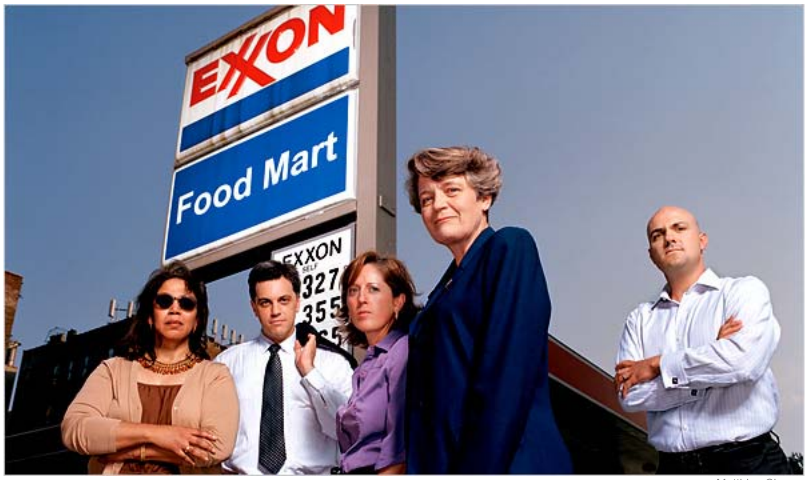
Resolved: Public Corporations Shall Take Us Seriously



Matthias Clamer

Fueled by Conscience Sister Patricia Daly (in navy suit) and some members of her other other -- of concerned shareholders.

By DASHKA SLATER
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Daly's order, the Sisters of Saint Dominic of Caldwell, N.J., owns about 300 of the 5.5 billion Exxon Mobile shares outstanding, but she has used those few shares to keep the company talking about an issue that it would just as soon ignore. In a few weeks' time, the company's millions of shareholders would be able to vote on a resolution she wrote, which asked ExxonMobil to set a firm date for reporting on its progress to reduce greenhouse-gas emissions from both its operations and its products. The board opposed the resolution, as it did each and every one of the 20 resolutions related to climate change submitted over the past 10 years, but Henry wasn't calling to debate the issue. That had already been done, ad nauseam, in countless meetings and phone calls between representatives of the company and its dissident shareholders, and it would be done again at the annual meeting on May 30. This was a courtesy call.

Daly assured Henry that she would be there to present her resolution in person, and then she smiled at the phone and made small talk, first about Ford Motor Company's annual meeting, which she attended earlier that day, and then about the weather.

"Very pleasant," she remarked afterward. "We can laugh about a few things." Then her mouth turned downward in a gesture that managed to convey simultaneously humor, pathos and wry acceptance. "At one point he said, 'Well, global warming can't be going on because we just had an ice storm here in April,' " she related. "I mean, can we review that global warming means that the upper atmosphere is warming, which is creating really weird and severe climate incidents — like ice storms in Dallas in April?" She fell back in her chair, clutching her head in astonishment.

For a certain kind of shareholder, particularly a religious shareholder, ExxonMobil poses a quandary. By every conventional measure, it is an exemplary investment. The company made $39.5 billion in profits in 2006, earnings that keep the value of its stock at around $85 per share and make it the most profitable American corporation, with a market value that is larger than the national budget of France. It is also the most technologically advanced of all the world's oil companies, and it has an admirable record of workplace safety and spill reduction.

But these days, corporations are increasingly judged not only by their quarterly earnings but also by their commitment to social and environmental values, and by governance standards like openness and accountability. By these standards, ExxonMobil is a mess. The company retains a reputation for environmental skullduggery that dates from the Exxon Valdez spill in 1989. Its skeptical stance on global warming has earned it the disapprobation of everyone from the Royal Society, Britain's premier scientific academy, to Senators Olympia Snowe and Jay Rockefeller. The company is known to be insular and hostile to the press (its representatives declined to be formally interviewed for this article), and its rumored and oft-denied participation in Dick Cheney's Energy Task Force did nothing to increase its popularity.

As a result, ExxonMobil has the dubious distinction of outperforming the competition in both the size of its shareholder dividends and the intensity of its shareholder discontent. This year, the company faced 15 separate shareholder resolutions — many more than most companies in the nation — on topics that include executive compensation and shareholder rights as well as global warming. For Daly, who has spent 30 years persuading companies like Dow, General Electric, Nestlé, Ford, Pepsi and General Motors to do things they didn't want to do, ExxonMobil is the great white whale of multinational corporations, unparalleled in size, power and elusiveness. "I've never worked with a company this long with so little progress," she says.

Daly, who is 51, is also the executive director of the TriState Coalition for Responsible Investment, a regional alliance of Roman Catholic investors who, like the Caldwell, N.J., Dominicans, are using the power of their pension funds to pressure companies to take action on issues as varied as genetically modified organisms and health care for employees with H.I.V. The eldest daughter of a mother who was a New York City schoolteacher and a father who worked in logistics for international freight, Daly didn't choose the religious life with the expectation that she would be spending her time crossing swords with corporate C.E.O.'s. But in 1977, while she was still a novice, she learned about attempts to unionize JP Stevens textile mills, a bitter decades-long struggle that would eventually be portrayed in the movie "Norma Rae." The Caldwell Dominicans happened to have JP Stevens stock in their retirement fund, and so Daly went to the annual meeting to tell company executives what she thought of their behavior. At the meeting, she discovered that there was a network of religious shareholders called the Interfaith Center on Corporate Responsibility; it used the stocks in its members' portfolios to pressure companies to address issues like poverty, racism and the environment.

Daly returned to the convent thrilled to have discovered this new kind of social movement. "I said, 'There's a whole network here, shouldn't we be part of it?' " she recalls. "And they said, 'O.K., good, that's your job.' " In the years since, she has been involved in campaigns that confronted Nestlé over its infant formula and pressured G.E. to clean up PCBs in the Hudson River, among others.

Daly doesn't pick the investments for her convent's $15 million retirement fund — that's done by its financial advisers, who are prohibited only from investing in the top 25 weapons manufacturers and the makers of abortifacient drugs and devices. Daly's job is to flag the companies in the portfolio whose behavior, in her view, needs improving. "The Dominicans are an order of preachers," she says. "I do it in boardrooms, and those kinds of inner arenas. It's not always public preaching. But preaching is really the mission."

Just about anyone who has owned a given company's stock for at least a year can file a shareholder resolution. As of June 15, shareholders had filed 1,151 proxy resolutions with U.S. companies in 2007, 361 of them on social issues. These resolutions, which address issues like domestic-partner benefits and the disclosure of political contributions, represent a significant shift in the way that Americans think about the stocks they own and pose a direct challenge to the way corporations are used to operating. While shareholders are technically the owners of a company, corporate executives have tended to view them the way a symphony orchestra might view its subscribers. The last thing the symphony expects is for its concertgoers to start giving the oboist pointers on her technique, or to suggest that the conductor choose a different program of composers.

Yet that is exactly the sort of thing that has been happening at shareholder meetings nationwide, thanks to the fall of Enron, the rise of socially responsible investment funds, a new sense of mission on the part of institutional investors and an Internet-age impulse toward participatory democracy. At Citigroup's annual meeting in April, for instance, Chairman Charles Prince listened patiently for nearly three hours while shareholders sounded off on subjects ranging from business strategy to tooth decay.

It's fair to ask, of course, if shareholder activists are promoting interest-group politics or economic goals when they ask companies to take action on global warming. While environmentalists have long framed the issue in terms like "the health of the planet" or "the future of our children," activists like Daly now talk about "risk" and "long-term profitability." Their argument goes like this: climate change poses an enormous risk to nearly every sector of the economy. It is therefore prudent to plan for both its environmental impacts and the inevitable regulatory constraints that are coming.

Daly does have a vested interest in keeping ExxonMobil profitable — her own retirement depends on it. But her approach is undoubtedly a rhetorical strategy as much as a financial one; return on investment isn't what keeps her on the phone with people like David Henry. "In any conversation with a company," she admits, "it's clear that I'm there because of a faith commitment."

Yet global warming does seem to be an area in which social and fiscal concerns overlap. Recent reports by Goldman Sachs, Citigroup and Lehman Brothers have reinforced the notion that climate change has the potential to affect a company's bottom line, and shareholder resolutions have been remarkably effective at getting companies to take global warming seriously. After the Connecticut state treasurer's office filed three consecutive climate resolutions with American Electric Power, the nation's single-largest producer of carbon dioxide, the company agreed in 2004 to study the impact on its operations of various carbon cap-and-trade proposals, whereby companies must either limit their carbon emissions or purchase emissions credits from other companies that pollute less. Today American Electric is one of the companies calling for mandatory carbon constraints. Other companies singled out by shareholder activists, like Home Depot, Ford, Prudential, Cinergy, Chevron Texaco, Apache and ConocoPhillips, have variously agreed to disclose their greenhouse-gas emissions, study the impact of climate change on their businesses, invest in renewable energy sources or support a mandatory carbon cap.

The exception, as Daly notes, is ExxonMobil. For years the company denied that global climate change was occurring. According to a Greenpeace report in May, ExxonMobil funnels more than $2 million a year to groups that dispute the reality of global warming. The company's current C.E.O., Rex Tillerson, made headlines in February when he admitted that the risks from climate change "could prove to be significant," but he continues to emphasize the uncertainty of the science. In May he said: "I know people like to boil it down to something very simple — the polar ice caps are melting, the planet is seven-tenths of a degree centigrade warmer. It's really not that simple of an equation." And while BP, Shell and ConocoPhillips have joined the United States Climate Action Partnership, which is lobbying for mandatory carbon limits, and are investing in renewable energy sources like wind, solar and biofuels, ExxonMobil remains coy about which, if any, carbon constraints it would support and has stated unequivocally that the company will not be putting money into renewables.

Whether the company's seeming indifference to the impact its emissions have on global climate change will affect its profitability remains to be seen, but a growing number of analysts suggest that it could. A recent Citigroup report, "Climactic Consequences: Investment Implications of a Changing Climate," noted that companies that "voluntarily adopt climate friendly policies ahead of competitors" might have an advantage over those that wait for regulation before they act. "One could argue," the report remarked parenthetically, that BP, "which has been focusing on climate issues for many years, and which regularly shows up at the top of surveys of 'climate-friendly' companies, is relatively well positioned, compared to ExxonMobil, which has funded pro-carbon advertisements."

That seems to be the concern of a growing number of shareholders. In 1997, when a Capuchin priest, the Rev. Michael Crosby, filed the first global-warming resolution at ExxonMobil, a mere 4.6 percent of the proxies were in favor of it. By 2005, a resolution asking the company to explain how it would meet greenhouse-gas-reduction targets in countries that had adopted the Kyoto Protocol garnered 28.4 percent of the vote.

Given Tillerson's wary admission of global warming's potential risk, and the business community's growing interest in the issue, shareholder activists were feeling cautiously optimistic about what might happen at this year's annual meeting. Daly, too, was thinking of changing her strategy.

"There was a gentleman, a retired man, who followed me out of the ExxonMobil meeting last year," she reflected. "He said: 'You know, Sister, I've been listening to you for a long time. We get the science, and we get the investment piece. You should be talking about their moral responsibility.' "

Daly looked out the window for a moment, as if the elderly shareholder might be lurking below, and the corners of her mouth ducked downward again. "I lost sleep over that comment," she continued. "I mean, I'm an investor. I know I get play because I'm this nun, and there's a lot of intrigue around that, but I'm no more interesting and far less qualified than a lot of other people I work with. And you know, I don't play the God card. But basically, he was saying, 'You should play the God card.' "

ExxonMobil has been on the defensive about global warming long enough to have developed a highly nuanced statement of its position. At a press briefing on the issue that was held before the annual meeting, Ken Cohen, the vice president of public affairs, allowed that something definitely might be going on: "Is climate change a risk that should be taken seriously? The answer is yes . . . there is a risk that human activity is contributing to climate change."

But while the dangers associated with climate change include catastrophic floods, hurricanes, drought and famine, there is little risk that gasoline will stop being a profitable commodity any time soon. That, from ExxonMobil's point of view, is all that matters. Between 2000 and 2030, ExxonMobil expects global energy demand to grow by 60 percent, driven largely by the developing world. Given that renewables are still in their infancy, Cohen argues that traditional fossil fuels are the only energy source that can meet that demand. By 2030, Exxon projects, fossil fuels will still be supplying about 80 percent of the world's energy needs.

ExxonMobil's projections are based on studies from reputable sources (the International Energy Agency and the U.S. Department of Energy), and the company has factored in slightly higher automotive efficiency standards — 30 miles to the gallon, rather than the current 27.5. But it's clear that when ExxonMobil executives look ahead to the next quarter century, they see a world that operates much as it did in the previous quarter century. Given ExxonMobil's profits over the past few years, that's a pretty comforting view, and one that doesn't encourage any radical change of course, no matter what people like Patricia Daly say. Climate change "is just another risk that we have to understand as best we can and respond to in a way that protects the shareholder value," Tillerson would explain at the annual meeting. "So I don't think it introduces any greater or lesser threat than a whole host of other risks that we manage day to day and that have been part of this business for decades."

The fact that a corporation can preoccupy itself with quantifying the financial risks of a global catastrophe while ignoring the human and environmental ones is what inspired a tall, courtly Boston Brahmin named Robert A. G. Monks to begin advancing the notion that shareholders use the power of their proxies to influence corporate behavior. Monks, who was a founding trustee of the Federal Employees Retirement System during Ronald Reagan's administration, responds to Tillerson like this: "The notion that a company that creates a problem is exempted from trying to find a solution to that problem is like being in the elephant business but not having anyone in charge of going behind the elephant and cleaning up after it."

The son of an Episcopal clergyman, Monks has been a partner in a corporate law firm, a venture capitalist, a oil-and-gas-company executive and a director of 10 publicly held companies. He is, in other words, a consummate insider, or would be one, had he not happened to stop by the Androscoggin River in 1972 while campaigning — unsuccessfully, as it turned out — as a Republican candidate for a United States Senate seat in Maine. The surface of the river glistened with a six-foot layer of foam, the effluent of the nearby International Paper Company.

For Monks, the foam came to symbolize all that was wrong with the way the modern corporation functions in society: none of its owners feel responsible for its actions. The dispersal of ownership through millions of shares, he argues, is the institutional equivalent of the tragedy of the commons: each shareholder is happy to reap his share of the profits, but no one feels responsible for the behavior of the company as a whole. His solution has been to try to make corporate boards more accountable by encouraging them to have directors who are truly independent, rather than being the friends and associates of management. He has done this in a variety of ways — by writing books, by pressuring companies from within and by founding various corporate governance institutions, among them Institutional Shareholder Services and the Corporate Library. In 1991, he went so far as to run for the Sears board himself, a move that inspired Sears to spend $5.5 million to defeat him.

Sears wasn't the first company whose board Monks nominated himself for — he also tried nominating himself for the Exxon board in 1987. The company didn't respond to his letter, and he chose not to pursue the matter. Yet as time went on, Monks came to believe that Exxon was "the symbol of a reality that nobody in the reformist area wanted to deal with" — a company that performed exceptionally well as a business and an investment yet failed to take responsibility for its greenhouse-gas emissions, which Monks sees as the 21st-century equivalent of foam on the river.

Monks's solution was to submit a resolution that would separate the positions of chairman and C.E.O., something that has been done at BP and Royal Dutch/Shell. Monks argues that an independent chairman would be able to raise questions about ExxonMobil's position in the world that will never otherwise be asked, much less answered, questions like, "Why is our company the one with the bull's-eye on its chest?" As it stands, he says: "The board is just there as the parsley on the fish. You're really talking about, when you have a combined chairman and C.E.O., a dictatorship."

Monks has submitted his proposal six times, but it has gone before the shareholders only four times, having been thrown out the other two by the Securities and Exchange Commission. Nonetheless, it has gotten a greater percentage of the vote each time it has been on the proxy ballot, he says, up to about 35 percent last year.

Getting a majority of the vote is an enormous task, in part because the number of shareholders is so vast. About 2,000 institutional shareholders and 2.5 million individuals can vote. At ExxonMobil, about 85 percent of the shares are voted, which is slightly higher than average. That's a pretty good turnout compared with that of the last presidential election, when only about 64 percent of the nation's registered voters made it to the polls, but in most other ways, corporate democracy is far from democratic. Shareholder votes aren't binding. They are advisory, which means that boards are free to ignore them. Shareholders have even less say over the boards themselves — most directors are handpicked by management and run unopposed.

In truth, most shareholders have very little real power over a company's behavior. "What we have to do is throw gorilla dust," Monks says. "When two gorillas get ready to fight, they throw dust at each other. I'm in the gorilla-dust business, and I'm in the gorilla-dust business not because I like it, but because it's the only game in town."

Shareholder activists began arriving in Dallas on the afternoon of May 29, and by evening, they were sitting in the lobby of their hotel planning the next day's strategy. Daly was clearly delighted to be reunited with longtime colleagues in the struggle, including Michael Crosby, the Capuchin priest, and Tracey Rembert from the Service Employees International Union. As they settled into the hotel's brightly colored armchairs, they began telling stories of past meetings. The stories tended to star Lee Raymond, the former chief executive, who was openly hostile to any discussion about global warming. One year's meeting featured the Rev. Robert Sirico, whose Acton Institute was a regular recipient of ExxonMobil donations, testifying that Daly and Crosby were trying to overthrow the free-enterprise system. "I always had a headache leaving that meeting," Daly said. "You'd walk away and say, 'There's got to be another way.' "

This year was expected to be far more cordial. For one thing, Tillerson is more genial than his predecessor, and he impressed everyone with his politeness the previous year. In addition, it was clear that mainstream shareholders no longer see climate resolutions as recommendations from the company's lunatic fringe. To everyone's surprise, the three largest proxy advisory firms, I.S.S., Glass Lewis & Company and Proxy Governance, had all recommended that their clients vote in favor of Item 15, which was Daly's resolution. A number of state pension funds were on board, including Calpers, which owns 30 million shares, and Stanford University had announced that its endowment would be voting its proxies in favor of the resolution as well.

But Crosby reminded them of some bad news. ExxonMobil had changed the rules of engagement, reducing the amount of time for discussion of each resolution from 10 minutes to 3. That didn't leave much time for the shareholders to make their case.

"The only other company like this is Reynolds," sighed Crosby, who spends much of the proxy season battling Big Tobacco.

Rembert nodded. "I tell everyone, if you can survive this meeting, you can survive anything."

The shareholders began going over their arguments. They raised the question of whether the developing world was going to be as profligate with petroleum as the United States had been. They talked about how Detroit automakers lost their competitive advantage by banking on gas guzzlers and suggested that Exxon might find itself in a similar position. They discussed why ExxonMobil seemed intent on torpedoing its own reputation and speculated as to whether there really was any more cheap oil to be had.

The prospect of feverishly trying to cram several hours' worth of arguments into three minutes was deflating, particularly when most of the proxies had already been voted.

"They know, going into the meeting, what the vote is," Crosby said.

Daly, who was one of the few people in the room whose energy and humor hadn't flagged as the hour got later, explained that the real work of a shareholder activist happens before and after the proxy season, in meetings with company representatives. "This is the theater," she said.

Crosby nodded. "If you know the Catholic tradition, this is the liturgy," he said. "It's all happened before, but it's worked out in ritual."

Daly laughed. "You might have to change the homily," she said.

It was precisely 9 o' clock the next morning when Tillerson called the annual shareholder meeting to order. About 450 shareholders filled the seats of the Morton H. Meyerson Symphony Center concert hall. Many were retirees — elderly men in turquoise-encrusted bolo ties, elderly women in red wool suits. Tillerson stood behind a large, box-shaped lectern, an imposing man with thick eyebrows, a square jaw and a deep voice. He was, as predicted, polite throughout, but the new time limits made it difficult for the shareholders to say much of anything. Monks, Crosby and the others raced through their remarks, keeping one eye on the panel of green, yellow and red lights that governed the time.

The 11 members of board sat in the balcony, listening impassively. I wondered what they made of the shareholders who had spent so many hours trying to shape an argument that would persuade them, and so a few days later, I called a board member, Dr. Reatha Clark King, and asked her. "As a board member, I'm thinking, this group or this individual has invested their resources to show up, to ask their question or to make a point," she told me. "I process the information eagerly, with the thought: What could I learn from this?"

Did that mean that board members were likely to be persuaded by shareholder arguments? King — who agreed to speak only in general terms about the job of a board member — said it wasn't that simple. After 10 years on the board, she figured she knew more about the issues than the shareholders, and wasn't her expertise the reason she'd been selected for the board in the first place? "You're working to maximize shareholder value," she said. "It's very different from the political environment, where you are persuaded because you are afraid of being voted out by your constituents." (King, like all the members of the ExxonMobil board, was nominated by the company and ran unopposed.)

And so the morning continued, in short bursts of truncated rhetoric that were received with polite silence. At last, Daly stood to introduce Item 15. She began, as she usually did, by talking about shareholder value. "We're the most profitable company in the history of the planet, but what will be our long-term health when we are really faced with the regulatory and other challenges around global warming?" she asked. She praised the company's resourcefulness and suggested that a company like ExxonMobil could achieve anything it wanted. Then she played the God card.

"I truly believe that every one of us has a very special vocation and we're here on this planet for a reason," she said. "We are now, this company and every single one of us, challenged by one of the most profound moral concerns. And we have the wherewithal to respond to that. We all want to be able to tell the children in our lives and have those children tell their grandchildren that we were part of the solution, not part of the real problem. . . . And that's why we want to be able to have our company show us how we are responding to the true moral challenge, the great work for the future of this planet."

Tillerson didn't respond at the time, other than to say that the board's reasons for recommending against the proposal were explained on Page 61 of the proxy statement. But at the post-meeting news conference, I asked him whether he agreed with Sister Daly's assertion that ExxonMobil had a moral responsibility to find a solution to global warming.

"We know that we have social and moral obligations as a corporate entity just as we all have personal social and moral obligations," he replied. "First and foremost our obligation, because of the business we have been in for more than a century, is to continue to provide reliable and affordable energy to the world to allow the world's economic growth to continue."

Tillerson is an intelligent man, and a fierce one, and for the last half-hour of the shareholder meeting he fielded a host of very pointed questions about ExxonMobil's stance on global warming and its refusal to invest in alternatives to fossil fuels.

He spoke as a man whose company excels at extracting oil from difficult and faraway places so that people can fill their gas tanks with it, and who continues to believe that this is a useful and necessary service.

"The world, like it or not, is going to have to live off fossil fuels for the foreseeable future," he said in response to a question from John Wilson of Christian Brothers Investment Services. "It's fine if people want to find ways to replace them. . . . We're not threatened by that at all. But we're not in that business. We're in the business of oil and natural gas. We're going to work on the things that we know how to do."

By now the votes had been counted, and the results were in. Robert Monks's plan for separating the positions of chairman and chief executive received 40 percent and Patricia Daly's greenhouse-gas-reduction proposal earned 31 percent of the ballots — about 1.4 billion shares. It was the largest number an ExxonMobil climate-change proposal had ever received.

Afterward, the shareholders went out for Mexican food, as they do every year. At the restaurant, Tracey Rembert of the Service Employees International put her laptop on the table and read aloud news stories about the meeting. They all hit two themes — ExxonMobil's staggering profits and the flak that the company was taking over global warming. Most portrayed the votes as a resounding defeat for shareholder activists, but the activists themselves saw victory in the fact that the resolutions made the news in the first place.

"The truth is, we've collectively stamped this problem on Lee Raymond and Rex Tillerson's obituary," gloated Kert Davies, research director for Greenpeace. "It's so embedded in how they're perceived, it's more than a P.R. problem, it's a liability."

"I found the board was listening more," John Wilson said. "Some of them were actually leaning forward."

In a few days the shareholders would begin strategizing again, drawing up a list of demands for a fall meeting with ExxonMobil officials. For now, they took pleasure in finding a few small indications that their message had been heard, if not by Tillerson, than perhaps by the board, or at least the press. They had done better this year than last, and hopefully they would do even better next year.

At the far end of the table, Daly was already talking about the next shareholder meeting on her calendar — General Motors, the following week. To her mind, the day had been a success. “I always put it in the context of here’s a company that’s making oodles of money for their shareholders and everyone should be thrilled,” she said. “So to walk away with a third of the vote was just a remarkable win.”

Dashka Slater has written for Salon, Mother Jones and More, among other publications. She is also the author of “The Wishing Box,” a novel.

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