

# Working toward the world we want to live in

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*Introduction to the Book Symposium on “The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy”* ([Brill 2019](#) & [Haymarket 2020](#))

## The Book

Grietje Baars’ recently published book *The Corporation, Law and Capitalism* is a powerful intervention on multiple accounts. Baars’ study spearheads and complements a newly revived Marxist legal tradition in the footsteps of Soviet legal theorist Evgeny Pashukanis, whose work on “[The General Theory of Law and Marxism](#)” (1924) pioneered the [commodity-form theory of law](#). Pashukanis’ main argument is that the commodity form and the legal form follow the same logic, the logic of capital. China Miéville’s [Between Equal Rights](#) (2004) took up the challenge to comprehensively bring this theoretical endeavor into the realm of international law and contemporary international legal debates. With some modifications to Miéville’s interpretation (p. 19) and a historical-material lens, Baars takes their readers on a journey to rediscover corporate power in today’s world.

*The Corporation, Law and Capitalism* traces the evolution of corporate legality from its inception in colonial times through the Second World War Trials of industrialists in Nuremberg and Tokyo to contemporary debates of corporate accountability and concludes that “emancipation from corporate power *cannot* be achieved through law” (p. 13, find a condensed version of this argument [here](#)). Baars’ exploration of corporate accountability, focusing mainly on international criminal law, is not solely a brilliant theoretical endeavor based on a detailed historical account; but further, the book aims to close a gap between theory and practice. It responds to activist lawyer Michael Sfar’s [call to academics](#) to “zoom out and inspect the internal legal battlefield from a high altitude, where a single victim cannot be identified, but trends and systematic failures may be revealed” (Preface XI).

Baars’ book shakes up theory-blind narratives that posit law and the corporation as natural phenomena, rather than socio-legal constructs that can be remodeled or overcome. Both the theoretical framework of the book as well as its methodology – inspired by Bertell Ollman’s “[Dance of the Dialectic](#)” – enable Baars to reflect on international law and the corporation from a rare place of legal writing, a place that dares to imagine a world unconfined by the barriers of legal language. This is both the beauty and power of Baars’ work: It is underpinned by the conviction that a different world is, indeed, possible.

Instead of seeking corporate accountability in order to tame “capitalism’s main engine”, the corporation, and its grotesque record of oppression, death and destruction, Baars calls on their readers to “work on the world we actually want to live in” and concludes that “our resistance must turn against the concept of private property, against capitalism and against law: away from legal emancipation toward human emancipation” (p. 379). Of course, this does not entail to completely turn away from law for social justice and change – at least not in the current moment. As Rob Knox explains “[e]very action [...] we take is already enmeshed in juridical relations and will have inevitable juridical consequences” or with Sundhya Pahuja “if you don’t do the law, the law will do you” (both found [here](#)). But the commodity-form theory of law and its materialist account of (international) law pointedly clarifies the limits of law’s engagement for transformative change: (international) law cannot fundamentally challenge the status quo, one of which it forms part and parcel.

Taking Baars’ work as a point of departure and thinking [with Rob Knox](#), the commodity-form theory of law “invites us to think [more] carefully about how we might use international law” against corporate power. Pashukanis himself explains in [Lenin and the Problems of Law](#) that “[t]he revolutionary nature of Leninist tactics never degenerated into the fetishist denial of legality; this was never a revolutionary phrase. On the contrary, at given historical stages, he firmly appealed to use those ‘legal opportunities’ which the enemy, who was merely broken but not fully defeated, was forced to provide”. What Baars in their book posits as “resistance” (through law) against corporate power can therefore not be overstated: Law and legal knowledge offer crucial opportunities and momentum for redress, protection as well as sites for reformist struggles and, in the best-case scenario, for emancipatory empowerment.

But, and this is how I read Baars’ argument, what law in its current form falls short of is to offer emancipatory solutions to world-making. Instead of presenting real solutions to the world’s most pressing issues, law (including human rights law) conceals the [root causes](#) of human suffering rather than to address and transform them. What Baars shows is that a focus on technical problems and solutions is not enough to challenge corporate power and joins Miéville’s argument that “[t]o fundamentally change the dynamics of the system it would be necessary not to reform the institutions but to *eradicate the forms of law* – which means the fundamental reformulation of the political-economic system of which they are expressions”. Instead of more law, one could conclude, we need less corporation.

## The Symposium

For this week’s symposium we have assembled a variety of contributions that engage with the book, from both scholars and (legal) activists who in their work address “the question of the corporation.”

**Marisa McVey** will start us off with a discussion on the book’s contribution to (or critical intervention in) business and human rights scholarship and practice. She concludes that Baars “provides us with two intellectual choices: despair; or self-

reflection on the role our own work plays in the congealment of law and capitalism, and our fixation on the ideology of corporate accountability in its current form.”

**Johan Horst** discusses the commodity-form theory of law as the main theoretical plank of the book and assesses critically “whether the book narrows the historical formation of law, the constitutive role of law for economic exchange relations and the emancipatory potential of law too much to one particular reading, so that important aspects are lost from focus in each case.”

**Hannah Franzki**, focusing her review primarily on the book’s historical (re-)narration of the Nuremberg Trial and the proceedings against economic actors, finds that “by juxtaposing extensive material in such a way as to reveal the very specific nature of the current academic and political debate on corporate responsibility, Baars presents a critical examination of the role of international law in the cementing of capitalist production and exploitation relations that is well worth reading.”

**Klaas Eller’s** review will situate Baars’ study in broader debates about the complex dynamics of corporate capitalism. He asserts that, “[i]mportantly, in Baars’ account, the legal form becomes pervasive both in the inner workings of the law and beyond, namely as a legal ideology sustaining preconceptions of power and telos of the state and the role of business in society.”

**Miriam Saage-Maaß**, a human rights lawyer and activist, critically discusses Baars’ concluding call to their readers to turn resistance “against law: away from legal emancipation towards human emancipation” (p. 379). Saage-Maaß holds that “lawyers should use Baars’ and other criticisms to evaluate their work, and take it as an opportunity to reflect on their privileges and the power-imbalances between themselves and their clients, as well as potential or actual discrepancies between the proclaimed goals of their advocacy and its real effects.”

Last but certainly not least, **Grietje Baars** will respond to this week’s contributions. We are looking forward to a stimulating discussion of a groundbreaking new book that should form part of any reading list on the corporation in the 21<sup>st</sup> century.

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