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Corporate Inversion: The American Way

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Advanced capitalism is, increasingly, an international system, subdivided into consanguineous blocs, such as the EU, or given practical implementation, as in NAFTA and the still-negotiated TPP, but in reality the dominant political economies, although benefiting from, indeed, defining and structuring, cross-border flows of financial, industrial, and commercial activities, relations, and investments, use these arrangements in order to develop an independent power base and thus strike out unilaterally on the world scene for achieving global economic dominance. The internationalization of capitalism is true so far as it goes, remaining qualified at the outset by intra-capitalist rivalries classically embedded in the imperialist paradigm (for which alliance-systems provide a subduing or mitigating factor), but in its upper reaches capitalism, America the prime and virtually singular example, rests on national foundations, not least because of the locus of preponderant ownership and, greasing the wheels, a formidable military protective force in promoting expansion. America is 21st century capitalism in extremis, i.e., not so much in heightened form, as rather near the point of death (Webster's), postponement or avoidance of which necessitates desperate moves, seemingly, but not really, noneconomic in origins, as in a broadly counterrevolutionary posture intended to shape the international order to its liking and in conformity with its ideology of unrestrained capitalism, antiradicalism, and the nuts-and- bolts policy constants of war, intervention, and regime change. On that score alone, America in the present-day is already conspicuous for its historical-structural corporatism, a systemic near-replication of what in the first-half of the 20th century had been tried and adopted in German, Italian, and Japanese fascism, where the lines between the State and Capitalism were removed in a unitary framework of government-business interpenetration.

I call that fascism, stripped of emotive content, and without necessarily invoking the existence of the concentration camp and gas chamber, because the telling feature in all of this, beyond an obviously militaristic mindset grounded in an hierarchical structure of status and power, is the corporatization of the total society: capitalism at the heart of the polity, that for which all of life is meant to serve. Capitalism and polity conterminous, no longer simply interpenetration of the two but an identity of structure and interest. America has carried this integrative process of a private-public conflation further than any other advanced capitalist power, state capitalism no longer a sufficient designation, or even capitalist state, but the state as the outer covering for capitalism proper, revealing its militaristic potential and hegemonic aspirations, tightly-bundled in a national context the better for the public realm to activate the private, inculcate patriotic devotion and submission in the people, and—bluntly—keep order. Meanwhile, capitalism's systemic wish-list (Marxists may fall back on integral tendencies, but I prefer the more active role of ruling groups in guiding and establishing boundaries for capitalist development, hence, an indictment of class rule, if that should ever be possible if and when working people get their act together) takes on, in America, an accelerated pace for completing the agenda of utmost and complete concentration and consolidation of the corporate form. America, Inc., a land of loyal employees, compliant consumers, obedient politicians, organized, synchronized, to reflect an imperative command structure dedicated to one end, the System itself.

Nominally, corporate inversion is an accounting trick realized through mergers and acquisitions to evade taxation. Why be satisfied with the myriad loopholes, corporate executives are asking themselves, and the opportunities for taking write-offs, built into the tax code, whose top rate of 35% is seldom, very seldom, charged, half that rate more typically, making a progressive tax system a misnomer (clearly one that is regressive, even as compared to that of individuals, in the higher altitudes), when you can have TAX EVASION altogether?! Let's stay with corporate inversion in its simple technical usage, then look briefly as above at a Capitalist Polity, the State its mere appendage: to fight its wars (trade wars included), provide bailouts for its business and banking failures, and steady its volatile stock market, based on everything from gambling blindfolded to manipulation via insider trading. To gain an overview of corporate inversion, I turn to the NYT DealBook section, Andrew Ross Sorkin's article, "A Tidal Wave of Corporate Migrants Seeking (Tax) Shelter," January 26, an apt title; not migrants like the Joad family in the Grapes of Wrath forced off the land and seeking opportunities perhaps in the city, but multibillion dollar entities voluntarily migrating overseas to save vast sums on their tax bills, havens the Joads will never see.

Sorkin has no illusions about the evasion tactic—this is about Johnson Controls, shock troops for the automotive industry in securing corporate bailouts, while ultimately greatly profiting for itself. "In the fall of 2008," he writes, "with General Motors and Chrysler on the precipice of bankruptcy, executives at the car parts supplier Johnson Controls flew to Washington. The company's president testified before a Senate panel and implored lawmakers to bail out the auto industry." Yes, what's good for GM (and Johnson Controls) is good for America, Keith Wandell, the latter's president, warned that "the failure of even one automobile company would 'implode' the supply chain and lead to broad job losses." We've heard that song before, and since—chiefly with financials; Congress gave GM and Chrysler "a bailout plan worth almost $80 billion," Johnson and other suppliers were saved, and Johnson's CEO in 2010 received a salary of $15 million. So far so good, for here we get a glimpse of corporate patriotism at its zenith. Sorkin writes: "Despite the federal government's rescue—and hundreds of millions of dollars in tax breaks over the last several decades from states like Michigan and Wisconsin—Johnson Controls said on Monday [Jan. 25] it was renouncing its United States corporate citizenship by selling itself to Tyco International, based in Ireland, a deal struck in large part to reduce its tax bill, which it said should drop by about $150 million annually."

Not unusual; here he briefly recites the honor role of tax evasion: The announcement "is just the latest effort by corporate America to flee the United States. In the last year, Pfizer said it was leaving for Ireland, as did Medronic, the medical device maker. [More on both of these below] Coca-Cola's largest bottling company, after selling its domestic operations, is heading to Britain." In fact, the stampede is on, and has been in this form for at least a quarter-century, under Democratic and Republican administrations, with no resistance offered. The dynamics of what amounts to bottom-fishing, here for the lowest taxes, applies still earlier to outsourcing and lowering the labor cost of manufacturing, capitalism dedicated to cheapening every thing in sight except its own profits (the foregoing, mine, not Sorkin's). To his credit, he states that until the tax code is reformed [wishful thinking, at best], "we will continue to see an exodus of American companies from our shores in search of a lower tax rate." And he finds that "based on a series of conversations with investment bankers, there are probably at least another dozen deals of meaningful size being negotiated in the pipeline." I might add, if genuinely reformed, the tax code would probably produce a universal stampede of "corporate migration," his idea of reform being what the Treasury has approved (but I think easily gotten around), "a rule that an American company could not complete an inversion if it owned more than 60 per cent of the combined company; Johnson Controls will own 56 per cent of the combined company."

Hmmm, how did it just come under the wire? In another NYT DealBook article, "Tyco Merger Will Shift Johnson Controls' Tax Liability Overseas," (Jan. 25), Leslie Picker explains the careful calculation made to legitimize the inversion. She begins: "One of the first big mergers of the new year resembles a number of other deals in recent years in one crucial respect: It will allow an American corporation to move its headquarters to a country where corporate taxes are lower." Johnson, now combining with Tyco, "will relocate its headquarters from Milwaukee to Cork, Ireland, where Tyco is domiciled and where corporate taxes are lower than in the United States." The reputed savings in annual tax payments, the combined companies announced, is at least $150 million. (Picker notes that the Johnson Controls-Tyco combination "is the 13th such deal to be announced in the last 16 months, according to data compiled by Dealogic.")

Still, how did the deal get beyond the Treasury rule, where "shareholders are required to own less than 60 percent of the joint entity to pass muster for an inversion"? We left the matter at 54%-46%, and Sorkin points to some streamlining by both companies, and adds, "Right before the merger, Tyco will conduct a reverse stock split, whereby Tyco shareholders will receive a ratio of 0.955 shares for each of their existing Tyco shares." If this seems too technical, as it does for me, Kevin Allison, also NYT DealBook, (Jan. 25), explains the mechanics of the deal, so as to satisfy Treasury guidelines: "In a complex deal that smacks of late-cycle merger action, Johnson's own shareholders are being handed $3.9 billion in cash to reduce the share count to levels that allow a shift of tax domicile to happen." Everyone is happy, Congress, Treasury, the respective shareholders ("Johnson is in effect paying roughly $1.4 billion above Tyco's market value on Friday [Jan. 22]" to keep within the prescribed limits set for inversion, here Tyco owners, "hold 44 per cent of the combined company and therefore collect nearly half of any additional upside."

Picker quotes Robert Olson, chief financial officer of Tyco, who said: "We're well within the guidelines that the I.R.S. has established, so we feel really good on it." Well he might, for we learn also in Picker's article that Tyco is quite a good candidate for the Corporate Good Citizen Award (my fictional creation): It changed corporate headquarters several times (one step ahead of the law?) doing its first "inversion in 1997 by acquiring ADT Ltd., and moving its headquarters to Bermuda." Then, "in 2009 shareholders voted to shift Tyco's headquarters to Switzerland, and then five years later to Cork, Ireland." A veritable Baedeker guide to Theft in the Grand Manner; fittingly, the company, started in 1960 as a small research outfit with government connections, later "growing into an industrial giant through a series of diverse acquisitions," in the early 2000s "was marred in scandal when Dennis Kozlowski, its CEO, was convicted of looting the company." Such is the nature of capitalism, of corporate tax evasion, of inversion; "since then, the company has been broken up several times." Its market valuation, as of last week, was $13 billion, and S. & P.'s Capital IQ show projects its 2016 revenue at $9.7 billion. Nor is Johnson suffering; it "will receive about $3.9 billion in cash from the transaction, for which Tyco has secured about $4 billion in financing." Added to that the savings effected in evasion (oops, inversion) and we have a good day's work. The usual helpers, Barclays, Lazard, Goldman, provided further zest to the whole operation.

The foregoing is a useful case study, not least because of its recency, alerting us to corporate depredations going on under our very noses. But there are many others, and sticking to the recent timeline I'd like to look at two, Pfizer and Medtronic, poster candidates for the dynamics of inversion. Medtronic goes back to mid-2014. It agreed, according to NYT analyst, Michael de la Merced, in his article, "Device Maker Medtronic Agrees to Merger and Will Move to Ireland," (June 15), "to buy Covidien for $42.9 billion, combining two of the world's biggest medical device makers and helping Medtronic lower some taxes by gaining access to cash held overseas." Never mind the obvious in all of these multibillion dollar transactions, in which anti-trust law and consequent prosecution are and have been for some time dead letters, for we see the interesting point that overseas cash holdings/profits are safely sheltered, even though, and when, they are reinvested back in the US. Merced writes: "The deal, which is being structured as a so-called inversion, will relocate Medtronic from its headquarters in Minneapolis to Covidien's corporate home in Ireland, where the tax rate is significantly lower than in the United States. But Medtronic argues that its tax rate will remain roughly the same, at about 18 percent." This is still absurdly low, given the size and scope of the merger, particularly when one notes Medtronic's advantage of enjoying, like Pfizer as well, assorted protections of US law, such as patent rights, access to the American stock market, etc. The deal isn't small: "Together, the two companies will become one of the biggest providers of medical devices in the industry, with 87,000 employees in over 150 countries." At the time, the deal was "the biggest-ever foreign acquisition by an American company," surpassing "Kraft's $19.5 billion takeover" of Britain's Cadbury.

Although US corporations claim to be at a competitive disadvantage headquartered in the US, where corporate tax rates are allegedly high, Merced points out that American tax laws "allow companies to move their corporate headquarters under certain circumstances [none seems unduly restrictive, if at all], leading to a growing wave of inversions." The refrain, repeated ad nauseam by every CEO in corporate flight, that this is not about lowering (i.e., evading) taxes, can be seen in the statement of Omar Ishrak, Medtronic's chair, "'Although this is an inversion deal, it's not about lowering tax rates,'" claiming instead, and correctly, without I think denying the other, that "'Medtronic can get access to the free cash flow that Covidien generates and deploy it in the U.S.'" So, even though Covidien shareholders will have only 30 percent of the combined company, thus well within Treasury regulations, Medtronic has married a cash cow and is happily ensconced in Ireland while, with these reserves, enlarging its business in America.

Finally, there is Pfizer, a granddaddy of global pharmaceuticals, voracious in its appetite/skilled in its aptitude, for profits, maker of Lipitor, Viagra, and Botox, the Holy Grail of the American lifestyle, and if that isn't enough to win our admiration, then sheer size earns the respect of every right-thinking capitalist. Its journey leading up the events of today has not been easy, for in mid-2014 it attempted to merge with AstraZeneca and was unceremoniously rebuffed. NYT reporter Jenny Anderson has the story, "Pfizer Abandons Bid for AstraZeneca," (May 24, 2014), affording insight into its corporate strategy to follow. She writes, "On the final day for Pfizer to decide whether to abandon the plan, it said it did not intend to make an offer for AstraZeneca." Its final offer was rejected the previous week, I gather to Pfizer's dismay: "The cash-and-stock bid, which valued AstraZeneca at about $19 billion [more than generous, it seems], would have created the world's largest drug company." Pfizer thinks big, it also thinks about favorable "tax domiciles," words often appearing from all sides. Ian Read, its chair, is direct: "'We continue to believe that our final proposal was compelling and represented full value for AstraZeneca…. As we said from the start, the pursuit of this transaction was a potential enhancement to our existing strategy.'" He is not shy about the tax-saving rationale for corporate inversion, nor the cash accumulated for global investment via lower rates. One reason AstraZeneca held back was its belief that it finally had "promising new drugs" in the pipeline (read: predators going for the jugular), in this case, "MEDI4736, a lung cancer drug that…could be worth as much as $6 billion in peak annual sales."

Welcome to the world of pharmaceuticals. Jumping forward to mid-November, 2015, Pfizer again on the (corporate) prowl, we see Jeff Sommer's article in the "Your Money" section of The Times, entitled, "A Tax-Cutting Move That Pfizer Can Hardly Resist," (Nov. 14, 2015), which is like a gunshot blast: "Give Pfizer, the giant drug maker, points for boldness and persistence: The company has bravely put 'tax inversions' back in the headlines." We are now up to the preliminaries with the Allergan merger: "Pfizer, which already holds roughly $140 billion overseas and is quite skillful at minimizing its taxes, is considering a deal that could move its legal tax headquarters from New York to Dublin, where it could save bundles more." Sommers notes that Pfizer tried unsuccessfully the previous year for a "tax inversion," and that "from a purely financial viewpoint, tax inversions make sense for companies like Pfizer," or in other words, amoral cynicism rules the roost and one cannot expect otherwise (mine, not Sommers). Enter Allergan: "Last month [Oct., 2015], the company revealed that it was engaged in merger talks with Allegan, a smaller pharmaceutical company that operates in New Jersey but has already shifted its own tax domicile to Ireland through a tax-inversion merger." Before Pfizer, Allergan was already in the game, perhaps ready, with its Irish tax domicile, for the next fish. Again, Ian Read. Yes, some in Congress are upset (Jack Reed of Rhode Island, to his everlasting credit) about the inversion, but so what, for Read on Oct. 27 said in a conference call: "'The shareholders of Pfizer expect us to maximize the return, and the employees of Pfizer want to have a robust, successful company in the future. To be successful in the future, we need to have a competitive tax rate.'"

Off to Dublin, still of course leaving the actual headquarters and operations in America intact. It is significant that Ian Read is an accountant (perhaps the coming occupational training ground for corporate CEOs), and Sommer notes, "Pfizer represents a textbook case of complex global accounting." What is meant here, besides sophisticated tax evasion? Perhaps nothing, except that, he goes on, Pfizer "has been deftly exploiting tax anomalies for years, yet it is evidently convinced that it can do even better with a foreign tax address." Taxation raises the question of, if not gives birth to, the multinational corporation, an argument raised (in its favor) by Roman Weil, University of Chicago professor emeritus, the Booth School of Business, whose textbook, "Financial Accounting," 14th edition, praises Pfizer to the hilt for its "unexceptionable" work. Weil reasons (?) that US multinationals are wary about repatriating foreign profits: "'It's not surprising,'" he writes, "'that companies like Pfizer and G.E. want to keep those dollars abroad so they don't have to pay those [US] taxes {which he estimates at 25%]. Sommer is quick with his rejoinder: Pfizer claims 25% as its "'effective tax rate,'" yet, he observes, "if you're not an accountant, that phrase, 'effective tax rate,' may not mean what you think it does. It's not what the company actually pays…. When, if ever, Pfizer would pay enough to reach 25 percent is far from clear."

Wonderful, the clouds part. Pfizer "has sheltered $74 billion by holding it overseas and declaring that the money will remain abroad 'indefinitely.'" Although the US government "taxes companies on their worldwide income, it doesn't collect on earnings that remain abroad," and in parentheses, further, and importantly, he writes: "Pfizer might be able to use its overseas cash in a merger with a foreign-domiciled company, like Allergan [the deal has not been consummated yet]. That could enable Pfizer to declare itself an Irish corporation, easing its tax problems." Ireland, I toast thee, the leprechaun of monopoly capital, a hiding place of treasure, elf pledged not to reveal its location. One need only add: "On top of that $74 billion, Pfizer keeps an additional, unspecified amount abroad," which Sommer calculates as another $70 billion. Our good Professor Weil thinks "tax domiciles abroad" can be advantageous to the US, encouraging multinationals to invest at home: "They might be more inclined to do so, he said, because they could book earnings abroad and bring the money back to America 'without incurring that additional United States tax.'" In all of this, we see academic whoredom falling into step: Edward Kleinbard, former chief of staff of the congressional Joint Committee on Taxation, and now professor of law and business at Southern Cal, takes the position that "the morality of tax inversions was not an issue that C.E.O.s should even be expected to address. In his words, "'There is a moral imperative here, but it falls on the shoulders of Congress, not on corporations.'" Corporate self-interest, Sommer paraphrase, is an "economic model in place now," and, again, Kleinbard, "'If the results are plainly inconsistent with the national interest, Congress has to fix things [which in buck-passing fashion, he is certain it will not]. We shouldn't expect the corporate community to hold itself to values higher than the marketplace.'" A fitting epitaph for America.

Perhaps it is unnecessary to go beyond the factual material to a theoretical conclusion about the nature of corporatism, and corporate inversion as the deconstruction of an atavistic demand for profits, militarism, conquest, all resting on a submissive populace that transforms the human being into a commodity, and capitalism, far from being a political economy, takes on the dimensions of the State itself insofar as organizing the structure of social relations and keeping the people in a condition of somnambulant regimentation. The merger has now been effected, we can all rest at ease.