Accounting and Management Review
Revista de Contabilidade e Gestão
No. 26 (Special Issue), 2022
pp. 111-131
Published by OCC
DOI https://doi.org/10.55486/amrrcg.v26i.5a
ISSN 2795-4412

From Stakeholder to Rightsholder Perspectives The UNGPs, SDGs and New Paradigms for Corporate Accountability

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ABSTRACT

This essay explores the extent to which the emerging field of Business and Human Rights presents an opportunity to push our theorizing in new directions and extend our understanding of the potential role that accounting could play in contributing to a better and more sustainable world.

The paper critically explores the stakeholder conception of corporate social responsibility that has dominated research on Social and Environmental Accounting to date. The first substantive part of the paper outlines the three main strands of *stakeholder* theory research: descriptive accuracy, normative validity, and instrumental power and begins to explore how the rightsholder perspective, encapsulated in the United Nations Guiding Principles on Business & Human Rights, extends these three perspectives and addresses some of the limitations in stakeholder theory.

The second substantive section outlines two specific opportunities for new directions in accounting research: first concerning the connection between corporate accountability and democracy and second about the theorization of accounting measurement. The first issue relates to the theory of the firm, the second, to our theory of value.

Keywords: Human Rights; Stakeholder Theory; Political CSR.

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1. Introduction

The changing role of business in society has been framed within the accounting literature in terms of a firm's Corporate Social Responsibility with Stakeholder Theory providing the lens through which this responsibility has been conceptualized. However, this narrative is shifting. A new framework, based on the universal nature of human rights, is emerging as a way of clarifying the responsibilities of corporations to society and providing a clear normative benchmark against which to assess the performance of the economy more generally (Ramasastry, 2015). This essay presents an initial attempt to explore how a human rights-based perspective extends the literature on stakeholder theory and opens up new opportunities and directions for accounting research[1].

According to Ratner (2020: 163) in the 10 years since the endorsement of the United Nations Guiding Principles on Business & Human Rights[2] (UNGPs), the field of Business and Human Rights (BHR) "has moved from the periphery to center stage" of international law. In addition, at the national level, legislation like The Modern Slavery Acts in the UK and Australia; the Netherlands Child Labor Due Diligence Act; the French Duty of Vigilance Law and the German Supply Chain Due Diligence Act, all require companies to implement human rights due diligence, particularly concerning their global supply chains (Bueno & Bright, 2020; Krajewski et al., 2021).

However, BHR is not just about the identification of new kinds of human rights risks that companies need to manage (notwithstanding the fundamental shift in our understanding of both international human rights law and the purpose of the firm that this entails). Its emergence coincides with an unprecedented level of skepticism towards our established economic narrative. While there is little doubt that the globalized free market has been successful in creating a kind of wealth, there is increasing concern over the ability of this system to distribute financial wealth fairly (Amis et al., 2020) and the resulting political instability caused by growing levels of inequality. Globalization hasn't delivered the kind of social and economic uplifting we have implicitly taught in our courses on international accounting (Barrientos et al., 2011). In addition, the promise that globalization would result in economic integration and deter international conflict has proven to be a false hope (Mansfield & Pollins, 2009).

As a consequence, there is increased focus on new measures of economic and social progress that seek to realign the economic system towards more valuable human ends (Sen, 1993). Recently these ends have been articulated in terms of 17 Sustainable Development Goals (Kanbur et al., 2018). The accounting literature contains relatively little analysis of the relationship between the UNGPs and the Sustainable Development Goals which were adopted by the UN 4 years later

(Bebbington & Unerman, 2020, 2018). Both initiatives are part of the same response to a global socio-political order that now bears little resemblance to the assumptions underlying our established Chicago School economic theories and Westphalian political theories.

The existence of the Sustainable Development Goals (SDGs) calls into question what we mean by the efficient allocation of capital. Parkinson (1993: 41) observes, that the profit maximization objective is justified on the basis that "companies contribute to the maximization of society's total wealth when they seek to maximize their own profits". But if global capital is being allocated efficiently, why do we need a goal to provide access to affordable, sustainable, and modern energy (SDG 7)? or to end poverty (SDG 1) and hunger (SDG 2)? While on the one hand the SDGs highlight a series of existential grand challenges we urgently need to address, the UNGPs highlight that line between state and business responsibility for addressing them is becoming increasingly blurred. Taken together, this new responsibility narrative raises fundamental questions about the assumptions underpinning the practice of accounting.

The issue is fundamentally whether the prevailing "Chicago School" understanding of what it means for a firm to behave efficiently and to create wealth remains the best way to theorize accounting practice? The economic historian Brad DeLong thinks not, pronouncing the "intellectual collapse" of the Chicago School and with it, our understanding of the relationship between economic activity and human thriving.

As Battilana (2018) and others have commented, this intellectual collapse leaves a lacuna that has yet to be filled with credible alternatives. This paper explores the role of the emerging BHR field as one potentially fruitful resource for beginning to build alternative theories and practice. While the accounting literature has begun to consider the implications of extending human rights responsibilities to companies (see for example McPhail & Ferguson, 2016; McPhail & McKernan, 2011), we have yet to fully explore the extent to which conceptualizing the social responsibility of business in terms of protecting and promoting human rights, as well as providing remedy when they are violated, has the potential to open up new perspectives on accounting theory and practice (see Schrempf-Stirling, et al. 2022) for a similar observation concerning business ethics). Drawing on the theme of this special issue, this paper studies the extent to which BHR presents an opportunity to push our theorizing beyond its current confines and extend our understanding of the potential role that accounting could play in contributing toward a better and more sustainable world.

Now is an opportune time to do so. In October 2021 the GRI revised its "Universal Standards" to require greater transparency concerning companies' human rights impacts, a change aimed at aligning the GRI's human rights-related disclosures with the UNGPs. While in February 2022, the European Commission published its draft directive on human rights and environmental due diligence. The Draft Directive explicitly requires directors to consider "human rights, climate, and environmental consequences" while acting in the best interest of a company. We are at a very important moment for the development of corporate reporting. As we increasingly focus on understanding the impact of companies on human rights, we need to find new ways to conceptualize the relationship between the environment and human rights and develop a new accounting paradigm. As yet we have no theory of why and how we should measure human rights, that is, we have no systematic way of giving meaning to the measurement of human rights. We need one.

Historically, our attempts to extend the conceptualization of corporate responsibility beyond the rights of shareholders has been dominated by the stakeholder perspective. While the literature has shown this perspective to be helpful, it has also been criticized for its lack both of a normative basis and voluntary adoption. The BHR perspective may go some way towards addressing both these concerns. To date, the accounting literature has yet to fully explore how a business and human rights perspective, relates to, extends, and differs from, stakeholder theory. This paper begins this task.

The remainder of the paper is structured as follows. Section two critically explores the stakeholder conception of corporate social responsibility that has dominated research on Social and Environmental Accounting to date. This section studies the shift from a shareholder perspective to a stakeholder perspective, then further explores what might be involved in transitioning from a stakeholder perspective to a rightsholder perspective. Drawing on this analysis, section three outlines some opportunities for new directions in accounting research.

2. Shareholder, Stakeholder, and Rights Holder Perspectives

This section begins by outlining the three distinct strands of stakeholder literature. The traditional model of the corporation vests control rights in shareholders because they are assumed to bear the greatest amount of business risk. This perspective results in a focus on the structures and incentives required to ensure that managers maximize the value of the shareholders' stake in the organization. However, following Freemans (1984) seminal work on a stakeholder approach to strategic management, the idea that corporations have a broader set of stakeholders in addition to shareholders is now a commonly accepted basis for framing our understanding of the firm and its social responsibilities (Donaldson & Preston, 1995). The stakeholder perspective is now a standard part of accounting theory and practice and it has emerged as one of the primary ways of conceptualizing an organization's ethical responsibility (Clarkson, 1995; Phillips, 1997; Wettstein, 2012) and reconceptualizing capitalism (Freeman *et al*., 2007).

Donaldson & Preston (1995), see Spence et al. (2010), identify three strands of stakeholder theory: descriptive accuracy, normative validity, and instrumental power.

Descriptive accuracy relates to the view that the prevailing principle agent model is empirically inaccurate, and that stakeholder theory better captures the real-world contexts within which corporations operate and the factors that influence the way managers behave (Brenner & Cochran, 1991). As a theory of the firm, stakeholder theory views the corporation as an organizational entity through which diverse participants seek to accomplish different, often opposing purposes.

Normative perspectives on stakeholder theory study the ethical basis of the relationship between corporations and those impacted by their actions. A core dilemma for stakeholder theory has been establishing the criteria by which to judge who is and who is not a legitimate stakeholder of the firm, the nature of their claim, and how stakeholders' interests should be negotiated (Donaldson, 1989). Donaldson & Preston (1995) for example contend that stakeholders are "identified by their interest in the affairs of the corporation" and that, the interests of all stakeholders have intrinsic value." While Donaldson (1999) identifies "concern for others" as being one of the basic ethical assumptions of stakeholder theory.

Yet this language has been criticized for being too imprecise within the context of the firm and unhelpful in distinguishing those individuals and groups with a legitimate stake in the firm from those that do not (Phillips & Reichart, 2000). Establishing who is a stakeholder and the nature of their claim against the firm requires the development of a clear normative basis (Jones & Wicks, 1999). The literature contains several attempts to develop such a grounding, including Kantian capitalism (Evan & Freeman, 1988; Rawlsian Fairness (Phillips, 1997); social contract theory, and utilitarianism (see for example Garriga & Melé, 2004). Thus, while there may be broad recognition that the claims of some stakeholders have intrinsic worth, there is little agreement on the normative basis underpinning these claims.

Finally, the instrumentalist strand of stakeholder research has focused on whether and how stakeholder theory helps a firm achieve its goals. While this task has principally been viewed in terms of increased profitability, others have explored the aggregate basis on which stakeholders' interests are maximized. This literature has explored new forms of measurements, like aggregate social welfare maximization and notions of shared value (Porter & Kramer, 2011; see also Kanbur et al., 2018).

The emergence of stakeholder theory has been an important development. It recognizes that the firm is a vehicle through which different interests are met and also that the financial success of the firm depends on the extent to which a broad range of stakeholder interests are managed. However, it does not provide any conclusive basis for the recognition of these claims. Neither does it provide an actionable way to negotiate between competing claims. Jensen (2002) contends that it is morally wrong for managers to act in any other way than to prioritize the interests of shareholders because stakeholder theory does not offer a credible and practical way of determining between the conflicting interests of different stakeholders. Jensen worries that without such a theory, management decision-making simply becomes a matter of preference and hugely inefficient for the allocation of capital.

This is a very important question, even though 100 years of business history has taught us that our current mode of business decision-making is socially and environmentally inefficient. Yet, to be fair to Jensen, the question is not whether we should ascribe intrinsic worth to all stakeholders or only value the interests of shareholders. The point, of course, is that Jensen assumes that the intrinsic claims of other stakeholders are recognized through other regulatory mechanisms. The company doesn't need to concern itself with adjudicating the claims of multiple stakeholders, not because they are unimportant, but because that's the job of the state. This latter point raises the important issue not only of the moral basis of the stakeholder's claim but also the concomitant moral basis requiring the firm, as opposed for example to the state to adjudicate between claims.

Stakeholder theory, therefore, provides the most widely used perspective for re-theorizing the social responsibility of firms (Spence et al., 2010). Yet while this perspective has obvious links to the emerging business and human rights field, there has been little systematic analysis of how the UNGPs relate to stakeholder theory. The remainder of this section begins to explore how the rightsholder perspective encapsulated in the UNGPs provides the basis for extending the three perspectives outlined above and addressing some of the limitations in stakeholder theory[3]

2.1 Human Rights & Descriptive Validity

If stakeholder theory is advanced on the basis that it better captures the real-world contexts within which corporations operate, then the BHR debate takes this argument a step further in recognizing the gulf between the world of assumptions that underpin conventional theories of finance and democracy and the *real* world.

As with stakeholder theory, there is descriptive validity to the starting point that companies impact many aspects of human rights. Indeed, it was this growing realization that provided the basis for the UNGPs. The lived experience of human rights for many individuals is, to a significant degree, dependent on the actions of multinationals rather than those of the nation-states that provide them with their citizenship. Think for example of the impact of the Rana Plaza disaster and those individuals embedded within garment manufacturing supply chains (Zürn, 2002). According to the Ethical Trade Initiative, an estimated 190 million women work in global supply chains that supply the world's food and clothing[4]. However, while this may be true for nations with perceived weak political governance like Bangladesh, it is also the case for those countries with stronger political institutions. For example, there is growing recognition that social media companies fundamentally impact the experience of an individual's right to privacy (Article 12), while corporate political lobbying undermines the individual's right to take part in the government of their country either directly or through freely chosen representatives (Article 21).

The nature of multinational corporations means they span different regulatory domains and also operate in regulatory gaps. So, while economists maintain that managers of corporations should maximize shareholder value (Jensen, 2002; Sundaram & Inkpen, 2004 a, b) and leave the state to take responsibility for social and environmental externalities (see e.g. Friedman, 1962), the reality is that we can no longer assume a functioning nation-state. The distinction between the private domain of the corporation and the public domain of the state no longer applies. Multinational companies are now political actors (Scherer et al., 2009), a development that has been recognized in the shift toward "political CSR" (Scherer, et al., 2016; Scherer & Palazzo, 2011).

Yet stakeholder theory doesn't critique the political philosophy of the firm as such, it doesn't challenge the idea that the firm is a private institution (Wettstein, 2012). Thus, while companies and their social responsibilities have been located in the private domain, human rights, by contrast, have traditionally been perceived as tools to curtail and limit political power (Wettstein, 2012). The Business and human rights debate fundamentally challenges this assumed separation of public and private power.

2.2 Normative Basis

One of the most pertinent connections between BHR and stakeholder theory is the formers perceived lack of a normative basis. Stakeholders and their stakes have been broadly construed in terms of "anything influencing or influenced by the firm." By contrast, BHR grounds the answer to this question in those rights recognized in international law. While stakes may not have any legal recognition, rights do.

Human rights identify those interests that 'trump' all other considerations (Dworkin, 1978). The universal and inalienable nature of rights is challenging because it means that rights cannot be offset. It is not possible, for example, to contravene rights through a business model but make up for it by promoting other rights through corporate philanthropy and voluntary work.

They also provide specificity to what these interests might be, for example, the right not to be held in slavery or servitude; the right not to be discriminated against; the right to just and favorable conditions of work and to protection against unemployment; the right to a standard of living adequate for the individuals' health and well-being and that of their family, including food, clothing, housing, and medical care and necessary social services; the right to just and favorable remuneration ensuring an existence worthy of human dignity. These are universally applicable, clearly defined rights that are grounded in international law rather than the perspectives of either the company (which may for example be inclined to limit the scope of stakeholders), or the community (who may not know what rights they are entitled to). As such, a BHR perspective also potentially changes the power relationships between rightsholders and corresponding duty bearers.

However, we have yet to think about how universally applicable rights connect to our models of corporate accountability and allocative efficiency. Much of the stakeholder literature distinguishes between market stakeholders like customers, employees, and investors, versus non-market stakeholders like governments, local communities and more recently, the natural environment (Starik, 1995). Yet this is a false distinction. In order for the market to allocate efficiently, all rights need to be recognized.

2.3 Instrumental Views

If the descriptive stream of stakeholder research suggests companies take stakeholders into consideration when making management decisions, the instrumental strand of literature explores the reasons why they do so. The focus here is on the extent to which positively engaging with stakeholders enables the firm to achieve its objectives. However, these ends have predominately been framed in terms of profitability (Mitchell et al., 1997) through the lens of Enlightened Shareholder Value (ESV) (Mayer, 2021; Mayer et al., 2021). The purpose of the corporation is not explicitly called into question[5].

If historically we have construed the value of the firm in terms of the sum of the values of all financial claims on the firm, where does social value enter into this equation? If the traditional instrumentalist perspective involves the "maximization of corporate value," the question implicit within BHR is how we measure the value contribution of a company to both the economy and valuable human ends in the broadest of senses. The question emerging here is what we mean by social value and whether we can legitimately hold companies accountable for its accumulation.

Yet there is a further question that relates to the process by which multiple interests are negotiated, as distinct from a measure of the outcome of this process. If the purpose of the corporation is to satisfy multiple interests, then how do we conceptualize this function in terms of the realization of rights? How do you negotiate competing claims, each of which is assumed to trump all other claims? Further work is required on the potential for the UNGPs to expand our thinking about the firm as a sight for the negotiation of rights, in a way that might respond to Jensen's objection that current versions of stakeholder perspectives, "have no theory which explains how the conflicting objectives of the individual participants are brought into equilibrium so as to yield this result."

3. Revitalized Questions for Accounting Research

These fundamentally challenging questions about the empirical reality of our socio-economic system, the normative basis against which corporate activity should be judged, and how we conceptualize the function of the firm and assess its performance, require nothing less than a rethink of the theoretical basis of the Chicago school and the development of credible alternatives. While Mayer et al.'s (2021) conclusion that "stakeholderism has proven to be a dead-end street" in helping us get to these alternatives seems harsh, it is clear that we need to stimulate some fresh ideas. The question is, whether BHR can provide a bridge into a rich vein of scholarship and new conceptual resources to help with the task at hand.

Drawing on the discussion above, this third section begins to sketch out two new(ish) directions for accounting research: first concerning the relationship between corporate accountability and democracy and second in relation to the theorization of accounting measurement. The first relates to the theory of the firm, the second to the theory of value.

3.1 Accountability and Democracy

The UNGPs are based on the increasingly blurred distinction between the private and public spheres. The BHR debate implicitly calls into question the effectiveness of the state in determining responsibilities and promoting rights to ensure that social, political, and economic needs are met. While the relationship between accounting and the proper functioning of democracy has been explored within the social and environmental accounting literature (see Gray et al., 1987; Lehman, 2001), the BHR field may provide a basis to further expand these debates and reconceptualize our theory of the firm and its purpose in contra-distinction to the purpose of the state. In concluding their analysis of the political role of the corporation, Scherer et al. (2009: 339) concluded that we need no less than a "new understanding of politics" to determine the "new political role of business in global governance." I agree.

Within the business and society literature, the breakdown in this distinction has been explored primarily in terms of the emergence of Multi-Stakeholder Initiatives (MSIs). The political CSR literature frames these initiatives as models of global governance that take the idea of democratic legitimacy beyond the nation-state (Scherer & Palazzo, 2007). The recent scholarship on this issue has been motivated by the promise of new forms of "industrial democracy" (Zajak, 2017). Indeed, Donaghey and Reinecke (2018), see also Lee et al. (2020), present the Accord MSI, which emerged in response to the Rana Plaza disaster, as one such example (although Alamgir & Banerjee, 2019 and Fougère & Solitander, 2020 provide critiques).

This focus resonates with two main strands of work within the accounting literature that explore the function of accounting first in dialogic and deliberative forms of social governance (Bebbington et al., 2007; Power & Laughlin, 1996) and second in agonistic forms of social governance (Brown, 2009, 2017; Dillard & Vinnari, 2017). While this body of work has led to important new insights for the "democratizing potential" of counter and shadow accounting by social movements, the BHR field may provide scope for further extending these theoretical insights. On the one hand, Macdonald and Macdonald (2020) for example draw on the global governance of business and human rights to develop a new articulation of the normative grounds for legitimacy within a pluralist global order in a post-state context. But BHR may also provide the basis for a more practical analysis of what democratic corporate forms of accounting might look like (Gould, 2004). Similarly, the requirement that corporations provide remedy where rights have been violated, (the third pillar of the UNGPs), raises questions about our conceptualization of the state as the context within which justice is administered.

Is it possible to transfer notions of political accountability and the administration of justice to the corporation? Can we combine corporate accountability over the exercise of public power with financial accountability? And how can the firm be viewed as a vehicle for the negotiation of competing interests in contradistinction to the state? The answers to these questions become even more important as the IFRC embarks on a process of establishing new international sustainability standards (McPhail et al., 2016).

3.2 Accounting Theory & Measurement

The discussion of business and human rights has tended to focus on protecting rights and "doing no harm". This focus on human rights as a constraint to behavior is primarily associated with human rights risk and due diligence (Wettstein, 2012). Yet while the requirement to do no harm is paramount, it limits our conceptions of what firms and the economy more broadly could be responsible for in terms, not only of protecting rights but also realizing them. The UN project on the Sustainable Development Goals after all calls on businesses to, amongst other things, help bring about an end to hunger, promote healthy lives, and wellbeing and ensure clean water and sanitation for all. There is scope to further explore how a BHR perspective could inform new theories of economic value.

There would seem to be obvious overlaps between this question and questions currently being explored by at least some of the professional accounting bodies. For example, the ICAEW's (Institute of Chartered Accountants for England & Wales) thought leadership project, "So what is economic success? Going beyond GDP and profit"[6],[7] critically explores two measures that dominate current discussions of corporate and economic success: GDP at the national level and profit at the organizational level. Profit and GDP are viewed as proxy measures for human development and, in part at least, the extent to which human rights are realized. The BHR field provides scope for further discussion of the theory of value that lies at the heart of accounting practice and encourages further reflection on the relationship between notions of value, inclusive growth (George et al., 2012), and the operation of the economic system as a whole (see Mayer et al., 2021; Quélin et al., 2017).

The broader management literature does explore several different perspectives that attempt to re-conceptualize value, for example Social Value (Hall et al., 2015; Kroeger & Weber, 2014); Shared Value[8] (Porter & Kramer, 2019; see also Crane et al. 2014) and Blended Value (Emerson, 2003; Nicholls, 2009). However, they do not explicitly engage with BHR or the broader kinds of literature on measuring human rights that might be helpful in further exploring the relationship between the generation of private value and social or public value (see, for example, the Human Development Index or Amartya Sen's work on capabilities). Relatedly, further critical analysis is also required of the emerging ways of accounting for the SDGs, the various frameworks that are emerging, and the political tussle for ascendency between them. All of which might seed new ideas for alternative theories of value on which accounting transactions could be based[9] (see for example Mayer et al., 2021). We need future research agendas that explore the role of the firm in the creation and distribution of social value; whether conceptualizing this process in terms of the realization of rights is helpful; and how we account for this process of value creation. As Mayer et al. (2021) note, none of our established theories or forms of accounting "have effectively delivered responsible business that meets the challenges of system stewardship."

4. Conclusion

A new framework based on the universal nature of human rights is emerging as a way of clarifying the responsibilities of corporations to society and providing a clear normative benchmark against which to assess the performance of the economy more generally. This emerging field of Business and Human Rights presents accounting scholars with an opportunity to push our theorizing in new directions and extend our understanding of the potentially enabling role that accounting could play in contributing toward a better and more sustainable world.

Endnotes

[1] While this paper starts with the assumption that human rights are a valuable and important legal construct, it is important to recognise that there is a broad debate within the human rights, philosophy and sociology literature that critiques that view that rights are naturally occurring. See for example Costas Douzinas' (2000) book, The end of human rights: Critical thought at the turn of the century.

[2] The UNGP's outline three pillars: The State duty to protect human rights; Corporate responsibility to respect human rights; and access to remedy for victims of business-related abuses.

[3] Santoro (2010) provides an attempt to connect stakeholder and rights together.

[4] See https://www.ethicaltrade.org/issues/gender-equality-global-supply-chains

[5] Little of the debate on the future of the corporation and the economics of purpose has engaged with the business and human rights field.

[6] https://www.icaew.com/technical/sustainability/what-is-economic-success-going-beyond-gdp-and-profit

[7] A growing number of projects are grappling with this need to rethink the theoretical basis of accounting, for example, The British Academy's work on rethinking the purpose of the corporation, the Cambridge Institute for Sustainable Leadership's, "Rewiring the Economy" project; and Harvard Business School's Impact Weighted Accounts project. Yet while they all grapple with these questions to varying degrees, it is surprising how little these initiatives engage with the UNGP's or the BHR field.

[8] See Adams, Frost, and Webber (2013) for a review of the literature on triple bottom line reporting.

[9] This task is more advanced in relation to environmental issues. Douai (2009); see also Faber, Costanza & Wilson (2002); Martinez-Alier (1987) for example talks about the need for further reflection on value theory in relation to ecological economics. Yet while there is considerable examination of ecological economics and discussion of its relevance for accounting, the same kind of investigation into rights-based notions of economic value is not nearly as developed.

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