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# Community syndicalism for the United States: preliminary observations on law and globalization in democratic production

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## Abstract

The Great Recession resulting from the globalization of Finance Capitalism created two structural labor crises for developed economies: 1) The channeling of substantial investment into non-productive, paper commodities, reducing growth of production for use and therefore reducing available aggregate job creation; and 2) The continued exportation of industrial jobs to other lower cost jurisdictions, and outsourcing, automation, just-in-time production, and speed-ups associated with global supply chains. As a result, local communities and regional populations have destabilized and even collapsed with attendant social problems. One possible response is Community Syndicalism – local community finance and operating credit for industrial production combined with democratic worker ownership and control of production. The result would increase investment directly for production, retain jobs in existing population centers, promote job skilling, and retain tax bases for local services and income supporting local businesses, at the same time increasing support for authentic political democracy by rendering the exploitive ideology of the Public/Private distinction superfluous. Slowing job exportation may reduce the global race to the bottom of labor standards and differential wage rates reducing the return to producers of value and increasing the skew of income distribution undermining social wages and welfare worldwide. Community Syndicalism can serve as moral goal in an alternative production model focusing incentives on long term stability of jobs and community economic base.

## Key words

Law; economics; sociology ethics; politics; cooperatives; democratic control; syndicalism; United States.

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**Resumen**

La Gran Recesión que ha traído la globalización del capitalismo financiero ha dado lugar a dos crisis laborales estructurales en las economías desarrolladas: 1) El destino principal de la inversión hacia bienes no productivos, reduciendo la producción de bienes de consumo, y reduciendo también las posibilidades de creación de puestos de trabajo, y 2) el traslado de puestos de trabajo industriales a otras jurisdicciones para reducir costes, y la externalización, la automatización, la producción "justo a tiempo", y las prisas relacionadas con las cadenas de suministro globales. Como resultado, las comunidades locales y poblaciones regionales se han desestabilizado e incluso colapsado, con los consiguientes problemas sociales. Una posible respuesta es el sindicalismo comunitario –la comunidad local financia y concede crédito para la producción industrial, combinándolo con medidas democráticas de propiedad de los trabajadores y de control de la producción–. Así, se lograría aumentar la inversión directa en producción, mantener puestos de trabajo en los centros de población existentes, promover la mejora de las competencias de empleo, y aumentar los impuestos destinados a servicios locales y a apoyar a empresas locales. Al mismo tiempo, se aumenta el apoyo a una democracia política real, haciendo que resulte superflua la ideología explotadora de la distinción entre público/privado. El freno de la deslocalización del trabajo puede reducir la tendencia global de pérdida de la calidad del empleo y las diferencias salariales. Ambos problemas dificultan la vuelta a la producción de valor, y aumentan la diferencia salarial, deteriorando los sueldos sociales y el bienestar en todo el mundo. El sindicalismo comunitario puede servir como objetivo moral de un modelo alternativo de producción, centrado en los incentivos para lograr a largo plazo estabilidad laboral y base económica para la comunidad.

**Palabras clave**

Derecho; economía; sociología; ética; política; cooperativas; control democrático; sindicalismo; Estados Unidos.

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*The economic renewal will be moral or it will not exist. The moral revolution will be economic or it will not take place.*
Don Jose Maria Arizmendiarrieta

Economic globalization is a fact and material condition of modern society. There will be no going back to purely local economies. At the same time, the future of participatory democracy depends upon "localizing" leverage within this global market. Otherwise autonomy will be ephemeral. Such leverage will depend upon new economic and moral changes embodied in new economic and legal institutions. One possible response is Community Syndicalism – local community finance and operating credit for industrial production combined with, but separate from, linked democratic worker ownership and control of production -- investment capital assets held separately from enterprise ownership and control. The result would increase investment directly for production, retain jobs in existing population centers, promote job skilling, and retain tax bases for local services and income supporting local businesses, at the same time increasing support for authentic political democracy by rendering the exploitive ideology of the Public/Private distinction superfluous. After analyzing Community Syndicalism as a moral/economic model, this paper will explore the future viability of worker ownership or cooperatives in the United States including the law affecting their viability, identify necessary legal changes in U.S. law, and outline global legal/political impacts of Community Syndicalism. It should be noted at the beginning that the ascendency of the political Right under the banner of the "Tea-Party" in local and state government currently in the United States probably makes Community Syndicalism a political impossibility now. Yet, current conditions underlying the need for "third-way" solutions (Ellerman 1982) will only deteriorate in the mid-term future, and there is no reason to avoid planning for inevitable change.

## 1. Structural challenges to developed economies embedded in financial globalization

Threatening developed economies, the Great Recession resulting from the globalization of Finance Capitalism created two structural labor crises for developed economies: 1) The channeling of substantial investment into non-productive, speculative, paper commodities, due in large part to hyper-inequalities in wealth, and entailing reduced growth of production for use and therefore reduced available aggregate job creation in the developed economies (Foster 2010). This impact was noted as early as 1986 (Swinney and Metzgar 1986). When the finance bubbles burst, more than 11,800,000 jobs were lost in the United States alone, and this jobs gap is not closing with finance sector bail out and recovery. At present optimistic job creation rates (which are about double current job creation) it will take over 12 years to return to pre-recession employment levels (Greenstone and Looney 2010b). 2) The continued exportation of industrial jobs from the United States to other lower cost of production nations, and the outsourcing, automation, just-in-time production, and speed-ups associated with investments spurring dispersion of global supply chains create excess global productive capacity (Foster 2010). Beyond short term corporate incentives (greed) to exploit low wage, underdeveloped regions, excess capacity will reinforce lower standardized wages worldwide. In turn, this will make new investment in production and therefore jobs in developed countries more unlikely in the future.

As a result, local communities and regional populations in the United States have destabilized, and even collapsed, with many attendant social problems (Greenstone and Looney 2010a; Wilson 1996). Of course all structural economic change will be accompanied by dislocations associated with local economies, however, recent dislocations have not proven to be subject to temporary readjustments. Twenty years after the 1980's recession,

> [t]he net loss to a displaced worker with six years of job tenure is approximately $164,000, which exceeds 20 percent of the average lifetime earnings of these workers. These future earnings losses dwarf the losses associated from the period of unemployment itself. … [J]ob loss also has negative economic and noneconomic effects on workers health, their families and their communities. Men with high levels of seniority when they are displaced from their jobs experience mortality rates in the year after unemployment 50 to 100 percent higher than otherwise would be expected. … These elevated rates of mortality are still evident even twenty years after the job loss and may reduce these workers' life expectancies by twelve to eighteen months for a worker who loses his job at age forty.
>
> The children of these workers also appear to suffer. Children whose fathers were displaced have annual earnings about 9 percent lower than similar children whose fathers did not experience an employment shock. (Greenstone and Looney 2010a).

Ironically, the collapse of the mortgage market as a result of the bursting of the securitized mortgage bubble has worsened the personal welfare of workers in declining communities by making their houses unsellable, making re-location to communities with available jobs of any kind infeasible (Greenstone and Looney 2010a).

Some may wonder why a neutral observer should care about welfare declines and local destabilization in developed countries and certainly the United States? If not just desserts, then at least for developing countries as recipients of new capital flows creating jobs formerly located in developed economies, their citizens' welfare is increased even as the new job holders are exploited by payment of substandard wages under substandard conditions of production. Something is better than nothing, which is of course what capital managers are counting on. There are two reasons to care. 1). Stabilizing production to some extent in developed economies slows the now frenetic race to the bottom of labor standards promoted by capital managers playing developing countries against each other. 2). An economic enterprise model needs to be established and proven that changes the priority of incentives based on production for use. The goal is not profit maximization but economic stabilization (Hanratty 1986-87). The first reason is both macro-economic and morally distributive in the long run. The second reason is micro-economic in incentives and rationality but moral as well in redefining rights to work, and mutuality of relations, equality and democratic participation. Both aims suggest middle-range responses to the crises in developed countries. This requires a change in economic agency not the abandonment of markets.

## 2. Community syndicalism as a moral/economic response to structural dislocation

Community Syndicalism will not be a quick fix. The key to breaking the conceptual roadblock to reversing local economic decline is to institutionalize the incentive to invest in job maximizing production that maximizes long-term stability and continuity of those jobs, and minimizes short-term profit seeking at the expense of long-term stability. Investment incentives must be turned upside down. Furthermore, these new investments largely will have to be from the distressed locality to that same locality. Outsiders won't be interested. (This may seem like squeezing blood from a stone). Furthermore, regarding hoped for economic spinoff of new local production, known as the local strategy of import substitution, "the base for the healthiest and most sustainable growth is the development of increasing numbers of firms that buy from and sell to one another as they create a labor market with increasingly skilled workers and technical and professional people." (Jacobs 1984). Thus, first, the incentive to invest needs to be collectivized locally so that investment flows are not solely directed by short-term return to individualized investors. "[S]o long as we treat the public good of investment as a private for-profit activity coordinated by individual banks and investment companies[,] 'Speculative finance' [Hyman] Minsky argues, is the problem; reliance on financial markets creates economic instability and discourages real innovation and investment." (Friedman 2010).

In Community Syndicalism – local community start-up finance and operating credit for industrial production combines with, but is separate from, linked democratic worker ownership and control of production. Community funding and ownership, coupled with worker control was the intent behind the closest attempt proposed in the U.S. thus far -- the Steel Valley Authority attempt to use the public power of eminent domain in the Pittsburgh region during the 1980s (Hornack and Lynd 1986-87). Community Syndicalism differs in two important aspects: First, the aim is not takeover of failing or closing plants as with S.V.A.; Second, splitting community investment in and ownership of capital assets, from worker ownership and democratic control of the enterprise, contribute synergistically to long term viability. Both the community (economic base) and the workers (sustainable jobs) desire stabilization in the labor market. (Simon 1991). The "Private" capitalist economy may be driven by short-term maximization of return, but Community Syndicates assume long-term viability.

How can this new model be generated? Start with the economic problem. Local communities or regional populations have been devastated by the decline of industrial production, whether the disappearance of enterprise that formed the economic base of those communities resulted from competitive failure or by outsourcing of some or all of the production from the affected area. Community economics of course are not limited to the base firm. Hundreds of small businesses, community non-profits, local taxes for services, even big-box retailers, and supply chain production, depend upon resident incomes. "A dearth of good jobs in distressed communities leads to high unemployment and stagnant wages. Evidence shows that certain place-based policies can help attract business investment to targeted areas and can boost the productivity and wages of workers in those areas." (Looney and Greenstone 2010). The key is jobs, and not just minimum wage jobs, but jobs that approximate the number and wage level of the production drain. Moreover, to rekindle the local economy, new jobs need to be anchored to the community. "Employee ownership helps anchor capital in local communities because employee-owners usually reside in the community in which they work and their interests, as residents and employee-owners, coincide with those of the community. Employee ownership is therefore a valuable tool for aiding economic development strategies which value both the geographic stability and the quality of employment opportunities created." (Olson 1986-87). For counter example, computerized service jobs can always be easily relocated to another community. What is needed is the formation of new production creating large numbers of jobs within modern, flexible production modalities. Existing capital formations are unlikely candidates as the source of the necessary new investment.

Will it work? There is reason to believe that much deindustrialization and job exportation is driven by short-term profit and inability to compete in world financial markets. "Many plants are closed not because they fail to make a profit, but because they fail to make *enough* profit to hold the decision-maker's interest when compared to some other marginally more profitable opportunity. When management fails to reinvest and modernize, productivity and profit margins most often *do* decline, thereby reinforcing the initial, casual decisions whose rhetoric often either places blame at the feet of labor, or speaks of these developments as if they constituted some natural and inevitable evolutionary path beyond anyone's control." (Ansley 1993). High wage, retained earnings, but no profit requirement, coupled with high productivity, could allow such syndicates to be market competitive and achieve long-term supply chain relations, especially within non-profit global production networks (Lindenfeld 1982; Swinney 1985).

Those left behind thus have strong economic incentive to act but no clear agency. For example, the economic spillover effects on community economies are not captured by the private investor market (Greenstone and Looney 2010a). The community or region needs capital pooling. Traditional sources include local industrial revenue bonds, state abatements or investment funds, and grants from non-profits. The Naugatuck Valley Project in Connecticut created a revolving fund to support worker buyouts from credit unions, churches, unions, and other institutions (Brecher 1986). These sources, however, have been substantially diminished since the initial enthusiasm for financing worker buyouts of failing industries in the early 1980's waned. State and local tax incentives to private enterprise may result in initial private enterprise investment but have not captured those enterprises long-term because such incentives do not change community against community races to the bottom dynamics (Greenstone and Looney 2010a; Crouch 1986). Yet, there may still be unused land or buildings available in unfinished local industrial parks. The Tri-State Conference on Steel in Pittsburgh has proposed land trusts owning land and buildings, leasing to private enterprises (Lynd 1990).

### 3. The community in community syndicalism

More likely, capital contributions would have to be raised by rolling but not permanent taxes on business franchises in the area. Local private banks may be induced to provide long-term, low interest loans if local residents are willing to withdraw personal and business accounts from banks declining to participate (Brecher 1986). Businesses paying franchise taxes might not object to participating in pooled leverage because they are already "paying" in another way. [1] "When you lose 1,000 manufacturing jobs, you lose an additional 1,000 jobs in the service economy. You put the following service companies out of business: 17 eating places, 13 food stores, 11 gas stations, 6 apparel shops, 3 automobile dealerships, 2 hardware stores, 2 drug stores, 1 sports store, 1 jewelry store, 17 doctors and 5 dentists, and an unknown number of teachers, government employees, etc." (Stout 1986).

A local community investment fund under democratic elected management, legally limited to investing in local syndicates would control pooled resources. Initial capital needs would likely be great because the purchase of production technology would be necessary to generate numbers of jobs. It is key to make the investment fund debt obligations minimal. Furthermore, after start-up, additional capital must be raised to provide operating credit.

Why would communities want to generate substantial capital pooling? Most directly, for survival: to recreate a tax base, to save small businesses and community organizations such as churches, to reduce the servicing costs of social morbidity. While lacking economic agency to support worker ownership, political agency is longstanding: "This movement includes community organizations, urban political organizations, religious organizations, unemployed organizations, and others who are responding to the reality of very high levels of unemployment." (Swinney 1985). Secondarily, the community would acquire new assets in the form of land, buildings, and machinery. The investment fund would have title to these capital assets unless bought from it later by the worker enterprises themselves. In the case of enterprise failure, the fund would have these basic assets to begin anew. Eventually, it might be hoped that worker and enterprise deposits would grow to support a subsidiary mutual bank that might be the source of future investments without taxing the community. In 1959, four years after the first cooperative was established in Mondragon, Spain, the corporation created the Caja Laboral Popular, which has grown to become the fourth largest bank by assets in Spain. (Azevedo and Gitahy 2010).

### 4. The syndical in community syndicalism

Splitting asset ownership from enterprise ownership is the conceptual advance of community syndicalism. Once planning by political communities and potential worker groups have identified a viable long-term market niche, an investment pool can be initiated. At this point or shortly thereafter worker organizations may form coalitions to "bid" (by virtue of viability of proposed business plans) on the enterprise value of the enterprise. The capital assets of the fund would be "leased" at nominal value for the period of the enterprise existence. The workers initially or subsequently employed would own the enterprise on a one share, one vote basis and generate any necessary management committee by democratic choice. Worker ownership and control not only permits but is crucial to stability. "If employees own the firm, they will not shut it, or move it to Mexico, after a disappointing quarter, or a failure to meet a growth target, or simply because they have failed to attain a 30 per cent market share." (Hyde 1993). There should be no incentives created to allow the local community to pull out capital assets or for workers to view participation as a transitory job rather than continuing ownership of the enterprise. Thus day to day management could be delegated under periodic democratic oversight meetings. This organizational model worked reasonably well in the Northwest plywood cooperatives. (Berman 1982).

Following the Mondragon experience, a parallel "social council" structure (or union) would mediate any differences arising between workers as owners and workers as workers. However, such differences, while perhaps inevitable about short-term value distributions as opposed to long-term retained earning reinvestment, are likely also to be reduced by eliminating the ownership/employee legal separation (Whyte and Whyte 1988).

By eliminating the need of the enterprise for more than variable cost coverage including relatively high monthly distributions to workers (replacing wages), plus some retained earnings for production improvement and flexibility, the enterprise should gain cost competitiveness against private enterprises forced to produce world competitive (not minimum) short-term profits for investors (Lindenfeld 1982), and the coverage of initial asset investments for start-ups, even where competitors gain their advantage from low wage labor exploitation.

## 5. The past failures of worker cooperatives in the United States is largely a problem of access to capital

Worker cooperatives have historically only been able to succeed in the United States in limited sectors for limited periods. The longest surviving cooperatives have clustered in small, service delivery, or small-scale consumer production firms (Curl 2009; Shirom 2001). Curl estimates that there are roughly 300 worker cooperatives currently operating in the United States. In such firms initial capitalization may be low, and coordination of management costs among a small number of workers also low, with little hierarchy associated with specialization.

Attempts to sustain large industrial cooperatives have failed most directly for three reasons: 1) Economics of start-up: In the 1970's, worker ownership, sometimes as cooperatives, were pushed as a way of buying out failing industries where no other buyer emerged to continue the enterprise, and thus the workers' jobs. This was cooperative by desperation. Predictably, failing industries usually failed, sometimes because of former ownership stripping of assets or neglect of re-investment or paying of investor dividends instead of retained earnings (Hyde 1992). 2) Access to operating capital: Early cooperatives in the Nineteenth century, and more recent industrial attempts, have failed not because initial capital could not be found, but because additional, conventional credit lines could not be secured for short-term production costs or modernization (Curl 2009). Private banks by and large have more profitable short-term loans available, or at least perceive loan options as less risky. "One of the major difficulties faced by worker cooperatives and worker owned firms has been access to financial capital. Without the ability to borrow for purposes of meeting short term cash flow needs or long-term expansion, these firms have faced substantial difficulties in surviving and competing in the marketplace." (Levin

1984). Both some truth and some self-fulfilling prophecy lead to bank choices. 3) Legal inflexibility in transition: Especially large cooperatives face difficult issues with labor attrition or turnover. Existing laws and the accompanying economic incentives often force marketable worker ownership shares to revert to non-participant shareholders. Over time the cooperative reverts to a public stock corporation. This has been the fate for many of the plywood cooperatives in the Northwest United States (Greenberg 1984; Berman 1982). It should be clear that these are barriers to success of any large worker owned and democratically managed enterprises.

Note this article does not consider individual worker stock purchases, or the sham ownership involved in the increasing number of Employee Stock Ownership Plans (ESOPs) even those owning (but not controlling) a majority share of stock shares. By splitting ownership (workers) from control (remains with management) ESOPS have been primarily used as anti-takeover or last-ditch capital raising devices, often in failing enterprises (Bagchi 2008).

Nevertheless, the political structure of federalism in the United States makes past successful organizational examples of worker ownership elsewhere more or less inapplicable to what would be needed in the United States, as well. The paper thus casts some doubt on the universalization of the Mondragon experience in developed country contexts, while applauding the Mondragon example, sharing its aims, and adapting its practices where context is favorable. In contrast, Community Syndicalism: 1. Would be located in locally distressed and deindustrialized communities; 2. Would not be subsidized from the regular State budget; 3. Would most likely be aimed initially at creating single enterprises aside from cooperative networks; 4. Would not raise capital from workers, who after all are unemployed in distressed communities; 5. Would still depend on the State budget for pensions and social insurance for workers; 6. Would require all employees to be or to become owners; 7. Would be established with no connection to the educational system, and aside from being in distressed communities, face hostility from the larger society. 8. Would have to learn different relations contrasted to the adversary nature of the larger culture’s normal management/worker hostility.

But if this model catches on, won’t communities not in decline turn to Community Syndicalism and by competition reduce the value of the new model. First, such a defeat is devoutly to be wished for (Despite the great success of the Mondragon system, cooperatives still comprise less than 1 percent of the Spanish economy) (Moye 1993). Three results would follow. One, economic incentives would switch to maximize long-term stability (better for the world and earth) (Lynd 1990). Second, the public versus private realm distinction underwriting massive worldwide wealth concentration and inequality would be undermined (as if public resources were not used to underwrite private wealth accumulation already by differential taxing and subsidy) (Klare 1988; Reich 2010). Such public subsidy in “profitable” communities would then be in direct political tradeoff with job creation and community stability. Third, the experience of something approaching full democratic participation at work is likely to be a spreading malady leading to greater democratizing of political participation in non-market arenas. “Clearly, a strong case can be made for bringing greater democracy into the workplace in order to create a citizenry that participates in all of the major areas affecting its daily circumstances and its future.” (Gamson and Levin 1984; Whyte and Whyte 1988). Too many tears would not be shed for private capital. Furthermore, traditional short-term competitive return may well be appropriate for high-risk production, research and development, organizational or product innovation, and other economic sectors, and thus likely to continue.

Some leaders in the labor movement decry worker ownership because worker owned firms are claimed to pacify workers as owners and undercut union wages (Slott 1985). However, this outcome is unlikely to follow where worker managed enterprises are a) created to inhabit long term market niches generating relatively high wage jobs and b) generated in failing communities particularly where unionized employment has previously fled. Ownership of enterprise democratically managed in fact may well increase *social* militancy.

Such a development becomes more practicable, of course, with the expansion of networks of such firms, for example in Basque Spain (Whyte and Whyte 1988). As of 2008, the network of cooperatives centered in Mondragon, Spain contained "106 cooperatives, with 97, 773 workers, and a total invoice of 15.6 billion euros." (Azevedo and Gitahy 2010). However, even with single enterprises in a local community, extensive planning and market analysis by independent intellectual cadres would be necessary to support workable community syndicates given the costs of potential failure of such enterprises, the inability to easily diversify, and the need to build-in production flexibility and adaptation for long-term job preservation. The major difficulties in reaching systemic networked outcomes are mainly political – coordination costs of multi-location divisions of enterprise labor within global supply chains. These coordination issues have certainly been of great recent concern to the Mondragon cooperative network (Azevedo and Gitahy 2010).

## 6. Legal changes in the United States

A) To structure the legality of worker enterprise ownership, little needs to be done. Virtually all states have already modified their incorporation statutes to allow licensing of cooperative ownership (Ellerman and Pitegoff 1982-83). Modifications of organizational management subject to owner control useful to the specific enterprise can be established voluntarily in corporate bylaws (Cummings 1999). Long-term nominal leases of assets and provision of financing in subsidy of local production is also standard practice. There is no policy reason except resistance by private enterprises to new competition to prevent extension of favorable national and local tax treatment given to other employee ownership forms such as ESOPs (Cummings 1999).

B) More legal changes would be needed to preserve community syndicates, particularly to recognize the asset ownership – enterprise ownership separation. First, a local mechanism is needed for taxing those enterprises expected to benefit from new production and jobs in advance of those benefits to provide for initial investment. This is difficult where the workforce is divided into local municipalities, sometimes crossing state borders. After long negotiations this obstacle was overcome via a unique provision of state law under the Tri-State Steel Valley Authority in the 1980's. The authority was empowered to acquire failing steel plants through eminent domain, and continue production through an agreement to fund acquisitions agreed to by nine supporting communities. Some plants were targeted, but none were ultimately operated by the Authority. Initial Steel plants targeted for eminent domain takeovers by the Authority ultimately were not purchased because of a failure of funding, particularly for investing in new plant equipment to make the plants competitive, reinvestment ignored by prior private ownership bent on milking the plants until the inevitable end (Stout 1986). Building up an ongoing tax value capture structure admittedly will be difficult politically given the collective need to bet on the future, but in an economically declining community what real choice is there other than abandonment.

Second, a special tax and borrowing jurisdiction would be needed. Such specialized political institutions have frequently been established to govern water distribution in the Western United States. (Lee 1983). Raising the capital pool and creating the community district to hold the capital assets would solve the main barriers to entry for successful industrial worker ownership cooperatives by separating investment capital needs from enterprise returns, and providing a reliable source for ongoing credit draws. These twin barriers have led to most worker ownership and control market failures in the United States.


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The politics of governing the investment pool funds should be institutionally separated from short-term changes in political party leadership of the community in general. Many Community Development Agencies have foundered by succumbing to short-term political forces structured into the enterprises that were developed by the CDAs (Kreiner 1986-87). Short-term demands and political log rolling involved in general policymaking should not intrude on the single minded long term resolve of enterprise stability. In instances where local entities have sat on the boards of cooperatives in return for funding support, the results for the cooperatives have not been positive except perhaps in the housing area. The special district should be restricted to using its funds in support of local, cooperative enterprises. Funds must be available for both asset investment and operating capital lines of credit. Perhaps a minimal amount of funds could be authorized for other investments in order to assure funds for the District's own operational needs. Leasing of the district's assets must be guaranteed for the duration of the enterprise in order to prevent the district from withdrawing capital assets earlier on purely political grounds. Determination of the point of enterprise failure triggering district asset recapture would either have to be specified in creating the district or in the terms of the lease requirements.

C). Another problem to be addressed legally involves maintaining worker management which has proven problematic in production cooperatives in the United States. Professor Henry Hansmann has predicted the failure of industrial production enterprises managed democratically based on substantial coordination costs of large corporation management (Hansmann 1990). The more specialized and hierarchical the internal division of labor, and the greater number of workers involved in industrial production, the greater the coordination costs (informational and divisional) occasioned by democratic forms. He is willing to concede consumer service delivery and shop based small scale firms can more easily overcome these transaction costs and survive if their capitalization costs are also relatively low – everyone tends to do the same thing and debt can be retired more quickly easing turnover problems (Hyde 1992). Undoubtedly, there is some truth to the transaction costs of democratic decisions, and that is why direct democratic micro-management of day to day production decisions is impossible. However, Hansmann discounts offsetting productivity gains due to worker input and productivity gains due to ownership and loyalty stakes in the enterprise. Historically, "For the same level of capital investment, the cooperatives had far higher labor productivity than comparable capitalist firms. (Jackall and Levin 1984). In the plywood cooperatives, worker owners often were rotated through different stages of production in order to educate each owner about the enterprise as a whole. "[B]roadly speaking, it is those clusters of [Producer Cooperatives] with the *most cooperative* features – particularly the plywood and cooperage PCs – that have the longest life, the best economic performance, and the best record of maintaining a cooperative structure over time." (Jones 1984). As is well known, the Mondragon cooperatives engage in extensive worker education, and also utilize interacting and overlapping hierarchies of democratic decision-making (Whyte and Whyte 1988). Of course this is costly particularly in terms of time, and generally goes without full compensation of management decisions. Just as maximizing short-term profit is not necessarily the most important goal of economic life unless we choose to embed it in law, so is absolute minimization of transaction costs not inscribed naturally. Nothing more has been established but that democracy and equality have some allocation costs.

Related to firm management, a more technical legal problem is workforce transitions or enterprise labor turnover. The main benefit of enterprise ownership is job stability, and perhaps an increase in the number of stable jobs. Indeed one of the aims of separation of asset ownership and enterprise ownership is to remove the incentive of any cohort of worker owners to liquidate the capital assets of the enterprise and cash out the enterprise (Bagchi 2008). Alternatively, enterprise value is mostly found in the income stream. This in turn reduces the magnitude, but doesn't eliminate the problem of share transfer. In the past, cooperatives have sometimes repurchased owner shares at current market value for owners who were leaving or retiring or deceased. The purchased shares are then sold to new workers or retained by the enterprise with returns apportioned to remaining owners pro rata. However market repurchase can escalate to prohibitive prices, particularly related to capital asset appreciation. Escalating market value of shares often forced sale to non-worker shareholders, and over time the enterprise returned to ordinary stock corporations. Given split ownership, that is not a cognizable option for community syndicates. Other cooperatives such as Mondragon have stabilized the share price for longstanding and new jobholders, but created undistributed share accounts for each owner that increase with longevity or value contribution. When a shareholder eventually severs their connection to the cooperative, the accumulated individual fund is paid out. In some sense the worker's accumulation operates similarly to a defined contribution pension fund in the United States (although Mondragon workers have an additional pension fund). This plan allows movement in and out of the cooperative but also has drawbacks. This approach does not consider risks undertaken by early worker-owners and fails to compensate owners for the appreciation in the value of the enterprise over time except as accumulation based on labor time. It thus depends on a strong culture of commitment to cooperation that may be diminishing among younger entrants.

The project of job stability based on enterprise stability should not incentivize easy exit. That is part of the tradeoff justifying replacing lost local jobs, an assumption of lessened mobility. If the community has bought in, the worker-owner can be expected to make a similar commitment foregoing some degree of mobility. "Legal and economic arrangements that make it more difficult or costly for parties to withdraw from the relationship may serve as safeguards that induce firm-specific human capital investments by reducing the risk of subsequent opportunistic withdrawal." (Simon 1991). Of course, this idea cannot justify involuntary servitude. But perhaps a sliding scale exit penalty reducing market value repurchase payout could be justified based on length of service to the firm, at least if exit is not due to retirement or incapacity. Of course, nothing prevents an enterprise generating surplus revenues successfully earned above costs and/or periodic and generous distributions, from also funding defined payment accumulation accounts as well. Also, there is justification for some share appreciation for well-established enterprises, because new entrant worker-owners are taking less risk, and early workers are more likely to have made sacrifices in distributions stemming from early debts incurred in establishing supply chain connections and reputation. Furthermore, the lack of appreciation of share value equity may be less disruptive within the Mondragon core area because of the extensive acculturation of workers before they join a cooperative enterprise. Share control and turnover can be part of the enterprise bylaws, but some limitation on transferability may need to be legislated to respect community capitalization and aggregate job stabilization.

The new enterprises should not be thought to be static. In fact production flexibility should be planned into the enterprise from the beginning to adapt production inputs, process, and products to changing markets. Worker-owners whose jobs are eliminated or technologically changed should be retrained and assigned within the enterprise with costs covered by normal attrition. That too will enhance labor force stability.

## 7. Conclusion

Community Syndicalism is not a panacea for local communities destabilized by job loss. It is not state socialism, public ownership and direction of all the means of production; certainly not bureaucratic socialism; if anything, it could be described as market socialism, but this is not really accurate. It is simply an alternative model of economic enterprise organization as yet untried. The United States cannot simply replicate Mondragon given the lack of an established internal bank or financing mechanism from within a larger cooperative structure, outside any existing cooperative network or cultural experience, and facing hostility from the educational system under separate federal jurisdictions, and within an adversarial society committed to individualistic capitalism. But within the margins of desperate distressed communities, under mostly available local legal mechanisms, it may be possible to demonstrate a different moral-economic alternative paralleling the Mondragon strategy. By splitting asset ownership from enterprise ownership it is possible to re-incentivize production for long-term stability of aggregate jobs; refocus on production for use; provide the tax and economic base for local institutions; localize participation in globalization of product markets and reduce the race to the bottom of labor standards; increase the experience of democratic participation affecting other areas of social life; and put the lie to the fictional public/private distinction underwriting inequality. Even under Tea-Party control of current politics, it is not a utopian project to begin what will follow. We need to make persuasive and feasible what is to be done.

### Bibliography


Ansley, F., 1993. Standing Rusty and Rolling Empty: Law, Poverty, and America's Eroding Industrial Base. *Georgetown law journal,* 81 (5), 1757-1896.

Azevedo, A. and Gitahy, L., 2010. The Cooperative Movement, Self-Management, and Competitiveness: The Case of Mondragon Corporacion Cooperativa. *Working USA,* 13 (1), 5-29.

Bagchi, A., 2008. Varieties of Employee Ownership: Some Unintended Consequences of Corporate Law and Labor Law. *University of Pennsylvania journal of business and employment law,* 10 (2), 305-331. Available from: http://www.law.upenn.edu/journals/jbl/articles/volume10/issue2/Bagchi10U.Pa.J.Bus.&Emp.L.305%282008%29.pdf [Accessed 22 Mar 2012].

Berman, K.V., 1982. The Worker Owned Plywood Cooperatives. *In:* F. Lindenfeld and J. Rothschild-Whitt, edtrs. *Workplace Democracy and Social Change.* Boston: Porter Sargent Publishers, 161-175.

Brecher, J., 1986. If All the People are Banded Together: The Naugatuck Valley Project. *Labor research review,* 9, 1-17.

Crouch, M., 1986. Job Wars at Fort Wayne. *Labor research review,* 9, 47-65.

Cummings, S.L., 1999. Developing Cooperatives as a Job Creation Strategy for Low-Income Workers. *N.Y.U. review of law and social change,* 25 (2), 181-211. Available from: http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_066372.pdf [Accessed 22 Mar 2012].

Curl, J., 2009. *For All the People: Uncovering the Hidden History of Cooperation, Cooperative Movements, and Communalism in the United States.* Oakland: PM Press.

Ellerman, D., 1982. On the Legal Structure of Workers' Cooperatives. *In:* F. Lindenfeld and J. Rothschild-Whitt, edtrs. *Workplace Democracy and Social Change*. Boston: Porter Sargent Publishers, 299-313.

Ellerman, D. and Pitegoff, P., 1982-83. The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts. *N.Y.U. review of law and social change,* 11, 441-472. Available from: http://www.law.nyu.edu/ecm_dlv1/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_070582.pdf. [Accessed 22 Mar 2012].

Foster, J.B., 2010. The Financialization of Accumulation. *Monthly review* [online], 1-17. Available from: http://monthlyreview.org/2010/10/01/the-financialization-of-accumulation [Accessed 22 Mar 2012].

Friedman, G., 2010. The Crisis and the Economists: A Guide to the Perplexed. *Labor history,* 51 (3), 345--362.

Gamson, Z.F. and Levin, H.M., 1984. Obstacles to the Survival of Democratic Workplaces. *In:* R. Jackall and H.M. Levin, edtrs. *Worker Cooperatives in America.* Los Angeles: University of California Press, 219-244.

Greenberg, E.S., 1984. Producer Cooperatives and Democratic Theory. *In:* R. Jackall and H.M. Levin, edtrs. *Worker Cooperatives in America.* Los Angeles: University of California Press, 171-214.

Greenstone, M. and Looney, A., 2010a. The Great Recession's Toll on Long-term Unemployment. *Brookings Institute*. Available from: http://www.brookings.edu/opinions/2010/1105_jobs_greenstone_looney.aspx [Accessed Dec 2010].

Greenstone, M. and Looney, A., 2010b. *An Economic Strategy to Renew American Communities.* Washington D.C.: Brookings Institute. .

Hanratty, P., 1986-87. Response to The Steel Valley Authority. *N.Y.U. review of law and social change* 15 (1), 141-143.

Hansmann, H., 1990. When Does Worker Ownership Work? ESOPS, Law Firms, Codetermination, and Economic Democracy. *Yale law journal,* 99, 1749-1816.

Hornack, J.F. and Lynd, S., 1986-87. The Steel Valley Authority. *N.Y.U. review of law and social change,* 15 (1), 113-135. Available from: http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_070164.pdf [Accessed 22 Mar 2012].

Hyde, A., 1992. In Defense of Employee Ownership. *Chicago-Kent law review,* 67 (1), 159-211.

Hyde, A., 1993. Ownership, Contracts, and Politics in the Protection of Employees Against Risk. *University of Toronto law journal,* 43, 721-749.

Jackall, R. and Levin, H.M., edtrs., 1984. *Worker Cooperatives in America.* Los Angeles: University of California Press. .

Jacobs, J. 1984. *Cities and the Wealth of Nations.* New York: Random House.

Jones, D.C., 1984. American Producer Cooperatives and Employee Owned Firms: A Historical Perspective. *In:* R. Jackall and H. M Levin, edtrs. *Worker Cooperatives in America.* Los Angeles: University of California Press, 37-56.

Klare, K., 1988. Workplace Democracy and Market Reconstruction: An Agenda for Legal Reform. *Catholic University law review,* 38 (1).

Kreiner, S.L., 1986-87. Worker Ownership as the Basis for an Integrated, Proactive Development Model. *N.Y.U. review of law and social change,* 15 (1) 227-238. Available from: http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_070168.pdf [Accessed 22 Mar 2012].

Lee, Dwight R., 1983. Political Provision of Water: An Economic/Policy Choice Perspective. *In:* James N. Corbridge, edtr. *Special Water Districts: Challenges For the Future*. Boulder: Natural Resources Law Center.

Levin, H.M., 1984. ESOPs and the Financing of Worker Cooperatives. *In:* R. Jackall and H. M. Levin, edtrs. *Worker Cooperatives in America.* Berkeley: University of California Press, 245-256. .

Lindenfeld, F., 1982. Workers Cooperatives: Remedy for Plant Closings? *In:* F. Lindenfeld and J. Rothschild-Whitt, edtrs. *Workplace Democracy and Social Change.* Boston: Porter Sargent Publications, 337-352.

Looney, A. and Greenstone, M., 2010. Leave No Community Behind. *Brookings Institute*. Available from: http://www.brookings.edu/opinions/2010/1008_communities_greenstone_looney.aspx [Accessed December 2010].

Lynd, S., 1990. From Protest to Economic Democracy: Labor-Community Ownership and Management of the Economy. *In:* J. Brecher and T. Costello, edtrs. *Building Bridges: The Emerging Grassroots Coalition of Labor and Community.* New York: Monthly Review Press, 259-273.

Moye, A.M., 1993. Mondragon: Adapting Co-operative Structures to Meet the Demands of a Changing Environment. *Economic and industrial democracy,* 14, 251-276.

Olson, D.G., 1986-87. Employee Ownership: An Economic Development Tool for Anchoring Capital in Local Communities. *N.Y.U. review of law and social change,* 15 (1) 239--267. Available from: http://www.law.nyu.edu/ecm_dlv4/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_070169.pdf [Accessed 22 Mar 2012].

Reich, R., 2010. *Aftershock:The Next Economy and America's Future.* New York: Alfred A. Knopf.

Shirom, A., 2001. The Industrial Relations Systems of Industrial Cooperatives in the United States, 1880-1935. *Labor history,* 13, 533--551.

Simon, W.H., 1991. Social-Republican Property. *UCLA law review,* 38, 1335-1393.

Slott, M., 1985. The Case Against Worker Ownership. *Labor research review,* 6, 83-97. Available from: http://digitalcommons.ilr.cornell.edu/lrr/vol1/iss6/3/ [Accessed 22 Mar 2012].

Stout, M., 1986. Reindustrialization From Below: The Steel Valley Project. *Labor research review,* 9, 19-33. Available from: http://digitalcommons.ilr.cornell.edu/lrr/vol1/iss9/9/ [Accessed 22 Mar 2012].

Swinney, D., 1985. Debate: Worker Ownership: A Tactic for Labor. *Labor research review,* 6, 99-112. Available from: http://digitalcommons.ilr.cornell.edu/lrr/vol1/iss6/2/ [Accessed 22 Mar 2012].

Swinney, D. and Metzgar, J., 1986. Expanding the Fight Against Shutdowns. *Labor research review,* 9, 99--112. Available from: http://digitalcommons.ilr.cornell.edu/lrr/vol1/iss9/1/ [Accessed 22 Mar 2012].

Whyte, W.F. and Whyte, K.K., 1988. *Making Mondragon: The Growth and Dynamics of the Worker Cooperative Complex*. Ithaca: Industrial and Labor Relations Press.

Wilson, W.J., 1996. *When Work Disappears: the world of the new urban poor*. New York: Random House.