



Trade Unionism vs. Neoliberalism

DIFFERENT PATHS TO IMPACT
INVESTING IN THE U.S.

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Trade Unionism

Pension funds: private and public

Defined contribution (DC) and defined benefit (DB)

Union vs. Non-union

Non-union: DC

Union: DB

Pre-1947 no restrictions (UMWA), post-1947 Taft-Hartley

Collectively bargained pension funds must have = representatives of management and unions

Characteristics, impact investing



Impact investing: negative and positive

- ESG (ECONOMIC, SOCIAL AND GOVERNANCE); SRI (SOCIALLY RESPONSIBLE INVESTING)

ERISA

Fiduciary duty standard (from the law of trusts), Exclusive benefit rule

Different interpretations by the Department of Labor

2008- if equal return to beneficiaries, then social impact can be considered, but investor must document proof

2015- socially responsible investments can add value long-term; if equal, no problem with socially responsible investment

2020- back to 2008; ok if equal but this would be a rare case

2021- reverses 2020 rule, allows investing based on environmental, social and governance issues




ERISA

New proposed rule would allow investors to specifically consider:

A corporation's exposure to real and potential economic effects of climate change

Board composition, executive compensation, and transparency and accountability in corporate decision-making

Workforce practices, including the corporation's progress on diversity, inclusion, and other drivers of employee hiring, promotion, and retention



Public pension funds

Not bound by ERISA

But generally follow ERISA standards and state trust law

However:

In California- investments may be for the “public good”; Calpers investments in green companies

In Ohio investments in minority or female owned firms are ok

Moderate union influence

Danger of misuse, but what is worst case scenario?

Hiring Halls

Section 8(f) of NLRA

Apprenticeship programs

Short-term, project oriented
collective bargaining agreements

High wage jobs, secure

Social benefits



Relative merits of a trade union centered approach

GOOD

Workers' organizations – trade unions – largely control investment priorities

So a bottom up rather than top down approach

Social value of unions (community=less recidivism, homelessness)

BAD AND UGLY

“Negative” social investments don't make a huge impact

Accessibility of union apprenticeship programs (esp. for disadvantaged groups)

Risk to employee pensions/corruption

Union priorities may not always align with needs of the poor

Neoliberalism

Social Impact Bonds (SIB) / Pay for success contracts

Problem: Government lacks money for social services, yet if these services are not provided, government loses more money because of higher social costs (increased incarceration, temporary housing for the homeless, etc.)

Solution: Capitalism/Private investment. Potential win-win if investors provide capital to cure social problems, and make money while doing so. Risk of investment lies with investor, not government.

Social Impact Bonds

Form/Model:

Private investor  social welfare programs  managed by intermediary organization

If benchmarks are met, investor gets return/profit.

Theoretically, profit financed by government savings (i.e., cost savings of not housing prisoners)

If not, investor loses all or part of investment.

Probably not actually a “bond”, but instead a contract. In U.S. “pay for success contract” is often used to describe SIBs.

Actors in U.S. SIBs

1)Underserved population

2)government entity

3)investors

4)social service providers (NGOs)

5) intermediary organization (structures the deal, brings parties together)

6)program evaluator

In U.S., program evaluation may be split in two parts: a)independent review of benchmarks and b)ongoing evaluation and monitoring

Structure of SIB in U.S.

LIFESPAN

- 1) Feasibility study
- 2) Realistic timeframe
- 3) Evidence NGO can achieve outcomes
- 4) Favorable political conditions
- 5) Structure the deal
- 6) Implement
- 7) Benchmarks met or not

FORM OF CONTRACT

- 1) Term of contract
- 2) Performance indicators
- 3) Endgame/outcome payments
- 4) Oversight/reporting (presence of investor?)
- 5) Representations
- 6) Termination rights/remedies

Investment Framework

Untested, innovative

Existing social welfare program- mixed results

Existing social welfare program – good results

Risk/reward



Which would you choose as an investor? Problems?

Risk management mechanisms: Disbursement of investment in installments/early termination;
Government/Foundation guarantee for part of investment

Legal Framework

Federal law: Social Impact Partnerships to Pay for Results Act (February, 2018) Almost \$100 million disbursed as grants

State/local law: Arkansas: Pay for Success Act, Ark. Code Ann. § 12-27-204 (2015). California: Social Innovation Financing Program, Cal. Gov't Code § 97008-97015 (2015). Colorado: Pay for Success Contracts, Colo. Rev. Stat. Ann. § 24-37-403 (2015). Idaho: Pay for Success Contracts – Education, Idaho Code Ann. § 33-125B (2015). Massachusetts: Social Innovation Financing Trust Fund, Mass. Gen. Laws ch. 10, § 35VV (2012). Oklahoma: Pay for Success Revolving Fund – Criminal Justice, Ok. Stat. Ann. tit. 57 § 510.8c (2014). Texas: Pay for Success Contracts, Tex. Gov't Code § 403.110 (2015). Utah (Education): School Readiness Initiative Act, Utah Code Ann. § 53A-1b-101 et seq. (2014). Utah (Employment): Employability to Careers Program, Utah Code Ann. §63J-4-701 et seq. (2017). [+ District of Columbia]

Tax, regulatory questions exist, but these are treated as contracts rather than bonds. Laws deal with feasibility studies, enabling such contracts (funding), and security (investor).

Examples in the U.S.

General features:

Slow start, big possibilities. Rockefeller foundation estimates \$1 billion dollars in mid-term (10 years).

2012-2017: 18 SIBs

5 re: criminal justice, 4 housing/homelessness (goal to empty beds – hospitals, shelters, prisons)

34 total investors and 12 repeat investors





Rikers Island

First U.S. SIB, 2012. Goldman Sachs: \$9.6 million investment, NGO should cause 10-20% reduction in recidivism for 3000 under 18 male prisoners. Up to \$2.12 million profit. Bloomberg foundation guarantee of \$7.2 million. Failure after 3 years.



Salt Lake City Pre-K

SIB to avoid placement of pre-K kids in expensive special education programs. Goldman and investors: \$6.8 million. 99% success, 104 kids, only one needed special ed. 5% return. Goldman later raised \$150 million.



Philadelphia NGO -Comcast Worker Training

75 local employees trained for Comcast jobs over 3 years (from 2020); if training successful (benchmarks met), Comcast pays for part of the costs of training. These funds then used for future trainings.

Relative Merits of SIB/PFS

GOOD

Providing funds for serious social problems,
where no funds otherwise exist

No or low risk for the tax payer

Better quality control

BAD AND THE UGLY

Privatization model; most often well-
functioning govt programs are replaced

No incentive for NGO to perform

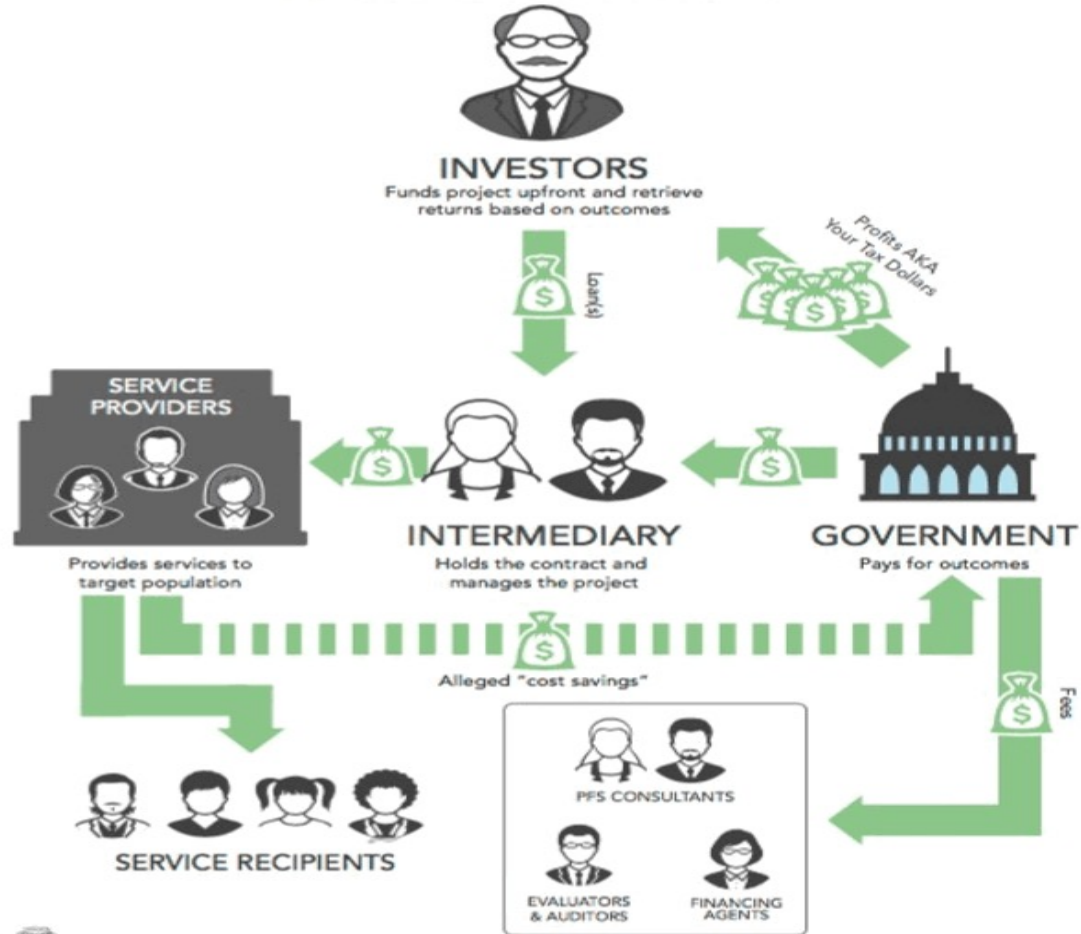
Corruption/manipulation of results

Attitudes of unions

Unions are against SIB/PFS model, seeing it as expansion of privatization

Privatization accelerates decline of unions- the public sector is one area of stability with respect to unionization rates

PFS ARRANGEMENT



Opposing Social Impact Bonds

RESOLUTION NO. 9

[AFSCME] 41ST INTERNATIONAL CONVENTION

MCCORMICK PLACE

JULY 14 - 18, 2014

CHICAGO, IL

WHEREAS:

Social impact bonds (SIBs), sometimes called “pay for success,” are the latest financing gimmick that supplants community investment in public goods and services with Wall Street money. Lenders, such as private investors, provide the upfront capital to fund projects, which is paid back by the government with interest if the projects are deemed successful. SIBs are more accurately called “social impact borrowing” or “social impact loans,” since they are not bonds in any traditional sense; and

WHEREAS:

Taxpayers dollars are used to directly underwrite investor profits.....

Beyond SIBs

Corporate Social Responsibility (CSR) Bonds

Structure

How to influence corporate policies, particularly labor policies?

Investor State Dispute Resolution and international SIBs