

COMPANIES AND CLIMATE CHANGE

Companies lie at the heart of the climate crisis and are both culpable for, and vulnerable to, its impacts. Rising social and investor concern about the escalating risks of climate change are changing public and investor expectations of businesses and, as a result, corporate approaches to climate change. Dominant corporate norms that put shareholders (and their wealth maximization) at the heart of company law are viewed by many as outdated and in need of reform. *Companies and Climate Change* analyzes these developments by assessing the regulation and pressures that impact energy companies in the UK, with lessons that apply worldwide. In this work, Lisa Benjamin shows how the Paris Agreement, climate and energy law in the EU and the UK, and transnational human rights and climate litigation, are regulatory and normative developments that illustrate how company law can and should act as a bridge to progressive corporate climate action.

Lisa Benjamin is Assistant Professor at Lewis & Clark Law School. Professor Benjamin was a corporate and commercial lawyer in London for seven years before teaching international environmental and company law at the University of The Bahamas. She became an advisor to the Government of The Bahamas on climate change, including representing the country at the UNFCCC negotiations and as part of the Paris Agreement negotiations. She is currently a member of the UNFCCC Compliance Committee (Facilitative Branch) which assesses country reports under the Kyoto Protocol.

CAMBRIDGE STUDIES ON ENVIRONMENT, ENERGY AND NATURAL
RESOURCES GOVERNANCE

Cambridge Studies on Environment, Energy and Natural Resources Governance publishes foundational monographs of general interest to scholars and practitioners within the broadly defined fields of sustainable development policy, including studies on law, economics, politics, history, and policy. These fields currently attract unprecedented interest due both to the urgency of developing policies to address climate change, the energy transition, food security and water availability and, more generally, to the progressive realization of the impact of humans as a geological driver of the state of the Earth, now called the “Anthropocene.”

The general editor of the series is Professor Jorge E. Viñuales, the Harold Samuel Chair of Law and Environmental Policy at the University of Cambridge and the Founder and First Director of the Cambridge Centre for Environment, Energy and Natural Resource Governance (C-EENRG).

Companies and Climate Change

THEORY AND LAW IN THE UNITED KINGDOM

LISA BENJAMIN

Lewis & Clark College



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
978-1-108-72347-3 — Companies and Climate Change
Lisa Benjamin
Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108723473

DOI: 10.1017/9781108689243

© Lisa Benjamin 2021

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

First published 2021
First paperback edition 2024

A catalogue record for this publication is available from the British Library

ISBN	978-1-108-48467-1	Hardback
ISBN	978-1-108-72347-3	Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

Cambridge University Press & Assessment
978-1-108-72347-3 — Companies and Climate Change
Lisa Benjamin
Frontmatter
[More Information](#)

To my parents and Philip. Thank you.

Contents

<i>Acknowledgements</i>	<i>page</i> xiii
1 Introduction	1
1.1 The Climate Crisis	2
1.2 Climate Action	4
1.3 The Causal Relationship between Companies and Climate Change	5
1.4 Company Law and Climate Change	6
1.5 Varying Corporate Forms	9
1.6 Systemic Barriers and Opportunities: Short-Termism, CSR and Societal Expectations	13
1.7 Climate Risks and Corporate Transitions: The United Kingdom as a Model	16
1.8 Structure of the Book	18
2 Theorising the Company in the Context of Climate Change	20
2.1 Corporate Theories and Norms in the Context of Climate Change	21
2.2 Impact of Corporate Theories and Norms on the Environment and the Climate	31
2.3 Alternative Climate-Friendly Corporate Theories	37
2.4 Conclusion	44
3 English Company Law and Climate Change	46
3.1 Corporate Governance Reviews in the United Kingdom and the Takeover Code	47
3.2 The Common Law Position Prior to 2006	52
3.3 Company Law Review Steering Group Reports	61

3.4	The Companies Act 2006 and Climate Concerns	63
3.5	Post-2006 Case Law	71
3.6	Conclusion	74
4	International and Transnational Climate Change Law and Policies	78
4.1	International Treaties on Climate Change	80
4.2	Corporate Social Responsibility and Private Environmental Governance	90
4.3	International Codes of Conduct and Private Transnational Initiatives	102
4.4	Conclusion	110
5	Domestic Climate and Energy Regulation	113
5.1	Regulating Companies	114
5.2	Climate and Energy Regulation in the European Union	118
5.3	Climate and Energy Regulation in the United Kingdom	119
5.4	Energy Market Reform in the United Kingdom	122
5.5	Market Mechanisms	131
5.6	Companies' Approaches to Trading Mechanisms	138
5.7	Conclusion	139
6	Companies, Human Rights and Climate Litigation	141
6.1	Companies and Human Rights	143
6.2	Human Rights as an Environmental Concern to Companies: The Development of the UN Norms	144
6.3	The United Nations Guiding Principles	146
6.4	The OECD Guidelines and National Contact Points	147
6.5	Broader Effect of the United Nations Guiding Principles on Companies	147
6.6	Climate Change and Human Rights	149
6.7	Climate Change Litigation	151
6.8	The Convergence of Human Rights-Based Climate Litigation against Companies	164
6.9	The Oslo Global Principles and Enterprise Principles	167
6.10	Some Stumbling Blocks to Climate Litigation Efforts against Companies	169
6.11	Conclusion	171
7	Fiscal Barriers and Incentives to Corporate Climate Action	173
7.1	Fossil-Fuel Subsidies	174
7.2	Carbon Taxes	181

<i>Contents</i>	xi
7.3 Institutional Investors and Climate Change	187
7.4 Sustainable Investment and Environment, Social and Governance Factors	200
7.5 The Divestment Movement	205
7.6 Shareholder Climate Action via Resolutions	207
7.7 Impact of Initiatives on Companies	209
7.8 Conclusion	211
8 Conclusion	214
8.1 Key Findings	215
8.2 What the Future Holds for Companies in the Context of Climate Change	223
8.3 Final Thoughts	227
<i>Index</i>	231

Acknowledgements

There are so many people who contributed to this work. This monograph represents a culmination of ideas that I have been working on and presenting for several years. I would like to thank Matt Gallaway and everyone at Cambridge University Press who supported me and helped me to refine the scope of the work. I would also like to thank the anonymous reviewers of the initial book proposal, and the editor of the Cambridge University Press monograph series, Jorge Viñuales.

I would like to thank the following individuals in particular (in alphabetical order) for their comments and reviews of various iterations of this project over the years: Stelios Andreadakis, Daniel Attenborough, Janet Dine, Marc Moore, Meinhard Doelle, Thomas Hale, Veerle Heyvaert, Emily Jones, Hari Osofsky, Jacqueline Peel, Melissa Powers, Lavanya Rajamani, Sara Seck, Joana Setzer, Harro van Asselt and Horace Yeung.

Parts of this monograph were presented at several different events, and I would like to thank the participants at these events who provided valuable feedback and comments: American Society of International Law, Institute of the Environment, University of Minnesota's The Road to Paris: Multidimensional Action to Address Climate Change (2015), University of Oxford Faculty of Law, International Environmental Law Interest Group, ASIL and the University of Minnesota Energy Transition Lab's Regulating the Energy Transition Conference (2016), the University of Oslo's Time and Sustainability Conference (2018), Aarhus University's Climate Litigation Conference (2018), Vermont Law School's Corporations and Climate Change Conference (2018) and the Association for Law, Property and Society, Corporate Energy Transitions Panel (2019). Last (but not least), I would like to thank Akriti Bhargava for her invaluable research assistance.