

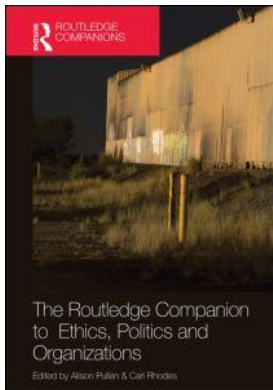
This article was downloaded by: 10.2.97.136

On: 20 Mar 2023

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



The Routledge Companion to Ethics, Politics and Organizations

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Accounting, ethics and organization

Publication details

<https://test.routledgehandbooks.com/doi/10.4324/9780203566848.ch12>

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Published online on: 28 May 2015

How to cite :- Ken McPhail. 28 May 2015, *Accounting, ethics and organization from: The Routledge Companion to Ethics, Politics and Organizations* Routledge

Accessed on: 20 Mar 2023

<https://test.routledgehandbooks.com/doi/10.4324/9780203566848.ch12>

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Part 3

Ethics, politics and the functioning of business

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Accounting, ethics and organization

Accounting for human rights in a post-sovereign world?

Ken McPhail

A fundamental shift has occurred. The United Nations once dealt with governments. By now we know that peace and prosperity cannot be achieved without active partnerships involving governments, international organizations, the business community and civil society. In today's world we depend on each other. The business of the United Nations involves the business of the world.

(UN General Secretary Kofi Annan, World Economic Forum, 1998, quoted in Nolan, 2005: 445)

Accountability and right to a remedy are at the core of the international human rights regime and also need to be at the core of deliberations about the Guiding Principles on Business and Human Rights.

(Navi Pillay, UN High Commissioner for Human Rights, Opening remarks at the UN Forum on Business and Human Rights, December 2013)

Not so long ago the relationship between accounting, ethics and organization would probably have been construed primarily in terms of how to get accountants to comply with the codes of ethics of their professional organizations (Jakubowski et al., 2002; Abdulmohammadi and Baker, 2006; Cohen et al., 1992). Either that, or it would have been construed as the challenge to understand how organizational work contexts impact on the moral behaviour of accountants (Ponemon, 1990, 1992) and whether organizational position and culture affect the way accountants experience and respond to ethical dilemmas. Both of these perspectives on the moral implications of how accounting practice is or should be organized are important (Backof and Martin, 1991). The fact that accounting activity is organized as a professional practice is important and raises some significant questions about how we think about accounting, and whether indeed it is helpful to continue to represent accounting as an organization of professional expertise (Hauptman and Hill, 1991; Downie, 1990; Sikka et al., 1989; Willmott and Sikka, 1997; Parker, 1994; Loft et al., 2006; Hoarau, 1995). Attempts both by professional bodies and

private firms to raise the ethical awareness and moral capacity of their members and employees are vital. Understanding the impact of commercial organizational culture on professional accounting practice is also important (Sims and Brinkman, 2003; Schlachter, 1990). The financial crisis has highlighted again the importance of individual morality both for the long-term viability of organizations and the feasibility of political ideologies like the market economy, regardless of protestations to the contrary.

However, notwithstanding the importance of these perspectives, it is contended in this chapter that much more analysis is required at the geopolitical level of the relationship between the organization of the global political landscape, accounting and ethics. This is primarily because the geopolitical economy is changing quite dramatically. The “system of states” that has provided both the backdrop and the taken-for-granted assumptions for modern-day accounting practice no longer holds. The structures that we thought accounting was embedded within are changing and this change increasingly means that accounting theory is out of sync with the new cosmopolitan, post-sovereign realities of the twenty-first century.

This chapter therefore explores financial accounting and accountability at the level of the global political economy. In terms of ethics, we explore the emerging role of accounting as a mechanism for enabling corporations to realize their human rights obligations. Contemporary financial accounting has always been about human rights, specifically the realization of the right to property (Chang, 2002). However, contemporary global governance discourses seek to expand the range of rights for which corporations should be responsible. They seek to replace the discourse of stakeholders with a discourse of rights holders firmly grounded in an international consensus on human rights. Underpinning the stakeholder orientation is a rather loose notion of entitlement related to stakes. However, infusing the practice of accounting with a human rights framework brings about quite a significant reconfiguration in the parameters for thinking through the function of accountancy in society. This is primarily because human rights have historically been associated with a set of institutions and ideas that has been associated with the function, practice and legitimacy of nation-states. It is here that I bring in the last element of the focus of this book: organization. In this chapter, organization is viewed at the level of global political economy. The focus is on the changing organization and configuration of the global political landscape. The ideology of human rights has historically been premised on “the system of states”, with the legitimacy and autonomy of the state closely related to the state’s ability to realize the rights of its citizens. The corollary of this argument is that the rights of individuals have been connected to their nationality and identity as a citizen within a particular national context. Under “globalization” all of this is changing (della Porta, 2013).

We are now at a pivotal time in the evolution of the discourse of rights, the corporation, the state and, I would argue, accounting. First, the language of human rights is becoming ubiquitous. It is emerging as the common global language for articulating moral responsibilities across cultures and continents. The Business Leaders Initiative on Human Rights (2004: 11) comment, for example,

increased numbers of businesses [are] willing to talk seriously about their human rights responsibilities, *perhaps recognizing that human rights is the most legitimate and universal framework for determining the social dimensions of business responsibility* and issues of corporate governance.

The unit of analysis for human rights theory is also shifting from the nation-state to the individual. In other words the rights of individuals are being taken outside of the context of national citizenship. This has been characterized as a shift from national citizenship to global citizenship. Second, the capacity of states to realize rights is being questioned. The contention

that states are ineffective in realizing rights is linked to a growing awareness of the complex, interconnected and transnational nature both of the causes of human rights violations and how progress towards their realization might be achieved. Third, and partially in response to this observation, attention is turning to the role of corporations as a new unit of analysis in the theorization and realization of rights. Corporations are now bigger than many states (Sikka, 2011) and in most states they are now intricately involved in the delivery of public services.

Partially in recognition of all three shifts, the United Nations endorsed a set of guiding principles on business and human rights in 2011 (the Guiding Principles here on). This chapter explores these principles within the context of the geopolitical changes outlined above. The requirements of the Guiding Principles serve to translate the organizational changes at the geopolitical level into the organization of the corporation. Specifically the Guiding Principles can be viewed *as an attempt to translate the organization of democracy into the commercial context of corporations*.

Established, but outmoded, thinking tends to view the ethical function of accounting and accountants within a broader context where the state is seen to exercise a regulatory function on corporations. Within this standard economic model of the corporation, the ethical function of accounting fits into a system of governance where the state ostensibly exercises regulatory influence over corporate entities. Of course corporations exercise power, lobby states, corrupt public officials and influence national governments, but the changes sketched out above represent the emergence of quite a different set of relationships. This shift in global governance construes the corporation as having a legitimate role in the regulation of nation-states and the realization of the substantive lived experience of citizenship that have historically been used to justify the legitimacy of the nation-state. Within the emerging discourse on global governance, corporations are cast in a role where they deliver more than profits, or indeed the subsidiary benefits that are assumed to flow from economic growth. Rather this evolving discourse envisions a role for corporations in realizing the right to health, the right to energy, the right to environment and so on, and also a role in regulating nation-states in order to achieve those ends. This chapter asks whether these changes coalesce to represent a significant moment in the evolution of accounting, ethics and organization.

The remainder of the chapter is structured as follows. The first section briefly introduces the notion of rights as an ethical concept along with different ways of thinking about rights. The second section outlines the development of the United Nations Guiding Principles on Business and Human Rights. This section explores the broader context within which these principles were developed and specifically draws on notions of cosmopolitanism to explore the challenge that they implicitly represent to our established notions of sovereignty and the function of corporations in society. The final section explores the challenges that these developments represent for thinking about the possibilities for accounting within this new form of global governance.

Human rights, states and corporations

This section provides an outline of the notion of rights, along with the traditional way they have been institutionalized through nation-states.

Rights

The discourse of human rights is emerging as the generally accepted way in which human beings talk about how they should be treated (Howen, 2005). This trend may of course reflect the

ubiquity of the economic power underlying western notions of ethics and dignity, as opposed to the veracity of human rights as a notion. The meaning of human rights and the function of the emerging human rights discourse are therefore complex, contested and ideological (Douzinas, 2000, 2007; Cooper et al., 2011; Dembour, 2006; see also Gallhofer et al., 2011). The literature outlines a number of different theoretical perspectives that could be used to frame an analysis of corporate responsibility for human rights (Dembour, 2006) and this section briefly outlines the approach adopted within this chapter.

This chapter draws on a discursive approach to human rights. The discursive school draws on poststructuralist theory to argue that rights are discursively constituted, although this view is not necessarily dismissive of the potentially positive role that a notion of rights could play in addressing social justice issues (Dembour, 2006). Drawing on a poststructuralist perspective construes the Guiding Principles as both reflective of, and an attempt to effect, a shift in the contemporary *order of discourse* (Fairclough, 1992). Drawing on this perspective allows us to explore how the meaning of human rights is shifting and also how these shifts are constitutive of changing social relationships between corporations, states and citizens. Starting from a poststructural view of human rights enables us to place the business and human rights discourse in emergence (Fairclough, 2005). Fairclough (2005: 932) explains the processes of emergence of new discourses in terms of their “constitution as new articulations of elements of existing discourses”. We therefore view the relationship between the new corporate responsibility for human rights and the emergent practices that constitute them as *social practice*, that is, they are reflective of changes in social organization (Gallhofer et al., 2001).

The meaning of rights and their associated institutionalization are therefore viewed as being in the process of emerging (Fairclough, 2001). The sections that follow outline the characteristics of the traditional view of rights and then explore how this view is changing. Rights and the social relationships that they represent are not viewed as natural or fixed but discursively evolving. It is contended that the potential of the rights discourse to effect positive change in the lives of the most disenfranchised people on the planet is contingent on the form into which corporate responsibility to respect rights can be moulded.

The established framework

Amnesty International (2005: 9) define human rights as follows: “those basic standards without which people cannot live in dignity”. Most people in the West would associate the delineation of those “basic standards” with the United Nation’s 1948 Universal Declaration on Human Rights. The Universal Declaration contains different categories of rights.¹ The category of Economic, Social and Cultural rights, for example, includes the right to education, the right to housing, the right to health and the right to an adequate standard of living. By contrast the category of Civil and Political rights includes the right to participate in the civil and political life of the state. Specifically they cover the protection of individual freedoms from infringement by government and private actors.

In 1966 the rights contained in the Universal Declaration were codified into international law in two treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), collectively known as the ‘the International Bill of Rights’.

The Universal Declaration on Human Rights presents the rights it delineates as applying to all of humanity. However, while it calls on “every individual and every organ of society” to play a role in realizing the rights it contains, the International Bill of Rights specifically requires nation-states, not companies, to ratify conventions, protocols and other human rights instruments.

It is therefore nation-states, not corporations, that have historically been responsible for implementing and realizing the rights contained in the Universal Declaration. Under this framework, it is governments that are accountable for compliance with international human rights treaties.

State responsibilities extend towards ensuring that individual rights are not infringed (a negative responsibility). This responsibility involves ensuring that third parties, including corporations, do not violate the rights of their citizens. However, governments also have a positive responsibility to fulfil or realize these rights. Included within this expectation is the obligation to provide individuals with the opportunity to realize their rights where they are unable to do so themselves (Amnesty International, 2005). In order to fulfil these obligations under international law, governments are required to put in place mechanisms for redress where individuals feel that their human rights have been violated.

This framework rests on two important political assumptions. First, the human rights articulated in the Universal Declaration are assumed to represent the normal, substantive conditions that citizens should experience as the outcome of a well-ordered political system. In della Porta's (2013) terms, the substantive conditions of a well-ordered political system are expressed in terms of human rights. In other words, the list of rights contained within the Universal Declaration: the right to life, liberty and security of person; the right to education and a standard of living adequate for health and well-being, as well as the right to participate in government of one's country should be the lived experience of democracy. The flip side of this assumption is that political organization, in this case the nation-state, is legitimized by the extent to which it delivers these "conditions of life". The second big assumption is that the state is qualified to exercise public power in the pursuit of these ends due to its democratic credentials. There is therefore a symbiosis between what the state is responsible for and its constitution as the state (della Porta, 2013). As MacDonald and MacDonald (2010: 19) comment,

The primary task undertaken by the liberal-democratic project throughout its modern history has been that of legitimately constituting and controlling the public powers wielded by sovereign states. As such, the principal institutions of modern representative democratic systems – constitutional structures and electoral processes – have consistently been developed with state power as the target for democratic control.

To summarize, the established international human rights framework has five key characteristics. First, the list of rights contained within the Universal Declaration represent what life should be like within nation-states. Second, it is assumed that rights are the responsibility of nation-states. Third, the framework confers upon states the responsibility to protect against human rights abuses, including those perpetrated by corporations and to promote the conditions under which human beings can realize their rights. Fourth, states have a responsibility to provide access to remediation for those whose rights have been violated. And, finally, the state has the authority to exercise public power in the pursuit of the realization of rights and the remediation of violations of rights via its democratic credentials.

The emerging framework

The framework outlined above is increasingly seen to be unreflective of the realities of the current global political order. One of the most significant attempts to revise this framework and bring it in line with the political realities of the twenty-first century is the United Nations Guiding Principles on Business and Human Rights, which were endorsed by the UN in June 2011.

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This section outlines the development and content of the Guiding Principles before describing how they challenge and change the framework outlined above. The Guiding Principles begin to disrupt the established view that the state should bear sole responsibility for the protection and promotion of human rights (Muchlinski, 2001).

The evolution of the Guiding Principles can be traced back to the late 1990s. In a speech to the World Economic Forum in 1998, then UN General Secretary Kofi Annan stated (quoted in Zammit, 2003),

A fundamental shift has occurred. The United Nations once dealt with governments. By now we know that peace and prosperity cannot be achieved without active partnerships involving governments, international organizations, the business community and civil society. In today's world we depend on each other. The business of the United Nations involves the business of the world.

Annan's comments signal a policy reorientation that led to the launch of the Global Compact at the subsequent meeting of the World Economic Forum in 1999 at Davos (Nolan, 2010). In 2003 the UN developed the United Nations Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the Norms), in an attempt to push corporate responsibility beyond the voluntary expectations of the Global Compact. The Norms, which sought to introduce more obligatory standards for corporations, were not well received and the UN was left at an impasse (Nolan, 2010). Ruggie (2011) points out that they triggered a "deeply divisive debate between the business community and human rights advocacy groups".

It is against this background that the UN appointed Professor John Ruggie of Harvard as a Special Representative of the UN Secretary-General on Business and Human Rights in 2005. Ruggie's task was split into three phases. Initially he was to address the "lack of shared knowledge", on human rights within business contexts.² Ruggie concluded his initial review with the observation that,

there were many initiatives, public and private, which touched on business and human rights. But none had reached sufficient scale to truly move markets; they existed as separate fragments that did not add up to a coherent or complementary system. One major reason has been the lack of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge.

(Ruggie, 2011: 7)

The objective of the second phase was therefore to develop this "authoritative focal point". The Protect, Respect, Remedy framework that Ruggie subsequently developed highlighted three core principles. The first principle emphasizes the states' duty to protect against human rights violations. As we indicated above, this core principle lies at the heart of the established international human rights regime. However, the second core principle stipulates that corporations have a responsibility to respect human rights independently of the responsibilities of states. The third pillar of the framework highlights the need for victims of human rights violations to have access to remedy for those violations. The Guiding Principles challenge the established framework by arguing that human rights violations should be remedied via both judicial and non-judicial mechanisms. In the concluding phase of the project Ruggie developed a range of practical guidelines for implementing the Protect, Respect, Remedy framework.

The endorsement of the Guiding Principles is widely regarded as almost revolutionary within the context of the traditional human rights framework (Taylor, 2011). The question is whether

it is equally, or potentially, revolutionary for the way we think about the function of corporate accountability. The hyperbole relates to three issues in particular. First, the way the Guiding Principles construe human rights as primarily grounded in the individual rather than the state. Second, the claim that corporations have a responsibility to respect rights that is independent of the responsibilities of the nation-state. And, finally, the way the Guiding Principles place a responsibility for remediating human rights with both states *and* corporations. Each of these issues is explored in more detail below.

The focus on the individual

The traditional view of human rights has developed on the assumption that the state is the most effective unit within which to construe the realization of rights. The community that the state represents has been construed as the most effective context for developing the conditions for humans to flourish. Within traditional human rights theory, rights are therefore related to citizenship. Citizenship has provided an important construct for thinking through how rights are recognized and realized. The Guiding Principles, however, challenge the territorial nature in which rights have historically been viewed and reflect a growing tendency to conceive of a de-territorialized view of citizenship. Cohen (2005: 166) explains the impact of this position as follows: “In short the dignity and integrity of the individual and her right to protection – the core principle of human rights law – is and should replace sovereignty as constitutive of global relations.” Held similarly comments,

This conception relies on the availability and clarity of the principles of democracy and human rights. These principles create a framework for all persons to enjoy, in principle, equal freedom . . . *the meaning of citizenship shifts from membership in a community which bestows, for those who qualify, particular rights and duties to an alternative principle of world order in which all persons have equivalent rights and duties.*

(Held, 2008: 262; emphasis added)

Part of this shift is motivated by an increasing awareness that the lived experience of rights depends less on membership of a state and more on what Held (2005) calls, “overlapping communities of fate”. This represents a shift from state citizenship to global citizenship.

However, with this shift comes the requirement to extend the qualitative characteristics of democracy. Held explains,

It posits the idea of a political order in which people can enjoy an equality of status with respect to the fundamental processes and institutions which govern their life expectancy and life chances. As a result, the opportunities of citizenship would be extended to cover all political communities in which people have a critical stake.

(Held, 2005: 262)

This shift challenges the perception of the modern state as a frontiers community with rigid criteria for membership, which has been the main political subject in international relations. The shift in focus from the state to the individual is representative of the broader shift at the global level in recognition of the need for new ways of thinking about managing public affairs.

This new cosmopolitan approach to human rights is reflective of the individualization of international law (Cohen, 2005) and the growing tendency to predicate global governance on consensus around global norms, rather than state consent. Human rights provides one such moral norm (della Porta, 2013).

The dual responsibility of nation-states and corporations

Second, the Guiding Principles contend that corporations have a responsibility to respect rights that is independent of the responsibilities of states. There are two important points here, one relating to form and the other relating to justification. In terms of form, the Guiding Principles are based on a polycentric regulatory model (Black, 2008). They imply that rights are best pursued through a network of agents in conjunction with the nation-state. In terms of justification, Ruggie's primary argument is based on what he calls Principled Pragmatism. Part of the reason why the UN focuses on the responsibilities of business is related to a perceived problem of corporations acting across national borders, often within countries with weak human rights regimes. The concern was that companies were taking advantage of those weak regimes while the countries where the corporations were domiciled turned a blind eye. There was a perceived unwillingness by home states to apply standards that would apply locally to areas that they perceived to be outside their jurisdiction.

The Guiding Principles address both these issues. They stress that governments have a responsibility for the actions of their corporations abroad. And, second, they also argue that corporations have a responsibility, regardless of the actions of their home states. As such the Guiding Principles attempt to transform a problem into an opportunity by arguing that it is precisely because corporations operate across national boundaries and within countries with weak human rights regimes that they should be tasked with respecting and promoting rights within those regimes.

The argument here is that because corporations can positively affect the realization of rights, they should do so. The quite radical implication of this pragmatic approach is the assumption that corporations may provide the only prospect for some individuals of their human rights being respected and realized! Abbott et al. (2000), sum up the challenge when they comment that we need to drop the notion that law is enforced by a sovereign.

The Guiding Principles therefore challenge the common representation of the international political community as a system of states. This perception has been replaced with a network view of the international community. We have tended to think of this network as involving states, non-governmental organizations (NGOs) and intergovernmental organizations (IGOs), for example, but the Guiding Principles seem to envisage a regulatory role for corporations within this network, as opposed to simply being subject to regulation. If this is the case then it represents quite a radical shift because it means that corporations are no longer simply subject to the mechanisms of government; on the contrary, they become part of the mechanisms of global government. But this role creates problems for the way we are to construe the actions of corporations. Backer (2011b: 74) explains,

Within the context of governance, the concept of a state duty to protect human rights is entirely understandable. The relationship between state, corporation and law is both conventional and well defined. States are believed to be the legitimate source of binding rules, which when enacted can impose corporate obligations that can produce considerable consequences. Just as important, those legal obligations were bounded both by rule of law limits and commonly embraced notions of legal effects mediated solely through the domestic legal orders of host or home states . . . On the other hand, the second pillar corporate responsibility to respect appears to source the connection between entity and duty outside of the state and its domestic legal order. The responsibility to respect arises from what was previously considered an imprecise set of social obligations to which a number of norms would be appended after being derived from legal instruments not yet directly applied to corporations, in addition to other instruments with no precise legal effect. These

will form the heart of a governance regime based on social order that will exist simultaneously with traditional law based governance orders derived from states' political authority.

Access to remedy

The final reason why the Guiding Principles are considered to be revolutionary is because they place responsibility for remediating human rights with both states and corporations. According to Backer (2011a: 182), “the remedial obligations of states and corporations present the most potentially dynamic element of the GP framework”. Ruggie (2011: 22) describes the violation of rights in the following terms: “injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or *general notions of fairness of aggrieved communities*”. Based on this definition, the requirements of the Guiding Principles are revolutionary because they ascribe to corporations a role in adjudicating fairness and dispensing justice within communities, functions that we would normally associate with national judicial systems.

Cohen (2005) points out that once the community of states is replaced with a notion of overlapping communities of fate, regulatory analysis turns from states to the components of states and how these components translate into the new global context. The Guiding Principles “access to remedy” principle seems to represent an attempt to translate a component of the state into the corporate context. Dryzek (2010, in della Porta, 2013: 105), points out that,

political theory in general has long proceeded on the assumption that the main locus of political authority demanding attention is the sovereign state. Democratic theorists have generally concurred, in addition that the state must be accompanied by a well-defined demos, the people in whose name rule is exercised . . . Yet this image captures only a subset of politics in today’s world.

Dryzek (2010) therefore points out that public power is exercised in the name of the demos. If, or when, corporations exercise power and influence in relation to human rights, the question is, in whose name is this power exercised? It would, quite obviously, be wrong to assume that this power is exercised in the name solely of the shareholder. It is clear that corporations are exercising power that used to be the preserve of the state. When corporations act to respect human rights they are acting in the name of global humanity! They are construed as agents of global humanity! But this is surely hugely problematic, not least because, in Dryzek’s terms, there is no accompanying democratic accountability. The characteristics and mechanics of democracy are entirely missing; the mechanisms that need to function in order for liberal democracy to be legitimate. Of course we need to be careful of overstating the case for the demise of the state as the singularly important analysis in international politics. The truth of the matter is that the state has not been replaced, but rather supplemented (Cohen, 2005). However, this does not diminish the challenges that the shifting international context presents for understanding how corporate accountability might evolve.

Human rights accounting in a post-sovereign world

This section of the chapter begins to tentatively explore what these changes mean for accounting. There are two related ways in which the shifts outlined above are relevant for accounting. First they are significant at the level of accounting practice. Second, there are implications for the way we think about the function of accounting theoretically.

Human rights and the practice of accounting

It is clear from even a cursory reading of the Guiding Principles that accounting is seen to play an important role in putting business responsibility for human rights into practice. The implication is that accounting and management systems will play a key role in implementing systems of human rights due diligence and access to remedy.

First, the Guiding Principles envisage that systems of accounting will play a key part in constructing new measurable human rights indicators. Guiding Principle 20, for example, comments on how corporations' responsibility to respect human rights needs to be "based on appropriate qualitative and quantitative indicators". Backer (2011a: 176) remarks,

There is an expectation that data will be harvested from all phases of the human rights due diligence process and all contacts with affected stakeholders. The Commentary urges integration into relevant reporting processes with a cross-reference to the corporation's remediation obligations.

The development of new indicators is part of the process of rendering corporations' human rights performance auditable.

Second, human rights due diligence systems are seen to feed into communication and disclosure practices. The Guiding Principles highlight that human rights due diligence must be directed to four principle functions, each of which has considerable implications for accounting and management systems (Baker, 2011). They are:

- assessing actual and potential human rights impacts;
- integrating and acting upon the findings;
- tracking responses;
- communicating how impacts are addressed.

The obligations of human rights due diligence elaborated in Principle 20 lead to a suite of disclosure and transparency requirements. Guiding Principle 21 requires formal reporting by business enterprises, "whose operations or operating contexts pose risks of severe human rights impacts". However, it also envisages that companies will provide external informal and episodic communication, around issues of stakeholder concern. The stated object of these provisions is to provide "a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors". These requirements are beginning to find their way into regional legislation and regulatory environments. For example, the European Commission is currently developing legislation on human rights disclosure requirements for large corporations. In the USA, the Dodd Frank Act also contains some disclosure requirements for companies in relation to operations in conflict zones. The Guiding Principles also outline implications for contemporary corporate reporting, specifically in relation to materiality. The commentary to Guiding Principle 3, for example, states that, "Financial reporting requirements should clarify that human rights impacts in some instances may be 'material' or 'significant' to the economic performance of the business enterprise" (GP Principle 3 Commentary; Backer, 2011a).

In addition to the requirements outlined in the Guiding Principles, the evidence suggests that human rights is beginning to enter internal performance management accounting systems like the balanced scorecard, supply chain management as well as bank lending decisions, to name just a few examples (McPhail, 2013). The Australian Human Rights Commission has specifically

encouraged the Australian financial sector to incorporate human rights criteria into bank lending decisions (Australian Human Rights Commission, 2009).

The Guiding Principles also contain clear practice implications for accounting in the public sector. The commentary to Guiding Principle 5 stipulates,

As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

(GP Principle 5 Commentary)

The Guiding Principles therefore envisage that the practice of accounting will play an important role in implementing business responsibility for human rights.

Corporate accountability human rights and democracy

Over and above the practice implications, the shift towards a more cosmopolitan political economy (Held, 2008; Held and Koenig-Archibugi, 2005; Archibugi, 2008) significantly challenges the way corporate accountability is currently theorized.

The practical accounting requirements of measuring, recording, reporting and communicating outlined in the Guiding Principles are clearly associated with a discourse of corporate accountability for rights. Guiding Principle 15(b) for example outlines the need for: "a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights". The Guiding Principles' access to remedy requirement also has some significant implications for corporate accountability systems. The Guiding Principles state that, "These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts." The implication here is that accounting for human rights feeds into a corporate system of redress. In this instance, accountability is not only about the demanding and giving of reasons for conduct (Roberts and Scapens, 1985). It is also clearly tied to remediation and justice.

Mashaw (2007) helpfully proposes that six questions be asked in relation to the grammar of governance: Who is accountable? To whom? For what? Through what processes? By what standards? With what potential effects? It is clear that the Guiding Principles challenge our traditional responses to Mashaw's questions. Who is accountable? – corporations and nation-states. For what? – human rights. By what standards? – the global consensus on human rights as outlined in the United Nations Universal Declaration. To whom? – the global political community. Through what process? – due diligence and access to remedy. And with what consequences? – apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines) (Ruggie, 2011).

However, the significance of the Guiding Principles lies not in the answer to any one of these questions, rather it is in the combined and constitutive effect of corporations rendering an accounting for human rights that is significant (Shearer, 2002; Schweiker, 1993; Roberts, 1991). In the remainder of the chapter we begin the process of exploring the challenges of corporate responsibility for human rights for our understanding of corporate accountability.

The function of business therefore takes on a new role in the post-sovereign world where the significance of the system of states as a way of thinking about the international community is challenged and replaced by network perspectives where nation-states and corporations play a supplementary governance role, along with IGOs and other political actors. As such, the Guiding

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Principles reflect changing social relations. However, this reality runs counter to the theoretical perspective of the corporation that informs much of our business education and accounting theory, as Shearer comments,

the discourse of neoclassical economics that informs accounting practice constructs the identity of the accountable entity such that it is obligated to pursue only its own good. Consequently, extant accounting practices are inadequate to meet the demands for accountability that are legitimately entailed by the act of rendering an account.

(Shearer, 2002: 541)

The Guiding Principles see a role for accounting practices in operationalizing corporations' human rights responsibilities, specifically in relation to access to remedy and human rights due diligence. But these practices are related to a significant challenge to the way corporate accountability could be construed more generally. Roberts explains,

Here accounting appears not as a mirror of organizational reality but as a set of practices which helps create and shape organizational reality. . . . if accounting is seen as a set of organizational practices, then one can look to transforming accounting by transforming the way it is used. Such is the concern of this paper in exploring the possibilities of accountability within organizations.

(Roberts, 1991: 355)

While the Guiding Principles envisage the implementation of new human rights accountability practices, the possibility that these practices might reshape organizational reality remains moot. Much more work is required on how due diligence and access to remedy are being translated into organizational practices.

The emerging discourse on global governance is concerned specifically with how the new political organization impacts both our understanding and the practice of democracy. This concern is reflective of a broader shift in the notion of political community and the characteristics of government. A key area for further exploration therefore lies in the extent to which the practice of human rights due diligence or access to remedy could in any way be construed as democratic practices. As outlined above, the emergence of a corporate responsibility for both the promotion and protection of human rights represents the corporation in a way that we have reserved for talking about the nation-state (Muchlinski 2001, 2012). The state's responsibility for rights is based on its legitimate *democratic* authority. The Guiding Principles thus challenge the way we traditionally think about the governance of corporations and their moral agency (Shearer, 2002; Schweiker, 1993).

One of the primary challenges facing global democracy is the constitution of global identities and global institutions (della Porta, 2013). A key concern in relation to the emerging global political economy is the lack of democratic accountability and transparency amongst new global political actors (della Porta, 2013; Held, 2008). One of the concerns in the shift away from the prominence of the sovereign state is the emergence of new sites of political, public power that bear little democratic accountability (Held, 2008). Within the literature, this concern has been primarily articulated in terms of IGOs, institutions and agencies of political authority, such as the European Union, the G7, the World Bank, the World Trade Organization (WTO) (della Porta, 2013) and the International Accounting Standards Board (IASB) (Loft et al., 2006). The challenge in this instance is perceived in terms of a lack of accountability and how to build deliberative and participatory models of democracy into these new sites of political power (della Porta, 2013; Held, 2008: 342).

Yet while much of the debate has focused on how to bring democracy and public accountability into intergovernmental organizations, the emerging regulatory role for corporations within policy frameworks like the Guiding Principles has been largely overlooked within the accounting and organizational literature. Where multinational corporations do enter the discussion, it has been in terms of how to curtail their political influence. Held (2008) for example comments, “At stake are among other things, the curtailment of the power of corporations to constrain and influence the political agenda.” Yet, as outlined above, the Guiding Principles do envisage a role for corporations in influencing the policy agendas of nation-states. They envisage a role for corporations in regulating the behaviour of, or at least *positively* influencing, states with weak human rights regimes or supplementing the state, endeavours to realize rights. The issue is not how to stop corporations from influencing nation-states, but rather their constitution as global regulatory agents. The democratization of the new transnational political economy therefore shifts from trying to limit the influence of actors that are not politically accountable, to incorporating the mechanisms of democracy into corporations.

As outlined in the introduction, the substantive conditions of life that are used to facilitate and legitimize global political governance are increasingly being expressed in human rights terms (della Porta, 2013). The public good for which this mode of organization is accountable is articulated in terms of rights. There is of course an interrelationship between the two that impacts on the nature of accountability, in the sense that it is the requirement that organizations (whether political or corporate) be accountable for human rights that impacts on the political spaces of global accountability and governance.

It is clear from the way the practices of due diligence and access to remedy are described that the accountability mechanisms that the Guiding Principles seek to introduce into the operations of corporations bear traces of a deliberative and participative democratic sensibility. It would seem that the Guiding Principles, at least marginally, hint towards the democratization of corporations (MacDonald and MacDonald, 2010). The Guiding Principles do envisage space for discursive and political participation (Arrington and Puxty, 1991). This process is part of a radical transformation of democracy that is connected to the emergence of new forms of the management of public life. The Guiding Principles are reflective of a broader discourse of assigning political jurisdiction and legitimacy to subjects other than the state (Archibugi, 2008). Ascribing corporations’ responsibility for rights reconstitutes them (della Porta, 2013; Schweiker, 1993). As does the reorganization that takes place in order to meet these new accountabilities (Roberts, 2003).

Yet this reconstitution takes place in relation to a community of others. The practice of accounting for human rights affects our understanding of the community in whose name these actions are justified. Archibugi for example argues.

The basic assumption is that if some global questions are to be handled according to democratic criteria, there must be political representation for citizens in global affairs, independently and autonomously of their political representation in domestic affairs.

(Archibugi, 1998, in della Porta, 2013)

Della Porta (2013) identifies two alternatives for thinking about the justifications for participation. First, an all affected, or stakeholder, model where participation is determined by the extent to which the individual is impacted by activities. This, now common, perspective within corporate responsibility literature is simply expanded to transnational communities. Second, however, della Porta (2013) contends that in polycentric models of global regulation, participation and political inclusion can also be based on the right to input into the characteristics that the community should take, as opposed to those purely affected by the decisions.

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Thus over and above the implications for accounting practice, the emerging cosmopolitan system of global governance challenges the models that we normally bring to our understanding of corporate accountability (Shearer, 2002; Schweiker, 1993; Roberts, 2003, 1991).

Conclusion: new possibilities for accounting or the end of rights?

This chapter has explored the relationship between human rights, the post-sovereign global political landscape and accountability. It has examined the implications of the reorganization of the geopolitical economy for the way we think about corporate and state accountability (Muchlinski, 2012; Held, 2008; Held and Koenig-Archibugi, 2005). The chapter has engaged with the conditions of legitimacy associated with those political spaces.

These developments undoubtedly represent important new sites of power. These developments don't ascribe to corporations new levels of socio-political influence. To some extent they simply recognize the level of power they already exercise. They do, however, seek to harness the power of corporations as a force for good! At one level this seems extraordinarily optimistic. But this ignores the fact that the discourse of business and human rights not only envisions an expanded role for corporations, it also seeks to expand their democratic accountability. The extent to which this happens will depend on the extent to which governments, NGOs, academics and other political actors make it happen.

There is of course the danger that the language of rights becomes so co-opted that in the end it serves the interests of those organizations that are guilty of the most grievous human rights violations (Douzinas, 2007, 2000; Hess and Dunfee, 2007) or the neoliberal ideology that underpins them. The question, to return to the outline of different rights perspectives above, is whether the language of corporate responsibility for rights creates space for protest and deliberation or whether it represents the triumph of neoliberalism and the end of rights. My own view is that it could be either. The press is replete with examples of corporations using the rights discourse for their own interests and the accounting literature contains many examples of how the instrumental practices of accountability work to undermine democracy (Power, 2000). However, what corporate responsibility for rights becomes will depend in part on how we shape the emerging discourse.

The endorsement of the Guiding Principles creates an opportunity to question whether the emergent political economic context creates new possibilities for the way accounting and organization is practised (Roberts, 1991). It raises the question of whether the shifts associated with giving business a responsibility for rights could, at least potentially, represent the possibility of a new style of democratic accountability in which we rediscover accounting as a worthy endeavour (Williams, 2004).

Notes

- 1 The precise nature of even the traditional framework is contested.
- 2 Interestingly Ruggie comments that in 2005, "there was little that counted as shared knowledge across different fields". This assessment is made five years after the establishment of the Global Reporting Initiative, a body that was ostensibly set up to foster learning and capacity building in the area of business responsibility for human rights.

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