6 The Reshaping of Corporations and Their Governance by Climate Change and Other Global Forces – Implications for Leaders and Management Education

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Introduction

For business leaders in market economies, the sanctity of national law for setting their respective governance frameworks is diminishing. It is giving way to global forces and the activities of international institutions, alliances, and public opinion, spurred on by the laws of climate and nature. Previously, company leaders could have confidently said that they act in the interests of the company and its shareholders, that the company obeys applicable national laws that govern its activities, and that the company acts ethically and responsibly, but beyond that, they had wide discretion when carrying out their duties. Today, extraterritorial forces are redefining many aspects of corporate life and the agendas, roles, and responsibilities of corporations, their leaders, and governing boards.

An important illustration of this is the existential challenge for companies to transition from a focus on short-term profit to long-term sustainability and shareholder wealth creation. Likewise, there is a growing expectation that corporate leaders will take into account a wider range of stakeholders when exercising corporate powers. For CEOs, directors, and senior executives, new domains of responsibility are emerging with varying degrees of speed and certainty. They pose a challenge for leaders to keep pace with such fluidity and its implications for corporate governance. Some entities may carry on business in ignorance or defiance of the advancing forces, but the unstoppable march of those occupying the high moral ground who seek to advance matters of global moral concern, especially climate change, signals the inevitability of major change for most businesses and their leaders. And moreover, a company cannot rely on its nation's government to be

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the arbiter of which demands will be met and to what extent and within what timeframe.

Thus, even if a government declined to fully support the Paris Agreement (United Nations, 2015) targets or withdrew its support completely, it would not prevent global investors from withholding essential finance from a proposed project or forcing strategic change upon a corporation and its leaders. Nor would it prevent businesses from voluntarily acceding to international and national market forces that effectively oblige leaders to associate their brands with fast-evolving principles of good corporate citizenship. To this end, fluid extraterritorial powers, especially fueled by climate change and other environmental, social, and governance (ESG) considerations, are able to act ahead of and, when necessary, independently of national governments. Supranationality is an ever-increasing modern phenomenon, manifesting itself in global opinion and the reach and actions of non-state actors and movements, both challenging and supplementing the exclusivity of traditional principles of state-centered sovereignty.

Our era of fluid modernity provides a novel setting for issues of global concern to become deeply embedded into public discourses and ultimately flow into governance frameworks and corporate behavior. Modernity offers a translational efficiency never before experienced or available, probably outside of wars and pandemics, in relation to the regulation of business. Global agendas can now quite quickly filter down to influence governments, regulators, and national interest groups and, in consequence, change both local laws and business behavior. Influencers include global organizations, both public and private; global capital movements, such as institutional investors with unlimited reach; and social media, with its ubiquity and immediacy. Global and local standard setters also play an important role in this process of translation.

For the present purposes, four closely connected dimensions of these extraterritorial forces – namely, the laws of climate and nature, Climate Action 100+ (CA100+), the Task Force on Climate-Related Financial Disclosures (TCFD), and stakeholderism – will be considered in this chapter.[1] These are affecting the day-to-day settings of business

[1] Others of relevance include the wide-ranging and ever-expanding ESG movement, the increasing take-up of the Principles for Responsible Investment (PRI), and the increasing impact of the United Nations (UN) Sustainable Development Goals (SDGs; United Nations, n.d.).

life as global institutions and players have their agendas quickly translated into real action and real outcomes with impressive speed. For businesses and their leaders and those who educate them, this is the modern reality; a new era is unfolding.

Liquid Modernity

Liquid modernity (Bauman, 2012) describes contemporary global society in which many accepted elements are being uprooted or liquidized. Flexibility and immediacy are replacing established norms and practices. As a consequence, questions are being raised about the nature and purpose of modern corporations, how they should operate in the face of climate change and other concerns, the duties and accountabilities of their CEOs and boards, and the extent of their managerial power. Global power giveth and global power taketh away.

> Power can move with the speed of the electronic signal – and so the time required for the movement of its essential ingredient has been reduced to instantaneity. For all practical purposes, power has become truly *extraterritorial*, no longer bound, not even slowed down, by the resistance of space.... This gives the power-holders a truly unprecedented opportunity: the awkward and irritating aspects of the Panoptical technique of power may be disposed of. Whatever else the present stage in the history of modernity is, it is also, perhaps above all, post-Panoptical. What mattered in Panopticon was that the people in charge were assumed always to be there, nearby, in the controlling tower. (Bauman, 2012, p. 10)

Now power can be amassed globally and brought to bear across borders with relative speed, with or without state sanction or participation and with both private and public outcomes. Today, transactions, information, and corporate power flow more fluidly than ever before, thereby allowing for global dominance over product and data markets and industries. Not even the great and feared trading behemoths of earlier centuries, such as the British East India Company, could have amassed dominance across the globe with equivalent speed and efficiency. As one commentator observes: "Imagine an economy without friction – a new world in which labor, information, and money move easily, cheaply, and almost instantly ... it's here" (Colvin, 2015, para. 2). For example, in 2017, 69 of the world's richest 100 entities by revenue, including countries, were corporations (Global

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Justice Now, 2018), and incumbent enterprises are said to own 80 percent of the world's commercial data (Schumpeter, 2018).

Mark Zuckerberg, founder and chairman of Facebook, has said: "In a lot of ways Facebook is more like a government than a traditional company" (Farrell et al., 2018, para. 1). Its 28 billion users are far greater in number than the citizens in any one country, and its influence, market value, and revenues exceed those of many individual nations. This is but one example of the modern realities of supranational power that sits uneasily with traditional theories and limits of sovereignty.

Capitalism has become light in the process. "The passage from heavy to light capitalism, from solid to fluid modernity, may yet prove to be a departure more radical and seminal than the advent of capitalism and modernity themselves, previously seen as by far the most crucial milestones of human history at least since the neolithic revolution" (Bauman, 2012, pp. 125–126). But while light or fluid capitalism describes the transience of industrial production and the freely moving, profit-seeking global capital, it also facilitates the movement of socially focused, long-term aspirational investment and its demands. It is this phenomenon of liquid modernity that allows direct private action successfully to be taken in pursuance of globally agreed-on social and environmental goals. Social narratives around the world are themselves more fluid than they were 10 or 20 years ago.

Historically, those holding the power write the narratives, and as Bauman (2012) observes:

> For at least two hundred years it was the managers of capitalist enterprises who dominated the world.... It was therefore their vision of the world, in conjunction with the world itself, shaped and reshaped in the likeness of that vision, that fed into and gave substance to the dominant discourse. (p. 55)

The dominant discourses, however, are beginning to change, as are those who shape and give effect to them. Now, international contributors such as the United Nations (UN), the World Economic Forum (WEF), PRI, CA100+, the TCFD, institutional investors, and powerful coalitions of interests united in beliefs and connected through modern media channels are exerting influence in time and reach way beyond what was possible or contemplated not so long ago. Speed, reach, and influence are now leveraged to shape policies, practices, products, and commitments while confronting corporations and their executives on

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issues of global and local community concern. Chief among them are climate change, protection of the environment, sustainability, ethical investment, human rights, and addressing inequality.

A feature of modernity has been a strong emphasis on short-term thinking and outcomes. "The 'long term', though still referred to by habit, is a hollow shell carrying no meaning; . . . the 'short term' has replaced the 'long term' and made of instantaneity its ultimate ideal" (Bauman, 2012, p. 125). This is the environment in which corporations and their leaders have been operating, facing incessant market demands for short-term profits while battling to gain market support for initiatives and investments that could only be harvested in the long term. And all the while, they are being met with ever-expanding demands for good corporate citizenship, whose nature is also rapidly evolving. These are the realities of modernity that have substantially eliminated time and distance in the exercise of power. However, the global forces representing climate action are changing the short-term–long-term equation. Long-termism is making a spirited comeback to challenge the dominance of short-term thinking, planning, and investment.[2] Nevertheless, much remains to be played out in this contest between two "deep-pocketed" forces.

How Quickly Things Develop

It took many centuries for Christianity and Islam to evolve into global religions, at least 1,500 years in the case of Christianity. In contrast, the science and political movements associated with climate change have emerged in less than 60 years, and widespread acceptance by the public at large of climate change as an existential threat to communities has occurred in around 30 years (Weart, 2020) but with growing intensity over the last decade.[3] Black Lives Matter became a global movement in less than 7 years, and the MeToo movement became truly global in less than 3 years.

According to Thomas Friedman, the three largest forces on the planet, namely, technology, globalization, and climate change, are all accelerating at the same time (Friedman, 2016a, p. 120). As he says, even the pace of change is changing. In consequence, "so many aspects

[2] See page 131 for a discussion of the New Paradigm.
[3] See Fagan and Huang (2019).

of our societies, workplaces, and geopolitics are being re-shaped and need to be re-imagined" (Friedman, 2016a, pp. 3–4). To this list can be added corporations, their purpose, their regulation, and the expectations of those who lead and oversee them.

Friedman refers to 2007 as the moment when the globalization of thought, capital movement, and fluid power became turbo-charged. "The moment that Steve Jobs introduced the iPhone turns out to have been a pivotal junction in the history of technology – and the world" (Friedman, 2016b, p. 20). He describes how a whole group of new companies emerged in and around that year: "Together these new companies and innovations have reshaped how people and machines communicate, create, collaborate, and think" (Friedman, 2016b, p. 20). Friedman also points to the "Big Shift," which describes the knowledge *flows* that pass through countries and communities, creating opportunities and competitive advantages (Hagel et al., 2009b). As John Hagel observes of the globalization of flows: "We are living in a world where flow will prevail and topple any obstacles in its way."[4] Global opinion and capital pressure, now flowing in increasing harmony with that of nature and the climate, are becoming irresistible forces.

Climate Change – a Force of Nature, a Force for Change

Ascendancy of the Climate-Change Movement – toward Climate Sovereignty and the Sovereignty of Nature

International agreements, such as the United Nations Framework Convention on Climate Change (UNFCC) signed by 197 countries (United Nations, 1992) and the Paris Agreement signed by 186 of the UNFCC signatories, broadly frame the global movements on climate change and climate action. At the time of writing, the Paris Agreement has been ratified by 190 countries. Aided by the developing science generated by the Intergovernmental Panel on Climate Change (IPCC) and many scientists and scientific organizations around the world, a global belief, even global consciousness, has emerged.[5] Because of this

[4] An extract from Thomas Friedman interview with John Hagel, cited in Friedman (2016b, p. 128).

[5] See, for example, National Aeronautics and Space Administration (2020). Also, a recent survey showed that in 23 of 26 countries surveyed, climate change was

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overwhelming scientific and public, albeit not universal, support for the notion that the climate change being witnessed in the world is human induced, businesses, their leaders, and their representative institutions have little choice but to respond accordingly. As a result, climate action now appears to be an unstoppable global force, with transitions to decarbonizing economies now backed by massive and growing investments,[6] perhaps meaning, in de Tocqueville terms, a revolution is underway as a result of rising expectations.

We are living in a state of anticipation, transnational in reach, where global warming and other issues "infuse a sense of looming time limits that generate urgency and anxiety about acting now to protect the future" (Adams et al., 2009, p. 248). Fear and hope are important factors, and we see these at work with climate change and climate action. "Anticipation is not just betting on the future; it is a moral economy in which the future sets the conditions of possibility for action in the present, in which the future is inhabited in the present" (Adams et al., 2009, p. 249). Thus, as climate-related disasters are seen as portents of future calamities, forces are amassing to take serious remedial action in the present.

This involves the participation of national governments, international governmental and nongovernmental organizations too numerous to list, private international capital, individual corporations, communities, individuals, and activist groups. Together, they comprise an international network of movements pursuing broadly common goals but often differentiated with respect to methodologies, timings, and impacts. Thus, globally engaged human thought is manifesting itself in a unique way – when else has this occurred so comprehensively and been so individually and institutionally embraced? And why does this groundswell of belief and support continue to gather strength and not waver? In large part, it seems, because the climate itself constantly catalyzes interest by delivering powerful and tangible reminders.

rated as a major threat to the respective nations by a majority (median score 68 percent) of those surveyed. See Fagan and Huang (2019).

6 Bloomberg NEF research shows that more than $500 billion was invested in energy transitions in 2020, with a continuing upward trend. See Macdonald-Smith (2021, p. 17). Further, the value of sustainable investments globally is estimated to exceed $30 trillion (Statista, 2021). The adoption of formal climate action plans by individual companies is, however, still lagging global opinion. See also PricewaterhouseCoopers (2021) and Coppola et al. (2019).

Are we, accordingly, in this age of liquid modernity, moving toward the recognition of new forms of sovereignty arising from the impacts of climate and the responses of nature to human and corporate activity? Could it be said that climate sovereignty and the sovereignty of nature – a federation of sovereignties – are being claimed or reasserted by Mother Nature through the agency of, but not limited by, governing and institutional constituencies around the world and her foot soldiers paying respect and pledging loyalty and obedience to her needs and demands such as conservationists, climate activists, the public, and compliant capital? Mother Nature can be seen to be asserting control over her domain, rewriting social contracts globally and demanding compliance with the rules of her regime in new and more apparent ways. And her regime can be considered to be every bit as sovereign or even more so than limits of temporal and territorial power existing within nation-states and other sovereignties.

In modern international law, sovereignty is generally linked to territory and to the right of peoples to govern themselves, subject to some exceptions. Yet extraterritorial power and movements are increasingly influential in the affairs of nations and of humankind more broadly. Climate and environmental activism are cases in point, including the forces of direct private capital flowing seamlessly across the globe, largely unfettered by states or the conceptual limitations of territorial sovereignty in search of climate solutions and the protection of nature. They deserve more serious consideration and analysis in the sovereignty debates as to the nature and source of their power and authority. In a well-reasoned analysis, which has analogies for global climate action, it has been argued that the authority of the International Criminal Court derives not from state power but from the international community of citizens and their human rights. The author concludes:

> A supranational *ius puniendi* can be inferred from a *combination of* the incipient stages of *supranationality* of a value-based world order and the concept of a world society composed of world citizens whose law – the "*world citizen law*" *(Weltbürgerrecht)* – is derived from universal, indivisible and interculturally recognized human rights predicated upon a Kantian concept of human dignity…. This community is the holder of the international *ius puniendi*. (Ambos, 2013, p. 314)[7]

[7] *Ius puniendi* means "the right to punish."

With climate action, by analogy, the right to "punish" or require obedience to long-standing norms ultimately derives not from territorial authority but from an even higher level of supranationality than "world citizen law," namely, climate sovereignty and the sovereignty of nature.

In the world prior to territoriality becoming the cornerstone of jurisdiction, other forms of sovereignty existed, based on, among other aspects, tribes, race, religion, or nationality (Kassan, 1935, p. 240). For example, consider papal sovereignty. "The Holy See is essentially international and has to deal with higher motives and interests than the political ascendency of any state or group of states" (von Redlich, 1932, p. 244). Further, "Rome looks on at the forward march of the course of events in this world, not only from an international standpoint, but from one still more exalted, seeing the course of human life and the life of nations and states '*sub specie aesternitatis*' – in the light of eternal truths and of the supernatural" (von Redlich, 1932, p. 244).

In Islam, sovereignty derives from Allah and is not associated with, or limited by, the notions of states or territorial jurisdiction. "Thus, real sovereignty belongs to Allah alone and it is spread from *arsh* to *farsh* (from the Throne of God to the floor of the earth)" (Ahmad, 1958, p. 249).[8] A recent analysis showed that some extra-legal and organic forms of sovereignty from premodern times continue to exist (Paris, 2020). These include, relevantly, the idea of an organic, civilizational, transnational Chinese nation – a form of transcendent universalism (Paris, 2020, pp. 472–473) not limited by China's territorial borders.

To recognize climate sovereignty and the sovereignty of nature as contemporary federated sovereignties is to acknowledge their organic and transcendent existence, possessing permanence, authority, and the capacity to exert power and influence over a global constituency. They confer the benefits of production and regeneration and impose limits within which sustainable life, natural assets, and ecosystems can flourish and endure. They command respect and obedience and can instill fear when their norms are seriously broken or threatened. This includes fear for the future of the planet, communities, and business and industry continuity; financial instability; the prospect of public shaming; loss of predictability or certainty in the lives of individuals

[8] See also Khir (1990).

or families; various forms of extinction; and the loss of safety and security. These sovereignties are potent forces.

In relation to corporations, which rely for their existence on natural capital,[9] these sovereignties are rewriting the rules of "citizenship." Oaths of allegiance are fast becoming mandatory. Being a good corporate citizen possessing moral legitimacy within these sovereignties has its onerous civic responsibilities, such as reducing greenhouse emissions and operating sustainably, but is accompanied by protected freedoms and benefits. Among others, there is freedom to continue in business and the benefits of a green reputation, together with supportive capital waiting to invest in and help transition and grow a business. And, some would say, the social license to operate is the ultimate concession, offering sovereign passports stamped with a visa for green-credentialed corporations to continue in business for the long term.

Conversely, industries and corporations not seen to be responding seriously to climate change and other social responsibilities are susceptible to having their social licenses to operate being canceled. This could arise, for example, through a government banning the extraction or processing of fossil fuels, as was highlighted by the newly elected US government's action to pause new oil and natural gas leases on public lands and in offshore waters.

Thomas Friedman (2016a) describes in an interesting way how Mother Nature controls her domain through a rigid and brutal rules-based regime: "Mother Nature also believes in bankruptcy.... She has no mercy for her mistakes, for the weak, or for those who can't adapt to get their seeds, their DNA, into the next generation.... What markets do with bankruptcy laws, Mother Nature does with forest fires" (p. 306). And also with other effects of climate change, it might be added. This is how Mother Nature's system of justice works. Friedman (2016a) suggests that "Mother Nature in her own way, appreciates the power of ownership" (p. 305). But in contrast to human systems, he notes, "Natural systems have no owners, no self-interested managers per se" (Friedman, 2016a, p. 305). Yet, green

[9] Natural capital is "the stock of ecosystems that yield a renewable flow of goods and services that underpin the economy and provide inputs and direct and indirect benefits to businesses and society"' (United Nations Environment Programme Finance Initiative, n.d., para. 2).

shoots are emerging where nature's ownership of its own capital is being recognized.

In New Zealand, personhood has been granted to the Wanganui River (Te Awa Tupua), from the mountains down to the sea, in a world first for river ownership (Chapron et al., 2019). No longer the property of the Crown, the river has its own identity and owns itself, with all the rights, powers, duties, and liabilities of a legal person. Similarly, personhood has been granted to what was formally a large national park (Te Urewera) containing lakes, forests, and mountains (Biggs et al., 2017, pp. 24–25). Personhood has also been conferred on the Ganges and Yumana Rivers in India, and rivers in Colombia possess rights to protection, conservation, maintenance, and restoration (Biggs et al., 2017, p. 27).

As well, Ecuador became the first country to enshrine rights of nature in its constitution, and under Bolivian national laws, the inherent rights of ecosystems are recognized (Biggs et al., 2017, p. 8). In the United States, the right of nature to exist and flourish has been recognized in a number of communities but with varying effects (West, 2020), and Ohio's Lake Erie was the first US example of an ecosystem to receive acknowledgment of its rights to exist, flourish, and naturally evolve (Community Environmental Local Defense Fund, 2020). Clearly, it is the early days in the process of fully recognizing the rights of nature; however, the movement's achievements are growing, and it has established the International Tribunal for the Rights of Nature, where cases are presented by an "Earth Defender" (Biggs et al., 2017, p. 36). Another example of natural capital emerging more clearly into the mainstream is the establishment of the Natural Capital Investment Alliance, which aims to invest $10 billion in natural capital investments by 2022. Falling under the banner of Prince Charles's Sustainable Market Initiative, it is seeking to monetize activities that protect natural capital. Its Terra Carta (Earth Charter) manifesto aims to broaden the notion of sustainability beyond net-zero emission targets to include nature, people, the planet, equality, and prosperity (Fernyhough, 2021).

Questions surrounding "standing" to act on behalf of nature, which can arise in formal legal proceedings (Miller, 2019), are avoided when direct action is taken by nature's champions and defenders. They can employ a variety of extra-legal measures, especially leveraging the power of institutional capital to achieve outcomes on behalf of nature and the planet.[10] As well, groundbreaking legal actions are emerging around the world (Setzer and Byrnes, 2020). Notably, actions are being brought against governments, corporations, and regulators at local, national, and international levels. Among a widely expanding range of plaintiffs are individuals, including children, as well as groups, corporations, nongovernmental organizations (NGOs), and local communities seeking enforcement of treaty obligations, national laws, policies and regulations, and corporate commitments. Furthermore, the bases for such claims are similarly expanding as plaintiffs seek to rely on established causes of action as well as asserting new foundations for claims to protect their interests, both personally and on behalf of their communities or the local or global environment. Claims extend to seeking protection against future harm by applying for injunctions or declarations or to receiving damages for present or future loss. Decisions have been handed down requiring governments to take affirmative action, and increasingly, actions are relying on human rights to found the claims (Setzer and Byrnes, 2020). New high-water marks are being set within countries and at the international level.

An extraordinary example involves the case *Lliuya v. RWE AG* (Global Climate Change Litigation Database, n.d.), in which the plaintiff, a Peruvian farmer, is suing a German utility company in a German court for the partial costs of remediation of threatened flooding in his home country due to the recent increase in volume in a glacial lake near his farm. This was allegedly caused by the impact of climate change upon a nearby glacier. Although the farmer was initially unsuccessful in his claim, on appeal, the case was accepted for hearing. The potential is for the company to be found liable for its relative contribution to global climate change as a result of its greenhouse gas (GHG) emissions and to contribute the same proportion to the costs of remediation (Germanwatch, n.d.). Many legal and scientific issues will be in contention, but the supranational dimension to this claim highlights the potential scope of climate-change liability as well as climate protection. In the age of liquid modernity and in light of the emerging consensus, it is hardly surprising that traditionally perceived limitations on the right to compel governments, regulators, and corporations to take action on climate change, either within or across jurisdictions, are succumbing to progressive judicial decision making.

[10] See, for example, the CA100+ discussion later in the chapter.

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Reflecting the growing movement to protect nature's capital, the EU High-Level Expert Group on Sustainable Finance recommends making investor duties more explicit by including impacts and dependencies on natural capital and ecosystems and how these may be material to investors, companies, and insurers (EU High-Level Expert Group on Sustainable Finance, 2018). Another of its recommendations is to include consideration of natural capital among the good-faith duties of company directors (EU High-Level Expert Group on Sustainable Finance, 2018, p. 40). Corporations are now facing the formidable combined forces of climate and nature and those acting on their behalf, with far-reaching implications for all parties who are direct or indirect stakeholders in corporate life.

Climate Action 100+

An Overview of Private Politics and Financial Power

The climate-change phenomenon in raising global consciousness has spawned a multiplicity of organizations, both public and private, to vigorously campaign for radical changes to business practices and models. It is best described as a "regime complex for climate change" (Keohane and Victor, 2011, p. 7). It defines the "hodge-podge of loosely connected, decentralised institutional arrangements scattered around the globe that … emerged in the absence of any unified, binding environmental policy regime" (McAdam, 2017, p. 190). This recognizes the elements that "are linked more or less closely to one another, sometimes conflicting, usually mutually reinforcing" (Keohane and Victor, 2011, p. 7).

Such regimes are loosely coupled sets of specific regimes, and in contemporary world politics, structural and interest diversity tend to generate a regime complex rather than a comprehensive, integrated regime (Keohane and Victor, 2011, p. 7). The former has two distinctive advantages, namely, flexibility across issues and adaptability across time (Keohane and Victor, 2011, p. 15). The regime complex for climate change emerged rather than having been comprehensively designed (Keohane and Victor, 2011, p. 19), reflecting the infeasibility of a comprehensive regime as a result of the complexity of issues, the multiplicity of power groupings in the international arena, and the fluidity of their respective interactions. The emergence of CA100+ is a prime example of this fluidity.

In the space available, CA100+, a powerful activist group, has been chosen to demonstrate the speed, reach, and outcomes that are occurring through the use of private politics (Baron, 2003)[11] – that is, using direct engagement to achieve change or resolve disputes without relying on the law or governments. CA100+ was established in 2017 to implement the first Global Investor Statement on Climate Change, which was published in the lead-up to the adoption of the Paris Agreement (Climate Action in Financial Institutions, 2019). As a senior executive at CalPERS[12] says: "Climate Action 100+ illustrates owners' ability to come together to solve the tragedy of the commons" (Rundell, 2020, para. 1). In this case, it's a coalition of 617 investor organizations of enormous financial scale, with combined assets exceeding $65 trillion (CA100+, 2020), which, remarkably, and presently surpasses the combined gross domestic product (GDP) of the United States, China, and Europe. Furthermore, these organizations represent vast numbers of grassroots members around the world who depend upon them for their long-term financial well-being. In the context of current global politics, both public and private, CA100+ possesses the legitimacy to succeed in its campaign: for it, "the time is right" (Sjöstrüm, 2020, p. 9).

CA100+ signatories acknowledge the need for the world to transition to a lower-carbon economy consistently with the targets set by the Paris Agreement. Accordingly, three broad aims with potentially far-reaching governance consequences were specified in relation to 160 heavy emitters that are said to be responsible for up to 80 percent of industrial emissions.[13] CA100+ aims to secure commitments from each focus company to implement a strong governance framework that clearly articulates the board's accountability and oversight of climate-change risk and opportunities. Second, it wants reductions in GHG emissions across company value chains, consistent with the Paris Agreement's goal of limiting global average temperature increase to 1.5°C above preindustrial levels. And third, it is seeking enhanced corporate disclosure in line with the final recommendations of the TCFD. This includes disclosure of sector-specific expectations on climate change to enable investors to assess the robustness of companies'

[11] See also Reid and Toffel (2009).
[12] The California Public Employees' Retirement System.
[13] Representing $8.4 trillion in market capitalization in 32 countries (see CA100+, 2020).

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business plans against a range of climate scenarios, including the Paris Agreement targets, and to improve investment decision making (CA100+, n.d.).

The expectation of companies is that they will have an ambition to achieve net-zero emissions by 2050, if not sooner, across their supply chains and a reduction in emissions of 45 percent by 2030 relative to 2010 levels. To this end, companies in collaboration with CA100+ are expected to develop and implement net-zero transition action plans for their value chains and sectors. This requires a resetting of corporate strategies over the short, medium, and long terms and may require companies to reinvent themselves and their operating models. The corporate thinking that is required, therefore, is not to view climate change as a corporate social responsibility issue but one that "is best addressed with the tools of the strategist, not the philanthropist" (Porter and Reinhardt, 2007, para. 1).

A useful analysis of the scope of these challenges is set out in a 36-page Royal Dutch Shell report (Royal Dutch Shell PLC, 2021). Another useful example of the sheer scale and ambition required to reimagine a major business lies in the proposal by Fortescue Metals Ltd, a global leader in the iron-ore industry, to become one of the world's largest energy providers by transitioning to becoming a global renewable resources company (Thompson, 2020) with a particular focus on green hydrogen. Beyond individual corporations, probably the most far-reaching transition proposed is that of the European Green Deal (European Commission, 2019).

A Net-Zero Company Benchmark launched by CA100+ in 2021 includes 30 indicators to provide a comprehensive analysis of which companies are leading the transition to net-zero emissions as well as providing indicators for investors to inform their investment and corporate-engagement strategies (Ceres, 2020a).[14] This initiative, accompanied by data tracking and analysis, sends strong messages to companies and their leaders that, increasingly, their climate data will be publicly available, with implications for their corporate reputations, brand health, and the ability to continue to attract investment. The intention is to hold companies accountable. As the CEO of Ceres, one of the five key stakeholders in CA100+, stated bluntly when referring to the proposed 2021 Net-Zero Company Benchmark: "We're going

[14] See CA100+ (2021) for details of the first report.

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to hold them accountable. We'll assess their progress towards this call to action with the public benchmark next year" (Min, 2020, para. 4).

Ethical and moral considerations underpin the work of CA100+, but it is also motivated by self-interest because its signatories' investments are at risk of being devalued by climate change:

> With our long-term investment horizon and multiple generations relying on us for pension security, establishing a thriving low-carbon global economy in which we can invest is vitally important to our ability to protect our members' assets and earn risk adjusted returns. Climate change is a systemic risk which needs to be managed and mitigated. For an intergenerational, universal owner like us, there is nowhere to hide. (CalPERS, 2019, p. 24)[15]

An advantage of private capital acting internationally is that it can cut through the intransigence and opposing political forces that inevitably appear when state-based reform is proposed. Nor is it forced to succumb to unacceptable compromises. It also avoids the impasse over the status of corporations under international law.[16] Importantly, it can escalate its use of financial power in cases when cooperation is not forthcoming. As will be seen, this is proving to be a successful strategy. Although CA100+ cannot achieve a green business revolution in the 5 years of the project, its success to date is, nevertheless, remarkable, with inevitable flow-on effects.

These impacts are shrinking timeframes between principle and practice. For example, TCFD disclosure is fast becoming the governing framework for climate-change governance, disclosures, and reporting well in advance of national legislation, except in rare instances.[17] Relying on the social movements' theory, Reid and Toffel (2009) affirm the effectiveness of private politics such as that exercised by CA100+. They found "that companies respond to private politics by

[15] For useful examples detailing the climate-change risk exposure of major institutional investors, see the analyses of two CA100+ signatories (CalPERS, 2020); see also AustralianSuper (2020).

[16] Other than in a few exceptional cases, corporations are not subject to direct duties under international law but wait for international obligations to be translated into national regulatory frameworks. The direct negotiation process taking place between large institutional investors and corporations bypasses this long-standing theoretical obstacle.

[17] See discussion on page 115 regarding mandatory reporting enacted by the New Zealand government.

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adopting new practices that adhere to the underlying objective of the social activists" (Reid and Toffel, 2009, p. 1171). They also observe

> that political context affects the success of a social movement in that firms under threat of regulation related to the social movement are more likely to agree to engage in practices consistent with the aims of the movement . . ., as are firms that share an institutional field with firms under threat of regulation. (Reid and Toffel, 2009, p. 1171)

Presently around the world, national governments and regulatory bodies are moving at various speeds, generally slower than the private political forces[18] regarding, for example, reduction of carbon emissions, requiring climate risk reporting to improve financial market stability, and encouraging industry and corporate transitions. Evidence of this lies in the extent of commitments being undertaken by corporations around the world voluntarily, by agreement in response to market pressures or as a result of public and private politics, but nevertheless in advance of regulatory compulsion to do so.

Climate Action 100+ Disciple Model

With its highly committed action working groups deployed around the world, CA100+ has become a potent private force driving business transition in response to climate change.

Under the CA100+ model, signatories are entrusted as fiduciaries to engage with target companies in their respective jurisdictions, either alone or in partnership with other signatories, to achieve climate outcomes. There is a clarity of purpose that informs the discussions held with target companies.[19]

Although its main targets are the 160 identified major GHG emitters, the reach of CA100+ is now far more pervasive as its signatories, generally large institutional investors, use its goals to guide the other investment decisions they make. BlackRock, for example, is targeting 1,000 companies in 2021, reaching beyond direct heavy emitters to those who finance such companies (BlackRock, 2020b, p. 6). It should be noted that the signatories' shared unity of purpose may not always

[18] See, for example, Institutional Investors Group on Climate Change (IIGCC, 2020a), in which the IIGCC, a CA100+ member, urged the EU to set more aggressive 2030 targets in order to meet a 1.5°C Paris Agreement goal.

[19] See, for example, Boyd (2017).

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prevent their own commercial interests from coming into conflict while they, themselves, are transitioning their portfolios.[20]

Engagement may take all or any of the following forms: holding one-on-one meetings with companies; holding group meetings with companies; conducting investor roundtables; making a statement at company annual general meetings (AGMs); supporting shareholder resolutions on climate change risk; voting for the removal of directors who have failed in their accountability of climate change risk; voting against reports, accounts, and company-led resolutions; and making joint statements with the company (CA100+, 2019). When necessary, the methods employed to achieve positive results can be scaled up according to the circumstances. CA100+ has firmly stated that it will approach unresponsive and poorly performing companies with targeted action strategies (Ceres, 2020a). A striking example of this approach is BlackRock's stated intention to increasingly use its voting power on shareholder resolutions where engagement is not providing sufficient outcomes or where its voting would accelerate progress in a particular company (BlackRock, 2020b, p. 7). This is a powerful business model at work.

CA100+ Achievements

As a stakeholder possessing power, legitimacy, and urgency (Mitchell et al., 1997, p. 878), CA100+ is achieving both tangible and precedential outcomes.[21] The first CA100+ Net-Zero Company Benchmark Report released in early 2021 contains a useful snapshot of areas in which significant progress is being made, as well as areas of continuing challenge for corporations. Thus, 52 percent of focus companies have made full or partial commitments to 2050 net-zero targets; 60 percent have made full or partial commitments to long-term (2036–2050) GHG emission reduction targets; and 67 percent have similarly

[20] See, for example, a recent occasion when BlackRock unsuccessfully voted for a resolution to bring forward closure of some Australian coal-fired power stations, which was opposed by some other signatories of CA100+ (Australian Centre for Corporate Responsibility, 2020).

[21] For a useful summary of climate-action outcomes analyzed in relation to the energy; materials and buildings; agriculture, food, and forestry; and transportation sectors, see CalPERS (2020).

committed to medium term (2026–2035) emission-reduction targets. Other areas in which major progress has been made, no doubt because these are the easiest and least complex to implement, are climate-policy engagement (63 percent), climate governance (89 percent), and commitment to TCFD disclosure (80 percent).[22]

In contrast, two areas that go to the heart of business operating models, strategy, and financing of transitions, namely, capital allocation alignment and decarbonization strategy, have achieved the least progress to date. Only six companies have made full or partial progress in aligning their capital allocation with their climate-action commitments, and only 40 percent of focus companies have achieved full or partial progress in developing and implementing a decarbonization strategy.

A few specific examples, however, highlight the progress being achieved. In 2018, Royal Dutch Shell PLC (Shell) announced its intention to reduce its carbon footprint by around half by 2050, to link its energy transition with long-term remuneration, and to disclose in line with the TCFD recommendations. Then, in April 2020, Shell announced a new ambition to become a carbon-neutral energy business by 2050 and to reduce scope 3 emissions by 65 percent by the same date (Royal Dutch Shell PLC, 2020). Importantly, the Shell CEO declared that its previous targets were not sufficient and that society had moved toward meeting the more ambitious Paris Agreement targets of 1.5°C (Royal Dutch Shell PLC, 2020).

Maersk, the world's largest shipping company, committed to net-zero emissions by 2050 (Maersk, 2019), and Glencore, the world's largest mining company by revenue, agreed to cap its coal production at current levels while prioritizing investment in commodities that support low-emission technologies, among other commitments (Glencore, 2020). Another notable success, following discussions with CA100+, was Total's announcement of its ambition to achieve 2050 net-zero emissions across its worldwide operations (IIGCC, 2020b). It further committed to assessing capital expenditure for its consistency with the Paris Agreement, together with annual reporting, and to

22 See CA100+ (2021). This report also contains details of the progress of individual companies.

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actively advocate for policies that support the achievement of net-zero emissions. The CA100+ 2020 Progress Report contains a full outline and analysis of corporate commitments and progress in key sectors (CA100+, 2020).

Lobbying commitments are another key feature of agreements reached between CA100+ and individual companies. This involves obtaining undertakings to ensure that lobbying by industry associations of which a focus company is a member is balanced and does not unduly emphasize the cost of taking action. Thus, significantly, BHP, the world's largest miner by market capitalization (Statista, 2020), worked with CA100+ and other key investors to establish its new Global Climate Policy Standards, which state that advocacy on climate policy should be balanced to avoid focusing on the cost of reducing emissions; fact-based, using the best available evidence and avoiding ambiguity; focused toward areas that present the greatest benefits to members and communities while avoiding advocacy that might unduly exacerbate policy tensions; and be technology and commodity neutral (BHP, n.d.).

Using the proxy system to propose shareholder resolution is another strategy being used to good effect by CA100+, more so in the United States than in Europe (Horster and Papadopoulus, 2019).[23] Importantly, the publicity associated with shareholder resolutions in major corporations also sends strong signals to others in the same industry: "firms are more likely to agree to engage in practices consistent with the aims of a social movement if they . . . or other firms in their industry . . . have already been targeted by a shareholder resolution on a related issue" (Reid and Toffel, 2009, p. 1171). Areas of focus for shareholder resolutions include director elections, climate strategies aligned with the Paris Agreement, board independence, alignment of executive remuneration with ESG metrics and Paris Agreement goals, and commitment to TCFD reporting.[24]

A truly remarkable example of CA100+ in action is its role in having a resolution passed by over 99 percent of the vote at the 2019 Annual

[23] See also Institutional Shareholder Services (2020); the coverage will extend to 3,700 companies globally across more than 20 capital market main indices and will be supported by a Custom Climate Voting service.

[24] See Lamanna and Berridge (2020). See also BlackRock (2020a).

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General Meeting of BP (BP, 2019a). The resolution directed the company to include in its future Strategic Reports and other reports a description of its strategy, which the board believes to be consistent with the Paris Agreement goals. Further, the company was directed to state how future capital expenditure would be consistent with the Paris goals, together with climate-change metrics and targets over the short, medium, and long terms. Notably, it was supported by the BP board itself. Subsequently, BP set a 2050 net-zero target and announced that it would reinvent its business (BP, 2020). The company's detailed response to the direction is evident in the contents of its 2020 AGM Report (BP, 2019b).

Rarely, if ever, is a major corporation directed by its shareholders to undertake such far-reaching strategic steps;[25] however, it is a sign of the times when the legal niceties of traditional corporate-governance principles are giving way to global social realities and new ways of governing. Agreements freely entered into, such as those negotiated by CA100+ and the BP example, in particular, avoid issues of legal standing faced by shareholders or other stakeholders when trying to force changes to corporate policies and strategies.

Through a combination of direct actions and their flow-on effects, CA100+ is making a major impact on corporate responses to climate change in the countries in which it is active. Nevertheless, evidence of the sheer scale of the task confronting CA100+ lies in the findings of a recent global survey: it reveals that 60 percent of CEOs have not yet factored climate change into their strategic risk-management activities, and ironically, companies in countries with the highest exposure to natural hazards are least likely to have embedded climate change into their risk-management frameworks (PricewaterhouseCoopers, 2021). Likewise, a major European survey reveals that few companies have a governance and steering mechanism in place to develop and implement climate strategies (Coppola et al., 2019). Even so, CA100+ has achieved remarkable momentum in a short time, and with the commitment of its signatories and significant like-minded others, it is part of an impressive movement that is not only helping to transform corporate politics but also heralding the emergence of a new corporate governance paradigm.[26]

[25] At least in shareholder primacy jurisdictions.
[26] See discussion of the New Paradigm on page 131.

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TCFD Reporting

One of the most significant reforms arising out of the climate-action movement is climate reporting (Reid and Toffel, 2009),[27] for which demand has been rising for several years. Of themselves, corporate disclosures may not achieve changes in corporate behavior or reductions in GHG emissions (Sjöstrüm, 2020), but they are, nevertheless, crucial elements in the broader accountability framework that is emerging. They will assist in investment decision making; shaping corporations; and, coercively, enabling activists such as CA100+[28] to hold corporations to their stated climate actions.

It is now clear that the recommendations of the TCFD are gaining traction around the world as the preferred reporting framework (TCFD, 2020).[29] The TCFD was established by the Financial Stability Board (FSB) as an industry-supported initiative to consider the implications of climate-related issues for the financial sector, and it released its recommendations in 2017 (TCFD, 2017). TCFD recommendations are intended to be adoptable by all organizations and be included in financial filings, and they are designed to provide forward-looking information on the financial impacts of climate change to assist with decision making by users. There is a strong focus on risks and opportunities as organizations transition to a lower-carbon economy (TCFD, 2017, p. III). The core elements of TCFD reporting, governance, strategy, risk management, metrics, and targets (TCFD, 2017, pp. 14–16) require deep consideration, planning, and evaluation by companies. TCFD reporting is creating a new, multifaceted dimension for investment decision making and corporate governance more broadly.

The recent endorsement by the International Organisation of Securities Organisations (IOSCO) of a proposal from major international reporting standards organizations to align their respective frameworks with the TCFD recommendations in an endeavor to

[27] See also Thistlethwaite (2015). Here, the author explains how the Climate Disclosure Standards Board (CDSB) emerged from an international consortium exercising private environmental governance. And see also Ahmad (2017).

[28] See also the Children's Investment Fund Foundation and its disclosure-focused "Say on Climate" campaign directed at major international companies (van Leeuwen, 2021, p. 28).

[29] See also Demaria et al. (2019).

"deliver an integrated and consolidated set of disclosures that meets multiple stakeholders' needs" is a pivotal moment in climate-related disclosure (IOSCO, 2020, p. 3). The measures of TCFD's growing influence are contained in its 2020 Status Report, which reveals that it is supported by over 1,500 organizations globally, including financial institutions responsible for assets of $150 trillion (FSB, 2020). Nearly 60 percent of the world's 100 largest public companies either support the TCFD, report in line with the TCFD recommendations, or both. From 2020, TCFD reporting has become mandatory for PRI signatories totaling more than 3,000, with assets under management exceeding US$100 trillion (PRI, 2019).[30] And 42 percent of companies with a market capitalization greater than $10 billion disclosed at least some information in line with each individual TCFD recommendation in 2019 (FSB, 2020). As well, over 110 regulators, as well as governmental entities and governments around the world, now support the TCFD recommendations' framework (FSB, 2020, p. 71). This is amazing progress in a short period of years.

Recently, New Zealand (NZ) became the first country in the world to adopt mandatory climate-change reporting based on the TCFD framework. The NZ obligations apply to banks, asset managers, and insurers with assets exceeding $1 billion or premium income exceeding $250 million. The legislation is intended to help NZ meet its Paris Agreement targets and assist investors in valuing companies and realigning their portfolios to contribute to a lower-carbon world. At the same time, Australia, Canada, the UK, France, Japan, and the European Union are heading toward the requirement for companies to report climate risk (Fernyhough, 2020). The European Commission has also taken a major step forward by incorporating TCFD recommendations into its *Guidelines on Reporting Climate-Related Information* under the EU's reporting requirements to assist companies in making climate-related disclosures (FSB, 2020). CA100+, as already noted, regularly negotiates outcomes with companies that include a commitment to report climate matters in accordance with the TCFD voluntary-disclosure framework. From its very beginning, the pursuit of TCFD reporting was one of the three key objectives of CA100+ (Climate Action in Financial Institutions, 2019).

[30] See also PRI (2020).

Some of the most onerous of TCFD requirements are in setting and disclosing climate-related strategies. In particular, organizations are recommended to describe the climate-related risks and opportunities an organization has identified over the short, medium, and long terms (Climate Action in Financial Institutions, 2019, p. 14). These should have regard for the nature of the organization's assets and infrastructure and the fact that climate effects often manifest themselves over the medium and long terms (Climate Action in Financial Institutions, 2019, p. 20). There should also be a description of the specific climate-related risks for each of these terms that could have a material impact on the organization (Climate Action in Financial Institutions, 2019).

Significantly, organizations should disclose the resilience of their strategy, "taking into consideration different climate-related scenarios, including a 2°C or lower scenario" (TCFD, n.d., section C). This has been described as the most complex disclosure recommendation ever laid down because companies do not have historical data to compare with; commonly agreed-on climate scenarios; or consistency in methodologies for the assessment, quantification of, and reporting on climate impacts (KPMG Australia, 2020). The TCFD regards this form of scenario planning, although in its infancy, as one of its key recommendations because it allows information users to better understand the potential impacts of climate change on the organization over the coming decades. The TCFD (2020) status report demonstrates the difficulty corporations are having in complying with this onerous requirement (FSB, 2020, p. 2).

It follows that the more diverse are the business activities of a corporation, the more complex and challenging it will be to comply with the framework. For example, a major Australian international bank took 26 pages to set out its 2020 TCFD report to disclose the identification and management of its climate risks across its client base, which spans many industries (Macquarie, 2020). Nevertheless, with the support of major investors, regulators, and many major companies, the recommendations are becoming mainstream. And as TCFD reporting becomes more developed and uniform, its influence will surely grow. In particular, it can be expected to influence decision making by major investors, especially those with an ESG focus, and will more easily allow commitments made by corporations and their leaders to be tracked. In these ways, TCFD reporting is adding new and dynamic dimensions to corporate governance frameworks.

A Snapshot of CA100+ and TCFD Reporting in Australia

CA100+ in Australia

Australia has been chosen for the purpose of taking a single-country snapshot of the reach and impact of CA100+ and the TCFD recommendations for several compelling reasons. First, Australia is one of the world's leading mining countries, and as the largest exporter of coal and gas, it is a significant exporter of GHG emissions (Moss, 2020). Australian coal accounts for nearly 30 percent of the world's coal exports (Reserve Bank of Australia, 2019). Its contribution to the national GDP of 3.5 percent (Reserve Bank of Australia, 2019) makes the country heavily dependent on this revenue and underpins significant employment and community sustainability. And although domestic coal consumption has been declining, exports have been increasing (Reserve Bank of Australia, 2019). In the face of global climate action, there is, therefore, a vulnerability of mining companies to both price and global consumption trends as well as to the national economy as a whole.

Second, Australia hosts some of the world's largest mining companies, such as BHP and Rio Tinto, an Anglo-Australian company that is the second-largest metals and mining company in the world by market value (Statista, 2020). Of the 160 CA100+ focus companies, 13 are Australian. Further, nearly 10 percent of CA100+ signatories are Australasian, thereby implying the likelihood of a high degree of climate activism. Australia also has a high rate of climate-related litigation. According to a recent analysis (Setzer and Byrnes, 2020, p. 6), 98 such cases have been initiated, which is greater than the total of all European cases and 50 percent greater than those in the United Kingdom. Based on that analysis, Australia is second only to the United States for climate cases, but on a per capita basis, it is the most climate-litigious country in the world.

Finally, in the country's political setting, there is sharp disagreement between the main political parties on the setting of emission-reduction targets. Presently, the Australian government has not formally adopted the goals of the Paris Agreement, of which the country is a signatory, despite all Australian states having done so (Allens Linklaters, 2020b). Moreover, 56 percent of Australians consider climate change to be a serious and pressing problem requiring immediate action, and over

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80 percent regard it as important for Australia to reduce its carbon emissions (Colvin and Jotzo, 2021). As we will see, ironically, while the national polity has been unable to establish a national consensus and action plan on climate change, CA100+, surely and steadily, assisted by the efforts of others, is achieving particularly significant successes. Some notable examples demonstrate the growing influence of CA100+ within Australia.

In consultation with CA100+, and in what has been described as a landmark shift for corporate Australia (Toscano, 2019), BHP agreed to develop targets for downstream emissions from its customers' use of its products (scope 3 emissions) and to act as a steward to its supply chain. It was the first major mining company to make such a commitment. This agreement complements the company's commitment to the Paris Agreement goals. Also, as noted earlier, BHP, in consultation with CA100+, published its Global Climate Policy, which committed to strict and progressive standards governing its public advocacy on climate change. Underpinned by global agreements, including the Paris Agreement and its temperature targets, the company states that climate policy should be constructive and targeted at emissions reductions, achievement of national targets at least cost, policies that support the development and deployment of low-emissions technologies, and policies that make a broader transition to a net-zero economy (BHP, n.d.).

Another prominent example of CA100+ in Australia is the commitment in February 2020 by Rio Tinto to reach net-zero emissions by 2050 and to spend $1 billion to achieve this target (Rio Tinto, 2020). Further, having committed to the TCFD reporting framework in 2018, it published its first TCFD report setting out the impacts of climate change and identified technological breakthroughs in materials that have a key role in low-carbon transition (Investor Group on Climate Change, 2019). While acknowledging these developments as progress, criticisms had been leveled about the pace of change, the absence of a comprehensive plan, and the commitment to all aspects of the CA100+ agenda.[31]

Australian Super, the largest retirement fund in Australia, is, together with other CA100+ signatories, targeting at least 12 other Australian companies to make CA100+ commitments following its successful negotiations with BHP. They are using their voting power

[31] See, for example, Market Forces (2020).

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to help achieve these ends. A further useful example worth highlighting is the consultative engagement between CA100+ and Origin Energy, a major Australian company. The engagement was undertaken so that both parties could more fully understand and contribute to the company's alignment with the Paris Agreement, emissions reductions, increased disclosure, the alignment of climate action to executive remuneration, and its plans toward exiting coal-fired generation by 2032. It is regarded as a model for climate-action engagement with companies around the world (CA100+, 2019, p. 31).

A final example that signifies a serious change of pace in Australia is the release in June 2020 by the Minerals Council of Australia (MCA) of a Climate Action Statement that acknowledges the net-zero target, albeit without specifying a deadline for its achievement. The release of the statement followed public and investor pressure. Although open to criticism by some, the statement nevertheless shows that the combined global and local forces of climate action are reaching deeply into the control centers of carbon emission. The momentum that is currently at work will bring further and more specific outcomes. To this end, CA100+ influential member Australian Super has adopted an assertive stance in relation to the MCA announcement, warning that it was insufficient because it failed to specify how MCA members would contribute to the Paris Agreement goals. It vowed to maintain the pressure on all industry associations whose climate agendas did not match the stated goals of their members (Butler, 2019).

Through its gravitas and scale, CA100+ increased the velocity of climate-action forces in Australia, thereby accelerating the pace and depth of change. This is so not only in respect to a relatively small number of major emitters but also, through the ripple effects of its activities and especially its signature successes, in terms of the broader scope of climate action in Australia's corporate sector. In consequence, several powerful interest groups have been formed to pursue climate-action goals similar to those adopted by CA100+, including, notably, the Climate Leaders Coalition, an organization comprising 22 leading Australian corporations (Australian Climate Leaders Coalition, n.d.).

TCFD Reporting in Australia

Although there is as yet no mandatory climate-change reporting framework in Australia, the TCFD is rapidly gaining support for reporting generally or within or associated with a company's annual report (Deloitte, 2020).[32] Notably, the Australian government stated that TCFD reporting could be implemented by corporations without any law reform required for the recommendations to be implemented (Governance Institute of Australia, 2018). Further, the TCFD is gaining popularity with regulators, major investors, and major companies that are either committing to it or are now embedding it in their annual reports. Among the signatories to the PRI are 141 Australian investors who are committing to mandatory climate disclosure in accordance with TCFD recommendations (Governance Institute of Australia, 2020, p. 5).

In view of the necessity for such reporting, the Australian Securities & Investment Commission (ASIC) has recommended that publicly listed companies consider reporting their climate-change exposure and risk in accordance with TCFD recommendations (ASIC, 2018). Under ASIC Regulatory Guides, climate change is identified as a systemic risk that might affect a company's future financial prospects, and if it is a material business risk, a listed entity is required to disclose it (Allens Linklaters, 2020a). As a clear signal to the business world of the materiality of climate-related disclosure in corporate reporting, ASIC has undertaken deep-dive analyses and desktop audits in critical sectors such as energy and industrials (Ross, 2021). Similarly, the Australian Prudential Regulatory Authority (APRA) encourages Australia's large banking, insurance, and superannuation institutions to address the climate-data deficit through scenario analysis, stress testing, and disclosure of market-useful information, in accordance with TCFD recommendations (APRA, 2020).

Finally, the Australian Stock Exchange (ASX) recommends that a listed entity should disclose the existence of any material ESG risks and the management of such risks, and it further recommends that they be disclosed in accordance with the TCFD recommendations (ASX Corporate Governance Council, 2019, p. 27). Thus, TCFD reporting is gaining a major foothold in Australia, with implications for all corporations with climate-related risks as well as for their CEOs and governing boards.

[32] See also KPMG Australia (2020).

Stakeholderism and Corporate Purpose

Stakeholderism is the fourth global force to be considered in this chapter. In brief, stakeholder theory suggests that a corporation that is managed for the benefit of its whole body of stakeholders will produce better outcomes than those whose principal focus is profit making for shareholders. Although it is widely regarded that stakeholderism is an emerging form of responsible capitalism, others regard it more as a rebirth (Reich, 2014). It also enjoys public support, exemplified by the Edelman 2020 Trust Barometer, in which 87 percent of global respondents expressed a belief that stakeholders, not shareholders, are most important to the long-term success of companies (Edelman, 2020).

A stakeholder is "any group or individual who can affect or is affected by the achievement of an organization's purpose" (Freeman, 1984, p. 53). This is a wide and expanding group. It has been said to include "persons, groups, neighbourhoods, organisations, institutions, societies, and even the natural environment" (Mitchell et al., 1997, p. 853). In the current stakeholder and climate-action debates, investors, employees, suppliers, the community, nature,[33] and society are commonly referred to as stakeholders, not necessarily in that order. Furthermore, and due to the influence being exerted by them, CA100+, TCFD, and PRI (Majoch et al., 2017) could each be considered to be stakeholders in the corporations they affect.

Stakeholderism has been advanced as being the preferable central paradigm for the business and society field (Jones, 1995). "It focuses on the contracts (relationships) between the firm and its stakeholders and posits that trusting and cooperative relationships help solve problems related to opportunism" (Jones, 1995, p. 432). Further, "It implies that behavior that is trusting, trustworthy, and cooperative, not opportunistic, will give the firm a competitive advantage. In the process, it may help explain why certain 'irrational' or altruistic behaviors turn out to be productive and why firms that engage in these behaviors survive and often thrive" (Jones, 1995, p. 432).

Another explanation is that the capability to create close relationships with stakeholders represents a source of sustainable competitive advantage and that "the incremental benefits of a close relationship

[33] See, for example, WEF (2020).

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capability can exceed the costs of a strategy used to develop and maintain it" (Jones et al., 2018, p. 388). Beyond issues of competitive advantage to corporations, stakeholder theory or stakeholderism is now taking on a significant public policy dimension, becoming as much a moral as an economic consideration. This is driven substantially by international public opinion as a means of tying corporations, their supply chains, and other stakeholders into the measures for addressing climate change and other major global concerns.

National laws typically define those to whom corporate boards and CEOs owe their duties when managing corporations and for defining the purposes of a corporation. In some places, shareholders are the primary focus (shareholder capitalism), whereas in others, it is a broader range of stakeholders (stakeholder capitalism).[34] However, stakeholderism is a global force gaining increasing traction in public discourses and consequent action. Strong support for it can be found in Europe, the UK, the United States, and many other countries. Although it lacks the cohesive support underpinning climate action across the globe, it is, potentially, a major disrupter of corporate theory and practice. If adopted in legislation as a mandatory obligation,[35] it will redefine the purpose of a corporation and substantially alter decision-making processes. In consequence, it would rewrite the rules and scope of discretionary business judgment. Although there are significant obstacles to its formal adoption in law,[36] its proponents have considerable momentum, nevertheless. Adoption of stakeholderism, accordingly, has significant implications not only for corporations, their leaders, and governing boards but also for shareholders, other stakeholders, regulators, and business schools and their accreditation bodies.

The Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance incorporate a stakeholderism approach but without advocating that national corporate governance frameworks adopt a mandatory requirement to consider all stakeholders. It is recommended that a "corporate governance framework should recognise the rights of stakeholders … and encourage active co-operation between corporations and stakeholders in creating

[34] For a useful comparison of two contrasting systems, see Georghiu (2015/2016).
[35] That is, if corporate leaders are not only authorized but compelled to consider all identified stakeholders when making decisions on behalf of a company.
[36] See further discussion on page 132.

wealth, jobs, and the sustainability of financially sound enterprises" (OECD, 2004, p. 21). And, further, where "stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights" (OECD, 2004, p. 21). This might require a step-change for Enlightened Shareholder Value (ESV) jurisdictions in which corporate leaders are generally shielded from stakeholder actions seeking to challenge corporate decisions. The OECD Guidelines for Multinational Enterprises (OECD, 2011) similarly highlight the importance of stakeholders and recommend that their interests be taken into account but in a manner that is consistent with the ESV approach.

In Europe, the EU High-Level Expert Group on Sustainable Finance proposes to clarify the fiduciary duties of institutional investors and asset managers to incorporate ESG considerations into their decision making and to ensure that directors of investee companies are subject to sustainability duties (EU High-Level Expert Group on Sustainable Finance, 2018, pp. 20–23). It also proposed to adopt a mandatory form of stakeholderism. In particular, it proposes that director duties and corporate governance explicitly incorporate sustainability by requiring a director to act in good faith and in a way that is most likely to promote the success of the company for the benefit of its owners and other stakeholders. A director would be required to have regard for the following: the likely long-term consequences of any decision; the interests of the company's employees; fostering relationships with suppliers, customers, and others; the impact of the company's operations on the community and the environment; and saving the world's cultural and natural heritage (EU High-Level Expert Group on Sustainable Finance, 2018, p. 40).

A director would also have to exercise reasonable care, skill, and diligence and be aware of the direct and indirect impacts of the company's business model, production, and sales processes on stakeholders and the environment. As well, nonexecutive directors and supervisory boards would be required to develop a climate strategy aligned with climate goals and to describe the company's approach to the UN SDGs (EU High-Level Expert Group on Sustainable Finance, 2018, p. 41). These are far-reaching stakeholderism proposals that will face considerable implementation challenges but enjoy strong political support.

Further, in the EU Guidelines on nonfinancial reporting, the European Commission set out six guiding principles, including that reports should be stakeholder oriented (European Commission, 2017, p. 15) and that companies should report on their engagement with their stakeholders and how their information needs are taken into account. Under this model of reporting, shareholders are on an equal footing with all other identifiable stakeholders, a development that has been described as a significant step on the path toward stakeholderism in Europe (Howitt, 2020). It is also worth noting that the European Green Deal states that managing the transition to a sustainable Europe Investment Plan will lead to "significant structural changes in business models," impliedly incorporating stakeholder approaches (European Commission, 2019, p. 16).

The British Academy recently released the *Principles for Purposeful Business*, which are thoroughly researched and developed proposals to radically reform the underlying paradigm of corporate law and corporate governance (British Academy, 2019). If adopted, they would replace profit-making with corporate purpose, which would, inter alia, take into account social, political, and environmental issues. Profit would be an outcome of a company's purpose, not the central focus. The British Academy (2019) sets out eight principles for purposeful business (pp. 8–9):

1. Corporate law should place purpose at the heart of the corporation and require directors to state their purposes and demonstrate commitment to them.
2. Regulation should expect particularly high duties of engagement, loyalty, and care on the part of directors of companies to public interests where they perform important public functions.
3. Ownership should recognize the obligations of shareholders and engage them in supporting corporate purposes, as well as in their rights to derive financial benefit.
4. Corporate governance should align managerial interests with companies' purposes and establish accountability to a range of stakeholders through appropriate board structures. They should determine a set of values necessary to deliver purpose, embedded in their company culture.
5. Measurement should recognize impacts and investments by companies in their workers, societies, and natural assets both within and outside the firm.
6. Performance should be measured against the fulfillment of corporate purposes and profits, measured net of the costs of achieving them.

7. Corporate financing should recognize impacts and investment by companies in their workers, societies, and natural assets both within and outside the firm.
8. Corporate investment should be made in partnership with private, public, and not-for-profit organizations that contribute toward the fulfillment of corporate purposes.

These principles inextricably intertwine corporate purpose and stakeholderism and propose a new contract between business and society. Importantly, the British Academy (2019) cites four factors that highlight why change is needed now: the global nature of challenges facing society, such as climate change, especially, and the global nature of business itself; second, opportunities and challenges presented by new technologies; third, the increasingly intangible nature of companies and their assets; and fourth, the perception of business in wider society, noting that trust in business institutions is essential for social and economic progress (p. 12). In particular, the Academy asserts that companies must help to drive urgent change in response to "growing concerns around the external impacts of business regarding social inequality, the environment, competition, consumer protection, and privacy in digital markets" (British Academy, 2019, p. 12).

The proposals capture two underlying dimensions of corporate purpose, namely, the "positive benefit of producing profitable solutions to the problems of people and planet, and the avoidance of harm in not profiting from producing problems for people or planet" (British Academy, 2019, p. 20). A reformulated duty would make it mandatory for directors to state their companies' purposes, then act in ways they consider most likely to promote the fulfillment of the stated purposes and, importantly, be obliged to have regard for the consequences of any decision on the interests of shareholders and stakeholders in the company (British Academy, 2019, p. 20). In practice, therefore, corporate leaders would be empowered to pursue socially and financially advantageous outcomes for a business rather than having to put shareholder interests first. Accordingly, they could, in particular circumstances, prefer the interests of stakeholders other than shareholders so long as the corporate purpose is being fulfilled.

It would be a major corporate-law reform for shareholder-capitalism countries where directors presently enjoy greater freedom in decision making and would alter the balance between corporate and governmental responsibility for achieving social outcomes. A similar leap is suggested in a proposal regarding ownership, under which the traditional property-right view of the firm is turned on its head by suggesting that "ownership does not relate to the assets of a firm but to its purposes. Hence, with the rights of ownership come obligations and responsibilities to respect the interests of others affected by its purpose" (British Academy, 2019, p. 22). By developing these principles against the backdrop of the UN SDGs and the global movements for responsible and moral business,[37] the Academy's proposal significantly strengthens the forces for change. It is worth noting, in this context, the remarks of Larry Fink that "a strong sense of purpose and a commitment to stakeholders helps a company connect more deeply to its customers and adjust to the changing demands of society. Ultimately, purpose is the engine of long-term profitability" (Fink, n.d., section 3, para. 2).

Quite clearly, the views of the Academy and many other proponents of stakeholder capitalism are consonant with emerging global sentiments that expect business to be an engine for long-term wealth creation achieved in harmony with nature. A recent global survey shows that 56 percent of respondents believe capitalism does more harm than good; a minority of respondents trust business, in contrast to a strong majority of the informed public who do trust business; 73 percent desire change; a majority believe business serves the interests of only the few; and 87 percent believe that stakeholders, not shareholders, are most important to long-term company success.[38]

Under the Academy proposals, stakeholders, broadly defined, would be key participants in, and beneficiaries of, this form of business. What remains unclear is how competing claims upon corporate outcomes and any ensuing disputes can be resolved. The Academy states that "a purposeful business will also ensure that measures are in place to ensure accountability within the business for remaining faithful to its purpose and for ongoing monitoring and reporting of delivery of its purpose" (British Academy, 2019, p. 17). With responsible purposes clearly agreed upon, more stable ownership, inclusion of stakeholders in a company's governance structure, and better ongoing dialogue between a company and its stakeholders, it is implied, somewhat

[37] See also Harvard Business Review (2015).
[38] See Edelman (2020), involving 34,000 respondents in 28 countries.

hopefully, that less disputation will arise. However, perfect alignment of stakeholder interests even under these new arrangements cannot be assumed.

The respective interests of the corporation itself, management, capital, labor, suppliers, the community, and those acting on behalf of nature can be expected to fall out of alignment from time to time. And if a company strays from its stated purposes, especially if narrowly expressed, one or more stakeholders will want a mechanism for corrective action and one that is enforceable if all other attempts at resolution are unsuccessful. Ironically, many companies that are having to reimagine their businesses as a result of climate change might not have been able to do so if they were bound by narrow purpose statements.

A legal mechanism to consider such cases that are incapable of being resolved internally, through market forces, or through stakeholder pressure will need to be developed. Presently, in shareholder-primacy jurisdictions, the law favors wide discretionary decision making by corporate leaders, allowing them to determine, from time to time, what is in the best interests of a company, including in regard to stakeholder interests. To make such consideration mandatory would therefore require a major rewriting of corporate-governance principles and structures in those jurisdictions.

Interestingly, although the UK has traditionally followed the shareholder-primacy model, it has incorporated stakeholders into legislation in two explicit ways. First, Section 172(1) of the UK Companies Act, which enshrines the principle of ESV (Williams, 2012, p. 360),[39] requires that the directors of a company must act in a way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole and, in doing so, have regard for, among other matters, the likely consequences of any decision in the long term and the interests of other stakeholders – employees, suppliers, customers and others, the community, and the environment. However, it has been argued that, notwithstanding the references to stakeholders, the section introduced in 2006 makes little difference to the preexisting law (Williams, 2012, p. 362). In other words, there is little difference between the ESV

[39] See also Keay (2007).

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approach adopted in the UK and that of the traditional shareholder-value approach that exists in other places.[40]

Section 172(2) of the UK Companies Act, however, expressly allows the directors of a company whose purposes consist of or include purposes other than the benefits of its members to give effect to those nonmember stakeholder interests. In most cases, however, corporations have wide discretion over the purposes for which business can be carried on. B Corporations, which balance purpose and profit, are notable exceptions.[41]

A second stakeholder requirement under English company law is that specified large companies are required to publish in their annual reports how the directors have regarded the stakeholder matters set out in Section 172(1) of the UK Companies Act. In particular, they must specify how they have engaged with employees, showed regard for their interests, and considered the effect of that regard on the principal decisions taken by the company during the financial year. Similar disclosures are required regarding other stakeholders, such as suppliers and customers.[42] Because these reports are only starting to be filed, it is too early to tell whether such ex post facto requirements will have any significant bearing upon the extent to which directors take account of and prioritize respective stakeholder interests when making major decisions.

Also, to be noted is that the 2018 UK Corporate Governance Code issued by the UK Financial Reporting Council embraces purpose as the central principle (Financial Reporting Council, 2018). Finally, in 2019, the Institute of Directors issued a 10-point manifesto that was designed to achieve three broad objectives, the first of which was to "increase the accountability of the UK corporate governance system to stakeholders and wider society" (Institute of Directors, 2019, p. 3).

In America, the US Business Roundtable 2019 "Statement on the Purpose of a Corporation," signed by 181 CEOs (Business Roundtable, 2019) representing \$13 trillion of market value, was widely regarded as a watershed occurrence and elevated the intensity of global debate concerning corporate purpose and stakeholderism.

40 In the United States and Australia, for example.
41 Nee (2020) refers to the growing number of B Corporations across the world, including increasing numbers of large established corporations.
42 See Section 414CZA(1) of the UK Companies Act. See also PricewaterhouseCoopers (2020).

Whether it becomes a pivotal moment in a fuller adoption of stakeholderism remains to be determined because the signatories were not calling for and did not support radical changes to corporate governance structures, which could have serious unintended consequences (McMillon and Bolten, 2020). They also believed that prescriptive government control over business would hurt many stakeholders who are in need of help (McMillon and Bolten, 2020).

While acknowledging that each participating company has its own corporate purpose, the signatories expressed a fundamental commitment to stakeholders to delivering value to their customers; investing in their employees; dealing fairly and ethically with their suppliers; supporting the communities in which they operate and protecting the environment by embracing sustainable practices across their businesses; and generating long-term value for shareholders, who provide the capital that allows companies to invest, grow, and innovate.[43]

As widely welcomed as this statement was, it has generated considerable controversy around what it means and how it will be implemented. Professors Bebchuk and Tallarita (2020, p. 133) conclude that, in effect, the Business Roundtable statement does not move away from ESV and was not intended to shift the corporate-governance requirements of the signatories or others. They noted that there was little evidence to show that the signatories had adjusted their corporate-governance settings following the statement and that most were already meeting the principles set out in the statement. They regarded it largely as a public relations exercise (Bebchuk and Tallarita, 2020, p. 98).[44] At the very least, however, it may be regarded as an influential statement of good contemporary corporate citizenship against which the signatories are prepared to be publicly judged, expressed in the hope that others will follow suit. Furthermore, the statement adds significant weight to the global forces advocating action on climate and long-term business sustainability and is widely cited in literature and debates concerning the future of stakeholderism. Notably, stakeholderism is likely to receive a boost as a result of the US elections, due to the opinion of the new president that corporations

[43] For the full statement, see Business Roundtable (2019).
[44] See also Winston (2019), who argues that it is merely the start of a long-term journey.

have responsibilities to workers, the community, and the country as well as to shareholders and that the era of shareholder capitalism should be brought to an end (Hinks, 2020).[45]

Subsequent to the Business Roundtable statement, the WEF issued a bold stakeholder manifesto (Schwab, 2019) in 2020, stating:

> The purpose of a company is to engage all its stakeholders in shared and sustained value creation. In creating such value, a company serves not only its shareholders, but all its stakeholders – employees, customers, suppliers, local communities, and society at large. The best way to understand and harmonize the divergent interests of all stakeholders is through a shared commitment to policies and decisions that strengthen the long-term prosperity of a company. (Schwab, 2019, part A)

In asserting that a company is more than a wealth-generating economic unit and that it fulfills human and societal aspirations as part of the broader social system, the manifesto suggests that performance must be measured by how a company achieves environmental, social, and good-governance objectives as well as by the return to shareholders (Schwab, 2019, part B). Furthermore, a company that is multinational in scope is to be regarded as a stakeholder, "together with governments and civil society – of our global future" (Schwab, 2019, part C). These conceptions go much further than merely displacing shareholder capitalism as they seek to hold companies that trade internationally, and their controllers, globally accountable for improving the world.

Contributing to the 2020 WEF, Professor Mayer asserts that corporate purpose is "rapidly becoming a global phenomenon" (Mayer, 2020, para. 2) and that once a clear, all-encompassing understanding of corporate purpose is achieved, everything else will follow from that (Mayer, 2020). Citing the British Academy *Principles for Purposeful Business*, he argues that it's "no longer a question of whether and why to change, but what and how to do it" (Mayer, 2020, para. 6). Resolving the "how" question cannot be underestimated; however, while this receives attention, an alternative and stakeholder-friendly form of negotiated corporate governance is emerging.

[45] See also the Accountable Capitalism Act proposed by Senator Elizabeth Warren that would mandate stakeholderism for all US corporations with annual revenue exceeding $1 billion (Accountable Capitalism Act, n.d.).

The New Paradigm – Negotiated Stakeholderism

The New Paradigm (Lipton, 2016), in which large companies and large investor funds deeply collaborate to implement shared long-term financial, social, environmental, and sustainability goals, has emerged as a negotiated form of stakeholderism. It rests on the propositions that "private ordering through the New Paradigm by corporations and investors who best know their respective concerns and needs is more likely to result in balanced solutions than government interventions" (Lipton, 2017, section 4, para. 3) and that stakeholder governance and ESG are in the best interests of shareholders. It further maintains that the "board can exercise business judgement to implement the company's objectives and the company and its shareholders engage on a regular basis to achieve mutual understanding and agreement as to corporate purpose, societal purpose and performance. Ultimately, the shareholders' power to elect the directors determines how any conflicts are resolved if they are not resolved by engagement" (Lipton, 2019, section 3, para. 1). Thus, in being implemented without any need for governments to rewrite corporate-governance legal frameworks, the New Paradigm is less reliant on corporate law for guiding principles and dispute resolution.[46] As a consequence, negotiated stakeholderism coexists as an alternate and sometimes overlapping system of corporate governance even in shareholder-primacy jurisdictions.

Through direct action such as that employed by CA100+, goals for the climate and other important issues can be more quickly put in place. In the process, particular stakeholders, such as the environment, may be accorded preferential treatment or are, at least by agreement, considered in new ways or with increased levels of urgency. The New Paradigm, accordingly, responds to incessant modernity demands to redefine the purpose of corporations, protect the environment, and create long-term sustainable businesses.

Even though New Paradigm agreements are less reliant on corporate law, it does not mean that this domain is or will be free from conflicts requiring resolution. Even where, for instance, CA100+ signatories are active, including where agreements have been struck, proxy campaigns are continuing in many cases to increase or accelerate the corporate commitments. And as the ongoing costs and complexities of

[46] See Goshen and Hannes (2019).

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transitioning to new business models emerge, tensions between aspiration and reality may well give rise to formal disputes. Because the New Paradigm is voluntary, it is still possible that major and influential shareholders may change their views on a particular issue or the directions and purpose of a company more generally.

Nevertheless, as climate action, PRI, and UN SDGs gain even wider acceptance, negotiated governance solutions are likely to increase. The New Paradigm, however, is not a comprehensive system. For those outside of the negotiation or collaborative system, such as smaller companies, those that don't attract institutional capital, and those that have not received or have not acceded to approaches from such investors, corporate law retains its traditional role. Shareholders in these types of situations who wish to advance ESG objectives in jurisdictions that enshrine the shareholder-primacy approach cannot, without board support, force companies to adopt such agendas. A recent attempt at the Woodside Petroleum Ltd (a leading Australian company) 2020 AGM highlights the obstacles faced by shareholders wishing to influence the company's climate policies.

There, a resolution was unsuccessfully proposed to alter the company's constitution to allow for shareholders to pass advisory resolutions that would not bind the board. Shareholders, according to local law, could not compel the directors to act in particular ways, but with a constitutional amendment, they could pass advisory resolutions as indications of climate-related actions shareholders wanted the company to take. Notwithstanding the failure of the resolution to pass, a majority of votes cast in favor of Paris Agreement goals and targets prior to the meeting sent the board a clear message expressing the opinion of the majority. In a shareholder-primacy jurisdiction such as Australia, these are substantial hurdles to be faced by those wanting to influence the company's direction and strategies in the absence of being able to negotiate a New Paradigm type of agreement or replace the board.

Challenges to Implementing Pluralistic Stakeholderism

In a well-considered analysis of the obstacles to implementing stakeholderism, Bebchuk and Tallarita (2020) distinguish between two types of corporate governance, namely, ESV and pluralistic stakeholderism, the latter of which they conclude faces insurmountable hurdles to its adoption.[47] The former, they argue, is little different from shareholder value, which has deep roots in corporate-law history and gives effect to shareholder primacy. ESV, such as exists under English company law and in many other jurisdictions, recognizes that in the course of advancing shareholder interests, corporate leaders may take into account the interests of other stakeholders, as they often do, but without being compelled to do so.[48]

Pluralistic stakeholderism, in contrast, "treats stakeholder welfare as an end in itself" where "the welfare of each group of stakeholders is relevant and valuable independently of its effect on the welfare of shareholders" (Bebchuk and Tallarita, 2020, p. 114). Directors are faced with independent constituencies, thereby requiring them to "weigh and balance a plurality of autonomous ends" (Bebchuk and Tallarita, 2020, p. 114). The authors outline a number of problems with implementing this form of stakeholderism. Whether it can be practiced and enforced when there are divergent needs and priorities among the stakeholders is a fundamental challenge to its successful operation as a system, with the serious possibility that substantial new costs may be imposed on stakeholders, society, and shareholders (Bebchuk and Tallarita, 2020, p. 176). How corporate leaders would decide what is in the interests of a community or society more broadly is a vexed question that will not always be easily determined or necessarily acceptable to respective stakeholders affected by such a judgment.

The nonalignment of incentives also has to be considered. Traditionally, corporate leaders are not incentivized to pursue stakeholder interests in exercising their discretions (Bebchuk and Tallarita, 2020, p. 139). There are, however, significant examples emerging where, through direct negotiation by major investors individually and collectively, such as through CA100+, nonfinancial incentives are being introduced. For instance, meeting climate-related benchmarks can be an incentive to retain the support of key employees or an investor or to keep the investor from taking other action against the

47 For a rebuttal, see Mayer (2021).

48 For example, in the interests of the corporation's reputation and to retain the loyalty of employees and their financiers, it may be decided, legitimately, not to pursue a profitable opportunity that could be damaging to the environment or result in an increase of GHG emissions.

board or the CEO. But at present, these occurrences are still exceptions to the rule, albeit growing in number and impact.

It is also argued that pluralistic stakeholderism might insulate corporate leaders from accountability and further entrench managerialism (Bebchuk and Tallarita, 2020, p. 165). Accountability to all may lead to accountability to no one (Council of Institutional Investors, 2019). It might also raise illusory hopes that corporate leaders will protect the interests of stakeholders (Bebchuk and Tallarita, 2020, p. 101), whereas legislators and regulators might be deflected from acting to protect stakeholder interests where such intervention is necessary (Bebchuk and Tallarita, 2020, p. 172). Overall, the authors conclude that pluralistic stakeholderism would not make stakeholders better off. In relation to those wanting action on climate change, they say it is time "to abandon the illusory hope offered by stakeholderism" and "devote all efforts and resources to advancing laws, regulations, and policies that address the catastrophic threat of climate change and to educating the public about the urgency of adopting such measures" (Bebchuk and Tallarita, 2020, p. 175). Even so, there are growing instances of significant climate outcomes being achieved through private negotiations and actions that are supplementing government measures.

Another matter to consider is that pluralistic stakeholderism and mandatory purpose statements open up various possibilities for legal action to be initiated by disaffected stakeholders. First, for the objectives of pluralistic stakeholderism to be fully achieved, corporate leaders will need to have a duty, rather than a discretion, to consider and weigh up the respective interests of identified stakeholders. From the perspective of stakeholders, this system could only be fully effective if the law is adapted to provide the means for subjecting corporate decisions to judicial scrutiny on behalf of stakeholders who believe that their interests have not been considered appropriately or at all.

Who would have the standing to mount challenges and what threshold tests they would have to satisfy in these circumstances would also need to be determined. It would require, therefore, a radical departure from the present system of corporate governance in shareholder-primacy jurisdictions for fully enforceable pluralistic stakeholderism to be introduced. In such circumstances, a legal quagmire could well ensue as stakeholders with heightened expectations, motivated by varying degrees of self-interest and altruism, seek to advance or protect their particular interests. At the same time, corporate decision makers would be able to cite a wider range of issues they considered in order to justify their decisions, with the potential to diminish their accountability.

Finding a practical solution to this will not be easy. Nevertheless, a modern and reformed corporate-governance system that reflects global realities is likely to need to incorporate enforceable rights for stakeholders, fairly apportioned between them *inter se*. Such a system faces the challenge of establishing the rights' regime so that it does not unduly impede legitimate business activity or the courts that will have to mediate between the claims of various stakeholder interests that have to be appropriately weighed and prioritized. In the meantime, market forces and New Paradigm types of agreements are playing an increasing role in ensuring that certain stakeholder interests are considered, especially when climate change and ESG issues are involved.

Despite the implementation challenges it brings, the adoption of pluralistic stakeholderism cannot be ruled out. As difficult as it may be to rewrite the foundations of corporate governance, at least in those countries where shareholder primacy prevails, in the age of liquid modernity, anything seems possible. Momentum is a transformative force today. To this end, it is reasonable to ask whether traditional corporate-governance models can remain immune to change, even radical change, when the world of business is dramatically changing. Global opinion and public politics are being transformed by concerns for the planet, issues of sustainability more broadly, human rights, and issues relating to inequality. Who could have imagined, just a few years ago, large corporations agreeing to reinvent their business models in order to protect the planet? Now the momentum is growing for corporations to govern for long-term wealth creation, be good corporate citizens, demonstrate their care for the environment, and explicitly take into account their stakeholders in operating their businesses. In the Western world especially, corporations and their leaders can no longer separate their business responsibilities from global moral imperatives.

Thus, bolstered by the groundswell of support for stakeholderism in one form or another, the next few years may determine whether and how it will be formally adopted and how the implementation issues will be addressed. As climate sovereignty and the sovereignty of nature, together with other compatible ESG forces, are in the ascendency, they may well answer each of the unresolved questions.

In the meantime, a changing landscape is confronting all stakeholders, including corporations, their leaders, investors, and interest groups – including business schools. All need to respond to how corporate governance is evolving through negotiated agreements, market pressures, global opinion, and serious proposals for law reform. The tectonic plates are shifting.

Global Forces and Some Implications for Business Schools and Their Accreditation

When stepping back and reflecting on the mighty forces confronting our world, we are compelled to ask how business schools and accreditation bodies will respond to what is unfolding. Consider the combined effects of climate change and climate action, CA100+, the TCFD reporting framework, PRI, ESG, and calls for corporate leaders to operate their businesses for all identifiable stakeholders. As a result, managerial discretion is shrinking under the weight of global expectations, capital activism, and public politics. Separation of ownership and control must now be interpreted in the light of these modern developments. And then there are the seismic impacts of digital disruption and disruptive innovation on businesses and business models. Together, these are transforming business practices and governance before our very eyes. Business schools are challenged to keep pace. Their mission statements, which not uncommonly proclaim the intention to prepare students for thriving careers in a fast-changing world, will be meaningless if the forces of change are ignored.

Consider the knowledge and skills required of a corporate CEO whose business is affected by climate change and who will need to make more scientifically based operational, strategic, financial, and reporting judgments for which the CEO will be accountable. Boards are facing the same issues. Responding to climate change may require a corporation to completely revise its business model, thereby needing expert leadership and courage to implement the transition. Just as companies, in response to the global winds of change, are having to undertake onerous transitions, so too, by analogy, will business schools. Theirs won't be driven by green energy and the like but by how to transition to program portfolios built on theories, both traditional and emerging, that are relevant for explaining and understanding contemporary business in its modern setting.

If, for example, an MBA program specializes in strategic management and leadership and does not incorporate the effects of the global forces that are reshaping business models, spawning new finance models (Fink, n.d.),[49] and transforming key aspects of corporate governance, how will it advance the knowledge and practices of those undertaking the course? Will management of strategic transitions become a key focus? And how do you prepare graduates or executives to redesign a business model, create new strategies, and link these to capital allocations that, according to the CA100+ Net-Zero Benchmark, are proving to be most challenging?[50] Because these touch every part of the business, does this mean that systems thinking must become a key component of management education?

Consider the professional input that is required to model, manage, report on, value, and audit climate-change risks and manage the associated communication and public relations. Think of the skill base and judgment required by a climate-reporting auditor to certify that a company's disclosure meets the legal requirements of materiality and the broader demands of TCFD reporting. As well, recruitment and human-resource-management practices and the teaching of them will all be affected by these fast-unfolding realities. Ensuring that those who are recruited have values that align with those of the company and its purposes will become even more important in the future. Similar observations can be made in relation to every major taught or domain covered in business school programs. What will be the value of any major if it fails to adapt to the forces of change?

The mindsets needed to lead, to manage, or even to have sustainable professional careers will be even more closely scrutinized as time goes by. Successful business professionals will need to have, at least, the five minds identified by Howard Gardner (2008): the disciplined mind, the synthesizing mind, the creating mind, the respectful mind, and the ethical mind. The synthesizing and ethical minds will assume greater importance than ever before in the face of morally based global changes.

To the foregoing list can be added the curious mind,[51] which will need to constantly follow the knowledge flows in order for leaders and business professionals to be transformed by the renewing of their

[49] See also "Sustainable Finance" in EU High-Level Expert Group on Sustainable Finance (2018).
[50] See CA100+ (2021).
[51] See, for example, Ready (2019) and also Gino (2018).

minds. "Those who master the ability to learn faster will achieve much higher impact in a rapidly changing world" (Hagel, 2020, section 3, para. 2). Business schools have a challenging but exciting task to adapt to modernity and fully participate in the slipstream of disruption that is unfolding in our world. So, it might be time to introduce a modernity test for all programs they offer.

As Hagel et al. (2009a) explain, value is shifting from knowledge stocks to knowledge flows. "As the world speeds up, stocks of knowledge depreciate at a faster rate.... In more stable times, we could sit back and relax once we had learned something valuable, secure that we could generate value from that knowledge for an indefinite period. Not anymore. To succeed now, we have to continuously refresh our stocks of knowledge by participating in relevant flows of new knowledge" (Hagel et al., 2009a, para. 5). Corporations, therefore, face the challenge of scaling their knowledge accordingly (Hagel and Brown, 2017). Similarly, a challenge for business schools is to be sufficiently entrepreneurial and agile to participate as genuine stakeholders in these knowledge flows and in the process of lifelong learning and continuing self-development.[52]

Microcredentials, small-bite learning, and nondegree learning will play an even greater role in the future of management education. For many business schools to participate meaningfully in these markets, substantial barriers to entry, both internal and external, will have to be overcome. It is also likely that live paid subscription streaming services will develop as an important contemporary form of flows. They will provide research-based, cutting-edge insights to knowledge-hungry professionals who want to incorporate and leverage the latest thinking into their professional practices and decision making through instantaneity.

Proactive leadership, speed of action, and reputation will most likely define the winners here – those who can successfully connect with global audiences on issues of global significance, in real time. For those in the workplace, it will not be sufficient to change the speed of their learning – they must learn at the speed of change. As the chair of Shell says, "Over the course of the coming decades, as the world moves increasingly towards lower-carbon energy, we will have to learn new skills at Shell. The ways we work will have to evolve" (Royal Dutch

[52] See Friedman (2016b).

Shell PLC, 2021, p. 5), and if modern workplaces have to be reimagined (Friedman, 2016b), business schools have a major role to play in the process.

Presently, many of the orthodoxies on which business schools base their programs are being called into question by developments in global thinking and practice, but are schools keeping pace? So often, curriculum design and delivery lag too far behind what is happening in the real world. Most accredited schools, for example, are able to point to aspects of ethics, responsibility, and sustainability (ERS), but often, they are not systematically enshrined in the content and framing of the courses or in research strategies and outputs. This occurs notwithstanding the well-designed elements of the EFMD Quality Improvement System (EQUIS) standards relating to ERS, which permeate most chapters of the standards. Maybe the accreditation process should be used as an even greater lever to bring about a more holistic approach to teaching and researching ERS issues and climate-change transitions.

A recently released report (Ceres, 2020b) sets out what is required to become a just and sustainable company by 2030, within the context of the UN SDGs, themselves increasingly becoming framing concepts. For European schools, the proposed European Green Deal, which sets out comprehensive requirements for transitioning to a Sustainable Europe, will have an impact on business programs. Key issues include fighting climate change; measures to manage the transition, including green finance; sustainable investment; and the role of the private sector (European Commission, 2019, 2.2.1, pp. 15–17). Tax reforms will also play a key role in facilitating sustainable behavior (European Commission, 2019, 2.2.2, p. 17). "New technologies, sustainable solutions and disruptive innovation are critical to achieve the objectives of the European Green Deal" (European Commission, 2019, 2.2.3, p. 18). Universities are expected to play a role in developing competencies, skills, and attitudes on climate change and sustainable development (European Commission, 2019, 2.2.4, p. 19).

Further, Article 12 of the Paris Agreement requires countries to cooperate in taking measures, among others, to enhance climate-change education and training. In consequence, lessons in climate-change activism may soon become mandatory in schools of signatory nations (Lloyd, 2021) and have been incorporated into the New Zealand curriculum (Graham-McLay, 2020). It's entirely foreseeable, therefore, that business courses and accreditation standards may soon, too, give effect to Article 12.

Other developments also have implications for business schools. As institutional capital and large businesses grow the number and significance of their "New Paradigm"[53] agreements, corporate theories are being reshaped. And when principles of capital are taught in future, it will only be right and proper to consider natural capital as part of the curriculum. It is gaining traction as an element of corporate governance, risk management, finance, and investment and is a key consideration in climate action and sustainable business. Under the European Green Deal, the Commission will support "businesses and other stakeholders in developing standardised natural capital accounting practices within the EU and internationally" (European Commission, 2019, p. 17). Further, globalization is taking on a new and expanded meaning. As Thomas Friedman observes, the global flows of knowledge and information "are exploding and they are the new globalisation" (Friedman, 2016b, n.p.).

Stakeholderism in its various guises must also be on the radar of business schools and may become the guiding principle of enlightened corporate governance and good corporate citizenship, whether backed by legally enforceable stakeholder rights or otherwise. These important and developing forces invoke serious questions about the design and accreditation of fit-for-purpose business programs in the modern liquid world. If pluralistic stakeholderism is adopted, it may require corresponding amendments to the EQUIS standards and also to the way in which accreditation visits are structured. Presently, a school's corporate links are an essential element in gaining and retaining accreditation, and peer-review teams (PRTs) meet with corporate partners during an accreditation visit. But if pluralistic stakeholderism is institutionalized, the standards may need to reflect not only that there are corporate links but also that the school and its corporate partners are making positive contributions to meeting stakeholder outcomes. At the very least, the nature of the corporate connections' conversation during a PRT visit will become more multilayered.

Successful business school leaders are likely, therefore, to be those who, through productive paranoia (Collins, 2011, pp. 27–30), are best able to anticipate and embrace the forces of change and the new

[53] See earlier discussion on page 131.

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realities they bring with them. As Juan Goytisolo says: "If one lives only in the present, one risks disappearing together with the present."[54] Or, in the words of Søren Kierkegaard, "Life can only be understood backwards but it must be lived forwards" (Kierkegaard, 1843). Presenting the past as a guide or model for the future may have been sufficient in the past but not in our increasingly liquid world.

For life to be lived forward requires new forms of leadership thinking and action. However daunting this may appear to be, many lessons can be learned from the COVID-19 pandemic. First, it required all institutions to respond rapidly to new global realities. Organizations, including business schools, were forced to pivot; this often meant radical leadership decisions had to be made and implemented, including quickly providing their products and services in alternative ways and deploying their workforces from home. For many, such actions secured their survival; others, unfortunately, fell by the wayside, and remarkably, a good number thrived. Leadership thinking and action, both prepandemic and during the pandemic, no doubt contributed to the outcomes for individual organizations. For example, those with entrenched digital strategies and systems benefitted greatly from the e-commerce and online-delivery booms. Their leaders had them well placed to thrive, notwithstanding severe disruptions, even black swan events. And for those that survived by adapting quickly by going beyond the methodologies to which they were firmly committed, such as business schools with no digital strategy or commitment to online teaching and learning, potentially transformative lessons have been learned for the future.

With the global forces at work, COVID-19 has shown us the dangers of limited thinking. A recent publication highlighted how limited forms of thinking led to mistakes in dealing with the pandemic (Martin et al., 2020). In the early stages, it was regarded as a scientific problem when it was, in reality, "a sprawling, complex system of a challenge that would also call on holistic thinking and values-balancing decisions" (Martin et al., 2020, para. 11). Paralysis, they argue, follows from limited thinking. COVID-19 has demonstrated that new global realities can and must be responded to even when it requires loosening one's attachment to deeply held orthodoxies. When existential threats such as a pandemic or the creeping effects of climate

[54] Cited by Bauman (2012, p. 205).

change confront the world, leaders of business schools and other leaders can't bargain with or ignore the hard realities of liquid modernity.

A searching accreditation test for a business school might well become, therefore, "How is the school responding to modern global forces, and how is it preparing professionals, managers, and leaders for 2030 and beyond to 2050?"

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