SOLVING THE PARADOX OF WORKERS AS SHAREHOLDERS: A COMMENT ON SANFORD JACOBY

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In 2006, European unions made headlines challenging the social and economic contributions of private equity firms and joined the chorus of critics accusing these firms of creating "headless chickens"[1]—firms that have no purpose, direction, or future. As the world struggles to cope with the bursting of the credit bubble, organized labor in the United States and in Europe are engaged in articulating a sophisticated critique of the new forms of investment vehicles created by the financial industry targeted at their role in creating economic stagnation, conflict of interests, and, in many cases, theft. Organized labor's interest in financial regulation, CEO pay, and the intricacy of monetary policy and securities regulation may seem far afield from sit–down strikes, grape boycotts, and everyday collective bargaining. But Jacoby sets us right by describing the historical framework in which populist movements, aimed to create farmer and worker-friendly financial institutions, went up against financial systems that made a few people very rich.

Jacoby aims to, and succeeds, in advancing the economics literature explaining the signature economic trend since the 1970s—the widening gap between rich and poor. Though the crumbling credit markets and the magnitude of the working population left

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1. The chief complaint is that private equity investors borrow against the resources of the newly acquired company to pay themselves before the company succeeds. "These companies could be left for dead," Jon Moulton, head of Alchemy Partners. Smith, Peter and Gillian Tett. 2006. *Buy-outs create Headless Chickens*, FIN. TIMES, Nov. 15, 2006, *available at* http://www.ft.com/cms/s/8a72cba6-744e-11db-8dd7-0000779e2340,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F8a72cba6-744e-11db-8dd7-0000779e2340.html&_i_referer=http%3A%2F%2Fsearch.ft.com%2Fsearch%3FqueryText%3Dbuy-outs%2Bcreate%2Bheadless%2Bchickens%26aje%3Dtrue%26dse%3D%26dsz%3D. The British trade union movement and the Labour Party have created a list of cases where private equity firms make the companies they buy worse off because the investors extract, rather than add value, from newly acquired companies. Peter Smith, *Permira Chief Brings Private Equity PR Battle to Union*, FIN. TIMES, Feb. 15, 2007.

behind is not exactly the same as the 1920s, Jacoby says, "it rhymes." Jacoby sees the vast changes in the finance markets as the main driver widening wealth and income gaps. Changes in the financial markets are more powerful factors than the usual suspects in the standard explanations for rising inequality: skill-biased technological change and trade-based narratives.

Jacoby argues, pointing back towards Karl Polanyi (1944),[2] that economic growth is often connected to upswings in financial development, development that is constructed by the elite and crucially assisted by government regulators. Moving against those financial interests, Jacoby identifies, are consumers, organized labor, farmers, and small business. When successful, these groups have contracted the political influence of finance, which equalizes the distribution of income and, primarily, wealth. Jacoby writes: "politics drives financial development and mediates the finance-labor relationship."

The bulk of the last half of Jacoby's study describes how the American labor movements' strategies to improve the lives of working people is regulated from a mid-20th century perspective, but has evolved in the early 21st century to create the rich irony explained thusly: labor's institutions are more engaged and implicated in creating the mania, risk, some of the corruption, and a great deal of the inept response to the imploding present financial system than it was in the 1920s.

The legal framework for labor relations and thus, in a large part, that which governs the income distribution, is, by nature, a compromise between the political actors; it aims to protect unions from employers and obligates employers and unions bargain in good faith. To be in good faith employers must discuss, if asked to by the union, all items within the "scope of bargaining," which American labor law, in most jurisdictions, defines as all items determining "wages, hours and working conditions." Unions, for their part, must not bargain in bad faith by pressing for agreements about production decisions, e.g., to build an S.U.V. or a hybrid; their employers' investment plans, in say, Indonesia; or the Chief Executive Officer's pay incentives, to name a few things greatly affecting workers' working lives. Surely these subjects, even though they are outside the scope of bargaining, greatly affect the chances workers' lives will be

2. Jacoby describes Polanyi's recognition that after a period of liberal market "success," losers succeed in achieving social protection. KARL POLANYI, THE GREAT TRANSFORMATION 132 (1944).

improved. Scholars debate how these distinctions affect collective bargaining over time,[3] but addressing that legal debate is not the purpose of Jacoby's paper. Instead, Jacoby lays out the back story for any political coalition or group that attempts to articulate a "people-centered" financial system.

Jacoby reviews U.S. history and asks how, in the future, organized labor can stretch the boundaries of what the law defines as unions' key role—as bargaining agent—in order to protect the workers they represent against short-sighted managers and subprime mortgages. People in market societies have four roles: unions represent workers qua workers—sellers of a particular input to the production process—labor. But unions are also composed of people who are citizens, consumers, and increasingly owners of financial capital. Unions have always exploited the first three of these economic roles—worker, citizen, consumer—through collective bargaining, political action to raise the social wage and security, and through boycotts. More recently, labor unions produce a large portion of the nation's savings and finance capital—worker's retirement savings represent about half of the U.S. GDP and half of those reserves has been accumulated under the direct or indirect influence of unions through the collective bargaining or lobbying for pensions in the public or private sector. Unions may only represent 12% of the American workforce, but they represent over 50% of household savings.[4] No wonder Jacoby concludes that unions are the only social organization that has mounted anything close to a comprehensive response to the problems of the financial hyper-drive. Though the promise exists, Jacoby deems weak the labor movement's response to financial development.

Jacoby's paper is timely. In his 2008 book, the prolific and intrepid Kevin Phillips argues that "financial mercantilism" is the defining political economy of American life.[5] Our 21st century market-based society is threatened by a financial system that produces housing and asset and commodities bubbles and encourages untested and unstable financial instruments (including derivatives, hedge funds, and private equity). Who's to blame for this havoc? Once can partially blame pension funds, yet, behold that pension funds are

3. Donna Sockell & John Thomas Delaney, *The scope of mandatory bargaining: A critique and a proposal*, 40 INDUS. & LAB. REL. REV. 19 (1986).

4. Please see chapter 9 of my new book, WHEN I AM SIXTY-FOUR: THE PLOT AGAINST PENSION SAND THE PLAN TO SAVE THEM (2008).

5. KEVIN PHILLIPS, BAD MONEY: RECKLESS FINANCE, FAILED POLITICS, AND THE GLOBAL CRISIS OF AMERICAN CAPITALISM (2008).

creatures of worker struggles for secure retirement futures. Jacoby's paper is a valuable and long-awaited step in a painstaking examination of the conundrum.

Ever since unions started negotiating pensions and pressed hard for those pensions to be well-funded, unions realized their ironic and paradoxical role as capitalist investor. As unions seek to win the "class war" they keep funding their class enemies. How to respond is not simple or clear, and that is why Jacoby's piece is so valuable.