Rights, Duties and Corporate Social "Kantracts"

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Here's a riddle for you. Which is the more foundational concept in business, sustainability or responsibility? Does sustainability matter because to behave unsustainably is irresponsible? Or is it the other way around – to behave irresponsibly is unsustainable?

While both are true, I think, the stronger response is the former. I say this because by itself, sustainability is a purely descriptive affair – it tells us what our impacts in the world have been relative to empirical limits and thresholds, but not what they *should* have been. Responsibility, by contrast, is fundamentally normative. It goes beyond empirical measures by first determining what performance ought to be in order to be morally or ethically right. Thus, even when we combine the two – as we always do in the practice of Context-Based Sustainability (CBS)[1] – the *sustainability norms* that follow are perhaps better thought of as *responsibility norms*.

This explains why the inclusion of performance norms in sustainability accounting (i.e., thresholds and allocations) is so important, for without them the usefulness of sustainability accounting as a tool for assessing responsibility performance is impossible (McElroy 2022-2023; Thomas and McElroy 2016). Without the specification of norms, sustainability accounting amounts to little more than impact accounting, where the effects of activities on resources may be revealed, but never in terms of how they compare to responsibilities or norms.

> *…sustainability performance is arguably just a proxy for responsibility performance.*

The point, of course, is that tracking impacts on vital resources in purely incremental ways tells us nothing of any value about the performance of organizations. It is only when we add targets or thresholds for performance into the mix that such accounting becomes useful. And even when that happens (i.e., in authentic sustainability accounting), it is effectively *responsibility* performance we are talking about, since sustainability performance is arguably just a proxy for responsibility performance.

Rights and Duties

Not only is sustainability performance merely an indicator of responsibility performance, but so is the latter the best indicator of performance in general. After all, even financial performance is addressed in these terms, whereby for-profit companies, for example, are duty-bound to at least maintain shareholder value if not expand it – maximize it, even! Managers and directors in such companies

1 See, for example, https://en.wikipedia.org/wiki/Context-Based_Sustainability, and also McElroy 2008, and McElroy and Van Engelen 2012.

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are in fact vested with a responsibility to increase shareholder value, the duty for which has a name of its own: fiduciary duty.

In many ways, then, what today we refer to as CBS is simply an extension of conventional financial accounting, minus the shareholder primacy part. This is what Martin Thomas and I meant when in 2014 we coined the terms *monocapitalism* and *multicapitalism* as we were developing the MultiCapital Scorecard method (Thomas and McElroy 2016a, 2016b).[2] In monocapitalism, businesses focus on the growth of privately-held economic capital for the benefit of only one stakeholder group, shareholders. In multicapitalism, they focus on the maintenance of all vital capitals for the benefit of all stakeholders. Stakeholder theory therefore also plays a crucial role in multicapitalism (Freeman 1984; Freeman et al 2010).

The multicapitalistic interpretation of sustainability thus takes the position that performance – sustainability performance – is best thought of in terms of impacts on vital capitals relative to levels that must be maintained in order to ensure stakeholder well-being. This includes levels of economic capital of importance to shareholders, but is by no means limited to that. Levels of human, social, constructed and natural capitals, too, for the benefit of others to whom duties are *also* owed are material as well.[3]

> *…to put either the sufficiency of vital capitals or the well-being of those who depend on them at risk is irresponsible. Organizations simply have no right to do that!*

The effects of an organization's behaviors on vital capitals, then, is what makes them sustainable or not – both the behaviors and the organization. If they have the effect of undermining the sufficiency of vital capitals for stakeholder well-being – *any* stakeholder – the behaviors involved are unsustainable. Moreover, to put either the sufficiency of vital capitals or the well-being of those who depend on them at risk is irresponsible. Organizations simply have no right to do that!

Now while the morality of the position taken here may seem obvious to most, more guidance is required in order to strengthen the argument. How, for example, are organizations supposed to know who their stakeholders are, much less what their responsibilities may be to manage their impacts on capitals in ways that can affect their well-being? What's needed here, then, is a more specific moral philosophy or ethical doctrine by which criteria can be distilled in a way that managers and directors can work with.

Indeed, it is not enough to simply claim or assert that organizations have responsibilities to manage their impacts on resources that others rely on for their well-being. Evidence or arguments in support of such claims are also required. So what, then, is the moral basis of sustainability accounting in business, or of the view that organizations ought to take the well-being of others (not just shareholders) into account as they plan, execute, assess and report their performance?

Put simply, the basis of such claims can be found in the legitimate rights of others, and in the corresponding duties and obligations organizations thereby have to respect them. Henry Shue, the renowned American philosopher, put it this way in his groundbreaking book, *Basic Rights* (1980):

> "A right is an entitlement to action by others … a justified demand for others to perform their-rights-based duties."

J.S. Mill, some 117 years earlier, expressed essentially the same idea as follows (Mill 1863):

> "To have a right, then, is, I conceive, something which society ought to defend me in the possession of."

Shue is particularly well known for the distinction he makes between *basic* rights and all others, the

2 See, also, http://www.multicapitalism.com/Multicapitalism.pdf.

3 See Gleeson-White 2015, for more on the multi-capital orientation to management and accounting.

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former of which must be protected in order for any of the latter to obtain. Most important in Shue’s mind are the basic rights of *subsistence* and *security*, the former of which includes Earthly human habitats and a healthy environment (Shue 2020).[4]

Businesses and other organizations, then, are duty-bound to behave in ways that respect the inalienable rights of others in cases where such rights are material. And that is why in CBS we refer to stakeholders as anyone to whom such duties are owed. This is also why stakeholders are sometimes referred to as *rightsholders* and organizations as *duty-bearers*. Indeed, the same terms can be applied reciprocally, since organizations, too, have certain rights that stakeholders, in turn, are duty-bound to respect. Rights in either case beget duties and logically precede them!

To be legitimately moral, it must be possible to universally adopt a normative proposition without contradicting the proposition itself and/or undermining the well-being of its own proponents by dint of its effects.

The duties-based, or deontological, orientation to moral philosophy is most often, of course, associated with the writings of Immanuel Kant, especially his notion of the Categorical Imperative, or CI (Kant 1785). The most common articulation of the CI is the universalizability principle, which holds all normative propositions to a twofold test of conceptual and practical contradiction in order to be legitimate. To be legitimately moral, it must be possible to universally adopt a normative proposition without contradicting the proposition itself and/or undermining the well-being of its own proponents by dint of its effects. To be legitimate, normative propositions, that is, cannot be self-defeating. Nor can they only be good for some agents (their proponents) but not others. Fairness and justice considerations come into play here as well (Rawls 1971).

Corporate Social Kantracts

These ideas give rise to what I call *Corporate Social Kantracts (CSKs)*, a variant of corporate social *contracts* (rhymes with *Kantracts*) with a heavy Kantian spin to them. In this regard, I build upon the prior work of others in the social contracts arena (Bowie 1982; Donaldson 1982, 1989; Gauthier 1986; Keeley 1988; Donaldson and Dunfee 1999), including those who, like me, are intellectually drawn to Kant’s particular theory of morality as a basis for managing and assessing performance in business (Bowie 1982, 1991, 1998, 1999; Evan and Freeman 1988). Not satisfied with that, however, I go further. To the work of others who have successfully integrated social contract theory and Kantian ethics for organizational use, I add multicapitalism and the CBS methodology it entails to the mix.

What, then, does the addition of multicapitalism and CBS to social contract theory do for us? Why do we need it? The answer, I believe, is twofold.

First is that all legitimate rights fundamentally lay claim to capital resources of one kind or another that rightsholders rely on and are entitled to have; and which duty-bearers, in turn, are required to either provide, preserve, or refrain from consuming beyond their own shares.[5] A duty-bearer must not interfere with or deny, for example, a rightsholder’s entitlement to a healthy environment (a form of natural capital). Nor should a duty-bearer, such as an employer, refuse an employee’s right to fair treatment in the workplace (a form of social capital). And to the extent that such assertions themselves are nothing but beliefs or claims, they too constitute instantiations of intellectual capital that are mutually-held and collectively practiced in a community. Thus, they too are a type of resource that people rely on for their well-being, mutually-held knowledge and shared practices in a community, the enforcement of which must be maintained (i.e., social capital) (McElroy et al 2006). These things only make sense when viewed through the lens of multicapitalism and CBS.

4 By this standard, having access to a healthy, well-functioning climate system on Earth is a basic human right.

5 In multicapitalism and CBS, capital is defined as a stock of anything that yields a flow of valuable goods or services into the future. Capitals, in turn are essentially synonymous with resources. For more on this, see Costanza and Daly 1992, p. 38, Porritt 2005, p. 112, and McElroy 2008, p. 95-6.

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Multicapitalism and CBS thereby bring a highly relevant and disciplined form of performance accounting to social contract theory, without which it (the theory) is hardly practicable.

Second is that even in cases where we can clearly express a right or duty in terms of impacts on capitals, it remains to be determined how much of them a rightsholder is in fact entitled to have, or a duty-bearer is required to provide. These are precisely the kinds of issues multicapitalism and CBS were designed to address, using the all-important distinctions they make between *thresholds, allocations* and the *carrying capacities of capitals* (McElroy 2008, 2022-2023). Indeed, how else are organizations supposed to recognize and abide the rights of rightsholders to vital capital resources – not to mention assess their own performance in those terms – if not by turning to constructs like multicapitalism and CBS that were designed for that very purpose?

Multicapitalism and CBS thereby bring a highly relevant and disciplined form of performance accounting to social contract theory, without which it (the theory) is hardly practicable. Perhaps that is why until now social contract theory has never really gotten beyond metaphor in business and is virtually nowhere to be found in corporate practice. Multicapitalism and CBS can help bring it to life!

All told, then, the philosophy of management and accounting I have in mind for Corporate Social Kantracts is one that:

1. Differentiates between rights and their corresponding duties, rightsholders, and duty-bearers
2. Interprets overall performance in terms of responsibility performance
3. Interprets responsibility performance, in turn, in terms of duties and obligations owed to stakeholders
4. Defines stakeholders as parties to whom such corresponding duties and obligations are owed
5. Relies mainly on Kantian deontological principles to form, test and evaluate prospective duties and obligations
6. Expresses such duties and obligations in terms of normative impacts on vital capitals in accordance with multicapitalism and Context-Based Sustainability principles
7. Interprets sustainability performance in terms of actual impacts on capitals relative to such normative impacts, thereby rendering sustainability performance as a proxy for responsibility performance
8. Interprets overall organizational performance (both financial and non-financial) in terms of responsibility/sustainability performance, or as actual performance relative to normative performance using context-based metrics[6]

A good Corporate Social Kantract, therefore, would be one that clearly identifies parties to whom duties and obligations are owed – stakeholders/rightsholders – to have impacts on vital capitals – or not, as the case may be – in ways than can or should affect their well-being in specific ways. Norms for such impacts, in turn, can then be expressed in terms of whatever it might take to create and/or maintain minimally sufficient stocks and flows of such capitals (McElroy 2008, 2022-2023). Thus, the identification of rights and duties can serve as a definitive basis for making materiality determinations in organizations, as managers and directors perennially attempt to do so. Indeed, there can be no better way to make such determinations than by taking a context-based approach (McElroy 2019).

Importantly, when applied to impacts on economic capitals held by shareholders, this approach does not call for the maximization of profits. It rests only instead on the idea of reasonable and sufficient

6 See, for example, McElroy 2008, Sec. 3.5; CSO: https://www.sustainableorganizations.org/context-based-metrics-public-domain/; and Wikipedia: https://en.wikipedia.org/wiki/Context-Based_Sustainability#Context-Based_Metrics

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returns, especially in cases where limiting such returns may be deemed vital to the fulfillment of duties and obligations on other fronts (i.e., social and environmental ones).

Kantracts in Practice

The Corporate Social Kantract orientation to performance I propose here is the product of a more general approach to modeling human social systems after *contracts*. As Michael Keeley puts it, “From a contractual perspective, organizations are seen to be sets of agreements for satisfying diverse, individual interests” and not “goal-seeking biological entities”, or as akin to such (Keeley 1988, p. 12). And while the participants in such systems certainly include employees and shareholders, they are by no means limited to that. Participants also include suppliers, customers, neighbors, communities, etc. (Cyert and March 1963, p. 27).

Keeley goes on to expound upon the role of rights in organizations as follows, again contrasting the contractual view of organizations to the goal-seeking biological one (1988, p. 16):

> “While other models focus attention on system ‘goals’ or ‘roles,’ such concepts are secondary in a contractual view. In the latter, rights are recognized as the fundamental currency of social interaction… Virtually all organizational participants *have* rights (if not always in equal measure). They *act* accordingly. And the general structure of an organization can be outlined entirely in terms of *who has what rights to which things*.”

And as earlier noted, rights correlate to duties. Again, Keeley (p. 17):

> “Rights specify relations between persons, and each type of right typically involves correlative obligations or expectations on the part of another: ‘duties’ to honor others’ claim-rights…”[7]

Organizational performance, then, can be usefully interpreted as a measure of the degree to which managers and directors have (a) sufficiently identified participating rightsholders and their material rights relative to the activities or affairs of an organization, and (b) fulfilled their own (i.e., the organization’s) corresponding duties to them in response. And it seems obvious to add, I think, that in order to meet either or both of these expectations, one must think broadly in terms of stakeholders, and not just shareholders, to whom such duties may be owed. The relevance of stakeholder theory to all of this therefore once again comes rushing into view (Freeman 1984; Freeman et al 2010).

It seems hardly possible on the basis of the contractual view of organizations and the logic of assessing performance in those terms, that such assessments can be made until or unless the composition of an organization’s stakeholders (rightsholders) is determined in a systematic way, along with the rights and duties attributable to each. And so here we find another area in which the Corporate Social Kantract proposal I am making differs from what has come before it in the corporate social contract literature, in that what I am calling for is the explicit development of such contracts – or *Kantracts* – in organizations, and not just in metaphorical terms. To be clear, though, I am not calling for the development of such Kantracts in legally binding terms, only that the specifics of duties and obligations owed to stakeholders be clearly identified and documented in organizations as an early and recurring step in the performance accounting process.

For a model of how such an explicit Corporate Social Kantract might be constructed, see Figure 1 in which I provide an example of what the content of an actual Corporate Social Kantract might look like. At the core of the document is an articulation of (a) stakeholders to whom duties of performance are owed, (b) the specific claim-rights held by them, and (c) the corresponding duties owed by an orga-

7 A “claim-right” is an asserted moral or legal entitlement to the performance of another regarding access to a resource of some kind – a knowledge claim. When commonly applied or enforced in a societal setting, it amounts to a mutually-held knowledge claim (intellectual capital) that is embedded and expressed in the form of individual and/or shared practice (human and/or social capital).

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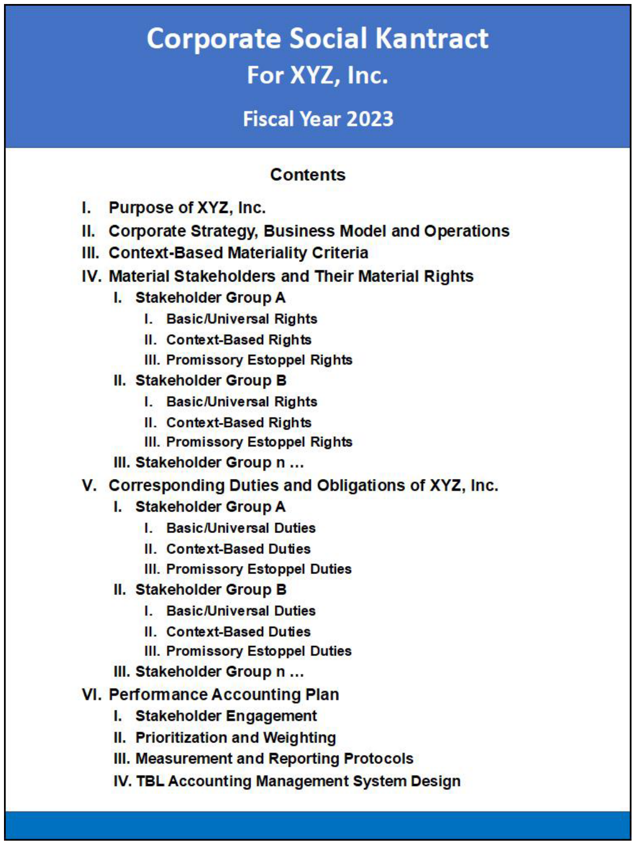
nization in response. Also included are descriptions of the organization's purpose, strategy, business model and operations, as well as its specific approach to making materiality determinations – which, again, should be context-based (McElroy 2019). The makeup of its performance accounting plan is also included.



Corporate Social Kantract
For XYZ, Inc.
Fiscal Year 2023

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  III. Stakeholder Group n …
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Figure 1 – Corporate Social Kantract Model

Figure 1 also suggests that rights and duties be identified in a way that differentiates between *basic/universal*, *context-based*, and *promissory estoppel* types in each case. Basic/universal rights "are everyone's minimum reasonable demands upon the rest of humanity", such as for security and subsistence, upon which corresponding basic/universal duties are based (Shue 1980, p. 19). All other material rights and duties in an organization are entity-specific and context-based as determined through a materiality analysis, including those attributable to promissory estoppel. Promissory estoppel rights and duties are those arising from supererogatory promises or pledges made by an organization to grant rights and privileges to stakeholders of a sort that might not otherwise be flagged in materiality determinations.[8]

Figure 2 goes on to show how the kind of Corporate Social Kantract I am proposing here would relate to other forms of accounting in an organization, the use of which can certainly continue unabated. Indeed, the development of a CSK is *antecedent* to reporting and does not constitute an act of performance reporting itself. Rather, a Corporate Social Kantract can establish the standards of performance that can and should *predicate* corporate reporting, not compete with it. After all, it seems the latter can hardly be done well without the former, in which case a Corporate Social Kantract can add tremendous value to the planning and management processes of an organization.

As shown in Figure 2, the making of materiality determinations is fundamental to the development of a Corporate Social Kantract. Indeed, this is an aspect of the CSK concept that is directly attributable to the CBS approach to sustainability accounting. By taking a context-based approach to making materiality determinations, rightsholders to whom duties of performance are owed can be identified, while also expressing the specific rights and duties involved in terms of impacts on vital capitals. This, in turn, makes it possible to report performance in terms of both sustainability and responsibility and also in triple bottom line terms.

Summary and Conclusions

In this article I have taken the position that for all intents and purposes, what passes for *sustainability* accounting in business today – especially in its most advanced Context-Based Sustainability form – is essentially a proxy for *responsibility* accounting. Sustainability performance, in other words, is an indicator of responsibility performance, since the very relevance and materiality of sustainability is rooted in (a) the fact that human well-being is so heavily dependent upon the sufficiency of vital re-

8 For more on promissory estoppel, see https://www.law.cornell.edu/wex/promissory_estoppel, as well as McElroy 2019, Box 2, p. 10: "When the Discretionary Becomes Obligatory".

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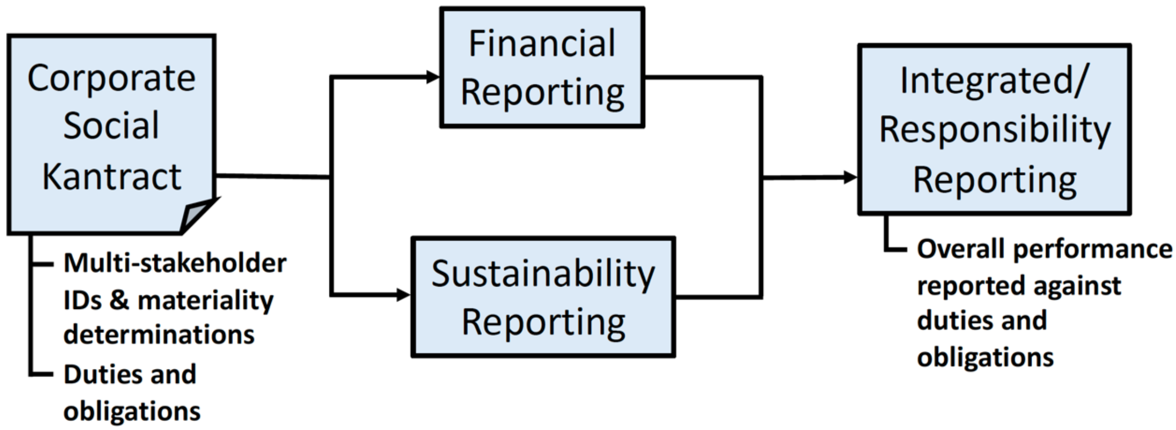

Figure 2 – The Corporate Social Kantract in Context

sources in the world, and (b) that it is critically important, therefore, that businesses be held to the highest standards (norms) for what their impacts on such resources ought to be.

This gives rise to the idea that in order to properly assess the performance of organizations, one must first be clear on what their individual duties and obligations are to respect and abide by the rights of others. Which in turn suggests the somewhat obvious and important role that a social contract can play in the lifecycle of performance accounting. All organizations, that is, should be clear about who their stakeholders (rightsholders) are, and to whom, therefore, duties and obligations may be owed to behave in specific ways. The results of those determinations should then be used as a basis for framing, managing, and assessing their actual performance.

The very idea of planning, governing, and assessing behavior in terms of duties per se is, of course, a Kantian concept, subject to what Kant himself referred to as the Categorical Imperative (CI), or "moral law" as he put it. According to the CI, a proposition is moral if and only if it can be universally applied without contradicting the proposition itself and/or undermining the well-being of its proponents. To be legitimate, normative propositions, then, cannot be self-defeating. Kantian ethics is just the particular moral philosophy that I and many others believe is the most appropriate one for use in the construction of social contracts, especially if it is rights and duties which such contracts are supposed to address. Since that is my purpose, Kantian ethics as a moral doctrine is the logical choice.

And that, of course, why I chose the play on words I have, *Corporate Social Kantracts*, since it is not just social contracts I have in mind here, but contracts explicitly grounded in Kantian ethics and its distinctive focus on the specification of *duties* for what should count as moral behavior in the world. But as I have also freely admitted, none of that, as far as it goes, is a new idea. Others before me have already proposed the use of corporate social contracts, not to mention the application of Kantian principles to them, as well as to capitalism writ large.

What *is* new is the added dimension of multicapitalism that I and my colleague, Martin Thomas, earlier developed, according to which the sustainability/responsibility performance of organizations can be interpreted in terms of impacts on multiple vital capitals, and with the well-being of all stakeholders in mind, not just one class of them (shareholders). Indeed, the economic and management doctrine of multicapitalism amounts to a full-throated renunciation of monocapitalism, the narrower shareholder primacy form of capitalism in force today.

And with multicapitalism comes the sustainability accounting system known as Context-Based Sustainability (CBS). What CBS brings to the table – and to corporate social contracts and CSKs, as well – is an explicit means of (a) acknowledging stakeholders/rightsholders to whom duties of performance are owed, (b) predicating such duties, in turn, on

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recognition of the rights they pertain to, (c) translating duties into entity-specific standards of performance, and (d) measuring actual performance against them in order to assess the sustainability/responsibility of organizations.

Importantly, the CBS tools we use to make such assessments are also designed to express both rights and duties in terms of impacts on vital capitals. This, too, fits well with the theory of corporate social contracts, since rights and duties themselves are fundamentally all about access to vital capitals, and are themselves nothing but beliefs and knowledge claims (intellectual capital) about what people ought to do and how they should behave. Indeed, the "something" which society ought to defend us in the possession of, to harken back to J.S. Mill's words, is our claim-right to *vital capitals*, if only in the form of the mutually-held norms we all rely on.

Whether it be the enforcement of such claim-rights to freedom, security, equality, or other forms of intellectual capital – or food, shelter, habitat, a healthy environment, or other forms of natural and constructed capital – access to capitals as resources for human well-being lies at the heart of human rights. In this regard, it is my contention that all of the human rights identified by the UN in 1948, for example, in its *Universal Declaration of Human Rights* (UN General Assembly 2017 [1948]), and more recently in its *Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment* (UN Human Rights Council 2021), clearly translate into various forms of vital capitals. In all cases, they reduce to mutually-held claims about capital resources, if not simply claims about other claims that should all be upheld.

What the Corporate Social Kantract concept therefore brings to business and society is a compelling new approach to setting standards for, managing, and assessing the performance of organizations and other human social systems at any scale (communities, municipalities, states, nations, etc.). And it does so by not only grounding standards in principles of sustainability and responsibility, but also in terms of human rights and the importance of recognizing and respecting them. And it does all of that not only in metaphorical terms, but also in a way that involves the explicit documentation of what an organization believes its duties and obligations are to its stakeholders.

In a world in which the demands of rightsholders and the responsibilities of duty-bearers are too often failing to connect as they should, the concept of a Corporate Social Kantract seems like an idea whose time has come!

About the Author

Mark W. McElroy, PhD is the founding director of the Center for Sustainable Organizations, a former partner at KPMG, and board chair emeritus of the Donella Meadows Institute. He is particularly well known for his development of tools, methods, principles and metrics for measuring, managing and reporting the sustainability performance of organizations, including Context-Based Sustainability and Generally Accepted Integrated Accounting (GAIA) Principles. He is co-creator of the economic doctrine known as multicapitalism and co-author of the books, Corporate Sustainability Management (2012) and The MultiCapital Scorecard: Rethinking Organizational Performance (2016). Dr. McElroy lives with his wife in Woodstock, Vermont and can be reached at mmcelroy@vermontel.net.

About the Center for Sustainable Organizations

The Center for Sustainable Organizations (CSO) is a U.S.-based 501(c)(3) non-profit organization created in 2004 by its founder and Executive Director, Mark W. McElroy, PhD. Its purpose is to conduct research, development, training and consulting for, and with, organizations around the world dedicated to sustainability in its most authentic, context-based form. What differentiates CSO from others in the field is its strong commitment to an approach to corporate sustainability accounting that interprets performance in terms of impacts on all vital capitals relative to organization-specific norms, standards or thresholds, and for the benefit of all stakeholders, not just some of them.

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