BEYOND "FINANCIALIZATION": THE ERA AHEAD

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Sanford Jacoby does an outstanding job of describing one of the most important developments of the past quarter century: the growing power of finance over economic activity and employment relations. In doing so he raises financial markets and institutions to the same status as the more familiar labor and product markets and institutions that have been the focus of analysis in our field. This is long overdue. The outcomes generated in today's employment systems cannot be fully understood without a more complete analysis of the impacts of financial markets and institutions. Jacoby's extended essay is a solid foundation in which we can begin building this type of analysis.

Students of employment relations should have been able to see the consequences of failing to recognize and address the growing role and importance of financial markets. Long ago John R. Commons pointed out the consequences for working conditions when markets expand faster than labor market institutions could respond. The results for workers that Commons predicted and that Jacoby once again documents are a degradation of wages and working conditions, increased inequality in incomes, and increased exposure to risk. In the time of Commons it was the expansion of *product* markets from local to regional and then national levels that led to these results. In our time it is the *global mobility of capital* that enables work to be reallocated in ways that once again put wages and working conditions in competition and outside the reach of contemporary labor market institutions.

In this brief note I want to build on the foundation Sandy lays by asking: What tools are available and/or need to be developed by labor market institutions and policymakers to respond to the growth in the power of finance?

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If Polanyi is correct, counteracting the ascendancy of the power of financial markets and institutions in employment relations will require a break from America's long neo-liberal political cycle and innovations in labor market policy and institutions. That is, there is no invisible hand of market forces that will produce a correction to the trends of the last thirty years; politically enabled trends require politically enabled responses. To stay with the historical parallel, it took the labor legislation of the New Deal to set a floor on wages and hours and protect the right of workers to organize and a new approach to organizing (industrial unionism) to build the countervailing power needed to cope with expanding product markets. The New Deal policies and institutions in turn came from prior trial and error experiments at the state level and in selected industries and not incidentally from the ideas and research of Commons, his students, and other Progressives. They broke new ground that challenged prevailing views of property rights and broke with common law traditions that limited workers' rights. The challenge of responding to changing financial markets will require equal shifts in thinking and further trial and error experimentation that has only recently begun. This time, however, the challenge will require breaking out of some of the very concepts that were embedded in the New Deal, that got narrowed and circumscribed by both the Taft-Hartley amendments to the original Wagner Act, and that have gradually entrapped workers and their representatives.

The trap is best reflected in the doctrine that sees financial, entrepreneurial, and managerial decisions as off limits to the influence or bargaining rights of workers and their agents. The Wagner Act, reinforced by Taft-Hartley and subsequent interpretations of labor law by the National Labor Relations Board and the courts, has embedded the doctrine that managers, as agents of owners, should be free to decide how to use capital without restraints or interference from labor or its agents. Capital, after all, is property and should be subject to doctrines guarding property rights. That principle has kept labor's influence in a narrow and ever shrinking space. Workers and their representatives are only able to respond to the effects of capital strategies and decisions they after they are made as these decisions affect wages, hours, and working conditions. Collective bargaining as traditionally structured, therefore, is inadequate for dealing with these issues.

Despite the effects of this limitation, there is little to no serious challenge to this principle raised by labor advocates in current debates over how to reform labor law. Thus we are unlikely to see collective

bargaining, at least in settings where it follows the strictures of labor law, expand in scope to address these strategic-level decisions. Only in the rare settings where the parties chose voluntarily (or in response to severe financial duress) to open the books and share information on financial matters does bargaining expand to engage capital investment decisions. The 2007 round of auto negotiations is a recent example. The major auto companies had to grant unparalleled access to their finances in order to negotiate a transfer of future health care liabilities from the company to new union managed funds. In return, commitments for capital investments were made. In crises like this, and when it serves the interests of firms to share data and negotiate over capital investment strategies, managers will do so. But labor law should not be a crutch on which firms can lean to resist such discussions outside of crisis situations. Whether debates over the future of labor law can be expanded to eliminate the distinctions that keep these issues out of reach except in the cases of extreme financial duress or partnerships that ignore the rules remains to be seen. It is a debate worth having and perhaps necessary if collective bargaining is to be anything close to as significant an institution for advancing employee interests in the future as it was in the past.

While overcoming the limitations of contemporary labor law would be helpful, it is not the only strategy available for addressing the increased importance and power of financial markets and decisions. Indeed, I would argue, labor needs to go a step further and help *invent and support* use of new capital instruments that are capable of creating and sustaining good jobs with good wages and working conditions.

Jacoby describes several other early stage attempts of unions to influence the supply of capital through union pension funds or support for social responsibility funds that pay attention to worker rights and employment conditions. To date, union pension funds in particular have suffered from a split loyalty—to workers as investors seeking maximum returns and to workers as workers with a collective interest in responsible employer behavior. In a sense there is a market failure at work here—no individual fund or fund manager has an incentive to evaluate investment options against socially responsible behavior or compliance with labor and employment laws and respect for worker rights unless others do so as well. Overcoming this market failure will require collective action by unions and/or by government to raise the costs of investing to irresponsible firms. One thing government, i.e., the Department of Labor, could do, for example, would be to integrate its data systems across all employment regulations and make

these data easily available to the public. There is good reason to believe that labor and employment law violations are correlated—those firms more prone to violate wage and hour laws also are likely to violate safety and health standards, labor relations laws, equal employment laws, etc. Publicizing employer violations of labor and employment standards in this way would take a lesson from recent efforts by NGOs to publicize violations of labor standards across global supply chains of major multinational firms. It was this publicity and pressure that has led significant numbers of large firms to at least claim to have put a "code of conduct" in place and a smaller subset of these firms to work with NGOs and labor groups to monitor and enforce their codes.

Government could go a step further and build these data into its enforcement strategies by targeting its conventional enforcement efforts on the most egregious violators while working in more flexible ways to further upgrade standards in ways that enhance performance with those firms that have demonstrated compliance records. This type of "dual" or "two track" regulatory strategy would create further incentives for firms to learn how to integrate their business and employment strategies to serve both shareholders and workers.

Aside from their potential to influence union pension funds and socially responsible investing, unions have a number of other tools for expanding the supply of worker-friendly capital. A small but perhaps growing number of private equity firms are looking for opportunities to restructure unionized firms in ways that attend to workers' interests in preserving jobs, wages, and union representation. Lessons learned from experiences with firms like this should be made available. Many unions in distressed industries such as steel and airlines have considerable experience with this and have built relationships with investment advisors they trust. Other unions have been even more proactive in developing capital strategies to support their bargaining and organizing objectives. This has worked best in the hospitality and building service industries where ownership is concentrated in a small number of national and international firms. Building capacity to negotiate with alternative owners or sources of capital will be an important part of the toolkit of the next generation labor leader.

Since capital is global, union networks, alliances, and organizational boundaries will also need to be expanded. Pilots are perhaps the group farthest along in this regard. The recently announced merger of the United Steelworkers of America with the United Kingdom's UNITE is a bold example of such an initiative. These alliances and international networks will be hard to build, and

even harder to sustain, and yet offer uncharted possibilities of engaging transnational firms at the level capital allocations and acquisitions/divestiture decisions are made.

Finally, I believe we are on the cusp of a major debate over how to allocate public investment resources in ways that address a series of identified national needs. There is now, for example, considerable debate among U.S. state and national politicians over how to reform health care to cover the uninsured, improve quality, and control costs, how to rebuild the nation's aging and deteriorating infrastructure, and how to promote green technologies and sustainable industries. A fundamental principle should be advanced for guiding these public investments: All parties (businesses and labor organizations) that benefit from public investment dollars should be held accountable for using them efficiently and, not just complying with labor and employment regulations, and standards but also for using state-of-the-art labor management and employment practices needed to achieve the high levels of productivity and quality performance needed to promote wage-high growth economy.

These are just some underdeveloped thoughts and ideas and some emerging institutional innovations that need to be more fully debated, developed, and brought to scale if our field of study, practice and policy is to catch up to and find ways of engaging the changes in financial markets and institutions that Sandy Jacoby has documented. This may be the key to jump-starting our generation's version of Polanyi's "double movement."