Suggestions toward Commonwealth Companies

Sharing Prosperity with Worker Stakeholders

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“Democracy is, among other things, the ability to say 'no' to the boss. But a man cannot say 'no' to the boss, unless he is sure of being able to eat when the boss's favor has been withdrawn.”

~Aldous Huxley, Themes and Variations (1950)

For two decades, we have been saying that the owners of workers’ capital “the workers” must prevent the use of their hard-earned retirement savings and other assets by irrational Wall Street schemes that would harm them. In "Working Capital: The Power of Labor’s Capital (2001), we called that process “collateral damage” (a corollary of collateral benefits, wherein the DOL has long allowed investments in ways that benefit people, with various caveats). In this paper, we call for stronger actions by workers as shareholders to invest responsibly and protect the beneficiaries of institutional investment, and by workers as stakeholders who, after all, are crucial to the success of any enterprise. Both are calls to make the boss more accountable.

Canton, Ohio. In June 2014, Timken Steel, a profitable, modernized manufacturer of steel and bearings in Canton, Ohio, is forced to split into two following a shareholders' campaign in 2013-14. Led by the California State Teachers’ Retirement System (CalSTRS), a signatory to the UN’s Principles for Responsible Investment (PRI), the breakup was a product of Relational Investors, an activist hedge fund founded by protégés of corporate raider T. Boone Pickens. The break-up was forced to “unlock value.”

However, multiple news accounts relayed the fears of the Timkin family, workers and local citizens that the split was unnecessary. The firm, a good community neighbour whose workers were represented by the United Steelworkers (USW), was reported well structured, had
low debt and a healthy pension. Soon after the split, Relational Investors sold its interests and walked away with a profit of $188 million, in just over two years as a shareholder.¹

Will the breakup of Timken benefit corporate health, long-term investors and stakeholders? The answer for now, three years later, is no. It appears that the forced divorce, opposed by the USW (experienced in brokering corporate restructurings) and Teacher’s union-appointed directors on the CalSTRS Board, enriched short-term players, resulted in the loss of long-term share values, destroyed synergies (as feared) and will probably make the company more vulnerable to hostile takeovers in a challenging economic environment (Stock prices for Timken Steel fell from $49 range in September 2014 to $14.81, a loss of 70%, and for Timken Company fell from $67 range in June 2014 to $48 mid-September, 2017, according to Motley Fool. They have badly lagged the trend line for the S&P).

Chattanooga, Tennessee. In February 2014, the United Auto Workers (UAW) loses a crucial organizing vote to at a Volkswagen (VW) automotive plant in Chattanooga, Tennessee. Losing by a close margin - 712 to 629 - the loss was a setback for workers’ rights, which were thwarted by a massive, third-party anti-union campaign waged by Republican U.S. Senator Bob Corker, the Governor and the Chamber of Commerce.² As a result of the loss, the Chattanooga plant is VW’s only plant worldwide without a Works Council, a joint labor-management works system successful in Germany and other nations that facilitates shop-floor participation and long-term strategy. When the UAW won a subsequent election with a smaller unit at the plant, VW turned against the union (as the massive VW emissions scandal was unfolding).³

The above examples are proxies for the systemic short-termism plaguing America’s capital markets and its productive economy. It is no secret that workers’ pension assets, the
assets and savings of teachers, steelworkers, firefighters, pilots, engineers - everyday working people, represent the largest shares of global financial stock. In 2016, pension assets were valued at US $36.4 trillion across 22 major pension markets globally. The U.S. pension assets market - at US $22.5 trillion and representing 121% of the nation’s Gross Domestic Product (GDP)\(^4\) - is the largest among the global markets.

Isn’t it perverse then that workers’ assets are so often deployed in ways that work against their long-term wellbeing? In 2001 in *Working Capital: The Power of Labor’s Pensions*, Dr. Tessa Hebb, one of the thought leaders in responsible investing, succinctly described this dichotomy: “the earnings that workers defer for a secure retirement inform financial decisions that, in turn, determine the quality of employment and the character of goods and services they enjoy. Yet the institutions and individuals that manage pension funds often pursue narrow goals whose consequences undermine workers who provide the savings they tend.”\(^5\)

**The State of Play**

The increasing misalignment of incentives between the owners and managers of corporate wealth, as we point out in the *Handbook*, has resulted in greater separation between the long-term interests of the beneficiaries of retirement funds and those that oversee and manage those assets. The result has been:

- Investment of pension assets into approaches that ignore long-term risks and that are focused on market timing and short-term gains.
- Preference for quick, short-term profits for shareholders and unsustainable bonuses for CEOs at the expense of sustainable, long-term value creation that benefits core stakeholders.
- Loss of worker representation and voice in the management of the workplace.
- The dual crisis of job insecurity and the malignant use of contract, temporary employees.
• Stagnated wages (even as productivity and corporate profits have soared) and rising income inequality.

• Little accountability for the negative Environmental, Social and Governance (ESG) impacts often generated in the pursuit of short-term gains.

One of the primary reasons for anemic middle-class income growth in both post-2001 recoveries is a retreat in business investment, which has remained well below its historic trend, according to the Center for American Progress (CAP). Profits have been rising while investment has been falling since 2000, which has slowed productivity. But even with this slow down, wages have failed to keep pace with productivity gains, a brutal process (for working people) underway since 1973.6

The 2008 financial crisis brought on by the sub-prime housing market crash bore testament to the explosive negative impacts of short-term, speculative investments “whose risk profiles they [pension
funds] did not fully understand.” These misguided understandings impacted not only the financial value of pension assets, but also the livelihood of working people and the broader civil society. Nearly $11 trillion in household wealth vanished, including $4 trillion in retirement accounts and life savings. In addition, millions of jobs were lost, homes were foreclosed, and resources were diverted from important human capital investments and environmental issues such as climate change, among many other negative effects.

Despite lessons from the past, “prevailing theories and practices have not been fully adjusted to reflect systemic and long-term risks that threaten to undermine the security of the pension plan ‘promise’.” In order to close the large funding gaps between plan assets and promised retiree benefits, many pension plans continue to make greater allocations to investments that promise higher returns but that also come with higher risks, further jeopardizing worker and retiree benefits.

This needs to change.

First, if we are to ever reverse income inequality, workers need a raise, and they need to share in the increased profits made possible by their labor. Second, America needs to drastically reverse our alienated, monarchical corporate works culture and move instead toward a “commonwealth” company, one that respects workers, provides increased human capital investment, and empowers and embraces a long-term engagement with workers.

In the 2016 presidential campaign, the voters finally revolted. During the campaign, which featured two populists who talked about reforming bad company behavior and rebuilding the middle class, an avalanche of headlines pointed to bad bosses and to the failures of corporate irresponsibility. An outbreak of voter anger was directed at unnecessary closings and downsizing, offshoring, extreme mergers and acquisitions, and outright union busting. Just as investors must weigh
the risks of short-term decisions, extravagant CEO pay packages and other mistakes, they must also examine the existing top-down corporate business structure that breeds bad decisions.

**Regaining Control of Workers’ Capital and Voice**

In their role as both shareholders and stakeholders, workers can help change the status quo. In *The Responsible Investor Handbook: Mobilizing Workers’ Capital for a Sustainable World*, we demonstrate how the labor movement and its allies, while fighting for stronger worker rights and protections, have also been pioneers of good corporate governance. We asserted that capital stewards and their allies should demand good corporate governance and shine a torchlight on active ownership strategies that can enable them to positively influence company behavior. The *Handbook* showcased how workers’ capital has been responsibly invested in the real economy, providing enormous sums of common wealth to sustainably build cities and drive society’s economic engines.

Some of the most promising challenges to the primacy of out-of-control corporate managers and destructive corporate raiders have come from this rising power of “Labor’s Capital,” the retirement and institutional holdings of working people and communities. Labor, public pension funds, and socially-responsible investors, have been winning major shareholder and corporate campaigns to question CEO pay; elect more diverse boards of directors; promote a more transparent and accountable corporate management; and push for human rights and environmentally-healthy corporate practices, etc. They have taken a lead in forcing corrupt corporations to alter behavior and become more accountable. Internationally, they’ve taken on the abominable use of slave labor by firms such as Unocal and Halliburton in Burma.
As shareholders, workers’ pension funds can seek to positively influence the behaviour of investee companies through shareholder activism. Such activism can range from private engagements with companies to formal shareholder proposals presented at a company’s annual meeting that seek to tackle issues related to governance such as CEO compensation, board of director selection, mergers and acquisitions, as well as non-financial corporate sustainability issues such as human rights, diversity, environmental pollution, etc.

Through shareholder proposals, trustees and other fiduciaries can bring attention to and support those issues that are expected to contribute to the long-term economic best interest of workers and their beneficiaries or that will have no adverse effect on the same. The U.S. Department of Labor (DOL) encourages pension funds to take a proactive approach to corporate issues, rather than merely respond to proxy solicitations. The DOL’s Interpretive Bulletin 2016-01 (“IB 16-01”) also rescinded the Bush-era proxy voting guidance due to the perception that the ruling wrongly discouraged ERISA plan fiduciaries from exercising their engagement or voting duties in terms of representing their beneficiaries. It states:

“The existence of financial benefits associated with shareholder engagement is suggested by the fact that a growing number of institutional investors are now engaging companies on ESG issues…. Other market developments further substantiate the financial benefits from shareholder engagement.”

As the core stakeholders of America’s businesses, workers, unions and pension funds (representing workers and their beneficiaries) should exercise their immense, collective influence to include stronger social policies within their investment policy and beliefs statements, enabling funds to positively shape the work practices of investee companies. In addition, workers’ pension funds should help support worker-friendly policies at investee companies. As the Global Trade
Unions have repeatedly emphasized, trustees, in keeping with their fiduciary duty, “should promote - and do not weaken – workers’ fundamental rights to freedom of association and collective bargaining.”16 By furthering a range of sustainability issues, including accounting for the intangible assets of a company such as its human capital, worker stakeholders can not only advance social and environmental rights, but also secure better performance outcomes for their pension investments.

The obligation to fiduciary duty requires that trustees not only enable workers to achieve their financial goals for retirement, but also champion a long-term, responsible and activist approach to the management of workers’ assets and to promoting workers’ interest. As Fiona Reynolds, managing director of the UN-backed Principles of Responsible Investment (PRI), points out, “We’ve found that failing to consider longer-term drivers like ESG is actually a failure of fiduciary duty.”

In addition to the more publicized investments of active responsible funds around the “E” and “G” of the Environmental, Social and Governance (ESG) framework for responsible investment, more investors are giving higher priority to the needs and roles of working people through their investments, thus raising the profile of the “S” in ESG.

Of course, activist shareholders must take care in running afoul of SEC rules. The Commission’s controversial “ordinary business rule” exception, which prevents initiatives that interfere with company operations, has stopped, in its tracks, many important shareholder initiatives. But as it becomes more clear that investors who don’t include ESG matters in their investment decisions may be violating fiduciary duty, shareholders should push for corporate governance measures that more aggressively recognize workers’ rights and the treatment of workers. As activist scholar Marlene O’Connor has pointed out, in her prophetic writings on the need for human capital management disclosures and shareholder-stakeholder balance from 2001’s *Working Capital* book, the hallmark of fiduciary law is disclosure. Responsible
investment advocates should push to have the new DOL provisions on ESG, along with those in other global compacts, embedded into fiduciary duty.\textsuperscript{17}

Below, we recommend a set of best practices that can help workers regain control of their monies and voices. We also suggest new pathways toward commonwealth companies, loosely described here as those that practice responsible governance rules but also those that respect worker stakeholders and “share the wealth” with those core stakeholders:

1) Reclaiming the investment of workers’ capital for the long term and for the benefit of workers and their beneficiaries through responsible investment strategies

2) Using responsible activism in corporate governance and pushing for worker-friendly agenda on the basis of pension investments

3) Balancing shareholder wealth creation with stakeholder value creation

4) Greater engagement on the S in ESG by pushing for better human capital management

5) Reinstating workers’ voice and rights through unions and new works systems such as works councils

Reclaiming workers’ capital through responsible investment strategies

Pension plans are generally organized as trusts where a board of trustees is responsible for the oversight and investment of pension fund assets.\textsuperscript{18} Trustees are the primary stewards of the plan’s assets and are the “ultimate decision-makers” in relation to their investment.\textsuperscript{19} They have a fiduciary responsibility to invest plan assets prudently, impartially, cost-effectively, in accordance with governing laws and documents, and, most importantly, with loyalty towards, that is, solely in the best interest of, plan participants and their beneficiaries.\textsuperscript{20}

Pension trustees’ have a duty to protect and grow the trust funds for the trust’s participants and beneficiaries. Workers and their family members depend on these assets held in
trust to meet their financial goals in retirement. As such, investments made today have the potential to affect future jobs, the quality of life for workers and retirees, long-term sustainability of communities, and growth of the overall economy.

However, trustees who oversee the management of pension funds have been challenged by weak governance structures, increased capital market complexities, oversized influence of investment managers and external consultants, and a multitude of changing regulations. They have sometimes succumbed to short-termism and institutional herd mentality, suffering “disrupted attention to the fiduciary duties of loyalty and impartiality.”

We encourage pension trustees to re-align their governance and investment strategies with the long-term interests of workers and their beneficiaries by incorporating responsible investment practices into the investment decision-making process for plan assets. What is responsible investing? It is “the integration of certain non-financial concerns in the investment process” to help generate competitive financial returns in the long-term alongside positive environmental and social impacts. These concerns are often collectively referred to as ESG issues.

We believe that responsible investors, with their longer-term focus, ESG-based holistic risk assessment, and shareholder activism, are better equipped to preserve and grow retirement capital while maintaining intergenerational equity. This concept of intergenerational equity represents the idea that “growth should occur whilst ensuring a certain level of economic, social and environmental security for future generations” – emphasizing important and inherent links between the goals of workers’ capital and those of responsible investing.

By re-aligning their governance and investment strategies with the long-term interests of beneficiaries, trustees can regain control of their fiduciary responsibilities and better influence
the future of workers’ capital. In so doing, trustees can also ensure that “their decision-making processes balance allocation of capital between near-term needs and future wealth creation and consider the potential transfer of risks between participant generations.”25

Supporting and re-affirming trustees in this reassessment of their fiduciary duty are investors and unions, both globally and nationally. Leading the charge for investors is the PRI, a growing coalition of pension funds and other institutional investors, unions, consultants and asset managers, who have pledged the incorporation of ESG considerations in their investment decisions. Together, the coalition represents an influential group of aspiring responsible investors representing nearly $70 trillion in assets.26

Similarly, the Global Trade Unions, with over 200 members from 25 countries, seeks to promote the long-term responsible investment of pension assets.27 And closer to home, the AFL-CIO, the largest federation of unions in the U.S. with 56 national and international unions as members, has also urged wider adoption of responsible investment practices by pension plans.28

Using responsible activism in corporate governance

“Nothing concentrates the mind of a corporate executive quite so sharply as a pointed inquiry from large investors or outside director.”
- Robert Reich, Former Secretary, Department of Labor29

The question of governance influences everything about how a company is run. It involves many different actors who have a stake in the ownership and control of companies, including shareholders, management, corporate boards, workers, and their unions, and other key stakeholders.
Good corporate governance, as CalPERS has noted, is about making “the boss” accountable. It allows for proper incentives for the board and management to pursue objectives that are in the interests of the company, its shareholders and other stakeholders.

The DOL, in addition to minding traditional board governance concerns, updated and reformulated corporate governance objectives to include the following responsibilities:

..the nature of long-term business plans including plans on climate change preparedness and sustainability, governance and compliance policies and practices for avoiding criminal liability and ensuring employees comply with applicable laws and regulations, the corporation's workforce practices (e.g., investment in training to develop its work force, diversity, equal employment opportunity), policies and practices to address environmental or social factors that have an impact on shareholder value, and other financial and non-financial measures of corporate performance.

As the OECD’s 2004 report on Principles of Corporate Governance states, “The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for investment decisions.” In the aftermath of the 2008 financial crisis, bad corporate governance practices were placed front and center in the minds of investors.

To prevent a repeat of the crisis, the Trade Union Advisory Committee (TUAC) to the OECD asserts that corporate governance principles should not accept the status quo standards that contributed to the 2008 crisis but should instead aim for aspirational governance standards to achieve the long-term interests of the company and its stakeholders. TUAC’s proposals to strengthen corporate governance principles and practices include the fundamental principles of

- Giving workers a voice through right to information, consultation, representation and negotiations
- Ensuring greater transparency in the investment chain
- Promoting the responsible use of shareholder rights
- Board independence and diversity, and
- Checks on executive pay.
Most importantly, the idea here is undertaking responsible activism that is in the interest of all key stakeholders, not just shareholders. Workers’ pension funds should not be engaging in the type of negative, speculative “value-unlocking” activism engaged in by CalSTRS, Relational Investors and other raiders. As Suzanne Berger, a professor of political science at M.I.T noted,

In the microcosm of Timken, you can see the larger forces playing out in manufacturing in America. It’s not classic greed, like ‘Barbarians at the Gate.’ But we’ve set up financial markets in a way that’s injurious to long-term investment and industrial companies…where California teachers have to protect their pension funds by hurting manufacturing in Ohio.\textsuperscript{35}

There is much evidence to support the value of responsible corporate governance initiatives on shareholder value. For example, findings from two large meta-studies\textsuperscript{36}–reveal that in aggregate, good corporate governance principles lower the cost of capital and are positively correlated with improved operational and stock market performance. Further, active responsible investment approaches such as proxy voting and shareholder engagement, along with the integration of material ESG factors in the valuation of securities, positively impact corporate behavior and performance when compared with passive approaches (such as negative screenings).\textsuperscript{37}

**Balancing shareholder wealth creation with stakeholder value creation**

Workers’ pension funds in America have a greater responsibility to use their rights as shareholders to insist on policies at investee companies and the capital markets at large that respect working people and that empower workers to be more engaged by industry. In European countries with a dualistic model of corporate structure, such as in Germany, Austria and the Netherland, workers voice is empowered through codetermination and stronger unions (codetermination is a legislative framework where workers are elected by their peers to boards or supervisory boards of companies, and also participate in corporate decisions through works
Shareholders are generally more passive in their engagement with companies because, unlike in the U.S. where market forces dictate the employment model, EU worker protection is institutionalised through regulation.  

In addition, in Europe, the concept of corporate social responsibility (CSR), a variant of responsible corporate governance, “differs a great deal from the American understanding because many social issues that are part of the original CSR social approach, such as employee participation, education and healthcare, are regulated by law in European countries.

Since American unions have not had consultation rights outside of collective bargaining, workers’ capital stewards have promoted a stronger, earlier push toward exercising their shareholder rights. As a result, union and public pension funds have generally been aggressive in launching proxy campaigns and shareholder engagements with companies.

Agency theory supposes that only shareholders incur risk. Shareholders, as rational investors with residual claims on a company’s profits, and thus incurring a high risk, have the right to assert total control over their agents and corporate boards, and can demand maximum financial returns. Based on the “nexus of contract” theory, it is believed that “the interests of other stakeholders such as employees, and ‘social’ concerns such as environmental preservation, are by contrast thought to be more efficiently dealt with by contract and/or through extra-corporate regulation” and that employees are “fully capable of bargaining for contractual protections in addition to those made generally available through labor and employment law”.

Of course, the nexus theory, like the theory of efficient markets, breaks down upon closer inspection. The rise of corporate dominance in the U.S. economy and public affairs, the increase in deregulation since the Reagan era, and the related decline of labor unions has meant that individual workers and communities have no comparable “power” to force negotiations.
Companies are not required to (and so generally won’t) enter into voluntary contract negotiations with individual workers or communities as partners. 42

Stakeholder theory holds that workers and other stakeholders of companies also make firm-specific investments and incur risk, and that core stakeholders should be considered in investment decisions. Labor economists observe that employees tend to develop long-term attachments to corporations under implicit contracts and make long-term human capital investments in the firm. In fact, shareholders can sell their stocks much more easily than employees can find another job.

While we firmly support responsible corporate governance, we would be remiss to ignore the rising list of authors who pinpoint shareholder primacy as a driver in the rise of short-termism and financialization, the demise of innovation and the destruction of the many corporations. As John Kay, author of the Kay Report, asserts: “Markets and corporations serve citizens when, and only when, they are embedded in the societies of which they are part.” 43

Therefore, there is a need to balance shareholder primacy with an approach that creates value for stakeholders. American labor and its pension allies view value creation as “long-term” value creation, and signed on to the Aspen Principles, which assert that companies and investors should recognize that firms have multiple constituencies and many types of investors, and seek to balance these interests for long-term success.” 44

The need to demand better human capital management practices and disclosure

In an earlier section, we described a growing canon of performance studies that have demonstrated the financial benefits of responsible investment and good corporate governance. There has been less interest, historically, in researching and understanding the “S” in ESG, which includes critical issues such as union representation, worker participation, good wages and
workers’ health and safety. Respecting workers, providing good wages, training and other benefits, and engaging with workers yields increases in productivity, according to the evidence.

As the TUAC notes, in addition to the active participation of pension plans in corporate governance, there are also many complementary workplace practices that protect workers’ rights, engage empowered workers, and facilitate productivity and higher bottom line results. These include:

- Undertaking responsible employment relations
- Supporting greater workforce participation and ownership
- Engaging in workforce training and knowledge sharing, and
- Employing empowerment and diversity strategies.45

Investors are slowly becoming interested in a broader framework that places more importance on workers as major stakeholders of industry, and they describe this broader field as human capital management (HCM). As defined by one investor group, HCM includes, but is not limited to, “hiring and retention, employee engagement, training, compensation, fair labor practices, health and safety, responsible contracting, ethics, desired company culture, and diversity, both with respect to a company’s direct employees and to the employees of vendors throughout the company’s supply chain.” Some analysts also include employee engagement, workforce participation and broader work systems. Others recognize the collateral importance of sharing ownership, profits and productivity with employees of firms. Human capital management has become widely accepted as a key component of corporate strategy.

An important Harvard study reported on a survey of the literature on human capital, reviewing empirical studies that examined the relationship between Human Resource (HR) polices and financial outcomes such as return on equity, return on investment and profit margins.
The majority of 92 studies they identified found positive correlations between training and HR policies with investment outcomes. The authors concluded that there is “sufficient evidence of human capital materiality to financial performance to warrant inclusion in standard investment analysis.”

Beyond employee training, this report confirmed the theory that firms are more competitive if their work systems are designed well and function effectively to make the most of employee talent and skills by stimulating worker engagement and commitment on the job.

In order to protect and enhance their investments, shareholders are increasingly incorporating HCM analyses into their overall evaluation of a company’s ability to deliver long-term sustainable value. These investors believe that firms with strong HCM policies and practices may be at a competitive advantage, and, in reverse, firms that have illegal or poor HCM practices are exposed to risks of failure.

However, despite the importance of HCM, corporate reporting requirements on HCM are virtually nonexistent. And where reporting does exist, the data cannot be compared across similar companies/industries due to lack of standardization in reporting. The Human Capital Management Coalition, representing over $2.8 trillion in assets of influential institutional investors, is seeking to change this. Among its many initiatives to further elevate HCM as a critical component in company performance, the Coalition has submitted a petition to the Securities Exchange Commission (SEC) asking it to demand HCM disclosure of public companies.

In addition, sustainability rating agencies, which have grown dramatically, play an important role in shaping the demands placed on companies regarding sustainability disclosures and practice. The Global Trade Unions, through its Committee on Workers’ Capital (CWC, and
its Taskforce on Sustainability Ratings, has been having a multi-year dialogue with a group of sustainability rating agencies to discuss its “Guidelines for the Evaluation of Workers' Human Rights and Labour Standards.” The Guidelines are meant to improve the methodology and indicators used by agencies in order to provide accurate snapshots of company strategy on the provision of decent working conditions and workforce empowerment - factors that are tied to long-term performance.

These efforts towards disclosure will drive best practices, which may yield a more motivated, productive and innovative workforce, and thus, should reduce personnel costs. Firms that ignore HCM are likely to have higher personnel costs, more disruption and embarrassing operational, reputational and legal risks. The Coalition notes, worse, that HCM failures resulted in a disastrous loss of life and share value losses at firms like Massey Coal and BP.

**Reinstating workers’ voice and rights through unions and new works systems such as works councils.**

As TUAC notes, “various mechanisms exist across OECD and G20 economies to ensure workers’ voices in the governance of the firm. These rights are recognized and upheld by several ILO conventions and by the OECD Guidelines for Multinational Enterprises (MNE). The most fundamental form of contractual governance consists of collective bargaining between senior management and worker representatives... But other important mechanisms to participate in company decision-making also exist, such as works councils and board-level employee representation.”

In the Chattanooga example mentioned earlier, though UAW lost the vote to set up a union at VW’s Chattanooga plant, an unexpected outcome from the loss was the commitment in 2015 on the part of IG Metall, the German union that represents workers in VW Germany, to
partner with the UAW on the formation of a partnership to explore Works Councils that represent blue-collar and white-collar workers in relation to workplace practices\textsuperscript{48} in the U.S. There does not appear to have been much progress on this front as of yet. Still it is a positive step towards giving workers a voice in corporate decisions affecting their wellbeing.

Most studies that have examined the productivity of firms with Works Councils have found a positive correlation between the two. In one report, the author found that, on average, establishments with a Works Council were 6.4\% more productive. Other reports confirmed this conclusion if there was also a collective bargaining relationship\textsuperscript{49}.

There are also initiatives being led by the AFL-CIO and the European Trade Union Congress (ETUC) to demand, as part of the negotiations for the Trans-Atlantic Trade and Investment Partnership (TTIP), that the treaty mandate that trans-national firms operating in the U.S. would have to replicate the dual union/works council structures that they operate under in Europe\textsuperscript{50}.

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\textbf{WHY WORKER PARTICIPATION IN EUROPE?}\textsuperscript{51} \\
Worker participation is a Fundamental Right in Europe laid down by the Charter of Fundamental Rights of the EU (Art. 27).
\begin{itemize}
\item Worker participation is an essential part of the European Social Model. At the same time, worker participation strengthens the European Democracy in practice and the economic competitiveness of European companies.
\item Worker participation highlights the fact that a company should not be defined by the sole interest of its shareholders and managers but also by the stakeholders (as a principle of corporate governance).
\item Worker participation means that social interests can be make effective at the level of decision making of a company.
\item Worker participation has to be underlined, thus, by European legislation in order to enforce workers making their interests to the same extend effective as those introduced by the shareholders.
\item European legislation ruling worker participation rights at transnational level is based on a broad political consensus of the European Parliament and among European Governments until today.
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Conclusion—Toward a Balanced Shareholder and Stakeholder Approach
In *The Divine Right of Capital*, the author predicted the implosion of a corrupt global
corporate leadership and correctly pinned the gigantic meltdown on systemic, organizational
hubris and speculation on a mass scale. The author, in 2001, was not talking about the banks that
drove the sub-prime financial markets collapse of 2008, but the 2000-2001 dot-com recession
and another set of corporate corruption scandals (that included, one year later, the Enron
corporate self-demolition). Author Marjorie Kelly argued for a new “stakeholder” politics of the
corporation and of society. She drew on the philosophical tradition represented by Jefferson,
Paine, Lincoln, and even Adam Smith to make her case. One of the biggest fans of this outlook
was Bill Greider, who observed in the book’s Forward: “The opening question that hovers over
American politics and smothers public life is this: Do corporations have too much power in our
society?”

Despite the progress that has been made in responsible investment, CSR, ethical business
management, etc., we agree with Kelley that corporations have become ‘feudal estates.’
Corporate managers and shareholders, as William Lazonick points out, have, unfortunately,
increased executive bonuses, stock buybacks and other measures that reduced workers’ pay and
benefits, workforce training and R&D, and bled corporate innovation.

Except where there are strong unions, conscientious owners or employee-owned firms,
workers are generally treated like serfs, with little or no rights. And, labor-generated shareholder
actions, while often calling on firms to comply with ILO core labor standards, generally have not
had traction in motions that focus on the workplace or that call for a more democratic, high-
performance work practices. And in this case, shareholder motions in the U.S., in contrast to
Europe, are non-binding.
Here are some suggestions to ensure that worker shareholders can protect their rights and that we can move toward broader balance for shareholder and stakeholder value:

**Broadly adopt shareholder rights to push firms to be more accountable, and responsible to all stakeholders**

Capital stewards should invest in responsible firms and demand the integration of ESG considerations in investment and decisions. They should utilize responsible corporate governance strategies through shareholder engagement, proxy votes, screening and other tools. This can improve corporate governance practices, and by extension, the long-term value of the funds’ assets. Diligent activists should also engage firms to disclose and improve HCM practices and support the HCM Coalition Petition to the SEC to require HCM disclosure from U.S. firms. These endeavors would boost fair wages, benefits and working conditions, increase workforce training, and facilitate more broadly shared profits. Investors should, finally, demand that Sustainability Ratings Firms adopt and utilize the CWC “Guidelines for the Evaluation of Workers’ Human Rights and Labour Standards”

**Board Representation**

Workers should have a statutory right to representation on corporate boards. The United Steelworkers (USW) have experimented with Board representation, having collectively bargained this provision with several of the largest industrial corporations in the U.S. While this process has been inconsistent, it has allowed for more information sharing with corporate
management and discussion with other board members. But legislation requiring board representation or codetermination would be more effective.

**Engage with the boards and management of firms around stakeholder issues**

Shareholder and public investors should prioritize and provide incentives to firms that adopt good human capital management practices. Labor shareholders should also explore, in their dual roles as share owners and stakeholders, new works systems, which include a broad array of existing U.S. workforce participation and industrial democracy practices (some considered part of HCM), but also productive dual union/works council systems. Finally, shareholders might consider engaging with the boards and management of firms around high performance and stakeholder participation models and approaches, particularly those that target communication, consultation and codetermination.

**Amend trade deals to stakeholder company adoption**

In the coming years, there will be a number of efforts to reform trade deals. While supporting the push from Labor and Civil Society for more democratic and transparent terms for all country partners, we acknowledge the important precedent, as in the case of the TTIP, to require that overseas firms operating in the U.S. adopt dual union/works council structures, especially given the productivity results that are apparent in firms utilizing the German model.

**Revisit State Constituency Statutes**

A majority of states have adopted so-called “constituency statutes,” giving boards of directors broad latitude to take account of stakeholder interests in corporate decision-making. While unpopular amongst shareholder activists (due to a perception that directors and managers self-deal, are untruthful in vowing to act for other stakeholders, or use the laws as barriers to responsible governance), we might want to revisit this framework. Modern stakeholder statutes should guarantee that boards are
accountable, monitored, and allow responsible governance to prevail, and that companies integrate ESG, and embrace information, consultation and codetermination rights for workers, their core stakeholders. Working people and communities need all the tools they can find to prevent destructive hostile takeovers, illogical and often unprofitable mergers and acquisitions, offshoring and irrational break-ups (think Timken).

An idea with deep roots in our society, with origins in the writings of C. Wright Mills, is this: why does American democracy end when you step outside the ballot box? Seizing on Mill’s writings, the New Left gave urgency to the notion of economic democracy, pushing it into schools, neighborhoods and even factories. They proclaimed that students, residents and workers should have more of a say in these respective places. These initial steps toward a more social and inclusive, participatory, bottoms-up democracy were taken up later by union and community activists, and have had lasting impacts in many spheres of American life.

Political pendulums swing, and it’s time to swing back to economic democracy. A bridge to economic democracy is to promote the broader interests of all stakeholders: investors, employees, customers, suppliers and the broader community, rather than to solely maximize shareholder value. Businesses are publicly-chartered, though the public rarely has a voice in whether or not a company has violated that charter. There are, on the other hand, thousands of interesting alternative ownership models, such as co-ops and employee-stock owned (ESOPs) firms that share profits with workers. There are newer ethical business models, such as benefit, social purpose or B-Lab companies, that have been chartered in a majority of states and several countries, and that aim to integrate ESG.

We need to, as a society, reign in bad actors and lift up the concept of *commonwealth companies* that make profits for shareholders, of course, but that also share the wealth with their
core stakeholders—employees. As Marlene O’Connor noted in 2001, there are convergences not only in global corporate ownership (with more European firms operating in the U.S. and U.S. firms merging with European firms) but also in fiduciary and shareholder law that call for a re-
look at how business is conducted in the U.S. (and those trends have only become more acute). As Rainald Thannisch, policy officer at the Department of co-determination of the Executive Board at the Confederation of German Trade Unions, said, “Co-determination creates the conditions—especially in global companies—for democratic (and independent) control of economic power.”

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Bibliography

14 We have no illusions about which candidate is more concerned about working families, as demonstrated through a long history of deeds, not just words.
18 In some cases, the plan may be managed by a single fiduciary rather than a board.
21 “Herd instinct”, a form of investor behavior also known as “herding”, can “often cause large, unsubstantiated rallies or sell-offs, based on seemingly little fundamental evidence to justify either. Herd instinct is the primary cause of bubbles in finance. For example, many look at the dot.com bubble of the late 1990s and early 2000s as a prime example of the ramifications of herd instinct in the development and subsequent burst of that industry’s bubble” (http://www.investopedia.com/terms/h/herdinstinct.asp, retrieved June 21, 2016)
suffered the worst market crash since the Great Depression, conceded (in testimony before the US Senate) that...

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University of Germany
http://www.workerscapital.org/blog/post/corporate
unions’ point of view,”
http://www.ilo.org/public/en
presented at the 13th World Cong
products or practices, such as investments in weapons, alcohol, or tobacco stock.

investments may be screened out, fully or based on a materiality threshold to exclude companies e

Negative screening refers to screening out investments based on one’s ethics

practices on financial performance. This was the case primarily when only negative screening strategies were used

by Arabesque Asset Management Ltd and the University of Oxford.

Drive Financial Outperformance,” a 2014 meta
studies included in the meta

The major stakeholders of democratic societies – business, trade unions and other members of civil society – also have an important role in OECD work (http://www.tuac.org/en/public/tuac/0812_TuacRole.pdf.)

In its efforts to strengthen the 2014 revisions of the 2004 OECD Principles of Corporate Governance, TUAC presented its corporate governance priorities as part of the OECD’s review process. TUAC’S submission can be found at http://www.tuac.org/en/public/e-docs/00/00/0E/49/document_doc.html.


A few studies included in the meta-studies demonstrated neutral or negative impact of responsible investment practices on financial performance. This was the case primarily when only negative screening strategies were used when engaging in responsible investments. See, Commonfund Institute, “From SRI to ESG: the Changing world of Responsible Investing,” (September 2013). Also see, Elroy Dimson, “Active Ownership,” (August 13, 2014).

Negative screening refers to screening out investments based on one’s ethics or values and is the oldest and the most basic way to engage in responsible investing. Depending on investor preference and/or available investment products, investments may be screened out, fully or based on a materiality threshold to exclude companies engaged in certain products or practices, such as investments in weapons, alcohol, or tobacco stock.


Christopher Bruner, “Center-Left Politics and Corporate Governance: What Is the ‘Progressive’ Agenda?” University of Georgia School of Law, 2017, pp. 7-9

Remember that Allan Greenspan, the former Federal Reserve Chairman who was at the helm when the US suffered the worst market crash since the Great Depression, conceded (in testimony before the US Senate) that...
the global market crisis exposed a "mistake" in his free market ideology, shorthand for the efficient market theory.


50 The authors are not, herein, advocating for new free trade agreements, but are highlighting efforts to include better labor and societal protections in such agreements.


