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John Gerard Ruggie
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Draft chapter for
Sustainable Investing: A Path to a New Horizon
Edited by
Andreas Rasche, Herman Bril & Georg Kell
(Routledge, forthcoming)

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On August 19, 2019, the U.S. Business Roundtable (BR), comprising the CEOs of more than 200 of America's largest corporations, issued a new mission statement on "the purpose of a corporation" (BR, 2019a). The press release noted that each periodic update on principles of corporate governance since 1997 had endorsed the principle of maximizing shareholder value. In contrast, the new statement commits signatory CEOs "to lead their companies for the benefit of all stakeholders – customers, employees, suppliers, communities and shareholders" (BR, 2019b). "[Milton] Friedman must be turning in his grave," a *Fortune* magazine article declared (Murray, 2019).

Such shifts are not unprecedented. Indeed, Friedman bore significant intellectual responsibility for the last one. William Allen, a highly regarded former Chancellor of the Delaware Court of Chancery, authored an essay some years ago entitled "Our Schizophrenic Conception of the Business Corporation" (Allen, 1992). Allen's thesis was that over the course of the twentieth century there were "two quite different and inconsistent ways to conceptualize the public corporation and legitimate its power. I will call them the property conception and the social entity conception" (Ibid, 264). By the property conception he meant that the corporation is literally seen – in the literature and in the courts – as the property of the individuals who constitute the firm. That made perfect sense, Allen affirmed, when the main players actually were a limited number of natural persons who had come together for the purpose of capital formation.[1] It began to make less sense, he states, as the scale and scope of the modern corporation grew massively, requiring distinctive management skills and risk sharing through widely dispersed stock holdings.

What Allen called the social entity conception of the corporation became the predominant form around the time of the New Deal, a time of socio-economic crisis. Contributors of capital certainly needed to be assured a decent rate of return to induce them to invest in a company. “But the corporation has other purposes of perhaps equal dignity: the satisfaction of consumer wants, the provision of meaningful employment opportunities, and the making of a contribution to the public life of its communities” (Ibid, 271). This conception prevailed well into the post-World War II era. By the 1980s, however, Allen saw the United States reverting to the property conception. Friedman, already in his famous 1970 New *York Times Magazine* article, had equated shareholders with business “owners,” and considered directors as well as executives as the owners’ employees (Friedman, 1970). This binary differentiation subsequently became the basis for part ideology and part academic paradigm in the form of principal-agent theory (Jensen & Meckling, 1976). Allen attributed its broader uptake in the 1980s to innovations in the technology of stock trading, the pressure of growing competition from globalization, and the upsurge of leveraged corporate takeovers. In 1986, a Delaware court held (in *Revlon v. MacAndrews & Forbes*[2]) that once a firm was already on the auction block, its directors had the fiduciary duty to secure the highest share price available. The generalized shareholder primacy doctrine emerged from this mix. By 2001 it was heralded to be nothing less than “The End of History for Corporate Law” (Hausman & Kraakman, 2001). It became a staple in shaping business school training, corporate law teaching, and securities regulation.

So, should we consider the BR’s mission statement as schizophrenia redux? As an attempt to preempt left-of-center politicians? A significant normative departure in the direction of a “stakeholder theory” of the firm (Freeman, 1984)? Unnecessary, because most of those companies already take stakeholder concerns into consideration, and even under Delaware law they have the discretionary power to do so given the “business judgment rule”? Or, as IBM

CEO Ginni Rometty put it, is it a means for business to regain its "social license to operate" in the post financial crisis world? (quoted in Murray, 2019).

Of course, at this point no one can know how or even if the idea of "repurposing" the corporation will shape actual day-to-day business conduct. But it seems safe to conjecture that, whatever the immediate motivations for the BR statement may have been in, the move toward a more social entity conception of the public corporation that it implies will be reinforced by the remarkable rise of ESG investing – taking into account a company's environmental, social and governance policies in making investment decisions. That is my focus in this chapter.

The chapter is organized in three parts. The first briefly summarizes why the narrowly construed shareholder primacy doctrine simply hasn't been an adequate conceptual foundation for the public corporation for some time. The second sketches out the rise of ESG investing, its performance, and its potential role in reinforcing corporate "repurposing." The third addresses potential impediments to the further rapid growth in ESG investing as well as moves to manage them – obstacles posed by traditional practices in the investment industry as well as by weaknesses in ESG itself. A brief conclusion wraps up the chapter.

I. Letting go of Milton Friedman[3]

It is a disservice to the legacy of a brilliant Nobel laureate in economics to keep invoking him in support for the shareholder primacy doctrine. Yes, a half-century ago Friedman wrote "The Social Responsibility of Business is to Increase its Profits," so long as it stays within the rules of the game (Friedman, 1970). He first articulated the core principles even earlier in *Capitalism and Freedom*, a book that has sold more than a half-million copies over the years (Friedman, 1962). But the world in which Friedman lived, thought and wrote about in his popular works was fundamentally different from ours, which his intellectual progenies today seem to ignore. I make just two points.

The first concerns foundational confusion regarding the concept of property as it applies to the public corporation: “In a free-enterprise, private-property system,” Friedman wrote, “a corporate executive is an employee of the owners of the business” (1970, 33). But in today’s world owning shares in a large public company with dispersed shareholding does not make one an owner of the company. Friedman’s Chicago colleague and fellow Nobel laureate Eugene Fama challenged the equation of the two long ago: (Fama, 1980, 290):

> Ownership of capital should not be confused with ownership of the firm. Each factor in a firm is owned by somebody...Dispelling the tenacious notion that a firm is owned by its security holders is important because it is a first step toward understanding that control over a firm's decisions is not necessarily the province of security holders.

And yet, almost a half-century after Friedman writings, the *Wall Street Journal* pilloried the BR statement for not “serving the interests of the shareholders who own the company” (*WSJ*, 2019). This is not merely a theoretical issue. It matters for very practical reasons: it reinforces the deep divide in the American variant of capitalism between “private” and “social,” which the Business Roundtable statement presumably sought to address and help bridge.

Fama had argued the case on analytical grounds; he viewed the corporation as a nexus of contracts between different parties that contribute to the firm. Empirically, the point he made has greater validity today than ever. Indeed, far from being owners, many investors are not even *investors* as such. They move into and out of individual stocks several times a day or hold them for very short periods of time—sometimes mere seconds—using a variety of trading algorithms and automated means. High-frequency traders are involved in half of the daily trading volumes on America's stock market (*The Economist,* 2019). In turn, indexers buy the whole market at today's price without "valuing" the price of any one stock as a potential owner would do.

Moreover, as Robé observes: "After the process of incorporation, shareholders have *no right of access* to the assets of the corporation; they *do not enter into any contract* in its name. *No liability* can arise for them from the corporate activity. They *do not run* the corporation and *do not own it*" (Robé, 2012, 6, italics in original). Yes, shareholders are entitled to a dividend at the discretion of the board, and at the annual general meeting they can vote on a pre-set slate of directors and on non-binding resolutions. If a shareholder owns a lot of shares in a single company, they might be able to demand a seat on the board or otherwise exert influence. And in case of bankruptcy or liquidation, shareholders are entitled to any residual assets left over after all secured obligations have been paid. But in no sense does any of this make them "owners" of the firm.[4] The challenge raised by the BR statement is how best to accommodate this fact without "undermining the morality of free markets and the moral and fiduciary duty" of the corporation, as a *Wall Street Journal* editorial hyperbolically characterized the BR statement (2019).

My second point concerns the assumed role of government in Friedman's scheme: "We have established elaborate constitutional, parliamentary and judicial provisions to control these functions [dealing with externalities, providing social goods], to assure that taxes are imposed so far as possible in accordance with the preferences and desires of the public" (Friedman, 1970, 122). Executives who invade this space by undertaking corporate social responsibility commitments, he argued, not only violate their fiduciary responsibility; they also usurp governmental functions and democratic principles. By "we" Friedman presumably meant countries like the U.S. and those in Western Europe at the time he was writing. Leaving aside the question of business influence on those governments, then and since, his model of state and market became highly problematic once corporate globalization broadened and deepened in the 1990s. There is no global regulator to match the functional and juridical space in which the multinational firm operates. International law generally does not apply to corporations. With some exceptions, the reach of national law typically does not go beyond the individual entities comprising a multinational group that are domiciled within a country's jurisdiction.

Moreover, in numerous domestic jurisdictions Friedman's characterization of government simply does not hold. Sir Mark Moody-Stuart worked for Shell in the 1990s, at the time the Movement for the Survival of the Ogoni People engaged in massive protests against the company's environmental and other practices in the oil-rich region of Nigeria. Nigeria's military government executed nine Ogoni leaders after a sham trial, while Shell became the target of a global campaign for not speaking out to oppose the execution. Shell meekly stated: "A commercial enterprise like Shell cannot and must never interfere with the legal process of any sovereign state" (quoted in Manby, 1999, 157). Friedman might well have agreed. But Moody-Stuart, who had advocated for a more robust position by Shell at the time and ultimately became its Chairman, later observed that "these economists live in cloud cuckoo land when they say that" (2015, 237).

In short, the combination of these two factors – the absence of a global regulator and national governance failures – led firms, Shell being an early mover, to adopt enterprise-wide social responsibility policies and practices with the aim of managing stakeholder-related risk and gaining social legitimacy (Kell & Ruggie, 2003). Among major firms such practices have moved steadily away from philanthropic approaches to involve the conduct of core business functions (Crane, et al., 2014; Crane, Matten & Spence, 2014).

Chancellor Allen described the emergence of shareholder primacy. But what accounts for its ultimate dominance, particularly in the U.S.? Lynn Stout, a longtime critic, suggests several factors (2012, 19-21): it gave the public and the media easy-to-understand sound bites to account for numerous corporate scandals in the 1980s (portrayed as out-of-control C-suites); it provided companies and reformers with a simple metric of corporate performance; it prescribed a solution that fit well with the broader influence of the "Chicago School" economists and the conservative Law and Economics movement; and self-interest. The last because one of the main means the doctrine's proponents advocated for how "principals" should exercise control over "agents" in the corporate context was to link CEO compensation to stock performance – which in practice often came to mean short-term performance. Earnings reports can be easily manipulated. And cost-cutting can be produced through a variety of means including, for example, outsourcing and offshoring jobs into opaque global supply chains, or cutting R&D expenditures and capital investments, all of which could affect not only the targeted factor of production but also the long-term health of the company.[5] Moreover, through outsourcing and offshoring, manufacturing companies in particular decoupled themselves from large parts of their workforce at both ends of global supply chains, thereby reducing the bargaining power of labor in their home countries (Rodrik, 1997). Similarly, through offshoring profits companies could significantly reduce their home country taxes (Palan, Murphy & Chavagneux, 2010) thereby creating, in the words of former U.S. Treasury Secretary Lawrence Summers, "a significant problem for the revenue capacity of states and an immense problem for their capacity to maintain progressive taxation" (quoted in Porter, 2014). Without getting into the tall grass of methodology of precisely what is measured and how, it seems safe to conclude that the combination of these factors contributed to rising income inequality in the U.S. that began in the 1980s and spiked in the 1990s and into the 2000s.

In short, it is time to let go of Milton Friedman when it comes to constructing a sustainable conceptual foundation for the role of the public corporation. Today, the broad and deep loss of social legitimacy in major institutions, private and public, and the governance failures preventing correction of market failures, has driven large and leading parts of the business community to engage in this paradigmatic challenge (Fink, 2018, 2019; Lipton, 2019, Mayer, 2018). The Business Roundtable statement is but one instance. ESG investing already has been and is likely to become even more of a factor in reinforcing the construction of a broader social conception of the public corporation. I turn to it next.

II. The Rise in ESG Investing

An institutionalized socially responsible investing industry (SRI) has existed at least since the 1970s, when the first socially screened mutual funds were established (Lydenberg, 2005; Townsend, 2017). SRI initially focused on the exclusion of certain stocks from portfolios (for example, weapons, tobacco, gambling, or alcohol), and also engaging with companies. In the 1980s major pension funds and university endowments took part in the divestment campaign against South Africa's apartheid regime. In the 1990s, the first research firm (Kinder, Lydenberg, Domini & Co.) was established to market social and environmental data on publicly traded companies to the investment community. Rating agencies using such data soon followed. Multi-stakeholder initiatives establishing principles for environmental and social reporting by companies, such as the Global Reporting Initiative, also emerged at this same time. In the U.S., SRI reached $2.32 trillion in 2001 (Lydenberg, xii).

ESG investing evolved out of this context. The term ESG was first used in a 2005 United Nations report, "Who Cares Wins" (Kell, 2018), prepared for the launch of the Principles for Responsible Investment (https://www.unpri.org). In essence, these Principles were a mission statement for asset owners and managers not unlike the recent BR statement. Today PRI is an independent non-profit entity and the Principles have nearly 2,800 institutional and individual signatories with some $80 trillion in assets under management. In 2010, Bloomberg terminals began to include ESG data, and by 2016 more than 100 rating agencies were providing ESG information and rankings of companies (Amel-Zadeh & Serafeim, 2017). All major asset managers now offer some form of ESG products.[6]

Depending on definitions, there are a half-dozen or more types and strategies of ESG investing (GSIA, 2018). The most prominent are values-based screening (mostly negative, some positive), and integrating ESG metrics into financial analytics. Engaging with companies can accompany all. Table 1 shows ESG categories that the authors of a broad survey found to be representative of the types of issues that can have a material impact on a company (Clark, Feiner & Vies, 2015, 12). Sub-categories and specific metrics operationalize these.

Table 1 about here

According to the Global Sustainable Investment Alliance (GSIA, 2018), nearly $31 trillion of all assets under management (AUM) globally, or more than 25%, apply some form of ESG criteria. This space is still largely dominated by institutional investors, but the share of retail investing is increasing. In Australia and New Zealand, ESG investing accounts for 60% of AUM; in Canada and Europe it hovers around 50%. In the U.S. it is 26% but growing quickly: it rose substantially after the 2008 financial sector meltdown, and then spiked by nearly 38% between 2016 and 2018. An article *Barron's,* the business magazine, called the latter the "Trump

Bump" (Fonda, 2018), presumably reflecting the view that the new administration was unlikely to advance an ESG-friendly agenda. Indeed, the U.S. Department of Labor, the Securities and Exchange Commission, and the White House have all issued Friedmanesque warnings that ESG investing by pension funds possibly violates their fiduciary responsibilities (BakerMcKenzie, 2019). Even so, ESG investing continues to grow rapidly (Nauman, 2019; Thompson, 2019).

An upward trend in ESG investing has also been reported in private equity markets (privateequitywire, 2017). In addition, ESG is expected to get a boost from millennial investors (born 1981-1996), who are reported likely to inherit some $30 trillion from their baby boomer parents (1946-1964) over the next decade or two. Surveys conducted by consultancies suggest that millennials have stronger commitments to sustainability investing (another way of labeling ESG) than their parents, and that the commitment is even higher among millennial women than men (Ruggie & Middleton, 2018). Millennial employees are reported to exhibit similar preferences for workplaces (Tett & Nauman, 2019; Henderson, 2019; Mooney, 2019).

The most persuasive drivers for investors and companies is the fact that ESG investing has begun to perform as well as, and often better than, its mainstream counterparts. Although causal inference remains complex, a meta-analysis of 200 academic papers and other research reports found either a positive or neutral correlation between ESG equity funds and conventional indexes (Clark, Feiner & Viehs, 2015; also see Kotula, 2019; Thompson, 2019). A similar although somewhat weaker correlation has been reported for bond indexes (Haefele, 2017). A survey of more than 400 mainstream senior investment professionals found that performance is the most frequent reason they cite for using ESG data, followed by client demand and product strategy (Amel-Zadeh & Serafeim, 2017; on client demand, also see GSIA, 2018). In 2017, the *Wall Street Journal* reported that "Do-Good Funds Finally Are Paying Off in Performance"

(Weil, 2018). Because ESG investing considers a broader array of issues it also may be more alert to risks that mainstream counterparts do not yet consider. For example, of 1,200 ESG funds Bloomberg tracks, only 34 were reported to have held stock in Pacific Gas & Electric, the California utility that triggered the wildfires destroying the town of Paradise and creating the first climate-related corporate bankruptcy (Rise Financial, 2019). In a similar vein, ESG funds have tended to avoid Facebook (Hale, 2019). And S-Ray, the big-data affiliate of Arabesque Asset Management, on numerous occasions has lowered the ESG scores of major global brands well before the companies and their share price were hit by scandals, detecting significant shortcomings in one or more categories.[7]

In sum, ESG investing has grown rapidly. Bank of England Governor Mark Carney views it as “a new horizon” for the investment universe (Carney, 2019). Performance is critical. But clearly these trends also reflect a desire by many in the investment community to move beyond the narrow strictures of shareholder primacy – to become more deeply embedded in the increasingly fragile social fabric and natural ecosystems in which they operate and live.[8] Virtually by definition these preferences will advance the move toward more of a social entity conception of the public corporation.

III. Managing Maturation

The fact that roughly 25% of global assets under management employ some form ESG criteria is impressive, as is how rapidly this has occurred. But continued expansion into the mainstream also faces obstacles. Some are due to traditional perspectives and practices of investment-related professionals, others to current weaknesses in ESG itself. This section addresses some of the challenges as well as moves to begin managing them.

Tradition

Perhaps the most deep-seated impediment to ESG investing resides in the binary thinking of many mainstream investment-related professionals, including influential media. As already discussed, in recent decades the dominant paradigm has been shareholder primacy. The hard-core response to efforts that advance a broader concept of corporate responsibility, including the BR statement and ESG investing, goes something like this: it amounts to *stakeholder* primacy; it violates fiduciary duties as well as corporate charters and corporate law; besides, stakeholder primacy is impossible to execute and therefore will destroy the public corporation as we know it; and if directors and officers want to start a charity or give money to one, they are free to do so using their own. This was Friedman's argument, close to verbatim; it remains the editorial position of the *Wall Street Journal;* and it pervades large parts of the mainstream investment profession, including academics and think-tank experts.[9]

But the dichotomy of shareholder vs. stakeholder primacy is a false one. There is vast space between the two. Shareholders have an important say over company performance via their role in the election of directors, through shareholder activism, and by means of exit. Shareholder rights are protected by corporate law and securities regulation. Directors have fiduciary duties of care, loyalty and good faith, and shareholders can bring suit if those duties have not been met. But none of this logically implies that any move beyond shareholder primacy ipso facto is a move toward stakeholder primacy. At bottom, it represents a desire to move beyond the narrow confines of the of principal-agent construct, beyond the "owners" and "employees" conception of the body corporate that may operate in more countries than there are UN member states. It acknowledges that there are forms of "capital" other than financial that affect the success of a company and the society in which it operates: human, social, and natural capital (Mayer, 2018).

Not all shareholders may care about these matters. But directors and officers should, in the best interest of the corporation itself. No specific institutional formula necessarily follows.

A closely related corollary has been the pressure on CEOs to produce short-term results. Among many other ways, this has played out in the quarterly reports controversy. I noted earlier that Paul Polman discontinued the practice of issuing such reports when he became CEO of Unilever, a consumer products company with some 300 factories, 400 brands serving 2.5 billion customers around the world. He found quarterly reports to be both distracting and unproductive – distracting from his commitment to achieving longer-term sustainable growth, and unproductive because he was never asked questions about the environmental and social dimensions of his business model at investor and analyst meetings or calls (*Harvard Business Review*, 2012; Boynton, 2015; Buckley, 2017). Since 2015 or so, the number of major companies issuing quarterly guidance has declined and ESG issues are discussed more frequently, although starting from a low base (Samuelson, 2018; Walker, 2018; Langley, 2019).

Finally, there is the issue of "materiality." According to the International Federation of Accountants, "[w]hether information is material is a matter of judgment. The concept of materiality works as a filter through which management sifts information. Its purpose is to make sure that that the financial information that could influence investors' decisions is included in the financial statements" (IFAC, 2017). Here again the issue is how narrowly a particular category, in this case materiality, is interpreted. In some domains, including climate change and human rights, potentially high impact risks that are emergent but not yet imminent may not receive the attention they require and thus fail to register in board or management "judgment" before serious and possibly irreversible harm has been done.

Current ESG Shortcomings

ESG investing is also faced with intrinsic maturation challenges. The most widely reported is significant inconsistencies in ESG data generated by data providers. Common taxonomies and templates are still in their infancy and evolving haphazardly even as demand for ESG products is increasing. This poses potential problems for investors who seek ESG opportunities and may be paying a high price for deficient data, as well as companies striving to improve their practices that go unrecognized. According to Hans Hoogervorst, head of the International Accounting Standards Board, it also means that so-called greenwashing, putting an ESG label on old funds – "is rampant" (quoted in Rajan, 2019). The lack of transparency regarding metrics and algorithms that data providers and raters use compound these problems.

An MIT Sloan study did have access to the data of five rating agencies. Using novel statistical tools it found that the major source of divergence among ratings is due to how raters measure different elements within each of the ESG categories, more so than the categories used or the relative weights assigned to them (Berg, Koelbel & Rigobon, 2019). They also detected a "rater effect," meaning that an agency's (human) assessment of one category seems to be influenced by its view of the company as a whole. Another statistical study focused on corporate social responsibility ratings more broadly. It found that in only 3 of 12 pairs of raters was the correlation between them higher than 0.5 (barely); the lowest was -0.12, and the mean 0.3 (Chatterji, et al., 2016).

The 'S' scores in ESG appear to be the least reliable (Ruggie & Middleton, 2018; O'Connor & Labowitz, 2017). In addition to the factors already noted, the way in which human rights elements are conceptualized in the S domain contributes to this poor performance. Look back for a moment at Table 1. The S column includes 10 elements (community relations, diversity issues, union relationships, health and safety, and so on), each of which will have numerous indicators that get measured and that algorithms will ultimately aggregate into the S score. The conceptual oddity is that virtually all of these elements are well established human rights issues – while, at the same time, the list *also* includes a separate human rights category. By well-established I mean that they reflect human rights that states have formally recognized in UN treaties, International Labor Organization Conventions as well as the UN Guiding Principles on Business and Human Rights, unanimously endorsed by the UN Human Rights Council (UN, 2011).[10]

This is a widespread practice. In a survey of 14 different raters and rating frameworks, 74 out of 85 S elements were standard business and human rights issues; yet 8 of the 14 raters also included a separate human rights category (Ruggie & Middleton, 2018). Indeed, even under the E domain in Table 1 we find categories that have critical human rights impacts, including raw materials sourcing (community relations), supply chain management (workers' rights), and water usage (the right to water). This oddity likely reflects a lack of familiarity on the part of ESG raters – and perhaps the investment community as a whole – with human rights, the core of the S.

Ongoing Developments

According to Lady Lynn Forester de Rothschild, founder of the Coalition for Inclusive Capitalism, more than "150 ratings systems exist, covering over 10,000 sustainability performance metrics, that are trying to fill the gap that is left by the lack of a generally accepted standard" (quoted in Edgecliff-Johnson, 2019). For ESG investing, no such standard is imminent. But greater depth of understanding and overlap around core issues is occurring, typically led by nonprofit entities and coalitions. One example is the Sustainability Accounting Standards Board (SASB). It identifies ESG issues that are deemed likely to affect a company's financial performance, across different industries and sectors. SASB has partnered with the Climate

Disclosure Standards Board to translate the principles developed by the Task Force on Climate-Related Financial Disclosure into more specific implementation guidance (sasb.org). As its name suggests, the International Integrated Reporting Initiative seeks to promote integrated financial and non-financial reporting by companies, and to make the practice a norm. According to the Global Reporting Initiative, its sustainability standards are used by nearly all of the world's 250 largest corporations in their sustainability reporting (globalreporting.org). The various such efforts may be described as resources for the willing.

There is some reinforcement of these trends on the governmental front, mainly by or within the European Union. The European Commission has issued a directive requiring large companies to report on their social and environmental impacts (Directive 2014/95/EU). The Commission is also developing a Sustainable Finance Action Plan, which will include more detailed guidance and voluntary standards in several environmental domains. And in 2021 an EU regulation will come into force aiming to stem the trade in conflict minerals (tin, tantalum, tungsten and gold) by requiring supply chain due diligence and reporting. France has a "due vigilance" law that requires large French companies or foreign companies with a significant business presence in France to have and report on "effective" due diligence systems for human rights and environmental matters (Law 2017-399). Anti-Slavery legislation in the United Kingdom (UK Public General Acts 2015c.30) and Australia (Modern Slavery Act 2018) also require human rights due diligence systems and reporting. Some form of mandatory human rights due diligence is currently under consideration by the EU, Germany, and Finland, while the UK is expected to roll out a requirement for all large asset owners to start disclosing their climate risks by 2020 (Hale, 2019). A move in the U.S. House of Representatives Financial Services Committee to require the Securities and Exchange Commission to write ESG disclosure rules failed to advance (Temple-West, 2019). This brief listing is not inclusive, but it does suggest that governments have begun to respond to the increased need for better and more standardized nonfinancial data, and where such issues are addressed the environment, particularly climate, and human rights in global supply chains have attracted the most attention.

Front-line market players are responding to the data challenge in two ways. One, investment research firms, ESG rating agencies and asset managers are both diversifying their sources of data and reducing their dependence on external data providers by building or acquiring in-house capacity. For example, UBS has built a proprietary base; Morningstar, an investment research firm, has acquired a 40% stake in Sustainalytics, an ESG research and ratings firm; Moody's, the rating agency, has bought Video EIRIS, a data provider (Mair, 2019). Second, in terms of stock picking there is shift toward a combination of big data and artificial intelligence (Thomas, 2017). BlackRock, the world's largest asset manager, has moved partially in this direction, while the algorithms of relative newcomer Arabesque are entirely machine based.

In short, there appears to be a high-level convergence among private and public actors regarding issues that are of interest to ESG investors and companies seeking to improve their ESG scores. But if the MIT study has it right, this may produce overlap and similarities in what actual metrics, but not convergence. At the same time, the development of proprietary systems by individual asset management firms raises transparency issues that may be more troubling than when those asset managers drew data from several different sources that were also being used by other asset managers. These issues are unlikely to be fully resolved anytime soon without governments setting clearer parameters, as they did in the evolution of financial accounting.

IV. CONCLUSION

The rise in ESG investing and the debate on repurposing the public corporation are not unrelated. Both express a view that the large public corporation should be more than a piece of private property that has been excavated and is insulated from its social and natural ecosystems. Both express a concern that the public corporation is not managing its adverse impacts on people and planet well enough. And both reflect a growing belief among investors and business leaders that there is unlocked value in creating shared value (Porter & Kramer, 2011).

At the same time, neither is without challenges. But getting ESG right is not fundamentally different from past instances of standard setting, whether by market actors, public authorities, or a combination of both. In contrast, the repurposing debate is deeply philosophical while also involving innumerable interests. Borrowing Chancellor Allen's wise observation made some time ago, the repurposing debate "will be worked out, not deduced" (1992, 281). Continuing to make practical progress on ESG investing is a key driver in working it out.

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[1] This would have been so in the 1919 case of Dodge v. Ford, when the Dodge brothers, in business with Henry Ford, wanted to collect dividends but Ford wanted to invest the funds to expand the business. The Dodge brothers won in the Michigan Supreme Court *(204 Mich. 459, 170 N.W. 668* (Mich. 1919)). The case is still cited today in support of the idea that shareholders are owners of the firm and, therefore, that shareholder primacy must be preserved (Skapinker, 2019).

[2] *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

[3] This heading was inspired by J.P Robé (2018).

[4] The corporation has legal personality in its own right and a "parent" company can own subsidiaries, just as natural persons can own their business. But to the question of who does "own" the large public corporation with dispersed shareholders there are only two plausible answers: no one; or that the corporation owns itself (Ruggie, 2018).

[5] When Paul Polman became CEO of Unilever in January 2009, he announced that investors should no longer expect quarterly earnings reports. He went further and urged shareholders to put their money elsewhere if they did not want to "buy into [my] long-term value creation, which is equitable, which is shared, which is sustainable" (quoted in Boynton, 2015). In 2017, Unilever rejected an unsolicited $143 billion takeover bid further by KraftHeinz, with Polman saying that their corporate cultures would never merge (Gelles, 2019).

[6] The proportion of funds allocated to ESG strategies by the top 10 asset managers varies but typically remains relatively small.

[7] Based on discussions with the firm. Full disclosure: I sit on the Board of Arabesque Asset Management Holding Company.

[8] For a formal analysis of why business would want to make such a move, see Bénaboud & Tirole (2010); in 2014 Tirole received the Nobel Prize in economics for his work on market power and regulation.

[9] On the latter, see Fried (2019) and Epstein (2019) respectively.

[10] I developed the Guiding Principles over the course of a six-year mandate as the UN's Secretary-General's Special Representative for Business and Human Rights (Ruggie, 2013).

Table 1

Typical ESG factors

ENVIRONMENTAL ("E")	SOCIAL ("S")	GOVERNANCE ("G")
Biodiversity/land use	Community relations	Accountability
Carbon emissions	Controversial business	Anti-takeover measures
Climate change risks	Customer relations/product	Board structure/size
Energy usage	Diversity issues	Bribery and corruption
Raw material sourcing	Employee relations	CEO duality
Regulatory/legal risks	Health and safety	Executive compensation schemes
Supply chain management	Human capital management	Ownership structure
Waste and recycling	Human rights	Shareholder rights
Water management	Responsible marketing and R&D	Transparency
Weather events	Union relationships	Voting procedures

Clark, Feiner & Viehs, 2015

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