



SURVEY

The Work of Retirement

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Abstract

In the past few decades, caregivers, such as nursing assistants and home health aides, have come to compose the fastest-growing segment of the paid workforce in the United States. At the same time, corporate caretakers of workers' savings, such as pension funds and mutual funds, have become the nation's largest investors, bound by fiduciary duties of trust. And unprecedented numbers of elder employees and retirees have become the biggest supposed beneficiaries of both care labor and trust capital, depending on health workers and asset managers in their daily lives. At the center of this emerging structure of work, wealth, and welfare lies the pension system, a telling crucible of class relations in our time. Several recent books across different disciplines examine the shifting politics of pensions in the United States and around the world. The spate of new studies presents an opportunity to explore the remarkable role of retirement funds in reorganizing labor and finance over the past fifty years. Rather than offering a historiographical critique of current work, this expository essay surveys the main findings of a larger and longer body of scholarship on organized labor and investment related to pensions. Though focused on the United States, it places the American story in a comparative context. The survey points to a fertile field for further study: as retirees have increasingly relied on professional asset managers and caregivers, the finance and health sectors have undergone converging crises over fiduciary duty and elder care, posing parallel challenges for organized labor.

In the past few decades, caregivers, such as nursing assistants and home health aides, have come to compose the fastest-growing segment of the paid workforce in the United States. At the same time, corporate caretakers of workers' savings, such as pension funds and mutual funds, have become the nation's largest investors, bound by fiduciary duties of trust. And unprecedented numbers of elder employees and retirees have become the biggest supposed beneficiaries of both care labor and trust capital, depending on health workers and asset managers in their daily lives. At the center of this emerging structure of work, wealth, and welfare lies the pension system, a telling crucible of class relations in our time.¹

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Several recent books across different disciplines examine the shifting politics of pensions in the United States and around the world.² The spate of new studies presents an opportunity to explore the remarkable role of retirement funds in reorganizing labor and finance over the past fifty years. Rather than offering a historiographical critique of current work, this expository essay surveys the main findings of a larger and longer body of scholarship on organized labor and investment related to pensions. Though focused on the United States, it places the American story in a comparative context. The review points to a fertile field for further study: as retirees have increasingly relied on professional asset managers and commercial caregivers, the finance and health sectors have undergone converging crises over fiduciary duty and elder care, posing parallel challenges for organized labor. The essay concludes by considering what the history of retirement might yet reveal about the increasingly intimate connections between caring for people and caring for capital.

“The Broken Promise”

A pension is a promise. It originated as a promise that rulers made to their subjects in exchange for military service: support the state in its hour of need, and the state will support you in yours. From the rulers of the ancient Roman Republic to Louis XIV of France and other early modern monarchs and to the Republican Party during the American Civil War, powerful political leaders granted those who risked their lives for their country a secure livelihood in disability or old age, along with support for their families after they died. In the postbellum United States, a few big cities expanded the promise from soldiers to police officers and firefighters; some added teachers, deeming classroom duty comparable to combat in its service to the state. In the Progressive Era, a handful of states extended pensions to all civil servants regardless of occupation, followed by the federal government, which established the Civil Service Retirement System in 1920.³

Unlike the arch pension paternalist Otto von Bismarck, who introduced state-supported retirement for all wage earners as “soldiers of labor” for the new

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²Leokadia Oręziak, *Pension Fund Capitalism: The Privatization of Pensions in Developed and Developing Countries* (London, 2022); Sanford Jacoby, *Labor in the Age of Finance: Pensions, Politics, and Corporations from Deindustrialization to Dodd-Frank* (Princeton, NJ, 2021); David Webber, *The Rise of the Working-Class Shareholder: Labor's Last Best Weapon* (Cambridge, MA, 2018); Teresa Ghilarducci and Tony James, *Rescuing Retirement* (New York, 2018); Michael A. McCarthy, *Dismantling Solidarity: Capitalist Politics and American Pensions Since the New Deal* (Ithaca, NY, 2017); Kevin Skerrett, Johanna Weststar, Simon Archer, and Chris Roberts (eds), *The Contradictions of Pension Fund Capitalism* (Champaign, IL, 2017).

³Robert L. Clark, Lee A. Craig, and Jack W. Wilson, *A History of Public Sector Pensions in the United States* (Philadelphia, PA, 2003), pp. 1–5; Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA, 1995); Laura Jensen, *Patriots, Settlers, and the Origins of American Social Policy* (Cambridge, 2003). On a related promise by aging parents in exchange for care from their grown children, see Hendrik Hartog, *Someday All This Will Be Yours: A History of Inheritance and Old Age* (Cambridge, MA, 2012).

German Empire in the 1890s, Progressive policymakers restricted public pensions to public employees. But after World War I, the US government began providing lucrative tax incentives for private businesses to reward their own loyal long-time salaried staff with a fraction of their final pay after they finished working. In the half-century between 1920 and 1970, the prospect of a dependable income in retirement became a basic part of the employment contract for millions of workers, with crucial public support.

The Revenue Act of 1921 exempted from federal income tax any revenues that employers earned by investing the money they set aside for workers' retirement. The more tax-free profits their pension funds accrued, the less money employers were regularly required to contribute to the funds in order to honor their obligations to retirees. Employers were also allowed to deduct pension contributions from their taxable corporate income and to write off payments to beneficiaries as business expenses. These deductions reduced the cost of pension plans for employers far below the benefits they offered to employees, especially when the federal government levied high taxes on "excess profits" above a certain level, which corporations could avoid by diverting profits into pensions. And after 1921, employees no longer paid income tax on the contributions their employers made to their pensions; they were only taxed on the benefits they received after they retired, at a lower rate than they would have paid when they were working. While employers managed the funds and doled out the benefits, the promise of a private pension depended on the state. Through such tax subsidies, the means of supporting retired employees drew on the work and wealth of American society as a whole.⁴

The broad bond between employment and retirement arose in answer to a dire economic challenge for policymakers in the 1920s and 1930s: a spiraling surplus of workers. In the United States, as in other industrialized countries, the rapid growth of the wage workforce and the extraordinary increase in life expectancy in the early twentieth century spawned a growing multitude of elderly workers. The federal government established its pension for civil servants as part of demobilization after World War I, seeking "to retire superannuated employees for the good of the service", as a later Social Security Administration bulletin put it.⁵ More generally, rising productivity in the increasingly automated industries at the core of the modern American economy meant that proportionally less labor was needed to produce more steel, rubber, automobiles, and home appliances, even as the excess of industrial workers required more income to purchase the glut of consumer goods. The Great Depression sparked a vicious cycle in which workers were idled for lack of jobs while factories were shuttered for lack of customers, revealing an expanding gap between the labor and the income needed for modern industry. To counter this devastating dynamic, paid retirement offered a means of restricting the labor supply by withdrawing

⁴Paul P. Harbrecht, S.J., *Pension Funds and Economic Power* (New York, 1959), pp. 8–9, 124–125.

⁵Ruth Reticker, "Benefits and Beneficiaries Under the Civil Service Retirement Act", *Social Security Bulletin*, 4:4 (1941), pp. 29–42, 29. "This latter purpose had been discussed as early as President Monroe's administration, 125 years ago, when the Secretary of War protested against his 'octogenarian department'". *Ibid.*, p. 29.

older workers from the labor market while boosting consumer demand by subsidizing their spending, together promoting full employment for those of working age.⁶

The grassroots movement for old-age insurance in the 1930s highlighted the logic and limits of the federal government's response. "The modern machine on the farm, in mine, forest, and factory will never again call for all our man power", the physician and retirement activist Francis E. Townsend wrote in 1936. His popular "Townsend Plan" would have guaranteed a generous government income to all Americans over the age of sixty, so long as they withdrew from the workforce and spent their monthly stipends. "Man power, from 20 to 60 years of age, can produce a high standard of living for every man, woman, and child in the United States", he contended. "With this ability, it is proper that we should, collectively as fathers and mothers, support our children and prepare them for life's work; and it is equally just and proper that these children should, in return, during their productive years, support their fathers and mothers in their declining years."⁷ Townsend took the widening divide between the demand for work and the production of wealth as a warrant for detaching retirement from employment, distributing stipends to seniors as "dividends" of the entire corporate economy and the working population that sustained it rather than returns from employees' savings managed by their employers. "Our elders built this modern industrial machine, and the dividends they will receive under the Townsend Plan will help consume the products which it now produces", he explained.⁸

The architects of federal old-age insurance under the Social Security Act of 1935 shared Townsend's economic rationale for universal retirement. But they repudiated the redistributive principle of providing an equal allowance to every senior citizen, paid for with a flat federal tax on business transactions. New Deal planners designed instead a "contributory" system that tied Americans' support in advanced age to their wages and salaries over the course of their careers, extending the employment relationship beyond what President Franklin Roosevelt's Committee on Economic Security called "the contributory period of a 'normal' working life".⁹ Through Social Security taxes and benefits based on workers' pay, the system ostensibly enabled individuals to earn their own retirements, while limiting retirement rights to those previously gainfully employed. It followed the model of the state-run insurance funds pioneered by Bismarck in continental Europe, in which wage earning took the place of military service as the basis for benefits. As an entitlement predicated on

⁶On the growing disjuncture between the labor and the income required to sustain economic growth in the 1920s and 1930s, see Martin J. Sklar, "On the Proletarian Revolution and the End of Political-Economic Society", *Radical America*, 3:3 (1969), pp. 1–41, esp. 13–23; James Livingston, "Their Great Depression and Ours", *Challenge*, 52:3 (2009), pp. 34–51.

⁷Francis E. Townsend, "Townsend Pensions: Sense or Nonsense?: A Debate. I – Recovery with Security", *Forum and Century*, 95:5 (1936), pp. 282–285, 282–283.

⁸Townsend, "Townsend Pensions", p. 284.

⁹Committee on Economic Security, *Old Age Security Staff Report*, January 1935. Available at: <https://www.ssa.gov/history/reports/ces/ces2armstaff.html>; last accessed 5 January 2023; Gabriel Winant, *The Next Shift: The Fall of Industry and the Rise of Health Care in Rust Belt America* (Cambridge, MA, 2021), p. 12.

prior contributions, such “social insurance” was deliberately distinguished from “public assistance” to the needy, elderly or otherwise.¹⁰

In reality, funding for Social Security payments depended on current, earmarked taxes as well as savings, much as in the social insurance programs established in Germany, Austria, France, Belgium, Italy, and a host of other nations in the twentieth century. As the economist Paul Samuelson wrote, such pay-as-you-go systems rested on a “social contract in which the young are assured of their retirement subsistence if they will today support the aged”, a prospect that seemed reasonably secure amid the baby boom and postwar prosperity.¹¹ Like the system of private pensions, Social Security was designed to bolster the ideological bond between individuals’ retirement and their previous employment, concealing the dependence of retirees on the broader societal surplus from which their benefits were actually drawn – not to mention the dependence of married men on the unpaid labor of their wives, who relied on their husbands’ Social Security checks no less than their paychecks. But while virtually all paid workers gained access to federal old-age insurance by the 1950s – including domestic workers, such as housekeepers and gardeners, farm laborers, clerical workers, hospital workers, and local and state government employees, all of whom were initially excluded – monthly Social Security checks remained far below a livable income, as they do today. The average benefit for a married couple stood at just \$39 per month in 1949, when the Federal Security Agency estimated \$148 was the minimum required for a “decent standard of living”.¹² With such paltry payments from the federal government, workers increasingly looked to private plans for the means of retiring in comfort and security.

A similar two-track system, combining meager public pensions with reliance on employer-sponsored plans for most of their participants’ retirement income, arose in the United Kingdom and its other former settler colonies including Canada, Australia, and New Zealand, though their governments generally provided a flat-rate minimum income for everyone over retirement age along with “contributory” benefits based on previous earnings. The mid-century English economist William Beveridge influentially espoused a bolder vision of ample state support for all citizens to maintain a rising standard of living in advanced age as in illness and unemployment, predicated on what the sociologist T.H. Marshall called the rights of “social citizenship”. But only the Nordic social democracies of Sweden, Norway, Finland, and Denmark approached that egalitarian ideal for public pensions in the postwar decades.¹³

¹⁰See Nancy Fraser and Linda Gordon, “A Genealogy of Dependency: Tracing a Keyword of the US Welfare State”, *Signs*, 19:2 (1994), pp. 309–336.

¹¹Paul A. Samuelson, “An Exact Consumption-Loan Model of Interest With or Without the Social Contrivance of Money”, *Journal of Political Economy*, 66:6 (1958), pp. 467–482, 479–480; quoted in Robin Blackburn, *Banking on Death, Or, Investing in Life: The History and Future of Pensions* (London, 2002), p. 31.

¹²Harbrecht, *Pension Funds*, p. 93. Average benefit in 2018: \$1,300 per month. On occupational categories initially excluded from the old-age and unemployment insurance provisions of the Social Security Act, see Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917–1942* (Ithaca, NY, 1995), pp. 123–133.

¹³Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State, 1875–1975* (Cambridge, 1990); Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton, NJ, 1990), pp. 79–104; T.H. Marshall, *Citizenship and Social Class, and Other Essays* (Cambridge, 1950). See also the

Why did the United States, like other welfare states on the Anglo-American model, delegate so much responsibility for its retirement system to private employers? The sociologist Michael A. McCarthy finds a compelling answer in a second crisis of employment, sparked by demobilization after World War II, when industrial unions of coal, steel, automobile, and other mass-production workers mounted the biggest strike wave in the nation's history. Wartime restrictions on wage and price hikes had focused labor conflicts for the first time on "fringe benefits", such as health insurance and pension plans. In *Dismantling Solidarity* (2017), McCarthy argues that the Truman Administration sought to secure labor peace and American economic power by designating pensions as part of workers' pay and therefore "mandatory subjects of bargaining" under the National Labor Relations Act of 1935. Even as federal officials kept Social Security benefits to a minimum, they granted unions a central role in claiming more expansive and exclusive retirement rights for their members. In Canada as well as the United States, aggressive bargaining spurred the great proliferation of occupational pensions in the postwar decades, when roughly two thirds of workers with pension plans owed them to union contracts.¹⁴

Postwar labor leaders generally favored raising Social Security benefits so that workers would be less dependent on their employers for retirement income. They demanded private pensions as a temporary expedient and a means of pressuring business leaders to join them in calling for higher federal payments for all senior citizens, not just union members. And even as they bargained for their benefits, union officials representing autoworkers, steelworkers, and mineworkers in the new Congress of Industrial Organizations (CIO) championed the rights of all retirees to a comfortable income, or to a fair share of the wealth produced by the entire workforce rather than to the fruits of their own individual labor. As the assembly line distanced their members ever further from the products they produced, CIO leaders reasoned that workers required "repair and replacement" no less than the machinery they operated on the job. Their common needs in old age – "too old to work and too young to die", as United Auto Workers leader Walter Reuther said – justified equal benefits for all workers irrespective of their earlier earnings. By contrast, leaders in the older American Federation of Labor (AFL), representing many skilled craft workers with a closer connection to the goods they made, regarded pension benefits as "deferred wages" based on retirees' previous work, not current need.¹⁵ So too, the National Labor Relations Board (NLRB) adopted the wage model, in a decision upheld by the US Supreme Court in *Inland Steel v. NLRB* (1949), endorsing the idea of pension benefits as postponed payments for the services workers rendered their

foundational typology of "residual", "industrial achievement", and "institutional redistributive" models of welfare policy in Richard M. Titmuss, *Social Policy: An Introduction* (New York, 1975), pp. 30–31.

¹⁴McCarthy, *Dismantling Solidarity*, pp. 15, 32–33, 46–47; Harbrecht, *Pension Funds*, p. 7. On "the explosion of firm-centered 'fringe-benefit' bargaining" and union officials' embrace of a "privatized system" of welfare provisions, see Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton, NJ, 2002), p. 127. By contrast, British labor unions played relatively little part in establishing occupational pensions in the United Kingdom. Andrew Pendleton and Howard Gospel, "Financialization, Labor, and Pensions: The UK Experience", in Skerrett *et al.*, *Contradictions of Pension Capitalism*, pp. 9–29.

¹⁵Harbrecht, *Pension Funds*, pp. 91–97; Nelson Lichtenstein, *Walter Reuther: The Most Dangerous Man in Detroit* (New York, 1995), pp. 282–283.

employers.¹⁶ Instead of distinguishing the basis of retirement income from that of paid labor, along the lines of the Townsend Plan or the rhetoric of “human depreciation”, federal officials reinforced the link between workers’ pay and retirees’ support.

By the 1970s, forty-five percent of private-sector workers and virtually all public employees participated in pension plans.¹⁷ But even as more Americans than ever expected to retire with a secure income, far fewer were actually able to do so. In September 1972, NBC News aired a controversial television documentary, “Pensions: The Broken Promise”, reporting that countless workers lost their pensions when they lost their jobs, often just months shy of the twenty or twenty-five years required for “vested” retirement rights, or when forced to move from one job to another, or when disabled before retirement age, or when informed, after decades of service to the same company, of technical restrictions and exclusions buried in the fine print of their contracts. Many others were left with little or nothing for retirement when their employers filed for bankruptcy, went out of business, merged with other firms, or ran short of sufficient savings in their pension funds to cover their obligations.¹⁸ As the consumer activists Ralph Nader and Kate Blackwell wrote in a guide for workers the following year, “*at least half the people covered by pensions will never collect a penny*”.¹⁹ Such experiences had become increasingly common as corporate profits had plunged and economic growth stalled since the late 1960s. The largest surge of strikes, slowdowns, and sabotage by American workers since World War II signaled the breakdown of the postwar labor regime of collectively bargained benefits for union members.²⁰

Once again, a searing crisis of employment prompted a sweeping reform of retirement. The Employee Retirement Income Security Act (ERISA), symbolically signed into law on Labor Day in 1974, established federal standards for the management, funding, and public insurance of private pensions. Four years later, Congress adopted Section 401(k) of the Internal Revenue Code, allowing corporate executives to direct their profit-sharing bonuses into special savings accounts, invested on their behalf, and exempted from federal income tax until the funds were withdrawn, like pension contributions. But in the next decade, contrary to their original intentions, the two laws in tandem spelled the steep decline if not demise of traditional pensions for private employees and the rise of 401(k)s and related retirement accounts in their place.

As McCarthy trenchantly shows, the Reagan Administration built on ERISA to impose a raft of additional regulations that made pensions increasingly costly, especially for smaller businesses in the growing, largely non-union service sector, where workers could not bargain for retirement benefits. In the same few years, the Internal

¹⁶*Inland Steel Co. v. National Labor Relations Board*, 170 F.2d (7th Cr. 1949), pp. 248–263, 251.

¹⁷Jacoby, *Labor in the Age of Finance*, p. 10.

¹⁸Edwin Newman and NBC News, “Pensions: The Broken Promise”, televised documentary, originally aired 12 September 1972. Available at: https://www.youtube.com/watch?v=Sjxidl8C_kU; last accessed 5 January 2023.

¹⁹Ralph Nader and Kate Blackwell, *You and Your Pension* (New York, 1973), p. 5 (italics in original).

²⁰On the economic downturn, see Robert Brenner, *The Economics of Global Turbulence: The Advanced Capitalist Economies from Long Boom to Long Downturn, 1945–2005* (London, 2006). On the labor uprising, see Aaron Brenner, Robert Brenner, and Cal Winslow (eds), *Rebel Rank and File: Labor Militancy and Revolt from Below During the Long 1970s* (London, 2010).

Revenue Service eased the restrictions on 401(k)s by opening them to deductions from ordinary employees' wages and salaries, triggering a mass migration away from pension plans by private employers. In 1983, more than sixty per cent of American workers with retirement coverage had access to a traditional pension. Today, just fifteen per cent, most of them public employees, can count on a fixed income from their employers after they retire, while nearly three quarters must take their chances on a 401(k) or similar plan.²¹

For businesses eager to trim labor costs, 401(k) accounts were much cheaper to administer than traditional pension funds, which carried greater responsibility and bore the brunt of the new regulations. Employers adopting the new plans also cut their per-capita contributions to retirement savings roughly in half.²² Most importantly, so-called defined contribution plans entailed no promise of a guaranteed income or "defined benefit", shifting the risk that they would wind up with too little to retire onto employees. Such individual investment accounts were designed to benefit highly paid executives who could consistently contribute enough from the bonuses they received to build up a volatile but potentially valuable addition to their other financial assets. For most workers, however, 401(k)s proved grossly inadequate and insecure as their principal savings for retirement. As the labor economist Teresa Ghilarducci and the investment banker Tony James report in *Rescuing Retirement* (2018), the average account balance in a 401(k) in 2018 was \$18,433, a small fraction of the estimated \$375,000 in savings that median-income workers required to maintain their standard of living at the end of their working lives. And those with 401(k)s, Individual Retirement Accounts (IRAs), and similar long-term savings accounts clustered in the top quartile of income earners, while roughly half of all private-sector workers lacked a pension or retirement plan of any kind.²³

Beginning in the 1980s, dozens of industrialized countries likewise shifted from promising workers a guaranteed income in retirement, secured by the state, to requiring them to rely on risky returns from financial investments. As the Polish economist Leokadia Oręziak writes in *Pension Fund Capitalism* (2022), the most radical reforms struck Latin America and Eastern Europe, replacing robust public pensions with compulsory contributions to private retirement funds, organized by employers and largely managed by American financial firms. In its landmark 1994 report, *Averting the Old Age Crisis* (1994), the World Bank issued a grim Malthusian forecast for state programs struggling to support the rising ranks of retirees on the backs of a rapidly aging workforce. By privatizing pensions, the Bank assured cash-strapped client states, they would spur savings, encourage investment, and promote economic growth while reducing public expenditures. But the reforms delivered instead deepening poverty and public debt, sparking widespread popular efforts to rebuild public pensions in developing economies from Ecuador to Estonia.²⁴

²¹McCarthy, *Dismantling Solidarity*, pp. 127–157; Ghilarducci and James, *Rescuing Retirement*, p. 15. Roughly 1,400 private and 12,000 public traditional pension plans remained in the US in 2018. Jacoby, *Labor in the Age of Finance*, p. 55.

²²Teresa Ghilarducci and Wei Sun, "How Defined Contribution Plans and 401(k)s Affect Employer Pension Costs", *Journal of Pension Economics and Finance*, 5:2 (2006), pp. 175–196.

²³Ghilarducci and James, *Rescuing Retirement*, pp. 21, 23, 3.

²⁴Oręziak, *Pension Fund Capitalism*, pp. 4–54, 106–108.

Meanwhile, the richer countries of Western Europe and other members of the Organization of Economic Cooperation and Development (OECD) scaled back public pensions, on the one hand, by raising the retirement age at which citizens could collect benefits and lowering the “replacement rate” that set retirees’ income as a percentage of previous earnings. On the other hand, they fostered the development of private plans in place of public provisions, either through regulatory reforms where private pensions were already well-established, as in Britain, Switzerland, and the Netherlands, or by creating what policymakers called new “pillars” of occupational and individual retirement funds where they had previously played little role, as in Germany, France, Italy, Belgium, and Denmark. As a promise of adequate state support for a decent retirement, the pension appeared to be nearing the end of its own career.²⁵

“The Unseen Revolution”

A pension is also a kind of property. In 1973, a Chicago truck driver named John Daniel retired after twenty-two years. Like the workers featured in the NBC documentary, he was disqualified from collecting his pension under a technicality in his contract requiring uninterrupted employment for twenty years: he had been briefly laid off thirteen years earlier. Daniel sued the pension fund for fraud, arguing that the terms of his plan had not been made clear when he took the job. A federal district judge and a circuit court of appeals agreed. They held for the first time that a pension plan was a financial asset or “investment security” that employers purchased for their employees, subject not only to labor law, but to securities law. Workers with pensions held rights as investors.²⁶

The rulings resounded on Wall Street. For over the course of John Daniel’s career, pension funds had come to own as much as a quarter of all the equity in American companies. When he had started working, retirement savings had been invested almost entirely in long-term corporate and government bonds providing fixed returns. Beginning in the 1950s, private pensions in the United States, as in other financial centers including the United Kingdom, Switzerland, and the Netherlands, had pursued greater gains by moving their money heavily into stocks, though public employees’ funds remained more conservative. By the early 1970s, the nation’s pensions comprised the largest pool of private capital in the world and the greatest and fastest growing source of investment for corporate America, controlling a sizable share of the stock in each of the thousand biggest businesses. Employees’ retirement assets were worth more than many of the major companies where they worked. Amid falling profits due to foreign competition and declining returns making it harder to attract individual investors, American corporations were searching desperately for new sources of savings. Pouring tens of billions of dollars into the stock market, pension funds willingly provided a critical lifeline for capital even as they failed to support labor. Over the next two decades, they supplied the seed money for the financial

²⁵Bernhard Ebbinghaus (ed.), *The Varieties of Pension Governance: Pension Privatization in Europe* (Oxford, 2011); Teresa Ghilarducci and Amanda Novello, “The Labor Consequences of Financializing Pensions”, in Skerrett *et al.*, *Contradictions of Pension Capitalism*, pp. 31–53.

²⁶Jeremy Rifkin and Randy Barber, *The North Will Rise Again: Pensions, Politics and Power in the 1980s* (Boston, MA, 1978), pp. 132–134.

reconstruction of the American economy, which came at workers' expense in more ways than one.²⁷

In the unparalleled scale of workers' investment, the management theorist Peter F. Drucker heralded the advent of "pension fund socialism", "an economy in which the 'worker' and the 'capitalist' are one and the same person". As Drucker wrote in *The Unseen Revolution* (1976): "If 'socialism' is defined as 'ownership of the means of production by the workers' – and this is both the orthodox and the only rigorous definition – then the United States is the first truly 'Socialist' country."²⁸ But what kind of property did workers possess in their pensions, or in the companies in which they invested?

Pension holders owned a right to an income from the funds when they retired, but no legal control over the funds themselves. The funds, in turn, owned shares in many corporations, which likewise gave them a right to income from dividends and capital gains, but little active influence over the corporations themselves at the time Drucker wrote. The general separation of ownership from control of big business dated back to the 1920s and 1930s, when shareholding became broadly dispersed among passive investors who took little role in running the companies in which they owned stock, while authority over the companies themselves concentrated in corporate directors and executives. But the splitting of property rights in savings arose when pensions became popular in the 1940s and 1950s, separating workers' rights to retirement income from pension officers' responsibility for investing their funds. While some large pensions managed their money in-house, most outsourced investment decisions to banks and financial services firms, forming a thick stratum of "professional owners" in charge of workers' savings.²⁹ "In these institutions, which have been entrusted with the capital of millions of small savers and investors, control of productive property [i.e. business and industry] tends to coalesce", the legal scholar Paul P. Harbrecht observed in an early study, *Pension Funds and Economic Power* (1959). "Ownership and control [of corporations] are again converging, but with the tremendous difference that these two components of property are now vested in trustees. Effective control of productive wealth is now at one more remove from the individual contributor who has become only a beneficiary without even a vestigial right of control."³⁰

The new relationship between policy holders and pension managers took the form of an old legal institution: the trust. ERISA mandated in 1974 that "all assets of an employee benefit plan shall be held in trust", reaffirming a requirement attached to the tax exemption for pension contributions since 1921.³¹ The trust had served for centuries as a means of pooling the assets of wealthy families and authorizing trustees to invest the funds for them. Asset-managing trust companies had midwived the

²⁷*Ibid.*, pp. 10, 83, 87; Peter F. Drucker, *The Unseen Revolution: How Pension Fund Socialism Came to America* (New York, 1976), p. 2.

²⁸Drucker, *Unseen Revolution*, pp. 34, 1.

²⁹James P. Hawley and Andrew T. Williams, *The Rise of Fiduciary Capitalism: How Institutional Investors Can Make Corporate America More Democratic* (Philadelphia, PA, 2000), pp. 51–52, xii–xiii.

³⁰Harbrecht, *Pension Funds*, p. 24.

³¹John H. Langbein, "The Secret Life of the Trust: The Trust as an Instrument of Commerce," *Yale Law Journal*, 107 (1997/8), pp. 165–189, 169.

corporate reorganization of American business around the turn of the twentieth century, directing the savings of Gilded Age investors into the emerging market for industrial stocks and bonds.³² But the paternalism of the fiduciary relationship between trustee and beneficiary – modeled on the bond between parent and child – had also long made it a versatile vehicle for appropriating wealth from colonized subjects under the guise of administering it on their behalf.³³

Armed with this instrument, the burgeoning business of asset management reshaped not only retirement, but employment. In 1970, the vast majority of corporate stock still belonged to rich individuals investing their own money. By the turn of the twenty-first century, however, pension funds and other “institutional investors”, such as mutual funds, private equity funds, and hedge funds, which likewise drew much of their money from workers’ retirement savings, owned more equity than all individual investors combined.³⁴ The swift rise of 401(k)s and other tax-deferred retirement accounts in the 1980s fueled the mammoth growth of mutual funds, in which individual account holders had even less control over how their savings were invested than the policy holders of traditional pensions. Private equity firms, which specialized in buying out publicly traded companies or their subsidiaries in order to restructure and sell them, derived much if not most of their capital from investments by the pension trustees of state and local government employees in the 1990s and early 2000s. Hedge funds, which previously catered exclusively to adventurous wealthy investors, branched out into investing the long-term savings of public and private pension-holders in high-stakes trading designed to capitalize on short-term upturns and downturns in financial markets.³⁵ “Peter Drucker’s early forecast of ‘pension fund socialism’ has not come to pass”, the management scholar Michael Useem found in 1996, “but something akin to mutual-fund capitalism has achieved much the same level of concentrated firepower [...] If the proverbial 800-pound gorillas exist in the world of capitalist enterprise today, they are roaming the halls of the great money-management firms.”³⁶

Investment firms used their market power as owners of large blocks of stock to reverse the earlier ascendance of autonomous corporate directors and executives over passive shareholders, or what the historian Alfred D. Chandler Jr. called at its

³²Elizabeth Blackmar, “Inheriting Property and Debt: From Family Security to Corporate Accumulation”, in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary Kornblith (Chicago, IL, 2012), pp. 93–117; Larry Neal, “Trust Companies and Financial Innovation, 1897–1914”, *Business History Review*, 45:1 (1971), pp. 35–51; Jeffrey Sklansky, *Sovereign of the Market: The Money Question in Early America* (Chicago, IL, 2017), pp. 215–225.

³³Emilie Connolly, “Fiduciary Colonialism: Annuities and Native Dispossession in the Early United States”, *American Historical Review*, 127:1 (2022), pp. 223–253; Nancy Buenger, “Extraordinary Remedies: The Court of Chancery and Equitable Justice in Chicago” (Ph.D. University of Chicago, 2009), pp. 138–147; Ritu Birla, *Stages of Capital: Law, Culture, and Market Governance in Late Colonial India* (Durham, NC, 2009), pp. 67–102.

³⁴Hawley and Williams, *Fiduciary Capitalism*, p. 64.

³⁵*Ibid.*, pp. 52, 59–64; Jacoby, *Labor in the Age of Finance*, pp. 79, 172–177; Webber, *Working-Class Shareholder*, pp. 84, 154, 161, 219.

³⁶Michael Useem, *Investor Capitalism: How Money Managers Are Changing the Face of Corporate America* (New York, 1996), p. 259.

zenith “managerial capitalism”.³⁷ They funded the conquest of boardrooms and balance sheets by corporate raiders in the 1980s, breaking up the multidivisional manufacturing conglomerates and sprawling smokestack industries that had flourished at midcentury. Stripping and flipping companies, slashing payrolls and paychecks, asset managers imposed rising benchmarks of fast profit and share price, redirecting revenues from research and development into dividends and lavish stock buybacks, which were legalized in 1981. Private equity firms and hedge funds led a massive new wave of corporate consolidation in the 1990s and 2000s, concentrating capital and reorganizing labor in the service industries of shipping and trucking, warehousing and retailing, and hospitality and healthcare, as the labor journalist Kim Moody describes in his stunning survey of the shifting landscape of class struggle, *On New Terrain* (2017).³⁸

Short-term gains for shareholders came at the cost of long-term losses for workers in wages and benefits, including retirement income, accounting for the sharp decline in labor’s share of national income since the 1980s in the United States, and less precipitously in other rich countries.³⁹ Just a tiny trickle of shareholders’ returns went to workers; in 2016, half of US households owned no stock whatsoever, and another thirty per cent held less than \$10,000 in shares, including in their retirement accounts. Yet, workers’ pensions, 401(k)s, and the like played a leading part in remaking Main Street in the image of Wall Street. Indeed, as the labor economist and historian Sanford Jacoby shows in *Labor in the Age of Finance* (2021), pension managers became especially active exponents of “shareholder primacy” at the turn of the twenty-first century, undermining workers’ wages and jobs while claiming for them a piece of the profits.⁴⁰

Even as workers’ political and bargaining power ebbed, the power of their pension capital spanned the globe, promoting and profiting from the increasing integration of financial markets in every kind of enterprise, industry, and property. By the end of 2020, US retirement funds owned \$20 trillion in assets worldwide, representing nearly two thirds of the \$34 trillion in workers’ savings administered by pension plans across the countries of the OECD, and nearly equaling the value of the nation’s total annual output. Pension funds in a handful of other OECD members owned even more than their American peers relative to the size of their economies: the Netherlands easily topped the list with pension assets worth more than twice its Gross Domestic Product, followed by Iceland, Switzerland, Australia, and the United Kingdom, their workers’ accumulated savings exceeding 100 per cent of GDP. But the enduring comparative strength of legal protections for employee rights in continental Europe

³⁷ Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, MA, 1977). Earlier classic studies include Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York, 1933); and John Kenneth Galbraith, *The New Industrial State* (New York, 1967).

³⁸ Kim Moody, *On New Terrain: How Capital Is Reshaping the Battleground of Class War* (Chicago, IL, 2017). See also Rana Farooq, *Makers and Takers: The Rise of Finance and the Fall of American Business* (New York, 2016).

³⁹ Alice Martin and Annie Quick, *Unions Renewed: Building Power in an Age of Finance* (Cambridge, 2020), pp. 19–20.

⁴⁰ Jacoby, *Labor in the Age of Finance*, pp. 6, 2.

lessened the severity of the trade-off between shareholder returns and workers' wages there. And in countries that still relied primarily on public pensions and hosted less developed financial markets, such as Germany, France, and Italy – where businesses traditionally relied on loans from closely affiliated “house banks” rather than on public investment – private pension assets remained relatively modest.⁴¹

In pursuing income from assets at the expense of earnings from labor, managers of American workers' savings recognized a sobering reality only partly of their making: “A job no longer provides a livelihood for the working class”, as the labor advocate Tamara Draut writes in *Sleeping Giant* (2018), one of several recent studies of the new labor movement.⁴² So too, the growing number of employers with more retirees than employees reflected a broader divergence between profits and productive labor in the advanced industrial world. Rising high-profit industries such as finance and real estate thrived on the appreciation of assets rather than the production of goods and services. Aging capital-intensive manufacturers introduced new technology and methods of “lean production” that enabled them to increase domestic output even as they eliminated millions of American jobs. Meanwhile, expanding labor-intensive industries such as health services, hotels, restaurants, retail sales, and child care, with limited room to heighten productivity, depended instead on reducing labor costs with low wages and part-time work. A weakened labor movement struggled to organize the service sector, where most people worked, while searching for new ways of “bargaining with finance”, where most of the profits pooled. As the English labor analyst Alice Martin and union organizer Annie Quick write of parallel developments across the Atlantic in *Unions Renewed* (2020), finance fed more on workers' growing consumer debts and dwindling retirement savings than on what they did or made for a living.⁴³ Even as unions battled to make work pay, wealth appeared increasingly detached from work. Born of the problem of surplus labor a century earlier, the pension system encapsulated the new crisis.

“Returns Only”

Carol Sanders began working as a cook in the New Orleans public schools in 1982, buying a home, raising three children, and earning \$15 an hour nearly thirty years later. Part of each paycheck went to her pension fund, the Teachers' Retirement System of Louisiana. The fund funneled Sanders's and other workers' small savings into big investments, including a \$100 million stake in one of several private equity firms that purchased Aramark Corporation, a global food services and facilities management company, in 2007. Three years later, her school district outsourced its cafeteria services to Aramark. The company cut Sanders's work hours in half, lowered her

⁴¹Howard Gospel, Andrew Pendleton, and Sigurt Vitols (eds), *Financialization, New Investment Funds, and Labour: An International Comparison* (Oxford, 2014); Oręziak, *Pension Fund Capitalism*, pp. 78–79.

⁴²Tamara Draut, *Sleeping Giant: The Untapped Economic and Political Power of America's New Working Class*, rev. ed. (New York, [2016] 2018), p. 5. See also Jane McAlevey, *A Collective Bargain: Unions, Organizing, and the Fight for Democracy* (New York, 2020); Timothy J. Minchin, *Labor Under Fire: A History of the AFL-CIO since 1979* (Chapel Hill, NC, 2017); Moody, *On New Terrain*; Martin and Quick, *Unions Renewed*.

⁴³Martin and Quick, *Unions Renewed*, pp. 31–33, 74–95.

pay to \$9 an hour, and wound up firing her. “We take a kind of hands-off approach, which is from a fiduciary responsibility”, the chief investment officer of the Teachers’ Retirement System explained. “We manage it for return and for our own constituents. We don’t get into, ‘Does that mean it lays off public workers?’ Our responsibility is to the trust.”⁴⁴

At the core of the pension fund complex was a question of trust. If the funds ultimately belonged to their working-class beneficiaries, how could workers ensure that they were invested in their interests, not only as future retirees, but as current employees? The answer lay partly in employees’ ability to exert collective control over their pensions, and partly in fund managers’ fiduciary duty or “responsibility to the trust”. Both issues became battle lines in a new kind of labor struggle.

Since the 1920s, unions had sought to invest members’ savings in worker-owned businesses such as banks, insurance companies, hospitals, and retirement homes. In the vanguard of labor’s ventures in finance were Progressive Era garment workers’ unions, railroad brotherhoods, and building trades, which found a foothold in consumer and investor activism before the New Deal gave unions broad new organizing and bargaining power.⁴⁵ As workers’ savings came to be widely organized in pension plans in the 1940s, big industrial unions pushed for the power to manage the retirement assets of the workers they represented along with their employers. But conservatives in Congress, fearing that such funds would become “war chests” for organized labor, imposed strict limits on calls for “joint control”. The anti-union Taft-Hartley Labor Management Relations Act of 1947 prohibited employers from contributing to any jointly administered pension funds unless management appointed at least fifty per cent of the board of trustees.⁴⁶

In practice, this meant that the big businesses that dominated heavy industries like auto, steel, rubber, and coal generally managed their company pensions with minimal input from the industrial unions that bargained for such benefits. But in more competitive industries where several smaller companies shared a pension plan instead of each operating its own, unions had more leverage. A single union representing all the workers participating in such a “multi-employer plan” could take advantage of divisions among the employers to exert considerable control over the pension fund. The unions exercising such power over their pensions were concentrated in the same industries – including textiles, transportation, retail, and construction – that had served as springboards for workers’ collective investments earlier in the century.⁴⁷ Public employee pension plans also commonly allowed workers to elect some of

⁴⁴Martin Z. Braun and William Selway, “Pension Fund Gains Mean Worker Pain as Aramark Cuts Pay”, *Bloomberg.com*, 19 November 2012. Available at: <https://www.bloomberg.com/news/articles/2012-11-20/pension-fund-gains-mean-worker-pain-as-aramark-cuts-pay>; last accessed 5 January 2023. Sanders’s story appears in Webber, *Working-Class Shareholder*, pp. 181–182.

⁴⁵See, for example, Dana Frank, *Purchasing Power: Consumer Organizing, Gender, and the Seattle Labor Movement, 1919–1929* (Cambridge, 1994), ch. 4, “Labor Capitalism”.

⁴⁶Labor-Management Relations Act, 1947, Sec. 302. Available at: <https://www.govinfo.gov/content/pkg/COMPS-8190/uslm/COMPS-8190.xml>; last accessed 5 January 2023. The same section of Taft-Hartley prohibited private employers from the mandatory collection of union dues as a condition of employment, a form of funding closely connected to the “union shop”.

⁴⁷Rifkin and Barber, *North Will Rise*, pp. 88, 98–102; McCarthy, *Dismantling Solidarity*, pp. 97–99; Jacoby, *Labor in the Age of Finance*, pp. 21–22.

their trustees and to influence the selection of others, who were appointed by elected officials in local and state governments. Together, union-run multi-employer pensions and public pensions formed the main sources of “labor’s capital” in the age of finance.⁴⁸

Workers’ efforts to organize as shareholders were inspired by civil rights and student activists bringing their own struggles into corporate boardrooms. The community organizer Saul Alinsky championed “Proxies for the People” in 1967, using the shareholder rights of liberal churches and foundations to press Eastman Kodak to hire more Black workers.⁴⁹ Ralph Nader launched a shareholders’ campaign for safer, less polluting cars at General Motors three years later. Churches formed the Interfaith Center for Corporate Responsibility (ICCR) in 1971, urging companies in which they owned stock to take their business out of apartheid South Africa. In a 1978 manifesto for a new workers’ movement, the economic theorists Jeremy Rifkin and Randy Barber decried the investment of pension funds in companies that evacuated jobs and tax revenues from the Northeast and Midwest, urging workers to seize control of their own savings. “This, then, is the struggle that is about to unfold”, Rifkin and Barber declared in *The North Will Rise Again*. “For the victors in this contest,” they concluded, “the reward will amount to control over much of the future economic life of the nation”.⁵⁰

Such calls drew strength from comparable currents abroad. “These savings belong to the workers, they are their own deferred earnings”, the British cabinet minister Tony Benn wrote in 1979. “Workers want them not only as income when they retire, but while they are at work, and so to guarantee that they will retire in a buoyant economy.” An inspiring model came from Sweden, where trade unionists in the mid-1970s rallied behind a proposal by the labor economist Rudolf Meidner requiring big businesses to distribute large shares of their stocks and profits to publicly controlled investment funds representing wage earners in each region, though the plan fell victim to staunch opposition from business leaders after it was launched.⁵¹ But the North American labor movement embraced pension-fund activism more zealously than most of its European counterparts, partly due to the peculiar strength of “shareholder rights” and the related weakness in the US and Canada of the “stakeholder” or “codetermination” approach under which workers in Germany and elsewhere on the continent exercised other legally mandated forms of representation in corporate decision-making.⁵² The movement scored a pathbreaking victory in Quebec in the early 1980s, buoyed by an alliance between the trade union federation and the social-democratic Parti Québécois, which established a powerful state-subsidized, worker-run retirement fund dedicated to investing in local development and union jobs.⁵³

⁴⁸The phrase comes from Teresa Ghilarducci, *Labor’s Capital: The Economics and Politics of Private Pensions* (Cambridge, MA, 1992).

⁴⁹Saul D. Alinsky, *Rules for Radicals: A Pragmatic Primer for Realistic Radicals* (New York, 1972), “The Genesis of Tactic Proxy”, pp. 165–183.

⁵⁰Rifkin and Barber, *North Will Rise*, pp. 90, 84.

⁵¹Blackburn, *Banking on Death*, pp. 13–14.

⁵²Thomas Croft and Annie Malhotra, *The Responsible Investor Handbook: Mobilizing Workers’ Capital for a Sustainable World* (Sheffield, 2016), pp. 49–50.

⁵³McCarthy, *Dismantling Solidarity*, pp. 121–122.

In the United States, initial efforts in labor's financial turn took the form of "corporate campaigns" with which unions put pressure on companies where they were organizing. An early example came in the 1970s, when the Amalgamated Clothing and Textile Workers Union (ACTWU) sought to organize a fiercely antiunion southern textile company, J.P. Stevens. The union hired a young Alinsky-inspired organizer named Ray Rodgers, who rallied support from the company's stockholders and creditors, including public pension plans and churches in the ICCR; Stevens agreed to union recognition at seven plants in 1980. In another key campaign, the Service Employees International Union (SEIU) and the United Food and Commercial Workers (UFCW) targeted Beverly Enterprises, a giant nationwide chain of nursing homes, partly by sponsoring shareholder resolutions questioning the company's patient care; Beverly agreed not to oppose unionization in 1984, and though the agreement did not last, it encouraged other unions to try similar strategies. The following year, SEIU launched its "Justice for Janitors" campaign, aiming to organize workers in thirteen big cities across the country. Public employee pensions were heavily invested in the Real Estate Investment Trusts (REITs) that owned the buildings where the janitors worked. When the largest public pension, the California Public Employees Retirement System (CalPERS), adopted a "Responsible Contractor Policy" requiring cleaning contractors to provide fair wages and benefits, other state and local plans followed suit, and multi-employer pension plans run by the SEIU filed shareholder resolutions in support. The campaign proved a major success, helping to make the SEIU's Capital Stewardship Program "the gold standard for working-class shareholder activism".⁵⁴

Examples of close coordination between pensions and unions remained rare, however. Pension officers could not act directly on behalf of union efforts without potentially violating their fiduciary duty to policy holders, as we will see. More common was a different kind of financial activism by labor's allies, upholding shareholders' rights rather than workers' rights, albeit with the goal of making corporate executives more accountable to the trustees of workers' wealth. In *The Rise of the Working-Class Shareholder* (2018), the legal scholar David Webber makes a strong case for the progressive potential of shareholder activism, which Webber calls "labor's last best weapon". But Jacoby's and McCarthy's studies underline how often that weapon has backfired.

After joining avidly in the stock market faith of the 1990s, pension managers emerged as more cautious critics of Wall Street amid the successive crashes of the high tech, energy, and housing bubbles in the 2000s. They allied with labor leaders associated with a major schism in the ranks of the AFL-CIO in the first decade of the new century, the breakaway "Change to Win" coalition, which joined older organizations of truck drivers, garment workers, electrical workers, plumbers, and carpenters with rising unions of janitors, cashiers, hospitality workers, and healthcare workers, united by occupations that could not be readily automated or exported (unlike jobs in manufacturing), and by a commitment to taking their struggle from the shop floor to the trading floor with new forms of financial action. They rallied

⁵⁴Webber, *Working-Class Shareholder*, p. 102; Jacoby, *Labor in the Age of Finance*, pp. 31, 34–35, 66–67.

behind three sets of reforms: reining in CEO pay, democratizing corporate governance, and making private equity and hedge funds more transparent.⁵⁵

“Say on pay”, granting shareholders the right to reject top executives’ compensation, became a rallying cry for labor amid astronomical CEO salaries, and it was ultimately included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. But as Jacoby notes, shareholders seldom vetoed pay packages, and CEO salaries paled in comparison to the massive stock buybacks and dividends distributed to shareholders, diverting earnings that could otherwise have been invested in jobs, wages, and benefits. “Proxy access” likewise galvanized union and public pensions, allowing pension funds and other institutional investors to nominate candidates for corporate boards of directors and have their names appear on the ballots, along with rules requiring candidates to receive a majority of shareholder votes in order to be elected. Yet, despite hard-won victories at many big companies, it is not clear how these reforms really benefited workers with pensions, let alone the growing majority of workers without them. More meaningful for labor were watch lists created by the American Federation of Teachers (AFT) and the hotel, restaurant, clothing, and textile workers’ union UNITE-HERE, encouraging pension managers to steer clear of private equity and hedge funds that bilked long-term shareholders, privatized public services, or preyed on workers’ jobs, wages, and benefits. Alternatively, SEIU pursued “framework agreements” with leading private equity funds like Carlyle and Kolberg Kravis Roberts (KKR), leveraging the funds’ increasing control of nursing homes, hospitals, office buildings, and other industries to win labor standards and union members.⁵⁶

Retirement fund managers’ consideration for those employed by the companies in which they hold shares has long been constrained by their fiduciary duty to pension participants, particularly because the two groups of workers are usually distinct. Pensions are normally barred from investing in firms where their own members work – though not in companies that might replace them, like Aramark. Workers’ savings are rather invested in employing and exploiting *other* workers, creating a perverse conflict of interests between pension holders’ returns and workers’ rights. The guidelines governing fiduciary duty, however, generally dictate not what investments trustees can make, but how they can decide. In the United States, ERISA sets the rules regulating private pensions, and because courts consider them best practices, public pensions are broadly bound by the same standards. Parallel legal principles govern pension fund administrators in other common-law countries including Australia, Canada, and the United Kingdom.⁵⁷

There are three basic duties under ERISA, taken from trust law. First, the duty of “loyalty”: pension managers must administer their funds “solely in the interests of the participants and beneficiaries” and “for the exclusive purpose of providing benefits” to them. This is commonly taken to mean that officers must strictly serve those whose money they manage, not other workers or stakeholders, and that they must focus on

⁵⁵On Change to Win, see Minchin, *Labor Under Fire*, pp. 274–279.

⁵⁶Jacoby, *Labor in the Age of Finance*, pp. 105–166; Webber, *Working-Class Shareholder*, pp. 45–163.

⁵⁷Simon Archer, “Fiduciary Law, ESG, and Financialization,” in Skerrett *et al.*, *Contradictions of Pension Capitalism*, pp. 155–177.

providing benefits by balancing between maximizing the returns and minimizing the risks of their investments. Second, the duty of “prudence”: fiduciaries must make their decisions “with the care, skill, prudence, and diligence [...] that a prudent person in a like capacity” would exercise. This is conventionally interpreted as requiring fund managers to follow the prevailing practices and professional norms of the financial industry, not the predilections of pension-holding employees or labor leaders. Third, the duty of “diversification”: pensions must maintain a broad and balanced mix of stocks and other securities in their portfolios, “diversifying the investments of the plan so as to minimize the risk of large losses”. Unlike the first two duties, which date to the nineteenth century, this is a distinctly twentieth-century standard, arising from the advent of “modern portfolio theory” in the 1950s, when pensions shifted from limiting their assets to stable, secure, fixed-income bonds to investing in the stock market. In theory, diversification allowed – indeed obligated – fund managers to pursue greater gains through riskier investments without incurring greater risks for their overall portfolios, by balancing the risk of each asset class, sector, or security against the others they owned. For this reason, prevailing wisdom prohibited pension trusts from discriminating either for or against particular investments based on any concerns, such as labor standards or union jobs, other than their risks and returns in relation to the rest of their portfolios. As the legal scholars John H. Langbein and Richard A. Posner concluded in 1980, “[t]he duty of prudent investing therefore reinforces the duty of loyalty in forbidding the trustee to invest for any object other than the highest return consistent with the preferred level of portfolio risk”.⁵⁸

The orthodox view of fiduciary duty elevated the single-minded pursuit of profit into a paramount legal and ethical imperative. It turned pecuniary self-interest into selfless loyalty and service. It equated workers’ interests with capital accumulation, and capital accumulation with capital gains. Even if pension holders themselves saw their interests in keeping their jobs, investing in their communities, or allying with other workers, the funds that managed their retirement savings could not.

Yet, trust was contested terrain. An alternative understanding of fiduciary duty emerged alongside the “returns only” view. In the 1970s, pension populists Rifkin and Barber wrote that shareholder activists within the civil rights, antiwar, environmental, and feminist movements “have succeeded in introducing a new lexicon, which has broadened the definition of investment to include social and moral considerations in economic decision-making”, breaking “the long-standing ideological stranglehold that the financial community had exerted over the economic language of the nation”.⁵⁹ By the 2000s, “responsible investment” had become a powerful ideological current and eclectic social movement in its own right, enlisting the allegiance

⁵⁸John H. Langbein and Richard A. Posner, “Social Investing and the Law of Trusts”, *Michigan Law Review*, 79:1 (1980), pp. 72–112, 98. For an influential related argument regarding corporate directors’ obligation to shareholders, see Milton Friedman, “The Social Responsibility of Business Is to Increase Its Profits”, *New York Times Magazine*, 13 September 1970, pp. 379, 425–427. For a strident recent defense of such injunctions, arguing that “mixing ancillary social causes with the pursuit of profit is a bad investment in every sense”, see Vivek Ramaswamy, *Woke, Inc.: Inside Corporate America’s Social Justice Scam* (New York, 2021), p. 123.

⁵⁹Rifkin and Barber, *North Will Rise*, p. 161.

of labor organizations including the Global Trade Unions and the AFL–CIO. As the labor advocates Thomas Croft and Annie Malhotra write in *The Responsible Investor Handbook* (2016), the movement embraced a capacious view of workers’ interests as current employees as well as future retirees, emphasizing the obligation of stewards of “workers’ capital” to pursue long-term, sustainable investment in the productive economy rather than short-term financial gains.⁶⁰

This “worker-centric” perspective has gained strength from legal scholars like Webber and from business scholars and investment consultants like John Lukomnik and James P. Hawley, who trace a seismic shift in the landscape of investment over the past two decades, necessitating a reconception of fiduciary duty. In *Moving Beyond Modern Portfolio Theory* (2021), Lukomnik and Hawley argue that as fiduciary institutions have come to dominate investment, the dominant beneficiaries (including workers with pensions) have become “universal owners”: their long-term savings, passively invested in diverse portfolios, identify their interests not with any single industry or sector, but with the prosperity and sustainability of the entire economy. At the same time, an escalating series of global financial as well as environmental crises signify that the fortunes of trust beneficiaries are shaped increasingly by systemic risks that diversification cannot remedy. These transformations of ownership undermine the distinction between shareholders and other stakeholders on which conventional notions of the duty of loyalty are based. And they highlight the dangers of the herd behavior that a narrow conception of prudence fosters, as what asset managers all deem sound investments spell disaster for the financial system as a whole.⁶¹

Ideals of socially responsible investment have been sanctioned in recent years by the United Kingdom Law Commission and the US Department of Labor, and they have found growing favor in the financial services industry itself. Wall Street asset managers such as Larry Fink, CEO of BlackRock, have made “Environmental, Social, and Governance” (ESG) investment a major – and increasingly controversial – market in itself, much as corporate leaders at the turn of the twentieth century capitalized on the Progressive ideals of wealthy investors, whose diverse financial assets interested them in the health and welfare of the whole society.⁶² But the continuing centrality of workers’ savings to institutional investment represents a competing claim to universal ownership, emerging from a newly transformed working class.

⁶⁰Croft and Malhotra, *Responsible Investor Handbook*, p. 8.

⁶¹John Lukomnik and James P. Hawley, *Moving Beyond Modern Portfolio Theory: Investing That Matters* (London, 2021). See also James Hawley, Keith Johnson, and Ed Waitzer, “Reclaiming Fiduciary Duty Balance”, *Rotman International Journal of Pension Management*, 4:2 (2011), pp. 4–17; Hawley and Williams, *Fiduciary Capitalism*.

⁶²See Fink’s open letter to CEOs in 2020, “A Fundamental Reshaping of Finance”. Available at: <https://www.blackrock.com/us/individual/larry-fink-ceo-letter>; last accessed 5 January 2023. See also Al Gore and David Blood, “Capitalism After the Coronavirus”, *Wall Street Journal*, 29 June 2020. Available at: <https://www.wsj.com/articles/capitalism-after-the-coronavirus-11593470102>; last accessed 5 January 2023. On the “corporate liberal” outlook of diversified investors in the Progressive Era, see Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890–1916: The Market, the Law, and Politics* (Cambridge, 1988), pp. 1–40; R. Jeffrey Lustig, *Corporate Liberalism: The Origins of Modern American Political Theory, 1890–1920* (Berkeley, CA, 1986); James Weinstein, *The Corporate Ideal in the Liberal State* (New York, 1971).

“The Hand of the World”

The question of trust is also a question of care. In 1912, Helen Keller wrote an essay about care labor. “As I write this, I am sitting in a pleasant house, in a sunny, wide-windowed study filled with plants and flowers”, she begins. “Here I sit, warmly clad, secure against want, sure that what my welfare requires the world will give. Through these generous surroundings I feel the touch of a hand, invisible but potent, all-sustaining – the hand that wove my garments, the hand that stretched the roof over my head, the hand which printed the pages that I read.” The touch might recall, for readers of Keller’s earlier life story, her miraculous first meeting with her childhood teacher, who taught the blind and deaf girl her first word by tracing “water” into one hand while holding the other under a spout from a well. Imagining the wondrous workforce that places in her hands the many words she now reads, Keller reaches out for the hidden hand that “spins and weaves, ploughs and reaps, converts clay into walls, and roofs our habitations”, “that ministers to my joy and comfort, that toils for the daily bread of all”. Yet, she contrasts what she calls “the hand of the world” to another invisible hand, one that leaves coal miners in the cold, housekeepers homeless, and garment workers ill-clad. “In yonder town the textile mills are idle, and the people want shoes. Fifty miles away, in another town, the shoe factories are silent, and the people want clothes”, she writes. “Between these two arrested forces of production is that record of profits and losses called the *Market*. The buyers of clothes and shoes in the market are the workers themselves; but they cannot buy what their hands have made.”⁶³

In identifying the labor of garment makers and shoemakers with the broader work of social provisioning and caregiving, Keller evokes the spirit of the “Bread and Roses” strike of more than ten thousand textile workers, mostly immigrant women, in Lawrence, Massachusetts, earlier that same year, with its calls for clean water, cooperative housing, and communal child care along with better wages and working conditions.⁶⁴ And in emphasizing the fundamental enterprises of feeding, clothing, sheltering, and caring for others, she calls attention to the core constituencies linking such supportive labor to working-class finance then and since, organizing workers as consumers, savers, and investors as well as producers: needle trades and building trades; housekeepers and janitors; teachers and nurses; teamsters and farm workers. These are not the assembly-line manufacturing operatives that formed the main subjects of industrial unionism and federal labor law from the 1930s to the 1970s. They are rather the locally based logistics and service workers that led the worker-run banks, businesses, and boycotts of the early twentieth century and the corporate campaigns and pension fund activism of the late twentieth and twenty-first.

⁶³Helen Keller, “The Hand of the World”, *American Magazine* (December 1912), reprinted in Keller, *Out of the Dark: Essays, Lectures, and Addresses on Physical and Social Vision* (Garden City, NY, 1913), pp. 3–17, quoted passages at 3, 4, 15; *Idem, The Story of My Life, With Her Letters (1887–1901) and A Supplementary Account of Her Education, Including Passages From the Reports and Letters of Her Teacher, Anne Mansfield Sullivan* by John Albert Macy (Garden City, NY, 1905), ch. 4.

⁶⁴See Ardis Cameron, *Radicals of the Worst Sort: Laboring Women in Lawrence, Massachusetts, 1880–1912* (Urbana, IL, 1993).

Retirement takes work. It requires not just savings from past labor, but current care. It needs the hand of the whole working world.⁶⁵ The need for workers to care for an aging population has soared while the demand for labor in manufacturing has plummeted since the 1970s, as the baby boom has given way to an “elder boom”. Yet, as the labor organizer Ai-jen Poo describes in her urgent polemic, *The Age of Dignity* (2015), most Americans cannot afford the exorbitant costs of the care they require in their 70s, 80s, and 90s, as they join the fastest growing segment of the population.⁶⁶ In important part, the yawning gap between their need for care and their ability to pay for it reflects the failure of the retirement system in its most basic task. All but the wealthiest struggle unsuccessfully to save enough to support them when they no longer receive a paycheck, and retirement experts project that the United States “will soon be facing rates of elder poverty unseen since the Great Depression”.⁶⁷

The precarity and poverty of old age, however, stem from a broader crisis of care in recent decades.⁶⁸ The costs of child care and elder care have skyrocketed as more households have supported both children and aging parents, while fewer have had a working-age family member staying home to care for them. Those entering the labor market have found jobs largely in the booming care industries of education, hospitality, and health services, which together match the share of the workforce employed by manufacturing in its heyday.⁶⁹

As the historian Gabriel Winant vividly reveals in *The Next Shift* (2021), the healthcare industry flourished in the shadow of the factory across the midwestern heartland of manufacturing. Like pension plans, health insurance policies became principal fringe benefits of good jobs. And much as retirement began to eclipse employment in the 1970s, so hospitals replaced steel mills as the biggest employers in the nation’s Rust Belt. But as financial reorganization pushed hospitals to focus on intensive treatment and expensive technology, the mounting burden of routine, long-term care was farmed out to nursing homes and legions of home care workers, mainly Black and immigrant women earning \$9 or \$10 an hour with few benefits and minimal legal rights. Expressly excluded from the protections of federal labor law under the Taft-Hartley Act of 1947, hospital workers gained limited rights to organize, bargain, and strike in 1974, while many home caregivers waited another forty years for recognition as workers entitled to minimum wages and overtime pay.⁷⁰

⁶⁵Nor can past monetary savings provide for current physical needs on a societal scale, as the economist John Maynard Keynes recognized during the Depression. “We cannot, as a community, provide for future consumption by financial expedients but only by current physical output.” Keynes, *The General Theory of Employment, Interest, and Money* (Hawthorne, CA, 2008, c1936), p. 104; cited in Doug Henwood, *Wall Street: How It Works and for Whom* (London, 1997), p. 306.

⁶⁶Ai-jen Poo, *The Age of Dignity: Preparing for the Elder Boom in a Changing America* (New York, 2015). See also Atul Gawande, *Being Mortal: Medicine and What Matters in the End* (New York, 2014).

⁶⁷Ghilarducci and James, *Rescuing Retirement*, p. 4.

⁶⁸See Nancy Fraser, “Contradictions of Capital and Care”, *New Left Review*, 100:99 (2016), pp. 99–117; Evelyn Nakano Glenn, *Forced to Care: Coercion and Caregiving in America* (Cambridge, MA, 2010), pp. 1–2.

⁶⁹Draut, *Sleeping Giant*, pp. 21–22.

⁷⁰Congress extended the National Labor Relations Act of 1935 to cover hospitals in 1974, but strictly regulated bargaining units, bargaining rights, and strike activity. Winant, *Next Shift*, pp. 14–15, 157. That same year, Congress extended the Fair Labor Standards Act of 1938 to cover “domestic service”

Like the rules of fiduciary duty, legal discourse on care labor invoked traditional norms of familial obligation in the service of novel forms of financial exploitation. Long conceived as a labor of love much like the administration of a trust, home care was set apart from the welfare-state apparatus of collective bargaining and social insurance for wage workers, as the historians Eileen Boris and Jennifer Klein write in *Caring for America* (2012). And like the web of pension trustees and fund managers that shrouded relations between employers and employees in the age of institutional investment, a tangled chain of intermediaries stretched from the family members, insurance companies, and government agencies that paid patients' bills to the health-care chains and subcontractors that paid workers' wages.⁷¹

Propelled by surging demand for elder care, care workers moved from the margins to the center of the labor movement, from the mobilization of hospital orderlies and support staff in the 1960s and 1970s to the organization of nursing home chains like Beverly Enterprises in the 1980s and 1990s and to the rise of home care workers' coalitions in the 2000s and 2010s.⁷² "Let's remember: *people getting older is not a crisis; it's a blessing*", writes Poo, who co-founded Domestic Workers United in New York City in 2000 and the National Domestic Workers Alliance seven years later, organizing elder caregivers along with housekeepers and nannies as part of a "powerful inter-generational alignment" she calls "the Caring Majority".⁷³ By building ties with senior groups, disability activists, and community organizations, "care workers unionism" sought to bridge the market divide pitting patients' interest in affordable care against providers' interest in fair pay, much like the corrosive conflict between pension returns and workers' rights.⁷⁴

workers employed by households, but exempted those providing "companionship services" from its minimum-wage and overtime protections. As of January 2015, the US Department of Labor narrowed the companionship exemption so that millions of home caregivers became entitled to minimum wages and overtime pay. Draut, *Sleeping Giant*, pp. 36–37; Poo, *Age of Dignity*, p. 89; Kirsten Swinth, "The Homemaker as Worker: Second Wave American Feminist Campaigns to Value Housework", in John C. Seitz and Christine Firer Hinze (eds), *Working Alternatives: American and Catholic Experiments in Work and Economy* (New York, 2020), pp. 121–147; US Department of Labor, "Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule" (September 2013). Available at: <https://www.dol.gov/agencies/whd/fact-sheets/flsa-domestic-service>; last accessed 5 January 2023.

⁷¹Eileen Boris and Jennifer Klein, *Caring for America: Home Health Workers in the Shadow of the Welfare State* (New York, 2012), pp. 7–10.

⁷²The care workers' coalitions of the twenty-first century built on the legacy of the homemakers' campaigns of the 1960s and 1970s, rooted in the women's movement. In advocating for the rights of married women flowing from their unpaid household labor along with the rights of paid care workers, these campaigns notably called for uncoupling Social Security benefits from prior earnings and providing "homemaker benefits" in retirement. "Homemaker as Worker", pp. 137–139. On these boundary-breaking efforts, see also Premilla Nadasen, *Household Workers Unite: The Untold Story of African American Women Who Built a Movement* (Boston, MA, 2015).

⁷³Poo, *Age of Dignity*, pp. 3, 114–116 (italics in original); Draut, *Sleeping Giant*, pp. 35–39, 194. Health workers also became active in challenging the management of their savings by financial officers more beholden to the banks than to the beneficiaries of retirement plans. See Jennifer Williams-Alvarez, "UnitedHealth CFO Added to Lawsuit Over 401(k) Offerings", *Wall Street Journal*, 24 August 2022. Available at: <https://www.wsj.com/articles/unitedhealth-cfo-added-to-lawsuit-over-401-k-offerings-11661378881?st=9rvxvpwtfvd53pm&reflink=article>; last accessed 5 January 2023.

⁷⁴Boris and Klein, *Caring for America*, pp. 16–17.

Scholars have yet to bring together the dual history of financial trust and care labor, joined in a single struggle over retirement. “The historical process that created the healthcare industry has brought about the dynamic of generational conflict and, at the same time, created a force that might transcend it by renewing class politics in the United States – on the basis of security and care for all”, Winant writes.⁷⁵ Something similar might be said of the pension system. It was founded on a false promise of care in exchange for trust: employees’ trust in their employers to steward their savings while they worked, and employers’ care for their employees once they retired. Yet, retirees’ benefits ultimately derived not from their former employers, but from the labor of all those who wove their garments, printed the pages they read, and ministered to their joy and comfort. A better basis of trust might be found in that shared work.

⁷⁵Winant, *Next Shift*, p. 23.