



Should the International Accounting Standards Board Have Responsibility for Human Rights?

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Review

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Abstract

Purpose – In this paper begin to explore the basis for, and ramifications of, applying relevant human rights norms—such as the United Nations Guiding Principles on Business and Human Rights—to the International Accounting Standards Board (IASB). In doing so, the paper seeks to contribute to scholarship on the political legitimization of the IASB’s structure and activities under prevailing global governance conditions

Design/methodology/approach – The paper explores three distinct argumentative logics regarding responsibilities for justice and human rights vis-à-vis the IASB. First, we explore the basis for applying human rights responsibilities to the IASB through reasoning based on the analysis of ‘public power’ (Macdonald, 2008) and public authorization. Second, we develop our reasoning with reference to recent attempts by legal scholars and practitioners to apply human rights obligations to other non-state and transnational institutions. Finally, we develop reasoning based on Thomas Pogge’s (1992b) ideas about institutional harms and corresponding responsibilities.

Findings – The three distinct argumentative logic rest on differing assumptions - our goal is not to reconcile or synthesise these approaches, but to propose that these approaches offer alternative and in some ways complementary insights, each of which contributes to answering questions about how human rights obligations of the IASB should be defined, and how such a responsibility could be “actually proceduralised.”

Originality/value – The analysis provides an important starting point for beginning to think about how responsibilities for human rights might be applied to the operation of the IASB

Keywords Human rights, accounting, IASB, United Nations Guiding Principles.

Paper type Conceptual paper

1. Introduction

“We do not live in a just world. This may be the least controversial claim one could make in political theory. But it is much less clear what, if anything, justice on a world scale might mean, or what the hope for justice should lead us to want in the domain of international or global institutions, and in the policies of states that are in a position to affect the world order. ... I believe that the need for workable ideas about the global or international case presents political theory with its most important current task, and even perhaps with the opportunity to make a practical contribution in the long run, though perhaps only the very long run. The theoretical and normative questions I want to discuss are closely related to pressing practical questions that we now face about the legitimate path forward in the governance of the world.” Nagal (2005, p.113)

Nagal’s quote encapsulates a dilemma that has attracted increasing interest from scholars of global governance across a range of policy domains. That is, what might a normative commitment to “pursue justice on a world scale” mean in practice for the design or reform of global governance institutions? This dilemma comprises the central concern of this paper. We present a preliminary exploration of what such a commitment to pursuing justice might mean if it was applied to the International Accounting Standards Board¹ (The IASB hereafter)—a much overlooked but hugely influential global accounting institution. The concept of ‘justice’ is notoriously broad and contested; our analysis focuses specifically on dimensions of justice associated with the protection of human rights.²

Despite the considerable volume of research on the IASB and international accounting standard setting more generally (e.g. Crawford et al 2014; Richardson and Eberlein, 2011; Arnold, 2009; Robson and Young, 2009; Power, 2009; Chiapello and Medjad, 2008; Chua and Taylor, 2008; Gallhofer and Haslam, 2007; Perry and Nölke, 2006; Kwok and Sharp, 2005; Whittington, 2005; Fogarty, Hussein and Ketz, 1994; Hopwood, 1994), such literature has yet to engage with contemporary debates about global justice and human rights, or to explore their implications for the normative justification of the IASB’s activities.

The significance of scholarship on global justice and human rights for analysis of the IASB is underpinned by four inter-related developments in both the practice and scholarly study of contemporary global governance. First, global economic governance is increasingly recognised as pluralist in character, reflected in the emergence of complex, multi-layered networks of governance, in which a range of non-state actors and hybrid public-private bodies play prominent roles in the governance of global capital markets, alongside states (Ruggie, 2014).

Second, a significant scholarship has emerged concerned with exploring the normative implications of

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3 such empirical transitions for the possibilities of realizing “justice on a world scale”. Such concerns
4 are reflected both within a broader cosmopolitan scholarship on political justice (Archibugi, 2008;
5 Held, 1995; Cabrera, 2005), and within a literature focused more narrowly on implications for the
6 moral and political responsibilities of business and other non-state or transnational actors within a
7 pluralist order (Arnold, 2010, 2013; Martin, 2015; Macdonald, 2011).
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12 Third, this broad discussion of what non-state actors are responsible for has in turn been increasingly
13 articulated in terms of responsibilities for human rights. As such, political and philosophical
14 scholarship focused on the responsibilities of non-state actors for human rights has intersected in
15 important ways with ongoing international legal debates about the changing role of human rights
16 norms as a basis for underpinning moral and legal responsibilities of non-state actors and international
17 organisations (Dorsey, 2005; Santoro, 2015). This trend is notable not only within academic
18 scholarship, but also at the level of political practice—evidenced by the high profile political
19 processes surrounding ratification in June 2011 of the United Nations Guiding Principles on Business
20 and Human Rights (Ruggie 2011; Martin, 2015; Cragg, Arnold, and Muchlinski 2012; Cragg, 2012;
21 Nolan, 2010; Cragg, 1999), and subsequent work to develop guidelines on their implementation.
22 These Guiding Principles clarify the human rights responsibilities of nation states, particularly in
23 relation to their relationship with business (McPhail and McKernan 2011; Santoro 2015), and extend
24 certain responsibilities for human rights beyond nation states to also encompass business enterprises.
25 The Guiding Principles have been rapidly incorporated into the language of global regulatory
26 frameworks, provided the basis for the development of National Action Plans or sovereign wealth
27 fund investment criteria in some national jurisdictions (de Felice and Graf 2015), and influenced the
28 internal corporate governance and CSR procedures of many major international corporations
29 (McPhail and McKernan 2011; Santoro, 2015). Several global governance institutions active in the
30 field of business finance and regulation, such as the World Bank and OECD, have also incorporated
31 elements of the Guiding Principles into their regulatory norms for business (Vandenhole 2012).
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44 Fourth, the accounting literature has made some preliminary moves towards engaging with debates
45 about implications of human rights norms for the accountability of corporations and international
46 organisations (e.g. McPhail and McKernan, 2011; Cooper, Coulson and Taylor, 2011; Sikka, 2011;
47 Frankental, 2011, Islam and McPhail, 2011; McPhail Islam and Huddle, 2014). Such engagement has
48 emerged in the context of broader ongoing debates about the IASB’s conceptual framework,
49 governance and accountability. It has conventionally been held that the IASB’s claim to be supporting
50 the public interest can be justified in terms of either the competency or the integrity of its members.
51 For example, much conventional ethical discussion of the IASB has focused on the integrity and
52 professionalism of practicing accountants through IFAC and the International Ethics Standards
53 Boards for Accountants (e.g. Clements et al. 2009; Lindblom and Ruland, 1997). Over the past few
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3 years the IASB has recognised that its rising prominence as a global governance actor—in light of the
4 increased importance of accounting in many national and corporate governance processes—generates
5 demands for greater public accountability; accordingly, it has begun to explore some initial reforms
6 designed to strengthen transparency and accountability to a broader global audience (Chiapello and
7 Medjad, 2008).
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12 In view of these developments, both scholarly analysis and institutional practice remain strikingly
13 underdeveloped with regard to exploring implications of wider debates about justice, human rights
14 and global governance for the responsibilities and associated activities of the International Accounting
15 Standards Board. Such implications are significant, as shifting the moral debate from the competence
16 and integrity of accountants to human rights and global justice fundamentally changes accountability
17 relationships and the discourses through which the IASB would be required to secure its legitimacy
18 (Black, 2008). If, as Mashaw (2005) implies, an understanding of accountability involves considering:
19 who is responsible; to whom; for what; through what process; by what standard; and with what effect
20 - then framing the accountability of non-state actors like the IASB in terms of a rights discourse
21 would fundamentally shift both what these institutions do and how they are held to account.
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29 Accordingly, the task of this paper is to begin to explore the basis for and ramifications of applying
30 relevant human rights norms—such as the United Nations Guiding Principles on Business and Human
31 Rights—to the IASB (see, Rahman, 1998).³ In this way, the paper seeks to contribute to scholarship
32 on the political legitimization of the IASB's structure and activities under prevailing global
33 governance conditions (IASB, 2013).⁴
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38 The paper develops through two major analytical steps. The first of these (presented in section 2)
39 explores the emergence of pluralistic forms of governance, and highlights the questions these
40 developments raise about the responsibility and accountability of organisations within polycentric
41 governance networks. We explain how the emergence of pluralist governance arrangements
42 challenges statist views of justice and human rights—such as that developed by Nagel—demanding
43 new ways of thinking about the human rights responsibilities of international organisations such as the
44 IASB.
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50 Sections 3-5 of the paper then explore in turn three distinct argumentative logics regarding
51 responsibilities for justice and human rights, which we suggest provide helpful bases for
52 conceptualising the implications of pluralistic governance forms for the responsibilities of the IASB.
53 First, we explore the basis for applying human rights responsibilities to the IASB through reasoning
54 based on the analysis of 'public power' (Macdonald, 2008) and public authorization. Second, we
55 develop our reasoning with reference to recent attempts by legal scholars and practitioners to apply
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3 human rights obligations to other non-state and transnational institutions. Finally, we develop
4 reasoning based on Thomas Pogge's (1992b) ideas about institutional harms and corresponding
5 responsibilities. Each distinct argumentative logic rests on differing assumptions, and our goal is not
6 to reconcile or synthesise these approaches from a philosophical perspective. Rather, we propose that
7 these distinct approaches offer alternative and in some ways complementary insights, each of which
8 contributes to answering questions about how human rights obligations of the IASB should be
9 defined, and how such a responsibility could be "actually proceduralised."

15 **2. A Pluralist Regulatory Context: implications for responsibility**

16 Decentered, multi-level and sometimes highly fragmented structures of public authority now
17 characterize many fields of global governance, particularly those involved in governance of the global
18 economy (e.g. Pierre, 2000; Marsk et al, 1996; Scharpf, 1997; Liesbet and Gary, 2003; Papadopoulos
19 2003; Cerny, 2007; Rosenau, 2002; Nye and Donahue, 2000; Held, and McGrew 2002; Hooghe, and
20 Marks 2003). These regulatory networks have attracted rising analytical attention, as commentators
21 have drawn attention to diffusion of public power and authority towards a range of non-state actors
22 and institutions, including companies, NGOs and professional organisations. Such 'polycentric'
23 governance is characterized by the diffusion and decentring of public authority, and increasingly
24 networked forms of coordination between actors (Scholte, 2004). Cerny (2007, p.1) refers to a 'multi-
25 nodal politics' that he sees as encompassing "traditional interest group pluralism both domestically
26 and across borders; institutional pluralism (including multi-level governance)" together with a broader
27 pluralism of actors and issues, interacting within dynamic governance processes that he refers to as
28 "transnational neopluralism" (see also Ruggie, 1993).

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38 The decentred distribution of governing authority – particularly where different sites of rule-making
39 lie in non-hierarchical relation to one another – has been a major preoccupation amongst scholars of
40 new governance models (Ruggie, 2014; Cerny, 2007; Rosenau, 2002; Nye and Donahue, 2000).
41 According to Krisch (2010, p.69) "Pluralism echews the hope of building one common, overarching
42 legal framework... [to] provide for a means of solving disputes between the various layers of law and
43 politics. It is based instead on the heterarchical interplay of these layers according to rules ultimately
44 set by each layer for itself. The attention of scholars has focused on the distinctive challenges for
45 questions of governance coordination, accountability and legitimacy that result from these pluralist
46 institutional tendencies.

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53 As attention to the power and authority of non-state actors has risen within contemporary governance
54 scholarship, so have corresponding concerns about implications for how the public responsibilities of
55 these actors are both conceptualised and given institutional expression (Ruggie, 2004; Scherer et al.,
56 2006). For example, activist campaigns on corporate accountability have highlighted new forms of
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3 public power and authority exercised by global companies, and promoted new mechanisms for
4 regulating corporate activity that impacts on matters of public interest, beyond the borders of
5 territorial political jurisdictions (Arnold, 2009; Macdonald, 2014). Within literatures on pluralist,
6 multi-layered governance processes, accountants and their professional bodies and standard setters
7 have been the focus of some important empirical and theoretical scholarship (Botzem and Quack,
8 2006, 2009; Mattli and Buthe, 2003, 2005). However, questions of accountability, justice and human
9 rights have received less systematic attention (although see Power, 2009; Djelic and Sahlin, 2009).

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15 We argue that this is a particularly important oversight in relation to the IASB, which plays an
16 increasingly important role in the governance of globalization, and exerts important forms of decision
17 making control over a range of outcomes of public concern. Moreover, the systems of economic and
18 financial governance in which the IASB is enmeshed are themselves highly pluralist in important
19 ways. For example, as we discuss below, the IASB have formed part of a constellation of
20 international institutions with a financial stability agenda - that includes the OECD, G7, International
21 Monetary Fund (IMF) and World Bank - in order to enforce compliance with International Financial
22 Reporting Standards (Arnold, 2009; 2012). Similarly, Arnold (2005) documents a further example of
23 how the IASB and international accounting firms have played a central role in the governance of
24 globalisation – through their close ties to the World Trade Organization (WTO) in the development of
25 international trade agreements such as the General Agreement on Trade in Services (GATS). These
26 examples provide some indication of the governance tasks the IASB are involved in, the international
27 institutions they work with and how they are involved in shaping rules that impact the public interest.

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37 Such empirical accounts of an increasingly decentred, pluralist global regulatory environment sit in
38 some tension with influential accounts of global justice such as that developed by the philosopher
39 Thomas Nagel. Nagel (2005) acknowledges the proliferation of international institutions and
40 organisations, but contends that the State should nonetheless remain the primary focus of justice. In
41 his view, this is first, because the state is the only kind of collective political institution that is
42 sovereign, in the sense of being capable of wielding coercive power over those it governs. In his
43 words:
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47 “The link between justice and sovereignty is something common to a wide range of
48 conceptions of justice: they all depend on the coordinated conduct of large numbers
49 of people, which cannot be achieved without law backed up by a monopoly of force
50 ... The absence of sovereign authority over participant states and their members not
51 only makes it practically infeasible for [international] institutions to pursue justice but
52 also makes them, under the political conception ... inappropriate sites for claims of
53 justice” (Nagal, 2005, p. 115, p.140).

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56 Second, Nagel regards the State as the only kind of collective institution whose rules are collectively
57 authored by the public it governs. Specifically, he claims that:
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3 “Justice, on the political conception, requires a collectively imposed social
4 framework, enacted in the name of all those governed by it, and aspiring to command
5 their acceptance of its authority even when they disagree with the substance of its
6 decisions” (Nagel, 2005, p.140).

7 On this view, regardless of state involvement in international institutions, the responsibility for rights
8 continues to lie with states, rather than international governance bodies of other kinds.
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11 Nagel’s ideas provide an important exemplar of what we refer to as a statist view of global justice,
12 according to which principles of political justice remain bounded within national political
13 communities, and responsibilities for human rights correspondingly remain with states. Such a statist
14 account of the scope and grounds of obligations for global justice is challenged in varying ways by
15 each of the three arguments we examine below in support of an extension of human rights
16 responsibilities to the IASB. As we will see, each of Nagel’s arguments against extending
17 responsibilities to transnational bodies such as the IASB fails to take into account the pluralistic
18 nature of contemporary global political order, and the complex interdependence between state and
19 non-state actors that results (Black 2008).
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27 **3. Public power and public authorization: implications for the IASB’s public responsibilities**

28 What then are the implications of emerging pluralistic forms of international governance for the
29 responsibilities of organisations such as the IASB? In this section we review the first argumentative
30 logic that we identified above, which centres on the analysis of ‘public power’ as a basis for
31 articulating the grounds and scope of political responsibilities of transnational bodies such as the
32 IASB (Macdonald, 2008; Papadopoulos, 2010; Black 2008). We also briefly consider associated
33 arguments about the concept of public authorization.
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38 Analyses of transnational public power have emerged in direct opposition to the statist view outlined
39 above, which links the attribution of political responsibilities to the exercise of distinctively sovereign
40 forms of political power—of the kind that is available to national governments, but not to
41 international bodies such as the IASB. Theories of global public power challenge Nagel’s position by
42 offering a means of conceptualising both sources and consequences of effective governing authority
43 in ways that are not reliant exclusively or primarily on the availability of coercive forms of sovereign
44 State power.
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49 Macdonald’s account of public power (2008, p.24) focuses its critical gaze on the traditional statist
50 characterisation of “an organisationally unified framework of public power”, concentrated in a state
51 agent, which exercises public power through law-making. In contrast, she suggests (p.29) that “In our
52 contemporary ‘globalizing’ world order, global public power is not currently allocated among
53 regulatory agencies in accordance with any underlying democratic principles, or constitutional
54 structure”. Rather, non-state actors including transnational companies, NGOs, professional
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3 associations and others, interact with states and their international organisations to exercise power
4 directly over individuals in ways that implicate a range of issues of public concern. On this view, the
5 'public' character of power is defined not by the state identity of the actors exercising power, but
6 rather the normative character of the impacts of such power on individuals: "power should be
7 designated as 'public' and subject to democratic control whenever it impacts in some problematic way
8 upon the capacity of a group of individuals to lead autonomous lives" (Macdonald, 2008, p.35).
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12 What then does this imply for how we might conceptualise the power of the IASB as 'public' in
13 character? As we explain in what follows, the IASB is public in multiple senses: (i) it receives public
14 funding; (ii) it often undertakes delegated responsibilities of the state; (iii) its organisational purposes
15 are oriented in some respects explicitly towards issues of public interest; and (iv) both directly and
16 indirectly, its activities have implications for a broad range of human rights. Such impacts are linked
17 not only to direct consequences of accounting standards for financial stability and the regulation of
18 remuneration and other forms of social income distribution, but also through broader impacts on
19 corporate and market behaviour. The work of the IASB impacts either directly or indirectly on a
20 number of basic human rights (see our discussion of Pogge later in the paper). The relationship
21 between global governance regimes and poverty within individual nation states is complex (Scholte,
22 2010; Uddin and Hopper 2003; Pogge 2002), however to the extent that the IASB plays a significant
23 role in this regime, it impacts both positively and negatively on, for example, Article 3, the right to
24 life and security of person; Article 23, the right to work and the right to just and favorable
25 remuneration for an existence worthy of human dignity Article 25: the right to a standard of living
26 adequate for the health and well-being, including food, clothing, housing and medical care and
27 necessary social services and even Article 21, the right to take part in the government of your country.
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39 First, the public character of the IASB's operations is underpinned by the public sources of
40 authorization and support on which it relies. These are reflected in the organisation's multiple sources
41 of state as well as private funding (Botzem and Quack, 2009; Kirsch, 2006; Larson and Kenny, 2011).
42 While some literature questions whether private sector contributions to the IASB undermine their
43 independence, the fact that public money also goes to the IASB is often overlooked⁵. Moreover,
44 within some contexts, specifically in relation to the United States, for example, the development of
45 financial reporting standards is a delegated responsibility of the state. The support that governments
46 contribute to IASB processes, in the form of both resources and support for their mandate and
47 authority, plays an important role in enabling the IASB to operate effectively on a sustained basis.
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55 Second, the IASB's organisational mandate and orientation is focused on public interest as well as
56 private purposes. The IASB is explicit in characterising its role as serving the public interest, when it
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3 identifies its objective as being: “to develop, in the public interest, a single set of high quality,
4 understandable, enforceable and globally accepted financial reporting standards based upon clearly
5 articulated principles” (IFRS Foundation, 2013, p.5). However, one could argue there is some
6 ambiguity in the IASB’s position, given that they conflate their responsibility to users of financial
7 reports and the rights of property owners and providers of capital: “These standards should... help
8 investors, other participants in the world’s capital markets and other users of financial information
9 make economic decisions” (IFRS Foundation, 2013, p.5) Further insight into the IASB’s central
10 purposes can be inferred from the core functions that the organisation performs. The IASB ostensibly
11 seeks to do three things: (i) to improve financial reporting quality; (ii) to make comparisons between
12 accounts easier, and; (iii) to reduce costs for companies and make raising capital cheaper and easier.
13 From this perspective, the objective of the IASB is to make capital markets more efficient in the
14 allocation of capital and thus support the public good of aiding global economic development and
15 prosperity—notwithstanding widespread contestation of the theoretical (and ideological) proposition
16 that efficient capital markets will deliver global economic prosperity (Stiglitz 2003). In this sense, the
17 narrow economic purposes of the IASB are regarded by some as linked to the advancement of certain
18 categories of social and economic rights.
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28 Third, the scope of the issues to which International Financial Reporting Standards apply is
29 significant, and this has implications for unintended as well as intended impacts on matters of public
30 concern. IFRSs encompass important public issues such as the accounting of pension solvency, the
31 treatment of intangible assets, and segmental reporting (Rudder 2008). The way in which these issues
32 are treated in financial reports have significant consequences for the prospects of different industries,
33 modes of taxation and the types of pensions available. For example, it is claimed that the IASB’s
34 pension standard resulted in a shift from defined benefit to defined contribution schemes due to the
35 way in which pension liabilities are reported (Rudder, 2008, p.902). As Dixon and Monk (2009, p.2)
36 note, “in recent years, changing accounting standards have supported a significant transformation or
37 decline of the DB [defined benefit] pension... in short, international accounting harmonization is
38 having profound transformational effects”. A further example of accounting standards giving rise to
39 matters of wider public concern, relates to changes to segmental reporting requirements recently
40 introduced by the IASB. More specifically, objections to the changes were raised by the Tax Justice
41 Network and the Publish What You Pay coalition (PWYP)⁶ because the changed requirements meant
42 that companies could choose not to disclose as much disaggregated information. This was considered
43 a particular problem for companies operating in the mineral and extraction sectors in developing
44 countries – and a number of “NGOs and charities were concerned that information about such
45 companies and the magnitude of payments made to governments and officials in these countries
46 would not be divulged” (Crawford et al. 2014, p.310). In view of such examples of broad public-
47 interest impacts of accounting standards, authors such as Rudder (2008, p.901) have claimed that such
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3 rules have the capacity to “affect not only their own industry but the life chances of those outside their
4 particular system of private governance”.

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7 The power of the IASB is often particularly notable in emerging economies, for whom the adoption of
8 International Financial Reporting Standards is sometimes a condition of receiving World Bank
9 funding, as well as a listing requirement for stock exchanges (Uddin and Hopper 2003). Despite the
10 assumption that public interest impacts – insofar as they are produced – should be generalised and
11 benign in character, evidence exists to suggest that a range of less benign, and in some senses
12 unintended, consequences, result from the IASB’s activities. A notable example of the imposition of
13 such conditions, as well as an illustration of the powerful constellation of international institutions to
14 which the IASB is aligned, can be found in the wake of the East Asian financial crisis (1997-1999).
15 According to Arnold (2009, p.60), G7 finance ministers and central bank governors formed “the
16 Financial Stability Forum (FSF)” in the aftermath of the crisis in order to bring greater stability and
17 transparency to the international financial system. As part of a set of a wider set of reforms, the FSF
18 “brought the full backing and authority of the World Bank, IMF, OECD, and authorities responsible
19 for financial stability... to the task of promoting the adoption of and compliance with international
20 financial reporting and auditing standards” (Arnold, 2009, p.60; see also, Arnold, 2012). As the crisis
21 spread to Korea, and as a condition of an IMF rescue package, Korea agreed to enforce accounting
22 standards in line with generally accepted accounting practices, “audited by internationally recognized
23 firms” (Arnold, 2012, p.371; see also IMF, 1997). According to Arnold’s (2012, p.373) analysis:

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35 “The East Asian crisis provided an opportunity to advance longstanding US and western
36 economic interests in promoting financial liberalization in East Asia and throughout the
37 developing world... accounting reform was seen as instrumental to the accomplishment
38 of that goal”.

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41 These examples highlight that the extent to which human rights are actually enjoyed amongst
42 populations around the world depends not only on enforceable legislation and other rules dependent
43 on the strictly ‘coercive’ kinds of sovereign power that Nagel has in mind, but also on transnational
44 rule-making bodies such as the IASB. These play a significant role in influencing economic policy
45 and development within nation states, the economic performance of national companies, and thus also
46 the wellbeing and rights fulfilment of individuals and societies.

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51 With the evolution of the IASB’s public functions and powers has come growing visibility of its
52 public character, and rising demands to hold the organisation publicly to account. The structure of the
53 IASB/C has changed considerably since its formation in 1973,⁷ and recently there have been some
54 efforts to build elements of new regimes of public accountability, in which an array of non-state as
55 well as governmental stakeholders have been engaged. For example, in 2009 the IASB’s constitution
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3 was amended to include the establishment of a monitoring board. This development came in response
4 to concerns about the significant levels of public power being channeled through what was essentially
5 a private sector standard setting body⁸. This move represented growing demands for regulatory
6 mechanisms to correspond with the IASB's social and political functions (Zeff 2012; see also Loft,
7 Humphrey, and Turley 2006). The Monitoring Board was initially composed of representatives of the
8 SEC, Japan's Financial Services Agency, the European Commission, and the Emerging Markets and
9 Technical Committees of IOSCO (Zeff 2012)—again highlighting recognition of the significant
10 public interests involved in IASB activities. Demands for greater transparency have also been
11 accommodated to some extent, for example by making meetings open to the public (Richardson and
12 Eberlein, 2011).
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20 The breadth of the political communities underpinning the IASB's constitution and operation is
21 particularly significant when considering applicability to the IASB of Nagel's statist account of global
22 justice obligations. Nagel (2005, p.138) claims that international rules and institutions cannot properly
23 be the subject of principles of justice because: "They are not collectively enacted and coercively
24 imposed in the name of all the individuals whose lives they affect; and they do not ask for the kind of
25 authorization by individuals that carries with it a responsibility to treat all those individuals in some
26 sense equally". In other words, Nagel connects the degree of inclusive public authorization and
27 legitimation of a given political institution, with the character of that institution's normative
28 responsibilities. Public authorization, as well as public power, are thus seen as important
29 preconditions for the applicability of principles of justice.
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37 In the case of the IASB, incremental (albeit many would argue still insufficient) moves towards
38 strengthened public transparency, accountability and representation in IASB governance have
39 evolved through the the cumulative construction of cross-sectoral and transnational constituencies of
40 supporters and stakeholders, and adaptive responses to their evolving demands. As Zeff (2012) put it:
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43 "The evolution of the IASC and the IASB is the tale of a private-sector international
44 accounting standard setter that has succeeded in earning the respect and support
45 initially of national accounting bodies, then of national standard setters, and
46 ultimately of regulators in the major capital markets and of government ministries, as
47 well as of the preparers and users of financial statements around the world."
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50 This account of cumulative, incomplete processes of authorization and legitimation within the IASB
51 is in accordance with widespread recognition within the sociological literature that political authority
52 and legitimacy within complex, pluralist governance systems are socially constructed, contested and
53 often fragile—within as well as between and beyond state jurisdictions (Black, 2008; Scott 2001).
54 Nagel's insistence that obligations of justice can apply only to institutions underpinned by
55 comprehensive and egalitarian processes of political authorization is thus idealised even with regard
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3 to the operation of contemporary states. We can accept his normative proposition that public
4 authorisation (as well as public power) is required for principles of justice to apply, without accepting
5 his highly idealised assumptions about what political authorization need practically consist of—
6 particularly when these assumptions stand in such clear tension with established political and
7 sociological accounts of how public power, authority and legitimacy actually operate within
8 contemporary, pluralist systems of governance.
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12 13 **4. The Guiding Principles, The Tilburg Principles and human rights responsibilities of the** 14 **IASB.** 15

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17 As we noted earlier, analyses of social justice applied to transnational business activity and its
18 regulation have been increasingly framed in terms of human rights (Pogge, 1992 2002; 2005; 2007).
19 Our review of Nagel's arguments about global justice have illustrated key elements of this statist logic
20 in broader, philosophical terms. Here it is also useful to briefly review the way in which this
21 traditional state centred view has been applied specifically to attribution of responsibilities for human
22 rights. The way in which international human rights law has attributed human rights responsibilities
23 within a state centric logic has four distinct characteristics. First, rights have been the responsibility of
24 nation states, as reflected in nation states being accountable for compliance with human rights treaties.
25 Second, states have a negative responsibility to protect against human rights violations including
26 those violations perpetrated by nation states. Third, states have a positive responsibility to create the
27 conditions under which human beings can realize their rights. Finally, where rights have been
28 violated, States have a responsibility to provide effective access to remediation in cases where
29 individuals feel that their human rights have been violated (Amnesty International 2005).
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38 Human rights scholars and practitioners are increasingly concerned, however, that the traditional
39 rights framework with its focus on the responsibilities of national governments does not reflect the
40 pluralist system of global governance outlined above. According to Vandenhole (2012: p.2), "Given
41 the multiplicity of State and non-state actors with varying degrees of power and importance, human
42 rights law needs to be adapted, so that new duty-bearers such as foreign States, transnational
43 corporations and international organisations can be integrated into the human rights legal regime". In
44 accordance with such concerns, there have been sustained efforts—both intellectual and political in
45 character—to try and develop collectively authored norms through which new transnational
46 responsibilities beyond the state may be articulated. In the discussion below we draw on two examples
47 of attempts to develop the human rights responsibilities of non-state or inter-governmental actors: the
48 Tilburg Guiding Principles on the World Bank, IMF and Human Rights, and the UN Guiding
49 Principles on Business and Human Rights.
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3 The 2002 *Tilburg Guiding Principles on the World Bank, IMF and Human Rights* (Vandenhoele 2012,
4 Genugten, 2013; Bradlow, & Grossman, 1995; Darrow, 2003; 2009; Skogly 2003, 2012) reflect one
5 significant effort to explore the extent to which inter-governmental organisations possess human
6 rights obligations, and how those obligations could be construed. The rationale underpinning these
7 Principles rests on two core arguments. One focuses on the *constitution* of these international
8 bodies—attributing responsibilities on the basis of what these bodies do, encompassing both their
9 normative and strategic purposes, and their material impacts. The second relates to their
10 *composition*—attributing responsibilities on the basis of what actors are involved in shaping the
11 definition of public purposes, and the exercise of corresponding forms of public power. Both offer
12 important means of countering Nagel’s claims that public purposes and corresponding forms of
13 collective authorship and organisational legitimacy are limited to state-based organisations.
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21 The second example we draw on is the UN Guiding Principles, which were ratified by the UN Human
22 Rights Council in June 2011. These are widely regarded as one of the most significant developments
23 in corporate governance in a decade (Taylor, 2011; Muchlinski, 2012; Backer 2011; Ratner 2001).
24 The Protect, Respect Remedy framework on which the Guiding Principles rest articulates three
25 principles: first, a State duty to protect against human rights abuses by third parties including
26 business; second, a business responsibility to respect human rights; third, the need for more effective
27 access to remedies for victims of human rights abuses (UN Commission on Human Rights, 2005). As
28 has been noted in the literature, the moral foundations on which these Guiding Principles have been
29 derived as a basis for allocating rights responsibilities to transnational business enterprises have been
30 somewhat obscure (Arnald 2010; Santoro 2015; Wettsein 2015). Nonetheless, the core arguments
31 underpinning the Tilburg principles—regarding the need for correspondence between public
32 purposes, powers and constitutive communities of a given organisation, and the assignment of
33 corresponding responsibilities—resonate importantly with the logic of the Guiding Principles. Such
34 arguments—explicitly or implicitly—have played an important role in justifying how the Principles
35 have on the one hand extended human rights responsibilities from states to business enterprises, while
36 on the other hand limiting the character of these responsibilities to ‘respecting’ rather than
37 ‘protecting’ rights, in view of the distinctive organisational purposes of business enterprises.
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49 We consider first arguments resting on analysis of the *constitution* of international bodies—
50 encompassing their core purposes and functions. These dovetail in important ways with the arguments
51 we explored in the previous section, highlighting the public power of the IASB, and thus the properly
52 political character of its corresponding responsibilities. Building on such arguments, the Tilburg
53 Principles assert that it is possible to extend human rights obligations to international organisations
54 such as the World Bank and the IMF because of what they are constituted to do. In other words, the
55 Articles of Agreement of the World Bank “require the Bank to recognize the human rights dimensions
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3 of its development policies and activities since it is now evident that human rights are an intrinsic part
4 of the Bank's mission." (Vandenhoele, 2012).⁹ A similar argument about a public mission translating
5 into appropriate public responsibilities for human rights can also be made with regard to the IASB, by
6 drawing on analysis of the IASB's public interest purposes; as already discussed in the previous
7 section of this paper,
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12 In terms of what it has been constituted to do, the IASB is centrally oriented towards the
13 realization of certain kinds of social and economic rights, such as securing the rights of
14 property holders—specifically, holders of financial property. Ideologically, like the World
15 Bank, the reason why the IASB promotes the adoption of international accounting standards
16 is because this process of harmonization is regarded as helping to realize economic social and
17 cultural rights. In addition, it has indirect and sometimes unintended impacts on rights of
18 these and other kinds (Black, 2008). Black (2008, p.146) comments,
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24 "Justice claims emphasize the values or ends which the organization is pursuing,
25 including the conception of justice (republican, Rawlsian, utilitarian, for example, or
26 various other conceptions of "truth" or "right"), but also more prosaically, goals such
27 as sustainable development or free trade."
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30 If, as the Tilburg Principles attempt to argue, the policies of the world bank provide grounds for
31 requiring it to consider human rights impacts, the same argument may also be applied to the IASB.
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34 We next consider arguments that focus on analysing the *composition* of transnational bodies. Here, we
35 highlight the dual public-private composition of the IASB, as an organisation in which governmental
36 as well as non-governmental actors provide resources, exercise influence, and underpin the
37 organisation's legitimacy. Although the IASB is not formally constituted as an inter-governmental
38 body, in some contexts—as we saw above—the development of financial reporting standards is a
39 delegated responsibility of the state, and the adoption of international financial reporting standards is
40 universally undertaken by national governments.
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46 The Tilburg Principles explore the human rights obligations that arise as a consequence of
47 relationships with nation states¹⁰ affirming that "States retain their international human rights law
48 obligations when they participate in [multilateral] institutions." Vandenhoele (2012, p.14) explains that
49 within this context, "States are assumed to have *soft* obligations specifically in relation to ensuring
50 that the multilateral institutions do not impede the ability of States to meet their human rights
51 obligations, nor hinder corporations from respecting human rights. On the contrary, they should
52 encourage multilateral institutions to promote business respect for human rights and to help States
53 meet their human rights obligations."
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Of particular relevance to analysis of the IASB, the Tilburg Guiding Principles stress that member countries of the World Bank need to make sure that they adhere to their international human rights obligations when the policies of the World Bank are being developed (Vanholden, 2012). The Guiding Principles for Business and Human Rights likewise stress that the human rights obligations of the state don't go away when it transacts with business. This view is supported by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guideline 19: Acts by International Organizations. This Guideline states that:

“The obligations of states to protect economic, social and cultural rights extend also their their participation in international organisations where they act collectively. It is particularly important for states to use their influence to ensure that violations do not result from the programmes and policies of the organisations of which they are members. ... Member states of such organisations individually or through the governing bodies ... should encourage and generalize the trend of several such organisations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.”

These principles articulated specifically in the domain of human rights law demonstrate the direct applicability of broader arguments about the public power and responsibility of the IASB to the specific context of human rights. Such arguments directly counter statist arguments relating to both the character of the IASB's public power, and the complex processes of collective authorization and legitimation operating within a pluralist order.

5. Responsibilities for institutional harm

The above frameworks highlight potential ways in which we might conceptualise the IASB's responsibilities as an individual institutional actor. However, as we explained earlier, the IASB does not act alone, but rather is enmeshed within complex networks of regulatory actors—public and private, national and international. As such, the ways in which it exercises public power and builds capacities to harm or protect human rights, are often indirect—mediated through interactions with broader institutional systems. This has potentially important implications for how responsibilities of the IASB can plausibly be conceived.

We suggest here that the the philosopher Thomas Pogge's (1992) account of *institutional* responsibilities for human rights supplies a simple and intuitive framework and vocabulary for beginning to think through the human rights responsibilities of the IASB as a key non-state actor in a pluralistic global governance system. Pogge does not oppose the dispersion of power within a pluralist order; indeed, a conception of dispersed global political power is something that Pogge has explicitly endorsed (Pogge, 1992). Nonetheless, dispersal of power towards international bodies such

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3 as the IASB can only be justified, on Pogge's view, to the extent that such dispersal is part of a
4 broader just institutional scheme.
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8 Underpinning Pogge's view is a distinction between *interactional* and *institutional* frameworks for
9 thinking about moral and political responsibilities. From the perspective of an interactional view,
10 human rights form the basis of evaluating interactions at the individual level. This view focuses on the
11 question of how individuals ought to behave, which Pogge characterises as a matter of *ethics*. The
12 institutional view, on the other hand focuses on the legitimacy of social or institutional systems, and is
13 a matter of *Justice*. On this view, Pogge (1992, pp.90-91) explains that human rights offer:
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17 "primarily a criterion of justice, which assesses a global institutional framework as
18 being the more unjust the less protective of human rights it is on the whole ... In
19 order to determine how agents ought to act within some given institutional
20 framework, we must first assess how just this framework is and whether there are
21 feasible avenues of institutional reform."
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24 Pogge (1992, p.92), provides the example of slavery to illustrate his point: "On an interactional view,
25 this right would constrain persons, who must not enslave one another. On an institutional view, the
26 right would constrain legal and economic institutions, which must be such that slavery is not
27 encouraged or supported or tolerated." In other words, an interactional view of rights construes
28 accountability for their fulfilment as resting with individual agents. However, from an institutional
29 view, human rights impose constraints upon shared practices. Individuals are responsible, but
30 indirectly: individual responsibility for the consequences of ones actions is replaced by a shared
31 responsibility for the justice of the systems one supports (Pogge, 1992, p.91). This results in the
32 challenge that one ought not to participate in an unjust institutional scheme that violates rights without
33 making reasonable efforts to aid its victims and to promote institutional reform. In Pogge's words,
34 this approach:
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38 "makes available an appealing intermediate position between two interactional
39 extremes: It goes beyond simple libertarianism, according to which we may ignore
40 harms that we do not directly bring about, without falling into a utilitarianism of
41 rights ... which commands us to take account of all relevant harms whatsoever,
42 regardless of our causal relation to these harms" Pogge (1992, p.92).
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48 It is important to note here that it is not Pogge's institutional view of justice persay that sets him apart
49 from state-focused scholars such as Nagel, many of whom share this broadly Rawlsian view of
50 political justice as applying to collective social and political institutions, rather than individual
51 conduct. Rather, Pogge differs with respect to his account of the relevant institutional structures—
52 focusing on the 'global' institutional order, rather than the basic social and political institutions
53 underpinning national societies—reflecting his broadly cosmopolitan orientation (see Murphy 1991;
54 Pogge 1992; 1989; 1989b; 2001;).¹¹
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3 Part of the appeal of applying Pogge's arguments to the IASB is that this view can account for a
4 responsibility for rights even where direct causality is difficult to ascertain. So, for example, while it
5 might be the case that the IASB doesn't have any control of local human rights violations, this does
6 not absolve the organisation of broader responsibilities towards desirable institutional reforms of the
7 regulatory and financial systems in which they participate. As Pogge (1992, p.96) explains: "Our
8 global institutional scheme can obviously not figure in the explanation of local human-rights
9 violations, but only in the macroexplanation of their global incidence...". As a result, actors such as
10 the IASB can be understood as bearing responsibilities for human rights not only in cases where they
11 have directly contributed to harms, but also insofar as such harms "are produced by social institutions
12 in which [they] are significant participants" (Pogge, 1992, p.93).
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20 In concrete terms, what then does this argument imply for the IASB? This view importantly shifts the
21 way we think about responsibility—highlighting the responsibilities of the IASB not only towards
22 ensuring that its own policies and activities do not harm human rights directly, but to ensure that
23 where broader elements of the economic and regulatory system of which the IASB is a part are linked
24 to human rights violations, they commit to "making reasonable efforts toward institutional reform" of
25 these broader systems. In other words, this implies an obligation for the IASB to attempt to extend the
26 pursuit of accounting as "a worthy endeavor" (Williams, 2004) to reform of the broader international
27 architecture. Our aim here is to open up the question of what it might mean for the IASB to make
28 reasonable efforts to aid the "victims" of unjust elements of the global regulatory and financial
29 system. What kind of institutional reform would be necessary? How should the IASB participate in
30 broader debates about Global Financial Stability? The equity of corporate remuneration or public
31 pensions systems and how could it deploy its expertise to more actively engage in supporting reforms
32 at the global level?
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41 **Conclusion**

42 This paper has begun to explore what a normative commitment to "pursue justice on a world scale"
43 might mean if it was applied to the IASB. We were motivated to explore these questions in the light
44 of the increasingly pluralist nature of global politics and the emergence of global networks of
45 governance; the extension of the language of human rights amongst prominent international actors
46 such as the World Bank and IMF, and finally the ongoing discussion about the role and
47 responsibilities of the IASB. While the accounting literature has begun to engage with the emerging
48 discourse on corporate responsibility for human rights, as yet there has been little exploration of what
49 this development might mean for thinking about the function and accountability of the IASB. Of
50 course there is an extensive literature on the dangers of a rights based approach to justice, and a
51 warning that rights, like every other signifier, remain contested (e.g. Douzinas, 2000, 2007; Dembour,
52 2006; Wettstein, 2010). We accept that requiring the IASB to be aware of the rights impacts of its
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3 activities is a potentially dangerous move. Regardless of how promising the business and human
4 rights agenda might seem, it could of course be undermined by corporate and/or ideological capture
5 (Grear and Weston, 2015). However, we contend that to not explore the possibility of this extension is
6 to ignore the realities of the pluralistic nature of global governance and the need to think through how
7 those individuals whose rights are impacted by the activities of non-state and transnational actors are
8 empowered to hold them to account. As Pogge (1992) notes: “As more and more persons are
9 significantly affected by certain institutions, more and more persons have a right to a political role in
10 shaping them.”
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17 We began by exploring the emergence of pluralistic forms of governance, and highlighting the
18 challenge this raises for established statist accounts of governance, accountability and justice.
19 Traditional perspectives on human rights contend that it is incoherent to extend rights responsibilities
20 beyond States to bodies that have no coercive power and whose legitimacy is not of a kind that
21 requires them to treat everyone equally. However, beginning with Macdonald (2008), we argued that
22 global regulatory agencies such as the IASB do exercise public power in important ways, and
23 moreover, that such power is increasingly underpinned by the kinds of collective authorship and
24 authorization necessary for norms of global justice to apply.
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30 We then examined attempts to translate human rights based notions of justice into this new pluralistic
31 context—exploring both the United Nations Guiding Principles on Business and Human Rights,
32 which extends human rights responsibilities to corporations, and the Tilburg Guiding Principles,
33 which apply human rights obligations to the World Bank and IMF. Drawing on both sets of principles
34 we explored arguments for extending human rights responsibilities to the IASB. Finally, we explored
35 how Pogge’s institutional view of human rights could be used as a moral justification for further
36 extending human rights responsibilities to the IASB.
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42 Our aim in this paper has been to provide a starting point for beginning to conceptualise the human
43 rights responsibilities of the IASB. Our intention is to open up this possibility to further analysis. Yet
44 even if it is possible to articulate the IASB’s theoretical responsibility for rights, this would of course
45 also open up a further set of questions about what this responsibility might look like in practice. From
46 the perspective of the GP’s, it could be that the IASB’s responsibility for rights could be related to the
47 requirements they place on corporations to implement systems of due diligence and access to remedy.
48 Should the IASB provide guidance on how to account for corporate access to remedy for rights
49 abuses, for example? Or should they require that human rights be included in a corporations’ risk
50 management strategy? This could further be linked to corporate requirements in relation to different
51 rights-based issues, like modern day slavery, upon which corporations are increasingly being required
52 to act. However, at a second level, perhaps it might be that we should place the same requirements on
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3 the IASB that the GP's place on corporations. From this perspective, the focus would be not on how
4 the IASB requires corporations to report on the financial implications of the GPs, but rather that the
5 IASB should implement its own system of human rights due diligence as part of the development of
6 international accounting standards. Thirdly, however, from an institutional perspective, a normative
7 account of human rights responsibilities such as that developed by Pogge would extend the
8 responsibility of the IASB further, ascribing shared responsibilities for the justice of the broader
9 institutional economic and regulatory order of which it the IASB is a key actor. Such a requirement
10 might have a more fundamental impact on the kinds of standards that the IASB would be required to
11 develop. Of course much more research is required to fully explore the impact that conferring a
12 responsibility for rights would have on the structure and composition of the IASB.
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20 By asking whether the IASB should have responsibility for rights, this paper provides one way to
21 further open up the IASB's claim to be in the public interest to critical scrutiny. In engaging here with
22 concepts of global justice, we may open up further the notion of public interest that has provided an
23 ongoing moral justification for the accountant's work.
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38 ¹ The International Accounting Standards Board is the independent standard-setting arm of the International
39 Financial Reporting Standards Foundation. It has responsibility for both developing and promoting the adoption
40 of international financial reporting standards. The International Financial Reporting Standard Foundation is
41 constituted as a not-for-profit whose stated purpose is to develop a single set of financial reporting standards and
42 by doing so, foster trust, growth and long-term financial stability in the global economy (IFRS 2016). The IASB
43 is composed of 14 members, 12 men and two women, all of whom have a technical accounting background.

44 ² Rights and justice are distinct and complex concepts, and it is important not to conflate the two (Rawls, 1999;
45 Nagel, 2005; Dworkin, 2008). Yet regardless of their conceptual distinctiveness, the discourse of human rights
46 is emerging as a key conceptual resource in the development of both theories and practices that aim to translate
47 the pursuit of global justice into a new pluralistic political context, particularly in relation to transnational
48 business activity and its regulation.

49 ³ We recognize the significance of the question as to the possibility of human rights at all (Li and McKernan in
50 this issue), which is not the subject of this paper. We acknowledge that the language of rights has been used to
51 intervene in international arenas as excuses or justifications for the exercise of power and motivated by financial
52 interests, however we contend this does not mean that there is no potential value to the discourse on rights. We
53 also do not address the extent to which the IASB's human rights obligations could or should be brought within
54 the international human rights legal regime.

55 ⁴ In doing so we recognise that the accounting literature is cautious about the Guiding Principles (Grey et al
56 2011). While we would also be wary of uncritically applying human rights to accounting, we think that it is
57 useful for opening up a debate about advancing the social and political possibilities of accounting and its
58 institutions (Grey and Gray 2011; Galhoffer, Haslam and Van der walt, 2011; Li and McKernan in this issue).

59 ⁵ According to their most recently annual report (IFRS, 2014), the IFRS Foundation received contributions of
60 £22.6 million. They note that their "primary source of income comes from voluntary contributions from

jurisdictions that have put in place national financing regimes' noting that while "funding mechanisms differ from jurisdiction to jurisdiction... most jurisdictions have either established a levy on companies or provide an element of publicly supported financing to the IFRS Foundation" (IFRS, 2014, p.42). Nevertheless, because the IFRS Foundation disclose contributions on an aggregated basis for each country, it is not possible to ascertain how much comes from public sources. While numerous national ministries of finance and national banks are listed as major contributors – the actual amount of their funding is not disclosed. Nevertheless, the IFRS Foundation (2014) do report that contributions representing over £6.4 million were received from international accounting firms – accounting for 28.3% of their total funding.

⁶ The Publish What You Pay coalition (PWYP) is a coalition of over 800 civil society organisations that campaign for greater accountability in the extractive industries. See: <http://www.publishwhatyoupay.org/about/>

⁷ The IASC was established in 1973 and changed its name to the IASB in 2001.

⁸ For example, in relation to the implementation of international accounting standards for EU listed companies, the European Parliament has noted that the IASB: "... is a private self-regulatory body which has been given the role of lawmaker for the EU ... [the EP] underlines that the IASCF/IASB ... lack transparency, legitimacy, accountability and are not under control of any democratically elected parliament or government, without the EU institutions having established the accompanying procedures and practices of consultation and democratic decision-making that are usual in its own legislative procedures.... (European Parliament, 2008, p. 4, quoted in Richardson and Eberlein, 2011, p.217; see also Crawford et al., 2014)"

⁹ These principles challenge to some extent the established World Bank position. Palacio, the World Bank's General Counsel, commented in 2006 that while the Bank could take human rights into account, it was under no obligation to do so (Vandenhole, 2012).

¹⁰ There is an extensive debate within the literature about whether the International Financial Institutions, in particular the International Monetary Fund and the World Bank, have direct human rights obligations as duty bearers (Salomon, 2007; Vandenhole, 2012) or whether responsibility lies solely with the nation states who are members of these financial institutions. The Tilburg Guiding Principles contend that global financial institutions like the World Bank and the IMF have their own human rights obligations because they are organizationally independent from the countries that are members (Vandenhole, 2012). Vandenhole, (2012, p.17) concludes, "as actors with international legal personality, they have international legal obligations."

¹¹ Pogge adopts a conventional liberal cosmopolitan perspective, which prioritises individual autonomy, and assumes that the most important unit of moral analysis is the individual, rather than the state. For Pogge, international boundaries between nation states should therefore not determine how the interests of individuals are taken into account.