

Three Christmas Spirits of Corporate Social Responsibility (French and European Union Law)

In

The Stakeholders in the Modern Corporation

Colloquium organized by the Institute for Advanced Study in Toulouse (IAST) & the
Toulouse School of Economics (TSE)

Toulouse, December 17th 2014

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Professeur des Universités, Sciences Po (Paris)



*“You will be haunted,” resumed the ghost,
“by three spirits.”*

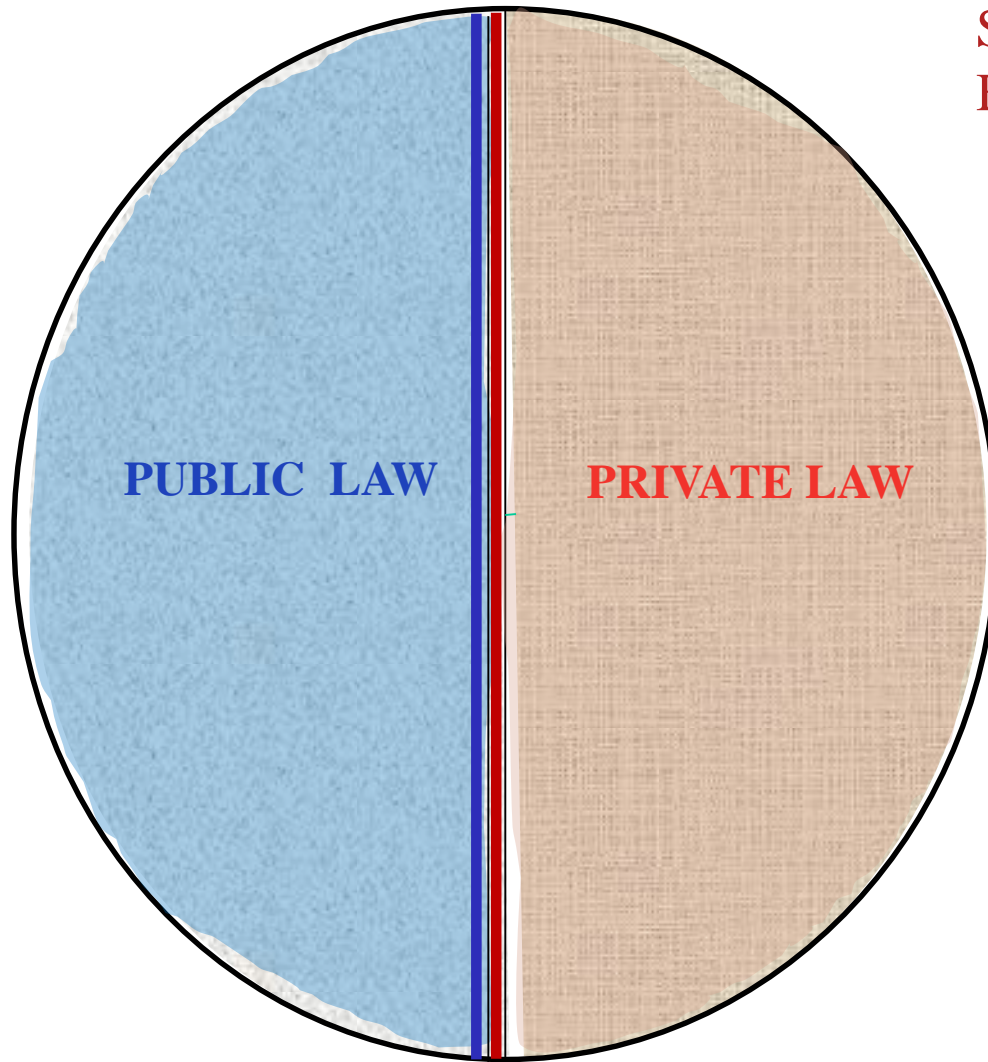
Plan

I. THE GHOST OF CHRISTMAS PAST: THE CONSIDERATION OF STAKEHOLDERS IN THE COMPANY BY CONTINENTAL LAW

II. THE GHOST OF CHRISTMAS PRESENT: THE LEGAL CONSTRUCTION OF « CORPORATE SOCIAL RESPONSIBILITY » BY FINANCIAL LAW

III. THE GHOST OF CHRISTMAS YET TO COME: THE SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF POWER

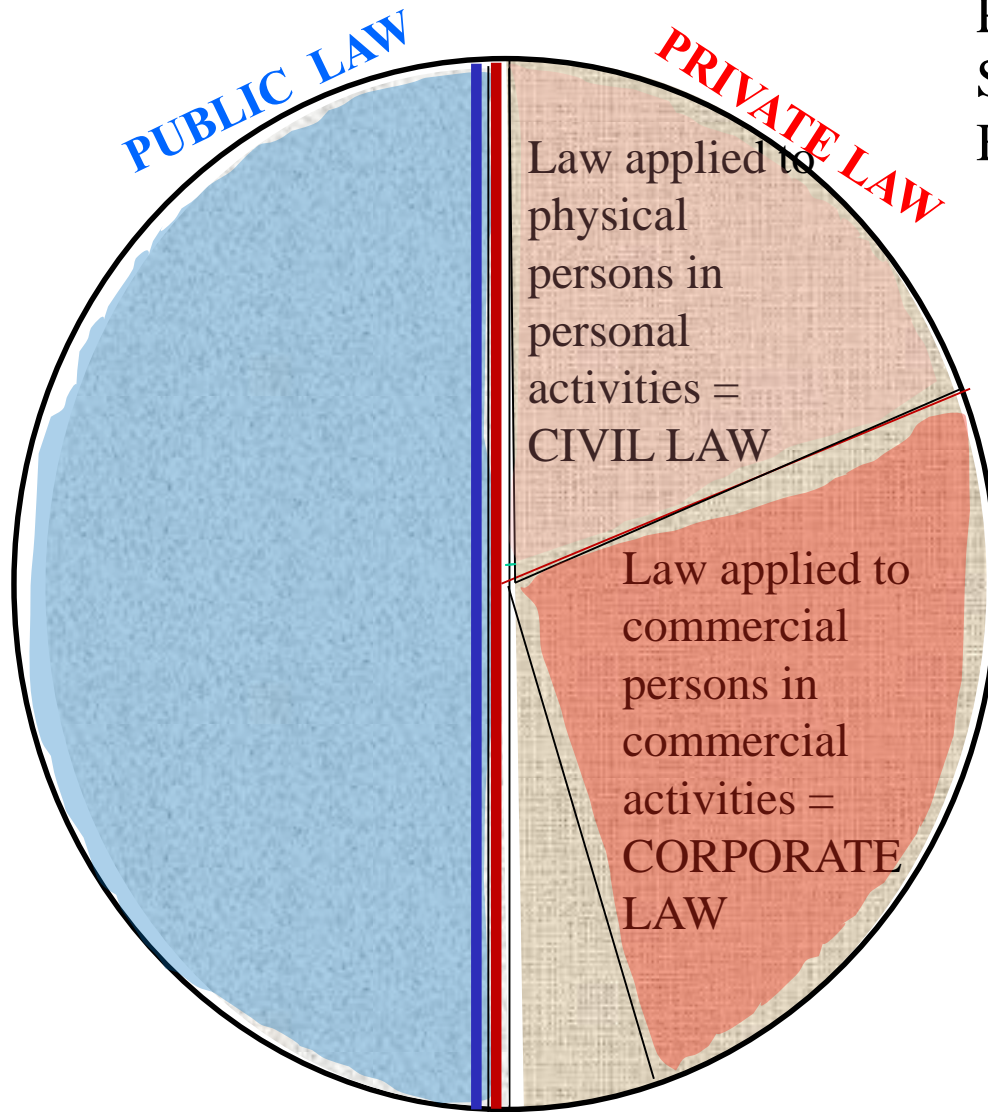
Structural presentation of Continental Law



I. THE GHOST OF CHRISTMAS PAST: THE CONSIDERATION OF STAKEHOLDERS IN THE COMPANY BY CONTINENTAL LAW

A. OBSTACLE BORN OF CONTINENTAL LAW BUILT BY DIVISIONS BETWEEN BRANCHES

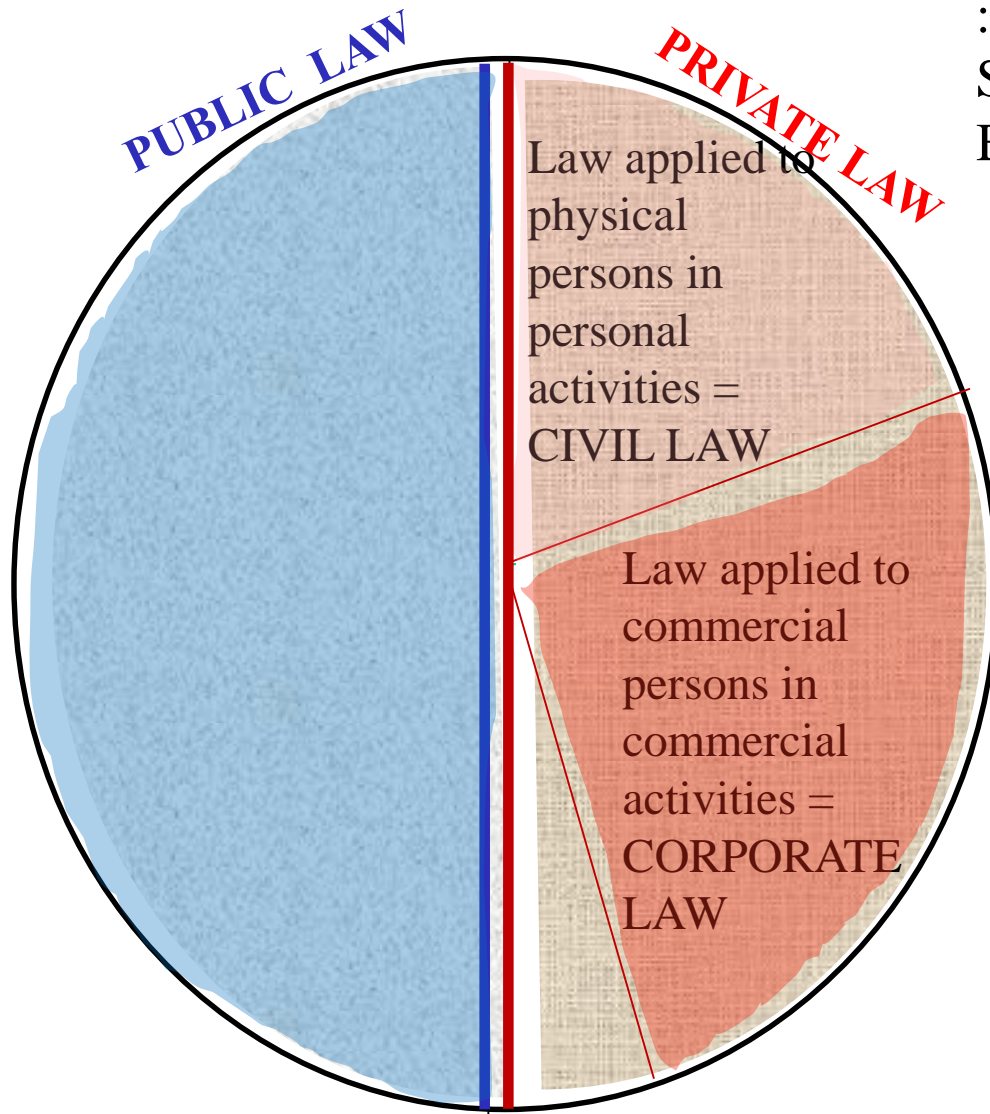
1. The construction of the Continental Law systems by branches and the isolation of Corporate Law



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A. OBSTACLE BORN OF CONTINENTAL LAW BUILT BY DIVISIONS BETWEEN BRANCHES

2. Separation between Corporate Law and special Civil Law

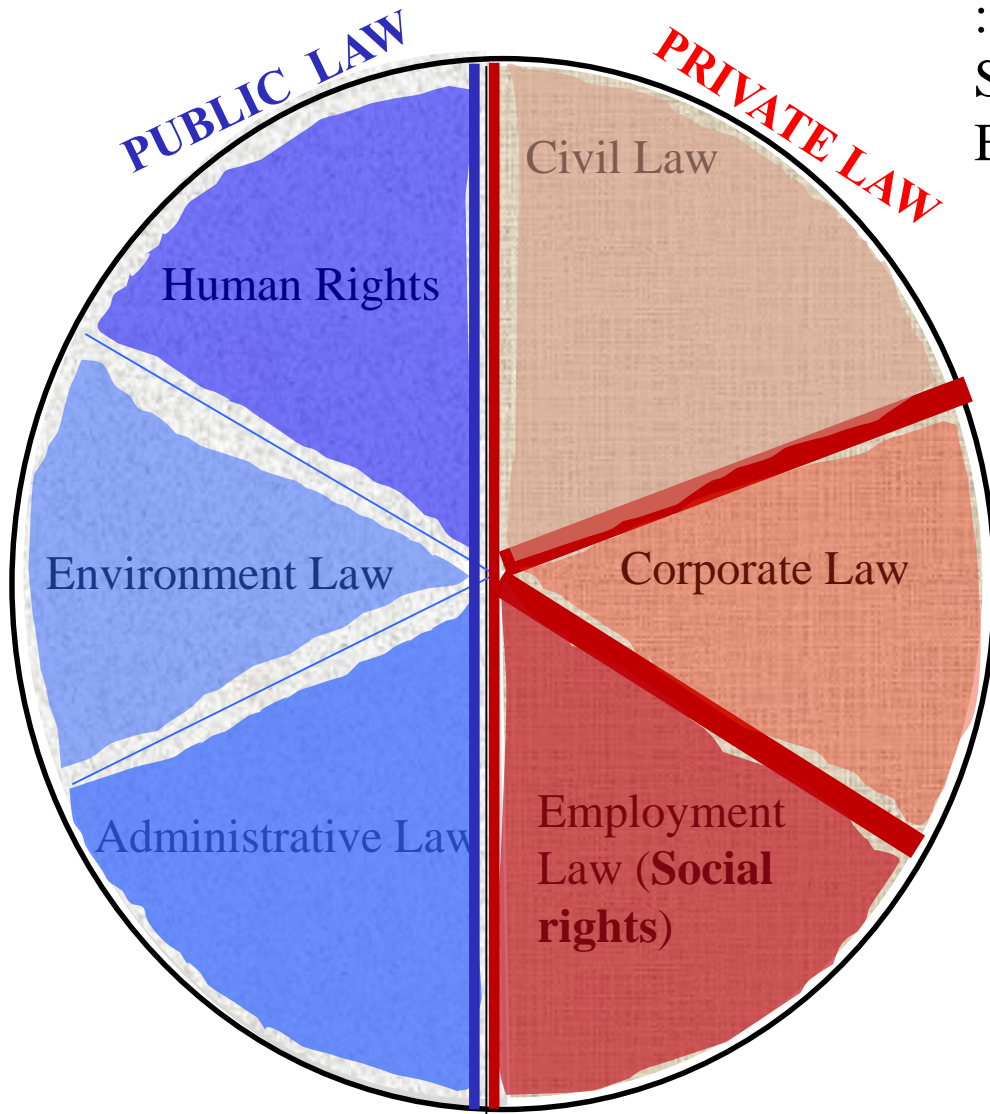


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3. Corporate Law as a branch of Law closed on itself, separated from Employment Law, from Human Rights, from Environment Law

Article 1382 du Code civil : *Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.*

Article 1382 of the French Civil Code: *Any act of anybody which causes damage to another obliges the person by whose fault it happened to repair it.*

I. THE GHOST OF CHRISTMAS PAST : THE CONSIDERATION OF STAKEHOLDERS IN THE COMPANY BY CONTINENTAL LAW

B. THE POWER OF CIVIL LAW

1. The Law of Civil Liability



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I. THE GHOST OF CHRISTMAS PAST : THE CONSIDERATION OF STAKEHOLDERS IN THE COMPANY BY CONTINENTAL LAW

B. THE POWER OF CIVIL LAW

2. Procedural Law





J. Leech
Scrooge's third Visitor.

London, Chapman & Hall, 156, Strand.

II. THE GHOST OF CHRISTMAS PRESENT: THE LEGAL CONSTRUCTION OF "CORPORATE SOCIAL RESPONSIBILITY" BY FINANCIAL LAW



A. "CORPORATE SOCIAL RESPONSIBILITY", AS INVESTORS' RIGHT TO BE INFORMED OF NON-FINANCIAL ACTIVITIES OF LISTED COMPANIES

1. The disclosure requirements for listed companies

Article L.225-102-1, al.5 du Code de commerce : Il (le rapport de gestion du conseil d'administration de la société) comprend également des informations sur la manière dont la société prend en compte les conséquences sociales et environnementales de son activité ainsi que sur ses engagements sociétaux en faveur du développement durable et en faveur de la lutte contre les discriminations et de la promotion des diversités.

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1. The disclosure requirements for listed companies

- *Loi du 15 mai 2001 sur les nouvelles regulations économiques (French Act on New Economic Regulations)*

Article L. 225-102-1, al.5 of the French Commercial Code: It (the Board report) also includes information on how the company takes into account the social and environmental consequences of its activity as well as its social commitments to sustainable development and to the fight against discrimination and the promotion of diversity.

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Enterprise and Industry

Sustainable and responsible business

Corporate social responsibility

- Business and human rights
- CSR and SMEs
- Multi-stakeholder Forum on CSR
- Research projects on CSR
- 2014 CSR Public Consultation
- Environment; Action Plan SCP/STP
- Ecodesign
- Eco-industries
- Climate change
- Environmental management
- External dimension
- Enterprise policy integration

The European Commission's strategy on CSR 2011-2014: achievements, shortcomings and future challenges

Objective of the consultation

The aim of this public consultation is to seek feedback on the achievements, shortcomings and future challenges of the Commission's activities on Corporate Social Responsibility (CSR), as outlined in the Commission's 2011 Communication on "A renewed EU strategy 2011-14 for Corporate Social Responsibility" (COM(2011) 681).

The results of this public consultation will be summarised in a technical report and further inform the preparation of the plenary meeting of the multi-stakeholder forum on CSR, which is planned for February 2015. These two events will provide the most essential input for the Commission's work on the direction of its CSR policy after 2014.

Policy field(s)

Corporate Social Responsibility

Target group(s)

Public authorities, Member States authorities, international organisations, civil society organisations, individual companies, industry associations, academia/universities, and other relevant stakeholders and citizens

Period of consultation

From 29.04.2014 to 15.08.2014

View the questionnaire



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- The disclosure requirements for listed companies
 - E.C. Communication, *About a Renewed EU strategy 2001-2014 for Corporate Social Responsibility*, 25 Oct. 2011
 - E.U. Directive, 22 Oct. 2014 *as regards of non-financial and diversity information by certain large undertakings groups*

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A. "CORPORATE SOCIAL
RESPONSIBILITY", AS INVESTORS'
RIGHT TO BE INFORMED OF NON-
FINANCIAL ACTIVITIES OF LISTED
COMPANY

2. The move from Financial Law to
Economic Law

II (le rapport du conseil d'administration) comprend également des informations sur la manière dont la société prend en compte les conséquences sociales et environnementales de son activité ainsi que sur ses engagements sociétaux en faveur du développement durable et en faveur de la lutte contre les discriminations et de la promotion des diversités.

Un décret en Conseil d'Etat établit deux listes précisant les informations visées au présent alinéa ainsi que les modalités de leur présentation, de façon à permettre une comparaison des données, selon que la société est ou non admise aux négociations sur un marché réglementé.

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A. "CORPORATE SOCIAL RESPONSIBILITY", AS INVESTORS' RIGHT TO BE INFORMED OF NON-FINANCIAL ACTIVITIES OF LISTED COMPANY

2. The passage from Financial Law to Economic Law

- New rewriting of Article 225-102-1,al.5 of French Commercial Code

(new paragraph of article 225-102, al.1
French Commercial Code) :

A decree of the State Council shall establish two lists specifying the information referred to in this paragraph and the terms of the presentation thereof, in order to allow a comparison of data, depending on whether or not the company is admitted for trading on a regulated market.

II. THE GHOST OF CHRISTMAS PRESENT: THE LEGAL CONSTRUCTION OF "CORPORATE SOCIAL RESPONSIBILITY" BY FINANCIAL LAW

- A. "CORPORATE SOCIAL RESPONSIBILITY", AS INVESTORS' RIGHT TO BE INFORMED OF NON-FINANCIAL ACTIVITIES OF LISTED COMPANY
2. The move from Financial Law to Economic Law
 - New rewriting of article 225-102-1,al.5 of French Commercial Code



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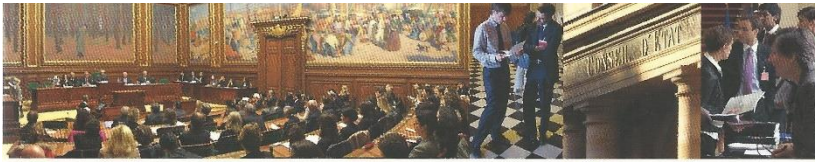
2. The move from Financial law to
Economic law

- General but specific obligations
about environmental issues

II. THE GHOST OF CHRISTMAS PRESENT: THE LEGAL CONSTRUCTION OF "CORPORATE SOCIAL RESPONSIBILITY" BY FINANCIAL LAW



B. « CORPORATE SOCIAL
RESPONSIBILITY », AS SELF-
REGULATION



CONSEIL D'ÉTAT

Étude annuelle 2013

Le droit souple



La
documentation
Française

II. THE GHOST OF CHRISTMAS PRESENT: THE LEGAL CONSTRUCTION OF "CORPORATE SOCIAL RESPONSIBILITY" BY FINANCIAL LAW

B. « CORPORATE SOCIAL
RESPONSIBILITY », AS SELF-
REGULATION



LAW AND ORDER
judgement and decision

CRIME AND
PUNISHMENT
report and resolution



SOCIAL
RESPONSIBILITY
swear and follow



The Last of the Spirits.

Article 1832 du Code civil : La société est instituée par deux ou plusieurs personnes qui conviennent par un contrat d'affecter à une entreprise commune des biens ou leur industrie en vue de partager le bénéfice ...

Article 1833 du Code civil : Toute société doit avoir un objet licite et être constituée dans l'intérêt commun des associés.

Article 1832 of the Civil Code :

The company is established by two or more persons who agree by contract to assign to a common enterprise property or industry to share the profits ...

Article 1833 of the Civil Code,

al.1 : Every company must have a lawful purpose and be incorporated in the common interest of the partners...

III. THE GHOST OF CHRISTMAS YET TO COME: SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER

A. "CORPORATE SOCIAL RESPONSIBILITY", AS A BASIS FOR CHANGE IN THE DEFINITION OF THE COMPANY

1. From Article 1832 of the *Code civil* (French Civil Code) to a possible new Article 1833 of the *Code civil*



III. THE GHOST OF CHRISTMAS YET TO COME: SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER

- A. "CORPORATE SOCIAL CORPORATE RESPONSIBILITY", AS A BASIS FOR CHANGE IN THE DEFINITION OF THE COMPANY
1. From Article 1832 of the *Code civil* (French Civil Code) to a possible new Article 1833 of the *Code civil*
- The notion of “intéret social” (corporate interest)

Article 1833 du Code civil :
Toute société doit avoir un objet
licite et être constituée dans
l'intérêt commun des associés.

Draft rewriting (Macron draft) : « ...
et être constituée dans l'intérêt
commun des associés. » sont ajoutés
par mots : « Elle doit être gérée au
mieux de son intérêt supérieur, dans le
respect de l'intérêt général
économique, social et
environnemental ».

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- A. "CORPORATE SOCIAL CORPORATE
RESPONSIBILITY“, AS A BASIS FOR
CHANGE IN THE DEFINITION OF
THE COMPANY
- 1. From Article 1832 of the *Code civil*
(French Civil Code) to a possible
new Article 1833 of the *Code civil*
- The possible new Article 1833 of
the *Code civil*

Article 1833, al.1, of the French Civil Code (written in 1804) :
Every company must have a lawful purpose and be incorporated in the common interest of the partners.

Added by “draft rewriting Macron” (written in 2014) : It (the company) must be managed in its best interests, in accordance with the general economic interest, social and environmental.

III. THE GHOST OF CHRISTMAS YET TO COME: SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER

- A. "CORPORATE SOCIAL RESPONSIBILITY“, BASIS OF CHANGE CORPORATE NATURE
 - 1. From Article 1832 of the *Code civil* (French Civil Code) to a possible new Article 1833 of the *Code civil*
 - The possible new article 1833 of the *Code civil*

III. THE GHOST OF CHRISTMAS YET TO COME: SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER



A. "CORPORATE SOCIAL CORPORATE RESPONSIBILITY“, AS A BASIS FOR CHANGE IN THE DEFINITION OF THE COMPANY

2. The judge at the center of a possible new system

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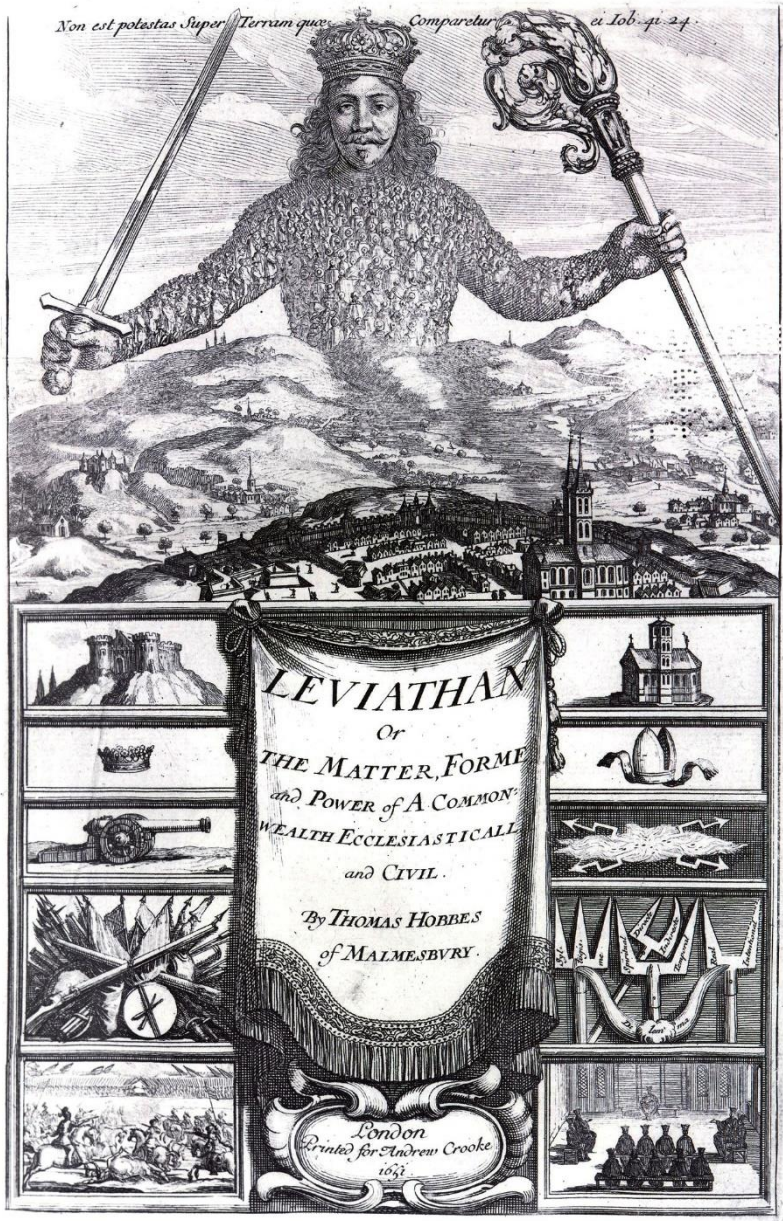
III. THE CHRISTMAS YET TO COME: SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER

B. "RESPONSIBILITY", AS PROOF OF A POSSIBLE CORPORATE CONSCIENCE ?

1. The link between Corporate Social Responsibility, Responsibility itself, and Conscience
2. The proof given by the *Holly Hobby* case (U.S. Supreme court, 30 June 2014)







III. THE GHOST OF CHRISTMAS YET TO COME: THE SOCIAL RESPONSIBILITY OF THE COMPANY, AS A FOUNTAIN OF ITS POWER

B. THE "RESPONSIBILITY" SIGNS OF A POSSIBLE CORPORATE'S CONSCIENCE ?

3. Would it possible in a Continental Law system?