time, the sponsoring/employing firm makes cash contributions to the ESOP; just as it would do in connection with any defined contribution plan. In this case, the contributions are used by the ESOP to amortize the loan originally used to purchase the sponsoring/employing firm's shares.³⁴ As the loan is paid down, stock held by the trust is gradually released from its loan-

27. The transactions which follow are related, in slightly differing order and somewhat less detail, in EMPLOYEE BENEFIT RESEARCH INSTITUTE, FUNDAMENTALS OF EMPLOYEE BENEFIT PROGRAMS 121-22 (3d ed. 1987).

28. 29 U.S.C. § 1107(d)(6) (2000). Defined contribution, or "DC" plans, are to be distinguished from so-called defined benefit or "DB" plans. The former prescribe a schedule of payments made into an account for the benefit of the employee, who in turn bears both upside gains and downside losses realized by her investment portfolio over time. DB plans, by contrast, prescribe payments made to the employee upon her retiring, and the employing firm, or the insurance company from whom the firm purchases annuities on behalf of its employee beneficiaries, in effect bears the aforementioned upside gains and downside losses realized by the fund out of which payments are made.

29. §§ 1104(a)(1), 1103(a). The idea, of course, is both to insulate funds earmarked for employees from the other financial operations of the firm and to afford the employee beneficiaries the benefit of fiduciary obligations owed them by the plan's trustee. It is regrettably not clear, however, that the trust protections offered employees by pension trusts are as fulsome as those offered beneficiaries of other trusts. *See, e.g.*, In re WorldCom, Inc., 263 F. Supp. 2d 745 (S.D.N.Y. 2003) (finding that ERISA defines "fiduciaries," "fiduciary functions," and "fiduciary duties" more narrowly than does common law trust doctrine).

30. § 403(a)(1). A partial exception, which need not detain us, is found at § 403(a)(2).

31. § 404(a)(1).

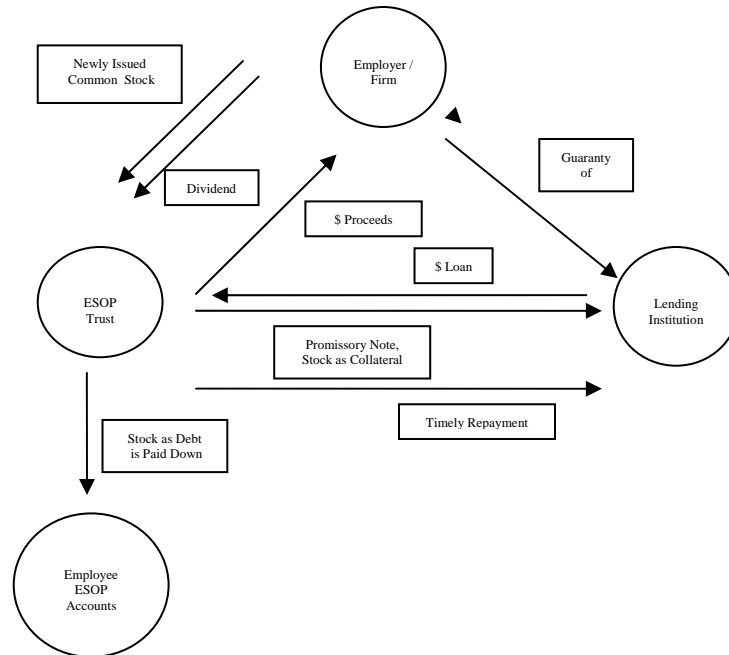
32. I say "partly" for reasons that will be made plain over the next several sentences.

33. Because the shares are purchased at fair market value, the purchase is sometimes misleadingly described by ESOP-proponents as an equity-injection. We'll see what actually happens is that publicly subsidized debt finance is accompanied by a stock giveaway.

34. So the sponsoring/employing firm is, in effect, both borrowing and paying back on behalf of employees for the purchase of its own stock—it gives out partial ownership of itself as an employee benefit. There's the dilution (of previous owners), more on which presently.

securing role to individual accounts maintained severally on behalf of the employee/beneficiaries.³⁵ Stock is released to those accounts in proportions that track the beneficiaries' labor-patronage of the firm (their wages or salaries). Diagrammatically, this is exhibited in Figure 1:

FIGURE 1: INSTITUTIONAL/FINANCIAL STRUCTURE OF A LEVERAGED ESOP ARRANGEMENT



Now, not surprisingly, in view of the arrangement's financial structure,³⁶ this all proves to work rather well as a method of getting more "capital into the hands of labor" (as well as: more debt financing to the firm). Some statistics are telling: By 1986, twelve years after ESOPs had attained congressional endorsement in ERISA, nearly five thousand firms had adopted plans.³⁷ About twenty-five percent of those plans held more than twenty-five percent of the outstanding stock of their firms, and nearly two percent of them owned all such

35. Typically, the shares become saleable or redeemable only upon retirement or exit of the firm, and, typically, the firm buys them back. There are voting restrictions (even to the vanishing point) as well, as we'll see presently. This is all significant when it comes to the question of just what "owning" should mean here; but that isn't our question in this Article. See Hockett, *Whose Ownership?*, *supra* headnote, for more on that question.

36. With one possible—though minimal—caveat to be noted below, the employee/beneficiaries neither pay nor pledge anything. The firm, in effect, does it all, or nearly all, as we'll see when we turn to the government's role.

37. See HENRY HANSMANN, *THE OWNERSHIP OF ENTERPRISE* 105 (1996).

stock.³⁸ By 1990, over twelve million laborers—about ten percent of the workforce—in over ten thousand firms had come to participate in ESOPs.³⁹

By the late 1990s, ESOPs were estimated to account for just under four percent of corporate equity-holding in the United States.⁴⁰ The rate of ESOP growth, moreover, by this point had come to average between three- and six-hundred new plans per year, accounting for between three- and six-hundred-thousand new employee participants per year.⁴¹ Among sponsoring firms over the past thirty years have been such American stalwarts as Avis, the Chicago Tribune, Delta, Federal Express, General Motors, Kraft, Maytag, Polaroid, Procter & Gamble, Quaker Oats, United Airlines and Xerox.⁴² Even skeptics of ESOPs, and of the oft-seemingly “crackpot” financial pronouncements of the ESOP’s inventor, Louis Kelso,⁴³ readily acknowledge their “rapid proliferation,”⁴⁴ hence that “[s]omething is happening that requires attention.”⁴⁵ But what is it that is happening, and why might it require attention? What do the telling statistics actually tell?

ESOP promoters tend to speak of ESOPs’ successes as though all were a “natural” function of superior financial engineering, the “self-liquidation” of “capital mortgages,” and the incentive effects that growing ownership imparts to laborers. Thus Louis Kelso: “[T]he corporation and its employees can achieve [through ESOP-financing] several hundred percent greater efficiency in the use of corporate earnings for capital purposes than through conventional . . . financing.”⁴⁶ And Kelsonian acolyte Stuart Speiser: “Th[e] new capital . . .

38. *Id.*

39. *See, e.g., id.*; UNDERSTANDING EMPLOYEE OWNERSHIP 10-11, 20 (Corey Rosen & Karen M. Young eds., 1991); THE EXPANDING ROLE OF ESOPs IN PUBLIC COMPANIES 23-27 (Karen M. Young ed., 1990); DAVID P. ELLERMAN, THE DEMOCRATIC WORKER-OWNED FIRM 110 (1990). *See* JOSEPH RAPHAEL BLASI & DOUGLAS LYNN KRUSE, THE NEW OWNERS 257-301 (1991).

40. *See* NATIONAL CENTER FOR EMPLOYEE OWNERSHIP, STATISTICAL PROFILE OF EMPLOYEE OWNERSHIP (1997). The Center estimates that nine percent of equity is employee-owned, with profit-sharing, 401(k) and stock option plans accounting for the non-ESOP balance. It should be noted that about four percent of ESOPs are estimated to be terminated each year.

41. *Id.*

42. Rosen & Young, *supra* note 39.

43. Kelso routinely announced such putative discoveries such as “Say’s Law” is being “violated” in modern capitalist economies, contemporary economists remain wedded to the labor theory of value, and that there are “two factors” that enter into production, capital and labor, with the first of those accounting for an ever-growing share of value added. *See generally* Hockett, *Jeffersonian Republic*, *supra* headnote, at 124-42. Economists do not appear to have found these discoveries compelling. I should perhaps not be as snarky as I might here seem, however. Kelso’s motives, energy, and inventiveness, as distinguished from his sallies into theory, were nothing if not worthy of praise. And he was a lawyer and investment banker, not an academic theorist, typically pitching his advocacy to legislators and the general public rather than fellow theorists. *See generally* STUART M. SPEISER, A PIECE OF THE ACTION: A PLAN TO PROVIDE EVERY FAMILY WITH A \$100,000 STAKE IN THE ECONOMY (1977).

44. HANSMANN, *supra* note 37, at 105.

45. ELLERMAN, *supra* note 39, at 120 (emphasis omitted).

46. LOUIS O. KELSO & PATRICIA HETTER KELSO, DEMOCRACY AND ECONOMIC POWER 62

pay[s] for itself out of the increased profits flowing from expanded production.”⁴⁷ And the ever-perky business journal, *Inc.*: “[T]here’s considerable evidence that eliminating the employee mentality and creating companies of businesspeople, of owners, has become a kind of Hidden Secret of Success in the American marketplace.”⁴⁸

The mentioned evidence is hardly “considerable”: At best it is thin and ambiguous.⁴⁹ Nor does presently leverage-bought ESOP capital “pay for itself” in much more than a trivial sense: It is far from clear that the dividend streams and/or capital gains that attend ESOP stock would dependably pay off the term loans without help of the kind we shall presently describe. And the “several hundred percent greater efficiency,” which quantity incidentally is, like many Kelsonian magnitudes, arrived at by altogether unspecified means, is hardly “natural,” “economic” or “financial” in any pre-legal or pre-political senses of the terms. For the real “Hidden Secret of [ESOPs’] Success,” it turns out, is no more obscure than the tax code, ERISA, and combined corporate governance and takeover law: The leveraged ESOP as currently constituted is essentially a public benefit conferred through private channels.

B. How: Private Channels, Public Benefits

Consider first a few tax and ERISA advantages. These, working in tandem, presently account both for the aforementioned “greater efficiency” of ESOPs as financing tools, and for ESOP stock’s apparent capacity to “pay for itself.” They also afford incentives to the lenders themselves, as well as to non-ESOP shareholders from whom an ESOP might seek shares:

1. Tax Advantages

Probably the most efficacious tax advantage that leveraged ESOPs uniquely confer upon sponsoring/employing/issuing firms comes via the Revenue Code’s permitting them to deduct contributions made to their plans. The firm may deduct contributions, to an amount up to twenty-five percent of all compensation paid a plan’s participants, from its taxable income.⁵⁰ That advantage works jointly with ERISA’s relaxing, in the case of ESOPs, the now customary mandatory-diversification understanding of the so-called “prudent investor” standard to which employee pension trusts ordinarily are subject: In non-ESOP cases, ERISA requires that employee trusts be broadly invested; a plan will not typically be permitted to hold much of the sponsoring firm’s

(1986).

47. STUART M. SPEISER, *supra* note 43, emphasis supplied.

48. John Case, *A Company of Business People, INC.*, Apr. 1993, at 79, 86.

49. See BLASI, *supra* note 23, at 25-27, 221-38 for plenary, and not unsympathetic, discussion of what evidence there is.

50. IRC § 404 (2000). ESOPs enjoy other tax advantages enjoyed by employee pensions more generally, most of which are noted below, but our focus will nevertheless be primarily upon what is unique to ESOPs.

equity.⁵¹ But ESOPs are exempted from this standard,⁵² meaning that the firm which sponsors a leveraged ESOP can eat the cake and keep the penny: It enjoys the tax favor bestowed upon contributions to its ERISA plans, *by* further financing itself through new share issuance.

The aforementioned “further financing”—the “purchase” of newly issued shares by the legally distinct trust for the employees—as noted, is leveraged. But, that simply means that the firm is effectively financing itself with debt while enjoying a publicly afforded tax break in doing so, in return for affording employees new stock. And, as it happens, the lender *supplying* the leverage for ESOPs is tax-favored too: Ordinarily, its taxable income is the interest received on lent funds.⁵³ But, on a loan to a leveraged ESOP, fifty percent of that interest historically has been excluded.⁵⁴ So, in effect, the legislated favors conferred upon ESOPs amount to significant government-subsidized debt-financing of ESOP-sponsoring firms, in a manner intended to encourage those firms to make partial firm-owners of firm-employees.

But wait, there’s more: Ordinarily, dividends paid out to the holders of firms’ shares are drawn from firms’ after-tax incomes.⁵⁵ Dividends paid on the stock held in an ESOP, however, are deductible from taxable corporate income.⁵⁶ Capital gains reaped by the trust also go untaxed; they are’ deferred compensation.⁵⁷ The tax code also affords incentives to non-ESOP shareholders to transfer their shares to the ESOP: For one thing, under specified conditions a shareholder in the sponsoring firm who sells shares to the ESOP may defer any taxable gain that she gleans through the sale.⁵⁸ For another thing, fifty percent of the proceeds from sale of a sponsoring firm’s stock to its ESOP are excludable from estate taxation.⁵⁹ And finally, a decedent’s estate may avoid tax-induced liquidity problems by shedding a

51. 29 U.S.C. § 1104(a)(1)(C) (2000).

52. § 1104(a)(2). At least that is ordinarily the case. Courts have in some instances agreed with the Department of Labor that there can be circumstances in which the prudent investor standard would require the ESOP trustee to refrain from purchasing employer stock. *See, e.g.*, *Herman v. NationsBank Trust Co.*, 126 F.3d 1354 (11th Cir. 1997); *Moench v. Robertson*, 62 F.3d 553 (3d Cir. 1995); *Kuper v. Iovenko*, 66 F.3d 1447 (6th Cir. 1995). § 1104(a)(1).

53. IRC § 61(a)(4) (2000) (including “interest” in the general definition of gross income).

54. § 133(a). *But see* Small Business Job Protection Act §§ 1602(a) and (c) (repealing the interest exclusion previously allowed under IRC § 133(a) for all securities acquisition loans made after August 20, 1996, except for loans made pursuant to a binding written contract which was in effect before June 10, 1996).

55. This is true “by definition,” so to speak—the revenue code’s definition of corporate taxable “income.” *See* § 311(a) (providing that a corporation may not deduct dividends from its gross income).

56. § 404(k).

57. §§ 501(a), (c)–(d). This advantage is not unique to ESOPs as distinguished from other ERISA plans.

58. § 1042 (Among the conditions are that proceeds of the sale must be reinvested within one year in a domestic corporation, and that after the sale the ESOP will own at least thirty percent of the sponsoring firm’s shares).

59. § 2057.

portion of its estate tax liability to an ESOP, provided that it convey to that ESOP shares in the sponsoring firm of equal value in exchange.⁶⁰

2. Additional ERISA Advantages

There are further ERISA advantages, in addition to the just noted tax advantages, designed to encourage ESOP share-acquisitions from non-ESOP shareholders in the sponsoring firm: Pension plans ordinarily are barred from purchasing sponsoring firms' shares not only from the sponsoring firms themselves, but also from all so-called "parties in interest"—directors, officers and principal shareholders.⁶¹ But, ERISA exempts ESOPs from that standard.⁶² ESOPs also may *borrow* from such parties in interest in order to acquire employing firm stock.⁶³

3. Publicly Conferred Governance Advantages

There is more to our public benefit story than just tax and ERISA inducement. A cluster of *governance* advantages offered by ESOPs, in this case working through (once again publicly afforded) corporate and securities law, offers incumbent managers and otherwise satisfied shareholders⁶⁴ an added array of incentives: First, the firm's immediate issuance of new shares to a nominally independent "third party" ESOP dilutes more than the monetary value of older shares; it dilutes older shares' voting power as well.⁶⁵ That makes it harder for unsolicited would-be acquirers to assemble a controlling bloc of shares. And this issuance legally *can* in fact be immediate, indeed even in express contemplation of an impending takeover bid. Thus has held the Delaware Chancery.⁶⁶

If the new employee/owners had been reliable voting allies to the would-be firm-acquirers, of course, the ESOP's promise as a takeover defense would be attenuated. But as it happens, the new employee/owners are not, interest-wise, reliable such allies at all; indeed quite the contrary. Employee preferences scarcely matter in these cases for the new employee/beneficiaries of leveraged ESOPs do not typically receive voting rights, at least not right away.⁶⁷ That in itself constitutes, of course, another incentive for ESOP-

60. § 2210.

61. § 4975.

62. ERISA § 408(e).

63. ERISA § 408(b)(3), I.R.C. § 4975(d)(3).

64. Including many newly owning employees, were they able to vote their shares. More on this "were they" presently.

65. I say "nominally" independent here partly owing to the role of the sponsoring firm's board in selecting and directing, indeed even functioning as, the ESOP trustee, *see infra* note 114, and partly owing several ESOP governance features to be noted presently.

66. *See Shamrock Holdings, Inc. v. Polaroid Corp.*, 559 A.2d 278 (Del. Ch. 1989). *But see NCR Corp. v. Am. Tele. & Tele. Co.*, 761 F.Supp. 475 (S.D. Ohio 1991).

67. A few details will be in order here. Most stock held by ESOPs considered in aggregate is nonvoting stock: The median ESOP holds ten percent of its sponsoring firm's shares, but only five percent of that firm's voting rights. *See* U.S. GEN. ACCOUNTING OFFICE, EMPLOYEE STOCK OWNERSHIP PLANS: BENEFITS AND COSTS OF ESOP TAX INCENTIVES FOR BROADENING STOCK

creation—an incentive enjoyed by the managers: ESOPs work to free managers' hands from such dissatisfied shareholders—including any employee shareholders—as there might be. So it seems more than likely that the ESOP's utility in warding off takeovers, and its strengthening managerial hands, might also account for the proliferation, in significant measure, of ESOPs'. And that utility itself, again, like the favorable tax and ERISA treatment, amounts to a public benefit. It is sanctioned and indeed affirmatively encouraged by legislation and court decision alike.

4. Bringing It All Together: A Telling Counterfactual

It surely cannot be objectionable, then, to suggest that the legislative and judicial favoring of ESOPs—hence ESOPs' amounting to a public benefit—might be playing a role in their spread.⁶⁸ But we quickly can sharpen and supplement, as well as summarize, the point here by appeal to a stylized scenario: We'll suppose there is no tax- or ERISA-favoring of finance of the firm through the ESOP; the same loan on the same terms can be had by other means. We'll also assume that ESOPs offer no governance or takeover-avoidance advantages. We'll further suppose that employees do not temper their wage demands by dint of their ESOP benefit; their new shares are “all gravy.” And finally we'll suppose that our laborers' gradually growing “ownership” does not appreciably boost shop-floor morale, hence productivity and firm-profitability. Under these circumstances, what is happening in Figure 1, above? It seems pretty clear: The firm, via the ESOP, is financing its projects by borrowing and repaying; while it happens to be issuing new stock to employees who pay nothing. But that means the value of pre-ESOP shares is diluted by the value of the newly issued ESOP shares, with no offsetting advantages enjoyed by the pre-ESOP shareholders. Why don't the latter object?

There are less proximate political answers, I believe, to which we shall turn in a moment. But the more immediate reason of course is that several of the aforesaid suppositions, as we have seen, do *not* obtain. There *are* considerable tax, ERISA, and governance advantages gleaned through ESOPs. There is also some evidence that employees *do* temper wage demands in view

OWNERSHIP 39-40 (1986). How can this be? First partition the class of ESOPs into those sponsored by closely held, and those sponsored by publicly traded, firms. Now consider the first of those subclasses: With little exception, closely held sponsoring firms enjoy all applicable ESOP tax benefits even if their ESOPs do not pass acquired stock voting rights through to employee/beneficiaries. The only exception is in respect of voting as to “fundamental” transactions—matter which must, according to charter or applicable law, be decided by supermajorities of outstanding shares voted. I.R.C. §§ 409(e)(3), 401(a)(22). Next the second subclass: While in the case of publicly held firms voting rights must in fact be passed through to the employee/beneficiaries, that is so only in respect of stock actually *allocated* to employee accounts. § 4975(e)(7). But the allocation occurs only gradually as the original loan is amortized. Note also that this lack of control rights ought to give pause to those who would see in the current “ESOP revolution” any real harbinger of an incipient “workplace democracy.”

68. I am far from the first to suggest the importance of public support for the spread. See, e.g., BLASI, *supra* note 23; HANSMANN, *supra* note 37; ELLERMAN, *supra* note 39.

of the ESOP benefit—that there might even be an implicit bargain to this effect—but this can be no more than a small part of the story.⁶⁹ Only the supposition that growing ownership fails to make much difference to productivity appears, in the light of what evidence we have, to be by and large correct. So the tax, ERISA and governance advantages—the cluster of public benefits—enjoyed by ESOPs must surely be critical to their spread. Pre-ESOP shareholders, at least the less other-regarding ones,⁷⁰ are willing to endure the dilution of their shares wrought by leveraged ESOP transactions. And they are willing to do so precisely because the now much more cheaply (because tax- and ERISA-favorably) debt-financed firm is sufficiently more valuable, in consequence, as wholly or partly to offset the dilution. To whatever degree those shareholders are not wholly compensated, the control benefits, imparted by ESOPs to management, make up the difference; any *dissatisfied* shareholders are *weakened* by the court-sanctioned ESOP transactions.

C. Why: Accounting for the Favor

So now assuming, plausibly it seems, that law-conferred tax, ERISA and governance benefits constitute a, if not the, critical reason for ESOPs' proliferating, we are faced with another question: Why is this public favoring of ESOPs *politically* accepted in the U.S.? Doesn't the support tamper with "natural" market forces, and isn't distortion of this sort disfavored?⁷¹ I think it is here that we—or at any rate those who would seek to render global trade and investment liberalization more unalloyedly just—shall find the successes of ESOPs instructive. For there are mutually reinforcing ideological and endowment-psychological reasons that appear to account for the U.S.'s public favoring of ESOPs, and even indeed for the private favoring of ESOPs as well.

I. Core Values: Responsibility & Equal Opportunity

The key to the ESOP's political success probably lies in its giving expression to a cluster of interlinked ethical-cum-political values and endowment-psychological dispositions that are shared by a broad swathe of Americans and, I suspect, persons worldwide.⁷² Values-wise, we are most of

69. For one thing, the evidence is scant. See ELLERMAN, *supra* note 39, at 90; BLASI, *supra* note 23, at 263. Perhaps more importantly, as a theoretical matter it seems highly unlikely that rational employees would be willing to reduce their wage sufficiently to offset the dilution. The diluting shares issued to them are, after all, deferred compensation. And as we'll see they confer none of the consumption benefits of control. And finally, of course, they are undiversified investments. It would be far more sensible for employees who were willing to sacrifice pay for stock to insist upon voting, and/or diversified stock, hence not to offer any sacrifices sufficient to offset the dilution of their own firms' owners' stock.

70. The other-regarding ones might partly be actuated by the ideological/political motivations that we shall discuss presently.

71. Certainly some seem to think so. See, e.g., Michael W. Melton, *Demythologizing ESOPs*, 45 TAX L. REV. 363 (1990); Richard L. Doernberg & Jonathan R. Macey, *ESOPs and Economic Distortion*, 23 HARV. J. ON LEGIS. 103 (1986).

72. For more on the invariance of these dispositions across cultures and subcultures, see, e.g., Robert Hockett, *The Deep Grammar of Distribution: A Meta-Theory of Justice*, 26 CARDOZO L. REV. 1179 (2005).

us opportunity-egalitarians.⁷³ We believe that what people have should ideally be traceable to equal initial holdings of such ethically exogenous resources— favors of fortune, of chance or mere circumstance, the global “stuff” of Part I—as no one now living is responsible for having created.⁷⁴ And we believe that departures from that baseline ideally would be the product of value-additive or value-detractive effort—of choice rather than chance—for which people *are* responsible.⁷⁵ It is tempting to think of access to value-adding opportunity—hence to business capital as well as to dwelling space and basic human capital—as part of that ethically exogenous endowment to which all should ideally enjoy access.⁷⁶ Ethical intuitions such as these, I conjecture, underwrite the first several assumptions that I noted in Part I, to be implicit in the thinking of many of us who find globalization ethically perplexing.

2. Endowment Dispositions: Loss-Aversion & “Handout”-Aversion

Endowment-psychological dispositions-wise, we are apt to experience some methods of redressing *imbalances* in the distribution of that aforementioned exogenous endowment as less discomfiting than others.⁷⁷ So, for example, our more self-regarding, less altruistic selves are apt to be friendlier toward distributing perceivably “new” resources to the presently under-endowed, than toward “taking” already held resources for redistributive purposes.⁷⁸ Those same selves will regard a perceived “refraining from taking” from the under-endowed as preferable to a mere “giving” to the same.⁷⁹ And finally, the self-regarding will be more amenable to any perceived “giving” to the degree that it can be framed more as a rewarding—hence as ethically endogenized, i.e. earned or deserved by the recipient.⁸⁰

3. How the SOP Structure Conforms

The leveraged ESOP coheres rather nicely with these values and dispositions. It spreads a basic endowment which it is not difficult to view as being, at least in part or potential, ethically exogenous.⁸¹ It spreads that

73. See Hockett, *Three Pillars*, *supra* headnote; Robert Hockett, *Minding the Gaps: Fairness, Welfare and the Constitutive Structure of Distributive Assessment* (Cornell Law Sch. Research Paper Series, Working Paper No. 06-039), available at <http://ssrn.com/author=602726>.

74. *Id.*

75. *Id.*

76. *Id.*

77. See Hockett, *Three Pillars*, *supra* headnote.

78. *Id.* I employ scare-quotes here to register the fact that the “newness” and “taking” in question are experienced as such pre-reflectively, as their proceeding from cognitive dispositions would suggest. We are speaking of predisposed framings here rather than considered judgments.

79. *Id.* Similar remarks hold of the scare-quotes here as of those in the text accompanying the previous footnote.

80. *Id.*

81. It is in part or potential ethically exogenous in two senses, one trivial, the other less so. First, one must use it responsibly in order to derive “utility” from it; it is a kind of resource. Second and less trivially, the quantum of this resource that one has it at least in part – and sometimes indeed in significant part – the product of fortune or fate rather than effort. One can hold less than another simply by dint of having been born to the wrong parents, so to speak. See

endowment by distributing what can saliently, if nevertheless superficially, be viewed as “new” capital—newly issued shares in firms.⁸² It does that partly in what resembles a return for reward-earning effort—labor patronage or work for the firm.⁸³ And it encourages private such rewarding (on the part of lenders and otherwise-diluted shareholders) largely by refraining from perceived taking (i.e., through tax breaks) rather than transparent taking and giving.

In a way, then, the leveraged ESOP replicates, in piecemeal and somewhat more convoluted fashion, the same strategies that the U.S. has employed more elegantly in connection with publicly facilitated home-spreading and education-spreading since the early-mid-twentieth century.⁸⁴ And this appears to be no accident, for there is considerable historical evidence suggesting that the ESOP was expressly inspired by the federal home finance programs set in place during the 1930s and 1940s.⁸⁵ There is also good evidence to the effect that both these and the federal education finance programs set in place over the 1960s and 1970s were found appealing to legislators and public alike precisely in owing to their resonance with the values and dispositions just rehearsed.⁸⁶

But then this raises a further question: Might the idea of the leveraged ESOP itself be leveraged yet further, in a manner that enables those whose incomes are disrupted by trade and investment liberalization to be readily compensated? Might the salience of the employment relation that appears ethically to underwrite the ESOP’s popularity carry-over to more attenuated, even severed, employment relations? I think that it might, and I now turn to that prospect.

III. MORE SOPs FOR MORE FOLK: ADAPTING THE STRUCTURE TO OTHER PATRONAGE FORMS

Let us begin by reminding ourselves that labor with a firm—the employment relation—is an ethically salient patronage relation.⁸⁷ It is an ongoing relational mode between persons and firms.⁸⁸ And it is a relation that

generally Hockett, *Whose Ownership?*, *supra* headnote, at 31-51.

82. See *supra* Part II.B. “Superficially” in light of what we saw *supra*, Part II.B.

83. That is to say that it is viewed as an “employee benefit,” as something predicated upon lengthy labor-patronage for—a kind of “loyalty to”—the firm. More on this *infra*, Part V.

84. See Hockett, *Jeffersonian Republic*, *supra* headnote, at 98-120, 143-53.

85. See *id.* at 135-37.

86. See *id.* at 98-120, 143-53.

87. So far as I have been able to determine, the only scholar who has devoted much discussion to the relations between patronage and firm ownership is Hansmann. See HANSMANN, *supra* note 37, *passim*. My employment of the concept of patronage will be somewhat more elastic than Hansmann’s, however—as is perhaps intimated by my addition of the qualifier “ethically salient.” My understanding of the term will accordingly be bit different as well. I do not believe, however, that my understanding and employment of the term will be incompatible with Hansmann’s.

88. Hansmann appears to be less explicitly concerned with the “ongoingness” of patronage

appears to afford sanction to the conferral of benefits upon persons.⁸⁹ It renders the latter apparently earning or deserving of the benefits bestowed upon labor through leveraged ESOP financing.⁹⁰ That was one upshot of Part II.C above.

Labor is also *but one* way in which people relate themselves ongoingly to firms. And this raises an intriguing prospect: Perhaps we might rely upon patronage relations additional to, or that vary upon, the employment relation in order to warrant the public facilitation of share-spreading—in particular, to those we have called “Peters,” or “Twos” and “Threes” above. This Part proposes and assesses a few possibilities, meant to be suggestive rather than exhaustive. The idea is to approach the particular plan I wish to propose by a brief sequence of suggestive steps.

A. A First, Simple Variant: Customer Stock Ownership Plans

One conspicuous form of patronage in some respects reminiscent of labor is ongoing customership.⁹¹ Some firms from which we purchase goods and

relations, while being more explicitly concerned with a particular species of relating to the firm—viz., selling to or purchasing from it—than I. See *infra* note 117. I think our distinct concerns with patronage nonetheless compatible, however. For, first, my concern with the possible *ethical* salience of patronage naturally lends itself to an emphasis upon longer-term relations, at least among those who purchase from or contribute to firms in small increments per transaction. (Duration of relating substitutes for magnitude of individual transaction.) And, second, I think patronage relations as potentially involving more than purchasing and selling alone to be implicit in Hansmann’s own understanding of the term, as evidenced by Hansmann’s occasional recourse to the broader relational concept of “supplying,” which figures prominently in his treatment of stock-holders as financial capital suppliers. See HANSMANN, *supra* note 37, at 12.

89. Hansmann defines “patrons” as “persons who transact with a firm either as purchasers of the firm’s products or as sellers to the firm of supplies, labor, or other factors of production.” *Id.* at 12. Much of the thrust of Hansmann’s often astonishingly insightful monograph is devoted to showing both (a) that it is typically a particular class of patrons which owns most of the firms operating within a particular industry, and (b) why it is that the particular classes which tend to own in particular industries end up being the more efficient owners. My interest in this Article, though not, I think, incompatible with Hansmann’s interest, is nonetheless distinct; and the distinction accounts for my somewhat broadened understanding and employment of the concept of patronage. My concern is with patronage as a form of ongoing relation between persons and firms such as can be viewed in part as the patron’s consistent conferral of some manner of benefit upon the firm, such as in turn can engage our willingness to view the patron’s coming to own a share of the firm as ethically unobjectionable—as something better than the product of a mere “handout.” That is to say that my angle on patronage here is as a “desert basis”—I do not believe that this basis for interest in patronage places me in any way at odds with Hansmann’s efficiency-grounded basis for interest in the same. For I do not here suggest that firms should be owned by patrons of a different kind than those that he shows to be the more efficient owners of firms in particular industries. Rather, I simply propose that more patrons within the class be added to the rosters of owners. The remainder of this Part, I believe, will both make this plain and unpack more fully the ways in which patronage relations might be seen ethically to underwrite benefit-conferrals upon current non-owners within patronage classes.

90. Please see the discussion in Part II.C, *supra*, which suggests reasons why we publicly favor ESOPs.

91. Indeed, in some industries customers constitute the most efficient class of firm-owners.

services are firms from which we *regularly* purchase them. In some cases that consistency is attributable to something like customer loyalty—an investment of trust, rather than labor, in the firm. In other cases the “loyalty” is perhaps not what we should call voluntary, but reflects a lack of available alternatives—our being held hostage, so to speak. And there are of course middling cases between the extremes—unthinking habit or ignorance of alternative supply sources, for example. In all such cases, however, we can plausibly imagine the relation to be sufficiently salient, from an ethical point of view, as to warrant at least some degree of public facilitation of patrons’ gradually coming to own parts of the firms that they regularly patronize.⁹²

Consider a homespun example: There might be a small university town centrally located, hence perhaps geographically isolated, in a large U.S. state.⁹³ People who live and work in the town see a lot of each other, and come to feel a palpable sense of community in consequence. They feel this not only in relation one to another, but even in relation to the relatively small number of retail establishments that sell to the townspeople. Buyers and sellers are all thrown together, and even feel “centrally isolated” together—perhaps even miss this feeling when they’re away.

Now, a marvelous new grocery store complex comes to this town.⁹⁴ Everyone talks about the new store and even shows it off to visitors and prospective new residents. They’re as proud as they are pleased, that at long last it’s arrived.⁹⁵ Nearly everyone living or working within several miles of

Examples are the farm supply industry, in which consumer cooperatives constitute an oft-encountered firm form; rural electricity, in which customer cooperatives again figure prominently; clubs that afford their members high-status “associative goods,” which again tend to be owned by their members; and urban housing, in which housing cooperatives figure prominently. *See generally* HANSMANN, *supra* note 37, at 149-223.

92. Again, sometimes this happens quite “naturally,” for reasons that appear to be rooted in the comparative efficiencies of governance and contracting. *See* note xx, *supra*. But the reasons for interest in an “ownership society” warrant our considering the fostering of ownership even where it does not quite “naturally” arise, which of course seems to be what has occurred in the case of ESOP proliferation. *See supra*, Part III. Those same reasons presumably afford at least a preliminary answer to prospective objections rooted in the same normative source as are familiar objections to disgorgement remedies in contract owing to their inefficiently coupling purchases from with investments in firms. *See* Hockett, sources cited *supra* headnote. And thank you to Daniel Markovits for pressing me here.

93. I am of course thinking of Ithaca, NY, where I live. But there are countless similarly situated locales, not all of them university towns and not all of them as relatively isolated as Ithaca. Indeed this example might also be plausibly applied, say, to a community-like neighborhood or sector of a large city, such as is commonly found in New York, Chicago, and Los Angeles. Please also bear in mind that the example following this one will make no reference to community-like towns at all. All examples in this Article are meant to be illustrative and suggestive, even to spur additional visualizations; they do not purport to be exclusive or exhaustive.

94. I am of course alluding to Wegman’s in Ithaca NY. This firm is not publicly traded, so I am asking that the reader pretend that it is.

95. It’s one of those towns that has difficulty attracting and keeping nationally, and even regionally known merchant establishments.

the town now purchases groceries at this store, leave and pick up their dry cleaning there, do their banking there, even leave their children to be attended there while transacting. Things might develop and go on in this way for years. That's an ongoing, many-faceted relation.

Now suppose that we found the recently floated American idea of an "ownership society" to be an attractive one, for any number of reasons,⁹⁶ and so thought that it might make for good public policy to encourage wider ownership of firms. In that circumstance, might we not find it politically acceptable, indeed affirmatively attractive, to work to encourage the voluntary spread of shares in this store or its holding company among the regular customers who live in community with and partly organize their lives around it, just as we do in the case of employees? We certainly might.⁹⁷

Consider a cognate example, applicable perhaps to larger metropolitan areas or wider regions now in addition to smaller communities: There might be a product or service the supply of which enjoys increasing returns to scale. It is a "natural monopoly."⁹⁸ Perhaps it's a transport system, an electrical power grid or high-speed internet network—a public or publicly regulated utility. Customers of the firms that supply such products and services, whether identified by reference to towns, cities or larger regions serviced by these firms, might often find themselves more or less "stuck" with their suppliers. They have little choice but to patronize them. That's a large part of why we regulate them. But might the same rationale not then warrant our facilitating the customers' gradually coming to own them, at least in part? Surely customer hostagehood is *at least* as ethically salient a patronage-form as is more voluntary customer loyalty, isn't it?

Were we to endorse this line of thinking, then we might well decide it worthwhile to consider facilitating the acquisition of shares in the firms—the grocery store or the utility—by their patrons in much the way we facilitate

96. I consider the variety of grounds upon, and the three principal American political traditions to which, the notion of an "ownership society" might be attractive in Hockett, *Whose Ownership?*, *supra* headnote, at 5-78.

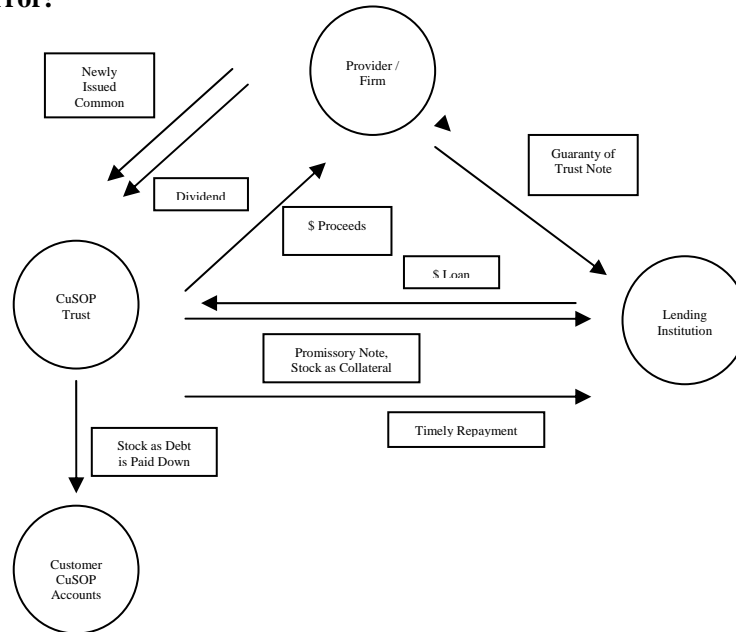
97. It is of course not the case that facilitating ownership of local businesses will afford optimal diversification. After all, personal incomes and the incomes of town-sharing or region-sharing firms can to some extent co-vary—in the case, for example, of local or regional slumps. But I ask that the reader bear with me a bit longer. As examples proliferate below we shall see that diversification grows. Moreover, our aim here is to make use of patronage relations as ethically salient grounds for public action facilitating ownership, pursuant both (a) to the hypothesis posited concerning why the public is willing to subsidize ESOP expansion, *see supra* Part II.C, and (b) to the further elaboration of that hypothesis in this Article's predecessor pieces, concerning why we have acted similarly to promote home-owning and higher education spreading in the way that we have done. Finally, please note that I have already addressed the project of democratizing income-risk-sharing across localities and even across nations in a separate article: *See Hockett, Just Insurance*, *supra* headnote, at 212-56. My hope is that all of these pieces together afford at least a rough template for how best to render our society more "owning," more risk-spread-efficient and more just.

98. In a way, of course, so was the store in the previous example. Small towns support less competition among smallish suppliers than do cities.

share-acquisition in firms by employees. We might tax-break-assist firms in debt-financing themselves, in exchange for their issuing shares to trusts whose beneficiaries gradually came legally to own what initially they would beneficially own. (Again, perhaps, as in the labor case, in proportion to their patronage—e.g., amounts purchased from the firms in place of wages earned working for firms.) In essence, then, we would just replicate the financial structure of the leveraged ESOP arrangement. Only the particular patronage relation would change. We might call it a “Customer Stock Ownership Plan,” or “CuSOP.”⁹⁹ Imagine it as in Figure 2:

Figure 2: Institutional/Financial Structure of a CuSOP Arrangement

Error!



Of course some things even apart from the differing patronage relation that ethically grounds it would be different here relative to the ESOP as presently constituted. There is no, say, federal “CRISA” for “customer benefit plans,” for example, in the way that there is an ERISA structure upon which ESOP programs partly are built. Nor, accordingly, does the revenue code currently include any provisions that might encourage firm-financing through CuSOPs as it does in the case of ESOPs. But that is all beside the point. The point is that all of the means by which we currently facilitate stock-acquisition by employees *could* be legislatively replicated to facilitate stock-acquisition by long-term customers—loyal customers, hostage customers, or “in-between”

99. This SOP is not to be confused with a “consumer stock ownership plan” proposed by Kelso, which latter appears to be little more than a producer co-op. See KELSO & KELSO, *supra* note 46, at 67-73.

customers. And the public benefit that such legislation would effectively confer—like that which public facilitation of ESOPs confers—would be warranted, could be advocated, and presumably would be politically embraced, on much the same grounds as ethically salient patronage.

B. A Second, More Complex, & More Pertinent Variant: Rent-Recouping Stock Ownership Plans

Let's try another one, one that I think takes us rather closer to the plan that I wish to propose for those "Twos" and "Threes" disproportionately harmed by global trade and investment liberalization: Sometimes new resources are discovered. Petroleum reserves are found in Alaska, newly exploitable minerals are found in beds of magnesium nodules just off the coast, some portion of the electromagnetic spectrum becomes usable in a way that it was not before, etc. Sometimes no living person or group of persons is creditable with the discovery, or with the discovery's full exploitability. But some such person or persons often can be *partly* so credited. And the "Western" and, especially, "American" way of doing things in any event is to permit private agents—generally firms—to exploit the new possibilities—to appropriate rents from them.¹⁰⁰ So we want some of the value of the new resources—rents—to flow very quickly into private hands, even while not *all* of that value seems to be *deserved* by those parties.

What should we do with the surplus? We might "windfall profits" tax it, but that might resemble a kind of incremental taking,¹⁰¹ and the takings go to the government. Westerners, and especially Americans, don't seem to like that kind of thing any more.¹⁰² At any rate they don't find it as palatable as they once did, perhaps because they are less trusting of the users of the "takings—the government"—than they once were.¹⁰³ But Americans in particular still like ownership—they like that very much, in fact—and they are aware that by definition nobody has earned a windfall. So why not widen the distribution of shares in the firms that are authorized to exploit the new opportunities?

100. The appropriable rents justification for property rights appears to originate, at least in its now canonical formulation, with Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. PAP. & PROC. 347 (1967).

101. Legally speaking this claim, associated with Richard Epstein, is of course hyperbolic. But one can readily grasp the intuition that underwrites it. For the hyperbole, *see, e.g.*, RICHARD A. EPSTEIN, *TAKINGS: THE CONSTITUTION AND THE POWER OF EMINENT DOMAIN* (1985).

102. *See, e.g., id.* (providing a representative screed). *See also* MICHAEL J. GRAETZ & IAN SHAPIRO, *DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH* (2005), for a morbidly fascinating, indeed chilling, documentary account of the exploitation of citizen cognitive error by champions of the tax-evading wealthy.

103. I employ scare-quotes here because I am simply conveying, rather than participating in, that attitude pursuant to which some view the government as an alien force rather than an agent of collective action. Perhaps the current iteration of this line of hostile thinking all began with the disillusionments of the 1960s, which seem to have fed directly into the populist "tax revolts" of the 1970s, out of which so much of current rightward-leaning ideology seems to have grown.

So far, so good. But this still leaves open the question of patronage. To whom should the shares be distributed? Is there some perceivably “natural” class of patrons whose beneficiary status would be as readily warranted as that of employees and long-term customers? After all, we would presumably not wish simply to replace one class of windfall beneficiaries with another, as it were at random. How, then, to think about this? I think we might employ a sort of “sliding scale” here. And indeed this might be a nice way gradually to generalize the original ESOP idea all the way out, so to speak—i.e., to move incrementally in the direction of broad global recognition that good citizenship and faultless wage or salary loss themselves constitute an ethically salient kind of patronage.¹⁰⁴

Let’s think along those lines for a moment: Some new resources might be broadly perceived as bearing some special nexus to the places where they are found. Such places, in turn, might be perceived as being somehow ethically “closer” or legally “more proximate” to—as it were “more owned by”—their residents than by nonresidents.¹⁰⁵ So, for example, new oil found in Alaska might be perceived as being somehow, somewhat more saliently Alaskan even than American. And Alaskan citizens might accordingly be thought to stand in a somewhat—even if but incrementally—closer patronage relation to any firm granted rights to exploit new Alaskan oil reserves than are non-Alaskan Americans.¹⁰⁶ Alaska itself is constitutionally permitted, after all, to tax firms that extract Alaskan oil reserves, even after the (federal) IRS has done so. So it must be the case that we tend to view the citizens of political units as being somehow more privileged than non-citizens in respect of the benefits brought

104. This suggestions is taken up *infra* Part V.

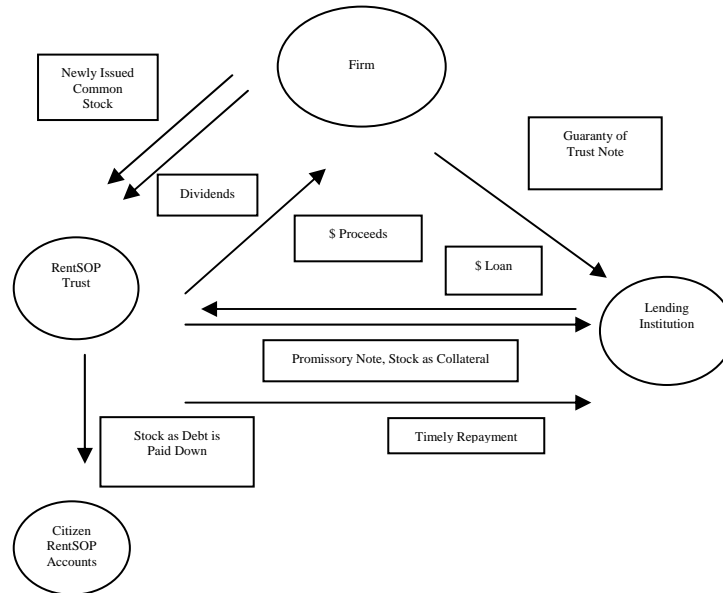
105. Scare-quotes again indicate that I am attempting to give expression to a pre-reflective manner of perception. I should note here that I am exceedingly uncomfortable with this particular perception, and experience resort to it to be a compromise with territorialist psychological dispositions that are regrettable at best. But bear with me for a moment. Some such primitive intuition as this seems to underwrite the judgment that coal found between Canada and Mexico is “American” coal, rather than North American coal or “the coal of mankind,” for example. Ideally I’d prefer to repudiate the intuition, but if we’re stuck with it then we may as well harness it to good purpose.

106. In 1978 and 1980, voters’ initiatives were introduced to establish the Alaska General Stock Ownership Corporation (AGSOC), which would have provided Alaskan citizens ownership interests in the Alaska Oil Pipeline. Pursuant to a tentative agreement with the British Petroleum Company, the latter was to sell its interest in the Alaska Pipeline to AGSOC. AGSOC would have enjoyed the backing of state credit to borrow. Under federal matching legislation—specifically, Subchapter U of Chapter 1 under Subtitle A of the Internal Revenue Code—AGSOC would also have enjoyed favorable federal income tax treatment. *See* Revenue Act of 1978, Tit. VI, 92 Stat. 2885 (1985). The AGSOC plan also would have prohibited any one individual from taking ownership of more than ten shares, in order to prevent concentrated ownership. *See* William Greider, *Alaska, Inc., an Economic Experiment; Senator’s Plan Would Distribute State’s New Wealth to Citizens; Alaska Inc., an Experiment in Distributing New Wealth*, WASH. POST, Oct. 22, 1978, at A1. The Alaskan ballot measure nevertheless lost on a close popular vote (approximately 78,000 to 72,000). *See, e.g.,* Alaska Division of Elections, <http://www.gov.state.k.us/ltgov/elections/initbal.htm>; and The National Initiative for Democracy, <http://www.ni4d.us/people/gravel2.htm>. Notwithstanding the failure of the ballot initiative, Alaska did adopt a cognate program.

by the resources that are found and exploited within the geographic boundaries of those units. Cognate observations to these “Alaskan” observations might hold true in respect of magnesium nodules found off the coast of Washington, Oregon and California. And international law of course treats things much in this way on a nation-by-nation basis.

Now let us bring these patronage considerations together with the earlier rehearsed “windfall” considerations. Would it be too far a stretch to require, as a condition for granting the rights to exploit the new resource to the firm, that the firm distribute shares in itself to the residents of any municipality or state with which the new resource is widely perceived to be especially closely associated? (E.g., residents of any municipality or state that currently might tax the enterprise that exploits the resources?) Note that if the answer is “no, it would not be a stretch,” then we might not have to bother with tax or other incentives at all. Or how about this: We *combine* tax and other incentives with the “carrot” that is the prospective new resource exploitation itself, in a manner that enables us to lessen the former relative to what they were in the ESOP and CuSOP cases. We thereby less expensively (to the public) encourage both (a) the entry of firms to do the exploiting, and (b) those firms’ spreading their shares. Call it a “RentSOP.”¹⁰⁷ It might look like this:

107. This is not to be confused with Kelso’s proposed “RECOPs,” “GSOPs” or “COMCOPs,” which, though apparently geared toward spreading ownership of some firms cognate with those under consideration here, are both (a) argued for on entirely different – indeed, puzzling grounds, and more importantly (b) presumably for that reason, differently financial-structured. See KELSO & KELSO, *supra* note 46, at 75-83, 88-92, 99-103. See Hockett, *Jeffersonian Republic* *supra* headnote at 124-42 (providing a more general charitable interpretation and correction of Kelsonian “theories” and schemes).

Figure 3: Institutional/Financial Structure of a RentSOP Arrangement**Error!**

That's right. This is the same diagram as Figures 1 and 2, with state or local citizens standing in as patrons now instead of employees or customers. (So now the degree of patronage might track years of residence.)¹⁰⁸ What is different, apart from the changed patronage basis here ethically grounding the public benefit, is simply that the tax and other benefits afforded by the public are less than before, since the exploitation rights are themselves a benefit. (That is entailed by the "windfall" considerations.) The loan made to the RentSOP trust might of course have to be participated as well, since possibly in this case unlike the ESOP and CuSOP cases it would be too large for any one lender to make.¹⁰⁹ But all of that is, again, for present purposes neither

108. I ignore, for present purposes, the matter of crafting terms so as to avoid conflict with court decisions overturning interstate-travel-burdening state laws, decided under the Commerce Clause of Article I of, the Privileges and Immunities or Equal Protection Clauses of the Fourteenth Amendment to, or some "penumbral emanation" from those or other provisions of the U.S. Constitution. In *Zobel v. Williams*, the Supreme Court rejected Alaska legislation that awarded pipeline dividends to state residents based on the duration of their residence up to the point at which distributions began. 457 U.S. 55, 64 (1982). But allowing the number of shares distributed thenceforth to grow with years of residence would *not* seem to be constitutionally offensive so long as one could begin to accumulate shares immediately upon taking up residence. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Edwards v. California*, 314 U.S. 160 (1941).

109. Not just as a matter of capacity, but as a matter of law as well, the Bank Code's lending limits could kick-in. See 12 U.S.C. § 84 (1994). 12 U.S.C. § 84(a)(1) (1994) requires that outstanding non-fully-secured loans and credit extended by a national banking association to an individual, including a trust, not exceed fifteen percent of that banking association's unimpaired capital and unimpaired surplus. 12 U.S.C. § 84(a)(2) (1994) additionally requires that

here nor there. The important point presently is that the firm still finds itself debt-financing itself on favorable terms in the interest of boosting its capacity to exploit the newly exploitable resources, and spreading ownership in itself—hence the benefits that accrue to its owners by dint of its access to the resources—in the process.

Now note, in connection with our hope of maximizing both the number of possible beneficiaries and the number of firms that beneficiaries might gradually come partly to own, that we can readily *broaden* our understanding of “local resource.” Matters here, in connection with CuSOPs in III.A above, are candidates for RentSOPs that can be proliferated.

We might broaden our understanding of “local resource” along at least two dimensions. For one thing, we can move outward from locality to region to nation or economic class—a prospect that we shall consider presently. For another thing, we can plausibly broaden our understanding of what constitutes a “resource.” For it isn’t always a matter of found objects or substances, after all. A highly desired set of geographic coordinates might count as well—say, a “prime location” upon which some highly remunerative piece of commercial real estate stands. That is a paradigmatic case, in fact, of “rent.” And *renters* who hold exclusionary rights to highly desired spaces are rather like the “natural monopolists” considered in connection with CuSOPs above at Part III.A. That’s why the so-called “classical” economists, pioneers like Adam Smith and David Ricardo, were so suspicious of them.¹¹⁰ But we needn’t be suspicious. We can facilitate the spaces’ voluntary sale and purchase at fair market value instead, by broad classes of locals, simply by treating the spaces like oil reserves or magnesium nodules, and the firms that operate them like resource-extractors, in Figure 3 just above.¹¹¹ “Don’t get mad,” we might say,

total outstanding fully-secured loans and credit extensions made by a national banking association not exceed *ten* percent of the association’s unimpaired capital and unimpaired surplus.

110. See, e.g., 1 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 161-63 (R.H. Campbell et al. eds., 1976) (stating rent as a monopoly price and not consequent on any expense laid out by the *rentier*); DAVID RICARDO, THE PRINCIPALS OF POLITICAL ECONOMY AND TAXATION 33-45 (J.M. Dent & Sons, 1973) (1817) (regarding *rentiers* as windfall beneficiaries of scarcity).

111. Hansmann suggests a number of reasons for the absence of urban utility coops analogous to rural electrical coops; among them are the comparative transience of urban dwellers relative to rural dwellers and conflicts of interest among disparate classes of prospective urban owners. HANSMANN, *supra* note 40, at 173-79. While such phenomena presumably account in part for the absence of spontaneously generated (sorry—pun foreseen but not intended) urban utility cooperatives, they do not, so far as I can see, stand in the way of publicly facilitated partial ownership of *corporate* utilities by their customers. Moreover, to whatever degree we might worry that *partial* ownership by customers is “not enough,” we can readily mitigate the worry by means familiar to other, existing utilities-ownership scenarios. Hence, rates can be regulated with a view to preventing price-discrimination as among classes of user; and any worry over the development of, say, “absentee ownership” in the long run would seem to be mitigated or mitigable by (a) the fact that highly transient residents of a municipality likely will not come to acquire much in the way of shares in any event, (b) the possibility of recourse to required redemption—indeed, we might even arrange to have transients trade their erstwhile utilities’ shares for shares in utilities located in their new locales, with the utilities themselves in turn

“get owning—get the company.”¹¹²

Turning from the resource dimension to the locality dimension, if we move outward from seemingly “locally located” resources to more diffuse such resources—e.g., new portions of the electromagnetic spectrum—we can move outward along the patronage dimension as well. We’ll thereby draw-in more beneficiaries, more potential owner-beneficiaries of the firm’s privileged access. So we might imagine, say, that the US’s Telecommunications Act of 1996¹¹³ is amended to work somewhat differently than it actually has done: Congress might not have authorized the FCC simply to *grant* existing broadcast companies new “advanced spectrum,” without requiring payment therefore.¹¹⁴ Instead it might have established a sort of “national RentSOP” on behalf of all citizens, and then offered the combined inducement of occupancy over the HD bandwidths and some (diminished) tax incentives to get the firms to spread shares in themselves to the citizenry. That would not only be a readily intuited extension from the more “locally located” RentSOP idea; it would also amount to a convenient bridge to a yet more universal SOP still.

IV. A SOP FOR PETER: “GLOBAL” STOCK OWNERSHIP PLANS

All right, let’s turn now to those whose plight occasions our concern in this Essay, Part I’s “Twos” and, especially, “Threes”¹¹⁵—those whom we also called “Peters.” Might we not view their heightened labor income risk as a particularly poignant variation on the employment relation itself which ethically underwrites the ESOP, as discussed in Part II? And, might we not also view the income gains realized by “Ones” through globalization as a species of *rent* as discussed in Part III? I think that we might.

For consider: If, per hypothesis, Peter truly is “faultlessly” misemployed in consequence of global trade and investment liberalization—because more desperate Paul can work for less—and if Peter is aging hence truly unable to

exchanging the shares, or at worst (c) the possibility of recourse to mere beneficial ownership by the new owners. Indeed, as Hansmann himself points out, some municipal utilities can be readily *likened* to cooperatives, organized, as they are, quite similarly. *Id.* at 177.

112. A variation, perhaps, on the 1979 Remington electric razor advertisement, in which Victor Kiam averred, “I liked it so much, I bought the company.” See BBC News, I Liked the Slogan So Much..., May 30, 2001, <http://news.bbc.co.uk/1/hi/uk/1357091.stm>.

113. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.). For commentary, see PETER W. HUBER ET AL., THE TELECOMMUNICATIONS ACT OF 1996 (1996); and 74 AM. JUR. 2D *Telecommunications* § 16 (2001).

114. See 47 U.S.C. § 336(a) (2000) (“[T]he Commission . . . should limit the initial eligibility for such licenses [for use of advanced spectrum] to persons that (1) are licensed to operate a television broadcast station or hold a permit to construct such a station . . . and (2) shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.”). For a discussion of the FCC’s grant, under the Act, of a free spectrum for HDTV, see Matthew Spitzer, *Dean Krattenmaker’s Road Not Taken: The Political Economy of Broadcasting in the Telecommunications Act of 1996*, 29 CONN. L. REV. 353, 365-67 (1996).

“retool” himself sufficiently fully as to recover all of his lost income through new forms of employment, then he bears a particularly poignant, and surely ethically salient, relation to his erstwhile employer.¹¹⁵ The latter, and hence the “Marys” who own the employing firm, have shed him—who recall, by hypothesis is faultless—precisely *in order* to capture the surplus that is’ generated by paying less in the form of wages and regulatory compliance to the more desperate “Pauls.” Peter’s labor patronage has effectively been replaced with a sort of “shadow,” or “ghost” labor patronage: His erstwhile relation is extinguished, and Peter accordingly harmed owing to no fault of his own.

Now note that Mary, for her part, is no more ethically creditable than Peter is faultable: For again, by hypothesis, Mary has simply *inherited* a goodly portion of the firm-shares that she owns, or of the wealth she had’ expended to purchase them. And the capital gains that now will accrue to those shares in consequence of global trade and investment liberalization are no more the result of her value-adding effort than were those that accrued to her by dint of her being born into wealth. They are the consequence of changes in the global legal environment, with which most Marys had nothing whatever to do. From Mary’s perspective, therefore, they are windfalls. They are rents flowing her way, in virtue of no more than her exclusive possession of that which was given her at birth. Ethically, they’re on all fours with mineral deposits or petroleum reserves discovered beneath her inherited real estate holdings.

Now, if these considerations are in order, then do not our core values—our opportunity-egalitarian sense of justice as elaborated above at Parts I and II.C—suggest that we view Mary as properly bound to share some of her globalization-wrought, windfall gains with Peter? And won’t Mary, in turn, as well as the rest of us, per our endowment dispositions discussed in II.C, view the most readily palatable means of *facilitating* that gain-sharing as that involving the issuance of new shares, by the globalization-benefiting and Peter-misemploying firms, to Peter? Of course, that will dilute the value of Mary’s shares in the firm. But this is simply another way of saying that it will amount to Mary’s sharing her globalization-wrought gains with those Peters whom her globalization-benefiting firms have laid off. And as we noted above at II.C, sharing of this sort is much less likely to be experienced as “taking” and “redistributing” than are “taxing and spending.”

How, then, would a SOP configured in conformity to these observations be structured? Well, in light of the sample SOP-variants laid out in Part III, I’ll wager it’s easy to visualize now. Indeed, think of it simply as a straightforward variation on the Rent-SOP itself described just above. Treat new access to global intermediate product, capital and labor markets as the “resource.” Treat those who are misemployed by firms *accessing* those newly

115. I discuss such “retooling” costs, along with other determinants of Peter’s faultlessness, at considerable length in *Just Insurance*, *Jeffersonian Republic*, and *What Kinds of Stock Ownership Plans Should There Be?*, *supra* headnote.

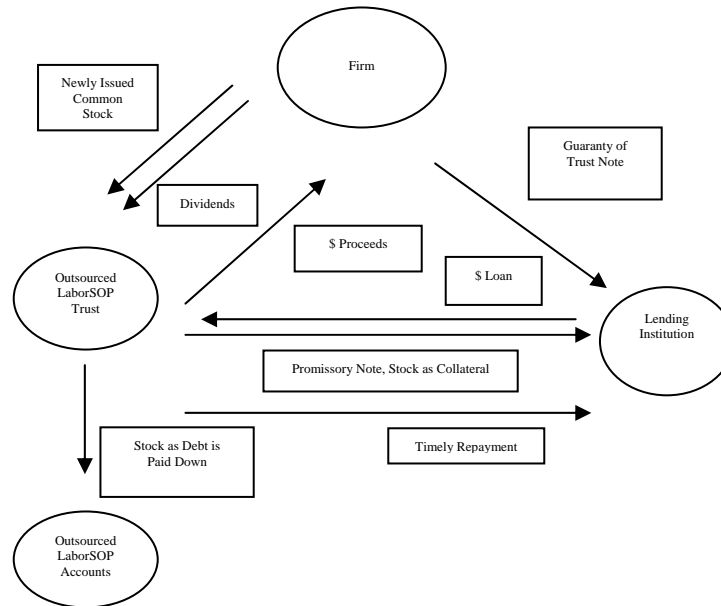
opened markets as the natural constituents—analogue to the “citizens of Alaska” countenanced above in III.B. (We can presumably employ the same means for determining that Peter was indeed misemployed owing to trade liberalization, and thus an appropriate beneficiary, that we employ currently in determining whether employees hard hit by trade liberalization are entitled to “adjustment” relief). Let years of employment with such firms serve as degrees of patronage—an ethical-intuitively attractive suggestion from “two angles,” as it were, in this case: For not only is it the case that more years laboring for the laying-off firm render the patronage relation appreciably “thicker” or “deeper” —something akin to the “loyalty” that we interpreted as ethically salient patronage in connection with CuSOPs in III.A. It’s also the case that more years’ labor with the laying-off firm mean less time for Peter to “retool” and find new employment.

All right, so far so good, I take it. Now, here is something that perhaps I have not unobjectionably left out: It isn’t the case that Peter is misemployed only to the benefit of compatriot Marys owning compatriot firms, is it? After all, Peter’s firm might not simply “outsource” Peter’s labor. It might go out of business, being out-competed by foreign firms. Those firms are held largely by foreign Marys, of course—indeed, in some cases even foreign governments. Moreover, since global investment has been liberalized at least as surely as—indeed, even more surely than—trade, even domestic Mary for her part is likely unharmed: If well advised by investment consultants, she has long since dumped shares in Peter’s employer for shares in other firms altogether—both domestic and, increasingly, foreign.

But if all of this is so, then it presumably will not suffice, if our goal is to ensure that the Marys share gains quite generally with Peters, simply to spread new shares in misemploying firms to their erstwhile, now laid off employees. To plug all the leaks, so to speak, as well as to diversify holdings by Peters more generally and thus render their capital incomes more secure, we shall want to link Peters to Marys via more firms than one. How to do *that*?

I think there are a number of options here, no one of which need be *the* one. I’ll accordingly resist the temptation to try to blueprint in detail every such possible means, and instead shall sketch simply what I think is a suggestive and promising multi-step general strategy. First, then, because the patronage link between Peters and healthy, continuing domestic firms that “outsource” their labor is particularly ethically salient and heuristically compelling, begin with those. Set things up, that is to say, again rather as we did in the RentSOP case above in III.B, now calling it something like, say, an “OutsourceSOP” in Figure 4:

FIGURE 4: INSTITUTIONAL/FINANCIAL STRUCTURE OF AN “OUTSOURCE” SOP ARRANGEMENT



Once again, of course, we find the same basic structure here as is found in Figures 1, 2 and 3 above, with misemployed laborers rather than ongoing employees, customers or “Alaskans” now standing in as our salient class of patrons. The *degree* of patronage, however, will again track years of employment just as in the ESOP—which seems intuitively attractive both because the outsourced employee has invested more of his working life and “specific human capital” into the firm and, flip-sidewise, because he has’ less to give now to other prospective employers. Other than this and the changed patronage basis here ethically grounding the public benefit, the only new wrinkle is simply that the benefits afforded to outsourcing *firms* by the public—in the form, inter alia, of negotiated trade and investment liberalization agreements—are conditioned upon share-spreading by the firms to the laborers they lay off. The important point for present purposes is that, just as in the other SOP examples, the firm in this case still finds itself debt-financing on favorable terms in the interest of boosting its capacity to exploit the newly exploitable resource that is a newly opened set of global markets, and spreading ownership in itself—hence the benefits that accrue to its owners by dint of its access to those markets—in the process.

But now, how about the foreign firms . . . won’t they be more difficult to rope-in to the scheme than domestic firms? Well, here things become a little more complicated, but not all that much once we think about it. Indeed the

principal “complication” is simply that there are *multiple* means of doing justice to Peter. One means would be to tax Marys with large holdings in foreign firms, the proceeds to be used to purchase shares in the same foreign firms, to be placed into SOP-styled “Peter accounts.” A cognate and perhaps more attractive (because non-taxing) means—though this would work more effectively in respect of primary issuances than of purchases on the secondary market—would be to condition *investment* liberalization (the continued absence of capital controls) upon foreign firms’ issuing a certain amount of new stock to such “Peter accounts” per increment of stock acquired by compatriot Marys.

Of course, foreign firms might be expected to protest that investment in them by Marys would be rendered less attractive in consequence of the taxing method; and thus would be illicitly disadvantaged relative to domestic investment. But if we were to develop means of ensuring that it was only indeed “Marys” whom we were thus taxing—e.g., by taxing capital gains realized on foreign stock holdings only beyond some threshold—this would simply amount to the unethical demand that Marys be permitted to unjustly benefit at the expense of innocent Peters. Moreover, investments by Marys in firms that abide by labor, environmental and other standards equivalent to those observed by domestic firms could be exempted.¹¹⁶ That of course raises the other, cognate prospect I just mentioned, amounting to yet another means by which to improve the relative justice-standings of Mary and Peter: Why not condition trade and investment liberalization themselves upon *all* benefiting firms’ financing themselves at least in part through the SOP structure to enable *all* Peters to share in the gains realized by Marys? That is to say, why not “go national” or indeed “go global” with the full “OutsourceSOP” program itself?

Let’s pursue that last line of thought for a moment. While at it, let’s link it up with the earlier mentioned matter of Marys who disinvest from globalization-damaged, Peter-misemploying firms in order to reinvest not abroad, but in other domestic firms to whose production processes Peter’s long-developed firm or sector-specific human capital is not suited. Let’s also link it up to the yet larger matter of income security and its relation to investment diversification more generally: Might we not develop either a national or, more ambitiously, multinational *compact* pursuant to which all “Peters” nationwide or worldwide benefit through something like the SOP structure in return for their “playing by the rules” or perhaps affording some other form of national or international service? This might ring a bit grandiose at present, but please bear with me a moment.

116. Note that this is not the same thing as conditioning trade liberalization upon trading partners’ subjecting their firms to the same labor, environmental and other regulatory standards as those to which domestic firms are subjected. It is only to require that Marys who exploit such differentials share the gains that they realize thereby with the Peters. Lest you worry that the effect will nevertheless be the same, only differing in degree rather than kind by dint of the Marys’ then turning to invest more in domestic firms that also do not employ Peter, please read on. For I aim next to close that loophole as well.

Here, a bit more precisely, is what I have in mind: It seems to me plausible to suggest that citizenship itself is a kind of patronage, even if “thinner” than most other forms.¹¹⁷ It is an ongoing relation such as can warrant, in some cases, the public conferral of at least some kinds of benefit. At any rate “good citizenship” would seem so, such that everyone who “plays by the rules,” “works hard” or perhaps provides some kind of ongoing public service, can be said to deserve some solicitude, perhaps even the guarantee of some “basic minimum,” from us all, would it not? Surely we all as a group, in a sense, feel we owe a “hand up” to those among us who share our core values, obey all our laws, seek useful employment and are nonetheless “down” by the workings of fortune not fault. That seems to be what our oft-invoked commitments to equal justice, equal worth, and equal dignity commit us to, at the very least. And those commitments all jointly add up, not to a guaranteed equality of citizens’ ultimate outcomes, of course, since outcomes impound efforts as well as opportunities, but at least to equality of real opportunity as suggested above in the Introduction and Parts I and II.C.¹¹⁸

I don’t believe anyone will disagree with these truths—which more folk than Americans seem to hold “self-evident.”¹¹⁹ What we do sometimes disagree about are the empirics of actual responsibility—the comparative degrees to which chance and choice have determined particular citizens’ outcomes. I linger at some length upon practical means of disentangling these intermingling “inputs” to citizens’ “wealth functions” elsewhere.¹²⁰ For

117. Even if, in a liberal polity as that toward which our own approximates, an attenuated or “thin” kind of patronage. The degree to which citizenship as a form of patronage is thin might track the degree to which the polity’s “theory of the good” is thin. A polity that acknowledges “the priority of the right over the good,” will be a polity which, qua polity, maintains but a “thin” theory of the good—reserving “thicker” conceptions of what is to lead a good life to citizens as individual “life-planning” agents. Citizenship itself accordingly would be but minimally defined, in bare justice terms; and claims to basic resource minima would be rooted in the basic justice to which every citizen is entitled as a citizen. To the degree that a polity departs from the minimal liberal ideal, however – e.g., in the direction of a “civic republic” whose citizens deliberately share certain “thicker” values additional to that of justice (e.g., the values of shared participation and deliberation themselves, even notwithstanding the wishes of some not to take part of deliberate) – the form of patronage to which citizenship itself amounts will correspondingly grow “thicker.” Being a citizen will involve closer relating with and value-sharing with one’s fellow citizens qua citizens. And it might then activate concerns we hold on behalf of others which are grounded more in fellow-feeling now *as well as* in bare justice. *See also* Hockett, *Whose Ownership?*, *supra* headnote, at 5-24 (discussing the degree to which the American polity appears to incorporate civic republican as well as classical liberal values).

118. *See, e.g., supra*, Part II.C.

119. *See* Hockett, *Whose Ownership?*, *supra* note headnote at 29-56 for support. That is where I endeavor to locate and overlapping consensus among our dominant political traditions—a consensus that converges upon a shared ideal I label that of an “efficient equal-opportunity republic.” *See also* Hockett, *Just Insurance*, *supra* headnote at 142-73; and Hockett, *The Deep Grammar of Distribution*, *supra* note 75, at 1179. The “self-evidence” remark, of course, alludes to THOMAS JEFFERSON, *A Declaration by the Representatives of the United States of America, in General Congress Assembled*, July 4, 1776, reprinted in THOMAS JEFFERSON: WRITINGS 19 (Martin E. Segal ed., 1984).

120. *See* Hockett, *Whose Ownership?*, *supra* headnote, at 36-51.

present purposes, however, it will do simply to recall what we reminded ourselves of above at II.C: Namely, that (a) the more innocent a prospective beneficiary of a share-spreading program, (b) the less well endowed that beneficiary already is, and (c) the more readily viewed as an ethically exogenous resource or material opportunity—upon which the beneficiary must expend *effort* in order to transform it into personally experienced utility—a spread item is, the easier it is to perceive publicly augmented spreading as a redress of ill-fortune. The easier in such case it is to view public action as vindicating equal opportunity rather than simply doling out “hand-outs.” And that is all the more so when public augmentation takes the form of tax breaks.¹²¹

In that light, it would seem that we might try a yet more generalized variation on the ESOP, this one geared toward benefiting those in particular who are young, lacking in resources, or good citizens who play by the rules. (We might begin by targeting those who benefit their country or the global polity through something akin to AmeriCorps services. We might indeed think about instituting, perhaps through the U.N., something like a “WorldCorps.”)¹²² We can readily ensure that beneficiaries meet these criteria—criteria which will reflect and in effect define the form of patronage that we believe ethically to underwrite the benefit.¹²³ And we can financially structure the arrangement so as to ensure that beneficiaries benefit only by working, rather as happens in the case of the ESOP.

Here is how: First, establish a national or multinational trust, a sort of cross between various nations’ national pension trusts and the humbler ESOP trust schematized at Part II. We might call this trust something like, say, the national or international “Citizen Stock Ownership Plan” or “CitSOP” Trust. Second, open individual “citizen trusts” or “accounts” for every citizen—perhaps upon each citizen’s reaching adulthood (in the “accounts” case), or at birth (in the “trusts” case) as has recently been begun in the U.K.¹²⁴ These individual CitSOP accounts could be administered rather as was envisaged in connection with the “USA” accounts proposed in the late 1990s, by President Clinton of the U.S., or the Social Security “personal accounts” proposed somewhat more recently, or even the accounts proposed by the IMF’s own co-

121. See *supra* Part III.C.

122. The United States’ first large-scale post-Homesteading era education-spreading—hence, “human capital” spreading—programs began with veterans as beneficiaries. Hockett, *Jefferson Republic*, *supra* headnote, at 144-46. How fitting it would be, to recognize other forms of service in similar ways.

123. Note that we do this already with federal home finance and higher education assistance. We employ both financial need criteria and law-abidingness criteria. See *id.* at 97.

124. See BBC News, Blair Banks on Baby Savings Scheme, April 27, 2001, http://news.bbc.co.uk/1/hi/uk_politics/1297324.stm (referring to Prime Minister Blair’s Child Trust Fund – or more popularly, “baby bonds” – plan implemented in 2001); Democratic Leadership Council, Idea of the Week: KidSave, Oct. 13, 2000, http://www.dlc.org/ndol_ci.cfm?contentid=2372&kaid=131&subid=207 (referring to Former Nebraska Senator Bob Kerrey’s “KidSave Accounts” proposed at the turn of the past century).

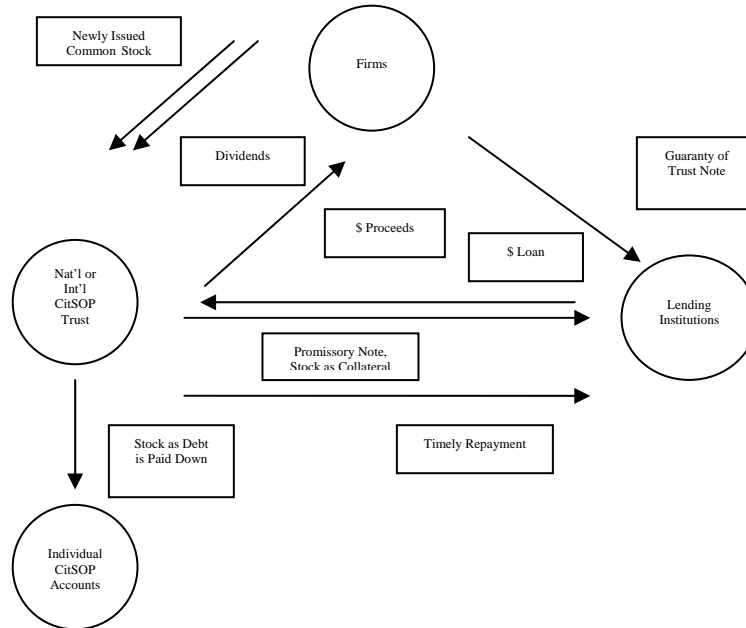
designer, Lord Keynes, nearly 70 years ago.¹²⁵

Now, let the national or multinational CitSOP Trust borrow from lending institutions just as firms' ESOP trusts do, and let them use the proceeds of the loans to purchase newly-issued, dividend-yielding common stock from firms; grant participating firms and lending institutions, in turn, more or less the same tax incentives as they are afforded in connection with US ESOP arrangements. Let the national or international CitSOP trusts, in turn, pledge the purchased stock as collateral¹²⁶ and steadily pay down the debts to the lenders out of, say, the tax revenue brought in from participating firms. Let the full set of arrangements, in short, look something like Figure 5:

125. See JOHN MAYNARD KEYNES, HOW TO PAY FOR THE WAR (1940), for Keynes's visionary and indeed prophetic proposal. *See also, e.g.,* Hockett, *Mission-Creep*, *supra* headnote (Keyne's role in designing the Fund). Compare Investment Company Institute, President Clinton Introduces Universal Savings Accounts, Apr. 16, 1999, http://www.ici.org/issues/ret/arc-leg/99_pres_usas.html; The White House Office of the Press Secretary, Remarks of the President on Universal Savings Accounts, Apr. 14, 1999, <http://clinton4.nara.gov/WH/New/html/19990414-3020.html>; Urban Institute, Matching Private Savings with Federal Dollars, Nov. 1, 1999, <http://www.urban.org/publications/309272.html>; and American Academy of Actuaries, USA Accounts, <http://actuary.org/pdf/pension/usaccounts.pdf> (last visited Oct. 3, 2007) (explaining President Clinton's "universal savings accounts," or "USAs," proposed in 1999), with The White House, Strengthening Social Security for Future Generations, <http://www.whitehouse.gov/infocus/social-security/> (last visited Oct. 3, 2007), and CBS News, Bush Pushes Private Accounts, May 4, 2005, <http://www.cbsnews.com/stories/2005/05/04/politics/main692991.shtml> (explaining a structure of private accounts, now without government income support, figured into George W. Bush's 2005 State of the Union address).

126. Though of course this also might be deemed unnecessary in, e.g., the United States in view of the full faith and credit enjoyed by a federal institution. Indeed, even were the trust to function as a government sponsored entity (a GSE), it would in effect be viewed as being fully eighty percent as credit-worthy as the federal government itself for purposes of bank capital adequacy regulation. *See* 12 C.F.R. pt. 3, app. A (2007).

FIGURE 5: INSTITUTIONAL/FINANCIAL STRUCTURE OF A CIT SOP ARRANGEMENT



This looks familiar. Yes, it's Figure 1 (or 2 or 3 or 4) again, save again with some differing persons and entities—apart from issuing firms and lenders—involved, once more in light of the distinct form of patronage that we are rewarding. The only complications found here but not there (in the ESOP, CuSOP, RentSOP and OutsourceSOP cases) have to do with how precisely we decide to define the salient patronage form. Hence, for example, if we begin with national or multinational service of some sort as the salient patronage form, then the amount of stock released over time to the individual beneficiary's CitSOP account will track her hours or weeks or years of service. If, on the other hand, law-abiding citizenship itself is the patronage category, then stock amounts will rise simply with years of citizenship—rather as one's US Social Security or cognate national pension benefit elsewhere (e.g., Chile¹²⁷) rises with time spent at work.

We might also, of course, stratify patronage *subtypes* in this case, such that law-abiding citizenship alone entitles the beneficiary to some basic minimum of stock released per quarter, national or international service of one sort entitles her to some amount more, national or international service of another sort entitles her to a yet larger increment more, and so on. Finally,

127. For a good sampling of the aims, ambitions and operations of various national pension programs, see *THE ECONOMICS OF PENSIONS: PRINCIPLES, POLICIES, AND INTERNATIONAL EXPERIENCE* (Salvador Valdes-Prieto ed., 1997).

insofar as it is opportunity deficits that have activated our concern, we might—but also might “not—”needs test” one or more of the benefits here, perhaps applying a graduated discount factor to entitled benefits as personal wealth rises.¹²⁸ Were we to do that, we might consider misemployment by an “outsourcing” firm itself to constitute such a need, in effect growing the CitSOP directly out of the OutsourceSOP . (In such case again we would presumably verify eligibility by means similar to those employed presently in connection with statutory “adjustment relief.”)

There are of course many variations and gradations that we can consider and experiment with in all of this, for again the aim here is to establish the plausibility and attractiveness of the general idea rather than to lock us in to one particular blueprint. The important points for present purposes, then, are more fundamental in nature: The first is that the basic model can perspicuously accommodate any form of patronage—any form of ethically deserving status such as might politically sanction benefit conferral—that we envisage. The second point is that it can do so while enabling us to confer the benefit in a manner that both (a) spreads firm-ownership, and (b) does so by means that respect both our core values *and* our *endowment* sensibilities as rehearsed above in II.C.

The third point is that we can, though we need not, in one way or another either wholly or partly condition trade and investment liberalization upon participation by other nations in some such multilateral program as this. Doing so requires only already well-to-do Marys, not erstwhile penurious Pauls, to share the surpluses that they glean in consequence of globalization with recently and faultlessly “outsourced” Peters. (We can condition continued globalization, that is to say, upon *everyone’s* truly gaining.)

And, finally, the fourth point, to which I turn now in a bit more detail, is that the national or international CitSOP idea naturally fans out into a broader consideration that deserves a bit more play: I mean the fact that the Peters who elicit our concern, possessing as they generally do only one, comparatively undiversifiable form of capital— “human capital”’—are inherently subject to more income risk than are the Marys, whose firm-share-holdings are readily diversified. Might we work, then, to render our compensated Peter’s new capital form as *secure* as is Mary’s?

One particular advantage enjoyed by the CitSOP idea that is not enjoyed to the same degree by the CuSOP, RentSOP, and single firm OutsourceSOP ideas is the automaticity of the CitSOP’s *diversification* of acquired stocks. If a broad variety of firms nationally or transnationally were to participate in the CitSOP program, beneficiaries could perforce receive shares in a broad array of firms. In the earlier-rehearsed CuSOP, RentSOP, and OutsourceSOP cases,

128. A limiting case, then, might be that of the offspring of wealthy families, who perhaps would not qualify for any benefit of this particular (CitSOP) sort. It might, however, on the other hand be deemed preferable not to needs test at all, on more or less the same political popularity grounds as the U.S. SSI’s abstention from needs testing.

by contrast, diversification would ride upon more accidental factors—viz., the number of different corporate firms that the particular beneficiary regularly patronized as customer (voluntarily, involuntarily, or in between), the number of such rent-extracting firms in more or less close proximity to which the beneficiary lived, or the number of firms—typically but one—fore which the beneficiary labored. How, then, in more detail might we design SOP-like or SOP-complementing arrangements that might optimally diversify holdings among all SOP beneficiaries irrespective of SOP-type?

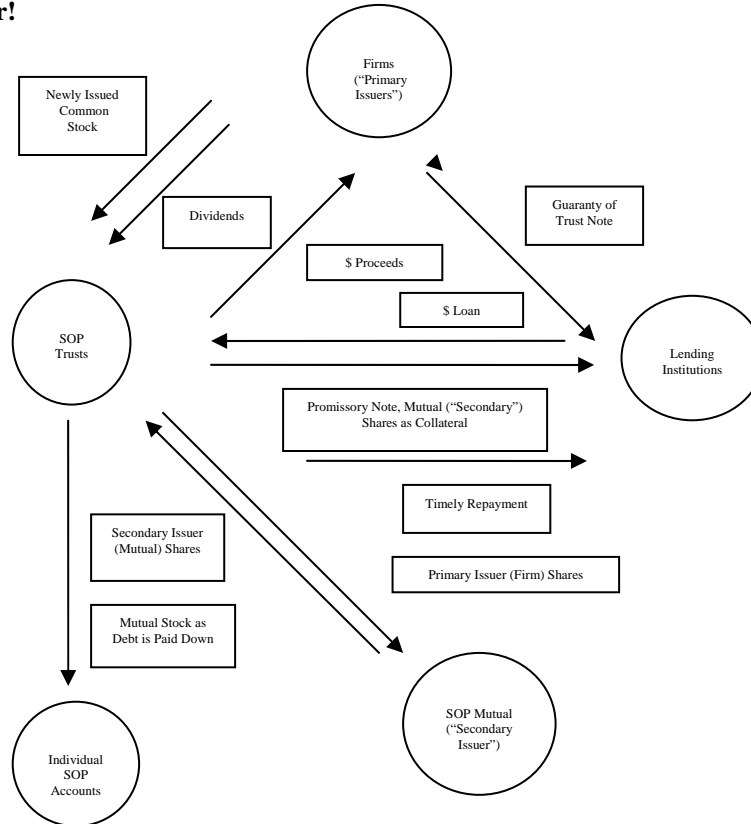
A variety of methods might be employed. I'll model two very simple, exemplary cases here. The first model might be called that of the "SOP Mutual." Various SOP trusts would convey their primary issuer stock holdings to an intermediary, which in return, would convey shares in itself of equal value to the trusts.¹²⁹ The intermediary (and now secondary issuer) would be, in effect, a mutual fund whose (initial) members were SOP trusts.¹³⁰ Subsequently the SOP trusts would, rather than gradually releasing sponsoring issuers' securities to their beneficiaries' individual accounts over time, release SOP Mutual shares instead. Shares of the latter sort would also serve, where shares collateralize loans used for the purchase of primary issuer stock, in place of the latter as collateral. Diagrammatically, then, things would look like Figure 6:

129. Fund shares would be valued as are any mutual fund's shares. Individual issuer shares would be valued as are any issuer's—by "the market" in the case of publicly valued firms, pursuant to the "cashflow" method in the case of closely held firms. *See generally* TOM COPELAND ET AL., *VALUATION: MEASURING AND MANAGING THE VALUE OF COMPANIES* 131-297 (3d ed. 2000). I ignore here the question of means of avoiding imprecisions occasioned by market fluctuations, account indeterminacies, etc., as there seem to be no difficulties specific to the present case and not already dealt with by familiar means in other investment company contexts.

130. And, as we'll see in a moment, SOP trust beneficiaries.

Figure 6: Institutional/Financial Structure of a SOP with SOP Mutual Arrangement

Error!



It seems worth noting that the SOP Trusts participating in SOP Mutual arrangements could be of all types—ESOPs, CuSOPs, RentSOPs, OutsourceSOPs, even CitSOPs with good reason.¹³¹ And the more SOP types and SOPs, of course, the greater the degree of diversity, hence the lesser quantum of value at risk, that would be faced by our SOP beneficiaries—our “Peters.” We might then have here a bit of the “best of both worlds,” so to speak. We would be both fostering patronage relations between persons and firms—since benefits ride upon such relations—and dissipating the income risk that attends patronage concentration.

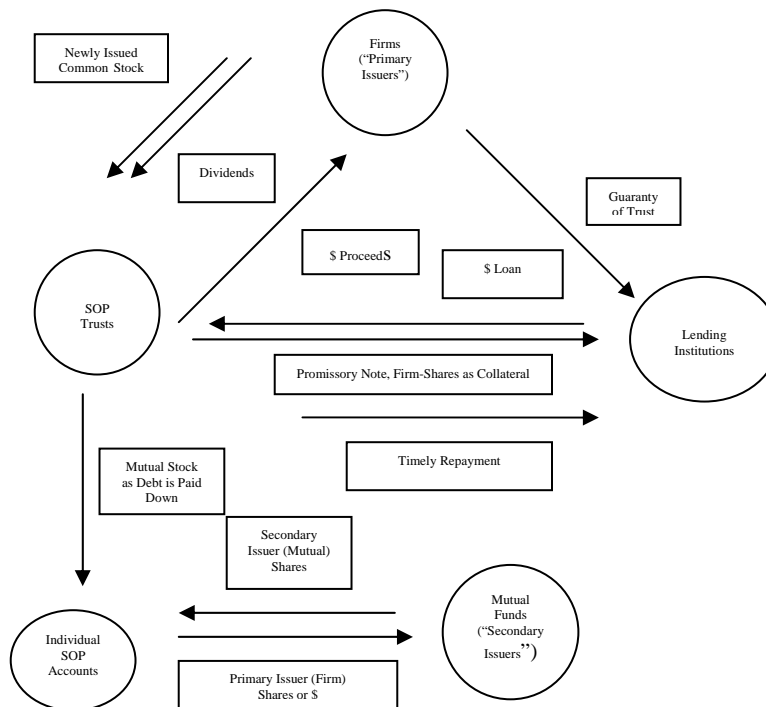
An advantage of the SOP Mutual model is it enables SOP beneficiaries—not to mention such lenders as whose loans are collateralized by SOP Trust-held stocks—to reap the benefits of diversification even before they become legal, as distinguished from beneficial owners. If, however, we found that we

131. For example, were an insufficient variety of firm types participating in CitSOP arrangements.

had or we wished to forgo that advantage for some reason, we could mutualize at the individual beneficiary level rather than at the SOP Trust level. We might, for example, condition beneficiaries' qualifying for the SOP benefit upon their agreement to diversify their holdings for some period of time. Or we might differently tax gains upon individually owned primary issues and secondary (mutual) stock. Or, yet again, what seems more likely, a gradually growing degree of financial understanding enjoyed by citizens holding gradually growing portfolios of securities¹³² presumably would prompt our SOP beneficiaries to better diversify their legally owned holdings. (We might even provide, facilitate or otherwise encourage the provision of such counseling.)

In all events, diagrammatically, in Figure 7, things would look rather as they do in Figure 5, save that now arrows would link, individual SOP beneficiaries and ordinary mutual funds, not SOP Trusts and SOP Mutuals:

FIGURE 7: INSTITUTIONAL/FINANCIAL STRUCTURE OF A SOP WITH ARRANGEMENT WITH DIVERSIFICATION ACHIEVED PRIVATELY



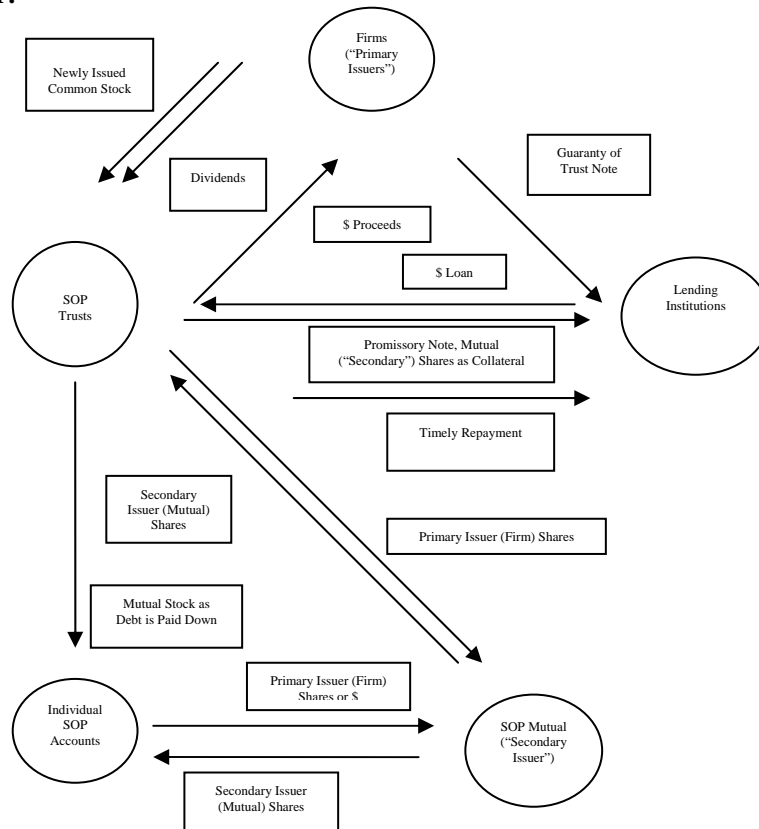
And we might imagine, of course, ordinary mutual funds serving *both* in

132. We might even subsidize or require—the latter perhaps in the form of benefit conditionality—some baseline degree of financial counseling, as we do in the case of our federal home- and education-finance programs. See Hockett, *Jeffersonian Republic*, *supra* headnote, at 112, 151.

their current capacities *and* as SOP Mutuals as in Figure 8:

FIGURE 8: INSTITUTIONAL/FINANCIAL STRUCTURE OF A SOP WITH SOP MUTUAL ARRANGEMENT AND PRIVATELY ACHIEVED DIVERSIFICATION AS WELL

Error!



There seems no reason, then, why we might not achieve optimal diversification among our growingly owning citizens even while rewarding their multiple ongoing patronage relations with a perhaps somewhat lesser variety of firms.

V. THE ROLE OF THE IFIS

Everything that I have been attempting to visualize and think through in Part IV implicates the international financial institutions (IFI). A problem at this juncture, however, is that it does not implicate them in solely one way. What role or roles the IFIs should play—and indeed what roles *which* IFIs should play—will ride significantly upon how we determine to structure and

institute a system of OutsourceSOP arrangements, CitSOP arrangements, or both. And I have repeatedly abstained from committing to any one way of proceeding with these arrangements, in view of the exploratory, “thought experimenting” nature of the present project.

The best way to think about the role of the IFIs in a manner consistent with our present purposes is to divide the inquiry into two stages. In the first stage, I’ll say a bit more of a general nature about why and how the IFIs are implicated. For what is to be said here will both (a) be applicable to any particular role or set of roles we envisage for the IFIs and (b) constrain how we ought to envisage those roles themselves. In the second stage I’ll sketch the IFIs’ more specifically, while still in broad enough outline as to remain appropriately responsive to the plurality of options left open by the “thought experimenting” done in Part IV.

A. Why & How They are Implicated, Generally Speaking

The proposals visualized over the course of Part IV are all, at their most basic level, financial in nature. They also are designed with a view to better apportion the benefits and burdens of globalization. The central idea is to spread what I’ve called ethically exogenous benefits and burdens more equitably, in keeping with our core opportunity egalitarian values as adumbrated in Parts I and II.C. The aim is also to do so, in keeping with our methods-constraining endowment dispositions, as briefly rehearsed in II.C, via the mechanisms through which globalization-benefited business firms finance themselves. By taxbreak-assisting corporate debt-finance in return for corporate share-spreading (which of course is capital-spreading) or by conditioning firms’ receipt of rent-like benefits (such as those occasioned by globalization) upon share-spreading, the SOP plans harness finance and globalization themselves to spread globalization’s own benefits more widely. And the benefits themselves are financial in nature: They are corporate securities.

Now, precisely for these reasons, the suggestions made in Part IV fall squarely within what I have argued in a number of other places to constitute the emerging mandate of the principal IFIs—the Bretton Woods institutions in particular.¹³³ What do I mean by “emerging mandate” here? I mean two things: one relatively broad, the other more narrow in sweep. What I mean broadly is that the IFIs’ legally mandated and indeed pragmatically necessary role is, at its most generally characterized, to facilitate sustainable global economic integration from that integration process’s specifically financial nodes.¹³⁴ This is, of course, a complex and evolving mandate, not least because global financial markets and practices themselves are both very complex and rapidly evolving.

133. See articles cited *supra* headnote. More specific cites to particular articles will follow.

134. See Hockett, *Mission-Creep*, *supra* headnote.

The mandate originally involved the IMF in overseeing and maintaining the global currency regime upon which product market integration depended and the IBRD in financing postwar reconstruction and new infrastructure development both directly and indirectly.¹³⁵ Since the 1970s, 1980s, and, especially, the later 1990s, the mandate has steadily come to involve rather more, largely owing to the IFIs' (and indeed globalization's) successes in carrying out 'earlier stages of the mandate. The 'IMF's comparatively recent domestic structural adjustment and global financial market monitoring roles, for example, have been gradually transforming it into a critical determinant of the legal and regulatory infrastructures not only of cross-border financial transactions, but unavoidably of domestic financial arrangements as well.¹³⁶ The Bank, for its part, increasingly—and again, unavoidably—treats domestic pension and social insurance arrangements as critical components of the infrastructures necessary for steady and sustained economic development.¹³⁷

I have argued elsewhere at length that all of these developments were, at least in broad outline, both foreseeable and indeed foreseen during the IFIs' founding era in the mid 1940s and, thus, were legally provided for in the constitutive documents, acts, and shared understandings from which the institutions grew.¹³⁸ The founders recognized, and indeed actively sought, the gradual integration of world product and service markets, in the interest of both greater prosperity among and closer integration between national societies themselves.¹³⁹ Accordingly, they also saw the need of a pragmatically adjustable role for international collaboration in the realm of finance and its regulation, both because financial services are themselves among the services that trade and, yet more importantly, because finance, financial markets, and financial products are critically determinative of the operation, integration, and stably sustainable growth of markets more generally.¹⁴⁰

Now the project of this Essay, I think, falls quite clearly within this same province both as a prudential and as an ethical matter. Prudentially speaking, as I trust we all recognize, global trade and investment liberalization have entered more turbulent political waters in the last decade or so. The process's perceived "losers" have been growing more numerous, more vocal, or both. And it seems they are beginning to be heard and heeded, not just by activists and agitators but by leaders and legislators as well. If the process of global economic integration is to continue and we are to avoid backsliding into a 1930s-style retrenchment, then, it would seem we'll do well to find a means of making more stakeholders among those who currently grow increasingly

135. The IBRD indirectly financed postwar construction and new infrastructure development by effectively encouraging private lending, in addition to supplying funds directly. *See id.* *See also* Hockett, *Three Pillars*, *supra* headnote.

136. *See* Hockett, *Mission-Creep*, *supra* headnote.

137. *Id.* *See also* Hockett, *Three Pillars*, *supra* headnote.

138. *Id.*

139. *Id.*

140. *Id.*

disenfranchised and disenfranchised.

As argued over the course of Parts II through IV, one very attractive and widely appreciable means of making more stakeholders is the making of more shareholders—holders of shares in the very firms that now *benefit* by globalization. This form of stake is financial in itself, in the sense that shares are financial assets par excellence. And the means I am proposing for spreading such shares are of course financial as well. So both in respect of ends—sustaining continued global market integration by better spreading such integration’s financial benefits—and in respect of means—financial engineering means—what I am proposing clearly implicates the IFIs and their evolving mandates as broadly considered.

This is what I mean, then, “more broadly” in saying the IFIs are implicated by what I’m proposing. What do I mean more narrowly? Well, as I also have argued elsewhere, the IFIs’ proper roles in facilitating sustainable global economic integration are best viewed as falling within four quadrants formed by two axes.¹⁴¹ The first axis runs between what I call “programs” and “policies.” This divide is rooted in the structures of the IFIs’ organic enabling documents themselves and, principally involves the IFIs in developing “policies” meant to encourage and facilitate particular kinds of state “program.”¹⁴²

The second axis runs between “opportunity” and “risk,” which amount to the financial faces of globalization’s benefits and burdens, respectively.¹⁴³ This axis is rooted, quite simply, in the functional roles played by finance in human affairs.¹⁴⁴ The IFIs’ mandates are best interpreted as charges to the IFIs to adopt policies which encourage and facilitate state programs that not only increase opportunity and decrease risk, but that work specifically to *spread* what I’ve called “ethically exogenous” opportunity and risk, to return to the language of Part I above.¹⁴⁵

The program/policy and opportunity/risk axes form four quadrants according to which we can readily classify and interpret a variety of opportunity- and risk-spreading state programs encouraged and facilitated by

141. See Hockett, *Mission-Creep*, *supra* headnote.

142. *Id.*

143. *Id.*

144. On the benefit side, finance literally amounts to opportunity by enabling people, through the exercise of diligence, to realize their potential value-adding ideas. In effect, this is precisely what micro-loans, small business loans, corporate finance, and venture capital all provide. On the burden side, finance provides a means of trading, sharing, or more thinly spreading what would otherwise be concentrated risk. This is one reason why insurance companies are considered financial institutions. Of course, it is also observed not only in derivative and other hedging markets but even in the more garden variety corporate securities markets themselves – a principal role of which is assist firms’ owners in diversifying their investments and, thus, lessening their financial risk. See generally ROBERT HOCKETT, *CASES AND MATERIALS ON FINANCE, FINANCIAL INSTITUTIONS AND FINANCIAL REGULATION* (forthcoming 2008).

145. See Hockett, *Mission-Creep*, *supra* headnote; Hockett, *Three Pillars*, *supra* headnote.

specific IFI policies. I've done so elsewhere, in addition to sketching and, in some cases, detailing further such programs and policies that it seems to me ought to be tried.¹⁴⁶

So, for example, land reform, basic health, literacy, and education programs carried out within states are ethically exogenous opportunity-spreading programs; the Bank in particular has developed policies in favor of encouraging and indeed facilitating such programs.¹⁴⁷ The Fund's and the Bank's developing interest in eradicating corruption, and even in fostering democracy, both in governments and in firm governance, can likewise be interpreted.¹⁴⁸ Social insurance programs run by states, of course, amount to ethically exogenous risk-spreading programs. And the IFIs' recent attentions to "social safety nets" amount to IFI policy developments along these lines.¹⁴⁹ (I have been proposing additional, market-based such programs in other venues.)

Where, then, do the SOP suggestions of Part IV fit in here? To a degree, they straddle the boundaries, occupying portions of all four quadrants. This is most obvious in respect of the opportunity/risk axis, where the straddle is, in a sense, conceptually inevitable. In respect of the program/policy axis, the straddle is contingent upon our decision as to how to proceed. I'll therefore say a bit here about the opportunity/risk axis, leaving the matter of program and policy to subpart B below.

What I mean in speaking of an opportunity and risk straddle in the case of the SOP plans of Part IV here is fairly simple and straightforward: It is that spreading shares in globalization-benefited firms to faultless outsourced Peters is to spread *both* ethically exogenous risk *and* ethically exogenous opportunity. It is to spread such risk because Peter no longer need bear this risk—which is, again, by hypothesis ethically exogenous (that's what we mean in calling him "faultless")—alone. The risk to people like Peter—who might, when too old to fully retool, unforeseeably lose income owing to the sudden hiring of desperate Pauls who can work for much lower pay in much poorer countries with much lower costs of living—is now mitigated. It is mitigated by compensation paid Peter by benefiting Mary, now made to share some of her windfall gains. So the presently concentrated burdens wrought by globalization are de-concentrated; they are spread. And they are spread precisely by spreading a hitherto *also* concentrated *benefit*—namely, the windfall gains gleaned by Mary.

The aforementioned benefit spreading, which here takes the form of firm-share spreading, also amounts to a form of ethically exogenous opportunity

146. See Hockett, *Mission-Creep*, *supra* headnote; Hockett, *Three Pillars*, *supra* headnote. See also Hockett, *Just Insurance*, *supra* headnote; Robert Hockett, *Gaming as Microinsurance* (working paper, 2007).

147. See Hockett, *Mission-Creep*, *supra* headnote.

148. *Id.*

149. *Id.*

spreading. It is opportunity spreading in the quite simple sense that to own shares in firms that benefit from globalization is to own shares in future profits. Peters will glean future dividends or capital gains (or both) that they would not have gleaned before. (They might even use some of these to finance “retooling” of themselves through vocational training, if relatively young.) Share spreading of this sort also is *ethically exogenous* opportunity spreading, in the sense that it is financed, in effect, by recouping some of the windfall gains realized by the Marys.

The SOP structures described over Part IV, then, amount to means of facilitating the sharing across persons of ethically exogenous opportunity and risk, in a manner that both increases the number of stakeholders in and decreases the degree of inequitable victimization of, global economic integration. It is, accordingly, just the sort of thing that I have argued elsewhere to fall quite squarely within the bailiwick of proper IFI concern.

But now, precisely what form of concern? Are the SOP arrangements described in Part IV best viewed as primarily a matter of state program that IFIs should adopt policies of encouraging and perhaps facilitating? Or are we considering here the sort of program that either must be, or at any rate would best be, administered by some transnational institution or institutions, including one or more of the IFIs acting in one or another capacity? That question takes us to more specific consideration of precisely what role the IFIs are apt to play in any global SOPs program. Here, I tend to think that “path dependence,” determined in part by already existing analogical precedent and in part by an already developing institutional backdrop, is likely to play an important role.

B. How the IFIs are Implicated, Specifically Speaking

Since there seems to be no question but that the IFIs both have good reason to take interest in the prospect of a global SOPs program and are authorized to do so, our principal remaining question is what form that interest should take. Given the particular interests at stake and the institutional environment already in place, I think that the principal role for the IFIs will be, first, inventive and advocative; second, coordinative; and third, monitory. In the remainder of this Part, I’ll explain what I mean here and why I think it is most likely, while also, in keeping with the more exploratory aims of this Essay, leaving open the prospect that IFI involvement might take some other shape.

The IFIs, then, should first work to design and urge their members to initiate OutsourceSOPs and, perhaps, CitSOPs domestically. Second, they should propose, host, and facilitate international cooperation in coordinating SOP policies across jurisdictions in a manner that encourages safe participation and diversification of holdings by SOP beneficiaries. And third, they should add, to their already active surveillance agendas, the regulation and monitoring of SOP trusts—this with a view to protecting beneficiaries and third parties from familiar forms of expropriation and exploitation from opportunistic

fiduciaries—pursuant to their general role in facilitating coordinated finance-regulatory policies worldwide.

In employing ordinal—“first,” “second” and “third”—terminology here, I intend to convey more than expository ordering. I mean quite literal, programmatically temporal ordering as well. I think the ordering of exposition is not only heuristically natural, but also replicates the optimal *sequencing* of IFI involvement in any global SOPs agenda. I’ll explain why as I proceed in explaining my position here.

First, as to design and advocacy: It might of course be wondered why the IFIs need design or advocacy here at all. Do individual member states—particularly those with substantial populations of those I have been calling “Peters”—not face sufficient incentives already to institute systems of OutsourceSOPs and even CitSOPs? After all, it is their Peters who are unjustly harmed by outsourcing; it is their treaties that are making this possible and it is their function to facilitate exogenous opportunity and risk-sharing among their own citizens. Furthermore, are states not perfectly capable of doing this on their own on a state by state basis? For again, after all, (a) it is for them themselves to encourage SOP financing on the part of firms by trimming their tax take from firms that do so or by conditioning trade liberalization on share issuance to outsourced employees. Moreover (b), it is they who will have to determine who among their citizenries qualifies for the benefit, as is currently the case with more familiar adjustment assistance. And finally (c) there is already an extensive infrastructure of bank trust departments and investment companies—especially mutual funds—that would seem most likely to supply the SOP-requisite trust accounts (we’re not likely to wish to “reinvent the wheel” here); and these operate under domestic regulatory arrangements.

The reply to these questions and observations is of course yes, and that is quite helpful to know for at least one reason: Namely, that states can begin designing and instituting such programs as these to render globalization more unambiguously good for their citizenries, without *waiting* for *others* to do so.¹⁵⁰ Nevertheless, things are a bit more complicated than I have thus far suggested in a number of respects. And it is these complications that constitute the principal points of entry for the IFIs.

For one thing, most simply and generally, it will be much better for the cause of sustainable globalization for *all* states with sizable populations of Peters to design and institute SOP-type programs of the kind sketched above in Part IV. That is so both for the justice- and prudence-grounded reasons elaborated in Parts I and II.C, and for the more globalization-specific reasons discussed just above in Part V.A. More is straightforwardly better where more just distribution is concerned.¹⁵¹ The IFIs, whose first mission is to facilitate

150. Hence my proposals in Hockett, *Stock Ownership Plans*, *supra* headnote.

151. For more on the straightforward betterness I have in mind here, see Hockett, *Whose Ownership?*, *supra* headnote. For a formal proof of the claim, see Robert Hockett, *Market*

precisely such continued globalization as mentioned, bear a natural interest in encouraging members to do domestically what is necessary to further that transnational purpose. That is indeed precisely why they encourage, as noted just above in Part V.A, the development of “social safety nets” that the OutsourceSOP and CitSOP would partly constitute.

Furthermore, within some policies Marys might be as influential as Peters, if not indeed more so, and their perceived self-interests might not be what most of us would call “enlightened.” What is more, Peters in many jurisdictions might well believe that their only remedy from continued outsourcing is to push back against globalization itself. They might not realize that there are more direct and better tailored, less globalization-threatening means of addressing their just complaints.

The IFIs can accordingly serve a most useful agenda-setting or – influencing role within polities where our “everyone gains,” Part IV SOP solution has not yet been hit upon or become mainstream. By adding a salutary voice within polities, then, and moreover by adding an impartial, transnational voice, the IFIs can play a critically salutary role in the spreading of SOP programs worldwide. That, again, in turn will facilitate the stable and steady continuance of distributively just market-integration to which the IFIs are, as it were, constitutionally committed.

It also bears emphasis that some of the assumptions embedded in the questions with which I introduced the present discussion require more nuance if the questions are not actually to be misleading. And this takes us directly to the second, more than merely advocative role that the IFIs seem likely to play in connection with the instituting of any global SOPs program.

Here, in essence, is the proverbial rub: It is true enough that national governments might be doing the actual taxbreak—encouraging or conditional requiring of SOP-financing by firms. And it is true that they’ll also, in all likelihood, be doing the monitoring of claimants to beneficiary status of SOP programs, with a view to those claimants’ bona fide “faultlessly outsourced” status. Finally, it is also true there already is an extensive, privately provided infrastructure of bank trust departments and investment companies in place which is likely to be utilized in the creation of SOP trust accounts and SOP beneficiary accounts. But, largely owing too the success of global financial market integration itself, what individual states do which bears upon the financing of firms and the operating of financial intermediaries increasingly affects persons who reside beyond their borders.

General Motors, Microsoft, Unisys, and other large American corporations are not owned solely by American Marys; nor are Daimler, Phillips or Unilever owned solely by Europeans, or Toyota and Sony by Japanese. Firms increasingly offer their shares worldwide, and the savings and

investment portfolios are increasingly held across borders.¹⁵² This all means, among other things, that what a particular state encourages or requires firms over which it has jurisdiction to do, increasingly affects non-nationals, as well as nationals. In turn, that means not only non-national Marys over whom a government lacks jurisdiction might feel differently than national Marys about having to share gains with national Peters—especially if it is easier for national Peters to gain beneficiary status than, say, Mary’s nation’s Peters: It also means nationally and non-nationally located *firms* can fare differently according as Marys “vote with their feet”—their investment moneys. Differential faring of this sort would be inimical to the ideals of global market integration. And what is more, differences of treatment of primary-issuing firms and financial intermediaries nation by nation would tend to discourage global diversification of holdings, a necessary predicate to optimal asset security among the world’s shareholders.

I trust that I needn’t continue with this line of observation. : For a global SOPs plan to be perceived as fair and to work optimally, it will have to treat all global Peters and Marys as close to alike and impartially as possible. And that means that there is a role for impartial international organizations to coordinate efforts among nations, to harmonize substantive standards, and procedural implementation. And this is, of course, yet another role that the IFIs—especially the Fund now—already play.

Insofar as globalization is truly a global community project, then, and insofar as this project implicates something like a global SOPs program by way of smoother and therefore continuer of the project’s progress, it calls for coordinative assistance from the same institutions that assist with coordinating the other policies, programs, and processes of global integration. In the present context, that means the IFIs. So, in addition to advocating the coordinated adoption of SOP programs by member states and supporting the design and fine-tuning of such programs through their research and related expertise, the IFIs will constitute natural fora for the coordinating itself—the coordinating of substantive standards, implementary and operational strategies, and the like. This takes us to the third and final “phase” of the most likely course of sequenced IFI involvement.

Perhaps above all else, the kind of coordinating that many of the IFIs and especially the IMF do now is the coordinating of regulation.¹⁵³ The financial services industry, as we have long known, is particularly vulnerable to occasional outbreaks of hyper-speculative and opportunistic behavior on the part both of fiduciaries and of others trading on their own accounts. All of these are people some of whom sometimes find the temptation to make a quick buck, often through sophisticated means not readily detectable even by experienced regulators let alone uninformed, non-expert clients, difficult to

152. See, e.g., HAL S. SCOTT, INTERNATIONAL FINANCE: TRANSACTIONS, POLICY AND REGULATION (14th ed. 2007).

153. See Hockett, *Mission-Creep*, *supra* headnote.

resist. And when such things happen, not only can innocent parties' life savings be wiped out with little more than a keystroke, but systemic third party effects can be devastating as well.¹⁵⁴

It is precisely for these reasons—the special vulnerability of inexperienced clients, the systemic effects on the wider economy and thus uninformed third parties, and the high money stakes—that even many traditionally anti-regulatory, politically “conservative” parties recognize the need for at least financial regulation.¹⁵⁵ Such reasons also, together with the need to coordinate regulatory strategies in a world whose financial markets are more and more integrated even while regulation remains national and polycentric, underwrite the role of the IFIs in researching, developing, and facilitating the smooth operation of the global finance-regulatory architecture.

You see where this is going: A global SOPs program would make substantial shareholders of a vastly large number of people worldwide. Firms worldwide will increasingly come to be owned, in varying sized parts, by virtually all of the world's adult inhabitants. Their shares will be held and managed by financial intermediaries, which will accordingly hold power and face temptations of kinds quite familiar but on a scale vastly larger than before.

The final role of the IFIs in connection with any global SOPs program, then, will be a straightforward extension of—or rather, augmentation of—what probably is currently their best known role: In a world that increasingly looks like a global shareholder society—in which national citizens transnationally hold shares in transnational firms in accounts with transnationally operating financial intermediaries—the IFIs will have to assist national regulators in protecting their shareholder citizens, as well as the global financial system qua system. When we get there, of course, things will look much as they do now, “only moreso.”

CONCLUSION

We have covered a good bit of ground here, probably more than enough to warrant leaving off for the present. Perhaps ironically, however, we have only just begun. For as mentioned a number of times over the course of this Essay, the aim has been more exploratory than anything else. The processes of global market integration have been remarkably successful to date, particularly when measured against the backdrop of those world conditions that determined visionary world leaders in the middle 1940s on our present course. Those processes also have brought many benefits to many people, and continue doing so—including many of the world's most disadvantaged people, and its most unjustly disadvantaged people.

154. Witness, by way of particularly recent example, current turmoil across financial markets generally rooted in the particular decisions of a few overeager subprime mortgage lenders several years ago. Such examples can of course be proliferated from decade to decade.

155. Even Ronald Reagan, the fellow who brought you “government is not the solution, government is the problem,” is said to have extolled the virtues of the SEC.

But global market integration is also occasioning losses too, including unjust losses. And unless we find means of addressing these, the world is apt not only to remain less just than it could be but is also vulnerable to backsliding in the unsatisfactory direction from whence we've come. It seems to me that the best means of addressing these losses—best as measured both against our motivating core ideals and against our feasibility-constraining endowment sensibilities—are financial in nature. It also seems to me, just as the project of globalization is a global project, so is the project of rendering globalization more just and sustainable a global project. It is a project in which global institutions must play a critical role; since it is also a financial project, it is a project in which our global financial institutions—our IFIs—will play a critical role.

The precise contours of that role—or those roles—will of course ride in part on the precise contours of the programs we ultimately devise. I hope in the foregoing pages at least to have sketched a plausible direction in which that devising might proceed.