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Profit-with-purpose corporations: Why purpose needs law and why it matters for management

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Abstract

In this contribution, we present the recent reform of corporate law in France (2017–2019) and discuss its implication at two levels. So far, “purpose” was mainly a managerial concept, and most efforts to make corporations responsible have not changed the legal constitution of the corporation. By contrast, the French reform first revises corporate law and introduces the purpose in the constitution of the corporation; it thus prompts a reexamination of former approaches of the purpose of the corporation. Second, with its two components, a duty of vigilance and the possibility for any company to become “société à mission,” it brings into corporate law some principles to manage the future corporate activities. We argue that it is based on a conceptualization of management that deeply differs from traditional legal representations of management. We show that this shift calls for new research at the intersection of law and management.

KEYWORDS

accountability, corporate governance, corporate purpose, corporate social responsibility, law, purpose of the corporation

For some years now, the idea that business corporations will spontaneously take the interests of their stakeholders into account because it is in their own long-run interest has been strongly challenged. Scholars are increasingly seeking for institutional mechanisms to make corporations responsible. However, most explored solutions, such as promoting non-financial reporting or ensuring the independence of directors, do not change the legal constitution of the corporation. However, a wave of reforms is doing just that, with the introduction of new legal forms of purpose-driven corporations in a number of jurisdictions.

In this contribution, we present the recent French reform of corporate law (2017–2019). This reform sets a precedent for European-level discussions, since over 1400 companies have already become *sociétés à mission*. We discuss its implications at two levels. First, at a time when “purpose” soars in strategic management, the introduction of the purpose into the legal field prompts a reexamination of several assumptions about the corporation and its purpose. Second, the French reform stands out as it

brings into the core of corporate law new principles on the management of future corporate activities. We argue that it is based on a new conceptualization of management: The transformative power of management on society and the environment is acknowledged, justifying a distinct “constitutional device” (Caulfield & Lynn, 2022) that imposes its own limitations. At this stage, the tangible effects of this reform are still uncertain and require further study. Nevertheless, we argue that it is an opportunity to analyze why a law is essential to make corporations responsible and to explore its implications for management.

HOW THE FRENCH LAW CHANGES THE CONSTITUTION OF THE CORPORATION

Within the “corporate purpose phenomenon” (Besharov & Mitzinneck, 2023), a number of reforms have introduced new profit-with-purpose corporate forms in different states over the past few years, including the

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benefit corporation in the United States. The French reform is part of them, but it exhibits unique characteristics (Segrestin, Hatchuel, & Levillain, 2021).

The French law comprises two components: a duty of vigilance applicable to all companies, partly enforced through a change in the definition of the corporation, and the possibility for any company to become a *société à mission*. Before delving into the specifics of these components, let us pinpoint two of their originalities, which will be further illustrated hereafter. First, while corporate law usually deals with defining who the constituencies are, their relationships, and their respective rights in the administration of the corporation, both components of the French reform bring corporate activities to the core of corporate law. As we will see, this is not without consequences, because these activities involve resources far beyond those of the shareholders and have effects that extend even beyond the legal boundaries of the corporate liability.

Second, the French reform tackles the known limitations of the law to deal with irresponsible behaviors of corporations. The literature often makes the distinction between “doing good” and “doing harm” (Stahl & De Luque, 2014), between positive and negative impacts, or between solutions and problems (Mayer, 2023, this dialog). Yet, as appealing as it may seem, this distinction is impracticable to reform corporate behaviors. Because either what is “bad” is defined and prohibited by law, in which case there is no debate. For instance, the tort or the delict is an unlawful act, and the injured party has the right to seek compensation from the person responsible for the harm. Or what is considered “bad” is not defined—we are in the “grey area” mentioned by Livia Ventura (Ventura, 2023, this dialog)—and everyone may have a different interpretation. In this case, leaving it to the company, and to the board in particular, to define what is a problem or a solution is likely to be ineffective as long as the governance structure remains unchanged. Directors are indeed legally accountable to the firm’s shareholders: they are appointed, evaluated, and dismissed by the firm’s shareholders (Kaufman & Englander, 2005). Ultimately, shareholders’ exclusive voting rights may allow them to subordinate the corporate purpose to their personal interests (Segrestin & Hatchuel, 2011).

One could have thought *a priori* that the duty of vigilance prohibits causing harm, while the *société à mission* invites companies to “do good.” We think that this interpretation is not correct. The French reform does not refer to any distinction between problems and solutions. It deals with this grey area through the following provisions.

A duty of vigilance

The first pillar of the reform focuses on very specific situations where rights are violated—there is a legally

acknowledged harm—but the company’s liability cannot be established. This occurs in particular when rights violations are legally attributed to suppliers or third parties. In these cases, and except in rare and clearly defined circumstances, the corporation cannot be held liable for the actions of others. Considering the company as an autonomous legal person makes it possible to compartmentalize corporate liability, what has been made for decades by corporate lawyers. The new French law aims at overcoming this limitation by considering activities and the role of management in the design of these activities, even beyond the company’s boundaries.

In 2017, France introduced a duty of vigilance (*devoir de vigilance*), a principle now embraced in Germany and under consideration at the European level via the Corporate Sustainability Due Diligence (CSDDD). The French law builds on existing international agreements on fundamental human rights and on the climate. It stipulates that business activities must be managed in a way that does not expose these rights to risks. The duty of vigilance requires large companies to proactively manage risks related to fundamental human rights and the environment throughout their value chain and beyond their legal boundaries. In essence, it is a management principle: Management must devise, implement, and disclose a risk management plan even if another entity (for instance, a tier-*n* supplier) is legally liable for those risks. The duty is therefore to manage the knowable risks even when tort law is, strictly speaking, unapplicable.

This duty was further extended with the PACTE law in 2019. The very definition of the company¹ (*société*) in the Civil Code, which had been unchanged since 1804, was revised. Whereas article 1833 previously stated that “Every company must have a lawful object and be formed in the common interest of its members,” it has now been complemented by an explicit reference to the activities of the company and their management: “The company *is managed* in its company interest, taking into consideration *the social and environmental challenges of its activity.*” Here again, the law refers to the management of the activities. It means that whatever the form of the company (its size, whether it is a limited company or a partnership, etc.), whatever the company’s interests, and whatever the shareholders’ interests, companies “must not knowingly do anything that could harm their stakeholders” or their ecosystem (Campbell, 2007). In other words, the law does not define “problems” in all generality: It lays the ground for courts to hold a company liable when an activity poses a risk to fundamental rights that was predictable and preventable, even beyond the boundaries of the company.

¹To avoid translation issues, we use the word “company” (*société* in French) to refer to any legal form of business enterprise, for example, both the partnership and the corporation. Conversely, we use the term “corporation” (*société anonyme* in French) in reference to the joint stock corporation (whether closed or public), with legal personhood and limited liability.

The *société à mission*

The second pillar of the French law addresses another challenging situation in law, where there are no violated rights and corporate actions are lawful yet still problematic. Selling excessively sugary products might be detrimental, but until proven otherwise, it remains legal. Similarly, CO₂ emissions are legal. Here, corporate accountability is legally unenforceable, particularly when the adverse effects are dispersed, long-term, or hard to detect *a priori*.

In this situation, French law does not define what is “doing good” or “bad.” It merely asks companies to define their own framework of responsibility, which then becomes known to all parties and legally enforceable. To do that, it proposes a positive qualification of the management mandate, with the concepts of *raison d’être* and *mission*. A company’s “raison d’être” is “the principles the company gives to itself and for the respect of which it intends to allocate resources in *the running of its activity*” (article 1835 of the French Civil Code). Any company can define its *raison d’être* in its constitution (i.e., its corporate contract). Moreover, corporate law introduces the option for any company to become “*société à mission*.” To qualify, a company, be it partnership, public, or private corporation, must (1) stipulate a *raison d’être* in its constitution and (2) detail the *raison d’être* with social and environmental objectives other than profit-making ones. The “mission” then refers to the purpose stated by both the *raison d’être* and its constitutional objectives. Governance is then modified accordingly to oversee the mission: (3) A mission committee, different from the board of directors, is set up with very broad investigative power, to monitor the statutory objectives, and (4) an independent third-party body also audits the execution of the mission every 2 years.

Currently, over 1400 companies across diverse sectors have amended their constitution to become *sociétés à mission*. It is pivotal to note that any type of company (e.g., a public corporation, partnership, and cooperative) can choose to become a *société à mission*. This choice is not limited to alternative social enterprises: There are no profit caps or activity restrictions. Becoming a *société à mission* status does not equate to forgoing profits. It means that the company’s purpose incorporates additional ambitions. Notable examples include Danone, Maif, La Poste, and RWE Renewables France.

This framework raises several questions that we would like to address briefly, as they give us the opportunity to highlight some practical and theoretical implications of the law. What is the point of creating a new legal option with the *société à mission*, since freedom of enterprise already allows shareholders to include whatever they want in the constitution of the corporation? What difference does this make, since corporate law already requires a corporate object? And since it already distinguishes the interest of the corporation from those of shareholders?

The purpose in the French law: model, contributions, and implications

Corporate purpose versus corporate object: enforceable responsibilities

Historically, all companies were to embed “object clauses” in their constitution. The precise delineation of a corporate object (*objet social*) used to serve as a prerequisite for obtaining governmental authorization to establish a corporation. Yet, with the liberalization of the corporation in the 19th century, the corporate object has become very open and even “unrestricted” in some states. Today, companies often define their corporate object by the field of business in which they operate.

We could therefore argue that the notion of “purpose” rejuvenates the traditional concept of corporate object. We contend that purpose is the formulation by a company of both the objectives it sets for its activities and the conditions under which it considers these activities can be responsible and sustainable. Again, the law cannot compel a company not to do what is not forbidden, nor can it compel to innovate. We can hope that companies will work to develop effective vaccines at lower cost for future epidemics, but nobody can force them to do so. It is therefore up to the corporation to express how it sees under what conditions it considers that its activities will be beneficial and not harmful. The *société à mission* provides a way, while preserving freedom of enterprise, to get companies to commit themselves to exiting environmental detrimental markets or to invest in a sustained research effort for developing more sustainable solution. To give a concrete example, Danone’s *raison d’être* is to “bring health through food to as many people as possible.” Danone has broken down this purpose into four commitments. The first one seeks to “impact people’s health locally with a portfolio of healthier products, with brands encouraging better nutritional choices, and by promoting better dietary habits.” The second one seeks to “preserve and renew the planet’s resources by supporting regenerative agriculture, protecting the water cycle, and strengthening the circular economy of packaging across its entire ecosystem in order to contribute to the fight against climate change.”²

Once they are established, the commitments are known (as are those they do not take) and become binding. The strength of the *société à mission* lies in the fact that the purpose, as a constitutional commitment, will remain, even through changes in shareholders and in any country in which the company operates.

²Details can be read here: <https://www.danone.com/about-danone/sustainable-value-creation/danone-societe-a-mission.html>.

Corporate purpose and corporate interest: a disambiguation?

The emergence of new purpose-with-profit corporations also sheds new light on the recurring debate on the purpose of the corporation. Since the famous exchange between Berle and Dodd (Berle, 1932; Dodd, 1932), researchers have debated, in France as in the United States, whether directors should pursue the interests of shareholders or those of the corporation, which is a distinct legal entity. However, exclusive control and voting rights allow the shareholders to reduce the interest of the corporation to those of the shareholders. The introduction of a purpose in the constitution is likely to revisit the debate. Once there is an explicit purpose, the ambiguity about the corporate interest is eliminated: The law requires economic success and the respect to the constitutional objectives. Profit-with-purpose corporations may therefore be a lever for restoring the “thirdness” of the corporation as a legal entity, different from its constituencies (Grandori, 2022).

Beyond directors’ fiduciary duties: a dedicated supervisory board

Companies define their purposes themselves, but then the purposes are binding, with legally mandated control. In this respect, the mission of a *société à mission* radically differs from both mission statements (Kaplan, 2022) and other approaches of purposeful organizations, as it goes with formal mechanisms of control and accountability to ensure effective monitoring. For example, according to Colin Mayer (2023, this dialog), it should be the basis of “fiduciary duties of directors to adopt purposes which produce profitable solutions not problems,” and “accountability of boards should then remain solely to their shareholders.” By contrast, we argue that new institutionalized control mechanisms are needed. The board of directors is the body in charge of defining the strategy; it cannot be judge and jury. In French law, the mission committee is another board, which controls that the corporate activities are consistent with the purpose, and an external audit is also required. The *société à mission* therefore also differs from the benefit corporation, which necessitates self-assessment-based reports according to a third-party assessment standard, but no change in the oversight governance and no supplementary control (Murray, 2012).

From *controlled reporting* to *controlled management*

The mission committee is responsible for establishing its own evaluation methods to ensure that the company sticks to commitments. It can define measures of impacts, ask for evidence, or question the company on its strategy

to respect the objectives. The trade-off among objectives would not be an option as the objectives are all binding. For instance, at Danone, the goal of healthier products may sometimes clash with the goal of ensuring broad accessibility. That is why the mission committee has to take a critical look at the company’s operations and, when necessary, compels management to elucidate how it explores innovative approaches to simultaneously fulfill these objectives. Additionally, the committee may advocate for further exploration, research, and innovation efforts.

As a result, we argue that the *société à mission* makes it possible to move from *controlled reporting* to *controlled management* of social and environmental performances. Traditional CSR tools often limit their reporting to instrumental, that is, financially material dimensions. When they define action plan with pre-defined goals, the goals are most set to be achievable. As a result, results are not innovative (Voegtlin et al., 2022). By contrast, we expect that in a *société à mission*, investigations of the mission committee will cover all relevant dimensions of sustainability. We also expect that the *société à mission* will serve as a lever for effectively transforming corporate practices.

The role of law

It may seem paradoxical to pass a law that, in practice, does not really expand what is legally possible. Shareholders already had the ability to put whatever they wanted in the corporation’s constitution. However, law plays an important role in terms of cognitive framing. By giving every company the opportunity to formulate its *raison d’être*, French law explicitly recognizes that a company is not just an organization with an economic purpose. The law challenges the idea that the purpose of the corporation is either profit maximization or a social goal (Gartenberg, 2022) and offers to dual-purpose corporations a chance to become an institution in their own right (Battilana et al., 2022). Moreover, we argue, as we will detail in the next section, that with its two pillars, the French law revised its conceptualization of management.

HOW THE FRENCH LAW INTEGRATES A NEW CONCEPTUALIZATION OF MANAGEMENT

As mentioned, corporate law traditionally deals with who are the constituencies, their respective voting or control rights as well as the distribution of profits and losses. It does not address questions related to the management of the activities. Typically, the relationships between management and employees or the management of environmental impacts fall under other branches of the law, respectively, labor or environmental law. French law innovates by placing into corporate law and, in the

constitution of the corporation, new principles of management. Our analysis is that it integrates a new conceptualization of management in law. In this section, we build upon the new legal framework and the broader academic and societal debates that have emerged around the reform to characterize how management is conceptualized in this new law.

It is important to note that by “management,” we refer to the body of managers, chief officers, or top executives.

The classic view: managers as corporate delegates

Classically, the status of management derives from the constitutional order of the corporation (Ciepley, 2013; Grandori, 2022). Except when they are directors, corporate law does not say much about managers or executives (Segrestin, Johnston, & Hatchuel, 2019), other than that the chief executive is appointed and dismissed by directors, who are themselves nominated by shareholders. It specifies that directors have a certain number of fiduciary duties: It is expected that they will give a decent amount of attention to business (duty of care), not in their own interest but with fidelity to the interests of the corporation (loyalty) and at least reasonable business prudence. Managers are only seen as corporate delegates. Although agency theory infers that managers must run the business in the name and on behalf of their principals, namely, the shareholders, legally speaking, managers are not agents of shareholders but of the corporate juridical person (Blair & Stout, 1999; Johnson & Millon, 2005). But they still are corporate delegates.

Beyond delegation: a public mandate to protect fundamental rights

With the French reform, managers can no longer be seen solely as corporate delegates. The example of the status of a ship’s captain may be enlightening here. In maritime law, the captain is at the same time the agent of the shipowner in commercial matters, but he has an authority of public order in matters of safety. The shipowner cannot exert pressure, and it is the captain’s responsibility to assess the risks and not set off in heavy weather.

Similarly, the duty of vigilance and the article 1833 recognize that, when managers design and implement a collective action, this collective action must be designed in such a way that it does not put the fundamental rights at risks. All the knowable risks must be managed to the best of the available knowledge. It thus institutionalizes a principle for management: Management must be both competent, that is, capable of identifying foreseeable risks, and responsible for ensuring that corporate activities, whatever the pressures, do not pose such risks.

Here, management comes with responsibilities that both agency theory and company law have so far neglected, but which had been decisive in the emergence of labor law. The most striking example concerns the historic law on accidents at work: In France in 1898, the law made chief executives (not shareholders) liable for accidents at work. This liability is very special because it makes chief executives liable in all circumstances (even if employees have not followed instructions) and because it does not presuppose fault on the part of the chief executives. The risk of accidents was deemed intrinsic to (innovative) industrial activity. It is therefore a risk for which executives can and must take out insurance. But to be insurable, executives must have managed the activity with all the necessary precautions according to the state of the art in terms of safety and security at work. There is therefore a requirement for competence and a responsibility on the part of management.

Today, we interpret the duty of vigilance as an effort to extend the responsibility of management, from security at work, to more human rights and environment agreements. As management conceives a collective action, it must be responsible for ensuring that this collective action does not jeopardize fundamental rights. And this responsibility is enshrined directly into corporate law, also leading directors and shareholders to face up to their responsibilities.

The mission: a mandate for creatively developing a purpose

With the *société à mission*, French law acknowledges another aspect of management. The *société à mission* is a legal device that invites companies to commit themselves on the principles they define themselves in their constitution. It reveals that making companies accountable no longer goes through either voluntary CSR regulation or through state-imposed principles that would determine what is allowed or not for business. The *société à mission* represents a new avenue. It is what Caulfield & Lynn (2022) define as a “constitutional device.” As the states impose limitations to their power over their subjects by imposing themselves constitutional rules, the *sociétés à mission* impose constraints on themselves to shape the way they will manage their future activities. A constitutional device is defined for entities with power as “formally institutionalized means of constraining power and authority.”

The Notat-Senard report, which laid the groundwork for the 2019 law (Notat & Senard, 2018), explicitly recognized that managed activities have gained a transformative power that shapes the world in which we live. Their creative power has expanded to such an extent that it now affects all aspects of the human condition. In these circumstances, the issue is not to limit this innovation capacity, nor to request states to intervene and define what this innovation capacity could be used for. Instead, the issue is

to harness this creative power in a sustainable way and to address contemporary challenges. The issue is to make companies, like States before them, determine the boundaries that management must respect in conducting their future activities. And the innovation capacity will be all the more crucial that management will have to explore new strategies to address multiple and potentially contradictory objectives. Therefore, with the *société à mission*, we argue that the law acknowledges the creative and profoundly transformative power of management.

In summary, the French reform significantly alters the way management is conceptualized in corporate law. Management retains its role as a corporate delegate for economic matters, but it is now acknowledged as an architect and a captain of collective endeavors with a creative power that transform the world. Consequently, the status of corporate delegate is augmented in two ways: (1) with a public mandate, beyond shareholders pressures, to organize collective actions that respect fundamental rights and environmental agreements, (2) and a mandate stipulated in the constitution with appropriate control mechanisms, specifying the purposes that the creative power of management must serve to ensure its sustainability and responsibility.

IMPLICATIONS FOR FURTHER RESEARCH AT THE INTERSECTION OF LAW AND MANAGEMENT

Purpose-driven companies, and the French *sociétés à mission* in particular, by no means mark the end of history for corporate law. On the contrary, in our view, the French reform reopens the possible avenues to hold companies accountable. On one hand, it enables us to understand why conventional corporate law is insufficient and why a new law is necessary. Making the purpose a constitutional device is a way to preserve, and even to strengthen the freedom of enterprise, as there is no longer a need to choose between profit maximization and social or environmental objectives. On the other hand, the French law revises its conceptualization of management to make corporations responsible. The reform thus opens up several research opportunities. It clearly calls for empirical study on its effects and implementation problems, and raises questions on the possible need for further complementary legal provisions. To conclude, we outline three complementary avenues for further research at the intersection of management and law.

Studying the institutionalization of hybrid organizations

First and foremost, it will be necessary to examine the concrete effects of the reform on companies that have become *société à mission*. In particular, it will be

important to study the formulation of purposes, the composition of mission committees, and the way they operate in practice. And ultimately the effects on organizational governance and management will have to be assessed. Such research will be useful to understand emerging practices, but also to characterize more virtuous practices and foster their dissemination.

It will be also important to see how the framework of *société à mission* interacts with other mechanisms such as directors' independence or non-financial reporting obligations. There is no reason for these mechanisms to be mutually exclusive, and they may even have significant synergistic effects.

Similarly, we have proposed that purpose-with-profit corporations can contribute to the institutionalization of hybrid organizations (Mair & Wolf, 2021). Research has shown that, despite strong societal expectations, dual-purpose corporations are embedded in pluralistic environments where different stakeholders hold different views on the goals companies should pursue, leading to major tensions within the corporation and in relation to its various parties. Therefore, future research will need to investigate to what extent the model of the *société à mission* provides a framework that can make "dual-purpose companies legitimate and accountable to both their owners and the society in which they operate" (Battilana et al., 2022).

Comparing the variety of new legal corporate forms

The growing variety of forms of corporations calls for comparative assessment to inform future frameworks for corporate law in Europe and elsewhere. The essay by Livia Ventura (2023, this dialog) is a useful step in that direction. There is a spectrum of alternatives, ranging from the straightforward inclusion of a purpose in the corporate constitution, to the more intricate French model, which involves a mission committee and an external review, as well as benefit corporations which necessitate self-assessment based on third-party assessment framework. Depending on the institutional context and on the issues to address, these diverse frameworks will vary in effectiveness, feasibility, and enforceability. For instance, while a third-party standard might support the implementation of well-established CSR practices, we expect that the presence of a mission committee becomes more pertinent when solutions are not readily available and demand sustained efforts to generate ad hoc solutions.

Rethinking the nexus between management and the corporation

Finally, from a more theoretical perspective, we have observed that with the French reform, managers could no

longer be equated to corporate delegates: The new mandate given to managers reveals a new conceptualization of their role in law. Management scholars have already tried to model the role of management by considering the legal framework. Managers have been portrayed as trustees, stewards, stakeholder administrators, professionals, *bona fide* team members, and so on. However, these characterizations served primarily as codes of conduct specific to management, whether instrumental, ethical, or moral. They have not impacted the constitutional order of the corporation. Consequently, their influence on promoting responsible corporate behavior has been limited. When previous efforts were made to hold management accountable, they have often been envisioned *outside of corporate law*—predominantly in labor or environmental law— independently from the corporate order (Segrestin, Levillain, & Hatchuel, 2022; Selznick, 1969).

Today, we contend that the conceptualization of the function of managers should not necessarily depend on legal perspectives. This reflection on the French experience has shown how views from management can, and perhaps should, inspire law and vice versa. In this respect, we need more research on the nexus between management theory and corporate law.

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