



*CHRONICLE OF THREE YEARS
OF STRUGGLE OF THE
SOCIALIST DEPUTIES*

MAKE THE COMPANY A
POLITICAL OBJECT

BY DOMINIQUE POTTER AND BORIS VALLAUD, THE 08 .01 .
2019
AND VALÉRIE RABAULT

CHRONICLE OF THREE YEARS OF STRUGGLE OF THE SOCIALIST DEPUTIES:

MAKE THE 'COMPANY A POLITICAL OBJECT

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This column by Dominique POTIER and Boris VALLAUD, published on January 8, 2020, includes a set of proposals made by Socialist and related deputies in the bill "new enterprise and new governance" (tabled on December 6, 2017) and in numerous amendments to the PACTE bill.

In the face of ecological, political and social crises, the overcoming of the capitalist system, more necessary than ever, may well involve... corporations. Far from being confined to the sphere of the market, companies play a political and social role of primary importance. The great fatigue of capitalism calls us to the double movement, driven by socialism, of a demanding search and authentically reforming actions.

The depletion of the planet's resources, rising inequalities and financial crises are putting capitalism to the test in an unprecedented way. No one seems to escape them. The Democratic election campaign in the United States which, at this very moment, places equality and the green deal at its heart; the 8,000 employees of Amazon who are appealing to their shareholders and urging Jeff Bezos' company to comply with climate imperatives; the impressive climate marches of young people who are asking that their future no longer be mortgaged; and even the very liberal Financial Times headline on September 16, 2019, "Capitalism. Time for a Reset": the feeling of an unprecedented challenge to capitalism is striking, and there is a risk that it will be instrumentalized. Notes from Larry Fink, the head of the world's largest asset management fund, stating that "To thrive over time, any business must not only produce financial results, but also show how it makes a positive contribution to society. In response to President Macron's criticisms of "mad capitalism", many people are surfing on this great wave and in fact turning it into a foam.

There is a risk that it may be used as an instrument. Notes from Larry Fink, the head of the world's largest asset management fund, stating that "To thrive over the long run

of time, every business must not only produce financial results, but also show how it makes a positive contribution to society. In response to President Macron's criticisms of "mad capitalism", many people are surfing on this great wave and in fact turning it into foam.

That the false nose of ecological and social indignation is no longer an illusion is one thing, that criticism inspires a renewal of political action is another. We are all called to transform the alert into a new perspective for our economy. In other words, to take up the project that has historically been the project of socialism since Sismondi and Saint-Simon. Certainly the problems are no longer the same - so much so that the social question is now intertwined with the issues of ecology and globalization - but the method remains: the great fatigue of capitalism calls us to the double movement of demanding research and authentically reforming actions.

This perspective invites us to rethink a fruitful link, made of autonomy and cooperation, between social movement, the intellectual world and political responsibility at a time when each part of this trihedron condemns us to impotence if it opts for indifference to the other two.

We must therefore discern the signals - however weak - of a renaissance through the movements that, throughout the planet, link the denunciation of injustice, the ecological emergency and the democratic struggle for the rule of law. To discern, also, in the different schools of thought, those that are freeing themselves both from the mimetic reproduction of neoliberal dogma and from a radical incantation of a disembodied ideal. To avoid the pitfall of an incantatory and Manichean critique of the "system", we need to be attentive to what acts positively today in it and even against it.

Clearly affirm that the critique of financialized capitalism is not that of entrepreneurship. We are witnessing, within companies themselves, a power of continuous innovation fueled by the aspiration of a new generation of leaders to give an ethical sense to their professional commitment. Moreover, we must consider the capacity of citizens - once they are freed from consumerist servitude - to change the rules of the market game: questioning the omnipotence of neo-liberal capitalism requires not only the regulation of public power, but also a democratic and civic renewal. It is in this moment of shared awareness that we elected representatives devote our mandates to translating into political opportunities the hopes that arise here from the academic world, there from civil society, from intellectual work as well as from social struggles. Since we have been deputies, in the wake of the law on the duty of vigilance, which was hard fought for yesterday and is now being watched around the world, we have defended proposals, based on scientific work, which aim to translate into law the aspirations expressed in citizens' initiatives and, at the same time, to give politics back its transformative force.

In spite of the weak results to which we confine an institutional system pathologically unfavorable to the parliamentary opposition, we will continue to do so. For the time being, parliamentary difficulties are negligible if they help to open a horizon. Submitted to debate through this forum, our proposals are intended to encourage dialogue and ultimately lead to the emergence of common struggles. Never since the 1840s, since the first age of socialism, has the state of the world been so conducive to overcoming capitalism. Provided that the trihedron is reformed, aspirations for its renewal can once again become a popular hope.

As in the nineteenth century, it will only be revitalized if it works to reform the economy to reverse this dynamic which means that "instead of the economy being embedded in social relations, it is social relations that are embedded in the economic system". Although the State is now lending a hand to this process, the driving force behind this de-embedding remains the enterprise; it is the enterprise that must be reformed first. With a simple objective: to recall some of them to the law, to allow all of them to respond to the aspirations for more justice and ecology that are being expressed today, to democratize them, to convince them to understand themselves not only as market actors but as participants in the republican ideal. Finally, to get out of impoverished dilemmas, such as "should we hate or love business? ».

Companies' actions "spill over" into their environment, just as they spill over into society as a whole. During the twentieth century, with the slow construction of labor law, the first forms of participation in the life of the company were already aimed at asserting that companies were political and social actors, inscribed in the public space and whose action could, as such, be subject to collective regulation. In the face of crises and imbalances, it is imperative to affirm and give new meaning to this idea. We are convinced that companies will come out of it with a better future. This is the aim, at least, of the few proposals that we are putting forward for debate here.

Optimization, Exile and the Law

The critique of financial capitalism that is being expressed today is first of all reactive. It reacts to the massive and widely documented practices of subutilization by companies of the part of the value created which, via the State, legitimately belongs to the community. Tax evasion and manipulation: this is, in fact, the other "affair of the century".

It is vile and insidious. It corrupts everything, undermines the States, generates unfair competition with small and medium enterprises, distils suspicion, feeds inequalities, weakens our social models, devours the future. The tax havens of a few are the hell of all the others. When the world's richest people and multinationals evade taxes, sometimes with the culpable complicity of the administrations, billions are lost to health, education and the environment.

NGO reports add to the work of researchers such as Gabriel Zucman to demonstrate the extent of the scandal. 8% of the world's financial assets are held in tax havens, i.e. nearly 7,900 billion euros. 40% of the profits of multinationals are declared in low or zero tax havens, i.e. nearly 650 billion dollars each year. Their profits are growing and yet their taxes are falling. France and the European Union are missing 20% of their corporate tax revenues.

Faced with the extent of injustice, which no simplistic equation suggesting fewer public services for less tax will solve, consent to taxation wavers, democracy wavers, rage rumbles. As with global warming, the crisis is no longer ahead of us; it is already here, already enormous. It is no longer the time for pleas, convoluted and supposedly scholarly formulas, declarations from the stage in Davos or elsewhere. We can no longer allow the multinationals to make fun of states and peoples, to make their laws to the detriment of the law, to oppose their will to the general will. We therefore propose to act without delay.

After Great Britain and Austria, France, acknowledging the failure of European negotiations, decided to tax the digital giants in France, Google, Apple, Facebook, Amazon (GAFA) ... This political act opens a path, but it could be a dead end if the government persists in ignoring the situation of so many large companies that escape taxation, contenting itself with this single decision for all accounts.

Why, indeed, tax only the GAFA? Don't McDonald's, Nike, Fiat and Total also use tax havens on a large scale? The figures are clear: the artificial relocation of profits is a widespread phenomenon, found among the digital giants as well as in the pharmaceutical, financial and food industries. The government measure therefore remains, at this stage, of the order of a symbol. However, a reform to combat the aggressive tax optimization of multinationals is not only desirable, it is also possible.

We propose, first, that every company domiciled abroad selling goods or services in France, for an amount exceeding 100 million euros, pay corporate income tax in France, whether or not it has a permanent establishment in France. Taxable income would thus be calculated by multiplying the group's consolidated worldwide profits by the fraction of its worldwide sales made in France. This solution has the advantage of separating the distribution of the tax base from that of the physical locations and therefore guarantees the sustainability of our industrial base. The principle is simple: multinationals must pay their taxes where they generate their revenues.

We propose, then, that each nation should be exemplary in the fight against the tax optimization of its own multinationals by instituting a form of

Adjustment based on the reported tax deficits of multinationals that are demonstrably under-taxed abroad. This is a corrective tax of the country where the head office is located to ensure an effective corporate tax rate of 25% for our multinationals regardless of the country where they make their turnover. We can collect the tax revenues foregone by tax havens.

These simple rules are in line with the reflections led by the OECD, and Europe should adopt them and make them its own by instituting a common corporate tax to finance a democratically managed European Union budget. This is our aspiration. But without waiting, France can now show the way. Fighting for fiscal justice and the rearmament of States calls for more than a tax on GAFA.

The fair allocation of the value

Political modernity is a matter of the organization of power, sovereignty and general will; but it is also a matter of the ideal: justice. Like a growing wave, we see it rising and asserting once again this desire for justice, which is emerging under the ashes of the excesses of capitalism. A financial capitalism, which has become as if drunk with itself, which plays against the economy, the environment, and social cohesion, and which is the bedrock of all discontent against the backdrop of tax-exempt multinationals, dizzying fortunes, prolific dividend distributions, golden hats and golden parachutes, unfathomable wage differentials?

At the end of the 19th century, banker John Pierpont Morgan estimated that a company director should not receive more than 20 times the average compensation of his employees. What would he say today about the salary of the CEO of the bank that still bears his name, a salary that is close to \$30 million? What would Henry Ford, a figure of industrial capitalism, who advocated a maximum compensation gap of 1 to 40, say when he sees today's income gaps, such as those of the CEOs of the 500 largest American companies, which range from 1 to 373? Such gaps, everywhere in Europe and around the world, are exploding. In France, they reach 250 times the salary of the least qualified employees for CAC 40 bosses, who have increased their salaries by a further 12% in 2018.

And as if these spectacular remunerations were not enough, their taxation has become more and more accommodating, with reduced tax rates for the upper brackets and even a degressivity of the compulsory levies; we end up with this astounding situation that makes a billionaire in many countries have a tax burden that is lower than that of the middle classes. Yet history teaches us that the economic prosperity of nations until the 1980s was often better accommodated by very high taxes on high incomes and large estates than by the uncontrolled accumulation of wealth in the hands of a few. Voices are now being heard around the world, from Switzerland to the United States,

to which we join our own, are no longer afraid to say so and make it a path to greater fiscal justice and economic efficiency.

Tax justice is inseparable from the question of equity of remuneration because it is possible to act as soon as income is distributed. Beyond the economic stakes, it is also an ethical issue: according to the calculation made by Danone CEO Emmanuel Faber, reducing the compensation of the highest paid percentile of his group by 30% would double the salary of the lowest paid 20%.

It is also, it must be stressed, an ecological issue: the excessive possession of wealth generates lifestyles that are incompatible with sustainable development, which calls for a new sharing. All serious studies agree, moreover, that at such levels of remuneration for the executives of multinationals, there is no link between their remuneration and their performance. It is therefore false to say that these remunerations would result from a competitive market in which nothing could be done, and that they would even be the condition for the economic performance of companies. This drift is above all the symptom of a glaring failure of corporate governance, which allows insatiable managers and predatory shareholders to enjoy a form of unhealthy economic connivance to the detriment of employees, long-term shareholders and industrial strategies.

The subject is global and the project should be European. However, without waiting for France to take a first step in the fight against excessive pay, within the constrained framework of its Constitution and the freedom of enterprise that it guarantees, sometimes to the detriment of other principles.

We propose that beyond a difference of 1 to 12 - the European Trade Union Confederation proposes the standard of 1 to 20 - the remuneration concerned and the associated expenses should no longer be deductible from the calculation of corporate income tax. There is no reason why the cost of these excessive remunerations should indirectly weigh on the community. We believe, moreover, that the company would thus have an incentive to share its value better. Through this tax bias, it would indeed have an economic interest in raising the lowest remunerations in order to increase the ceiling of deductibility or to control its highest remunerations.

French co-decision

The "Happy Days" of the post-war period, like those of 1968, brought with them the idea of a broadening of democracy in the company: works councils, employee freedom of expression, self-management. The triumph of neo-liberalism has put an end to this dynamic in recent decades. For more than thirty years, "shareholder supremacy" has imposed itself as an intangible dogma, favoring speculative short-termism at the expense of industrial and long-term strategies, distorting the sharing of added value to the benefit of shareholders and to the detriment of employees, or "shareholder democracy".

still giving priority to the return on capital over productive investment. A form of abuse of power by shareholders has been established, sometimes with the complicity of executives whose remuneration is excessive and unrelated to the interests of the company.

Faced with this situation, the ability of employees to influence corporate behavior and governance is too weak, and has even weakened, caught between economic constraints and legislative reforms that tend to reduce their individual and collective protections.

We consider, against the current neo-liberal ideology and undivided shareholder domination, that employees must be considered as constituent parts of the company. Following the example of what had been sketched out, without ever being realized, in the mid-1970s, notably by the Sudreau commission, we intend to carry out an in-depth reform of the company, a reform of democratization. Indeed, we advocate the implementation of a "French-style" co-determination inaugurating a new age in our economy and a profound renovation of life in the workplace.

Drawing on the positive experiences of 13 European Union countries, we propose to initially institute two employee directors in companies with more than 500 employees, one third in companies with more than 1,000 employees and half in companies with more than 5,000 employees. This is a decisive step, which would truly allow employees to participate in corporate governance.

Contrary to what the prevailing ideological discourse and the most timid commentators suggest, this in-depth reform is likely to consolidate our companies. Co-determination is a protective framework against the excesses of financialization, which weakens the real economy. It is also a useful crucible for negotiating, with agility and humanity, the technological mutations and to promote its rooting in our territories.

The government opposed this reform in the first reading of the Pact Law, with the only argument being the "cultural" hostility of the most conservative fringe of the business community. This line of defense of privileges is archaic and at odds with the issues of the time, with our economic interests, and with the practices of the coming generation of entrepreneurs who, given the opportunity and the framework, may be able to implement more democratic practices.

Co-determination is at the heart of a great idea: to bring about the emergence in globalization of a European business model capable of uniting States with overly fragmented rights and differentiating us from Anglo-Saxon standards as well as from Asian state capitalism. Combining the legacies of different countries (such as German co-management), it would allow the European Union to carry not only the idea of a political democracy, but a project of economic democratization, capable of managing, in a collective manner, industrial or environmental challenges.

Choosing social democracy at the heart of the company means making it a strength for our economy and a factor of cohesion for our society. The ecological, social and democratic emergency must give us the courage to legislate so that ethics is no longer a "flag on the flagpole" but the rudder of our companies. The time has come to reconcile democracy and entrepreneurship.

From Social and Environmental Responsibility to Economic Citizenship

Twenty years after the Rio Earth Summit, the notion of Corporate Social and Environmental Responsibility (CSR) has developed as an attempt to provide an ethical response to the environmental and social impacts of their economic activity and to the disorders of contemporary financial capitalism, as well as to the notorious inadequacies of financial information to account for them. The NRE law of 2001, followed by the decision of the European Union in 2014, provided a framework and introduced an initial extra-financial reporting obligation, making the CSR approach one of the central objectives of major European companies. They are now required to publish an "Extra-financial performance statement". At the same time, the development of a new generation of rating agencies, stock market indexes and CSR labels is flourishing; to the point of confusion, it is becoming so difficult to separate the wheat from the chaff, to enlighten investors, consumers or citizens on the reality of responsible corporate practices and trajectory.

It must be said that if the only conventional financial indicators of economic performance give a company only a blinkered vision of it, those of the current CSR give us a vague vision, incapable that they are of giving an account of the true social and environmental impact of the company. It should be added that in many respects there is an intrinsic contradiction between the two. The International Financial Reporting Standards (IFRAS) are concerned only with financial capital, the search for profit alone and the service of shareholders. It is not excessive to consider that, in their very conception and in the economic philosophy that inspires them ("the responsibility of a firm is to increase its profits" Friedman, 1970), these standards remain, as they stand, the refuge of a capitalism blind to the environmental question, destructive of men and nature, privileging the present to the detriment of the future, shareholders at the expense of employees, dividends rather than productive investments.

In the construction of an economic organization that would take into account financial capital as well as human and natural capital, the revision of these standards remains a Bastille to be taken. Without it, nothing will really change despite all the declarations of extra-financial performance, all the declarations of the Business Roundtable (regrouping 200 companies and 7000\$ of cumulated CA) committing to "invest in their employees, protect the environment and generate long-term value for shareholders" and the best intentions of business leaders seized by the ecological urgency and concerned about the social issue.

We must therefore go further. None of the steps taken so far have been totally in vain, but the time has come to take a more global approach and in particular to move beyond this first age of CSR. Only taking into account social and environmental externalities can give an adequate idea of the real value created by companies. A great deal of work is being done on this today and should help us to assess what is produced in a different way.

In other words, it is necessary to change the norms to change capitalism; we propose a first step on the path of this new accounting adapted to today's business, that is to say, also in the service of human dignity and the common good.

We propose the creation of a public CSR certification. We are convinced that clarity, as much as trust, requires a common foundation, a standard designed by the public authorities and evaluated and revised in a measured way, in line with the pace of democratic renewal. This public standard could take the form of a label or rating established on the basis of a defined number of criteria, indicating social and environmental impacts as well as the quality of governance. The control established by private assessors, approved by the State, would allow a simple, legible and reliable ranking. The latter would give every citizen, in his or her role as a consumer but also as a saver or employee, the opportunity to make a clear comparison of the CSR performance of companies and to guide the economy in a virtuous direction through their choices. In addition, it would be possible to add a financial bonus mechanism to this new standard, thus recognizing the positive contribution of labeled companies to a prevention policy that avoids public spending on "repairs".

These measures would give full scope to the proposal that we have been making since 2017 through the bill "New company, new governance" to amend Article 1833 of the Civil Code concerning the definition of companies, whose purposes cannot be reduced to the sharing of profits between partners. The company of tomorrow must not only "consider" but also "take into account" the economic, social and environmental consequences of its activities.

Increasing the presence of employee directors and their participation in the life of the company; reforming the taxation of multinationals; fighting against excessive remuneration and disproportionate wage differentials; modifying company valuation standards. The most timid, who are also often the most interested in keeping things as they are, can do whatever they want: all of these measures make sense and make sense. There is no risk of throwing the economic planet out of its orbit; on the contrary, they should help to ensure a new and lasting balance, by getting us out of the injustice and excessiveness that led us into the neo-liberal era.

What do these proposals actually say? They remind us that above the law of the market there is the law of democracy, above individual interests, the general interest and the common good. These proposals are a contribution to reflection on a renewed relationship between public and private power, on the place of business in a renewed social and ecological contract based on the alliance of productive forces.