

On Corporate Responsibility

Crisis of Capitalism and Climate Crisis

by Swann Bommier & Cécile Renouard

The climate crisis demands that corporations be envisioned as “commons”, and that they serve the protection of the material and intangible common goods which, alone, can allow the emancipation of all.

In France, a recent legislative bill established corporate transformation as one of the major challenges of the 21st century.¹ While the law failed to address the basic issues raised by climate change and loss of biodiversity under our economic model, the question of the transformation of the corporate model is becoming increasingly urgent given that no European Union member state is currently capable, within the framework of its current economic policies, of reducing its greenhouse gas emissions in order to meet the objectives set out in the Paris Agreement and keep global warming below 1.5°C.²

What role and responsibility do corporations have in this context? This question is all the more pressing considering that, although states are largely responsible for the construction of the current climate regime, corporations are its main players. A report released by the NGO Carbon Disclosure Project revealed that just 100 companies in the energy sector are responsible for 71% of global industrial greenhouse gas emissions.³ And already some of the companies featured on that list have stated in their annual reports that the fossil fuels divestment movement now poses a growing threat to their stock price.⁴

Analysing the various conceptions of corporate responsibility in the face of major 20th-century challenges, primarily climate change, means understanding the company as

¹ <https://www.legifrance.gouv.fr/Droit-francais/Actualite/18-juin-2018-pjl>

² <http://www.caneurope.org/publications/reports-and-briefings/1621-off-target-ranking-of-eu-countries-ambition-and-progress-in-fighting-climate-change>

³ <https://www.cdp.net/en/articles/media/new-report-shows-just-100-companies-are-source-of-over-70-of-emissions>

⁴ <https://cleantechnica.com/2018/06/26/shell-acknowledges-global-divestment-movement-in-its-annual-report/>

commons, in other words a collective made up of stakeholders who all claim ownership of that entity without ever being able to claim exclusive control of it, and who henceforth must agree to envisage their activity within the limits required to protect the global commons.

Legality as a Benchmark of Responsibility?

Pursuing the republican ideal of a state that would be capable of establishing the economic ground rules, neoclassical economists have long shared a minimalist perspective on corporate responsibility. In the 1960s, Milton Friedman stated that corporate responsibility was limited to “making as much money as possible [...] while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.”⁵ According to this approach, a business is a private actor driven by the unbridled quest for profit in a context of financialised capitalism, for whom the only constraint to the maximisation of the return on investment are the laws adopted by the states and the ethical norms in place at local level.

Nevertheless, this notion of corporate responsibility, which has been challenged for more than two centuries by numerous stakeholders keen to promote economic models embedded in society, has gradually been undermined. Indeed, the capturing of the legal system by economic elites and private lobby groups on the one hand,⁶ and the inability of states to agree on a universal binding threshold in the fiscal, social and environmental spheres on the other hand⁷ have rendered obsolete the idea that complying with local laws would guarantee justice. For what is legal does not necessarily coincide with what is morally legitimate or just.⁸

Identifying the Responsibilities Pertaining to a Political Actor

First and foremost, however, although states and parliaments obviously play a vital role in the adoption of public policies that promote fair and sustainable human development, companies have acquired so much economic, political and technological power that they are now capable—while still needing state protection to facilitate trade and defend their property

⁵ <https://www.nytimes.com/1970/09/13/archives/article-15-no-title.html>

⁶ <https://www.cambridge.org/core/journals/perspectives-on-politics/article/testing-theories-of-american-politics-elites-interest-groups-and-average-citizens/62327F513959D0A304D4893B382B992B>

⁷ <http://politybooks.com/bookdetail/?isbn=9780745662381>

⁸ <http://www.albin-michel.fr/ouvrages/desobeir-9782226395283>

rights—of freeing themselves from state supervision and profoundly reshaping our social relations, our imaginations and the physical parameters of the Earth’s surface.

In this context, private initiatives, civic initiatives, social movements, states, public bodies, social entrepreneurs, international organisations and non-governmental organisations have been trying for decades to put the economy in the service of a shared understanding of the common good and the protection of the global commons. To do so, these actors have established national and international laws, codes of conduct, certification labels, international tribunals, extra-judicial bodies and complaint mechanisms in order to make corporations accountable to citizens. Thus, in the fight against climate change, states, territories, associations and individuals are suing both governments and major industrial groups for harm caused by their inaction or greenhouse gas emissions to their quality of life or capacity to remain in their place of abode. For example, in early 2018 the City of New York filed a lawsuit against five fossil fuel companies based on their promotion and persistent use of an environmentally harmful industrial model in order to maintain profitability.⁹ In the Netherlands, 900 citizens successfully sued the Dutch government in 2015 to force it to urgently adopt more ambitious policies aimed at cutting greenhouse gas emissions.¹⁰ Saúl Lliuya, a Peruvian citizen, sued the energy giant RWE in Germany, claiming that the emissions generated by the company were contributing to climate change and threatening his village, located at the foot of a glacier.¹¹ In 2016, the Commission on Human Rights of the Philippines brought a case against 47 firms from the mining, oil, coal and cement sectors seeking damages linked to extreme climate events caused by their emissions.¹²

These various lawsuits highlight the responsibility of corporations in defining their purpose; in managing their negative impact on their employees, territories and ecosystems; and in their influence over the democratic process and public policy. We can thus distinguish the following four areas of responsibility, all of which have a bearing on the question of ecology and climate.¹³

- **economic and financial responsibility**, which concerns the conditions of fair value creation and sharing. This aspect is vital because it involves questioning ex-ante, and not just ex-post, the compatibility of economic activities—agricultural, industrial, service—with the ecological and climatic challenges we face. It is significant that France, through its energy transition law, has forced French financial institutions (banks, mutual funds, fund managers, etc.) to publish a set of data in order to assess their involvement in the fossil fuel sector,

⁹ <http://climatecasechart.com/case/city-new-york-v-bp-plc/>

¹⁰ <http://www.urgenda.nl/en/themes/climate-case/>

¹¹ <https://www.novethic.fr/actualite/environnement/climat/isr-rse/etats-et-entreprises-les-responsables-du-changement-climatique-sur-le-banc-des-accuses-145044.html>

¹² <https://www.theguardian.com/environment/2016/jul/27/worlds-largest-carbon-producers-face-landmark-human-rights-case>

¹³ <http://www.eclm.fr/ouvrage-394.html>

and that both the Task Force on Climate-related Financial Disclosures¹⁴ and the European Union's High-Level Expert Group on Sustainable Finance support a set of measures that would hold financial operators more accountable for incorporating climate issues into their investment strategies.

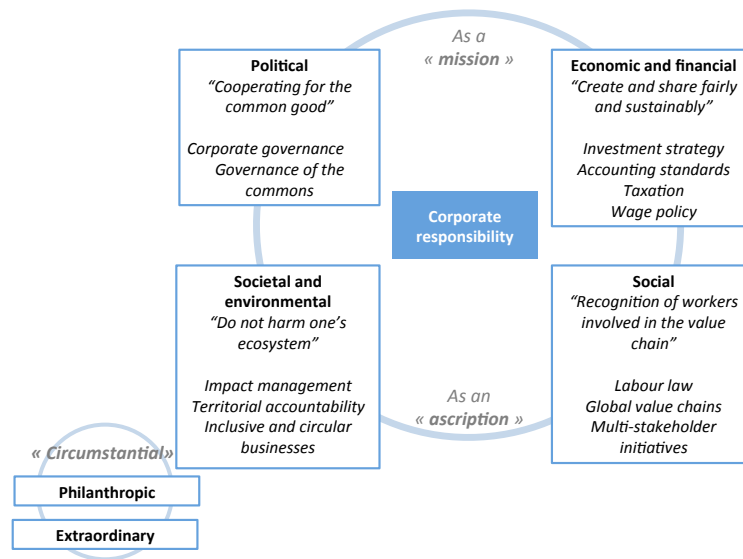
- **social responsibility** towards employees throughout global value chains. This responsibility is, a priori, further removed from the climate question. However, it takes on its full meaning when the objectives of a transition based on ecology *and* solidarity are tackled together, when it is necessary to consider the social consequences of halting certain environmentally harmful activities for the people employed in the sectors in question, and when there is tension between employment and environmental protection as a result.¹⁵
- **societal and environmental responsibility** as regards the impact that companies have on the communities and territories in which they carry out their activity. This idea of responsibility in terms of managing collateral damage represents a real paradigm shift away from philanthropic and instrumental conceptions of CSR, and the international legal sphere has reached a consensus on this point.¹⁶ International treaties, including one that has been under negotiation at the UN since 2014,¹⁷ are likely to lead companies to be more mindful of the negative impact of their activities on populations, ecosystems and the climate.
- **political responsibility** with regard to corporate governance issues and the global commons. This type of responsibility takes into account the way in which firms enable—or hinder—the establishment of democratic decision-making processes—whether within the companies themselves or in the states where they operate—aimed at promoting the construction of institutional frameworks that protect future generations and the environment.

¹⁴ <https://www.fsb-tcfd.org/>

¹⁵ <https://www.cairn.info/revue-projet-2017-5-p-55.htm>

¹⁶ United Nations Human Rights Council (UNHRC), "Guiding Principles on business and human rights", Pub. L. No. HR/PUB/11/04 (2011); OECD, "OECD Guidelines for Multinational Enterprises" (OECD Publishing, 2011); European Commission, "A Renewed EU Strategy 2011-14 for Corporate Social Responsibility" (Brussels: European Commission, 25 October 2011).

¹⁷ <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx>



Defining Corporations as a Commons

Based on these different responsibilities, the corporation can be seen as a common resource, in other words a collective space managed jointly by actors with a variety of concerns and interests. From shareholders and employees to the tax authorities; the commons in which its industrial sites are located; NGOs concerned by the collateral damage caused by its activity; the doctors who treat its employees' work-related illnesses; the subcontractors and suppliers affected by changes in their core business and strategies; and finally the lands, watercourses and air that make up the natural environment in which its economic activity develops: most of these actors have a variety of rights of use and claims over the control and therefore the ownership of a company.

From this perspective, the company is the property of no one; rather, it is a collective entity recognised by a body of rights, customs, and official and non-official rules. It is a common-pool resource, to use the term coined by Elinor Ostrom, winner of the 2009 Nobel Prize in Economics. And it is a specific common resource, because it centres on almost all of the conflicts surrounding our democratic ideal and our desire to preserve a healthy environment for future generations.

Thus, in order to maintain its legitimacy, and to meet the aspirations of many of the members who claim to control it, the company, as a common resource, must maintain and promote two types of global commons that form the basis of human life:

First of all, the immaterial commons, which are democratic legitimacy, social relations and popular sovereignty. To achieve this, it is necessary to regulate lobbying in order to promote a transparent democratic process and facilitate the adoption of binding measures on,

for example, a carbon price, divestment, and the evolution of our agricultural and industrial models. It is also important to fight corruption, which undermines social relations and the confidence that citizens have in their institutions to regulate the economic actors who are in favour of maintaining the status quo. Finally, it is necessary to revoke investor-state arbitration practices that undermine popular sovereignty by making public policies subject to private business law, as demonstrated by the numerous complaints filed by energy companies to prevent governments from adopting energy transition policies that might damage their economic interests.¹⁸

Second, the material commons, which enable human life to perpetuate itself on the Earth's surface, and allow human activities for the production of basic goods and services to continue. To do so, it is necessary to meet the climate challenge; to preserve land in order to have access to food sovereignty; to preserve biodiversity and the natural environment so as to respect the great natural balances that form the basis of life on Earth; to use natural resources and metals sparingly, in a spirit of sobriety, so as not to increase the sources of pollution and sacrifice zones¹⁹. It is therefore a call to innovate and incorporate the concept of sobriety into corporate strategy in order to reduce the ecological footprint of the wealthiest and enable the poorest to lead a dignified life all over the world.²⁰

This brief analysis of corporate responsibility clearly shows that in order to tackle the climate crisis, corporations—and big business—must be transformed into a common-pool resource according to democratic principles of shared governance. That common resource can then be used to protect the immaterial and material commons which, alone, make it possible to envisage each and every human being living in freedom on Earth. A new Paris Agreement must not overlook these questions of corporate governance and reform of contemporary political economy, hitherto largely ignored.²¹

Two key publications

- Swann Bommier and Cécile Renouard, *L'Entreprise comme commun. Au-delà de la RSE*, Paris, Éditions Charles Léopold Mayer, 2018.
- Naomi Klein, *This Changes Everything. Capitalism vs. the Climate*. London, Penguin Books, 2014

Institution

- Schumacher College (<https://www.schumachercollege.org.uk/>)

¹⁸ <https://www.tni.org/en/energy-charter-dirty-secrets>

¹⁹ <https://www.actes-sud.fr/naomi-klein-tout-peut-changer>

²⁰ <http://piketty.pse.ens.fr/files/ChancelPiketty2015.pdf>

²¹ <https://theintercept.com/2018/08/03/climate-change-new-york-times-magazine/>

- Schumacher College, founded in 1991 in Devon (UK), is an institution dedicated to training a variety of actors (including economics students and professionals) in the area of ecological and social transition. To that end, economic and business models are promoted according to the contribution they make to social cohesion, biodiversity, climate quality and, generally, respect for planetary boundaries.