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Property, Power and Politics Reviewed—A Reply to Critics

Since *Property, Power and Politics* (*PPP*) has been published, I have been blessed with comments from specialists of private international law (Brachotte 2021), sociology (Saussois 2021), labor law, and institutional economics (Deakin, Gindis, and Hodgson 2021). With the participants in this Book Symposium, I now have the benefit of comments from highly distinguished scholars of political philosophy, political science, property, and corporate law. This is a treat, and I am very grateful for their time spent reading the book and commenting on it.

In this reply, I will try to make the most of the critiques to improve some of the points made in *PPP* and give additional perspectives.

The arguments raised by Tully Rector are very helpful to zero down our points of divergence and clearly identify their origin and consequences.

Rector is unhappy with my rejection of "state of nature" theories. I can see the interest of these theories as an analytical device for *normative reasoning* purposes. And I insisted in *PPP* that they played an instrumental role in the creation of *real* legal rights. But *PPP* is a book about the *existing* World Power System (WPS), its *legal* configuration, and the role property and corporate law played in the arising of a new form of Power System which combines in complex ways with the State System. I am not starting from scratch, like the two economists on a desert island having found the way to the mainland by assuming that there is a bridge. Global society is already there, and we have constitutions, Declarations of Rights, and other legal instruments which embody a series of consensuses historically reached about (what should be) individuals' entitlements. There is often a lot of room for improvement, certainly. But in *PPP*, I tried to develop an analysis useful to identify ways forward regarding the *effective* implementation of these "entitlements" in the WPS while *avoiding* any theoretical attempt to reconstruct a perfect theoretical WPS.

In his critique, Rector speaks of "rights" and of "entitlements" and he seems to be treating equally "moral claims" and "legal claims." Rector writes that "there is at least one right that (contra Robé) doesn't depend on some positive act of law for its establishment—the basic right to freedom." This "basic right to freedom" may be a perfectly defensible aspiration and, deprived of it, I would certainly aspire to it. But, in my own view, to have such a *legal* entitlement, we need a *legal order* granting it to us and providing us with *effective* procedures to make this *moral/normative/aspirational* "entitlement" a *legal one*. I think our difference is that for Rector, some rights are so important that he considers we have them even if they have not yet reached *legal* life. I think these rights are so important that it is necessary to denounce the fact that we do not have them (when we don't) to effectively *obtain* them via real and effective legal institutions. In the present *PPP*, for example, we need to go beyond our *aspiration* to live on a planet having a climate compatible with human life. To do this, we need to design legal arrangements, institutions, procedures, or what have you to make of this aspirational "right" a reality. Stating

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that we have a right to live is easy. Obtaining real enforceable rights to make this a reality is one hell of a struggle.

Our next difference relates to corporate power. Contrary to what Rector writes, I do not "condemn" corporate power. I do not think that firms are "usurping public authority." They are making use of prerogatives legally available to them and there is nothing to "condemn" there. But we must draw the consequences of the concentration of power within global firms via corporate structures concentrating property rights and submit them to the rule of law, the respect of higher norms such as human rights, and possibly more democratic procedures of decision-making. I have written extensively on this, although not in *PPP*, where I decided to concentrate on a specific issue—climate change—and what I see as a good instrument to address *this* specific issue: the tweaking of the accounting system.

Further, I do not agree that property rights corporately owned have "specificities." In *PPP*, I am quite clear that I follow Robert Hale's analysis (1923) about the potentially coercive nature of *any* property. Hale's reasoning starts with a propertyless worker refusing to yield to the coercion of *any* employer. But the worker still must eat. There is a law, however, forbidding him from eating any of the food which exists, and that law is the law of property. That law compels the worker to starve if he has no wages. "It is the law of property which coerces people into working for factory owners," writes Hale (1923, 473). And, once at work, it is *property* which determines who gives orders and who must obey. It is part of the Power System. It does not have to be "corporate" property to have this characteristic. And it does not have to be "capital" in Rector's understanding of the word, either. This extraordinary power conveyed by property exists irrespective of who the owner is. Changing the identity of the owner of a property right does not change the constraining power entailed by property, and corporate property is no different in this regard.

Also, this coercive power has nothing to do with the *profit motive,* as Rector (and many others) would have it. It applies equally to a poor immigrant having to work like a slave in a household. The (potentially) oppressive capacity of the domestic employer does not derive from a profit motive. It comes from the fact that she controls the use of the premises in which the immigrant needs to work to survive.

Rector claims that "capital" has defining qualities and that these are what lead to relations of social dependence. In this construction, "capital" gets its value from its potential to generate future monetary profit. "Capital" thus defined is deemed to be "private power," whether it is owned by corporations or individuals. Thus, for Rector, the picture "is rather bleaker than Robé suggests." It is "private capital" which undermines freedom in principle, and not only when magnified and operated by a corporate structure. There is nothing special about corporate power, and private capital, as defined, has the same ability to undermine freedom in principle.

In the analysis developed in *PPP*, the picture is in fact *bleaker than Rector suggests*. The oppressive potential of property exists whether it qualifies as "capital" (as defined by Rector) or not. *Each* property right is potentially oppressive, whether subject to the profit motive or not. An owner refusing to part with an apple in favor of a starving child is an oppressor. That's why we have laws limiting what owners, employers, contracting parties, and any other party in a position of strength can impose upon others. Fortunately, these laws ("externality regulations") do not apply only against "capital" as defined by Rector. It would significantly reduce their effectiveness otherwise.

The next consequence of Rector's "more robust" definition of capital is that he is led to consider that there is no inherent difference between a local business, a bakery, a butcher shop, and a multinational firm like Shell or Total. For Rector, with his "more robust" definition of capital, the "autonomy based" reasons for opposing firm power (which I do not "oppose"—I just want to submit it to rules) "also challenge the powers inherent in capital ownership more broadly, corporate or otherwise." "Private capital undermines freedom in principle, and not only when magnified and operated in a corporate structure." But the issue is not with corporate structures in themselves. Were they purely national, operating within one single state legal system, "externality regulations" would be operative. Politics within constitutionally structured institutions would be available to address unresolved issues.

At the global level, however, property reconfigured via corporate structures provides governmental powers to firms with very few limits, as we lack the proper institutions to reconnect via politics "private" governance to the issues it raises. We need to think outside the box to reconnect, in a Law and Political Economy perspective, private action and public concerns. In this respect, the profit motive which is identified by Rector as the *source* of oppression can in fact become a tool for an *improvement* of the operation of the WPS, and specifically with regards to climate change. Today, maximizing profits leads to negative externalities such as climate change for several reasons discussed in *PPP*. But this is so because the accounting rules only address the preservation of *financial* capital, at the expense of other forms of capital which are also used in production processes, such as the CO_2 absorption capacity of the natural environment (Barker and Mayer 2017). Because they are not priced by markets, these resources can be consumed without accounting consequences. If profit is the key, as Rector says, then he should agree that "full cost accounting" should induce a reduction of CO_2 emissions. The cost to be incurred to reconstitute the resources consumed would be integrated into the financials. And businesses emitting more CO_2 than their competitors would be *less profitable* and would be valued less than their competitors. What Rector misses is that one can remain in a capitalist logic and *use the forces of capitalism* in favor of sustainability by changing the computation of profit. The key advantage of such a solution is the timing required for its implementation. One should always keep in mind with regards to climate change that our "CO_2 budget" will be depleted in 12 years if emissions are left unchanged. This is a minuscule delay and any solution requiring us to radically change our power system is incompatible with it. A change in accounting rules for large, listed companies, however, can be decided overnight by the G7. It would leave the system basically unchanged (we can't do otherwise in the short period of time we have) and would only twist the accounting rules—not by fundamentally changing the *principles* on which they are built but by *enlarging* the notion of *capital* to include the preservation of our CO_2 budget as an equally important constraint to the preservation of financial capital. The level of profit would depend on the preservation of the CO_2 capital and would be reduced if it was not *maintained*, like any other consumption of (financial) capital during any accounting period. *The profit motive is precisely what is being used in the proposal.* To put the extraordinarily complex WPS in motion toward sustainability without changing everything, which is not a sensible option, we must work from *within* the system which is already there.

I certainly do not mean that this is a remedy for all the issues raised by globalization or that other tools (constitutionalization, real value creation bonuses, other "micro-devices," changes in governance, procedural democracy, etc.) are not required in combination. I just want to suggest that with proper care about the analysis of the detailed legal structure of multinational firms, it is possible to re-engineer them as instruments for change, as I will further discuss when addressing Bartl and Vermeulen's comments.

Barbara Bziuk and Philip Stehr think that I have been hiding normative criteria which are deemed to guide my analysis in *PPP*. They consider that I should have been more transparent as to why it makes sense to promote "individual autonomy" and a "principle of accountability."

I did not delve into these issues in *PPP* because, as they themselves indicate, these are "widely held opinions." *PPP*'s main purpose is to explain the process of the self-institutionalization of a WPS which is incompatible with the sustainability of the natural environment required for humans to live. It investigates how we can affect the evolutive trajectory of the WPS in the limited time left to put it on a more sustainable course. Bziuk and Stehr prefer to investigate my "hidden normative commitments" to identify alternatives to my "favored solution." They present as "solutions": "increasing workers' autonomy," "participation rights," "co-determination schemes," and "workplace democracy." Unfortunately, they do not mention "constitutionalization" on which I have worked extensively and which I think is much more relevant to address issues in the WPS (Robé 2023b; Robé, Lyon-Caen, and Vernac 2016).

I have nothing against the "solutions" proposed by Bziuk and Stehr. But their relevance as "solutions" depends on the issue at stake. I do not see them as having *any* connection with climate change.

When Bziuk and Stehr finally address the potential offered by a tweaking of accounting rules to redirect the WPS towards environmental sustainability, they consider that "at the very least, an argument is needed for why and how the provision of a sustainability report would influence . . . evaluations."

There must be some misunderstanding. In *PPP*, I strongly criticize sustainability reporting. Citing Michael Bloomberg, I write that "for the most part, the sustainability information that is disclosed by corporations today is not useful for investors and other decision-makers." What I advocate is "full cost accounting" and not at all "sustainability reporting," which I see as being part of the problem. Full cost accounting implies a preservation of our "carbon budget" which is a form of capital being used in any firm's operations. It is designed to protect this resource *as such*, irrespective of the cost.[1] The accounting of a firm's operations must integrate the *cost* of preserving or reconstituting the resource. Otherwise, the financials are gravely misleading as they can evidence superb financial performance while the firm destroys natural capital. This is radically different from providing "sustainability information," which has almost no impact.

Rutger Claassen and Larissa Katz perfectly present my position regarding property and raise subtle arguments to challenge it. The notion of "office" they try to apply to property is their way of attempting to reconnect the use of property to larger societal or political considerations. I am sympathetic with this effort. But I do not believe that what they are trying to achieve can be done in this fashion—the reason being that property is not an "office" the duties of which could be extended.

I first need to clarify an assertion made by Claassen and Katz which is inaccurate: I do not think that offices exist only in the *public* law sphere and are foreign to *private* law. This assertion is in total contradiction with the whole notion of "Power System" I developed and with which I work. In *PPP*, I explain that the notion of Power System refers to the fact that "power" does not exist in isolation, in either the "public" or the "private" spheres of life. The Power System is a combination of large- and small-scale powers, of macro- and micro-authorities, the ones existing thanks to the others. I also mention that micro-powers are, in different forms at different times

[1] The solution proposed is radically different from imposing taxes, quotas, or artificial prices for the use of the resource (Barker and Mayer 2017).

in history, to be found in families, schools, universities, monasteries, armies, business firms, and many other kinds of power organizations.

With such an approach, how could I have missed that "private" offices are all over? Parents must make decisions in connection with their child. And under French family law, for example, there is a criterion for the making of these decisions: they must be made in the *personal interest of the child only*, with no other consideration. This is an *office*, and the discharge of its duties can be *reviewed* by courts which can second-guess parents.

My point is therefore not that the notion of office is foreign to *private law*. It is that it is foreign to the notion of *property*. A right which basically leaves you free to do whatever you want with the object of property, the only limit being to abide by the law and not to use your property with the *sole intent to harm* others, and which you can transfer to any one you please who will then enjoy the same subjective prerogatives, is simply not an office.

To defend their position, Claassen and Katz endorse Duguit's analysis of property as a *social function* (Duguit 1912). If property is a social function, then one can imagine extending the duties attached to this "function." But to understand what this social function meant for Duguit, his views on property must be put in the broader perspective of his analysis of the evolution of the legal system since the French 1789 Declaration of Human and Citizens' Rights and the 1804 French Civil Code. At the time he delivered his 1911 Argentinian lectures, he thought that "today, a legal system is being developed based on an essentially socialist conception." In this (brave) new world "man has no rights." "The legal rule . . . is not based on the respect and protection of individual rights which do not exist" (Duguit 1912, 25). And Duguit meant what he wrote: "all the acts he will do contrary to the function incumbent on him will be socially sanctioned" (25). "Man has . . . a social duty to act" (37). "Any law which would impose on everyone the obligation to work would be perfectly legitimate" (48). He proposed "hitting anyone who does nothing with a particularly heavy tax" (49). Of course, based on this duty to work, "any law that punishes and prohibits suicide would be perfectly legitimate" (38).

In his Sixth Argentinian lecture, Duguit addressed property which, according to him, is not a "right" anymore. He started yet again with his views on the extinction of the individual: "today, we are very clearly aware that the individual is not an end, but a means, that the individual is only a cog in the vast machine that is the social body, that each of us has no raison d'être in the world except through the work he accomplishes in the *œuvre sociale*" (157). Property therefore "is no longer the subjective right of the owner; it is the social function of the holder of wealth" (158). And this function is to satisfy common needs, the needs of the full national community and those of secondary communities.

Thinking about property as it operates today based on the analysis of an author who thought that "man has no right" and that the individual is a *means* is in total contradiction with Claassen and Katz's project to address the "nightmare of hierarchy." In Duguit's intellectual construction, property is *erased*. We must certainly address the power conferred by property to world "private" governments. But one can hope that it does not go as far as requiring suppressing individuals' autonomy rights.

Looking at Claassen and Katz's attempt to extend the duties attached to property and French legal scholarship, I would suggest Duguit is not the right source on which to build from if one wants to work out the "social" potential of property from within. There is a long tradition of French private law authors having attempted to extend the duties of the owner. They all followed the suggestion of Archimedes and searched for a lever *within* property to lift the world.

They all tried to identify two categories of private rights (Gaillard 1985): "power-rights" opposed to "function-rights" (David 1928), "rights with a selfish spirit" opposed to "rights with an altruistic spirit" (Josserand [1939] 2006), "rights with an individual purpose" opposed to "powers having a common interest as their goal" (Gaillard 1934), "discretionary rights" and "controlled rights" (Rouast 1944), "selfish rights" and "function-rights" (Dabin 1952). And they all have tried to subsume "property rights" within the "social rights" category (whatever its name). From the idea that certain private law rights can be identified as having a *social function* (as we have seen above in family law)—that they can be analyzed as being used for the fulfillment of an *office* and are subject to *review* by courts—they have tried to expand the "social right" category to suggest that all rights (including property) pursue some social function.

The notion of "abuse of rights" applied by courts as a limit to the *subjective* use of rights has been heavily made use of by these authors. The attraction and limits of the abuse of rights doctrine, however, is that it is generally available against *all* rights (*summum jus, summa injuria*). Thence the impression that the use of *all* rights, including property, are subject to review. One can abuse the right to strike, the right to end an established relationship, the right to sue in court, etc. The fact, however, is that the abuse of rights doctrine, *as applied to property rights*, is so narrow that not much lever can be found there. For an *owner* to abuse her property right there must be use of the property with the *sole malicious intent to inflict harm*. If *any other intent* can be identified, the abuse of right doctrine does not apply. The use of the property right is not second-guessed. The "duties" of the office of property cannot be enhanced because there are *none*. An "office" where the *sole* limit posed by the "function" of the office is *not to use the prerogatives conferred by the office with the sole intention to harm,* is not an office. Any other use cannot be reviewed and will not be second-guessed.

Bertjan Verbeek very aptly puts *PPP* in the perspective of the historical and intellectual roots of political science. Verbeek regrets that his discipline has lost its connection with law and takes the view that law and economics should be integrated into political science. He is right. It is via law that a *differentiation* between economics and politics takes place; it is also via law that the *reconnection* between the two *can* (Kjaer 2020) and indeed *must* occur. Otherwise, the political economy is defective, with unpredictable long-term consequences. I would suggest that today's messy situation, with an out-of-control World Power System, is in part due to the fact that most economists have lost sight of the roots of their discipline (Robé 2023a).

Verbeek is also right to link *PPP* to the work of Susan Strange. Her notion of structural power is key for an understanding of the World Power System because, with globalization, structural power has *moved*. It has moved away from institutions (states) feeding themselves from territory and populations (with their pros and cons) to institutions *leaving* territories to feed themselves in a purely extraterritorial *legal space*, in which they can have the pros of territory and population without the burden of the cons. Institutions which can theoretically be held accountable via politics (organs of states) are losing structural power, and unaccountable institutions (business firms and investment funds) are leaving territorial and political space to the largest extent possible, escaping regulatory laws and accountability. Space and people (plants, employees, environmental damage) are for local subcontractors in value chains to confront. Wealth extraction is for corporate vehicles higher up in the corporate chain. This of course is a very simplified version of *PPP*, but it shows that corporate deterritorialized structural power is a serious challenge to our existing institutional arrangements based on *territorial* institutions, which effectively disconnect economics and politics (as should be the case) but lack, at the global level, the necessary "reconnection," which is *required* for the effective operation of the Power System as a whole.

Verbeek regrets that *PPP* pays little attention to the actors involved. I think the criticism is founded, although I always have difficulties with the notion of "actor." But Verbeek's search for the dynamic leading to the adoption of new principles is right on point: how can we get a Power System to evolve? Where can we find levers to guide this evolution? These are key questions, and it is precisely by concentrating at this level of detail that one can find ways to effectively impact the Power System.

As I wrote in *PPP*, "the 'Power System' is the system of relationships linking macro- and micro-powers in an evolutionary dynamic." It is by finding levers in this evolutionary dynamic that it is possible to act on the evolutionary path of the Power System. In this respect, court cases where issues are presented in an orderly fashion are a great source of potential evolution, even when they fail. I will detail this below when addressing Bartl and Vermeulen's comments.

PPP's lack of development regarding the "actors" leads to another well-founded criticism: the lack of attention to NGOs and social movements. They do play a key role for sure. But to do justice to their importance would have required lengthy developments, which may not have been central to *PPP*'s overall argument.

In Verbeek's final argument, questions are raised about the sustainability of globalization. Clearly, a collapse of the existing version of the Power System is not a farfetched possibility. There could be a retreat to the state, as COVID-19 has shown. But what if there is not? It still makes sense to think about the potential ways to make extraterritorial powers accountable, even though the violence which will probably accompany climate change is likely to lead to a contraction of globalization—and of order and law as well.

I was pleased to read that Marija Bartl and Eva Vermeulen agree with much of the analysis developed in *PPP*. They, however, take issue with the fact that I indicate that property remains the same whoever the owner is. I think it comes from a misunderstanding.

The position I am taking does not mean that different *kinds of owners* will do the same thing with the same property. Different owners can do different things. But it is not *property* which changes. It is the owners who are *acting differently* with the same property. Even in the world of business, there are enterprises with a strong participatory culture. Property does not *prevent* this. But neither does it *impose* such attitude toward the use of property.

As we know, corporate property is presently generally mismanaged due to the shareholder value ideology. As I mention in *PPP*,

> Today, firms are managed by their executives with a mandate to maximize "shareholder value." With such a mandate, combined with an improper accounting of the firms' effective value creation or destruction, enterprises today often operate as destroyers of the natural environment and of the States' access to financial resources. (25)

Existing rules of corporate governance *distort* the proper management of the property rights existing over productive assets. There are innumerable efforts to extend the duties of directors of corporate owners towards the protection of various values or forms of capital.[2] Bartl and Vermeulen go further and would promote alternatives such as "shared ownership," "mutual funds," or "cooperative ownership and enterprises." Maybe marginal progress can be achieved via these alternative and more inclusive business vehicles. But I doubt that they can have any

[2] I am among the hundreds of writers who have explored this possibility (Robé 2011).

significant impact at the WPS level. There, the ultra-dominant legal organization of the world private "economic" governments takes the form of groups of *corporations* around which numerous contracts are being concluded with contributors of resources. The duties of these "private" governments can be increased, but by using a series of micro-devices in combination. Not, I think, by hoping that all of a sudden they will take the form of cooperatives or other similar legal structures.

Two recent court cases show us the kind of dynamic in which academics, legal experts, progressive business executives, and proactive governments can combine efforts in an uncoordinated fashion to identify potential paths towards sustainability.

In earlier and parallel works, I applied the concept of "constitutionalization" to the government of large business firms (Robé et al. 2016). Via a complex process—involving personal contacts, a research project at the Collège des Bernardins in Paris on "*L'Entreprise, Formes de la propriété et Responsabilité Sociale*," which attracted wide academic and media interest, political interest in the use of enterprises to address societal issues,[3] the drafting of a major report commissioned by the French government on "*L'Entreprise, Objet d'Intérêt Collectif*" (the so-called "Notat-Senard" Report),[4] and legislative changes—new duties have been imposed in France on the management of enterprises.

Today, pursuant to Article 1833, second paragraph, of the French Civil Code, each French company or partnership must be managed in its own specific interest "taking into consideration the social and environmental issues linked to its activity." And pursuant to a statute of March 27, 2017, very large French enterprises now have a "vigilance duty." They have an obligation to prevent social, environmental, and governance risks related to their operations *wherever they are in the world*. To do this, they must put in place a "vigilance plan," including risk assessment and prevention procedures in their relations with their subsidiaries, subcontractors, and suppliers.

Armed with these new tools, localities and NGOs went to court against one of the world's largest private governments, multinational conglomerate TotalEnergies, which encompasses 1,191 companies active in 130 countries. A disparate set of French municipalities, regions, and private law associations challenged the content of its "vigilance plan." By an order issued on February 11, 2021, the Nanterre Court ruled that henceforth the strategic choices of Total can no longer be made "in a strict economic logic," but instead now must be made by "integrating elements previously conceived as exogenous." It must integrate into its strategic orientations the risks of infringements of human rights and the environment and, in fact, regarding the nature of its activity, proceed to dropouts or substantial reorientations.

In my view, in this case, we can see the process of *constitutionalizing* global firms taking shape. Of course, the judgment does not mention "constitutionalization." But it has the effect of

[3] On October 15, 2017, Emmanuel Macron stated (in an interview on the TF1 television channel) that "the firm cannot be just a gathering of shareholders."

[4] Nicole Notat was from 1992 to 2002 General Secretary of the CFDT trade union and Jean-Dominique Senard was then the chairman of the Michelin Group. With three other participants (we ended up being called the "gang of four"), I was extensively involved in the drafting of the so-called "Notat-Senard Report" (March 9, 2018), which led to an amendment of the French Code Civil introducing a duty for each company to be managed, pursuant to Article 1833, second paragraph, in the corporate interest, "taking into consideration the social and environmental issues linked to its activity." Another report on "Le Rôle Sociétal de l'Entreprise—Eléments de Réflexion pour une Réforme" (April 9, 2018) also played a key role. The drafting of the report was made extremely difficult due to extreme opposition by some participants on the drafting of consensus positions. For a good summary of these new provisions and the context of their approval, see Bourgeois, Hollandts, and Valiorgue (2021).

submitting a private world government to higher norms of conduct, thus reconnecting, via law, economic and political matters of concern.

In another recent case involving Shell, a Dutch court treated this global enterprise as a world private government with a duty to act against climate change.[5] For the court, although the legal instruments of international public law are not binding on enterprises, the duty to respect human rights is a global standard of expected conduct *for all business enterprises wherever they operate*. The serious and irreversible consequences of dangerous climate change pose a threat to the human right to live. For the court, tackling dangerous climate change needs immediate action and this is not an optional responsibility; it applies everywhere and is not passive.

In my view, what the court also did in this case was to (partly) constitutionalize Shell's "private" government. The managerial setup of Royal Dutch Shell as a global firm is subjected to higher non-negotiable human rights ("There is no room for weighting interests," the court wrote). Such rights thus take on the character of *constitutional principles* (Kjaer 2018, 133), declarations of rights *ante* corporate governance. As a large world government in connection with the operations it controls, Shell is declared to be under a duty to respect human rights. All its operations, anywhere in the world, whether they are conducted by Shell PLC itself or its subsidiaries or contracting parties in its value chain, are now subject to this imperative and the human right to life *must* be respected no matter what.

These decisions are private law decisions, with immediate effect for the parties involved only. They now need to be relayed by *legislative instruments* extending these constitutionalizing efforts. They should inspire the ongoing processes leading to the finalization of the planned EU Directive on corporate sustainability due diligence, which proposal has been adopted by the European Union Commission on February 23, 2022 (Robé 2023c). They should lead to serious rethinking about our ways to measure profits, given the extended interests to be considered in the management of the "private" world governments (Robé 2019). The new Directive under consideration must be designed as an instrument facilitating the reconnection of economic and political issues at the level of the governments involved: global firms. It's a key lever the EU must mobilize to address the most formidable governmental issue ever faced. Our carbon budget is being depleted. The effects of devastating global climate change are already being felt all over the world. It's urgent.

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[5] Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC, Hague District Court, Judgment of May 26, 2021 (hereafter *Milieudefensie et al. v. Shell*). An English version of the decision is available at ECLI:NL:RBDHA:2021:5339, Rechtbank Den Haag, C/09/571932 / HA ZA 19-379. For a more detailed presentation of my interpretation of the case, see Robé (2023b).

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