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# Can business corporations be legally responsible for structural injustice? The social connection model in (legal) practice

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## ABSTRACT

In May 2021, Royal Dutch Shell was ordered by the Hague District Court to significantly reduce its CO<sub>2</sub> emissions. This ruling is unprecedented in that it attributes the responsibility for mitigating climate change directly to a specific corporate emitter. Shell neither directly causes climate change alone nor can alleviate it by itself; therefore, what grounds this responsibility attribution? I maintain that this question can be answered via Young's social connection model of responsibility for justice. I defend two claims: First, I argue that the model explains Shell's connection to climate change and that this relationship grounds Shell's responsibility. Second, by identifying a way in which the social connection model could be applied to corporations in legal practice, I further develop Young's model. I question Young's distinction between political and legal responsibility for justice and propose that courts could mediate citizens' actions regarding political responsibilities.

**KEYWORDS** Corporate responsibility; social connection model; structural injustice; Iris Marion Young; responsibility for justice

## Introduction

In May 2021, Royal Dutch Shell (henceforth referred to as *Shell*) was ordered by the Hague District Court to lower its CO<sub>2</sub> emissions by 45% by 2030 relative to its 2019 levels. This ruling is unprecedented in that it attributes the responsibility for mitigating climate change directly to a specific corporate emitter. Shell neither directly causes climate change alone nor can alleviate it by itself; consequently, the standard causal models of legal responsibility do not seem to apply here. What grounds this responsibility attribution?

In this paper, I maintain that this question can be answered via Iris Marion Young's social connection model of responsibility for justice (Young, 2011). I defend two claims: First, I argue that the model explains the connection that

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the court establishes between Shell and climate change as well as the way this relationship justifies Shell's individual responsibility. Shell is deemed responsible because it is socially connected to climate change through its corporate policy, which facilitates greenhouse gas emissions and thereby reproduces conditions that lead to climate change. By extracting textual evidence from the court's verdict, I demonstrate that the responsibility attributed to Shell meets all the characteristic features of Young's model of responsibility: it is non-isolating and forward-looking, it questions background conditions, and it focuses on shared responsibility and collective action.

Second, by identifying a way in which the social connection model could be applied to corporations in legal practice, I further develop Young's model. I question Young's distinction between political and legal responsibility for justice by highlighting the political origins of class action lawsuits and discussing the possibility of assigning legal responsibility for a mere connection to injustice. Based on this, I propose that courts could mediate citizens' actions regarding political responsibilities.

Thus, this paper's contribution is twofold. In the growing body of literature regarding corporate responsibility, some authors have attempted to generally apply the social connection model to corporations or to adapt some of its features to other theories of corporate responsibility (e.g. Phillips & Schrempf-Stirling, 2021; Schrempf, 2014; Tempels et al., 2017; Wettstein, 2009). In this paper, I do not discuss these applications in detail; rather, I demonstrate how the social connection model could be practically applied to corporations in a way that is not proposed by these theoretical approaches: through class action lawsuits.

Furthermore, by qualifying Young's assumptions about legal responsibility attribution, I develop the social connection model further so that it can be a fruitful tool for assigning justice responsibilities in actual cases. Considering the disregard of the potential role of the courts in the literature concerning Young's theory (e.g. McKeown, 2021; Neuhäuser, 2014; Zheng, 2018, 2019), in this paper, I shed new light on Young's moral division of labor and the political nature of responsibility for structural injustice.

Although the starting point of this paper is a concrete legal case, my goal is not to analyze the lawsuit's legal features in detail. Instead, I focus on the philosophical framework of responsibility attribution that underlies it. I begin by providing a brief description of the case's legal framework to establish the context for my argument and clarify the distinction between a legal and a philosophical explanation of the responsibility attribution. I then present the social connection model, after which I demonstrate how it can be recognized in the court's ruling. Finally, I discuss how my interpretation is compatible with Young's notion of political responsibility

and how my elaboration develops her model regarding the moral division of labor.

## The Shell climate change case

One way to ascertain the basis for the responsibility attribution in Shell's case is to examine what I consider the legal framework of the case, which explains the law and norms explicitly utilized by the court in its assessment and judgment. In this section, I briefly describe this framework to establish the context for further discussion and to clarify the distinction between this *legal* framework and the *philosophical* one upon which I focus in the following sections.

The litigation against Shell was a class action suit in which the claimants represented the residents of the Netherlands and the Wadden region.<sup>1</sup> It was raised by environmental organizations, such as *Milieudedefensie* (*Friends of the Earth Netherlands*), which claimed that Shell was obligated to fight climate change. Shell is a public limited company based in the Netherlands<sup>2</sup> that holds more than 1,100 subsidiaries (henceforth referred to as *Shell group*). As such, Shell determines the general corporate policy of the Shell group. For instance, Shell establishes the investment guidelines for energy transitions and business principles for the Shell group; it also oversees the climate change risk management (*Milieudedefensie v. Royal Dutch Shell*, 2021, paras. 2.5.1). As argued by *Milieudedefensie* and other claimants,

*RDS [Royal Dutch Shell] has an obligation, ensuing from the unwritten standard of care pursuant to Book 6 Section 162 [of the] Dutch Civil Code to contribute to the prevention of dangerous climate change through the corporate policy it determines for the Shell group. For the interpretation of the unwritten standard of care, use can be made of the so-called Kelderluik criteria, human rights, specifically the right to life and the right to respect for private and family life, as well as soft law endorsed by RDS, such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises (...). RDS violates this obligation or is at risk of violating this obligation with a hazardous and disastrous corporate policy for the Shell group, which in no way is consistent with the global climate target to prevent a dangerous climate change for the protection of mankind, the human environment and nature. (par. 3.2, emphasis added)*

As stated in the court's verdict, the claim against Shell was based on the so-called *unwritten standard of care* as established in the Dutch Civil Code. According to this standard, an act that violates unwritten law about appropriate social conduct is unlawful and constitutes a tort (Dutch Civil Code, 1992). From this it follows that 'when determining the Shell group's corporate policy, [Shell] must observe the due care exercised in society' (*Milieudedefensie v. Royal Dutch Shell*, 2021, paras. 4.4.1). In the interpretation of this standard,

the court relied on such considerations as universal human rights, the UN's *Guiding Principles on Business and Human Rights* (UNGPR), as well as scientific evidence regarding climate change as represented by the 2015 Paris Agreement. The court confirmed Shell's obligation to contribute to the prevention of climate change and ordered it to reduce its CO<sub>2</sub> emissions by 45% by 2030 relative to its 2019 levels through the Shell group's corporate policy (*Milieudefensie v. Royal Dutch Shell*, 2021, paras. 4.4.55).<sup>3</sup> This includes not only emissions directly produced by Shell but also so-called Scope 3 emissions that are attributable, for instance, to Shell's suppliers.

Although greenhouse gas emissions are the cause of climate change which constitutes environmental damage, in the court's verdict Shell's corporate policy was identified as the cause of the damage, or the 'event giving rise to the damage' (par. 4.3.2), and not Shell's contribution to climate change in emissions (par. 4.3.2–4.3.6). Shell supports climate agreements and speaks publicly about the need for energy transformation; nevertheless, its actual corporate policy is not consistent with the global climate target established in the Paris Agreement. Its corporate policy is perceived as the foundation for the actions of the Shell group (par. 4.3.5–4.3.6), and since any emissions may cause harm, policies that do not prevent or discourage such pollution are interpreted by the court as the fundamental cause of the damage itself. As noted by the court, Shell's policy as well as policy intentions and ambitions currently present 'rather intangible, undefined and non-binding plans for the long-term' (par. 4.5.2) and are conditional on other actors' moves toward energy transitions:

The Shell group's policy, as determined by RDS, mainly shows that the Shell group monitors developments in society and lets states and other parties play a pioneering role. In doing so, RDS disregards its individual responsibility, which requires RDS to actively effectuate its reduction obligation through the Shell group's corporate policy. (par. 4.5.2)

According to the court's argumentation, by contributing to the climate change in such a way, Shell risks violating the human rights of the residents of the Netherlands and the Wadden region, such as the right to life. According to the UNGP (United Nations, 2011), corporations have an obligation to respect human rights and mitigate adverse impacts on such rights independent of similar state obligations. Thus, by upholding a corporate policy that does not facilitate energy transformation, Shell does not fulfill its obligations. The court's assignment of Shell's special responsibility to reduce its emissions is grounded in the distinctive position that the corporation occupies. As the holding company and thus the policy-setter, Shell has the potential to determine the behavior of other actors in their contributions to climate change.

The description above presents the legal framework of the Shell climate change case and refers to specific laws and legally enforceable norms and agreements that were explicitly utilized in the court's assessment and judgment. From a legal perspective, Shell could be isolated as a bearer of responsibility for climate change because of conditions that were met in its case. Shell's head office is based in the Netherlands, which provided the claimants with the right to argue about Shell's responsibilities toward Dutch residents. Likewise, the distinctive Dutch tort law allowed the court to interpret Shell's behavior and corporate policy in a particular way, and in its interpretation, the court utilized aforementioned epistemic, normative, and conceptual resources that were available to them. Shell also endorses soft laws, such as the UNGP, which facilitated the litigation. Finally, climate change is a scientifically grounded issue, the harm of which is rather uncontroversial and objective regardless of one's normative commitments. The same kind of legal framework could not be utilized for the responsibilities of corporations that operate in countries with different tort laws regarding societal issues that are normatively or scientifically more controversial than climate change. Thus, the court's ruling is only of limited relevance for reasoning about corporate responsibility more generally.

However, as I will show, there is a philosophical framework underlying this case that is independent of its legal features.<sup>4</sup> This framework explains the relationship between Shell and climate change as well as the grounds on which responsibility has been attributed specifically to Shell. Typically, a causal model of responsibility attribution is associated with the legal context. According to this model, Agent A is liable for an event if Agent A's action or inaction is a direct cause of that event, that is, if the event would not have occurred had Agent A not performed said action.<sup>5</sup> However, this does not apply to the Shell climate change case because Shell neither directly causes climate change alone nor can prevent it by itself. Therefore, how can we philosophically ground this responsibility attribution?

## **The social connection model**

In this section, I argue that this question can be answered via the social connection model of responsibility for justice, which has been advanced by Iris Marion Young (2011). I first describe the basic features of the model and then present the similarities between the model and the ruling in the next section.

Although not primarily concerned with climate change, Young analyzes issues of a similar nature. She argues that some cases of injustice are neither directly caused by nor can be alleviated by any individual in isolation. These cases of structural injustice are instead caused by the accumulated effects of actions of myriad agents and institutional arrangements –

their sources are 'multiple, large scale, and relatively long term' (Young, 2011, p. 47) and facilitated by 'many policies, both public and private, and the actions of thousands of individuals acting according to normal rules and accepted practices' (p. 48). Despite the impossibility of isolating one person who is culpable or causally responsible for structural injustice, she argues, there remains a need to assign responsibility. Young provides a solution to this challenge by developing the social connection model of responsibility for justice and conceptualizing what she calls *the political responsibility*.

The basis for responsibility attribution in this model is one's connection to injustice rather than the direct causal relationship between one's action and specific harm. The model considers that actors often do not directly cause harm but only contribute to it through their actions and sometimes only through the unintended consequences of their otherwise unproblematic actions: 'The actions of particular persons do not contribute to injustice for other persons directly, moreover, but rather indirectly, collectively, and cumulatively through the production of structural constraints on the actions of many and privileged opportunities for some' (p. 96).

To elucidate this notion of connection, McKeown (2018) refers to two types of causal factors based on Hart and Honoré (1959). The attributive causal factors refer to a direct causal relationship between one's action and an event. Responsibility for these factors corresponds to Young's liability model of responsibility, which aims to identify a person responsible for some deviation from the norm: 'We assign moral or criminal responsibility to the agent who "directly caused" this deviation, and who did so with voluntariness and knowledge of what they were doing' (McKeown, 2018, p. 495). For instance, dropping a lit cigarette may be the attributive cause of fire for which the dropper can be found liable.

The explanatory causal factors, however, refer to conditions that facilitate or explain a specific action or event. For instance, the presence of oxygen is merely a condition necessary for fire to occur. It explains the reason that a fire occurred, but causal responsibility cannot be attributed to it. Some explanatory causal factors are man-made; for example, the background conditions that facilitate sweatshop labor include human consumption habits. The social connection model assigns political responsibility to all those agents who reproduce such man-made explanatory causes of injustice. This responsibility is political rather than causal or moral,<sup>6</sup> and requires a 'public communicative engagement with others for the sake of organizing our relationships and coordinating our actions most justly' (Young, 2011, p. 112). As McKeown (2018) states,

An individual may not contribute in any significant way to the background structure, but simply by acting within it the individual is reproducing those structures. This generates a political responsibility to struggle against these unjust structures, which recognizes that all agents connected to structural

injustice, in the sense that they reproduce the injustice through their actions, share a forward-looking responsibility to work together solidaristically to try to change the structures. (p. 500)

Thus, the goal of the model is not to locate a liable person for a single instance of past injustice. Rather, its point is to change the processes that result in unjust outcomes and are often unintentionally reproduced by many. Consequently, instead of examining only the deviation from accepted legal or moral norms, the social connection model analyzes the conditions that facilitate these actions, such as social norms, institutional arrangements, and existing policies. The social connection model is thus a *non-isolating, forward-looking* model of *shared* responsibility that *questions background conditions* and can be discharged only through *collective action* (Young, 2011, pp. -104–113).

Admittedly, not every agent is capable of acting on every responsibility or acting in the same way or to the same extent as others. Therefore, one's obligations toward justice should be adjusted to one's capabilities and particular circumstances, and Young distinguishes four categories that ascribe responsibility: one's privilege, interests, power, and collective ability. Differences regarding these parameters express the inequalities between 'social *positions* agents occupy in relation to one another within the structural processes they are trying to change in order to make them less unjust' (Young, 2011, p. 144).

In summary, Young's social connection model ascribes responsibility for structural injustice to every agent who reproduces the man-made background conditions that lead to the injustice.<sup>7</sup> None of them alone directly cause the injustice or can alleviate it; hence, the responsibility is shared, is non-isolating, and requires collective action. Furthermore, the model is forward-looking and questions background conditions, as it does not assign responsibility for a past deviation from legal or moral norms. Having explained the responsibility attribution proposed by Young, I next discuss the philosophical framework of responsibility attribution in the Shell climate change case.

## The philosophical framework of the Shell climate change case

In this section, I argue that the social connection model explains the responsibility attribution in the Shell climate change case. I first describe the type of connection between Shell and climate change and then reidentify the characteristic features of Young's model in the case.

Shell's connection to climate change, because of the structural character of the injustice in question,<sup>8</sup> cannot be explained in terms of direct causation. As stated by the court, 'every emission of CO<sub>2</sub> and other greenhouse gases,



anywhere in the world and caused in whatever manner, contributes to this damage [environmental damage in the Netherlands and the Wadden region] and its increase' (Milieudefensie v. Royal Dutch Shell, 2021, paras. 4.3.5). Generally, the emission of greenhouse gases is the attributive causal factor of climate change; however, attributing responsibility for particular emissions to specific emitters is challenging, as such emissions are not traceable to any concrete person and cause harm only when accumulated with the emissions of others.<sup>9</sup> Shell's emissions thus cannot be seen as the only attributive cause of climate change, which negates Shell's sole liability for climate change.

In the Shell climate change case, corporate policy was identified as 'the event giving rise to the environmental damage' (par. 4.3.2–4.3.6). By itself, as mentioned previously, the corporate policy merely sets the stage for the actions of various agents belonging to the Shell group. It creates conditions for action, and thereby connects Shell to climate change in a way that cannot be justified by a causal responsibility attribution. Rather, Shell's connection to climate change is better understood through explanatory causal factors, which are explained by Young's social connection model (see, Table 1).

Admittedly, greenhouse gas emissions, *if they occur*, cause harm regardless of the type of corporate policy Shell determines. Corporate policy as an explanatory causal factor is not comparable to the role of oxygen in McKeown's scenario – without the presence of oxygen, dropping the lit cigarette would not cause fire. Thus, the explanatory causes in the Shell case and McKeown's example differ in their need to produce the harm in question. Corporate policies that are inconsistent with the global climate target are not necessary for harm from greenhouse gas emissions to occur. Yet, these policies facilitate the activities that produce harm – they enable the activities to occur, and in this sense, are explanatory in the production of harm.

Apart from establishing the relationship between Shell and climate change through explanatory causal factors, the court's reasoning offers the same features as Young's theory regarding responsibility attributions that result from this kind of connection to injustice. First, the court acknowledges that assigning Shell responsibility for climate change does not absolve others from similar responsibility. Shell's responsibility is thus *not isolated*. For instance, the court notes that other companies have the same obligation regarding climate change as Shell and could be sued on similar grounds (Milieudefensie v. Royal Dutch Shell, 2021, paras. 4.4.49–50).

**Table 1.** Models of responsibility and their respective causal factors in theory and in the Shell case.

Model of responsibility	Liability model	Social connection model
Type of contribution	Attributive causal factors	Explanatory causal factors
Factors of the Shell climate change case	Greenhouse gas emissions	Corporate policy

Second, since Shell did not singularly cause direct harm, this case is merely an evaluation of the *background conditions*. On the one hand, instead of assessing the level of Shell's emissions alone, the case focuses on the conditions that facilitate them, such as corporate policies. On the other hand, investigating Shell's role and obligations in the processes of climate change is an instance of confronting the conventional view of corporations. According to this view, corporations are private actors whose primary objective is to maximize profit and are unsuited for pursuing any social or public goal. The influential exposition of this view is formulated literally as responsibility: 'The social responsibility of [a] business is to increase its profits' (Friedman, 1970). Shell defends this approach by arguing that, in contrast to states, businesses cannot balance different societal interests (*Milieudefensie v. Royal Dutch Shell*, 2021, paras. 4.4.12), and that therefore, the state's role is to provide policies and frameworks for energy transition with which Shell, as a business, should merely comply. This defense, however, was rejected by the court, which assigned Shell independent responsibility and thereby questioned the conventional understanding of the moral division of labor between the state and businesses (paras. 4.4.12–15, 4.4.51–4.4.52).

Third, the case builds upon Shell's past contribution to injustice through its CO<sub>2</sub> emissions (par. 4.4.5); however, the ruling does not attempt to identify Shell as liable for past harm by punishing it or declaring it to be guilty of some wrong. Instead, the case is *forward-looking*, as it intends to prevent harm in the future, the risk of which is considerable given Shell's current corporate policy, which 'constitutes an independent cause of the damage, which *may* contribute to environmental damage and imminent environmental damage with respect to Dutch residents and the inhabitants of the Wadden region' (paras. 4.3.6, emphasis added).

Lastly, the court's ruling acknowledges that the responsibility for climate change is *shared*, as multiple agents contribute to it, and that intervention in climate change requires *collective action*. For instance, the ruling highlights that the state alone cannot overcome climate change and that non-state actors must also engage (paras. 4.4.26–28). Notably, the shared responsibility and need for collective action do not free Shell from individual obligations. As emphasized by the court, other corporations' responsibility does not mean that Shell should not do its part immediately and independently from others. Rather, each company, including Shell, is obligated to work independently toward the energy transition (paras. 4.4.33–34), and each company bears this responsibility:

The court acknowledges that RDS cannot solve this global problem on its own. However, this *does not absolve RDS of its individual partial responsibility* to do its part regarding the emissions of the Shell group, which it can control and influence. (par. 4.4.49, emphasis added)<sup>10</sup>

The nature of the problem at stake and the character of responsibility for the issue raise challenges regarding why Shell in particular was distinguished by the court for reduction obligations. As the company says in its defense, the energy transition ‘demands a concerted effort of society as whole’ (paras. 4.1.2), and thus there seems to be no basis for distinguishing Shell. Furthermore, Young’s parameter of privilege for reasoning about corporate responsibility produces another tension. Shell, as a multinational oil and gas company, benefits from the processes that cause climate change. On the one hand, Shell, being an economically powerful and privileged institution, has resources to influence the processes of climate change to a larger extent and at a lower cost than individual citizens or smaller firms. On the other hand, as a market agent that is subject to efficiency constraints and market pressures, Shell may be in a worse position than individuals to intervene in such processes and adapt to change. Hence, the parameter of privilege does not provide an unambiguous prescription regarding Shell’s responsibility.

However, the court acknowledges that the individual responsibility to contribute to addressing climate change is relative to one’s ability by explicitly utilizing two parameters for Shell’s responsibility that mirror the criteria introduced by Young: power and collective ability. As the court argues,

much may be expected of RDS in this regard, considering it is the policy-setting head of the Shell group, a major player on the fossil fuel market and responsible for significant CO<sub>2</sub> emissions, which incidentally exceed the emissions of many states and which contributes to global warming and climate change. (paras. 4.4.37)

Thus, by virtue of its position as a major company on the fossil fuel market, Shell has more ability than smaller or less powerful companies to undertake certain actions toward energy transition.

Likewise, Shell’s status as a multinational corporation that establishes policy for a larger group of companies enhances its overall power and collective ability, as it determines the behavior of various agents to a larger extent than smaller firms or individual people:

Due to the policy-setting influence RDS has over the companies in the Shell group, it bears the same responsibility for these business relations as for its own activities. The far-reaching control and influence of RDS over the Shell group means that RDS’ reduction obligation must be an obligation of result for emissions connected to own activities of the Shell group. (paras. 4.4.23)

Ultimately, the argument that Shell is a market agent and, as such, is subject to competitive pressures does not outweigh Shell’s obligation toward justice, according to the court: ‘the interest served with the reduction obligation outweighs the Shell group’s commercial interests, which for their part are served with an uncurtailed preservation or even growth of these activities’ (paras. 4.4.53). Moreover, the court argues that any company that takes Shell’s

place on the oil and gas market, in terms of emissions and investments in oil and gas, could be sued on similar grounds, thereby responding to the possibility of this ruling creating an uneven playing field (paras. 4.4.50 and 4.4.53).

Thus, the court ascribes responsibility to Shell, declaring that it is connected to climate change through corporate policy that facilitates harmful CO<sub>2</sub> emissions. This responsibility is shared and forward-looking and does not rely on a direct causal relationship between Shell's action and climate change. Shell could be recognized as a bearer of responsibility because of its capacity, due to its power and collective ability, to intervene in the processes that result in climate change. What are the implications of this interpretation for the understanding of the social connection model?

### **From political to legal responsibility**

I argued previously that the social connection model philosophically explains the responsibility attribution in the Shell climate change case, thereby showing that the social connection model could be applied to corporations and utilized in legal practice. This argument stands in seeming contradiction to Young's theory, which sharply distinguishes between legal and political responsibility and focuses primarily on citizens' responsibility regarding injustice. In the following, I employ this seeming contradiction as a starting point to further develop Young's model. First, I highlight the case's political origin and thereby its compatibility with Young's theory. Second, I question Young's division between political and legal responsibility: rethinking this distinction, or so I will argue, has consequences for identifying agents of justice, thus opening Young's theory to the role of courts.

As stressed by Shell (*Milieudefensie v. Royal Dutch Shell*, 2021, paras. 4.1.2–3), the fact of the court's attribution of responsibility to Shell raises questions about the court assuming the state's role in regulating the moral division of labor in democratic society.<sup>11</sup> According to Young's theory, the court's ruling could also be criticized for its incompatibility with the political nature of responsibility. Young's model of responsibility is primarily concerned with the role of citizens in 'joining with others' (Young, 2011, p. 96) to change the structures that result in injustice. For instance, acting on one's responsibility toward the homeless may involve 'trying to persuade others that this threat to well-being is a matter of injustice rather than misfortune and that we participate together in the processes that cause it' (p. 112). Conversely, the Shell climate change case represents a corporation's responsibility enforced by the court.

The climate change case is closer to the idea of democratic society and Young's vision of justice than it may initially seem. Young includes

‘stockholder organizations’ (p. 147) as agents that are especially capable of acting on their responsibility for justice due to their collective ability, thereby suggesting that corporations are also the bearers of political responsibility. Market constraints and pressure may cause corporations to lack the necessary interest to address their responsibility, and class action lawsuits may circumvent the incentive problem.

More importantly, Shell’s case being a class action lawsuit is an important fact for objections based on the democratic order or political responsibility. *Milieudefensie* and other environmental organizations involved in the case are not governmental agents; they are financially supported by citizens and represent their interests. It could thus be argued that citizens’ awareness and willingness to intervene in processes that result in climate change underlie the lawsuit, which highlights the political origin of the court’s order as well as the order’s democratic character.

The argument about the democratic character of the class action lawsuit, as in the Shell case, does not imply a more general statement: that we ought to favor courts over regulation through legislation.<sup>12</sup> From the democratic perspective, it might even generally be better to regulate oil companies by enacting legislation rather than using courts. Nevertheless, because of the non-ideal conditions of the imbalance of power between states and companies, the regulation of companies through legislation alone has proven to be difficult (Fuchs, 2007; Ruggie, 2018). Using courts might be a supplementary way to alter the activity of corporations.<sup>13</sup> This prospect should invite us to think about how to make courts and lawsuits more in line with democratic commitments, instead of accepting that it is inherently undemocratic for courts to decide on fundamental moral disagreements.

Another seeming point of tension between my interpretation of the philosophical framework of the Shell case and Young’s model is that Young distinguishes between her model and what she calls *the liability model of responsibility for justice*. The latter is a model of causal responsibility attribution that, according to Young, is dominant in law, which she also calls *juridical responsibility* (p. 112). The political responsibility for justice represented by the social connection model is opposed to and distinct from juridical obligations. Young believes that the responsibility for structural social issues cannot be determined in law, as the legal liability is dependent on establishing a direct causal connection between an agent’s action and harm. As she states,

it is not difficult to identify persons who contribute to structural processes. On the whole, however, it is not possible to identify how the actions of one particular individual, or even one particular collective agent, such as a firm, has directly produced harm to other specific individuals. (p. 96)

This creates a problem in assigning juridical responsibility to those connected to structural injustice since ‘responsibility in that liability sense should be

reserved for persons who can be specifically identified as causing the harm, usually knowing what they are doing' (p. 104). This is also why Young opposes the possibility of extending the liability model to the social connection model (pp. 100–104) by stating that 'what we should seek is not a variation on a weaker form of liability, but rather a different conception of responsibility altogether' (p. 104).

By arguing that the social connection model can be recognized in the philosophical framework of responsibility attribution in the Shell case I do not claim that there is no difference between the liability model and the social connection model, or that the former can be extended to include the latter. Rather, my argument is that the social connection model could be incorporated into legal practice without changing its features or its method of attributing responsibility. This does not question the difference between the social connection model and the liability model, but it does question the tension between political and juridical responsibility and the political and juridical realm of assigning responsibility for structural injustice. That is, contrary to Young, I argue that it is possible to implement the social connection model in legal practice, or in other words, to assign political responsibility for structural injustice through a legal procedure.<sup>14</sup>

One reason why Young does not consider this possibility is that she associates legal theory and practice exclusively with a model of responsibility which is based on a direct causal connection.<sup>15</sup> This does not accurately describe the conceptualization of causality in tort laws. Tort laws differ in their interpretation of causality (Infantino & Zervogianni, 2017; Van Dam, 2013); both direct causal connection and contribution can ground juridical liability for harm in some tort laws (Steel, 2015, p. 16). This is the case, for instance, in overdetermination,<sup>16</sup> a situation in which multiple actions or factors contribute to the emergence of harm in such a way that none are singularly necessary to produce the effect, thereby dividing the direct causal connection between one's act and the harm. Some actions, however, may be sufficient to produce harm *given* all the other contributions (Steel, 2015, p. 20). In this type of case, a person could be legally liable for the harm without directly causing it alone.

Thus, relations other than direct causal connection might be relevant in tort laws. This invites us to rethink Young's rejection of legal theory and law as unsuitable to explain the shared responsibility for structural injustice.<sup>17</sup> However, it does not mean that the already existing accounts of how contribution grounds juridical liability for harm in tort law could provide the same responsibility attribution for structural injustice as the social connection model. Such cases of contribution still differ from the responsibility attribution in the social connection model. The social connection model assigns political responsibility for being connected to structural injustice, that is, for reproducing man-made explanatory causal factors of injustice. These factors

might be broadly understood as contribution in a causal sense, but not every contribution is an explanatory causal factor. For instance, Shell could be said to contribute to climate change with both, its greenhouse gas emissions and its corporate policy, whereas only the latter is an explanatory causal factor and constitutes the relevant connection to injustice from the perspective of the social connection model.

Moreover, the social connection model is characterized by several distinct features that further specify the attribution of responsibility for connections to injustice; for instance, it is forward-looking. The social connection model does not hold Shell liable for its past CO<sub>2</sub> emissions, as a matter of deviation from a moral or legal norm, but rather holds Shell responsible for its corporate policy, as a matter of political responsibility. Responsibility for the contribution to climate change through attributive causal factors could be still explained and executed by the liability model of responsibility. Thus, the social connection model establishes a different way of understanding contribution as an explanatory causal factor. My analysis of the Shell case shows that this model could be utilized in legal practice; not that the existing conceptualizations of contribution in legal theory already correspond to the social connection model.

Rethinking the strict distinction between political and juridical responsibility has further consequences for identifying agents of justice. In her account, Young (2011) opposes 'contemporary theories of justice' which 'tend to assume that remedy for injustice is the responsibility of a particular agent, the state, and that the responsibility of citizens is to make claims upon government to bring about justice' (p. 112). Young posits that such responsibility is not reserved for the state but is shared among all those who are connected to injustice. However, as she stresses, the state can mediate citizens' actions regarding their responsibility for justice:

It is often true that the best or only way for social actors to organize collective action to redress injustice is by means of state institutions. However, we ought to view *the coercive and bureaucratic institutions of government as mediated instruments for the coordinated action of those who share responsibility for structures*, rather than as distinct actors independent of us. *Government policy to promote social justice usually requires the active support of communities in order to be effective.* (p. 112, emphasis added)

The recognition of the social connection model in climate change litigation raises the question as to whether a court could likewise have such a role. This may be especially relevant in the just responsibilities of corporations, which are subject to market pressures but can easily escape state-introduced regulations and possess significant political power (Fuchs, 2007; Ruggie, 2018). These difficulties persist despite the growing public concern and pressure for just conduct by corporations. The identification of the social connection

model in legal practice is important also because, although Young mentions the possibility of stockholder organizations bearing political responsibility, it is not clear from her writings how this responsibility could be practically realized, especially with the current background of significant power imbalances between states, citizens, and corporations. In this way, the conclusion that class action lawsuits such as the Shell climate change case could mediate citizens' action regarding their responsibilities, rather than being inconsistent with Young's theory, supplements it and enriches its scope of application.

## Conclusion

The Shell climate change case, in an unprecedented way, attributes responsibility for fighting climate change to a corporation, which raises a question regarding the grounds on which this responsibility attribution is made, as Shell does not directly cause climate change by itself and cannot fight it alone. The legal explanation of this responsibility attribution is specific to the context of the case – the court's verdict was legally possible because of several factors, such as the seat of Shell's head office, the definition of *tort* in the Dutch Civil Code, and the science behind climate change. In this paper, I argued for another, philosophical way of explaining this responsibility attribution based on Young's social connection model of responsibility. I demonstrated that Shell's policy connects it to climate change in a way that cannot be explained by a causal responsibility attribution and that the features of the social connection model are present in the court's verdict. Moreover, I questioned Young's distinction between political and legal responsibility for justice, proposing that courts could have a mediating role in citizens acting on their political responsibilities and thereby further developing Young's theory.

The recognition of the social connection model in an actual example of corporate responsibility attribution provides insights that enrich the model and theoretical attempts in literature to apply the model to corporations. Likewise, this recognition could be utilized by legal scholars in their efforts to legally conceptualize shared responsibility for harm. With the increase of structural injustice facilitated by globalization, an urgent need has arisen to create or develop conceptual resources that enable courts to hold agents responsible for involvement in the complex processes that underlie such injustices. The interpretation of the Shell climate change case in light of the social connection model, which is joined to the notion of shared responsibility, may create an opportunity for legal scholars and justice theorists to utilize the model more explicitly in their approaches to corporate and individual responsibility. Potentially, the model recognized in this case could be utilized as a tool for addressing corporate connections to other cases of



injustice, such as economic exploitation, rising wealth inequalities, and financial crises.

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## Notes

1. Among the claimants, there was an environmental organization *Waddenvereniging* (*Wadden Association*) representing the inhabitants of the Wadden region in the North Sea, a part of which is located in the Netherlands.
2. Later in 2021, Shell announced plans to relocate to the UK, arguably because of climate activism in the Netherlands (Wilson & Khan, 2021; 'Shell's Dutch Exit Leaves Investors with a Dilemma,' Shell, 2021).
3. Shell announced that it will appeal the ruling (Shell, 2021).
4. One could argue that the court's judgment provides an explicit philosophical model of responsibility attribution that extends beyond the Dutch context. The court relied on the notion of universally accepted human rights and on the UNGP, neither of which are distinctive to the legal features and context of the Netherlands, Shell, or climate change. The UNGP is concerned not only with businesses causing human rights violations but also with cases of contribution to said violations (United Nations, 2011, Principle 13). Despite discussions about whether corporations are moral agents that bear human rights obligations (e.g. Hsieh, 2015), convincing arguments exist for endorsing the human rights approach in business ethics (Arnold, 2016), and some accounts build upon Young's theory to argue that businesses have human rights obligations (Wettstein, 2009). The social connection model and the human rights approach as presented in the UNGP may overlap to some extent in their conclusions or conceptualizations of responsibilities; however, rather than seeing them as competing views on corporate responsibility, they are better perceived as supplements to each other, as the social connection model directs analyses to neglected or difficult-to-conceptualize instances of injustice. For example, researchers employing the model specifically investigate the conditions that facilitate injustice rather than individual actions that result in particular harm. In other words, instead of studying only the instances of human rights violations, researchers also examine the creation of conditions under which human rights violations can occur. Although not this paper's goal, combining this mode of conceptualizing corporate responsibility with universally accepted human rights seems to be promising considering the legal enforceability of the latter and should be investigated further.
5. This is known as *the but-for test* in legal literature (see, Steel, 2015, p. 16). It is not the only way in which causality is established in legal theory and practice. I will come back to this point later.

6. Causal responsibility relies on the direct causal connection between one's action and harm. This can but does not necessarily overlap with moral responsibility, which in turn is related to moral praise or blame. For the latter, agents' intentions, moral duties, voluntariness of their actions, and foreseeability of the effects of their actions are more important than the direct causal link (see also, Miller, 2001).
7. The social connection model is primarily a theory of responsibility attribution rather than a theory of justice per se. Young develops it alongside her theory of structural injustice; however, if a structural wrong is broadly understood as a wrong caused and determined by social structures, that is, existing background conditions, such as social norms, institutional arrangements, and policies, then it becomes clear that the social connection model could be compatible with different normative values, such as human rights, equal division of relevant resources or capabilities, or fair treatment. In this paper, I demonstrate that the social connection model, but not Young's overall theory of justice, is recognizable in the philosophical framework of responsibility attribution in the Shell case.
8. Climate change can be understood as a structural problem insofar as it is produced by uncoordinated actions of multiple various agents across the globe, whereas the actions are often themselves ethically unproblematic. For an argument as to how climate change can be seen as a structural problem to which the social connection model applies, see also, Larrère (2018).
9. In other words, we can measure the overall emissions from particular agents, but we cannot say that a particular unit of emission in the atmosphere is caused by some concrete person or that the harm caused by climate change is the result of a particular unit of emissions attributed to a particular person.
10. For the mentions of 'individual responsibility' in this sense, see also, Milieudefensie v. Royal Dutch Shell (2021), paras. 4.4.13, 4.4.15, 4.4.37, and 4.4.49.
11. For a similar concern about the role of courts, and the discussion of the case from a legal perspective, see also, Nollkaemper (2021).
12. I thank the anonymous reviewer for raising this concern.
13. One could even argue that class action lawsuits might provide citizens with a different type of agency and possibility for intervention, even against the state, thereby strengthening democratic values. Consider another landmark case, Urgenda, of the court ordering the state, the Dutch government, to lower its emissions, which was initiated by an NGO (see, State of the Netherlands v. Urgenda Foundation, 2019).
14. One could argue that legal verdicts should not be political, which I take to mean that legal verdicts should not be connected to politics – they should not be biased in favor of, against, or by a particular political party. In this sense, they should be politically neutral. The social connection model is consistent with this belief, as it does not describe political responsibility in terms of politics. However, in a broader sense, every legal verdict is political insofar as courts' tasks are interpretative and, as such, cannot be entirely neutral.
15. Young also claims that the goal of the liability model is to assign blame and fault to a wrongdoer; however, different approaches to tort law exist regarding its goal. Tort law in some countries is based on the notion of 'fault-based liability' (Wagner, 2019, p. 996), whereas in other countries, its focus may lie

on the provision of compensation and the avoidance of future possible harm through threat of possible sanctions. Yet another approach to tort law, the so-called social-justice approach, focuses on compensating victims regardless of whether the cause of the harm was wrongful behavior (p. 997).

16. There are other instances of contribution being relevant to establish a tort, such as pre-emption (see, Steel, 2015, Chapter 1).
17. For the development of the idea of shared responsibility for international law, see, Nollkaemper et al. (2020).

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## Notes on contributor

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