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Community Syndicalism for the United States: Democratic Production in Resisting Hegemonic Globalization and Law

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COMMUNITY SYNDICALISM FOR THE UNITED STATES:
DEMOCRATIC PRODUCTION IN RESISTING HEGEMONIC
GLOBALIZATION AND LAW

BY
KENNETH M. CASEBEER*

*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 Arizmendiarieta**

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I. INTRODUCTION

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 community autonomy will be ephemeral.

* Prof. of Law Emeritus, University of Miami Law School. I am indebted to the work of Staughton Lynd, Alan Hyde, David Ellerman, and Peter Pitegoff, and as always, the support of Marnie Mahoney. The ideas were first presented at the Conference on: The Social Economy, Corporate Responsibility, and Workers’ Rights and Cooperatives, International Institute for the Sociology of Law, Onati, Spain, July 2011.

** Founder of Mondragon Cooperatives, Basque, Spain, quoted in WILLIAM FOOTE WHYTE & KATHLEEN KING WHYTE, MAKING MONDRAGON: THE GROWTH AND DYNAMICS OF THE WORKER COOPERATIVE COMPLEX (1991).

Temporary bubbles of autonomy must gradually turn into permanent, free communities. However, in order to do so, those communities cannot exist in total isolation; neither can they have a purely confrontational relation with everyone around them. They have to have some way to engage with larger economic, social or political systems that surround them.¹

Such leverage will depend upon new economic and moral changes embodied in new economic and legal institutions.

At the heart of all this, however, lies a simple structural dilemma: How can the left fuse the need to actively engage with, but also create an alternative to, the capitalist laws of value determination on the world market, while facilitating the associated laborers' ability democratically and collectively to manage and decide on what they will produce and how? This is the central dialectical tension. . . .²

One possible response is Community Syndicalism – local community finance and operating credit for industrial production linked with, but separate institutionally from, democratic worker ownership and control of production – in short, investment capital assets separate 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 article 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.³

1. DAVID GRAEBER, *DIRECT ACTION: AN ETHNOGRAPHY* 239 (2009).

2. DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* 126 (2012).

3. The ascendancy 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 will only deteriorate in the mid-term future, and there is no reason to avoid planning for inevitable change. See David Ellerman, *On the Legal Structures of Workers' Cooperatives*, in *WORKPLACE DEMOCRACY AND SOCIAL CHANGE* 299 (Frank Lindenfeld & Joyce Rothschild-Whitt eds., 1982).

II. 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 Investment Conundrum: 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.⁴ 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 twelve years to return to pre-recession employment levels.⁵
- 2). The Exportation Problematic: 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 to create excess global productive capacity.⁶

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.⁷ Of course, all structural economic change will be accompanied by dislocations associated with local economies; however, recent dislocations due to job loss have not proven to be subject to temporary readjustments. Twenty years after the 1980's recession,

4. John B. Foster, *The Financialization of Accumulation*, MONTHLY REV., Oct. 2010, at 1, 1-17. This impact was noted as early as 1986. Dan Swinney & Jack Metzgar, *Expanding the Fight Against Shutdowns*, 9 LAB. RES. REV. 99, 102 (1986).

5. Michael Greenstone & Adam Looney, *The Great Recession's Toll on Long-Term Unemployment*, BROOKINGS (Nov. 5, 2010, 9:50 AM), <<http://www.brookings.edu/blogs/jobs/posts/2010/11/05-jobs-greenstone-looney>>.

6. Foster, *supra* note 4, at 10.

7. See MICHAEL GREENSTONE & ADAM LOONEY, THE HAMILTON PROJECT, AN ECONOMIC STRATEGY TO RENEW AMERICAN COMMUNITIES 5-8 (Brookings 2010); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE URBAN POOR (1996).

[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.⁸

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.⁹

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.¹⁰

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 deserts, 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). Economic: 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). Moral: 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.¹¹

8. GREENSTONE & LOONEY, THE HAMILTON PROJECT, *supra* note 7, at 7-8.

9. *Id.*

10. *Id.* at 8.

11. Patricia Hanratty, *Response*, 15 N.Y.U. REV. L. & SOC. CHANGE 141 (1986-87) (discussing eminent domain and responding to Joseph F. Hornack & Staughton Lynd, *The Steel*

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, mutuality of relations, equality, and democratic participation. What is required is a change in economic agency, not the abandonment of markets at this time.

III. 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."¹² 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."¹³

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

Valley Authority, 15 N.Y.U. REV. L. & SOC. CHANGE 113, 115-16 (1986-87)).

12. WILLIAM FOOTE WHYTE & KATHLEEN KING WHYTE, MAKING MONDRAGON: THE GROWTH AND DYNAMICS OF THE WORKER COOPERATIVE COMPLEX 59 (1991) (citing JANE JACOBS, CITIES AND THE WEALTH OF NATIONS (1984)).

13. Gerald Friedman, *The Crisis and the Economists: A Guide to the Perplexed*, 51 LAB. HIST. 345, 352 (2010).

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’s attempt to use the public power of eminent domain in the Pittsburgh region during the 1980s.¹⁴ 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.¹⁵ 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.”¹⁶ 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

14. Joseph F. Hornack & Staughton Lynd, *The Steel Valley Authority*, 15 N.Y.U. REV. L. & SOC. CHANGE 113, 114-16 (1986-87).

15. See generally William H. Simon, *Social-Republican Property*, 38 UCLA L. REV. 1335 (1991).

16. Adam Looney & Michael Greenstone, *Leave No Community Behind*, BROOKINGS (Oct. 8, 2010), <<http://www.brookings.edu/research/opinions/2010/10/08-communities-greenstone-looney>>.

strategies which value both the geographic stability and the quality of employment opportunities created.¹⁷

For a 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 decisionmaker'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.¹⁸

High wages, 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.¹⁹

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.²⁰ 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.²¹ These sources, however, have been substantially diminished since the

17. Deborah G. Olson, *Employee Ownership: An Economic Development Tool for Anchoring Capital in Local Communities*, 15 N.Y.U. REV. L. & SOC. CHANGE 239, 242 (1986-87).

18. Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty and America's Eroding Industrial Base*, 81 GEO. L.J. 1757, 1764 (1993).

19. Frank Lindenfeld, *Workers' Cooperatives: Remedy for Plant Closings*, in WORKPLACE DEMOCRACY AND SOCIAL CHANGE, *supra* note 3, at 337, 338; Dan Swinney, *Worker Ownership: A Tactic for Labor*, 6 LAB. RES. REV. 99, 106-07 (1985).

20. Greenstone & Looney, *supra* note 5, at 13.

21. Jeremy Brecher, *If All the People Are Banded Together: The Naugatuck Valley Project*, 9 LAB. RES. REV. 1, 11 (1986).

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 race-to-the-bottom dynamics,²² either economically or legally.²³ 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.²⁴

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 participate by providing long-term, low interest loans if local residents are willing to withdraw personal and business accounts from banks declining to participate.²⁵ Businesses paying franchise taxes might not object to participating in pooled leverage because they are already "paying" in another way.

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.²⁶

IV. THE COMMUNITY IN COMMUNITY SYNDICALISM

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 1980s. The authority was empowered to acquire failing steel plants through eminent domain and continue production

22. Greenstone & Looney, *supra* note 5, at 16; see also Mark Crouch, *Job Wars at Fort Wayne*, 9 LAB. RES. REV. 47, 50 (1986).

23. Charter Twp. of Ypsylanti v. Gen. Motors Corp., 506 N.W. 2d 556 (Mich. App. 1993).

24. Staughton Lynd, *From Protest to Economic Democracy: Labor-Community Ownership and Management of the Economy*, in BUILDING BRIDGES: THE EMERGING GRASSROOTS COALITION OF LABOR AND COMMUNITY 259 (Jeremy Brecher & Tim Costello eds., 1990).

25. Brecher, *supra* note 21, at 9, 11.

26. Mike Stout, *Reindustrialization from Below: The Steel Valley Project*, 9 LAB. RES. REV. 19, 20 (1986).

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.²⁷ 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 there is little real choice other than abandonment.

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.²⁸ This 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. 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.²⁹

It is crucial that 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.³⁰ Short-term demands and political log

27. *Id.* at 27.

28. Dwight R. Lee, *Political Provision of Water: An Economic/Policy Choice Perspective*, in *SPECIAL WATER DISTRICTS: CHALLENGES FOR THE FUTURE* 51 (James N. Corbridge, Jr., ed., 1983).

29. JOHN CURL, FOR ALL THE PEOPLE: UNCOVERING THE HIDDEN HISTORY OF COOPERATION, COOPERATIVE MOVEMENTS, AND COMMUNALISM IN THE UNITED STATES 351-352 (2009).

30. Sherman L. Kreiner, *Worker Ownership as the Basis for an Integrated, Proactive Development Model*, 15 N.Y.U. REV. L. & SOC. CHANGE 227, 235 (1986-87).

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.³¹ 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.

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."³² Secondly, 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.³³

31. Howard Stanback, *Response [to Richard McGahey]*, 15 N.Y.U. REV. L. & SOC. CHANGE 83, 83-84 (1986-87).

32. Swinney, *supra* note 18, at 107.

33. Alessandra Azevedo & Leda Gitahy, *The Cooperative Movement, Self Management, and Competitiveness: The Case of Mondragón Corporación Cooperativa*, 13 WORKING USA 5 (2010).

V. 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 value of the enterprise. The capital assets of the fund would be “leased” at nominal value for the period of the enterprise’s 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.”³⁴ 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.³⁵

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.³⁶ Modifications of organizational management subject to owner control useful to the specific enterprise can be established voluntarily in corporate bylaws.³⁷ Long-term nominal leases of assets and provision of financing in subsidy of local production is also standard practice.³⁸ 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

34. Alan Hyde, *Ownership, Contracts, and Politics in the Protection of Employees Against Risk*, 43 U. TORONTO L.J. 721, 748 (1993).

35. Katrina V. Berman, *The Worker-Owned Plywood Cooperatives*, in WORKPLACE DEMOCRACY AND SOCIAL CHANGE, *supra* note 3, at 161.

36. David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441 (1982-83).

37. Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 201 (1999).

38. *Id.* at 204-05.

ESOPs.

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 investors³⁹ and the coverage of initial asset investments for start-ups, even where competitors gain their advantage from low wage labor exploitation.

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.⁴⁰

Another and linked 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.⁴¹ 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.⁴² But small-scale enterprise is not the aim here. 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

39. Lindenfeld, *supra* note 19, at 338.

40. WHYTE & WHYTE, *supra* note 19, at 38-41, 146-49.

41. Henry Hansmann, *When Does Worker Ownership Work? ESOPs, Law Firms, Codetermination, and Economic Democracy*, 99 YALE L.J. 1749 (1990).

42. See Alan Hyde, *In Defense of Employee Ownership*, 67 CHI-KENT L. REV. 159, 169 n.35 (1991).

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.”⁴³ 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.⁴⁴

As is well known, the Mondragon cooperatives engage in extensive worker education and also utilize interacting and overlapping hierarchies of democratic decision-making.⁴⁵ 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.⁴⁶ 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.⁴⁷ The purchased shares are then sold to new workers or

43. Robert Jackall & Henry M. Levin, *Work in America and the Cooperative Movement*, in *WORKER COOPERATIVES IN AMERICA* 3, 7 (Robert Jackall & Henry M. Levin eds., 1984).

44. Derek C. Jones, *American Producer Cooperatives and Employee Owned Firms*, in *WORKER COOPERATIVES IN AMERICA*, *supra* note 42, at 37, 52.

45. See generally WHYTE & WHYTE, *supra* note 12.

46. Aditi Bagchi, *Varieties of Employee Ownership: Some Unintended Consequences of Corporate Law and Labor Law*, 10 U. PA. J. BUS. & EMP. L. 305, 307-09 (2008).

47. Ana Guitierrez Johnson & William F. Whyte, *The Mondragon System of Worker Production Cooperatives*, in *WORKPLACE DEMOCRACY AND SOCIAL CHANGE*, *supra* note 3, at 195.

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.⁴⁸ 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.⁴⁹ 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."⁵⁰ 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. Also, there is justification for some

48. See *infra* note 55.

49. Johnson & Whyte, *supra* note 47, at 184.

50. Simon, *supra* note 15, at 1393.

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.

VI. 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.⁵¹ 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.

51. On the history of all cooperatives in the United States, see JOHN CURL, *FOR ALL THE PEOPLE: UNCOVERING THE HIDDEN HISTORY OF COOPERATION, COOPERATIVE MOVEMENTS, AND COMMUNALISM IN THE UNITED STATES* (2009). For a negative view of that history, see Arie Shirom, *The Industrial Relations Systems of Industrial Cooperatives in the United States*, 13 LAB. HIST. 533 (2001).

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.⁵²

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.⁵³ 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.⁵⁴

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.⁵⁵

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 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.⁵⁶

52. Hyde, *supra* note 42, at 206.

53. See generally CURL, *supra* note 51.

54. Henry M. Levin, *ESOPs and the Financing of Worker Cooperatives*, in WORKER COOPERATIVES IN AMERICA, *supra* note 43, at 245, 245-46.

55. E.S. Greenberg, *Producer Cooperatives and Democratic Theory*, in WORKER COOPERATIVES IN AMERICA, *supra* note 42, at 171.

56. See Bagchi, *supra* note 46, at 311-12. For a more hopeful view of ESOPs, see *Worker Ownership American Style: Pluralism, Participation, and Performance*, 20 ECON. & INDUS.

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; and

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 have comprised less than 1 percent of the Spanish economy).⁵⁷ Three results would follow. One, economic incentives would switch to maximize long-term stability (better for the world and earth).⁵⁸ 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

DEMOCRACY 225 (1999).

57. A. M. Moye, *Mondragon: Adapting Co-Operative Structures to Meet the Demands of a Changing Environment*, 14 *ECON. & INDUS. DEMOCRACY* 251 (1993).

58. Lynd, *supra* note 24.

subsidy).⁵⁹ 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.”⁶⁰ 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.⁶¹ 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. 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.”⁶² 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

59. ROBERT REICH, *AFTERSHOCK: THE NEXT ECONOMY AND AMERICA'S FUTURE* (2010); Karl Klare, *Workplace Democracy and Market Reconstruction: An Agenda for Legal Reform*, 38 CATHOLIC U. L. REV. 1 (1988).

60. WHYTE & WHYTE, *supra* note 12; Zelda F. Gamson & Henry M. Levin, *Obstacles to the Survival of Democratic Workplaces*, in *WORKER COOPERATIVES IN AMERICA*, *supra* note 43, at 219, 219.

61. M. Slott, *The Case Against Worker Ownership*, 6 LAB. RES. REV. 83, 87 (1985).

62. Azevedo & Gitahy, *supra* note 33, at 5.

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.⁶³

VII. CONCLUSION

Community Syndicalism is not a panacea for local communities destabilized by job loss. 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.⁶⁴ 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.

63. *Id.*

64. Harvey, *supra* note 2, at 177, n.12.