THE NEW GLOBAL POLITICS OF RESPONSIBLE INVESTMENT

by

Priyanjali Balasubramanian

B.A., The University of British Columbia, 2002

M.A., Royal Roads University, 2005

M.A. The University of British Columbia, 2009

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Examining Committee:

Dr. Lisa Sundstrom, Political Science
Supervisor

Dr. Peter Dauvernge, Political Science
Supervisory Committee Member

Dr. Tessa Hebb, School of Public Policy and Administration, Carleton University
Supervisory Committee Member

Dr. Yves Tiberghien, Political Science
University Examiner

Dr. Stepan Wood, Allard School of Law
University Examiner

Additional Supervisory Committee Members:

Supervisory Committee Member

Supervisory Committee Member

Abstract

This dissertation offers new perspectives on long-standing debates about private actors in global politics. It does so via three journal-length papers on the role of institutional investors in advancing human rights compliance by multi-national firms. The thesis innovatively bridges international relations scholarship on private authority, human rights norms and transnational advocacy, with academic work on corporate governance, responsible investment and business ethics. These disparate academic themes are unified through an empirical focus on the institutions through which responsible investment activism occurs, and how these institutions respectively inform and challenge existing conceptions of shareholder power, as a form of transnational private authority.

Using comparative analysis, the first paper examines how Dutch and Norwegian pension funds responded to allegations that a Chinese state-owned firm in their portfolios was complicit in human rights violations in Sudan and Burma. In this paper, I argue that state-based institutional checks on shareholder power can affect the tactical strategies employed within investor-led human rights advocacy, and in some cases, can limit the scope for ethical deliberation on these strategic choices. The second paper maps thirty-three investor-driven governance networks to show how their institutional design choices vary significantly in the degree to which they allow for meaningful engagement with civil society. This paper argues that although the mainstreaming of responsible investment has relied heavily on a narrative of values alignment with stakeholders, governance mechanisms to incorporate stakeholders within investor activism on sustainability issues remain rare. The third paper analyses 72 shareholder proposals on the topic of global human rights filed in Canada from 1982-2017. The analysis confirms that

contrary to dominant viewpoints, shareholder power is not ethically neutral. Rather, its use reinforces particular social hierarchies that do not advance global human rights, despite the appearance of doing so.

The dissertation's key contribution highlights the need for institutional adaptations to enhance the democratic qualities of global investor activism in ways that move the global business and human rights agenda towards collective publics rather than individual and private solutions. This study represents the first systematic effort to theorize and empirically evaluate shareholder power in the context of global human rights.

Lay Summary

Multi-national companies are obligated to respect global human rights standards. Developing effective mechanisms to ensure these obligations are met remains a persistent challenge. The role that institutional investors can play in addressing this challenge is under-explored, even though these investors have tremendous political and economic power. By looking at the different ways through which investors try to improve human rights compliance by firms, this project's research question asks whether investors leverage their influence in ways that shift power away from firms and towards other social actors, such as communities where human rights violations are occurring. Reviewing data from multiple sources, the project concludes that investor activism for human rights mainly functions as a tool for the financial elite to reduce investment risks. However, investors can indeed play a transformative role towards more equitable social power relations, if the institutions that facilitate such activism on human rights are re-designed accordingly.

Preface

This dissertation is an independent and original intellectual product of the author, Priyanjali Balasubramanian.

Research conducted as part of this dissertation and reflections provided in the concluding chapter were used to develop the following book chapter: Bala-Miller P. (2018). Has the Mainstreaming of Responsible Investment Eroded Ethics? Insights from Investor Advocacy on Human Rights in Conflict Zones. In: Poff D., Michalos A. (eds.) *Encyclopedia of Business and Professional Ethics*. Springer International, Cham (Switzerland).

The interviews referenced in the dissertation were conducted as part of fieldwork undertaken in Canada, the United Kingdom, the United States, Norway and the Netherlands from October 2013 to October 2015. The interviews were conducted in accordance with the TriCouncil Ethics Board's standards. The research was approved by the UBC Behavioural Research Ethics Board, as covered by certificate number H13-02632. Data in Chapter 5 pertaining to Canadian shareholder proposals filed between 1982 and 2017 was compiled by the Shareholder Association for Research and Education (SHARE) and is publically accessible.

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List of Abbreviations

ABG	Amnesty International Business Group
AGM	Annual General Meeting
AO	Asset Owners
AOW	Algemene Ouderdoms Wet Savings Fund
ATCA	United States Alien Tort Claims Act
AUM	Assets Under Management
CalPERS	California Public Employees Retirement Scheme
CBCA	Canada Business Corporations Act
CDA	Critical discourse analysis
CEO	Chief Executive Officer
CERES	Coalition for Environmentally Responsible Economies
CII	Council of Institutional Investors
CME	coordinated market economy
CNPC	China's National Petroleum Corporation
CRN	Conflict Risk Network
CSO	Civil Society Organisation
CSR	corporate social responsibility
DFID	U.K. Department for International Development
DNB	De Nederlandsche Bank
DTR	U.K. Disclosure Guidance and Transparency Rules
ENGO	Environmental non-governmental organisation

ERIN	European Responsible Investment Network
ESG	Environmental, social and governance issues
EVL	Exit, Voice and Loyalty (Hirschman, 1970)
FBC	Free Burma Campaign
FCA	U.K. Financial Conduct Authority
FOE	Friends of the Earth
FRC	U.K. Financial Reporting Council
GPFG	Norwegian Government Pension Fund-Global
GPFN	Government Pension Funds – Norway
ICCR	Interfaith Centre for Corporate Responsibility
ICGN	International Corporate Governance Network
IEHN	Investor Environmental Health Network
IFC	International Finance Corporation
IGN	Investor-driven governance networks
IIRC	The International Integrated Reporting Council
ILO	International Labour Organisation
IMF	International Monetary Fund
INGO	International non-governmental organisation
IO	International organisation
IR	International relations
M&E	Monitoring and evaluation
MNC	multi-national corporation
MOGE	Myanmar Oil and Gas Enterprise

MOU	Memorandum of understanding
NBIM	Norges Bank Investment Management
NEI	North West and Ethical Investments
NGO	Non-governmental Organisation
NGPF	Norwegian Government Pension Fund
OECD	Organisation for Economic Co-operation and Development
PRI	United Nations backed Principles on Responsible Investment
RIAA	Responsible Investment Association of Australasia
S&P 500	Standard & Poor's 500 Index
SDG	United Nations Sustainability Development Goals
SEC	United States Securities and Exchange Commission
SHARE	Shareholder Association for Research and Education
SRI	socially responsible investment
SSE	Social Shareholder Engagement
SSE	Sustainable Stock Exchanges initiative
STAN	shareholder transnational advocacy network
TAN	transnational advocacy network
TCCR	Taskforce on Churches and Corporate Responsibility
TWAIL	Third World Approaches to International Law
U.K.	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNEP	United Nations Environment Programme
UNEP-FI	United Nations Environment Program-Finance Initiative

UNFCCC	United Nations Framework Convention on Climate Change
UNGP	UN Guiding Principles on Business and Human Rights
U.S.	United States of America
USD	United States (US) dollars
VOC	varieties of capitalism
WDI	Workforce Disclosure Initiative
WWF	World Wide Fund for Nature

Acknowledgements

In pursuing this thesis project, I am fortunate to have had the patient guidance of my committee, comprised of Lisa Sundstrom, Tessa Hebb and Peter Dauvergne. Engaging with Lisa's scholarship on transnational activism through her invitations to collaborate on related research projects, papers and conference presentations have been an enriching experience. Our efforts to facilitate community service learning opportunities for undergraduate students at UBC were especially meaningful, and continue to influence my commitments to transformative learning in my current work. Lisa's graceful navigation between a well-respected academic career and the demands of family life was a frequent inspiration to me.

I am grateful to Tessa for bringing me into the fold of a talented network of academics and responsible investment professionals through her leadership of the Responsible Investing Initiative at Carleton University and the Principles for Responsible Investment's (PRI) Academic Network. The four months I spent at the Carleton Centre for Community Innovation in 2011 gave me a deep appreciation for the influence Tessa's body of work has had on establishing responsible investment as a specialized academic field. Her network of mentees also led me to delightful collaborations with peers such as Omar Dominguez and Heather Hachigian. Peter Dauvergne's impressive and accessible scholarship on sustainable consumption and production was a key factor that motivated me to pursue doctoral studies at UBC. I appreciate Peter's consistent encouragement that I probe power dynamics through this thesis project. Despite my own initial misguided misgivings to the contrary, following his steer ultimately made for a richer intellectual journey. Any remaining gaps in the dissertation are mine to own. My time at UBC was also enriched by the tutelage a number of dedicated professors including Yves

Tiberghien, Erin Baines, Anjali Bohlken, Alan Jacobs, Katia Coleman, Maxwell Cameron and Richard Price. The financial pressures of graduate school were greatly eased through doctoral fellowships and stipends provided by the Social Sciences and Humanities Research Council (SSHRC), UBC's Department of Political Science and Faculty of Graduate Studies. Bahja Alammari's diligent efforts to collate data used in Chapter 5 was deeply appreciated.

Carolyn Hostinsky, Elaine Ryan, Merima Kostecki, Cherlyn McKay, Junie Desil, Agustin Goenaga, Serbulent Turan, Yana Gorokhovskaia, Jen Allan, Lalani DeSilva, AiTiang Ng and Domenika Nackiewicz are cherished friends. We have seen each other through the stuff of life, and built ties I hope will keep us close for years to come. In addition, colleagues at SHARE and CIRDI accorded me many professional courtesies so that I could clear a number of academic hurdles along the way. Marie-Luise Ermisch showed up when I needed an angel most. Noushin Khushrushahi and Laura O'Neil's cutting wit and good humour often put my "grad-school problems" in perspective. My family members are beacons of personal fortitude and I offer everyone in the Bala-Miller clan my deepest thanks for seeing me through a time that has challenged me in more ways than I can count. I owe a debt of gratitude for my brother Sudeep's generosity, my brother Sid's ability to de-mystify financial markets, and my mother Sundari's nurturing care - emotional and otherwise. Through the thesis process, my son Vihaan showed me love and understanding beyond his years. Blair Miller is the best human I know. With an uncanny ability to detect when tea is the ideal solution for a problem at hand, if I need to be talked off a ledge (especially those of my own making), and to decipher if enthusiastic encouragement or silent support is the order of the day, he has been my unfailing champion and true partner in all the ways that matter. For this and much more, thank you my love.

Dedication

For Blair.

Chapter 1: Introduction

The key to the power of ethical investing is the recognition that corporations and institutions are owned and managed by people. Ethical investing insists on their humanity. It denies them the luxury of pretending to be impersonal economic forces. It requires a recognition of responsibility for one's actions, and it demands that others assume responsibility for theirs. As an instrument for change, both personal and social, ethical investing is unequaled (Domini and Kinder, 1984, p. 211).

We've been doing this year after year, using this forum [shareholder proxy requests] to allow people to have a voice in Canada and talk to the shareholders and directors directly…This year, they [Barrick Gold] rejected almost all the proxies, and there was no reason given. The first thing that came to my mind is, 'silence is violence'... This is how you silence people (Coumans, 2017, ¶ 8).

Responsible investing – the alignment of investment decision-making with financial, social and environmental sustainability, and ethical values – has increased dramatically over the past three decades.[1] What started out in the late 1970s as a niche effort by predominantly small groups of religious orders seeking to align their investments with religious values is now a global phenomenon (Sparkes and Cowton, 2004). Leading the charge for this transformative shift are financially powerful institutional investors who own the lion's share of global capital.[2] Echoing

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[1] In this dissertation, the term responsible investing is used interchangeably with sustainable investing and ethical investing.

[2] The term institutional investor generally refers to organisations that invest money on behalf of members or future beneficiaries (Brancato 1997). Typical institutional investors are pension funds, hedge funds, mutual funds, insurance firms, endowments and trusts for non-profit organisations, and sovereign wealth funds. These investors may have a diverse portfolio of investments across asset classes such as public equity, bonds, real estate and infrastructure. They a separate class of investor from individual (retail) investors and may hold investments in foreign and domestic markets.

the sentiments expressed above by Amy Domini and Peter Kinder (1984), public discourse on responsible investment is replete with promises of systemic transformation that puts capital in the service of society rather than the reverse (Fink, 2018; Battilana, 2018; UNPRI, 2018). Amidst claims that responsible investment is now "mainstream" (Economist, 2017; Revelli, 2017; Cowton, 1999; Dunfee, 2003), is this movement meeting its mandate for humanising global capital markets? The answer will depend on who you ask – financial industry insiders or their critics.

In this dissertation, I suggest that competing appraisals about the impacts of the responsible investment movement are a window into broader debates about the nature of power and authority wielded by private actors in global politics in the arena of human rights (Hall and Biersteker, 2002; Cutler, 2003; Büthe, 2004; Hall, 2007). Key fault lines in these debates centre on the social responsibilities of private actors, the rules and institutions that are best placed to mediate power differentials between the global multi-national companies and local communities, and ultimately whether the imperative for profit maximization that drives global capitalism can be harnessed to deliver on social goods such as universal human rights. The general thrust of my dissertation is to engage with and contribute new perspectives on these long-standing debates through an inter-disciplinary approach that bridges international relations scholarship on private authority, compliance with global human rights norms and transnational advocacy, with academic work on corporate governance, responsible investment and business ethics. These disparate academic themes are unified through a common concern with how they respectively inform, reinforce and challenge existing conceptions of shareholder power, as a form of private authority in transnational politics.

Financial industry insiders are quick to point to the increasing technical sophistication with which environmental and social data is incorporated into asset allocation models or to the overhauls of investment and corporate governance systems to accommodate the consideration of extra-financial risks as signals of the transformative changes investors are making towards greater social and environmental sustainability. Exemplifying these trends are efforts like the Sustainable Stock Exchanges (SSE) initiative, a peer-to-peer learning platform for exploring how stock exchanges can enhance corporate transparency and performance on environmental, social and governance (ESG) issues and ultimately encourage sustainable investment (UNEP-FI, 2018). As of 2016, 58 stock exchanges had joined the SSE initiative, representing over 70% of publicly listed equity markets (see Figure 1.1)[3].

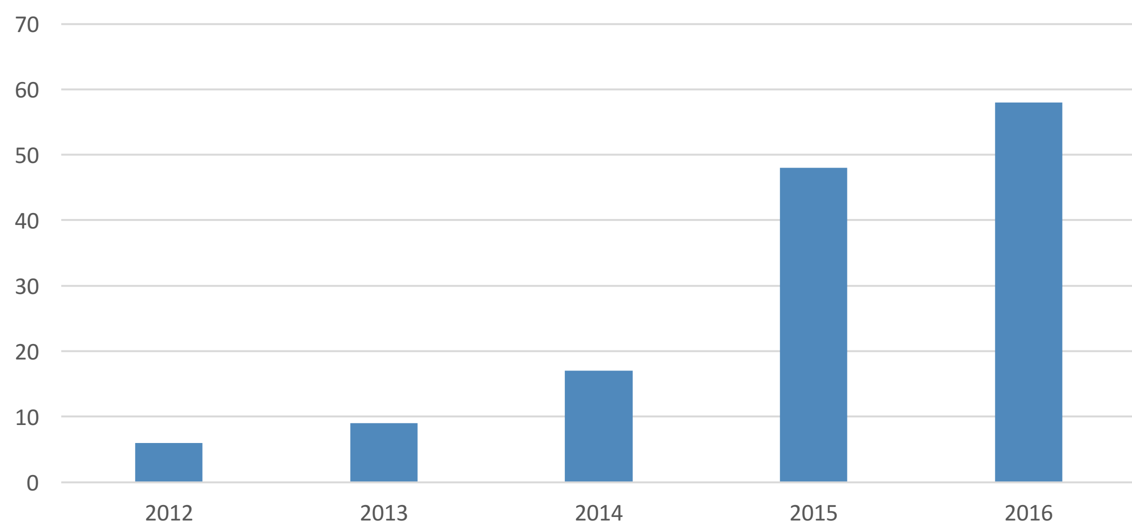

Figure 1.1. Number of SSE partner exchanges, 2012-2016
Source: Sustainable Stock Exchanges Initiative, 2016 Report on Progress

The staggering growth in the number of signatories to the UN-backed Principles of Responsible Investment (PRI) is another oft-cited indicator that approaches to sustainable finance

[3] Public equity is an investment asset class where individuals and/or organizations can buy ownership in shares/stock of a company through a public market such as a stock exchange.

are being mainstreamed (see Figure 1.2). Since its launch in 2006, more than 1800 institutional investors, asset managers and investment service providers have committed to the initiative's six voluntary principles for incorporating ESG issues into investment practice (PRI, 2018a). Indeed, in an effort to stress that signatories "can't just sit there", Managing Director Fiona Reynolds announced at the annual meeting in 2016 that the PRI would create a watch list of signatories that were not making sufficient progress in implementing the principles. She further explained that signatories who did not improve within two years of being placed on the list or who incurred fines or regulatory sanctions that violated the spirit of the PRI would be de-listed (Brooksbank, 2016, ¶2). The poignancy of such rhetoric in a post-2008 global financial crisis context is worth noting.

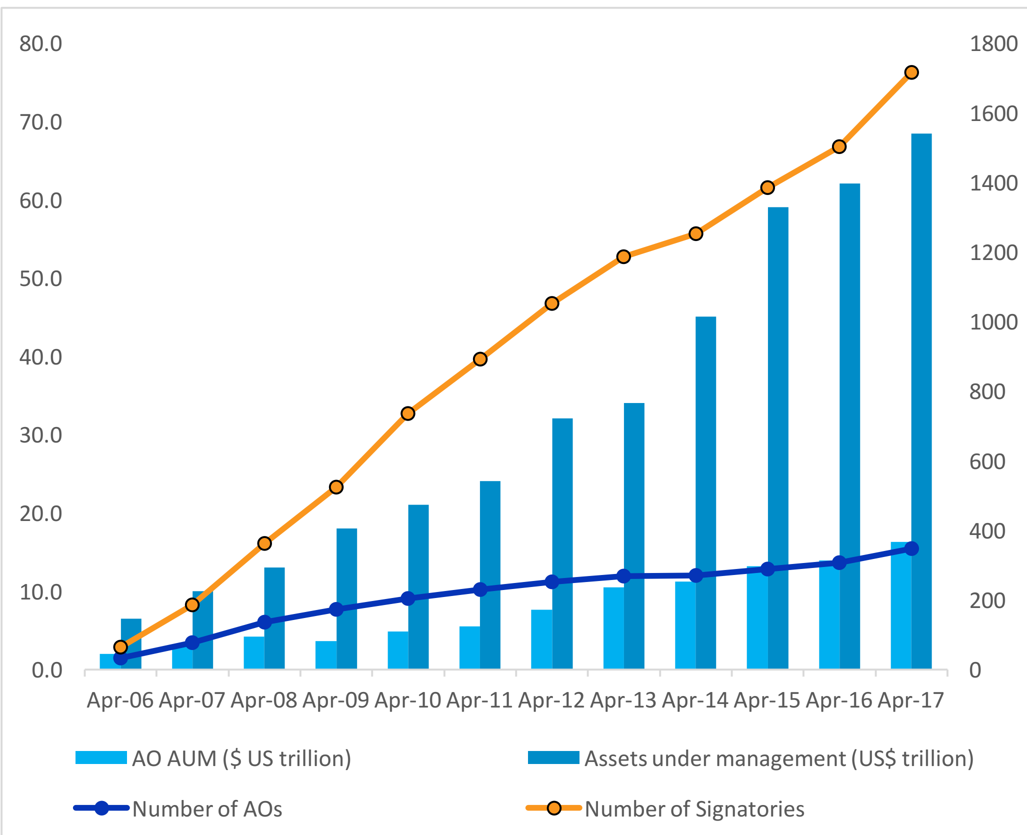

Figure 1.2. Growth of PRI signatories and respective assets under management, 2006-2017

Source: PRI Website (2018b), About the PRI.

Observers and pundits argued that a key precipitating factor for the 2008 global financial crisis was that institutional investors were derelict in their duties to oversee corporate managers and in curbing risky and unsustainable corporate behaviour (for example, Della Croce et al., 2011). The global financial crisis also brought rising levels of income inequality into sharper relief, where the plight of ordinary people experiencing home foreclosures and financial ruin contrasted sharply with run-away levels of CEO compensation at the very financial institutions that ushered in the crisis (Bhagat and Bolton, 2014; Bebchuck et al., 2010).

In this vein, reflections on the role of investors in the global financial crisis prompted the proliferation of so-called "stewardship codes" that aim to enhance investor engagement and transparency about how they define and discharge their ownership and governance responsibilities. These codes also provide a mechanism for investors to communicate their priorities on ESG issues such as human rights. In 2010, the United Kingdom became the first jurisdiction to adopt a stewardship code, following Sir David Walker's 2009 post-crisis review of corporate governance in UK-based banks and other financial institutions (Walker, 2009). A number of other jurisdictions have followed suit, including Denmark, Hong Kong, Japan, Kenya, Malaysia, South Africa, Taiwan and Thailand (EY, 2017, p. 2). More recently, the European Union adopted a Shareholder Rights Directive that includes elements found in existing stewardship codes, and India and Kazakhstan are actively considering the adoption of similar initiatives (See Fig 1.3). Aside from these efforts, investor-led best practice guidance currently exists in Australia, Brazil, Canada, Italy, the Netherlands, Singapore, South Korea, Switzerland and the United States (EY, 2017, p. 2). In addition, the International Corporate Governance Network (ICGN), whose members represent governance professionals from over 47 countries, adopted the Global Stewardship Principles in 2016 which include a principled commitment that, "investors should promote the long-term performance and sustainable success of companies and should integrate material environmental, social and governance (ESG) factors in stewardship activities." (ICGN, 2016, p.11)

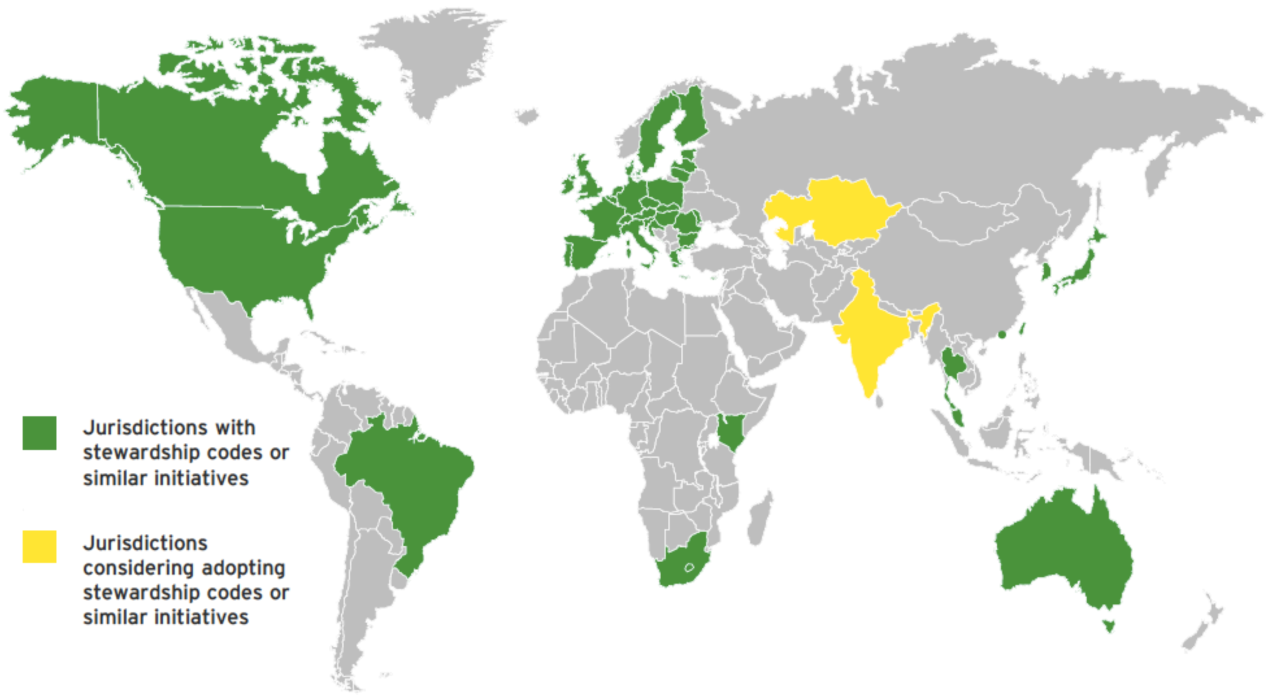

Figure 1.3. Geographic diffusion of investor stewardship codes
Source: Ernst and Young © (EY, 2017).

These positive trends in the uptake of responsible investment are tempered by critiques that the responsible investment movement neglects to account for the financial sector's impact on local communities. For instance, the Sahrawi people in Western Sahara oppose the certification of energy infrastructure projects as "sustainable" by responsible investment advisory firms when these same projects are located in contested indigenous territories that are claimed by Morocco (Western Sahara Resource Watch, 2017). Likewise, some civil society groups like Mining Watch remain skeptical of the ability of investors to advance corporate compliance with global human rights norms and standards, noting that shareholder-led activism on this issue is prone to cooption or subversion by firms, as illustrated by a recent case in Canada detailed below (Coumans, 2011, 2012).

On 25 April 2017, Evelyn Guape and Jocelyn Mandi travelled from the Porgera Valley in Papua New Guinea to Toronto to speak at Barrick Gold's annual general meeting (AGM) with shareholders (McSheffrey, 2017). Their testimony was intended to reveal personal stories of trauma and survival following horrific gang rapes perpetuated by security guards at Barrick's Porgera mine nearly twenty years earlier, and to draw attention to patterns of inadequate access to justice and restitution experienced by more than one hundred women similarly brutalised by the company's security forces on an on-going basis (McSheffrey, 2017). Guape and Mandi's right to speak at the meeting was facilitated via a request for proxy access[4] by Mining Watch, who held shares with the company. Citing a protocol mishap, the firm denied the women the opportunity to speak at the meeting and offered them a closed-door meeting with the firm's managers instead. At the AGM, Guape and Mandi's statement was read by a Mining Watch representative, an act that according to the NGO, amounted to "taking away their voice" (Coumans in McSheffrey, 2017, ¶7).

In the remainder of this introductory chapter, I provide a brief empirical justification for the dissertation's analytical focus on human rights advocacy by institutional investors (Section 1.1). This is followed by an overview of the key arguments and theoretical contributions of the

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[4] One way that publicly traded companies report their activities to shareholders is through annual meetings. Before those meetings, shareholders receive information on pertinent information to be voted on in the meeting. Rather than physically attending the annual shareholder meeting, most investors delegate their voting rights (by proxy) to asset managers or other investment service providers (proxy voting). The person exercising this right must in line with the shareholder's directions. Proxy holders attending a shareholder meeting may be permitted to speak to issues related to the firm's business operations.

project as a whole (Section1.2). I then outline the general methodological orientation and data-collection methods used, reflecting on some of the challenges posed in the study of investor-led transnational activism (Section 1.3). Section 1.4 provides an overview of the structure of the thesis, noting it is comprised of three journal-length papers that respond to particular theoretical and empirical gaps in existing studies of shareholder power. These substantive chapters are preceded by a review of the relevant literature, and followed with a reflection on the main findings and directions for future research.

1.1 Empirical justification

Two empirical trends underscore the significance of my analytical focus on institutional investors and their role in advancing human rights by corporate actors. First is their status as heavyweights in the global financial system. By virtue of the volume of capital under their control, institutional investors wield considerable material power and legitimacy in driving global financial markets at a systemic level (Hebb and Clark, 2005). Over the past twenty years, economic power has become highly concentrated among institutional investors who own an increasing share of public equity markets. For example by 2009, institutional investors collectively owned more than 70 percent of the largest 1,000 companies in the United States (Heineman and Davis, 2011). According to Celik and Isaksson (2013), in the mid-1960s, individual persons held 84% of all publicly listed stocks in the United States compared to 40% currently; in Japan, only 18% of all public equity was held by physical persons (as of 2011) and in the United Kingdom, the portion of public equity held by physical persons has decreased from 54% to only 11% over the last fifty years (p. 96).

Figure 1.4 illustrates the total assets under management of different types of institutional investors and the portion of these assets that they have allocated to public equities (Celik and Isaksson, 2013, p. 97). The figure shows that as of 2011, the combined holdings of all represented institutional investors was USD 84.8 trillion. Out of this, 38% (USD 32 trillion) was held in the form of public equity. The largest institutions by far were investment funds, insurance companies and pension funds. Together they managed assets with a total value of USD 73.4 trillion, of which USD 28 trillion was held in public equity.

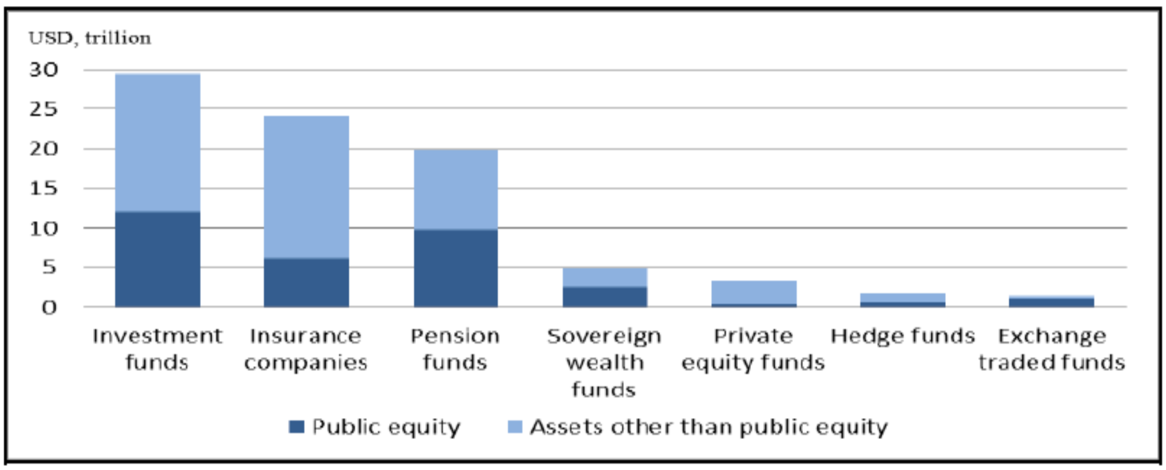

Figure 1.4. Assets under management and allocation to public equity by different types of institutional investors (in trillion USD, 2011)

Source: Celik and Isaacson (2013, p. 9), with data drawn from the OECD Institutional Investors Database, Sovereign Wealth Fund Institute, International Monetary Fund, Preqin, BlackRock and McKinsey Global Institute.

This process of ownership concentration in public equities has empowered institutional investors, particularly in Anglo-American countries to take a very active role in corporate governance, broadly defined as the rules and practices governing power relations between various stakeholders in the modern corporation (Shleifer and Vishny, 1997; Soderberg, 2003; Deakin, 2005; Williams, 2016). These rules and practices vary depending on the system of corporate governance prevalent in a firm's home state; nonetheless, all outline the key mechanisms by which investors can exercise their voice individually or collectively on issues that relate to the firm's performance and efforts to preserve and enhance shareholder value.[5]

One reason that investors are taking a more active role in monitoring corporate sustainability efforts is the burgeoning amount of evidence showing clear financial benefits for doing so. For example, a recent comprehensive review of empirical studies of the financial results of corporate responsibility by Clark, Feiner and Viehs (2014) found that 90% of studies show that sound sustainability standards lower firms' cost of capital[6]; 80% of studies show that the stock price performance of companies is positively influenced by good sustainability practices; and 88% of studies show that better environmental, social, or governance practices result in better operational performance.

Taken together, these trends confirm that institutional investors have a large stake in publicly-traded companies in major markets and that they are increasingly motivated to play an active role in overseeing the performance of firms when it comes of social and environmental sustainability. From this lens, the corporate governance arena becomes an important domain for the exercise of private authority by institutional investors. It is in this domain that institutional investors exercise legally-derived shareholder rights in order to shape and direct company policies and behaviour (Culpepper, 2011; Hebb and Clark, 2005). Shareholder rights also provide investors with legitimacy in exercising private authority over firms, where authority is

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[5] A company's shareholder value depends on strategic decisions made by senior management, including the ability to make wise investments and generate a healthy return on invested capital. If this value is created over the long term, the share price increases and the company can pay larger cash dividends to shareholders (Investopedia, 2018).
[6] This refers to the cost of funds used for financing a business (i.e. the rate of return needed to make an investment worthwhile).

defined as “institutionalized forms or expressions of power” that are legitimate in the sense that “there is some form of normative, un-coerced consent or recognition of authority on the part of the regulated or governed (in this case firms)” (Büthe, 2004, p. 281-282; see also Haufler et al., 1999; Hall and Biersteker, 2002).

In addition to the above drivers for expanding investor oversight of firms on social and environmental issues more generally, a second empirical justification for the project’s analytical focus on institutional investors is derived from critical developments in the past decade that have raised expectations for investors to play a more active role in advancing global human rights norms. For example, institutional investors have a responsibility under the newly enshrined UN Guiding Principles on Business and Human Rights (2011) to respect human rights in their operations and their business relationships with the companies in which they invest. Similarly, revisions to the OECD Guidelines for Multi-national Enterprises in 2011 extended the culpability for violations of the Guidelines to institutional investors. These revisions explicitly drew on the earlier UN “Protect, Respect and Remedy” Framework for Business and Human Rights (2008).

In light of the power and influence institutional investors exert at the firm and systemic level, I suggest that calls for deeper engagement by these investors within the arena of global human rights compliance has the potential to shape and transform power relations between the private sector, states and civil society in a number of important ways. However, given this topic has not been widely explored to date, there is a clear need to assess the true prospects and direction of these power shifts. The theoretical significance for advancing this line of inquiry is elaborated next.

1.2 Key arguments and theoretical significance

Few works are more ubiquitous in the literature on global human rights norms than Thomas Risse, Stephen Ropp, and Kathryn Sikkink's (1999) *The Power of Human Rights: International Norms and Domestic Change*. The book's analytically powerful "spiral model"[7] describes the various socialization processes through which international norms on human rights were internalized by authoritarian states. When these scholars revisited their influential work more than a decade later, the scope of their analysis extended beyond the state to critically examine the role of private actors in protecting human rights (Risse, Ropp and Sikkink, 2013). They argue that the persistent challenges of human rights compliance point to the limitations of unilateral state action, and that the traditional division of labour between states and private actors may not be sufficient to guarantee human rights within existing models of governance or market systems (see also: Brysk, 2002; Ruggie, 2013; Risse, Ropp and Sikkink, 2013). While arguments marshalled in favor of this observation have overwhelmingly focused on INGOs, corporations, sub-national political groups or international organizations, very little empirical work has examined the validity of these arguments in the investment sphere. Addressing this gap, the study's first contribution is to bring institutional investors into the frame of existing analysis on how human rights diffusion and compliance occurs at the transnational level.

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[7] Risse and Sikkink (1999) use the "spiral model" to explain the steps that states must go through to change their norms and behavior regarding human rights. This model has five phases: repression, denial, tactical concessions, prescriptive status, and rule-consistent behavior. These five steps work in a natural progression to first expose a state's human rights violations, and then change their norms to fit international standards. The authors argue that socialization is important to understand how the international society can promote norms to its members. They present three various processes that are vital to changing the human rights area: 1) "process of adaptation and strategic bargaining; 2) processes of moral consciousness-raising, 'shaming,' argumentation, dialogue, and persuasion; 3) processes of institutionalization and habitualization" (Risse and Sikkink, 1999, p. 11)

Choosing this new locus of investigation productively extends and refines our understanding of the role of private power and authority in the global governance of human rights.

I suggest that observing the relationship between institutional investors and corporations in the context of human rights norms sheds light on why and how conventional divisions between the state, market and civil society are breaking down, with important implications for how power is exercised and authority is understood in the international system. If governance is the exercise of political authority and the use of resources to manage society's affairs, human rights advocacy by institutional investors creates a veritable governance grey-zone, as the lines of accountability and authority between the owners of capital, those who use capital, those affected by how the capital is deployed and those with the power to control capital become increasingly blurred. Thus, the *political* importance of interrogating the role and function of institutional investors in global governance arises not only because their asset allocation decisions could affect the stability of the financial system, but also because they are crucial intermediaries between the market and society.

As a second contribution, the dissertation re-frames how the concept of shareholder power is understood. As noted above, corporate governance includes the mechanisms, processes and relations by which corporations are controlled and directed. These governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders). It also includes the rules, procedures and processes through which corporations' objectives are set and pursued in the context of the broader social, regulatory and market environment. Much of the scholarship on corporate governance centres on a classic *principal-agent problematique,* where shareholder rights endow investors with the power to ensure that a firm's managers do not subvert profit maximization and investment returns in the pursuit of their own interests. As a consequence, within the corporate governance literature, shareholder power is framed in very narrow terms. It typically encompasses specific mechanisms of control used by investors to influence corporate policies and practices in line with their interests.

With intellectual roots in corporate governance, studies of responsible investing have inherited this narrow conceptualization of shareholder power, restricting discussions of its use and implications to the investor-firm dyad. However, as this dissertation highlights, while this conceptualization of shareholder power might work in the context of domestic or comparative corporate governance, it does not travel as easily to the context of global governance and transnational political action. That is, a more sophisticated theoretical understanding of shareholder power in a global context demands a far more multi-dimensional view of who leverages shareholder power, on whose behalf this power is exercised and resulting effects, well beyond the realm of the firm. Two features of transnationalism are theoretically relevant here. First is the notion that in the age of increasingly interconnected global financial markets, corporate governance itself is transnational in nature. Second, the efforts of investors to mainstream responsible investment mimic dynamics observed in transnational advocacy networks.

On the first point, the dissertation demonstrates that the rise of the responsible investment movement is one manifestation of how contested views are being negotiated around the role of firms in society and what counts as a legitimate subject in a new 'global era' of corporate governance. As Peter Gourevitch and James Shinn (2005) argue in *Political Power and Corporate Control: The New Global Politics of Corporate Governance*, this new global era of corporate governance is characterized by huge sums of investment capital flowing from developed to developing countries through institutional investors, such that the formation of political identities, issues and interests of financial actors are now global in scope.

On the second point, institutional investors functioning within the bounds of corporate governance who champion corporate compliance with human rights norms as part of their responsible investment initiatives are simultaneously engaged in aspects of what Sidney Tarrow (2005) refers to as "*The New Transnational Activism*". As a form of transnational political action, the responsible investment movement shares a few notable characteristics in common with other forms of transnational activism (Piper and Uhlin, 2006) in that it occurs through organized networks of principled actors, poses a challenge to a state-centric international system and promotes a cosmopolitan view of citizenship. In this regard, Keck and Sikkink (1998) describe transnational advocacy networks as "voluntary, reciprocal and horizontal patterns of communication and exchange" (p. 8), while, Charli Carpenter (2007) refers to "networks of activists motivated by shared, principled discourse and aiming to affect political behaviour through moral argument" (p. 101). According to Tarrow (2005), the term "network" has both a structural and a purposive meaning (p. 164), and encompasses institutionalized links that may exist for other purposes, but can be appropriated for contentious collective actions (such as corporate engagement). Since the 1990s, the transnational sphere is populated with a significant number of investor networks organised with the specific purpose of addressing social and environmental issues. Initiatives such as the Asset Owners Disclosure Project, the Social Investment Organisation (Canada), The Social Investment Forum and its numerous national chapters, the Ceres Coalition, Interfaith Centre for Corporate Responsibility (ICCR), Conflict Risk Network, Investor Responsibility Research Network, EURESA Network, PRI National and

International Signatory Networks and provide empirical validation of the structural and purposive nature of transnational investor activism on sustainability. These initiatives typically have defined membership, secretariat and governance structures, clear mechanisms through which to coordinate collective action on responsible investment topics, as well as defined mission statements, advocacy priorities and related programs of work.

Aside from having a networked character in common with other transnational forms of activism, advocacy by investors on issues related to human rights similarly challenges the conventional view of a state-centric international system. Investors do this by making corporations (not states) the subjects of human rights and environmental advocacy, and by emphasizing global standards, such as the Extractives Industry Transparency Initiative (EITI) and the OECD Guidelines for Multi-national Enterprises, over domestic legislation in framing and advancing advocacy claims, especially in weak-governance zones (Risse-Kappen, 1995; Keck and Sikkink, 1998; Khagram, Riker and Sikkink, 2002).

A final transnational feature of investor activism on human rights is that they implicitly advance a globalised notion of citizenship (Held, 1995; Held and McGrew, 2002). The globalization of markets and the increasingly complex supply chains that straddle multiple jurisdictions are encouraging investors to embrace cosmopolitanism in order to carry out their duties of oversight more effectively. For instance, investors are aware that firms can no longer ignore the impacts of climate change on the access and availability of key resources such as water, and how such factors affect a firm's business plan. Proactively addressing these problems also frequently requires investors to enter into sustained dialogue with foreign owned companies or firms with significant operations outside a 'home' state. In the case of pension funds specifically, some scholars argue that by virtue of their remit to provide retirement security for future beneficiaries over the long-term, the implicit responsibility of pension funds is to be concerned about the wellbeing of society and the natural environment *as a* whole. The duty of long-term investors to take a holistic and systemic view of investment decision-making is seen to be aligned with the principle of inter-generational equity. This principle posits that humans "hold the natural and cultural environment of the Earth in common both with other members of the present generation and with other generations, past and future" (Weiss, 1990, p. 8). Investors who take up the mantle of responsible investment through a sense of cosmopolitan citizenship, particularly in areas such as human rights are thus seen as "new capitalists" motivated to use corporate engagement as a tool for achieving a more "civil economy" (Berry, 2011; Lydenberg, 2007).

However, there is also one important difference between global investor-led activism and other forms of transnational activism. Unlike some perspectives that treat transnational forms of activism as resistance to neo-liberal forms of globalization (see for example Higgot, 2002), through my analysis in this dissertation, I propose that although shareholder activism may be reacting to political realities generated by economic and financial globalization, investor activism on human rights is not fundamentally resisting the globalization per-se. As Haigh and Hazleton (2004) observe of socially and environmentally-motivated advocacy by institutional investors, "The isolated instances of 'success' in achieving 'outcomes' at the firm-level mask the reality that systemic change to industrial practices, or engagement with issues at the industry-wide level has not been the focus of shareholder activists" (p. 60). For example, although investors may urge factories with weak occupational health and safety standards to improve their policies and practices in ways that improve employee well-being, these engagement efforts do not necessarily question or problematize the structural conditions that enable the migration of capital to geographies with weak social and labour protections in the first place. Likewise, Cullis et.al (1992) point out that the ability of financial markets to transform the measure of moral commitments to pecuniary returns represents both an irony and a limitation of responsible investment. Furthermore, the fundamental governing principle of financial markets, namely the right to maximize profits and enjoy capital gains on investment, is not seriously challenged by shareholder activism (Cullis et al., 1992).

So what are we to make of shareholder power that is leveraged by institutional investors in this new global context for corporate governance and transnational activism? Rather than a dyadic power relationship between firms and investors, this project argues that a truly transnational understanding of shareholder power must also account for interactions between investors and a variety of other actors who are simultaneously engaged in the global governance of human rights. These include fellow institutional investors, financial intermediaries such as asset managers and responsible investment service providers, the state, industry associations, communities, civil society organizations and inter-governmental agencies and international non-governmental organisations. Hence, the core objective of this dissertation is to advance a broader, *relational* understanding of shareholder power by exploring the institutions through which this unique form of private power is expressed. Within international relations, institutions are understood as the formal or informal principles, norms, rules and decision-making procedures and structures around which actors' expectations converge in a given issue area (Krasner, 1982) or *humanly-designed* constraints[8] that shape human interaction (North, 1990). A wide range of international relations scholarship has been devoted to demonstrating how and

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[8] Thanks to Lisa Sundstrom for drawing out this emphasis to distinguish my focus from environmentally-imposed constraints.

why international institutions matter in explaining particular global governance outcomes given their role in structuring choice and incentives, distributing power and defining identities and roles. These rules and practices are typically socially constructed, publicly known, anticipated and accepted (March and Olsen, 1996,p. 249). Hence, a robust understanding of shareholder power in the context of global governance requires close attention to the institutions through which this power is expressed. As Barnett and Duvall (2005) convey:

> Global governance involves formal and informal institutional contexts that dispose that action in directions that advantage some while disadvantaging others. Understanding power in this way makes it much more difficult to approach global governance purely in terms of cooperation, coordination, consensus and/or normative progress; governance is also a matter of institutional or systemic bias, privilege and unequal constraints of action. Conversely, if global governance itself is conceptualized in terms of production, reproduction, and/or transformation of such asymmetries, then theorization and analysis, must, by logical necessity, rest on a conception of power that sees power as interaction through diffuse social relations. (p. 17)

In a series of three papers that comprise the dissertation, I examine how institutional investors work through particular formal and informal institutions to call for greater corporate compliance with human rights. Towards this end, I bring together a previously disparate but mutually invigorating set of literature on corporate governance, transnational activism and responsible investment. This dissertation does not take an agency-centred approach, but focuses instead on structural determinants to explain particular outcomes stemming from investor advocacy on human rights.[9] A key concern motivating this project is that the tactics, organizational forms and discourses used by institutional investors in their efforts to diffuse human rights norms reveal a number of tensions between the local and global, as illustrated by the contrasting assessments of responsible investment presented at the start of the chapter.

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[9] This analytical choice is further explained in Chapter 2.

Focusing on the institutions that shape transnational investor advocacy on human rights not only sheds light on why these contrasting assessments arise, but also offer the promise of signalling what kinds of institutional adaptations may be needed in order to effectively bridge these divides in ways eventually align capitalism and long-term sustainability.

1.3 Methods and data

I discuss the specific research design, data sources and methodological approach in separately in each of the three papers. However, here I provide a general indication of common aspects that lend cohesion to the project – namely the comparative outlook and largely qualitative approach. The geographic scope of the analysis focuses on investors and investor-driven governance networks that are primarily located in the Global North, though specific instances of human rights violations that trigger investor activism cover a much broader set of countries indicated by the darker shading in Figure 1.5 below.

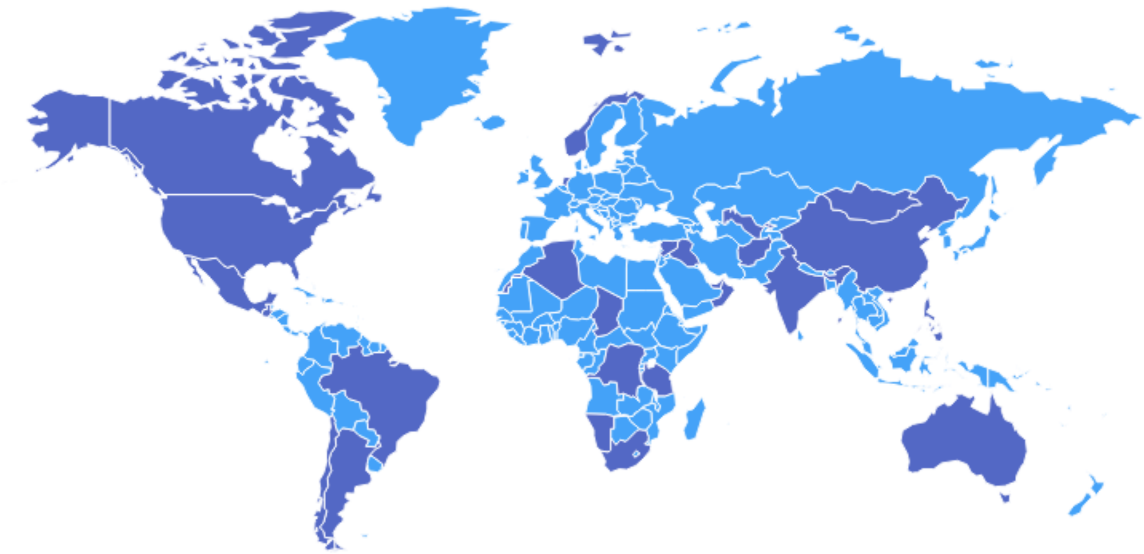

Figure 1.5. Geographic spread of countries of concern in examined cases of investor led human rights activism

The three papers are primarily qualitative and comparative in approach. In the first paper, I compare public pension funds in the Netherlands and Norway in order to probe why seemingly similar investors would respond to the same case of weak corporate compliance with human rights standards in dramatically different ways. In the second paper, I map thirty-two investor-driven governance networks across North America, Europe, the Asia-Pacific, Africa and Latin America. I qualitatively evaluate the governance rules that delimit these networks in order to identify the ways in which institutional choices may serve to consolidate or diffuse shareholder power, based on the degree to which civil society voices are accommodated therein. Although the final paper focuses on shareholder activists in one country – Canada – I comparatively assess shareholder proposals filed on sustainability issues over thirty-five-year period [1982-2017] in order to trace discursive shifts in investor activism on human rights, paying particular attention to whether these shifts signal tangible transformations to power relations between private actors and other social actors such as communities where human rights violations are alleged to occur.

One challenge involved in the study of investor activism is that a bulk of this activity is conducted in private through confidential interactions between firms and investors. For this reason, most analysis of shareholder activism focuses on publicly available data such as shareholder resolutions and public announcements made by investors on particular responsible investment topics (Becht et al., 2008; Gifford, 2010). In an effort to extend the reach of my analysis, I made a deliberate effort to capture both public and private forms of investor activism. The first paper focuses on private engagement between Dutch and Norwegian investors and the Chinese state-owned oil and gas company Petro-China through letter-writing, press-releases and phone-calls. In addition to archival material pertaining to this case, I also conducted field-work in the Netherlands and Norway so as to include elite interviews as part of the data repository. It should be noted that the number of individuals involved in direct engagements between investors and firms tends to be very small (2-5). This poses a significant risk for studying direct corporate engagement as the failure to secure elite interviews and access to private correspondence between firms and investors poses a major constraint to data collection and triangulation. The limitations confronted with regard to data triangulation at both project sites is further discussed in Chapter 3. In addition to private, direct engagement, the third paper examines public and collective forms of investor activism on human rights. It focuses on the specific institution of shareholder proposals and examines instances where such proposals were filed by single institutional investors, as well as cases where groups of investors acted collectively. The breadth of cases analysed cover a wide variety of investor types: religious investors, mutual funds, individual activists, non-governmental organisations and pension funds, thereby providing additional analytical leverage on the key themes of concern.

1.4 Chapter overview

As previously mentioned, the objective of this dissertation is to advance a broader, *relational* understanding of shareholder power by exploring the institutions through which this unique form of private power is expressed. To provide necessary background for this key concept, Chapter 2 provides a deep-dive into contrasting images of shareholder power across key theoretical traditions that have been applied to the study of shareholder activism. It identifies a number of gaps in extant understandings of shareholder power and explains how the three papers that comprise the thesis respond to the identified gaps.

In Chapter 3, the research question I explore is: *When faced with a portfolio company that is a systematic violator of human rights norms, why would an institutional investor with strong human rights commitments continue engaging the company rather than divesting from it?* This question arises from examining the diverging responses by public pension funds in Norway and the Netherlands to allegations of complicity in human rights violations by their investee firm PetroChina (a state-owned Chinese oil and gas company) in Burma and Sudan. To probe this question, I provide a theoretical framework for understanding shareholder activism using Hirschman's (1970) work on exit and voice that lays out the conditions under which divestment and engagement would be expected to occur. However, as my systematic analysis of observed outcomes in both cases reveals that theoretical expectations do not hold. In particular, engagement with PetroChina by the Norwegian fund and divestment from the firm by the Dutch fund cannot be adequately explained by existing theoretical accounts for why voice and exit options are used in shareholder activism, because the factors commonly identified as correlates of shareholder engagement (voice) in the former case, are also present for divestment (exit). I conclude that the case challenges the explanatory power of existing accounts for why investors may prefer engagement over divestment, and highlights the need for additional hypotheses in explaining variations in investor responses to human rights violations by firms.

One proposal to this effect includes considering how the presence of a state-based veto point on divestment and engagement decisions for public pension funds, and the institutional character of target firms (particularly state-owned enterprises) may affect an investor's appetite for divestment. An expanded framework for evaluating tactical options available to investors advocating for corporate compliance with global human rights norms would advance not only the literature on shareholder activism specifically, but also theories of transnational advocacy more broadly by bringing in private actors from the periphery of this literature into the main frame. The chapter offers commentary on how, shareholder power, although leveraged in the context of transnational corporate governance, is still shaped and influenced by domestic institutions of the state. This finding provides support to the arguments of scholars who suggest that processes of transnational governance are shaped by an interaction between global and domestic forces, and that the authority of the state is not necessarily completely eroded as a result of these processes, though it is certainly contested (Lipschutz, 1997; Soderholm, 1997; Held and McGrew, 2002; Clapp and Fuchs, 2009; Robertson, 2012; Carbonnier, 2011; Jasanoff and Martello, 2004, Tarrow and Tilly, 2009).

Chapter 4 moves on from investor activism by single institutional investors to collaborative platforms for investor advocacy. MacLeod and Park (2011) refer to these coalitions or alliances led by investors formed around a specific public goods issue or issue-areas as investor-driven governance networks (IGNs). MacLeod and Park's definition of IGN's is conceptually valuable. However, their claim that non-governmental organisations (NGOs) and social activists also participate in IGNs, either formally or informally is worth probing, and offers a unique vantage point from which to unpack intra-network relations in transnational advocacy politics. In particular, Deborah Avant's (2006) work on private authority reminds us that despite similar rhetorical commitments to sustainability, INGOs and private actors draw from vastly different sources of authority when engaging in transnational politics. Avant notes that the private sector's profit imperative offers a very different materially-derived source of authority held by investors, from the moral or expert authority possessed by INGOs such as Greenpeace and the WWF. Hence, investigating how these two very different types of advocacy actors interact through the auspices of IGNs could provide a fascinating account of how diverse forms of authority compete and complement each other at the global level.

To address this issue, the chapter's main research question is: *How do IGN governance arrangements accommodate or exclude specific forms of authority that are held by INGOs*? The chapter first provides a brief review of existing work on NGOs in the context of shareholder activism, whereby my assessment highlights a very low level of engagement with issues of power and authority. Having justified the theoretical need to advance work on this subject, I present an analytical framework for assessing INGO-IGN relations. I suggest the degree to which an IGN is open or closed to civil society input affects the range of sources it can draw from to legitimize its authority. I then extend the empirical reach of previous work on IGNs by mapping civil society integration in thirty-two such networks, across a range of advocacy themes and geographies. I measure civil society integration in IGNs by focusing on two attributes: the degree to which IGNs a) recognize civil society as key to their mandate and b) enable the participation of INGOs in delivering that mandate, either formally through board governance structures and mandate-implementing activities or informally through ad-hoc collaboration.

Overall, Chapter 4 demonstrates how choices around institutional design (formal and informal) limit whose voices and whose norms shape global investor advocacy on human rights. Specifically, IGNs are usually designed to act as “industry-associations” that advance the interests of investors, rather than as “aggregators of multi-stakeholder consensus” demanding corporate compliance with global human rights norms. Chapter 4 also shows that studying governance arrangements within IGNs matters against claims that activism by institutional investors is poised to be a crucial and potentially transformative pathway for aligning capitalism with social and environmental sustainability (Monks and Minnow, 1995; Hawley and Williams, 2000; Clark and Hebb, 2004). If investors are to live up to this expectation, unpacking their interactions with the very organisations tasked with articulating environmental and social demands within global governance can offer insights into whether shareholder power in this context serves to reinforce private interests, or whether IGNs can indeed generate a better balance between the interests of society and profit maximization. The chapter concludes with the observation that evaluating INGO-IGO relations from a governance lens presents the opportunity to re-design or reform IGNs in ways that can catalyze this transformative potential of shareholder activism. The study is exploratory and descriptive in nature, i.e. it seeks primarily to map variations in the degree to which INGOs include civil society participation. It does not take on the onus of theorising factors that produce the observed variations, and stops short of evaluating whether IGNs that access more diverse sources of authority are more successful or impactful in delivering their mandate.

Chapter 5 conceptualizes shareholder advocacy not simply as a mechanism by which investors address principal-agent dilemmas that arise from inefficiencies and imperfect information in global markets, but rather as a discourse structure that has the potential to enact, confirm, reproduce or challenge relations of private power (and its abuse) in society (Fairclough, 2015; Wodack and Meyer, 2016). To illustrate the validity of my "socially-embedded" conceptualisation of shareholder power, I conduct a content analysis of 72 Canadian shareholder proposals on human rights from 1982-2017 using a critical discourse approach. The chapter draws attention to how images of corporate social responsibility and shareholder power conveyed by investor discourses have evolved against changing global norms. It also demonstrates how the global "mainstreaming" of responsible investment has impacted the frames that Canadian investors use to improve firm compliance with global human rights standards. It further sheds light on how the formal rules around the filing of shareholder proposals has resulted in discursive choices that advance private authority and interests, over those of communities actually being impacted by corporate human rights violations.

In closing, Chapter 6 summarises the key conclusions of the dissertation project by reflecting on the question: *Who wins and who loses in the New Global Politics of Responsible Investment?* The dissertation's central finding is that a closer inspection of responsible investment reveals that the movement is yet to deliver on meaningful transformations that redress existing social power hierarchies that advantage private actors over other social actors, especially for communities where corporations may be complicit in or directly contributing to human rights violations. This finding troubles the robustness of claims by scholars and practitioners alike that responsible investment is indeed capable of aligning the public and private interests.

Across these three studies, we see that the exercise of shareholder power, as a form of private authority, is highly contingent on institutions that mediate how this power is leveraged, by whom and for whom. Cumulatively, the dissertation establishes a series of important findings. First, I contend that state-based institutional checks on shareholder power can affect the tactical strategies employed within human rights advocacy by investors, and in some cases limit the scope for ethical deliberation on these strategic choices. Moreover, the mainstreaming of responsible investment has relied heavily on a narrative of values-alignment with stakeholders, yet governance mechanisms to incorporate stakeholders within human rights advocacy by investors remain rare, raising questions around the ethical representation of human rights claims.

Finally, the exercise of shareholder power, contrary to dominant viewpoints, is not ethically neutral. Rather it conveys and reinforces particular relations of social power that do not necessarily advance global human rights, despite the appearance of doing so. In this regard, the dissertation confirms that shareholder engagement and responsible investment are tools for the financial elite and not the powerless. The implications of these findings are that if capital is truly to serve society, and not the other way around, a number of institutional adaptations will be necessary to enhance the democratic qualities of global investor activism in ways that increase spaces for beneficiaries, civil society and affected communities to participate in and inform investment decision-making.

Chapter 2: Theoretical Approaches to Shareholder Power

The study of shareholder activism straddles a number of disciplines ranging from law, psychology, business ethics, comparative corporate governance, sociology and organizational studies. As these different approaches can create conceptual fuzziness, I follow Goranova and Ryan's (2014) definition of shareholder activism as "actions taken by shareholders with the explicit intention of influencing corporations' policies and practices" (p. 1232). The relationship between shareholder activism or advocacy and shareholder power is rarely made explicit. In a general sense, the ability of investors to engage in activism in the first place is seen as being derived from certain sources of power: legal (shareholder rights), material (financial) or normative (value-based or religious moral authority). However, shareholder power itself can be difficult to define and conceptualize, depending on whether one focuses on the sources, function or mechanisms by which this power is exercised. While I am interested in all these aspects of shareholder power, this dissertation approaches the concept in a novel way by considering the types of power relations at play when shareholders engage in transnational advocacy. I suggest that within the domain of human rights, investor-driven activism animates four sets of power relations between investors and a) firms, b) states, c) advocacy coalitions working on similar issues and d) affected communities on whose behalf the advocacy is initiated.

In this chapter, I review the existing literature on shareholder activism with three objectives in mind: a) to examine the contrasting images of shareholder power used, b) to evaluate the extent to which existing theoretical approaches account for all types of power relations noted above (i.e. the extent to which multiple stakeholders are accommodated in conceptualizations of shareholder power), and c) to consider the different scales at which shareholder power is conceptualized – local, national or global (i.e. whether the way shareholder power is conceptualized travels reasonably well to the transnational domain). As this chapter outlines, reviewing the literature from these dimensions suggests that approaches to shareholder power that tend to dominate the business ethics and finance literature confront some limitations. First by viewing shareholder power as a pre-requisite for shareholder activism, the literature tends to feature shareholder power as an independent variable. That is, shareholder power is studied in terms of how it may influence a particular advocacy outcome, but not how activism itself may subsequently affect shareholder power. Existing works do not examine how the use of shareholder power in given contexts and over certain issues may serve to further legitimize this particular form of private power over other complementary or competing sources of power in the international political system. A second limitation is that the work on shareholder advocacy so far has tended to frame shareholder power mainly as a relationship between investors and firms, such that the implications of shareholder power as it relates to other actors operating at different political levels are rarely considered.

By systematically reviewing the existing literature in this chapter, I also aim to illustrate that a main theoretical contribution of this thesis lies in its effort to bridge disciplinary silos between business ethics and international relations. Specifically, as the three papers which comprise the dissertation will illustrate, existing analysis of shareholder activism can be fruitfully extended by considering perspectives on power that are offered by scholars of international relations, particularly when investor-led advocacy is viewed through the lens of global governance and transnational political action. The remainder of this chapter analyses the contributions and limitations of approaches used within the business and finance literature on shareholder activism, namely agency theory (Section 2.1), organizational theory (Section 2.2), stakeholder theory (Section 2.3) and socio-political approaches (Section 2.4) and how these inform extant understandings of shareholder power. I then explain in Section 2.5 why socio-political approaches can serve as an entry-point to introduce a more transnational conception of shareholder power that may enable the concept to migrate more easily from a narrow field of investor-firm relations to a broader space of global political action, involving relations between multiple social actors and impacts at different levels of governance.

2.1 Agency theory

Stemming from an interest by economists to broaden existing literature on financial risks and risk distribution, agency theory sought to understand issues that arise when one party delegates work to another by means of a contractual relationship (Eisenhardt, 1989). The theory has been especially relevant to the study of corporate governance – the system of rules, practices and processes by which a company is directed and controlled. Here, the relationship between investors and firms is explained within the frame of the principal-agent problem, particularly within Anglo-American systems of corporate governance[10] (Eisenhardt, 1989; Fama, 1980; Jensen and Meckling, 1976).

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[10] The "Varieties of Capitalism" (VOC) research program distinguishes primarily between liberal market economies and coordinated market economies based on how firms coordinate their activities with other key actors. As Aguilera and Jackson (2003) summarise: in most comparisons researchers contrast two dichotomous models of Anglo-American and Continental European corporate governance (Becht & Röel, 1999; Berglöf, 1991; Hall & Soskice, 2001; La Porta, Lopez-de-Silanes, Shleifer, & Vishny, 1998). They stylize the former in terms of financing through equity, dispersed ownership, active markets for corporate control, and flexible labor markets, and the latter in terms of longterm debt finance, ownership by large blockholders, weak markets for corporate control, and rigid labor markets. Yet this classification only partially fits Japan and other East Asian countries (Dore, 2000; Gerlach, 1992; Khan, 2001; Orrú, Biggart, & Hamilton, 1997; Whitley, 1992), the variations within Continental Europe (Barca & Becht, 2001; Rhodes & van Apeldoorn, 1998; Weimer & Pape, 1999; Whittington & Mayer, 2000), Eastern Europe (Martin, 1999; Wright, Filatotchev,& Buck, 1997), and multinational firms (Fukao, 1995). The caution here is that despite the rich description found in the VOC research literature, the challenge remains to conceptualize cross-national diversity in corporate governance systems and to identify the key factors explaining these differences.

Financial markets in the United States and United Kingdom are organized such that owners of capital who are shareholders of listed companies, delegate the running of the company to the firm's management (Solomon, 2007, p. 17). This separation of ownership and control (Berle and Means, 1932) leads to a notorious agency problem where firm managers (agents) do not necessarily act in the best interests of shareholders (principals) (Shliefer and Vishny, 1997). For example, as the recent global financial crisis strikingly demonstrated, managers may pursue short-term profit maximization or egoistic personal goals over maximizing shareholder value[11] over the long-term (Boatright, 1999; Sykes 1994). Hence, the challenge for shareholders is how to align their interests with those of corporate management given information asymmetries and incomplete contracts (Shleifer and Vishny, 1997). The reduction in shareholder value that can result from the agency problem is known as residual loss. In addition to residual loss, Solomon (2007) reiterates that an important and basic assumption of agency theory is that it is costly for principals to verify an agent's actions are in line with the former's interests. Likewise, agents expend resources to adequately demonstrate they are maximizing shareholder value (such as through added accounting and reporting procedures).

Among the strategies to mitigate this particular problem, the allocation of stronger voting rights that endow shareholders with more power to influence managerial discretion has been explored in significant detail (Davis and Thompson, 1994; Shleifer and Vishny, 1997; Useem, 1996). Shleifer and Vishny (1997), for example, argue that ownership rights would improve existing information systems and increase transparency, thus minimizing agency costs. Other

[11] A company's shareholder value deepens on strategic decisions made by senior management, including the ability to make wise investments and generate a healthy return on invested capital. If this value is created over the long term, the share price increases and the company can pay larger cash dividends to shareholders (Investopedia, 2018).

mechanisms include the threat of takeover as a disciplining force over managers, divestment of capital, the passing of shareholder resolutions where a group on shareholders collectively lobby the company on issues they are dissatisfied with, or one-to-one dialogue and engagement with firms (Solomon, 2007).

As applied to the context of shareholder advocacy, shareholder power itself is under-specified within agency theory. For example, although Jensen and Meckling's (1976) foundational work is fundamentally driven by concerns with the abuse of power by corporations, defining shareholder power as a countervailing force is not addressed. Power is defined very narrowly as the decision-making abilities of firms, where power abuse primarily entails deviation from the expectations of investors (325). In general, agency theory is heavily reliant on assumptions of self-interest, bounded rationality and risk aversion. The strength of the theory is that it allows room to understand situations where the principal and agent engage in cooperative behavior despite differing goals and attitudes towards risk. However, it almost exclusively emphasizes the avoidance of responsibilities by agents as self-interested behavior and sees the principals as being at the mercy of agents (Bond, 1992).

Subsequent work on the rise of investor capitalism has challenged the direction in which power is exercised. Rather than being at the mercy of agents, studies by Useem (1996) and Hawley and Williams (1997) for example, demonstrate that investors can and do exert tremendous influence over firms due to a number of developments in the market such as the concentration of share ownership among institutional investors. This concentration serves to incentivize active monitoring of firms over divestment and provides a material basis through which to understand shareholder power, though this is not made explicit by the scholars themselves. Hawley and Williams' (1997) work widened the scope of discussions on power relations by asking, for instance, whether developments toward the concentration of ownership among institutional investors are compatible with a shared sense of the common good (Hawley and Williams, 1997). Despite these promising openings however, the locus of power itself is still primarily discussed within the confines of a bilateral relationship between firms and owners of capital. As a result, I am inclined to echo Eisenhardt's (1989) view that "agency theory presents a partial view of the world that, although it is valid, also ignores a good bit of the complexity of organizations" (p. 57-74), as well as key critiques of agency theory offered by Aguilera and Jackson (2003) in their influential work on comparative corporate governance.

With these scholars, I find that agency theory, as applied to studies of shareholder activism, tend to overlook the diverse identities of stakeholders within the principal-relationship and echo their call that comparative research must address this "social construction" of these diverse interests (Maurice, Sellier, & Silvestre, 1986 in Aguilera and Jackson, 2003). Jackson and Aguilera (2003) marshal a range of compelling arguments in this regard. They suggest that agency theory overlooks important interdependencies among other stakeholders in the firm because of its exclusive focus on the bilateral contracts between principals and agents—a type of "dyadic reductionism" (Emirbayer & Goodwin, 1994, in Jackson and Aguilera, 2003, p. 449). In addition, agency theory retains a thin view of the institutional environment influencing corporate governance. Within the literature, the theory's focus on shareholder rights does not capture the entire complexity of institutional domains by limiting actors' financial behavior to the effects of law (La Porta, Lopez de Silanes, & Shleifer, 1999). These shortcomings lead Jackson and Aguilera (2003) to assert that "the unmet theoretical challenge, in comparative studies, remains to conceptualize corporate governance in terms of its embeddedness in different social contexts" (Dacin, Ventresca, & Beal, 1999; Granovetter, 1985 in Aguileria and Jackson 2003, p. 449).

Recognizing the limits of agency theory, this dissertation departs from a focus on exploring shareholder power purely from the lens of the principal-agent problem in order to shed light two on neglected properties of shareholder power – its *relationship* to a broader set of actors beyond the firm, and the idea that shareholder power itself is socially constructed through an interplay of agents (responsible investors, the state, communities, NGOs etc.) and structures (institutions, norms etc.). Nonetheless, although I acknowledge this interplay, in order to keep the scope of the dissertation feasible, I focus mainly on the structural aspects, rather than individualism and micro-foundations as explanatory mechanisms.[12]

My emphasis on structure throughout the dissertation is informed by Margaret Archer's (1995) morphogenetic approach and her subsequent work on structural properties and powers in the context of social action (Archer, 2000). This research strategy aims to avoid the conflation of agency and structure in analytical work. Although Archer does not dispute the co-constitution of agents and structures on philosophical terms, as argued by scholars such as Anthony Giddens (1984), she does argue these are analytically distinct phenomena that operate at different timescales. The framework she uses to make this argument is the morphogenetic sequence (Archer, 1995, pp. 165-194). At any particular moment, pre-existing structures constrain and enable agents, whose interactions produce intended and unintended consequences, which lead to structural elaboration and the reproduction or transformation of the initial structure. The resulting structure then provides a similar context of action for future agents. Likewise, the initial pre-

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[12] Many scholars have stressed the need to make the micro-foundations of institutional theory more explicit (DiMaggio and Powell, 1991; Zucker, 1991). Scholars seeking to focus on these aspects draw on work by Goffman on interaction ritual to Wieck on sensemaking (Powell and Colyvas, 2008). Powell and Colyvas (2008) chapter the Microfoundations of Institutional Theory in Greenwood et al's (2008) edited volume on organizational institutionalism offers a very helpful overview.

existing structure was itself the outcome of structural elaboration resulting from the action of prior agents (Archer, 1995, pp. 165-194). So, while structure and agency are interdependent, by isolating structural and/or cultural factors which provide a context of action for agents, it is possible to investigate how those factors shape the subsequent interactions of agents and how those interactions in turn reproduce or transform the initial context.

For example, Chapters 3-5 reveal a number of ways in which communities, as sites of human rights violations, have very limited institutional pathways to engage in responsible investment advocacy on human rights, even when such advocacy is initiated on their behalf. This can be explained in part by the rules and norms at the disposal of institutional investors that channel shareholder power in ways that reinforce the materially-derived authority of investors in their role as providers of capital, by excluding or limiting alternative non-material sources of authority in the context of responsible investment practices.[13] Here Weber's (1978) work is an important reminder that the concept of "embeddedness" as applied to responsible investment is helpful because he stresses that economic action is also social action oriented toward others and may be constrained by noneconomic objectives or supported by noneconomic social ties (Streeck, 2002 in Aguilera and Jackson, 2003, p. 449).

2.2 Organizational theory

Another widely-used theoretical frame applied to the study of shareholder advocacy is Hirschman's (1970) theory of the firm. Hirschman argues that members in diverse organizational contexts can express their degree of satisfaction or dissatisfaction either through exit, by voicing

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[13] I elaborate on these connections to authority in Section 2.5.

complaints with the objective of inducing changes, or remaining loyal. The theory is frequently applied on its own, or in combination with other theories to understand how investors navigate the menu of monitoring options available to them in order to alleviate agency problems, and to what effect.

In Exit, Voice and Loyalty (EVL), Hirschman (1970) discusses political power and market power primarily with regard to how voice or exit may affect both. He observes, "[p]olitical power is very much like market power in that it permits the powerholder to indulge either his brutality or his flaccidity" (p. 58). A key argument in this seminal work is that although exit may be a viable option, there is considerable risk that it may entrench the status quo, reinforce a cycle of decline and entail costs (Schumpeter, 2012). For instance, if you have invested heavily in a company that starts performing badly, then you may be better off agitating for a change in management (voice) rather than selling your shares at a loss (exit). Just as Latin American powerholders have long encouraged their political enemies and potential critics to remove themselves from the scene through voluntary exile (Hirschman, 1970, p. 60), we can imagine situations where the exit of vocal critics from a firm may actually serve to reinforce corporate malfeasance. The main point here is not that exit is bad but that exit (or the threat of exit) and "voice" work best together. Taken together these assumptions have gained purchase in studies of shareholder advocacy.

Typically, Hirschman's work has been used to ground empirical studies that unpack processes of exit and voice involved in shareholder advocacy. Work in this tradition includes Beunza and Ferraro's (2013) study of shareholder advocacy by religious investors in the United States. They use Hirschman's framework, in combination with insights from cognitive organizational theories to reveal how shareholders' identity as company "insiders" permits firms to engage in learning and face-saving in light of corporate governance failings that are traditionally obscured in contentious and public interactions with activists who are external to the firm. In particular, Beunza and Ferraro (2013) refocus Hirschman's concept of voice as a mechanism of influence in organizations through two routes: formulating emerging issues and their business implications and sensitizing corporations by influencing internal corporate debates (p. 43). They argue these mechanisms give shareholders a "moral voice" that complements the more contentious approaches used by other activists.

In a similar vein as Beunza and Ferraro (2013), a number of empirical studies on shareholder advocacy reference Hirschman's voice and exit framework in order to categorize voice and exit options available to investors, while relying on alternative theoretical approaches to advance particular insights on the mechanics of the engagement process.[14] Hirschman's framework can also be found in Goodman et al's (2014) analysis of how and why the voice and exit options are used in social shareholder engagement (SSE)[15] through the analysis of seven engagements by three religious organizations in the United States and United Kingdom. Here, Hirschman's frame is coupled with specific assumptions about how an investor's identity affects the engagement process. Their analysis identifies distinct stages in the engagement process (issue raising, information seeking, change-seeking and outcomes) by religious investors. In contrast to much of the corporate governance literature, they find that religious organizations base exit and voice decisions on *political* rather than economic motivations, often using voice to further their beliefs and mission in society (196). In addition, they argue that Hirschman's voice and exit

[14] See for example: Allen, Letourneau and Hebb (2012)
[15] The term social shareholder engagement refers to the process by which institutional investors engage firms on social sustainability topics such as human rights.

options are dynamic, mutually reinforcing and not necessarily sequential. Divestment does not close the door to continuing external engagement with a company, nor is exit always the consequence of an unsatisfactory voice strategy (Goodman et al., 2014, 208).

In general, the application of Hirschman's framework has added some texture to the concept of shareholder power. For some, the material source of shareholder power provided by agency theorists persists as the dominant point of departure. For instance, using the EVL frame to explain the growth of shareholder activism, Jahnke (2017) argues that market characteristics such as rising ownership concentration[16] and the growth in passive assets[17] means that the institutional investor community is both *more powerful* and more compelled to be involved in corporate affairs. Alternatively, Beunza and Ferraro (2013) and Goodman et al. (2014) offer perceived moral legitimacy as a different source of shareholder power than the more material conception derived from extensive share ownership. For example, Goodman et al (2014) note: "Shareholders with large holdings are able to apply economic pressure and can affect management decision making through the threat of exit and the divestment threat can be considered a form of voice" (p. 196). Research into the salience of shareholders has demonstrated that this *traditional source of power* (emphasis added) is not usually available to shareholders undertaking SSE (Gifford, 2010; Lee and Lounsbury, 2011). Furthermore,

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[16] The author argues that the increased concentration of ownership and centralization of decision-making resulting from the rise of "fiduciary capitalism"—a "capital market in which large institutional investors purchase shares on behalf of ultimate owners to whom they have fiduciary responsibilities," with these intermediaries exercising power on behalf of the owners—has increased the ability of shareholders to exercise power. Concentration of ownership in the United States. is substantial, with the top 5 investors controlling 47% of assets at year-end 2016, up from 36% in 2005, while the share of assets managed by the top 10 firms has increased from 47% in 2005 to 58% at year-end 2016.

[17] Passive investing is an investment strategy that aims to maximize returns over the long run by keeping the amount of buying and selling to a minimum. The idea is to avoid the fees and the drag on performance that potentially occur from frequent trading. This incentivizes shareholders to engage in more active monitoring of firms through engagement, rather than selling shares in companies they are dissatisfied with.

Goodman et al., (2014, p. 196) explain that in SSE voice can be interpreted as social action, and can be used for the pursuit of justice or for wider social change, with financial impact being relatively inconsequential for smaller holdings typical of SSE (Hollenbach, 1973; Clark et al., 2008, Proffitt and Spicer, 2006; Sjostrom, 2010 in Goodman et al., 2014, p. 196-198).

However, given that religious investors are a small portion of the global institutional investor landscape, this view of shareholder power is highly contextual, with limited generalizability. One troubling aspect in Goodman et al's (2014) reference to traditional vs. non-traditional sources of shareholder power as discussed in the quote above is the elision between two very distinct phenomena involved in the exercise of shareholder power: a) investor motivations for engaging in social shareholder activism (namely wanting to enhance justice, affect social change, and an emphasis on values-alignment over financial impacts), and b) the institutional characteristics of investors that may prompt desired changes in firm behavior (size of ownership stake). This elision is evident in the argument that for religious organizations, exit can sometimes function as a form of voice: "According to Hirschman, exit is an economic argument and entails revenue loss. However, the shareholdings of religious organizations tend to be small and therefore cannot rely on traditional shareholder power to have a financial impact on investee companies" (Goodman et al, 2014, p. 205-206). Hence, exit as a private and anonymous economic act was not an option. Rather by combining divestment with public statements, it was used as a political argument more in line with a voice strategy, described by Hirschman (1970) as "various types of actions and protests, including those that are meant to mobilize public opinion (p. 30). As noted, the application of Hirschman's frame to scholarship on shareholder advocacy has added to our understanding of non-material sources of shareholder power, but all too frequently these arguments under-developed and implied, rather than explicitly addressed.

Furthermore, owing to the emphasis on the EVL framework as a tool to understand how investors work around certain types of coordination problems, organizational theory too confronts some of the limitations noted with agency theory. Although the EVL framework offers more room than agency theory to consider multiple social influences on shareholder advocacy, discussions of shareholder power typically focus on this concept as an explanatory variable for particular advocacy tactics or outcomes. Both approaches also tend to discuss shareholder power strictly within the context of investors and firms, rather than a more expansive view of how the state and civil society my affect shareholder power, or in whose interests this power is exercised. The latter point is important because responsible investment practices are meant to be aligned with long-term social and environmental sustainability. Rather than assuming this is always the case, the examination of shareholder power in this dissertation critically investigates whether this assumption holds in practice. In the three chapters that follow, I explore which corporate social responsibility and sustainability norms are advanced by responsible investors, and in particular evaluate how institutions mediating the exercise of shareholder power (such as shareholder engagement, investor-driven governance networks and shareholder resolutions) shape these norms. I do so in Chapters 3-5 by considering the implications of shareholder advocacy on human rights for the beneficiaries on whose behalf institutional investors are entrusted to serve as financial stewards, as well as the communities whose human rights are the subject of investor advocacy.

A further observation from my review of this literature is that most studies adopting the EVL framework have focused on single-case studies within a specific jurisdiction or limited comparative work primarily within the Anglo-American context (typical cases are the Interfaith-Centre for Corporate Responsibility in the United States and the Ecumenical Council for

Corporate Responsibility in the United Kingdom). These studies mainly measure the impacts of investor-led human rights advocacy in terms of pro-CSR shifts in a firm's policies and the preservation of financial value in the period following investor activism on a human rights issue. This dissertation widens the lens on how impact is conceptualized. For example, in Chapter 5, my study of human-rights related shareholder proposals filed in Canada over a thirty-five-year period reveal a shift in investor discourses around human rights, whereby a steady erosion of purely ethical justifications for corporate responsibility for human rights based on notions of harm to particular communities has given way to predominantly hybrid justifications based on the idea that human rights violations pose risks to shareholder value. This discursive shift, I argue, heightens ethical ambiguity around the social responsibilities of *investors* (not just firms). By repeatedly legitimizing this form of persuasion in their responsible investment advocacy, investors may constrain themselves from speaking out against corporate-related human rights violations in perverse situations where the violations of such rights may actually be financially profitable.[18]

2.3 Stakeholder theory

Stakeholder theory can be traced to the work of Freeman (1984) who proposes extending the focus of managers beyond traditional interest group of shareholders in order to understand the needs, expectations and values of groups previously perceived to be external to the firm. Stakeholder theory has both normative (moral/ethical) and instrumental (profit/wealth

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[18] On this point, I acknowledge Raj Thamotheram (Preventable Surprises) and Rob Lake's(Authentic Investor) for calling attention to the idea that investors are not passive bystanders in how markets (and related dysfunctions) are created and sustained, as well as the need for greater personal accountability on the part of these investors for maintaining perverse incentives (interviews with author, November 2013).

enhancing) implications, since dealing with stakeholders can be regarded as a responsibility to meet the legitimate claims of all stakeholders, and/or as a means to maximize organizational wealth (Donaldson and Preston, 1995; Jones 1995; Jones and Wicks, 1999 in Ayuso et al., 2007).

The development of stakeholder theory ushered in one of the deepest fault lines in the corporate governance literature regarding the purpose of the firm – the shareholder/stakeholder debate.[19] From shareholder perspective corporations have no duty to exercise "social responsibility" (Friedman, 1962), where social responsibility means the expending of corporate resources for socially beneficial purposes, regardless of whether those expenditures are designed to help achieve the corporation's financial ends (Schaefer, 2008, p. 298). This view holds that the purpose of the corporation is to realize the specified ends of shareholders, with the caveat that those ends are legal and basically non-deceptive. In practice, those ends are nearly always to maximize the corporation's profits (Schaefer, 2008). By contrast, stakeholder theory holds that the corporation should be run for the benefit of all stakeholders regardless of whether doing so maximizes the corporation's profits (Freeman, 1984). The stakeholders of a corporation can be characterized as those persons vital to the continued survival and success of the corporation, and this is usually thought to include owners, management suppliers, employees and customers (Schaefer, 2008, p. 297).

Stakeholder theory has been widely applied to issues related to corporate sustainability and social responsibility since it provides a suitable framework for understanding the relationship

[19] Within the political science/political economy literature on Varieties of Capitalism, scholars have distinguished Continental European/Japanese stakeholder systems of corporate governance, where labour is incorporated into corporate decision making through works' councils for example as distinct from Anglo-American shareholder systems. These are highly stylized portraits primarily used to explain differences in finance, ownership, labor relations and the role of the market in corporate control or issues of institutional isomorphism in corporate governance.

between business and society (Clarkson, 1995; Donaldson and Preston, 1995; Waddock and Graves, 1997). By broadening the scope of influences on corporate decision-making beyond shareholders and the state, a major thrust of scholarship has focused on how firms decide 'who or what really counts' (Freeman 1994; Mitchell et al., 1997). Addressing this issue of "stakeholder salience" has meant that stakeholder theory has made a more focused effort to address the concept of power than the theories previously discussed.

In this respect, Mitchell, Agle and Wood's (1997) theory of stakeholder identification and salience has proved to be highly influential in studies of shareholder activism, as it offers a framework to understand firm responsiveness (or lack thereof) to the demands of institutional investors.[20] Mitchell et al.'s (1997) central thesis is that the salience of particular stakeholders can be identified by looking at three attributes: (1) the power of stakeholders to influence the firm, (2) the legitimacy of the stakeholder's relationship with the firm and (3) the urgency of the stakeholder's claim. Here, the authors make an important distinction about how stakeholders are defined in the first place. They suggest that on order to clarify the term "stake," we need to differentiate between groups that have a legal, moral, or presumed claim on the firm and groups that have an ability to influence the firm's behavior, direction, process, or outcome (Mitchell et al., 1997, p. 859). Influencers have power over the firm, whether or not they have valid claims or any claims at all and whether or not they wish to press their claims. Claimants may have

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[20] I present Mitchell et al.'s (1997) framework in substantial detail here. I do this primarily because their framework has been highly influential in studies of shareholder engagement and has provided the theoretical underpinning for a number of studies on the topic. It should be noted however, I am not adopting their definitions of concepts like authority and legitimacy wholesale. These concepts are discussed at great length and with a high degree of contestation across the various theoretical traditions in international relations (particularly Realism, Liberalism, Constructivism and a range of critical theories). In the interest of brevity, I have not added a comparative analysis of how these concepts are defined and understood differently by stakeholder theorists and IR scholars. I have chosen instead, to focus my discussion on areas where these concepts inhibit a relational, multi-scalar and socially-embedded understanding of shareholder power.

legitimate claims or illegitimate ones, and they may or may not have any power to influence the firm. Thus, power and legitimacy are different, sometimes overlapping dimensions, and each can exist without the other (Mitchell et al., 1997, p. 859).

Within Mitchell et al.'s (1997) framework, power is defined in simple terms as the ability of one actor to influence another. The authors draw on the early Weberian idea that power is "the probability that one actor within a social relationship would be in a position to carry out his own will despite resistance" (Weber, 1947 in Mitchell et al., 1997) and echoed later by Dahl (1981) as "a relationship among social actors in which one social actor, A, can get another social actor, B, to do something that B would not otherwise have done" (p. 3). The emphasis that this power relationship is deeply tied to a misalignment of interests is noteworthy. To elaborate the mechanisms through which power is exercised, Mitchell et al. dismiss French and Raven's (1960) typology of power for failing to incorporate a sorting logic to create mutually exclusive and exhaustive categories. Rather, they turn to Etzioni's (1964) categorization based on the type of resource used to exercise power: coercive power, based on the physical resources of force, violence, or restraint; utilitarian power, based on material or financial resources; and normative power, based on symbolic resources (Mitchell et al., 1997, 865). Applied to the context of shareholder advocacy, investors are seen to possess power to the extent they possess or can gain access to coercive, utilitarian, or normative means to impose their will in a given set of relationships. However, this "access to means" is not a steady state, which is one reason why power is transitory: it can be acquired as well as lost (Mitchell et al., 1997, p. 865-866).

With regard to the second pillar of their framework, Mitchell et al. (1997) observe that the notion of "legitimacy," loosely referring to socially accepted and expected structures or behaviors, is often coupled implicitly with that of power when people attempt to evaluate the nature of relationships in society. Davis (1973), for example, distinguishes legitimate from illegitimate use of power by declaring, "in the long run, those who do not use power in a manner which society considers responsible will tend to lose it" (p. 314). Seeking to define a firm's stakeholders narrowly, some scholars also make an implicit assumption that legitimate stakeholders are necessarily powerful, when this is not always the case (e.g., minority stockholders in a closely held company), and that powerful stakeholders are necessarily legitimate. Despite this common linkage, Mitchell et al.'s stakeholder salience framework accepts Weber's (1947) proposal that legitimacy and power are distinct attributes that can combine to create authority (defined by Weber as the legitimate use of power), but that can exist independently as well. An entity may have legitimate standing in society, or it may have a legitimate claim on the firm, but unless it has either power to enforce its will in the relationship or a perception that its claim is urgent, it will not achieve salience for the firm's managers. This understanding leads Mitchell et al., to follow Suchman (1995) in defining legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (in Mitchell et al., 1997, p. 867). The third and final pillar of the stakeholder salience framework is urgency. This is defined by Mitchell et al., (1997) as the degree to which stakeholder claims call for immediate attention. This definition involves two key components: *time sensitivity* – the degree to which managerial delay in attending to the claim or relationship is unacceptable to the stakeholder, and *criticality* – the importance of the claim or the relationship to the stakeholder.

The stakeholder salience framework has proved quite valuable in allowing scholars to explore which attributes are likely to contribute to successful outcomes in shareholder advocacy campaigns, and the original work has benefitted from a number of useful extensions. For example, combining resource dependency theory and stakeholder theory, Frooman (1999) argues that a resource relationship exists between a firm and its stakeholders, and an over-emphasis on power may obscure how dependencies may shape impressions of stakeholder salience. Frooman's early work has been expanded upon in subsequent studies (Hendry, 2005; Gifford, 2009, 2010; Mattingly and Greening, 2002; Hamilton and Erickson, 2011). For example, Gifford (2010) further subdivides Mitchell's three attributes of urgency, salience and power so as to get a richer picture of shareholder advocacy practices. Within Gifford's work, legitimacy is enhanced to include 'what a shareholder says, not just who they are' and urgency is modified to include 'a sense of intensity of engagement' (Gifford 2010, p. 28). Three moderating factors are also added in Gifford's model: coalition-building, relative size of the investor and the company, and the values of the managers. In bridging normative and instrumental aspects, Gifford finds that tying shareholder advocacy to the business case is seen as a key criterion which increases the likelihood of a positive response by corporate management (Gifford, 2010; Guay, Doh, and Sinclair 2004). While such research has confirmed the merits of the Frooman model, it has also found it to be too simplistic to explain the true variety of stakeholder–firm relationships encountered. Going beyond formal rules and the investor-firm dyad, Hendry (2005) adds factors such as a stakeholder's communicative ability and the potential to actually form an alliance, and type of influencing strategy adopted as key variables that may explain stakeholder salience through an analysis of four environmental non-governmental organizations (ENGOs).

In general, the application of stakeholder theory to gain analytical leverage on shareholder power encounters some difficulties. For instance, what Gifford terms as sources of shareholder power might more accurately be described as mechanisms through which this power is exercised. In addition, conceptually differentiating issue salience from actor salience is needed for further clarity. Furthermore, the criticism that much traditional managerial stakeholder analysis fails to capture broad structural societal patterns of power also persists in analyses of shareholder advocacy to date (Jones and Fleming, 2003). For instance, the role of the state and public policy was not included in revised iterations of stakeholder analysis proposed by Frooman and Gifford (Reed, 2002), despite the fact that the state is a crucial intermediary in corporate governance.

Taken together, the stakeholder salience framework offers a higher degree of dynamism than agency theory and the EVL framework. The assumptions that stakeholder attributes are variable, socially constructed and may not always be consciously exercised, potentially create more room to advance a broader understanding of shareholder power. Unfortunately, while the framework has expanded the scope of who counts as a stakeholder from the view of firms, this is not the case when viewed from the investor perspective. As such, stakeholder theories do not fulfil their promise of advancing a more holistic understanding of shareholder power because existing empirical work has not actively sought to understand how shareholder power affects stakeholder relations beyond the firm, and at multiple levels of governance. In this respect, stakeholder theories that are applied to understanding shareholder power have not truly escaped the investor-firm dyad and have remained rooted in the Mitchell et al.'s (1997) proposition of the centrality of managers in stakeholder theory, illustrated when they note that "although groups can be identified reliably as stakeholders based on their possession of power, legitimacy, and urgency in relationship to the firm, it is the firm's managers who determine which stakeholders are salient and therefore will receive management attention" (p. 871).

2.4 Socio-political approaches

A substantive critique of agency, organizational and stakeholder theories relates to the concept of *embeddedness*. According to Granovetter (1985), embeddedness is a matter of the degree to which economic behavior is affected by or submerged in social relations. Critical, sociological and constructivist perspectives, though prevalent in the literature on corporate social responsibility (CSR)[21], are only recently being taken up in studies of responsible investment and shareholder advocacy. Key themes that have been pursued within this "social-studies of finance" research agenda include cultural ethics and the relationship between ethical behavior and cognition (sensemaking). By emphasizing the social rather than the economic (and thus, reductionist) view of organizational activities scholars have followed arguments advanced by interpretive sociology (Garfinkel, 1967; Schütz, 1967), the sociology of knowledge (Berger and Luckmann, 1966), social movements (Tarrow and Tilley, 2009) and social psychology (Weick, 1979). It also includes and builds on the work of constructivist scholars (Wendt, 1992; Adler, 1997; Checkel 1998) to include collective ideas and identity, which may be analytically prior to material interests.

As pointed out by Basu and Palazzo (2008), a sensemaking perspective allows "studying those factors that might trigger or shape CSR activities in the first place" (p. 123) and thus, reveal the critical differences among organizations in terms of how they enact their notion of responsibility (in Zarbafi, 2011, p. 16). Influence emerges, in a retrospective sense, out of the reciprocal process of how both parties involved, the investor and the corporation, make sense of

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[21] See for example Gond and Moon (2012); Gond, J.P. and Piani, V. (2013); Gond, J.P. and Boxenbaum, E. (2013). Cabantous, L.,; Gond, J.P. and Johnson-Cramer, M. (2009).

the actions that have been performed by the counterpart.[22] This new view on influence or power brings into play what Schelling (1960) has called the *credibility of enforcement mechanisms*. "Only if an enforcement mechanism such as filing shareholder resolutions etc. is credible, or framed differently, *makes sense* both internally and externally for the targeted corporation, it succeeds in provoking the desired change in behavior" (Zarbafi, 2011, p. 97).

As Zarbafi (2011) insightfully explains this approach advances the agency model in that it looks at managerial discretion and active ownership as both necessary for transforming equivocal data into sensible information. In this context, a main challenge for the principal-agent problem confronting firms and investors was historically attributed to information asymmetries between the two parties. However, applying a sensemaking perspective to the principal-agent problem suggests that

> we are no longer predominantly confronted with the problem of information asymmetry that has to be reduced via governance structures that align the interests of passive (and powerless) investors with those of active (and powerful) managers. Rather, we face the problem that when information asymmetry exists, participants tend to perceive different cues and attach different meanings to their observations (Vlaar et al., 2006 in Zarbafi, 2011, p. 98).

We are thus confronted with an *information plurality* resulting from the different ways of how participants make sense of equivocal data which has to be reduced via collective sensemaking among both parties involved (Zarbafi, 2011, p. 98).

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[22] A recent example of this type of scholarship includes Sabina DuRietz's (2014) work on how accounting practices are interpreted as information in the context of responsible investment. DuRietz's work is influenced by work on epistemic practice (Kalthoff, 2005; Knorr-Cetina, 2001; Rheinberger, 1992a). Instead of focusing on frames for interpretation, their origin in economics and how these shapes the behaviour of their users, which the social studies of finance already do (e.g., Beunza & Garud, 2007; Callon, 1998; MacKenzie & Millo, 2003), DuRietz focuses on the interaction between analysts and accounts that become identified as information and input to such models (DuRietz, 2014, p. 397).

This shift has significant implications for how shareholder power is understood and underscores the idea that shareholder influence should not be solely viewed as a function of power derived from access to resources or resulting from a central network position. Rather, the question "who counts is largely a function of the identity orientation of the organization doing the counting" (Zarbafi, 2011, p. 109). As a result, Zarbafi (2011) concludes that researchers in the field of responsible investment should thus become more creative and explore phenomena such as investor responsibility or investor influence from multiple perspectives.

Scholars drawing on social movement theories explore the agency problem and corporate control from a sociological perspective. Scholars such as Davis and Thompson (1994) argue "corporate control is inherently political, and politics is accomplished by coalitions of mutually acquainted actors that recognize or construct a common interest … Social movement theory adds insight into the process by which actors translate shared interests into collective action" (p. 152, in Zarbafi, 2011, p. 75).[23] For example, Reid and Toffel (2009) and Lee and Lounsbury (2011) consider the impact of environmental shareholder resolution filing on the environmental performance of corporations from a social movement perspective, while Jackie Cook's (2012) work examines the role of shareholder resolution filing in advancing a public policy agenda.

Collectively, social movement theories as applied to responsible investment have focused on identity, framing and network politics as key variables in explaining particular shareholder advocacy outcomes and processes (Proffitt and Spicer, 2006; Macleod, 2009; Macleod and Park, 2011). Social movement theory presents shareholder power as a function of *political struggles*

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[23] Research building upon this argument includes the work of den Hond and de Bakker (2007), Derry and Waikar (2008), King (2008), King and Soule (2007), and Rao et al., (2000).

between investors and managers as well as *social structures* going beyond the organization (Davis and Thompson, 1994). Nonetheless, a shortcoming of this approach is that the embeddedness of corporate governance in *social processes* both within and between organizations is neglected (Zarbafi, 2011, p. 75), a gap that is taken up by social constructivists.

For social constructivists, shareholder advocacy is viewed as a process of "ongoing social constructions, emerging from the skillful accomplishments through which organizational members impose themselves upon their world to create meaningful and sensible structure" (Morgan, 1980, p. 617). While the social constructivist research agenda in international relations sets out to "problematize the identities and interests of states, to open up the historical constitution of the states-system and to reflect on issues of systemic change" (Bieler and Morton, 2008, p. 107), applied in the context of globalized market relations, the unit of analysis here shifts to private actors. Nonetheless, both traditions share the view that "intersubjective frameworks of meaning are attached to social norms, which in turn are not taken as simple descriptive categories, but as components of generative structures that shape, condition and constrain action, (Ruggie, 1982, 1983, 1993 in Bieler and Morton, 2008, p. 107).

Bieler and Morton (2008) argue that a challenge with social constructivism is that it is grounded in an idealist understanding of transformations in social relations because of the dis-embedding of intersubjective ideas, norms and values from the social relations in which they cohere. For these scholars:

> The recurring questions are therefore: *Whose* values and beliefs have constituted or embodied state identities and interests and the relevant constitutional structure of the international society of states? *Which* agents shape the core intersubjective beliefs of underlying social and world orders? *Why* does a particular set of ideas become part of the structure and not another? As it stands, there exists an under-theorized notion of power across social constructivist perspectives that fail to ascertain whose interpretations come to constitute the social world and why they do so (Bieler and Morton, 2008, p. 109).

Building in a more critical lens on constructivist approaches to shareholder power could offer a viable route to address this concern, as illustrated by DeGoede's (2001) analysis of legitimacy deficits in finance. DeGoede (2001) does not concentrate on the material structure of financial markets and argues instead that "in order to criticize the legitimacy deficit in finance and to broaden financial debates, it is imperative to understand how financial science became a historical possibility and how financial decision-making became depoliticized in the first place" (DeGoede, 2001, p. 151 in Bieler and Morton, 2008, p. 111). These phenomena are traced through the historical constitution of financial speculation as a technical issue, which depoliticizes the circumstances surrounding notions of risk. Once discourses of financial speculation as well as the discursive constitution of modern finance are broadly deconstructed, the process of thinking about possible alternatives can then begin (DeGoede, 2005, xxvi; DeGoede 2004 in Bieler and Morton, 2008, p. 112).

In summary, socio-political theories provide analytical leverage on issues that are neglected by alternative theories. They open up spaces to consider non-financial sources of power and authority, reveal the ways in which shareholder power is relational and socially-constructed. Bridging critical approaches here also permits going beyond the question of whether ideas, norms and social structures matter, but to also interrogate power hierarchies within the context of responsible investment that may reinforce the perspectives, needs and interests of some social actors over others, as I elaborate in greater detail below.

2.5 Broadening the scope of analysis on shareholder power

As the literature review has sought to demonstrate, existing theoretical approaches are limited in their ability to move discussions of shareholder power beyond the investor-firm dyad, vary in their genuine engagement with the influences of a broader set of actors (including the state and civil society) and generally do not consider how the exercise of shareholder power via shareholder advocacy may entail particular implications for the issues and actors that are the subject of these efforts, and that these implications may occur at varying geographic scales: local, national and international. In this dissertation, I propose that moving away from materially and instrumentally-rooted conceptions of power towards a more socially-contingent conception is essential for moving towards a more holistic understanding shareholder power that overcomes the aforementioned limitations.

A first step towards this more holistic understanding is adopting a framework of power that can transcend the investor-firm dyad. Constructivist scholars working in the domain of global governance have a number of valuable insights to offer here. Alice Ba and Mathew Hoffman's (2018) book is a much-needed synthesis on how social constructivism makes sense of global governance. Their work outlines the social processes in order to shed light on how different actors come to be authoritative rule makers, how diverse norms and practices come to define global rules and how ideas and identities shape global rule-making across various arrangements of global governance. In light of the growth of influence of international institutions and non-state actors, "international rule-making has become the domain of multiple overlapping actors and regimes, rather than the clear-cut leadership by one (hegemonic) state or multilateral conformity with a small and homogenous set of shared rules backed by enforcement mechanisms" (Haas, 2002, p. 73). In this respect, Anne-Marie Slaughter offers a socially-grounded definition of global governance as "the formal and informal bundles of rules, roles and relationships that define and regulate the social practices of states and non-state actors in international affairs" (Slaughter, 1998 in Haas, 2002, p. 73).

For constructivist scholars therefore, the institutional, discursive and intersubjective procedures by which international governance develop have been paramount (Haas, 1999, 2002; Ruggie, 1998; Held et al. 1999; Price and Reus-Smit, 1998; Finnemore, 1996; Barnett and Finnemore, 2004; Reus-Smit, 2002). For example, Lisa Sundstrom (2005), provides a norms-based explanation for varying successes that foreign development assistance donors have had in strengthening Russian social movements. Her analysis finds that,

> where foreign assistance is employed to promote norms that are universally embraced, it is highly likely to lead to a successful NGO movement. In contrast, when foreign assistance pursues norms that are specific to other societal contexts, it will fail to develop an NGO movement, regardless of the amount of funding foreign donors devote (Sundstrom, 2005, p. 419).

According to Sundstrom (2005),

> NGOs and foreign donors have succeeded by articulating a universal norm against physical harm in the cases of soldiers' rights and domestic violence, but have failed by voicing specifically Western norms of gender equality and feminism in the case of women's rights" (p. 419).

My project aligns with this broader scholarly community of constructivists through its focus on distinctive processes of institutionalization, socialization, persuasion, discourse and norm diffusion to understand the ways in which global governance develops. A key contribution of note is that I engage with these processes within the previously unexplored empirical terrain of shareholder advocacy on human rights by institutional investors. For instance, in Chapter 3, I offer an explanation for tactical variations adopted by institutional investors in their efforts to diffuse emerging norms on the responsibilities of multi-national corporations to respect human rights and to avoid complicity in human rights violations through due diligence measures. In Chapter 4, I examine how the various forms of authority at the disposal of transnational investor-driven governance networks can involve complex institutional arrangements that can shape international advocacy agendas. Likewise, in Chapter 5, I employ critical discourse analysis to study how investor discourses in Canada are shaped by developments in transnational human rights governance, as well as to show how these discourses themselves are emergent, socially constructed, and serve as vehicles through which certain power hierarchies may be maintained and even reinforced.

As noted earlier, the unifying force across the three papers that comprise the dissertation is the concept of shareholder power. Although constructivist scholarship on power is quite dense, my socially-grounded analysis of shareholder power is primarily shaped by Michael Barnett and Raymond Duvall's (2005) introductory chapter in their edited volume *Power in Global Governance*. These scholars characterise power as the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate.[24] This definition entails two dimensions: 1) the kinds of social relations through which power works in relations of interaction or in social relations of constitution; 2) the specificity of social relations through which effects on actors' capacities are produced. These two dimensions generate a four-fold taxonomy of power: compulsory, institutional, structural, and productive (Barnett and Duvall, 2005, p. 48) that is especially useful to consider how shareholder power manifests at the global level. The taxonomy is elaborated in greater detail below.[25]

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[24] Barnett and Duvall (2005) criticise existing international relations literature on power for its attachment to realism, namely how one state uses its material resources to compel another state to do something it does not want to do. However, they also note that in steering away from realism, both neoliberals and constructivists have neglected to develop how power is conceptualised within their own frameworks.

[25] An alternative to Barnett and Duvall's (2005) framework is available in Doris Fuch's (2005, 2007 and 2009 with Jennifer Clapp) typology of corporate power which has three forms: instrumental, structural and discursive. I thank Peter Dauvergne and Jane Lister for drawing my attention to this framework via their 2011 book *Timber*. Because I was especially interested in how institutions mediate shareholder power as a form of private authority, Barnett and Duvall's (2005) inclusion of this factor, in addition to those in Fuch's (2005) framework, offered greater analytical leverage for my project. In addition, Barnett and Duvall's framework is less contingent on having corporations as the primary unit of analysis. Future iterations of my this analysis may offer more granular comparison of the two frameworks.

According to Barnett and Duvall (2006), *compulsory power* can entail both material and normative resources. This is an important departure from the realist conception of power, which focuses only on the former, and one that matters in bridging concepts of power and authority. For example, transnational activists who may not be on a level-footing with states or firms when it comes to financial clout, can nonetheless use naming and shaming tactics to influence these actors to comply with the values and norms they advance (see for example, Hendrix and Wong, 2012; Murdie and Davis, 2012; Schmitz, 2013; and Hafner-Burton, 2008 for a counter-viewpoint). However, naming and shaming is effective only to the extent that these activists have legitimacy—hence moral authority (Price, 1998). To illustrate this link between power and authority, Barnett and Duvall (2005) discuss how international organisations use their expert, moral, delegated, and rational-legal *authority* as a resource to compel (influence or exercise power over) state and non-state actors to alter their behaviour (p. 50).

Whereas compulsory power entails the direct control of one actor over another, *institutional power* is the ability to control others in indirect ways. Formal and informal institutions allow one party to work through rules and procedures that define those institutions, and guide and constrain the actions and conditions of socially distant others. This description is particularly apt for exploring shareholder power in the domain of human rights because institutional investors are usually geographically disconnected from the sites of alleged human rights concerns. Hence, what I find particularly compelling about Barnett and Duvall's (2005) discussion on institutional power is that they highlight both spatial and temporal dimensions within particular mechanisms of influence.

Spatially, one actor can influence others through institutional arrangements, such as decisional rules, lines of responsibility, divisions of labour, and structures of dispersed dependence, hence power works through socially extended, institutionally diffuse relations (Barnett and Duvall, 2005, p. 51). Mirroring the point made earlier in reference to Archer's morphogenetic sequence, temporally, institutions can have ongoing and unintended effects at a later point (Barnett and Duvall, 2005, p. 51). Institutions themselves are the result of strategic interactions in different domains, generating shared beliefs that, in turn, impact those interactions in a self-sustaining manner (Aoki, 2001). Hence, the value of applying Barnett and Duvall's framework to analyze shareholder power is that it also permits researchers to specify how the role of each stakeholder toward the firm is shaped by different institutional domains and thereby generates different types of conflicts and coalitions in shareholder activism (a related point is made by Aguilera and Jackson, 2003). This is a key step in allowing analysis of shareholder activism to also migrate across different geographic scales from the local to the global.

Exploring the institutional dimensions of shareholder power therefore offers the opportunity to expose how governance biases embedded within the institutions of responsible investment can create winners and losers at different levels of governance to the extent that the ability to use these institutions and benefit from collective rewards are unevenly distributed or serve to reinforce unjust power hierarchies (Barnett and Duvall, 2005, p. 58). However, institutional power also appears moot if the institution is not deemed legitimate at least to some extent. Here, fairness, or the perception thereof, becomes crucial in lending fundamental legitimacy to institutions. Insofar that an institution is deemed legitimate, the institution can then shape the strategic environment of actors by setting the rules to bargaining, affecting policy bias, and mobilising power. In sum, the concept of institutional power enables researchers to unpack the idea that institutions shape the social and political processes of how stakeholders' interests are defined ("socially constructed"), aggregated, and represented with respect to each other (Aguilera and Jackson, 2003).

Within Barnett and Duvall's (2005) framework, *structural power* concerns the constitution of subjects' capacities in direct structural relation to each another. The focus is on social relations of constitution and an actors' self-understanding and subjective interests. To the degree that actors do not recognise their own domination, they serve to reproduce, rather than resist the differential capacities and privileges of structure (Barnett and Duvall, 2005, p. 53). Historical materialists view the structure of global capitalism as substantially determining the capacities and resources of actors, shaping their ideology so that it serves the interests of capitalists. The arena of responsible investment advocacy offers a fascinating arena within which to test the proposition that the actions of those in subordinate positions are disposed toward reproduction, rather than transformation of the structural relations of domination (Barnett and Duvall, 2005, p. 54).

The final form of power discussed in Barnett and Duvall's (2005) scheme is *productive power*, which involves the constitution of social subjects with varying social powers through systems of knowledge and discursive practices. From this vantage point, the discourses and institutions of transnational investor-led advocacy on human rights prioritize certain types of actors with associated specific social powers (in this case over firms), self-understandings and performative practices. Whereas structural power envisions binary and hierarchical relations, productive power concerns the boundaries of all social identity, and the capacity and inclination for action for the socially advantaged and disadvantaged alike, and the myriad social subjects that are not constituted in binary hierarchical relationships (Barnett and Duvall, 2005, p. 56). It is this feature of Barnett and Duvall's (2005) framework that allows for my analysis of shareholder power to transcend the investor-firm dyad and consider a much broader set of social relations. To illustrate the concept of productive power, the authors note that categories such as "civilised," "Western," "rogue," "democratic" represent productive power, in that they generate asymmetries of social capacities (Barnett and Duvall, 2005, p. 56). Here, productive power seeks to establish legitimacy, which in turn becomes intrinsic in the discourse itself, as diffuse and contingent social processes produce certain subjects, fix meanings, and create a structure of intersubjective public beliefs. An example is the Global Compact, whose goal is to engage "the private sector to work with the UN, in partnership with international labour and nongovernmental organisations (NGOs), to identity, disseminate, and promote good corporate practices based on nine universal principles" (Barnett and Duvall, 2005, p. 60). Architects of the agenda envision two mechanisms to realise this development: 1) as MNCs sign onto a set of evolving standards, a discursive space is formed in which actors are produced as subjects empowered legitimately to comment on their performance; and 2) the creation of the socially responsible corporation with a new self-understanding that embraces best practices (Barnett and Duvall, 2005, p. 61). Power and authority in this case are difficult to distinguish, as legitimacy and authority become inherent in the continuing production and maintenance of identity and understanding.

As a whole, Barnett and Duvall's (2005) framework of power complements the under-socialized view of shareholder power that has persisted in the literature on shareholder activism thus far. It does so by capturing both material and normative dimensions of power, but also expanding this focus to include the embeddedness of investors in a nexus of formal and informal rules (North, 1990), their role as co-creators of social systems and as agents who are actively shaping and legitimizing a particular discourse around the social responsibilities of firms through their shareholder advocacy. Applying Barnett and Duvall's (2005) framework to existing studies of shareholder activism also sheds light on some gaps that need to be filled. For the most part existing studies have focused almost exhaustively on compulsory forms of power (material and normative), but less so on institutional, structural and productive forms. Each of these aspects is investigated in inter-related ways in the papers that follow.

Throughout this chapter, I have referenced authority in relation to shareholder power on a number of occasions, and this relationship merits some elaboration. In this dissertation, I address shareholder power as it is exercised in the context of investor advocacy aimed at enhancing corporate compliance with global human rights norms. As has been discussed thus far, shareholder power can only be effective in influencing firms, if the authority of investors (as private actors) to leverage this form of power is viewed as legitimate. Hence, this project's focus on relational and socially-embedded aspects of shareholder power also helps us to probe the nature of private authority in global governance. As Hall (2005) suggests, "authority is a social commodity that cannot be usurped or successfully claimed unilaterally. It must be publicly claimed and publicly acknowledged by the subjects of the exercise of power" (¶4). Scholarship on the role of international organisations (IOs) have shown that particular forms of authority serve as mechanisms by which institutions can shape state identities and interests. For example, IOs influence social processes through authority derived from their status as technical experts and as beneficiaries of delegated state authority in specific issue areas (Barnett and Finnemore, 2004, p. 20).

Hall's work with Thomas Biersteker (2002) observes that the globalisation of economic liberalism has led the state to yield previously sovereign domains to private and non-state actors. This in turn has given way to a rise in private authority that is challenging public authority in a number of ways. In the sphere of the market, private authority stems from two sources. The first regards the capacity to establish manufacturing, productive, regulatory and reporting standards that become recognized by others and are subsequently adhered to, otherwise known as "institutional market authority" (p. 214). The second form regards the increasing acceptance, particularly in advanced industrialized economies, of market-based decision-making over politically-based decision making, often on efficiency and normative grounds, and generally referred to as "normative market authority" (p. 214).

Other scholars such as Claire Cutler, Tony Porter and Virginia Haufler (1999) refer to this concept as "private international regimes" (p. 21) which can include a complex array of actors, industry norms and practices, coordination service firms, production alliances and business associations. In her later work, Cutler (2003) argues that the system of global governance is undergoing a fundamental transformation with the creation of a new private transnational legal order that has historical antecedents in prior international systems (the law merchant). She suggests three trends are driving this transformation, namely an increase in the juridification of international social life, an increase in heterogeneity among forms of governance (pluralization), and an increase in the significance of governance in the private sphere (privatization) (pp. 17-32). As a consequence of these processes, Cutler (2003) argues that we are witnessing three transformations that also shed some light on why this study's empirical focus on institutional investors is warranted. First, the welfare state is being replaced by the "competition state" as the globalization of liberalism induces states to adjust to a neo-liberal global environment (p. 29). Second, the world is moving from national to transnational patterns of capital accumulation characterized by a third transformation (pp. 29-30). This third transformation, in turn, is the emerging dominance of "flexible accumulation" constituted by a combination of capital mobility and a high degree of flexibility in transnational production arrangements (pp. 30-31). Modern commercial law (the law-merchant) abets these transformations, according to Cutler, by generating publicly binding sources of private international commercial law through networks of private actors (pp. 39-41).

Bringing together this wider scholarship on private power and authority in global governance, my study examines the ways in which institutional investors draw on both forms of private market authority to persuade firms to improve their performance when it comes to aligning with global human rights norms and standards. I do not assume that their identity as market actors necessarily means that institutional investors draw on market authority alone. For instance, Chapter 4 examines the ways in which collaboration with INGOs through investor-driven governance networks may offer investors the opportunity to draw on the moral authority of their civil society counterparts. Similarly, Chapter 5 sheds light on how investors may (deliberately or inadvertently) coopt moral authority by citing INGO reports on human rights violations without having to give up any institutional space or power to these actors.

In this chapter, I have reviewed the key theoretical schools that frame existing analyses on shareholder activism in order to identify the merits and gaps of each approach in theorising shareholder power. The result of this review suggests that sociologically-grounded theories and critical perspectives can offer productive avenues through which to interrogate shareholder power, as existing accounts tend to overlook power relations between investors and other social actors beyond the firm. Previous studies have also avoided examining shareholder power a dependent variable, thereby limiting our understandings of how investors exercising this form of private authority may do so in ways that affect a broad range of stakeholders, as well as the governance of human rights at different geographic scales ranging from the local to the global. The three chapters that follow are a modest attempt to address these gaps.

Chapter 3: Explaining Tactical Variations in Investor Responses to Human Rights Issues

Over the past two decades, political economy scholars have convincingly argued that conflict is understood not only in terms of the political fractures, demands and interests of warring groups, but also through the resources at their disposal to wage and sustain violence (Banfield et al., 2005; LeBillon, 2001). As suppliers of political, material and financial resources, the role of transnational corporations in fueling conflict dynamics and related human rights violations has been investigated at length (for example: Cilliers and Dietrich, 2000; Banfield et al., 2005; Renner, 2002; Avant, 2005; Watts, 2005; LeBillon, 2001 and 2012; Global Witness, 2010a; 2010b; Goodhand, 2002). Cumulatively, these studies have documented a deeply concerning accountability deficit for corporate complicity in human rights abuses (most notably by Ruggie, 2007). Responses to this intractable challenge have predominantly focused on regulatory (Koenig-Archibugi, 2004; Vogel, 2010), judicial (Ratner, 2001; Deva, 2004; Weissbrodt and Kruger, 2003), non-judicial mechanisms (Lukas et al., 2016) and voluntary approaches (Mares, 2010, 2011; Vogel, 2008). However, the role of institutional investors[26] as a mechanism for advancing corporate compliance with human rights has been largely ignored by international relations scholars.

As elaborated in Chapter 1, this neglect is surprising given the many ways in which institutional investors are already engaging with the global politics of human rights. For example, in 2012, thirty-nine institutional investors and investment management firms asked

[26] Defined in Chapter 1.

member states of the United Nations to adopt a strong, legally binding and comprehensive arms trade treaty (Bâtirente, 2012). Together, this group represented USD$3 trillion in assets under management. These investors suggested that without a stronger system to control international trade in conventional arms, companies operating in the defense industry face regulatory and reputational risks, as they may be perceived to be complicit in human rights violations committed by irresponsible end-users (Batirente, 2012). Similar global investor advocacy efforts have been evident across a whole range of issues such as human trafficking (ICCR, 2011) and labour rights in global supply chains (PRI, 2017a) to the trade in minerals from conflict zones (Compere, 2010), and indigenous rights in mining and agro-forestry dependent communities (PRI, 2017b).

Broadly speaking, when faced with information that companies they have invested in are committing or complicit in human rights violations, investors react in one of three ways. First, they may remain passive, choosing to remain silent and continue to invest in these firms. Alternatively, they may engage in some form of activism to express their preferences around human rights compliance by investee companies through positive engagement such as letter-writing, dialogue, media stories and participation in multi-stakeholder or industry forums seeking to address a particular issue. As a third option, investors may choose to “cut-and-run” by divesting their shares from the company. However, investor responses to human rights issues may not follow predictable patterns.

For instance, the widely-condemned human rights violations associated with the trade in conflict minerals from the Democratic Republic of Congo[27] prompted investors to engage in public-policy advocacy, dialogue with technology firms whose supply chains included conflict minerals, and even divestment from firms likely to source conflict minerals (Khushrushahi, 2012), whereas the trade in other conflict-commodities such as jade in Myanmar or gold in Colombia did not trigger comparable investor responses. Likewise, in response to the deadly collapse of the Rana Plaza garment factory in Bangladesh in 2013, the Bangladesh Accord – a legally-binding agreement between retail firms and trade unions that was designed improve labour rights in the Bangladeshi Ready-Made Garment Industry was roundly endorsed by investors (SHARE, 2013; ICCR, 2016; PRI, 2014), while no comparable investor activism is evident in light of almost-identical labour rights violations documented in other garment-producing countries like Turkey in a similar time-frame (FairWear Foundation, 2017; Indonesia (Clean Clothes Campaign, 2014) and Cambodia (Human Rights Watch, 2015).

How do we explain these diverse advocacy responses to strikingly similar human rights concerns? Given that institutional investors have not been systematically taken up as a subject of analysis within international relations scholarship on transnational advocacy, it is necessary to pivot to other disciplines in search of possible answers. Although explicit attention to tactical approaches within investor advocacy is fairly limited, it is possible to distill a number of implicit

[27] Global Witness (2010a) defines conflict minerals as "natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law." (p. 8) The term typically refers to cassiterite, coltan, gold ore and wolframite (for tungsten), diamonds, timber and petroleum. Conflict minerals was first addressed by the UN General Assembly in 2001 in relation to diamond mining in Liberia, the scale of conflict-mineral extraction and related human rights abuses in the DRC have made it a notorious and widely-discussed case.

hypotheses from existing work on shareholder activism by corporate governance and business ethics scholars. By engaging with this literature, I argue that existing explanations for tactical variations in investor advocacy are insufficient, and a more holistic approach to unpacking mechanisms by which investors exercise power in the domain of global human rights is warranted. Undertaking this analysis may provide insights on how to assess competing appraisals about the impacts of the responsible investment at different levels of governance related to human rights, as well as the degree to which different stakeholders occupy or are absent from these governance spaces.

To develop this argument, the chapter is structured as follows: I first provide a theoretical framework for understanding shareholder activism using Hirschman's (1970) work on exit and voice in Section 3.1. Next, I lay out the empirical context that motivates the chapter's core research question: *When faced with a portfolio company that is a systematic violator of human rights norms, why would an institutional investor with strong human rights commitments continue engaging the company rather than divesting from it*? This question arises from examining the diverging responses by public pension funds in Norway and the Netherlands to allegations of complicity in human rights violations by their investee firm PetroChina (a state-owned Chinese oil and gas company) in Burma and Sudan (Section 3.2). The data and methods for analyzing these investor responses are explained in Section 3.3, followed by a systematic analysis of observed outcomes in both cases against hypotheses articulated in the theoretical framework. As evidenced through the findings elaborated in Section 3.4, engagement with PetroChina by Norwegian fund and divestment from the firm by the Dutch fund cannot be adequately explained by existing theoretical accounts of why voice and exit options are used in shareholder activism because the factors commonly identified as correlates of shareholder engagement (voice) in the former case, are also present for divestment (exit). I conclude in Section 3.5 by noting that the case challenges the explanatory power of existing accounts for why investors may prefer engagement over divestment, and highlights the need for additional hypotheses in explaining variations in investor responses to human rights violations by firms. Such a framework would advance not only the literature on shareholder activism specifically, but also theories of transnational advocacy more broadly by bringing in private actors from the periphery of this literature into the main frame. Finally, because the concept of shareholder power serves as the thesis' connective tissue, the chapter closes by reflecting on the implications of the case analysis regarding the question of who leverages power in global human rights politics, and the mechanisms by which they do so within and outside the state.

3.1 Theoretical Framework

3.1.1 **Exit, voice and loyalty**

Hirschman's (1970) theory of the firm presented in *Exit, Voice and Loyalty* is both simple and far-reaching in its explanatory power. The framework distinguishes between likely responses of stakeholders[28] their dissatisfaction with particular institutions – be they social, political or economic. In Hirschman's view, stakeholders signal their concerns through exit (such as consumers ceasing to buy a firm's product or service) or voice (via complaints to management or a regulatory body). Both options could serve as a trigger for an organization's leadership to chart a course to recovery from decline. Unlike exit, voice involves any attempt to change, rather than

[28] Note: Hirschman's terminology mainly refers to employees, consumers or customers of a firm and citizens or members of a political or social organization. I use the term stakeholder to capture a broader set of relationships than those referenced by Hirschman.

escape from an objectionable state of affairs (p. 30). Hirschman's work primarily sought to address the following questions: "Under what conditions will the exit option prevail over the voice option and vice versa? What is the comparative efficiency of the two options as mechanisms of recuperation? In what situations do both options come into play jointly?" (Hirschman, 1970, p. 5).

Within Hirschman's (1970) framework, for either exit or voice to function as a trigger for recovery within an organization, there are two important pre-conditions: elasticity of demand and differentiation among stakeholders. First, demand for the product or service provided by the organization is assumed to be elastic in response to changes in quality, such that any decline in demand results in revenue losses (p. 23).[29] The second assumption requires a mixture of "alert" and "inert" stakeholders (pp. 24-32). The alert stakeholders provide the organization with a feedback mechanism about decline, whereas the inert stakeholders maintain the flow of capital, legitimacy or time needed by the organization's leadership to make necessary changes needed to address the decline in quality (pp. 24-32). Furthermore, the effectiveness of exit and voice are subject to threshold effects. For instance, mass exit may accelerate institutional decline to such a degree that recovery becomes impossible. Likewise, if the voice option is too distracting or does not leave enough time for recovery, then it can trigger negative returns (p. 33).

In considering the interplay of both responses, Hirschman (1970) explains that voice can be viewed as subordinate, alternate or complementary to exit. The subordinate view is that voice is exercised only when the exit option is unavailable (such as in monopolistic conditions).

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[29] As part of this assumption, price and costs are assumed to remain constant, and the decline in quality is not initiated as a deliberate strategy on the part of the firm. These conditions are expected under perfect competition, which also assumes perfect knowledge on the part of consumers.

However, voice can also act as an alternative to exit. For example, if stakeholders are sufficiently convinced that voice will be effective, then they may well postpone exit (Hirschman, 1970, p. 37). Hence, exit can also be viewed as dependent on the ability and willingness of stakeholders to take up the voice option. If organizational decline plays out over a length of time, Hirschman's framework assumes that,

> the voice option is more likely to be taken at an early stage. Once you have exited, you have lost the opportunity to use voice, and vice versa; in some situations it will therefore be a reaction of *last resort* (emphasis original) after voice has failed (Hirschman, 1970, p. 37).

In Hirschman's (1970) view, the decision to stick with a deteriorating firm or organization – that is preferring voice to exit – is based on a) the willingness to take the chances of the voice option as against the certainty of the exit option, and on (b) the probability with which a stakeholder expects improvements to occur as a result of actions to be taken individually, with others, or just by others (p. 39). Therefore, in comparison to exit, voice is costly and conditioned on the influence and bargaining power members can bring to bear on the organization (p. 40). Because of these characteristics, voice becomes more expensive in direct proportion to the number of organizations of relevance to a particular stakeholder. Moreover, voice is more likely to function as an important mechanism in markets with few buyers, or where a few buyers account for an important proportion of total sales, both because it is easier for a few buyers to combine for collective action, and because each one may have much at stake and wield considerable power, even in isolation (p. 41).[30] For these reasons, Hirschman expects that voice is more salient for members of an organization rather than individual customers of firms, whereas the wide availability of substitutes in advanced economies favours exit over voice.

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[30] Here, Hirschman relies on Olson's (1965) *Logic of Collective Action*.

Nonetheless, Hirschman concedes that,

> the domain in which the voice option is likely to be deployed, especially as a substitute for exit, the territory left to it remains both considerable and somewhat ill-defined. Moreover, once voice is recognized as a mechanism with considerable usefulness for maintaining performance, institutions can be designed in such a way that the cost of individual and collective action would be decreased. Or, in some situations, the rewards for successful action might be increased for those who initiated it (Hirschman, 1970, p. 42).

Thus, he argues that while the exit option involves a clear-cut either-or decision, the voice option "is essentially an art constantly evolving in new directions" (Hirschman, 1970, p. 42). This situation makes for an important bias in favour of exit when both options are present, where members of an organization are:

> likely to base their decision on *past* experience with cost and effectiveness of voice, even though the possible *discovery* of lower cost and greater effectiveness is the very essence of voice. The presence of the exit alternative can therefore tend to *atrophy the development of the art of voice*. (Hirschman, 1970, p. 43, emphasis original).

Within Hirschman's (1970) model, loyalty is a key concept in the battle between exit and voice (p. 82). Loyalty applies to groups or organizations where exit is unlikely or impossible, such as the family, tribe, church, and the state, making voice the principal way for an individual member to register their dissatisfaction (Hirschman, 1970, pp. 76-78). Loyalty is especially powerful because its very existence is predicated on the possibility of exit. As such, the chances for voice to function effectively as a mechanism for recovery from deterioration is strengthened "if voice is backed up by the threat of exit, whether it is made openly or whether the possibility of exit is merely well understood to be an element of the situation by all concerned" (Hirschman, 1970, p. 82).

Throughout *Exit, Voice and Loyalty* Hirschman draws on examples from particular market conditions and political structures. Writing at a time when economic thought had gained wide purchase in political science, Hirschman's work was deliberately inter-disciplinary. He writes:

> Exit and voice, that is market and non-market forces, that is economic and political mechanisms have been introduced as two principal actors of strictly equal rank and importance. In developing my play on that basis, I hope to demonstrate to political scientists the usefulness of economic concepts *and to economists the usefulness of political concepts* (Hirschman, 1970, p. 19, emphasis original).

Though Hirschman's eloquence and theoretical reach are difficult to replicate, this thesis project is largely inspired by his candid efforts to bridge economic and political studies for mutual benefit. This chapter in particular seeks to make a modest contribution towards that effort.

3.1.2 **Exit and voice as a framework for shareholder activism**

As discussed in Chapter 2, Hirschman's (1970) rubric of "Exit and Voice" dominates the corporate governance literature as an explanatory framework for how and why institutional investors exercise shareholder power over the firms they own[31] (Becht et al., 2009; Berle and Means, 1932; Fama and Jensen, 1983; Gifford, 2010; Goodman et al., 2014). From this lens, institutional investors may choose to champion firm compliance with human rights standards through a punitive approach (exit), where deviant companies are deprived of capital through exclusion from investment portfolios (Divestment). Alternatively, these investors may opt to voice support for human rights compliance through a variety of engagement mechanisms such as letter-writing, active dialogue, media campaigns, proxy voting and the filing of shareholder proposals that raise human rights concerns (Engagement) (March and Olsen, 2008; Sjöström 2008, p. 142).

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[31] Within corporate governance, shareholder activism is also referred to as 'monitoring' of firm behaviour.

Before moving onto reviewing when exit or voice are more likely within shareholder activism, it is first necessary to address how the two key preconditions for Hirschman's (1970) framework are met in this context. Recall that the first precondition is a variation on the typical demand function (i.e. declining demand signalled through voice or exit harms a firm's revenue). This means that the issue being taken up through shareholder activism needs to have a tangible impact on the firm's revenue in order to effectively function as a signal of decline. At minimum, this impact is generated because firms allocate resources away from operational tasks for addressing investors' concerns through various mechanisms (quarterly investor calls, investor relations teams, coordination between sustainability teams, operations staff and management etc.). Aside from these costs, in practice, most investor activism on ESG is issues are predicated on a clear rationale for how the particular issue at stake affects firm performance, and by extension detracts from shareholder value (Khan et al., 2016).[32] The second pre-condition that would allow Hirschman's model to apply in the context of shareholder activism is a mix of active and inert shareholders. Across most advanced economies, institutional investors typically own shares in a very large number of companies. This poses a practical difficulty in monitoring all firms at the same time. As a result, at any given time, some investors will be more active in certain firms over others, creating a mix of active and passive investors (Black, 1990; Huppé and Bala-Miller, 2014).

[32] "Shareholder value is the value delivered to shareholders because of a firm's ability to grow sales, earnings and free cash flow over time. A company's shareholder value depends on strategic decisions made by senior management, including the ability to generate a healthy return on invested capital. If this value is created over the long term, the share price increases and the company can pay larger cash dividends to shareholders" (Investopedia, 2018b, ¶ 1).

To articulate likely conditions for exit and voice in the context of investor advocacy, I now turn to a brief overview of the literature on shareholder activism – a growing topic of study for scholars interested in corporate governance and business ethics. Over the last decade, this set of literature has specifically focused on understanding drivers and motivations of shareholder activism on environmental, social and governance issues (ESG). Previously these issues usually externalised as drivers of firm performance and profit maximization. However as firms seek to gain competitive advantage through sustainability initiatives (Dauvergne, and Lister, 2013), these topics are increasingly being taken up by activist shareholders (Khan et al., 2016). Although studies that specifically address tactical variations between engagement and divestment are very limited, it is possible to infer a set of probabilistic hypotheses that may explain why institutional investors may prefer exit over voice (and vice versa).

Likely conditions for divestment

Within Hirschman's model, exit is usually chosen when institutionalized mechanisms for voice do not exist or because it is typically the cheaper option. Within the context of shareholder activism, the literature on comparative corporate governance provides a strong indication that certain structural factors and institutional designs may alleviate the burden of costs associated with corporate engagement, thereby making exit cost-effective in some markets, but not others. For example (as discussed in Chapter 2), the Anglo-American model of corporate governance is often contrasted with the Continental European corporate governance model (Becht & Röell, 1999; La Porta et al., 1998). Wen (2009) argues that the fixation on shareholder value and the highly diffused ownership structure of corporations in the Anglo-American corporate governance model minimizes incentives for investors to actively engage corporations, whereas the social-dialogue model of corporate governance prevalent in Continental Europe and Scandinavia forces firms to be responsive to issues raised by social partners involved in the firm's governance. From this literature, it is possible to infer the first hypothesis to explain tactical variations in shareholder activism: *H1 [Corporate governance model]: Institutionalised social dialogue structures lower the costs of engagement, making divestment a less likely option for investors operating in European/Scandinavian corporate governance models.*

Likely conditions for engagement

Hirschman's model also suggests that voice is more likely when stakeholders are confident of their ability to influence the firm, and determine the voice option is more likely to yield the desired results. In the context of shareholder activism, results are mainly assessed to the degree that a firm's response ensures it preserves shareholder value by maximising returns and minimising risks to a firm's profitability.

The primary argument in favour of corporate engagement by institutional investors is that maintaining an equity stake in a firm that is under-performing in relation to human rights compliance enables investors to act as a source of pressure on the company to improve its practices, whereas divestment amounts to a "cut and run" strategy that does not address or mitigate alleged human rights violations. Here, investors appear to align with Hirschman's assertion that "voice is necessary because an exclusive reliance on exit precludes an organization from learning from its most articulate critics" (Hirschman, 1970, p. 4). Also in line with Hirschman (1970), it has been widely assumed that voice and exit are alternative options, and that a failed voice strategy will lead to exit (Withey and Cooper, 1989). Interview data with institutional investors in the United Kingdom, United States and Netherlands, that were asked to explain their preferred mechanism for addressing human rights abuses such as forced labour in corporate supply chains, exemplify this general preference for engagement over divestment (Bala-Miller, 2010):

> Direct company engagement has to be productive. Companies may not want to talk with shareholders about these issues and it can be very difficult to get the right company representatives to have the discussion with. Sometimes, going straight to top executives and company boards is the only way to get directly to the heart of an issue and take concrete steps. Filing shareholder proposals can put additional pressure for this dialogue to take place. However, a proposal should be a starting point, and not an end unto itself. For Teamsters [General Fund], divestment is a measure of last resort. Most long-term shareholders should try to push for reform rather than take a "cut and run" approach because maintaining shares in a company gives voice to labour rights issues. (p. 8)
>
> At All Pensions Group Netherlands, "We feel that shareholder proposals and engagement can be quite effective because they generate public pressure on a company to improve its performance. On the other hand, divestment is difficult and can be counter-productive. We base our strategy on a realistic assessment of what we can change through playing our role as a large investor with some influence. For this reason, our research on sustainability or corporate governance provides the basis for our decisions on whether or not to make an investment, to sell an investment, or to reduce or increase the size of an investment" (p. 12).
>
> Hermes Equity Ownership Services in the UK "sought to build an investor coalition through the UNPRI with significant assets to obtain adequate leverage for approaching the companies. We succeeded in constructing a coalition of nine separate asset managers. For Hermes, divestment was not an option because we wanted to achieve positive change in the management of labour rights in the Brazilian pig iron supply chain, and use our ownership of company shares to act as a lever." (p. 15).

The efficacy of engagement by institutional investors in achieving their demands is also shown in other thematic areas. For example, firms targeted by shareholder resolutions are more likely to disclose their greenhouse gas emissions (Reid & Toffel, 2009). In this context, it is likely that investors with previous experience of successfully achieving their demands through engagement strategies are more likely to replicate this approach than opt for divestment when confronted with similar issues and firms.

Ferraro and Beunza (2013) argue that because shareholder rights provide an institutionalized relationship between firms and investors, the voice option offers a much better avenue for communication and corporate learning than extra-institutional contentious tactics that may be deployed by stakeholders such as INGOs. They note,

> [a]s a channel of activist voice, shareholder engagement avoids the limitations of contentious tactics by building on the institutionalized relationship between the equity investors and the publicly-listed company: it is as part-owners, not as concerned citizens, that engaged shareholders address managers (Ferraro and Beunza, 2013, p. 4).

However, it should be noted that this assumption is contested in the literature. For example, Eesley and Lenox (2006) found that more confrontational tactics such as boycotts, protests and lawsuits, typically favored by external stakeholders were more effective in achieving changes to a firm's policies and practices, than letter-writing campaigns and shareholder resolutions - the tools-of-the-trade of shareholder activists. Vasi and King (2012), on the other hand, found that shareholder activism through shareholder resolutions had a stronger effect on environmental risk than more confrontational tactics. They suggest that the different results might stem from the fact that these two tactics target different audiences. Shareholder engagement is closely followed by risk analysts, leading to a greater impact on their perceptions of corporate risk, while protests and boycotts are more public, and thus might represent a more imminent threat to corporate reputation. As a result, the latter is more effect in triggering changes to corporate policies and practices for firms that are sensitive to consumer pressure. Another crucial point to note is that these studies did not include attention to shareholder dialogue which is a preferred engagement strategy by investors, and hence they do not provide a complete account of whether external tactics are indeed more effective than shareholder engagement (Ferraro and Beunza, 2013).

While the literature on tracing the actual impacts of engagement on corporate policies suffers from an attribution problem, especially when multiple actors are simultaneously putting pressure on the firm through various means at their disposal, from an investor perspective, there does appear to be a bias in favor of engagement over divestment due to the perceived efficacy in articulating demands to the firm's management (Hebb, Hachigian and Allen, 2011; Gond and Piani, 2013). One of the reasons for this bias is that shareholders enjoy a reasonably higher degree of salience with a firm's management compared to other stakeholders. Empirical studies on this theme are largely inspired by the stakeholder saliency model developed by Mitchell et al. (1997), and generally investigate how managers identify their primary stakeholders and how stakeholders gain the attention of managers (Gifford, 2010; Hebb, Hachigian and Allen, 2011; Goodman and Arenas, 2015). Taken together, the literature suggests that the expectation by investors that engagement is likely to yield a response from firms in favour of shareholder demands, generates the second hypothesis that could explain tactical variations in approaches to shareholder activism: *H2 [Firm responsiveness]: Low firm responsiveness to shareholder engagement is more likely to result in divestment*

Aside from a belief in the effectiveness of engagement as a change-inducing strategy, investors may also prefer engagement because of emerging evidence linking this strategy with better financial returns and shareholder value. This link is most famously associated with the 'CalPERS effect' in the United States or the 'Hermes effect' in the United Kingdom. Brad Barber (2007) found that the California Public Employees Retirement Scheme's (CalPERS) pursuit of reforms aimed at increasing shareholder rights in a set of 'focus-list' firms resulted in over USD$3 billion in wealth-creation.[33] Becht et al. (2008) conducted an analysis of

[33] CalPERS selects a small number of companies as part of the Focus List Program. These companies are engaged on sustainability issues. In September 2014, Wilshire (a consultant to the CalPERS Board) published an analysis that measured the stock performance of the 188 companies targeted by the Focus List Program from 1999 through the fall of 2013. The report showed engaged companies performed better (CalPERS, 2018, ¶1-4).

shareholder activism based on an analysis of the private engagements by the U.K's BT Pension Scheme and found that the fund substantially outperforms benchmarks and these abnormally high returns are largely associated with the achievement of engagement objectives rather than stock picking (Hermes effect). Similar findings are reported by Buchanan et al., (2009), Carleton et al., (1998) and Gillan and Stark (1998 and 2007). Barnett and Salomon (2003) found that institutional investors which rigorously screen investments based on social factors "may effectively weed out bad firms from their portfolios, thereby improving financial performance" (p. 384). Similarly, environmental shareholder resolutions have been shown to positively affect corporate environmental performance (Lee & Lounsbury, 2011). In a review of thirty-six academic studies on the relationship between environmental, social and governance (ESG) factors and financial performance, twenty studies showed evidence of a positive relationship, while only three show evidence of a negative relationship (Mercer, 2009). Dimson et al. (2015) examined highly intensive ESG corporate engagement activities at U.S. public companies between 1999 and 2009. The findings revealed that successful engagements generate cumulative abnormal returns of +7.1%. Aggarwal et al. (2011) analyzed the portfolio holdings of institutional investors across 23 countries over the period 2003–2008. They concluded that the greater presence of institutional ownership (and their related engagement activities) translates into higher likelihood of dismissing poorly performing CEOs, leading to improvements in valuation over time.

Moderating factors for engagement

The size of an institutional investor can also determine its propensity for engagement. Proponents of corporate engagement use the logic of markets to explain that since institutional investors have grown so large in recent decades that they now jointly own the majority of all financial assets worldwide, and have in effect become "universal owners" (Hawley and Williams, 2002, p. 286). As such, increased global diversification within institutional investors' investment portfolios creates greater exposure to investment risks that requires greater oversight of companies. The considerable size of holdings and use of passive index funds[34] mean that it is difficult for investors to exercise control by simply selling firms (exit) that they are dissatisfied with (Hirschman, 1970). The resulting lack of liquidity[35] therefore requires active corporate engagement (voice) in firm level decision-making to ensure share value is maintained (Hirschman, 1970). Hence, universal owners have an incentive to integrate any environmental, social or governance criteria which affects the world economy into their investment processes instead of just considering those criteria that individual corporations cannot externalize (Hawley and Williams, 2000, 2002a, 2002b, 2007; Thamotheram and Wildsmith, 2007).

From this view, corporate engagement on issues like climate change or human rights represents a credible investment strategy that, in some cases, delivers attractive risk adjusted returns (Clark and Hebb, 2005; Kiernan, 2007; Sethi, 2005; Monks, 2001; Camejo., 2002; Davis et al., 2006, Ivanova, 2017). Generally, empirical evidence also shows that investors with bigger stakes in their investee companies have higher monitoring incentives as their influence and resulting benefits from activism increase (Shleifer & Vishny, 1986). The links between shareholder engagement with positive financial returns, as well as the moderating influence of

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[34] A passive index fund is an investment vehicle wherein the investment portfolio is constructed to match or track the components of a market index, such as the Standard & Poor's 500 Index (S&P 500). This investment strategy is said to provide broad market exposure (diversification), low operating expenses and low portfolio turnover. This typically characterizes the approach taken by mutual funds.

[35] "Liquidity describes the degree to which an asset or security can be quickly bought or sold in the market without affecting the asset's price" (Investopedia, 2018a, ¶ 1).

the size and characteristics of institutional investors as universal owners generates the third hypothesis that could explain tactical variations in shareholder activism. *H3 [Financial risk]: The greater the exposure to financial risk for the investor stemming from the issue being raised, the more likely it is for shareholder value to diminish, making divestment more likely.*

However, financial measures are not the only indicators of costs incurred in the context of shareholder activism. As alluded to earlier, while a significant body of literature has explained how and why firms respond to reputational threats, a similar emphasis on reputational effects on investor behaviour is lacking. However, there is a small but emerging set of scholarship that examines the motivations of financial actors in adopting responsible investment policies and approaches where reputational issues are addressed. Adherence to these policies typically commits investors to align investment principles with long-term sustainability and to raise related, material environmental and social concerns with investee firms. For example in their study of why investors join the PRI, Majoch, Hoepner and Hebb (2017) evaluate different forms of power as explanatory factors. They note that as a voluntary and aspirational framework the PRI itself does not use the means of threat or coercion to influence an investor's decision to sign up to the Principles. Coercive power as a means of increasing adoption of the PRI would have to come from other sources such as regulatory bodies or investment fund trustees. A utilitarian, financial incentive is most likely to come from an investor's clients. The desire to attract new clients or to satisfy the demand from existing ones by adopting the PRI would be typical examples of utilitarian drivers. The reputational benefits and the signaling of capacity to address environmental and social issues by virtue of becoming a PRI signatory are examples of normative power, as non-material, symbolic incentives to adopt the principles. Their study found the strongest evidence for normative power driving decisions to adopt the PRI (Majoch, Hoepner and Hebb, 2017). Although understanding reputational issues for institutional investors is at an early stage, it is possible to infer a further potential explanation for variations in investor advocacy strategies based on this factor: H4 [Reputational risks]: *The greater the exposure to reputational risk for the investor stemming from the issue being raised, costs of engagement increase, making divestment more likely.*

Likely conditions when engagement is combined with divestment

In Hirschman's model, engagement is likely used in combination with divestment when stakeholders have long-term interests in the organization. Empirical analysis based on the temporal horizons of particular investors and their propensity for engagement as a strategy for shareholder activism has also yielded inconsistent results. On the one hand, it is believed that institutional investors, as long-term shareholders have an incentive to actively monitor and engage the corporation as they are more interested in long-term profitability and are likely to still hold the shares when the corresponding benefits arise (Chen, Harford, & Li, 2007; Neubaum & Zahra, 2006). Similarly, Callen and Fang (2013 in Ivanova, 2017) provide empirical evidence that institutional investors act as monitors and reduce future stock price crash risk, because their dialogue and oversight prevent management from hoarding bad news. On the other hand, short-term, or transient investors such as hedge funds may have greater incentives to intervene to correct firm behaviour, and may do so more often in pursuit of short-term profits at the expense of long-term firm value (Bratton & Wachter, 2010 in Ivanova, 2017).

Studies of when engagement and divestment are used in combination are very rare. Instead, most studies are case specific and focus on specific engagement strategies (dialogue vs. filing of resolutions etc.). For example, Hebb et al.'s (2014) study on shareholder power and salience drew on a large sample of minority shareholder resolutions submitted at U.S. companies. Contrary to the assumption that minority shareholder resolutions are put forward when engagement between shareholders and company managers breaks down, they found that in most cases where shareholder engagement is combined with the filing of a shareholder proposal, the minority resolution preceded the engagement and may well have been required in order to gain attention from the company. These temporal dimensions require further empirical investigation and for the moment can be used to inform analysis of tactical variations in shareholder activism on a case-by-case basis.

To summarise, a review of the existing literature on shareholder activism on the mechanics of exit and voice suggests that factors that are most likely correlated with shareholder engagement as a tactical preference by institutional investors when raising concerns with investee firms include a European/Scandinavian corporate governance model and relatively low financial and reputational risks stemming from the issue being raised. These factors are moderated by specific investor characteristics such as their relative size and confidence in their salience, and ability to have their demands met through engagement rather than divestment. However, as the case detailed in the following section suggests, these characteristics may be theoretically insufficient, prompting the need for more a more holistic framework. Recall in Chapter 2, I also pointed out that most analyses that have applied Hirschman's Framework to the study of shareholder activism do not necessarily consider how power relations may shape tactical decisions to pursue exit or voice. To address this gap in the literature, I am particularly interested to explore whether the three hypotheses investigated in the case study that follows confirms or challenges the need to consider the influence of power relations beyond the investor-firm dyad.

3.2 Empirical context

The Dutch Pension Fund ABP and the Norwegian Government Pension Fund-Global (GPFG) are among the world's biggest pension funds by assets under management (Towers Watson, 2012). They have similar frameworks and approaches to implementing responsible investment, in addition to being signatories to the PRI. Both funds were also invested in PetroChina, a subsidiary of China's National Petroleum Corporation (CNPC). Despite these similarities, when the company's systematically weak compliance with human rights norms became apparent, each fund took a very different approach to addressing these violations.

PetroChina Company Limited, the largest oil and gas producer and distributor in China, was created in July 1998 in accordance with Plan for the Organizations Structure Reform of the State Council (PetroChina, 2013). It was established as a joint stock company with limited liabilities by China National Petroleum Corporation (CNPC) under the Company Law and the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies in 1999 (PetroChina, 2013). Company shares have been listed on the New York Stock Exchange and Hong Kong Stock Exchange since 2000, and on the Shanghai stock exchange since 2007 (PetroChina, 2013). CNPC is the sole sponsor and controlling shareholder of PetroChina. PetroChina's corporate strategy focusses exclusively on aggressive growth, with strategic planning goals set to 2022 in light of China's need for resources to sustain its economic development trajectory. In tandem with these ambitious plans, PetroChina's human rights record has been plagued with criticism on multiple accounts (Human Rights Watch, 2003; UN Global Compact Critics, 2012; EarthRights International, 2008).

In December 2011, Norway's Ministry of Finance announced that the GPFG would continue with investments in Burma (Myanmar) despite warnings from the Norwegian Council of Ethics (the body responsible for ensuring the fund follows its' own code of ethics) that these investments may contribute to violations of human rights. The fund's exposure through these violations occurred via its investments in PetroChina's oil and gas pipeline projects in Burma. The Council of Ethics report in May 2010 recommended divestment after finding that PetroChina and CNPC operate as a single unit in Burma and that the "fund's investment in PetroChina entails an unacceptable risk of contributing to ongoing and future, serious or systematic violations of human rights" (Norwegian Council of Ethics, 2011, p. 49). Construction of the pipeline involved human rights abuses including land confiscation, forced relocation, forced labour, arbitrary arrest and physical abuse at the hands of police and military personnel. In addition, the pipes were being laid in areas of active conflict in northern Burma, where an estimated 30,000 were displaced by fighting in Shan State alone in 2011 (Norwegian Council of Ethics, 2011, p. 49).

Just a month later, the Dutch pension fund ABP came to a very different conclusion about maintaining its investments in the Chinese oil company. In January 2012, ABP fully divested its interests in PetroChina and blacklisted the company for non-compliance with the United Nations Global Compact Principles.[36] In explaining this decision, ABP confirmed that it had repeatedly urged CNPC, to improve its behavior to prevent complicity in human rights violations in conflict-ridden Sudan through its extensive financial links to the country's repressive regime (ABP, 2012, p. 6).

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[36] Launched in 2000, "The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption" (UN Global Compact, 2013, ¶1).

These divergent outcomes across the funds are puzzling for two reasons. The first relates to the criteria for exclusions or divestment used by each fund. Both funds have product and conduct-based criteria, though a stronger commitment to humanitarian and human rights principles is evident in the Norwegian context. Typically, this stronger commitment is likely to translate into a lower level of tolerance for human rights violations and greater likelihood of divestment from norm violators. The GPFG's assets are prohibited from being invested in companies that are engaged in the following activities (either directly or through subsidiaries): the production of weapons that violate fundamental humanitarian principles through their normal use (chemical weapons, biological weapons, anti-personnel mines, undetectable fragmentation weapons, incendiary weapons, blinding laser weapons, cluster munitions and nuclear arms) (Norwegian Government Pension Fund Global, 2004). The GPFG is also not permitted to be invested in companies that develop or produce key components for these types of weapons. Investments in tobacco companies and bond investments in countries restricted due to sanctions are also prohibited (currently Iran, North Korea and Syria) (Norway Ministry of Finance, 2014a).

Product-based exclusions are similar for ABP, where companies involved in the production of land mines, cluster bombs, or chemical or biological weapons are excluded from the investment universe (ABP, 2014b). In cases where a company may become exposed to these sectors through acquisitions or suppliers, the fund is expected to exclude the company (ABP, 2014b). However, the criteria for conduct-based exclusions are somewhat stricter (with a distinct governance process for deliberating these issues) in the Norwegian setting than the Dutch.

Under this set of criteria, a company may be excluded from the GPFG if there is an unacceptable risk that the company contributes to *serious human rights* issues outlined in the Council of Ethics' mandate, including aspects such as murder, torture, deprivation of liberty, forced child labour, severe environmental damage and corruption (Norway Ministry of Finance, 2014a; 2014c; GPFG, 2004). These types of explicit commitments are not made by ABP, whose policy simply states that conduct-based exclusions are based on company violations of the UN Global Compact (ABP, 2012 and APG, 2014) which cover a much broader set of issues beyond human rights. Aside from the policy, the GPFG is more likely to divest from a company than the ABP when divestment decisions taken by the Ethics Council and NBIM are aggregated (see Table 3.1).

Table 3.1. Scope of corporate engagement, 2013

Institutional Investor	ABP (Dutch)	GPFG (Norwegian)	
Engagement leader	APG	NBIM	Ethics Council
Companies engaged[37]	196	2,304	40
Companies divested	2	27[38]	21[39]

Given that these two influential institutional investors made their respective decisions within weeks of each other, what is PetroChina reasonably expected to glean about the consequences of failing to comply with human rights norms in light of these mixed signals? Are some human rights abuses and some repressive regimes more palatable to investors than others? How are these tactical variations across seemingly similar cases to be explained? This empirical puzzle motivates the core research question for the paper: *When faced with a portfolio company that is a systematic violator of human rights norms, why would an institutional investor with strong human rights commitments continue engaging the company rather than divesting from it*? To

[37] These figures refer to direct contact through letters, phone calls and meetings. Proxy voting-related engagements are disclosed separately.
[38] 11 coal-mining and 16 gold-mining companies
[39]13 for environmental damage, 3 for human rights violations, 2 ethical norms, 3 for violations related to war or conflict. For observations: 1 was kept for observation on corruption and 1 for confidential observation

answer this question, I conduct an in-depth comparative analysis to investigate whether existing theoretical expectations for this variation hold in this particular case. The research design used for this investigation is elaborated next.

3.3 Analytic framework, data and measures

Given the focus of the literature on traditional corporate governance issues such as mergers and acquisitions or executive remuneration, it is not clear whether similar exit and voice dynamics hold true for social shareholder engagements (SSE's) on issues such as human rights, as is the focus for this paper. As pointed out by Goodman et al. (2014), the concept of SSE attempts to reconcile the array of definitions used in the SRI and engagement literature whereby shareholders voice issues of concern to companies and where the nature of the issues tend to focus on the social, environmental and ethical impacts of corporate behaviour. However, unlike Goodman et al (2014), and drawing from the previously alluded to body of literature on shareholder value, I do not assume that profit maximisation and principled action are mutually exclusive drivers for corporate engagement on human rights by institutional investors. The expectation that SSE will gain prominence within the responsible investment movement as a whole (Gond and Piani, 2013), makes it important to unpack the dynamics of exit and voice more fully in thematic areas such as human rights. Thus, in an effort to test whether current explanations for voice and exit options by institutional investors holds true in SSE, the remainder of the paper evaluates the explanatory power of three likely independent variables: firm responsiveness, financial risk and reputational risks as per the probabilistic hypotheses inferred from the literature (see Table 3.2).

Table 3.2. Summary of analytic framework

Dependent Variable	Independent Variables	Hypotheses	Indicators
Divestment from systematic human rights norm violator	Firm responsiveness [IV_1]	[H_1] Low firm responsiveness is more likely to result in divestment [Assumption: divestment follows engagement]	• Quality and quantity of communication between firm and investor
	Financial risk profile [IV_2]	[H_2] The greater the exposure to financial risk stemming from the norm violation, the more likely divestment will occur	• Size of holding • Direct financial costs attributed to the type of rights violation by the company
	Reputational risk profile [IV_3]	[H_3] The greater the exposure to reputational risk stemming from the norm violation, the more likely divestment will occur.	• Urgency (direct civil society pressure, media pressure and peer pressure (through other investor networks and global standards). • Self-view as 'responsible investor'

The analytic framework is applied using a qualitative case study approach (Eisenhardt, 1989) to enable the examination of exit and voice processes within their institutional context. Of note is that both pension funds (NGPF and ABP) analysed show a high degree of complementarity on their relative size, commitment to responsible investment and the types of approaches used to implement this commitment. Likewise, the pair of chosen cases falls under the category of "coordinated market economies" (CMEs) based on the classification system provided by Hall and Soskice's (2001) seminal work on varieties of capitalism. Cumulatively, these constitute a vector of variables that are held constant across the two cases. As such, the cases are selected using a most similar systems design. The features of this design are elaborated in greater detail in Appendix 1 which covers the positon of each fund within the domestic pension system, relative size, governance structure, strategic investment mix and respective responsible investment approach.

The chosen design is appropriate to the current state of the literature and the research question because it enables the study to move from a hypothesis testing mode of analysis to hypothesis generation (based on the degree of confirmation achieved) (Gerring, 2007, p. 131). In the first instance, the cases are selected because they differ on the outcome of theoretical interest (engagement vs. divestment) but are similar on various factors that may have contributed to that outcome. The expectation of the analysis is that intensive study of the cases will reveal the key factor (s) that differ across the cases and provide an indication of potential causes (Gerring, 2007, p. 131). If a particular strong hypothesis emerges from the analysis, future analysis can move on to hypothesis testing across cases that exhibit different scores on the independent variable, but similar scores on all other possible causal factors. Confirmation of the hypothesis could also enable a deeper examination of potential causal mechanisms (Gerring, 2007, p. 131). The design also provides the advantage of not having to measure control variables in great detail, where factors assumed in common can simply be asserted as such (Gerring, 2007, p. 133).

Data was collected through 16 interviews with expert representatives of the institutional investors in the two cases of interest (ABP, GPFG), human rights NGOs, responsible investment service providers, finance-sector specialists and representatives of relevant global governance initiatives. These interviews took place between November 2013 and October 2015, and summary breakdown of interviewees is included in Appendix 2. Additional data was gathered through desk research covering government publications, press releases, policy statements and publicly-available NGO reports.

With regard to measures for each independent variable, firm responsiveness is evaluated qualitatively based on communications between firm and investor in the three-year period prior to the decision to continue engagement/divestment. Typically large-N studies on the impacts of engagement and divestment focus on changes in share price as a measure of financial risks. However, this measure would not be appropriate for the present study because a post-hoc share-price increase or decrease does not necessarily convey whether perceptions or calculations of these changes factored into a tactical decision about how an investor should respond to a firm's human rights practices. For this reason, this study qualitatively evaluates whether direct financial costs were attributed to the type of rights violation by the company in their interactions with investors, and the size of the investor's holding in the firm.

Within the corporate governance literature, reputational risk is operationalised in a variety of ways. In some instances, the resources diverted from a company in order to mitigate reputational damage in response to negative publicity or consumer boycotts is seen as a direct cost, and thereby considered a direct financial risk (Hebb and Wojick, 2005). In other instances, these financial effects may be more difficult to quantify, and reputational risk is addressed apart from direct costs (Gifford, 2010). This paper aligns more closely with the latter approach, particularly because reputational risks for an investor differ from those faced by a company. For investors reputational risks matter far more in a normative sense, and as a basis for legitimacy (Gifford, 2010). Hence, reputational risk is measured along two dimensions:

1) The degree of civil society, media or peer pressure which shape norms of 'appropriate behaviour' expected by a fund, and
2) The extent to which divestment or engagement is justified based on whether or not the action aligns to the fund's view of itself as a 'responsible investor' (failure to align will mean that it cannot be taken 'seriously' as a responsible investor).

3.4 Findings

Based on the analytical framework, theoretical expectations drawing on Hirschman (1970) would suggest that ABP's decision to divest from China and the GPFG's decision to continue engagement could be explained if the following conditions are met:

a) PetroChina was more responsive to the GPFG's engagement efforts than ABP's, prompting the former to continue engagement through dialogue and observation.
b) Exposure to financial risks stemming from ownership of PetroChina and the company's alleged human rights violations were deemed to be greater in ABP's case than the GPFG's, prompting the former to divest.
c) Exposure to reputational risks stemming from ownership of PetroChina and the company's alleged human rights violations were deemed to be greater in ABP's case than GPFGs, prompting the former to divest.

Each of these conditions were qualitatively investigated in the study through a review of documentary evidence, media reports and in-depth expert interviews, and the findings are summarized next.

3.4.1 **Hypothesis 1: Firm responsiveness**

Low firm responsiveness to shareholder pressure is more likely to result in divestment.

Firm responsiveness is measured by examining the quantity and content of interactions between the company and respective pension funds. Both the GPFG and ABP had been engaging with CNPC for approximately three years regarding the company's operations and related complicity in human rights violations being perpetuated in Sudan and Burma (Brooks, Lake, DenUyl, Mestad, interviews with author, 2013; APG, 2009, p. 13).

According to ABP Investments, the pension fund engaged with the local management of CNPC in Sudan and requested that company to fulfill several demands related to compliance with human rights norms (Global Compact Critics, 2012; ABP 2012; APG, 2010). These included a request for management to execute an assessment of the impact of CNPC's activities on the local community; transparency on the working methods of their security staff; the initiation of accountable dialogue with company stakeholders and a public statement on the company's role in the democratic development processes in Sudan (Global Compact Critics, 2012; ABP, 2012; APG, 2009-2010). However, CNPC responded that they do not comment on political situations, staying silent on the alleged human rights violations and their potential role (Lake, interview with author, 2013). ABP's investment policy is based on the ten principles of the Global Compact[40], and that CNPC's lack of concrete policies to prevent involvement in human rights violations in Sudan violated Principle 2, which states that businesses should make

[40] Founded in 2000, the UN Global Compact is an initiative that aims to encourage business to adopt sustainability-related and socially-responsible policies and to report on their implementation. Firms sign up to ten principles related to human rights, labour rights, the environment and anti-corruption.

sure that they are not complicit in human rights abuses (ABP, 2012; Lake, DenUyl, Brooks, interviews with author, 2013).

The goal of this divestment decision is explained in terms of a signaling effect, particularly as an outcome of poor firm responsiveness (Lake, 2013, interview with author). According to the ABP's annual report:

> By excluding PetroChina, it is our intention to signal to CNPC that we do not agree with the manner in which it has developed its activities in Sudan and Burma. We spent three years conducting an intensive dialogue with PetroChina and its parent company CNPC, but the latter refuses to discuss the political and human rights risks associated with its activities. Furthermore, the company is implementing insufficient structural measures to identify the impact of its operations on the environment and local communities and to limit the damage caused by them. (ABP, 2012, p. 6)

Thus, ABP had urged CNPC repeatedly to improve its behavior to prevent complicity in human rights violations and the CNPC failed to adequately address the concerns, leading to the divestment decision (ABP, 2012; Lake, DenUyl, interviews with author, 2013)

The Norwegian Council on Ethics reports a similar lack of engagement on the part of the company. The Council's recommendation on divestment from PetroChina explained that in accordance with the ethical guidelines, the Council sent a letter to PetroChina through Norges Bank[41] on 20 November 2007 requesting information about the company's role in the planned gas pipeline from the Shwe field on the west coast of Burma (Norwegian Council on Ethics, 2010, 2). The letter was sent in response to media reports that PetroChina had signed a Memorandum of Understanding (MoU) with Myanmar Oil and Gas Enterprise (MOGE), a Burmese stated owned company, on the sale of gas from the Shwe field in Burma (Norwegian Council on Ethics, 2010, 17). The Council requested information on whether the agreement

[41] Norges Bank is responsible for the fund's asset management. Further details in Appendix 1.

included the construction of the pipeline, as well as PetroChina's role and responsibilities in the pipeline project, as the Council was previously aware of serious human rights violations in the Burmese Oil and Gas sector due to previous engagement with the French oil company Total, regarding their operations in the region (Mestad, interview with author, 2013; Norwegian Council on Ethics, 2010, p. 1; Norwegian Council on Ethics, 2005).

The Council recommendation reports that in a letter, dated 12 December 2007, PetroChina responded that it "does not have any direct business contacts with, ties to, or associations with Burma; it has no exploration, production or operations in Burma; nor does it maintain any joint ventures, offices or employees, sell any products or provide any services in Burma" (Norwegian Council on Ethics, 2010, 17). PetroChina also noted that that the agreement with MOGE was entered into by CNPC, the controlling shareholder of PetroChina and stressed that PetroChina and CNPC are two separate entities and PetroChina has no control over CNPC's business activities (Norwegian Council on Ethics, 2010, p. 17).

However, having been suitably convinced through their own due diligence efforts that the CNPC and PetroChina de-facto operated as a single corporate unit, on 26 March 2010 the Council sent a draft recommendation to PetroChina in order to give the company the option of providing comments to the Council's findings and assessments 15 April (Norwegian Council on Ethics, 2010, p. 1; Mestad, interview with author, 2013). The company was subsequently contacted on two occasions. PetroChina responded in a message dated 27 April 2010 that it wished to address the Council's letter, but failed to meet the subsequent deadline (Norwegian Council on Ethics, 2010, p. 1; Mestad, interview with author, 2013). Other than denying direct involvement in Burma, the company did not provide any further insights into its processes for addressing human-rights related issues and conducting appropriate due diligence. Based on the evidence of the strong likelihood of human rights violations and in accordance with the Council on Ethics' mandate, divestment from PetroChina was recommended (See Norwegian Council on Ethics, 2010 for a full discussion). In this regard, then Chair of the Norwegian Council on Ethics Ole Mestad (interview with author, 2013) draws an important distinction between *correspondence* and *dialogue*, aptly stating: "They [PetroChina] did not respond. They only formally replied with a letter. There was no dialogue." Overall no significant variation in the CNPC's reaction can be detected between the two cases of interest, suggesting that firm responsiveness is not a distinguishing factor in accounting for the divergent responses take by ABP and the GPFG in this instance.

3.4.2 **Hypothesis 2: Financial risk**

The greater the exposure to financial risk stemming from the norm violation, the more likely divestment will occur.

Each fund's exposure to financial risks stemming from PetroChina's complicity in human rights violations are measured by the size of the holding, as well as whether direct financial costs were attributed to the norm-violating behavior of the company, either in the long-term or the short term.

At the time of the Council of Ethics' recommendation on the divestment from PetroChina, the GPFG's shares in the company were worth approximately USD$92 million, corresponding to an ownership of 0.03 percent (CNPC owned 86.71 percent of PetroChina's shares) (Norwegian Council on Ethics, 2010, p. 1). The specific value of ABP's shares in PetroChina was not disclosed in media reports and figures were not accessible via interview data regarding the divestment decision. Direct relationships to financial risk were not identified as a material factor in accounting for the decision to divest from PetroChina in ABP's case either in media releases or interviews with the fund and its asset manager (Lake, DenUyl, interviews with author, 2013; ABP, 2012; Brooksbank, 2012; Global Compact Critics, 2012).

Likewise, in the Norwegian case, financial risks were not mentioned at all in the text of the Council of Ethics recommendation (Norwegian Council of Ethics, 2010). This is perhaps not surprising given the structural bi-furcation between deliberations related to human rights and financial value between the Council of Ethics and Norges Bank. However, it is noteworthy that financial risks were also not referenced in the Ministry of Finance's response to the Council's recommendation (Norway Ministry of Finance, 2011). This is a curious outcome because, as the institutional body delegated with financial oversight of the GPFG, it would be more likely to see their language reflect concerns with the financial implications of divestment.[42]

Thus, in this instance, immediate concerns with financial risks do not appear to have strong explanatory power in account for the variation in engagement outcomes across the two cases. While some interviewees discussed human rights in light of long-term value creation (Lake, DenUyl, Piani, interviews with the author, 2013; Thomas, interview with author, 2014), the substance of the comments that related directly to the Dutch case mainly referred to the fund's overall strategic orientation towards responsible investment, rather than immediate

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[42] I am not sure how to explain this outcome. As explained later, the Council's recommendation for divestment from PetroChina was based on the fact that its parent company, the CNPC, was involved with alleged human rights abuses in China. The Council also made the point that there was a very high degree of overlap between the persons tasked with corporate governance at both firms. However, the Ministry disputed its responsibility for human rights risks committed by CNPC because corporate responsibility does not run upward from a subsidiary to the parent company (but rather the converse). Hence, the substance of their disagreement was on the route of exposure to the human rights violations being committed, rather than on the financial risks these violations may pose for their investments in PetroChina.

concerns about share-price declines due to PetroChina's involvement in with potential or actual human rights violations.

3.4.3 **Hypothesis 3: Reputational risk**

The greater the exposure to reputational risk stemming from the norm violation, the more likely divestment will occur.

Based on the analytical framework, theoretical expectations would suggest that the overall reputational risk to ABP (through different pressure points and internalisation of responsibilities for human rights) would be qualitatively higher than in the case of GPFG. The lower thresholds for these risks and lack of pressure for divestment could have motivated the latter fund to continue engagement without fear of damaging its own reputation. Findings as they relate to each indicator are elaborated next.

Pressure points (civil society, media, peers)

Neither Burma nor Sudan were exempt from sustained civil society and media coverage in relation to human rights violations (Frankental, Howard, Tripathi, Dunnebacke, Williams, interview with author, 2013; Conflict Risk Network, 2010; Global Compact Critics, 2012). Trade unions in both Sweden and Netherlands had expressed long-standing concerns about the use of forced labour in Burma (Simard, interview with author, 2014), and particularly in the Dutch case, had raised these issues with employee trustees associated with the governance of the fund (Den Uyl, interview with author, 2013).[43] However, based on public statements by the funds and interview data, there is no indication that one fund was under greater pressure than the other to divest from PetroChina due to media or civil society pressure.

The press being highly free in both countries suggests that it is reasonable to expect both funds faced similar levels access to information about civil society pressures for divestment (Freedom House, 2010).[44] A case in point is the formal complaint against PetroChina filed with the UN Global Compact in January 2009 (prior to each fund's respective decision on PetroChina). Given that both funds benchmark portfolio companies against the UN Global Compact, and are well-integrated within related informational networks (Piani, Mestad, Lake, Brooks and DenUyl, interviews with author, 2013) it would be surprising if this significant event went unnoticed by either fund. The initiative garnered support from over 80 civil society organizations from 25 countries (Investors Against Genocide and SOMO, 2008). According to the complainants, the company was uniquely positioned to influence the government of Sudan, but failed to act and denied involvement in the humanitarian crisis in Darfur. However, to their disappointment, the Global Compact Board dismissed the complaint and maintained that the CNPC (PetroChina's parent company) had been active in supporting sustainable development in the country Sudan. The Board also took note that CNPC "had engaged in Global Compact learning and dialogue activities on conflict-sensitive business practices" (Global Compact Critics, 2012).

[43] One challenge empirically is the issue of temporality. External pressure may have prompted engagement, but the role of these pressures in sustaining engagement is less clear.
[44] The relatively high flow of media across borders in Europe may make it difficult to also sharply separate such pressure across the two cases. The one caveat to this may be the linguistic differences involved, where national-language press may have a higher viewership domestically.

There is limited evidence that peer pressure may have been a contributing factor in the Netherlands, as ABP was not the first Dutch pension fund divested from PetroChina (Lake, interview with author, 2013). In 2008 PGGM, another Dutch pension investment giant sold its PetroChina shares after their own engagement strategy failed to produce desired results on human rights issues. At the time, PGGM indicated that the company had not taken adequate steps to avoid involvement in human rights violations or to contribute to resolving human rights issues in Sudan (Responsible Investor, 2009). Moreover, in January 2009 the U.S. pension group TIAA-CREF also sold its PetroChina shares in protest against PetroChina's business links to the Sudanese government presiding over genocide in Darfur (Global Compact Critics, 2012). Data limitations in accessing personal communications of fund staff with peers and peer networks prevented a thorough investigation of the extent to which this factor may have shaped the engagement outcome. Interviewees did not independently identify peer-pressure from other pension funds (other domestically or regionally) as a factor that influenced decision-making on tactical options for how to respond to PetroChina, though it should be noted that interview prompts did not address this factor specifically.

Internalization of the fund's obligations for human rights

Dutch interviewees placed a strong emphasis in explaining ABP's decision to divest from PetroChina in light of the fund's identity as a responsible investor and having a strong responsible investment policy. For example, Rob Lake states "With an [ABP] office in Hong Kong, the fund wanted to be seen as an 'appropriate investor' by China…but nonetheless there were strong signals at the Board level to demonstrate that the responsible investment policy had teeth, particularly related to exclusions under the complex area of human rights. *These policies* *were a matter of the fund's own reputation and beliefs*" (interview with author, 2013). Similarly, from the board perspective, Den Uyl observes:

> [within ABP] there has always been a strong movement that we don't want to invest in a company that's doing bad things. The other is the idea that you can use RI [responsible investment] as a means for change or influencing and making a better world. *I am really convinced that you could and should use RI to make it a better world*… You see that by having a fundamental policy you can have and play a role in improving workers' rights, not everywhere, but in certain cases, engagement really helps to change policies of companies…and when you don't as in Sudan and Burma [referring to PetroChina], then you should move on. (interview with author, 2013)

These comments are illustrative of a deep-level of internalization of responsibility for human rights as part of ABP's approach that are also captured across organizational documents noting that the fund is "aware of the far-reaching influence of [its] investments and the social responsibility this implies" (ABP, 2014b). The fund's annual reports are replete with similar sentiments. For instance, the 2010 annual report highlights: "through its policy of responsible investment, the Board of Trustees is reflecting the growing realisation of the importance of social responsibility as a pension fund" (ABP, 2010, 45). Another internal document explains that sustainable economic growth, as well as information on environmental, social and corporate governance issues are all important factors in the fund's investment analysis, and although issues like human rights are not always covered in a company's financial statements, they are particularly relevant for a long-term investor such as ABP (ABP, 2012).

As noted earlier, the observed outcome in the PetroChina case is also puzzling because the GPFG's policy is far more explicitly grounded in respect for human rights than APB's policy. GPFG's policy prohibits investments in companies which produce weapons that violate fundamental humanitarian principles and recommends exclusion if there is an unacceptable risk that the company contributes to or is responsible for the following serious and systematic human rights violations, particularly in situations of war or conflict (GPFG, 2004). In assessing whether a company shall be excluded, the Ministry may among other things consider:

> the probability of future norm violations; the severity and extent of the violations; the connection between the norm violations and the company in which the Fund is invested; whether the company is doing what can reasonably be expected to reduce the risk of future norm violations within a reasonable time frame; the company's guidelines for, and work on, safeguarding good corporate governance, the environment and social conditions; and whether the company is making a positive contribution for those affected, presently or in the past, by the company's behaviour (GPFG, 2004).

This commitment was highly evident in the justifications provided by the Council of Ethics to the Norwegian Ministry of Finance. Ola Mestad (interview with author, 2013) explains "we felt quite confident from our analysis that in this [PetroChina] pipeline project, that there was a higher risk of violations of human rights on that pipeline project than on the Total pipeline [analysed earlier] because North-East in Burma, where this pipeline is, has several minorities and active conflicts, so when the pipeline reaches those areas, then conflicts are going to escalate." Similarly, the Council of Ethics recommendation states:

> In the Council's opinion, nothing indicates that the present situation in Burma is any different from 20 years ago, when preparations for the Yadana pipeline started. The reports of the UN Special Rapporteur and other sources confirm that the Burmese military's systematic abuses against the civilian population are extensive and follow the same pattern as before. The Council therefore assumes that the construction of CNPC's pipelines will entail severe and systematic human rights violations (Norwegian Council on Ethics, 2010, p. 5).

It goes on to stress:

> the construction of onshore oil and gas pipelines in Burma will entail severe and systematic human rights violations, including forced labour and extensive abuses against the civilian population. Even though it is the Burmese authorities and not the company who in principle will commit the violations, there is a link between the violations and the company's operations in the sense that the violations take place to facilitate the company's future operations (p. 19).

It is also important to note that although the Norwegian Ministry of Finance ultimately rejected the Council on Ethics' recommendation to divest from PetroChina, care was taken to clarify that the decision was made on the basis of divergent opinions regarding company law, and *not on the likelihood of human rights violations*. Excerpts from the Ministry of Finance's (Norway Ministry of Finance, 2010) response to the Council on Ethics' Recommendation illustrate their rationale:

> The company in which the GPFG owns shares, PetroChina, is not directly involved in the activities on which the Council on Ethics based its recommendation. It is Southeast Asia Crude Pipeline Company, another subsidiary of PetroChina's parent company, China National Petroleum Corporation (CNPC), which is constructing the pipelines in cooperation with, among others, the state-owned Burmese company Myanmar Oil and Gas Enterprise (MOGE). The main issue in this case is therefore whether PetroChina can be held accountable for human rights violations to which its parent company, CNPC, may be involved through its subsidiary Southeast Asia Crude Pipeline Company. CNPC, which is 100 percent state-owned, owns 87 percent of PetroChina" (¶ 5).
>
> In its assessment, the Ministry of Finance takes as a premise that large international corporate structures differ greatly in terms of their degree of integration, and that organisational, and thus staff-related, overlap of corporate functions arises relatively frequently. Moreover, it is not unusual for leading employees of a majority shareholder in a company to occupy leading positions in the governing bodies of the subsidiary. PetroChina and its majority shareholder CNPC appear to be closely linked. Nevertheless, the Ministry of Finance has concluded that PetroChina's links with CNPC are not such that the two companies should in practice be regarded as a single entity. (¶ 6).

The Ministry's response to the Council's recommendation stressed that the human rights situation in Burma remained very worrying. The response also confirmed that Ministry had placed other restrictions applicable to the Fund's portfolio investments related to Burma, investments in Burmese government, and in companies that sell weapons to the Burmese regime (Norway Ministry of Finance, 2010). This justification for continued investment in PetroChina was seen as a weak response by a number of civil society organizations concerned about human rights violations in Burma. For example, Paul Donowitz, the International Campaign's Director for EarthRights International said "Norway's decision to continue investing in PetroChina was based on its belief that CNPC and PetroChina should be regarded as separate companies…and

EarthRights International disagrees… (I)t is important to note that the Ministry did not deny that the pipelines posed serious human rights concerns to civilians in Burma. Their stated concern was in the corporate structures." (Earth Rights International, 2011, ¶4).

The interim case evidence suggests that both funds had strongly internalized a sense of obligation towards human rights, and that the expected pattern of variation does not hold. Indeed, given the stronger emphasis on human rights and the particular attention to conflict dynamics in the GPFG's responsible investment policy, the expectation would be that it would be more likely than ABP to divest PetroChina in light of the violations uncovered.

3.5 Analysis and conclusion

A close examination of the cases reveals that expected variations across all three hypotheses are not realized and this points to some limitations in agency, organizational and stakeholder theories to accounting for tactical variations in shareholder advocacy on human rights. Across the two cases PetroChina was equally unresponsive to engagement efforts of both funds. Immediate concerns with financial risks due to PetroChina's involvement in with human rights violations were also not significant in explaining each fund's choices with regard to continuing engagement and divestment. Finally, it is not apparent that ABP was under any greater pressure to divest than GPFG, based on the threats to its own reputation. There is however some evidence to suggest that peer pressure may have been a stronger factor in the Netherlands than in the Norwegian case. Cumulatively however, variations in firm responsiveness, exposure to financial risk and reputational risks do not appear to have strong explanatory power in accounting for why ABP was compelled to divest from PetroChina but

GPFG was not. The case analysis reveals that the likely explanatory variables for tactical variations in shareholder advocacy may need further interrogation to be theoretically robust.

One promising possibility for developing this more robust theoretical account is to examine the political institutions that shape exit and voice decisions. One significant difference between the Norwegian and Dutch systems is the existence of a state-based veto point on divestment decisions – in this case the Norwegian Ministry of Finance for the GPFG. In the GPFGs case, it is important to note that the Fund was invested in PetroChina and while the company did not have direct investments in Burma, its parent company CNPC did. The Council on Ethics made the case that PetroChina and the CNPC effectively operated as one organisation, and that the CNPC had a history of securing state-to-state infrastructure projects and subsequently passing them onto PetroChina (Norwegian Council on Ethics, 2010). As a result, the likelihood that the fund would hold a company that was complicit in human rights violations was a highly significant risk. The Ministry counter-argued that lines of accountability can only run from a parent company to its subsidiary, and not the other way around, thereby precluding the fund from divesting (Norway Ministry of Finance, 2010).

The motivations and political context for this decision have not been investigated thoroughly as yet, although both documentary and interview evidence run counter to the Minister of Finance Siv Jensen's recent assertions that the GPFG is not a foreign policy tool (Norway Ministry of Finance, 2014b). At the time of the Norwegian Ministry of Finance's decision on PetroChina, diplomatic relations between China and Norway were under significant strain as the Norwegian Nobel Committee had just awarded the Nobel Peace Prize to Chinese dissident Liu Xiaobo (Anonymous, interview with author, 2013). China reacted swiftly and negatively to the announcement of the award, initially even censoring news about the announcement of the award in China. Foreign news broadcasters including CNN and the BBC were immediately blocked, while heavy censorship was applied to personal communications (Anonymous, interview with author, 2013; Baculinao and Gu, 2010). The Chinese Foreign Ministry denounced the award to Liu Xiaobo both in the media and through formal diplomatic channels – lodging an official complaint with the Norwegian Ambassador to China (Vehaskari, 2010; Xinhua News Agency, 2010). Following the announcement of the Nobel Peace Prize, celebrations in China were either stopped or curtailed and prominent intellectuals and other dissidents were detained, harassed or put under surveillance (Feng, 2010). Sixty-five countries with missions in Norway were all invited to the Nobel Prize ceremony, but fifteen declined, in some cases due to heavy lobbying by China (Norwegian Nobel Institute, 2010).[45]

It is possible that the divestment from PetroChina would have been seen as a further condemnation of China's human rights policies (given the dominance of state-ownership in the company) and the diplomatic gamble generated by announcing divestment from PetroChina was perhaps deemed too risky by the Norwegian Government. The possibility that diplomatic relations may have influenced the Norwegian Ministry of Finance's decision suggests that power relations between states, and not just investors and firms may shape how responsible investment is carried out. From a comparative perspective, the privatization of ABP and its de-linkage from a state-based institution suggests that a similar foreign policy quandary in the Dutch scenario

[45] Non-attendees included Russia, Kazakhstan, Tunisia, Saudi Arabia, Pakistan, Iraq, Iran, Vietnam, Venezuela, Egypt, Sudan, Cuba and Morocco.

may not have necessarily impacted its decision to divest from PetroChina (though this is speculative).[46]

Without over-reaching the argument at this stage, the case study at minimum suggests that existing theories of shareholder engagement that have been developed in the context of primarily financial issues and traditional corporate governance concerns may not translate easily into the context of social shareholder activism on issues such as human rights. Specifically, the case study suggests that the transnational power relations as well as particular institutional arrangements at the domestic level could have a causal relationship to particular outcomes (divestment or engagement). For instance, differences between public and private pension funds with regard to the variation in their sources of authority (public versus private) to diffuse human rights norms through divestment and engagement strategies should be explored more systematically. The case also suggests that firm characteristics may also matter such that a public pension fund may be less likely to divest from a foreign-owned state enterprise.

Theoretical grounding for research into local and global political factors shaping engagement and divestment decisions by institutional investors may need to come from outside the business ethics and corporate governance scholarship. Specifically, there appears to be adequate cause to search for explanatory narratives that go beyond the current literature's emphasis on shareholder salience and Hirschman's (1970) model. Although institutional investors have been neglected as a unit of analysis in studies of transnational activism by political scientists, this body of literature confirms the importance of unpacking advocacy tactics

[46] As noted in the ABP's fund profile in Appendix 1, the Dutch pension fund was originally a government controlled entity that fell under the authority of the Minister of Home Affairs in The Hague (Lutgens, 1999). In January 1996, ABP was privatized although its primary function remains unchanged (Lutgens, 1999).

in achieving better compliance with global human rights norms and standards. Prominent examples include Charli Carpenter's (2007) probing analysis of why children born of rape in conflict zones (as a subset of issues related to sexual violence in conflict zones) received very little attention by human rights advocacy groups, despite meeting expectations for issue salience uncovered through previous analysis. Carpenter's (2007, 2014) scholarship draws special attention to network politics – the variable degree of linkage INGOs have with issue gatekeepers and issue entrepreneurs as an important explanatory variable in accounting for particular advocacy outcomes. Like Carpenter, Murdie (2014) suggests relations between INGOs within a particular advocacy network are affected by the structural characteristics of organizations, and outcomes such as 'free-riding' can limit the benefits organizations receive from the network. Turning away from external relationships, other scholars probe the internal dynamics of advocacy organizations for insights on tactical variations. As Wendy Wong (2012) argues, the preferences, ideals, altruism, or self-interest of an INGO's own managers, employees, and volunteers shape the organization's mission, vision, values, structure, and tactics. Aside from organizational attributes and network linkages, institutional factors have also been explored at length as potential explanations for tactical variations in transnational advocacy. Sarah Stroup's (2012) *Borders Among Activists* contends that INGOs are deeply tied to the legal and cultural environments of their place of origin. Institutional factors including regulations political opportunity structures, resources and social networks leads Stroup to hypothesize about "varieties of activism." Specifically, she anticipates that the institutional environment of the home country explains differences in INGO behavior, including issue selection, advocacy and research agendas, and fundraising strategies. Studying the effects of these factors on shareholder-led advocacy presents a number of rich avenues to add to the current theories that are usually applied by business ethics and corporate governance scholars, while also providing an expanded empirical focus for political scientists. This mutual benefit across disciplines is perhaps an outcome Hirschman himself would condone.

Implications for shareholder power

Expectations of corporate responsibility for human rights, particularly in zones of weak governance continue to evolve within the realm of transnational politics. In some cases overt political violence can erupt and die down just as quickly, such as in countries like Bahrain during the Arab Spring (Bellin, 2012), whereas in other cases historical political cleavages can span decades, such as in the Democratic Republic of Congo. The different possibilities for action and exposure to human rights violations across these temporal horizons, as well as the complexity of political violence mean that it can be difficult for investors to have a one-size-fits-all approach to human rights. In particular, the issue of how to deal with companies operating in environments with questionable governance regimes and complicity in on-going human rights abuses is symptomatic of the larger problem that responsible investors face in aligning investment practice with long-term sustainability, while still reacting to immediate core-business challenges and crises.

One implication of these different possibilities for action relates to how issues of representation and accountability are connected to the exercise of shareholder power. It should also be noted that very little documentary and interview evidence related to ABP's and the GPFG's respective decisions regarding PetroChina referenced how these decisions might impact accountability to the fund's beneficiaries or indeed the communities where the alleged human rights violations were occurring. The representative from the Norwegian Council on Ethics stated that their due diligence procedures involved in-country research and the recruitment of local consultants to investigate human rights claims (Mestad, interview with author, 2013). However beyond this statement, the institutional mechanisms and ethical deliberation of these issues did not arise.

Through their expanded corporate engagement activities, Clark and Hebb (2004) argue that in effect institutional investors are redefining the power relationships within the firm, and that rather than simply reshuffling the players within the existing framework of the shareholder-dominated financial system, corporate engagement holds new possibilities for humanizing capital in the global arena. Some scholars go so far as to identify an “evolutionary shift” in institutional investment that has sharpened the focus of the financial sector on corporate social responsibility (Sparkes and Cowton, 2004, p. 49), with analogous propositions advanced by Monks (2001) and Hawley and Williams (2007). The important debates such scholarship has generated about the relationship between financial returns and corporate engagement by institutional investors certainly sheds light on why investors are increasingly motivated to exercise active oversight over investee companies. Nonetheless as this chapter demonstrates, a significant shortcoming is that political factors and power relations tend to receive scant attention in accounting for the tactical trade-offs investors make in choosing how to ensure investee companies adhere to particular global norms. As I have argued here, extant theoretical expectations about the conditions under which divestment or engagement should occur when investors are faced with systematic human rights violators do not always hold. More importantly it has shown that significant scope remains for fruitful research programs that set out to unpack the internal dynamics of shareholder engagement through attention to political variables.

Chapter 4: Power and Authority in Investor-driven Governance Networks

The previous chapter examined how human rights issues related to investee firms are addressed by single institutional investors through diverse tactics ranging from direct dialogue to divestment. An alternate transnational advocacy model involves investors acting *collectively* across borders with their peers or other stakeholders to address particular environmental and social issues with one firm or a group of companies. Collaborative platforms for investor activism include the Interfaith Centre for Corporate Responsibility (ICCR), the International Corporate Governance Network (ICGN), CERES coalition and others. MacLeod and Park (2011) refer to these coalitions or alliances led by investors formed around a specific public goods issue or issue-areas as investor-driven governance networks (IGNs). The intent of these networks is "to purposively steer, i.e. govern, the behavior of market actors through the broad range of tools at their disposal, including the legally defined rights they have as shareowners, but also their power to shape and define the obligations of the business community at large" (MacLeod and Park, 2011, p. 54). Focusing specifically on the thematic area of climate change and environmental governance, MacLeod and Park view the governance function of these networks as "an innovative form of public governance that is created and managed by private organizations for specific purposes, which in this case are investors and their collective actions" (p. 55). At the core of these networks are pension funds and mutual funds who increasingly engage corporations to advance more sustainable forms of capitalism by including non-traditional considerations into their investments.

MacLeod and Park's definition of IGN's is clear and compelling. However, their claim that non-governmental organisations (NGOs) and social activists also participate in IGNs, either formally or informally and "whose presence is often critical to the functioning of collective investor activities" (p. 54) is worth probing. This relationship between IGNs and international NGOs (INGOs) offers an interesting vantage point from which to investigate intra-network relations in transnational advocacy politics. Although the literature on transnational advocacy has proliferated dramatically over past two decades, existing scholarship has tended to focus on relations between NGOs and states (see for example Brysk, 1993; Keck and Sikkink, 1998; Price, 1998; Sundstrom, 2003a; 2003b) or the inter-relationships between NGOs within a particular advocacy network (for example Carpenter, 2007a, 2007b, 2007c). However, very little work has focused on the relationships between private actors, especially institutional investors and international NGOs who may share advocacy priorities related to the environment or human rights. Consider the striking similarity in the rhetoric of INGOs Greenpeace and the WWF, alongside the Investor Initiative on Sustainable Forests, a relatively new IGN:

> For the benefit of the world's forests – their peoples, biodiversity, carbon stock and other ecological values – and honoring the rights of Indigenous Peoples and other local communities living in forested landscapes, Greenpeace will work as part of a broader global movement to deliver the following goals: Halt deforestation globally by 2020, massively reduce forest degradation globally (prioritizing intact forest landscapes) and restore 500 million hectares of native forests by 2030. (Greenpeace Australia, 2018, ¶ 3)

> Deforestation can disrupt the lives of local communities, sometimes with devastating consequences. Forests provide a vast array of resources to all of us, including food, wood, medicine, fresh water, and the air we breathe. Without the trees, the ecosystem that supports the human population can fall apart… To eliminate one of the largest drivers of deforestation—the irresponsible expansion of agricultural operations—WWF is focused on ensuring that agribusinesses, governments and others meet their commitments to help conserve the world's forests. (WWF, 2018)

> The Investor Initiative for Sustainable Forests "supports institutional investors on their engagement with companies to eliminate deforestation and also address other environmental, social and governance issues related to soft commodity production, such as poor working conditions, land rights, and impact on indigenous peoples…The objectives of this collaborative engagement includes achieving a full commitment by companies to no deforestation and no human rights violations throughout entire supply chain and to encourage company participation in collaborative forums to develop

> standards, policies, certifications, and/or tools to facilitate deforestation-free supply chains. (CERES, 2017, ¶ 2-8)

How might these shared philosophies and commitments play out in the global governance of sustainability issues such as environmental sustainability and human rights? The dissertation's concern with how shareholder power may be leveraged in ways that affect power relations in transnational politics, particularly with actors beyond the firm, is one route by which this question may be explored further. Addressing this question is important in light of Avant et al's (2010) persuasive arguments that the profit imperative which drives private actors offers a very different materially-derived source of authority in global governance compared to the moral or expert authority possessed by INGOs such as Greenpeace and the WWF. Hence, investigating how these two very different types of advocacy actors interact through the auspices of IGNs could shed light on whether these relatively new institutional forms are indeed reshaping power relations in ways that flatten existing power hierarchies, and increase the space for marginalised voices to come to the fore in shaping the sustainable finance agenda.

In this chapter, INGO is used as an umbrella term that refers to a broad range of organizational types, from operational to advocacy organizations (Jordan, Van Tuijl and Edwards, 2006). As Collingwood (2006) notes, "a variety of structures - whether loosely or hierarchically-organized, networked, member-driven or privately funded, independent or linked to government - exist side by side within the non-governmental sector. In addition, the sector is characterized by a medley of political viewpoints and outlooks, from cosmopolitan to fascist, secular humanist to religious fundamentalist" (p. 441). Following this lead, INGO is used in this chapter to denote an ideal category that contrasts to the equally idealized private (market-oriented) and governmental sectors operating transnationally. Since the late 1980s, there has been a remarkable change in the scale and significance of INGOs as they move to center-stage in areas such as poverty alleviation, sustainable development, human rights and women's emancipation (Wils, 1995; Meyer, 1997; Meyer and Boli,1999; Sundstrom, 2003a). One of the main defining features of INGOs is that they can work simultaneously at different levels of the global system. In principle, therefore, INGOs are able to link micro-level experience with macro-level policy (Madon, 1999). According to Meyer and Boli (1999), INGOs are more or less authoritative transnational bodies employing limited resources to make rules, set standards, propagate principles, and broadly represent "humanity" vis-a'-vis states and other (market) actors.

When it comes to including these "representatives of humanity" IGNs appear to vary widely. Some follow a more inclusive, multi-stakeholder organisational model, with strong institutionalised commitments to working with INGOs. An example of this model is the Coalition for Environmentally Responsible Economies (Ceres), which was founded by a small group of investors in 1989 in response to the Exxon Valdez oil spill. The membership base of 130 organisations includes environmental and social non-profit groups such as the Natural Resources Defense Council, Union of Concerned Scientists and Oxfam International, institutional investors such as the California and New York public pension funds, labor unions and other key stakeholders (Ceres, 2015). Other IGNs working on sustainability issues are less inclusive, and tend to have fairly restricted membership, along the lines of a professional or trade association. A typical example here is the UK-based International Corporate Governance Network (ICGN) - a corporate-governance focused investor network with 500 members based in over 50 countries. The origins of the ICGN stem from the convergence of corporate governance initiatives in North America and Europe 4 during the mid-1980s (ICGN, 2015). Formally founded in 1995 in Washington DC, the ICGN does not refer to the potential role civil society organisations could play in advancing its mission “to promote effective standards of corporate governance to advance efficient markets and economies world-wide” (ICGN, 2015). Both CERES and the ICGN have a global membership base, conduct research, lobby for sustainable investment policies, organise conferences, provide practical guidance to investors on responsible investment issues, and yet the observed model of governance with regard to the inclusion of other stakeholders is very different.

Do these differences represent extreme poles in the governance models of IGNs or does the reality of IGN governance reveal a far more complex set of arrangements for accommodating various forms of authority that are held by investors and INGOs? Answering this research question is the primary objective of this chapter. A number of scholars have argued that activism by institutional investors can serve as a transformative pathway for aligning capitalism with social and environmental sustainability (Monks and Minnow, 1995; Hawley and Williams, 2000; Clark and Hebb, 2004). If investors are to live up to this expectation, surveying their interactions with the very organisations tasked with articulating environmental and social demands within global governance can offer insights into whether shareholder power in this context serves to reinforce private, market interests, or whether IGNs can indeed generate a better balance between the interests of society and profit maximization. In this respect, I view transnational shareholder advocacy for sustainability as being aligned with a vision of global governance articulated by Avant, Finnemore, and Sell (2010), namely that [global], “Governance involves the creation of new issues, new interests, and new modes of action by creative agents. Governors can gain acceptance from those they seek to lead by offering attractive new ideas, formulating new strategies, and persuading people of the importance of new social goals” (Avant et al 2010, p. 9).

Here, I also echo Stevens and Kanie's (2016) idea that

> [g]lobal collective action does not end when decisions are reached, but these decisions introduce new practices in a complex political process that can bring in new actors, new ideas, and new action for sustainability. To unpack the practices of global governance that can contribute to a transformation toward sustainability, it is crucial to analyze the decision-making processes and the transformative ideas that are captured in those decisions. While neither processes nor ideas are a guarantee of transformation, they help to understand the potential impacts (p. 393).

In order to address this chapter's research objective, I analyse INGO-IGN relations as a means to gain analytical leverage on how we understand shareholder power and authority in the context of global governance. The remainder of the chapter is structured as follows. I begin with a brief review of existing work NGOs in the context of shareholder activism in Section 4.1. My assessment of the existing scholarship on this topic shows a very low level of engagement with issues of power and authority. Next, in Section 4.2, I present an analytical framework for assessing INGO-IGN relations. I suggest the degree to which an IGN is open or closed to civil society input affects the nature of authority it can draw, with important implications for how an IGN shapes existing power relations as it carries out its mandate in the realm of global governance In Section 4.3, I extend the empirical reach of previous work on IGNs by mapping civil society integration in thirty-two such networks, across a range of advocacy themes and geographies. I measure civil society integration in IGNs by focusing on two attributes: the degree to which IGNs a) recognize civil society as key to their mandate and b) enable the participation of INGOs in delivering that mandate, either formally through board governance structures or informally through ad-hoc activities and collaboration. The chapter concludes in Section 4.4 with the observation that evaluating INGO-IGO relations from a governance lens presents the opportunity to re-design or reform IGNs in ways that can catalyze the transformative potential of shareholder activism. The study is exploratory and descriptive in nature, i.e. it seeks primarily to map variations in the degree to which INGOs include civil society participation. It does not provide explanations for the observed variations, nor does it evaluate whether IGNs that access more diverse sources of authority are more successful or impactful in delivering their mandate. These are however fruitful next steps in this emerging research program.

4.1 Literature review

The objective of this literature review is to provide some background for this chapter's focus on the role of institutional investors in advancing a sustainable financial system in the post-2008 Global Financial Crisis context. I find that although INGOs and investors may be aligned in their vision of a sustainable financial system, their cooperation towards this goal via investor-driven governance networks has not been addressed in great detail. I review the literature related to INGOs and shareholder activism, with the specific objective of learning how the concepts of power and authority have been tackled thus far, and find that attention to these issues has been minimal.

4.1.1 Institutional investors and the global sustainability agenda

Although states retain a pivotal role in world politics, there is an increasing acceptance that governance functions are exercised through a variety of mechanisms and that in certain contexts, governments are not necessarily the most important actors (Koenig-Archibugi and Zurn, 2006; Held and McGrew, 2007; Duffield, 2001). This evolution has motivated a broader shift in international relations from a 'cooperation paradigm'[47] to a 'governance paradigm' (Koenig-Archibugi, 2006, p. 2). Governance in this sense, not only includes "the processes and institutions, both formal and informal, that guide and restrain collective activities" (Keohane and Nye 2000, p. 12) but also the mechanisms and relationships between states, markets, citizens and organizations through which collective interests on a global plane are articulated; duties, obligations and privileges are established; and differences are mediated (Weiss and Thakur, 2010). Global governance is a multi-faceted subject and there is little agreement about the extent to which political authority and governance capacity have migrated to transnational level. While there is evidence that major parts of the world are indeed moving in a post-national direction, this process is neither linear, nor consistent across sectors and regions, nor irreversible" (Koenig-Archibugi, 2006, p. 1). Perhaps as a consequence of this "messy center" political action that occurs transnationally and through processes of global governance engenders its fair share of criticism, especially in relation to economic globalization.[48]

In *Globalization and its Discontents* for instance, Joseph Stiglitz (2002) argues that rather than working for equity and poverty alleviation, global financial institutions are spokespersons for the financial sector and have widened the gap between developed and developing countries through undemocratic paternalism, the lack of accountability and weak transparency. In Stiglitz' estimation, in the absence of a) effective institutional and ideological checks and balances on power and b) champions for global social justice, global governance will not be able to manage threats to financial, environmental and social sustainability, peace and security. Such calls for

[47] A traditional concern in international relations has been the study and causes of cooperation between states (Krasner, 1983; Keohane, 1984; Wendt, 1992; Keohane and Martin, 1995; Lake and Powell, 1999).
[48] For broad debates see: Scholte, 2004; Griffin, 2004; O'Brien, 2000; Soros, 2002.

fundamental reforms to better align the global financial system with social justice and environmental sustainability have been echoed by other scholars (Barnett and Finnemore, 2004; Kapur, 1998), and are even more pronounced in the post-Global Financial Crisis era (Lybeck, 2011; Calhoun and Derluguian, 2011)[49]. Citing slow political progress and a lack of political will on this front, Christine Lagarde, Managing Director of the IMF, describes global financial sector-reform as an "unfinished agenda" with many vested interests actively working against change (Lagarde, 2012). She cautions, "a robust recovery will only last if supported by resilient institutions and markets…Moreover, there is simply no alternative: the costs of crisis are so much higher than the costs of building a more stable system" (Lagarde, 2012, ¶ 46-48).

In light of the political challenges associated with ushering in a more sustainable global financial system, it is important to highlight that focusing on multi-lateral financial institutions such as the World Bank, World Trade Organization or International Monetary Fund offers only a narrow range of possibilities for change. Beyond these institutions, there are innumerable alternatives in the way the international community does the world's business (Forman and Segar, 2006). Various arrangements for allocating capital to global sustainable development have emerged with non-state and private actors often occupying crucial roles, including in hybrid financing mechanisms such as the Global Environment Facility, public-private partnerships like the Global Alliance for Vaccines and Immunization and numerous other "coalitions of the willing" (Forman and Segaar, 2006[50]).

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[49] Both books point to an alarming concern: despite the staggering scale of the crisis, much of the financial sector has gone back to "business as usual".

[50] Forman and Segaar (2006) are mainly concerned with the security sector and offer some good examples in this regard.

In this vein, the United Nations Environment Programme's Inquiry into the Design of a Sustainable Financial System (the Inquiry) recently made the case for increased private sector involvement, (alongside public sector leadership) in driving sustainable finance forward.[51] The Inquiry was launched in 2014 on the basis that the global financial system needed reshaping to finance an inclusive, prosperous and environmentally-sound future (UN Environment, 2016). Through an in-depth analysis of policy developments across national governments and international bodies,[52] the Inquiry concluded that a "quiet revolution" is underway in aligning the financial system with sustainable development. It acknowledged that private-sector partnerships will be critical in ensuring the trillions of dollars needed to meet global targets set out in the Sustainable Development Goals[53] and the Paris Climate Accord.[54]

Within the academic literature investigating these evolving forms of global financial governance, Eric Helleiner (2011) notes that the large flows of money associated with private global financial markets have been largely neglected. In agreement with Helleiner (2011), I view this neglect as unfortunate since the scale of private international financial flows particularly

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[51] The Inquiry into the Design of a Sustainable Financial System was initiated by the United Nations Environment Programme (UNEP) to advance policy options to improve the financial system's effectiveness in mobilizing capital towards a green and inclusive economy — in other words, sustainable development.

[52] Results of the Inquiry were underpinned by over 80 published reports and technical papers, prepared together with more than 60 collaborating institutions including banking associations, research institutions, central banks and financial regulators, finance ministries, civil society and international organizations. Experience was drawn from 15 diverse country-level contexts and engagements and included policy and technical reviews across banking, bond markets, insurance, institutional investment and stock exchanges, with focused assessments in areas as diverse as human rights, social banking, fiduciary duty and the changing roles of central banks (UN Environment Inquiry, 2016).

[53] The Sustainable Development Goals (SDGs) or the 2030 Agenda for Sustainable Development is a set of 17 Global Goals. They are measured against a set of targets and indicators that UN Member states are expected to use as a framework in setting development agendas and policies over the next fifteen years (UN Department of Economic and Social Affairs, 2018).

[54] The Paris Climate Accord is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC) dealing with greenhouse gas emissions mitigation, adaptation and finance starting in the year 2020 (UN Climate Change, 2018). The language of the agreement was negotiated at the 21st Conference of the Parties of the UNFCCC in Paris and adopted by consensus on 12 December 2015 (UN Climate Change, 2018). The Accord aims to keep global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius (UN Climate Change, 2018).

through institutional investors dwarfs not just public international lending but also volume of international trade and foreign direct investment.[55] If the global economy is to be made more environmentally sustainable, this powerful "electronic herd" of global money will need to be steered in greener directions, argues Helleiner (2011, p. 51).

Helleiner's observations hold true for the social aspects of global sustainability as well. I suggest that leveraging private finance for sustainability will be shaped by the character of the global sustainability agreements in place where, at least on paper, human rights occupy a prominent space. According to the Danish Institute for Human Rights (2017a): "The 2030 Agenda for Sustainable Development is explicitly grounded in human rights. Consequently, the SDGs reflect key international human rights and labour standards and affirm that they seek to realize the human rights of all" (p. 6). More than 90% of SDG targets are linked to international human rights and labour standards, and the pledge of the 2030 Agenda to "leave no one behind" reflects the fundamental human rights principles of non-discrimination and equality (Danish Institute for Human Rights, 2017a). The Agenda also stipulates that "Follow-up and Review (FUR) processes to reach the SDGs should be inclusive, transparent, respect human rights, enhance accountability and have a particular focus on those furthest behind" (Danish Institute for Human Rights, 2017b, p. 7). Similarly, the preamble to the Paris Agreement includes an acknowledgement "that climate change is a common concern of humankind" and that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights" (UNFCC, 2015, ¶ 11). The latter statement, Benoit Meyer (2016) confirms, has no equivalent in the UNFCCC or in the Kyoto Protocol, and that its

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[55] As discussed also in Chapter 1.

insertion in the Paris Agreement is, largely, the outcome of years of advocacy by civil society organizations. Also adopted were provisions to promote gender equality, and participation, sustainable development, and poverty eradication as a context for climate action (Meyer, 2016). However, despite the importance of human rights for the future of sustainable financial markets, empirical analysis on the politics of these "steering" efforts have almost exclusively addressed environmental issues.

An example of work that examines linkages between institutional investors and sustainability includes MacLeod and Park's (2011) work on 'investor-driven governance networks' (IGNs). Focusing on climate politics, their analysis shows that many IGNs are involved in more than just the development of voluntary standards for information disclosure at the international level. They have also been engaged in more direct shareholder activism[56] to influence corporate managers, and the lobbying of official institutions such as the United States Securities and Exchange Commission to require mandatory reporting of material risks associated with global warming. Likewise, Harmes (2011) argues that "investor environmentalism" through carbon disclosure initiatives overlooks the fact that these efforts address imperfect information rather than the externalization of environmental costs by firms. As a result, investors are not really addressing the core challenge of climate change, as they will continue to invest in "dirty" firms. Harmes (2011) concludes that investor-driven carbon disclosure initiatives are likely supported for reputation reasons, rather than for the utility of the data. Both works address an important question in transnational politics in the extent to which actors' perceptions of self-

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[56] Responsible investment and shareholder activism function as strategies through which the steering of finance towards sustainable development goals occurs.

interest may be transformed (Helleiner, 2011). While Harmes assumes the profit-maximizing goal of investors are fixed, MacLeod and Park argue that IGNs may be able to shape the identities of investors by transforming their conceptions of economic "rationality" through processes of socialization by drawing on the work of scholars like Keck and Sikkink (1998). Together, these studies offer an initial foray into the study of investor-driven networks in the context of global governance and sustainable development. They also open up productive conversations with the now burgeoning research agenda on transnational advocacy networks and intra-network politics. It is from this point of departure that the chapter justifies its focus on unpacking how IGNs engage with other non-state actors, namely INGOs[57] in steering finance towards sustainability goals within the domain of human rights. Furthermore, accepting IGNs as exemplars of private authority offers an additional site from which to interrogate how investors are leveraging shareholder power as a form of private authority within the realm of global governance.[58]

In the pursuit of a more sustainable global financial system, Steve Waygood (2013) makes a convincing call for more advocacy partnerships between international financial institutions (including institutional investors) and international NGOs. His arguments draw on his experience of working within both types of organisations, and particularly the lessons learned when he founded and coordinated the lobbying efforts of the Corporate Sustainability Reporting Coalition (with both NGO and financial-sector partners) at the 2012 UN Conference on

[57] Van Tuijl (1999) distinguishes between "operational" and "advocacy" NGOs. Operational NGOs provide social services such as education, health, or human relief, whereas advocacy NGOs lobby governments, corporations, and international organizations. In this paper, I focus on the latter only.
[58] Power and authority have been discussed at length in Chapter 2. References to these concepts within this chapter follow from the earlier discussion.

Sustainable Development (Rio+20). Waygood (2013) essentially argues that "NGOs and financial institutions could improve the impact and effectiveness of their sustainable capital markets advocacy by working together "(p. 69). Such partnerships could help design and advocate reforms to all of the following:

1. capital market regulation;
2. transparency, accountability, and reporting provisions;
3. investment training standards, and
4. market incentive structures.

Waygood insightfully notes that to date, capital market campaigning by INGOs has mainly targeted investors as a way of influencing corporations rather than attempting to change the structure of capital markets themselves. In spite of initiatives such as the Collevecchio Declaration[59], there are very few examples of NGO-led campaigns to change government policy on capital markets. In the post-Global Financial Crisis era, it is expected that there will be more attempts to generate structural reforms, including increased calls for government to reduce financial market short-termism,[60] an increased emphasis on the chain of incentives that motivate companies and investors, and more focused attempts to correct the long-term market failures

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[59] This declaration calls on financial institutions to embrace six main principles which reflect civil society's expectations of the role and responsibilities of the financial services sector in fostering sustainability. They cover commitments to sustainability; do no harm; responsibility; accountability; transparency and sustainable markets/governance (BankTrack, 2018). Following the launch of the Declaration in 2003, INGOs formed a network to carry out join direct action, lobbying and research on banks and sustainability (BankTrack, 2018). This network now consists of 40 organizations that coordinate their activities through BankTrack. The Declaration was the first civil society statement on finance and sustainability and it was signed by over 100 organisations (BankTrack, 2018).

[60] Lynn Dallas (2012) explains short-termism, as the excessive focus of corporate managers, asset managers, investors and analysts on short-term results, whether quarterly earnings or short-term portfolio returns, and a repudiation of concern for long-term value creation and the fundamental value of firms, which is increasingly linked to systemic sustainability issues such as climate change, resource scarcity, migration etc. Short-termism was seen as a key driver of the 2008-09 global financial crisis.

arising from the capital market's promotion of unsustainable patterns of growth (UN Environment, 2016; Lybeck, 2011).

Within this context, Waygood (2013) asserts that there is a critical need for forums where NGOs and financial institutions can come together to learn from each other in a spirit of mutual trust and respect. He further stresses that advocacy partnerships between financial actors and NGOs would be very different from the partnerships between companies and NGOs that exist today. According to Waygood (2013), contemporary business-NGO partnerships tend to involve companies taking voluntary action in the absence of government intervention, such as the marine or forest stewardship councils. The new "sustainable capital market advocacy partnerships" between NGOs and financial actors would lobby for greater government intervention to correct market failures. (Waygood, 2013, 68). Probing the dynamics of these coalitions through the auspices of IGNs, is the main task in the remainder of this chapter.

4.1.2 **NGOs and shareholder activism on environmental and social issues**

Kenneth Rodman's (1998, 2001, 2002) scholarship on this topic examines civil society campaigns for corporate social responsibility via case-studies pertaining to human rights issues in South Africa, Burma and Nigeria. Through this body of work, Rodman argues that if global civil society can replicate the experience of the anti-apartheid movement in securing corporate withdrawal from repressive regimes, then economic sanctions will no longer be the exclusive preserve of nation states (Rodman, 2002). For instance, in analyzing the Free-Burma Campaign (FBC), Rodman observes that consumer pressure, shareholder pressure and municipal procurement power were vital strategies – a mix of economic coercion and public shaming – for persuading multi-national corporations that their self-interest coincides with withdrawal from

Burma (Rodman, 2002, p. 33). He concludes that in Burma, this strategic mix astonishingly "persuaded roughly 60 firms either to disinvest or sever their licensing and franchising relationships in Burma" (Rodman, 2002, p. 33).

One shortcoming of this study is that Rodman does not clearly distinguish between investors as shareholders, and corporate investments in Burma (such as through subsidiary relationships). For example, he notes that the aforementioned tactics were

> less effective with the most strategically significant investors. Some tried to deflect societal pressures by implementing social responsibility practices, the most significant example of which was Premier Oil's decision to provide human rights training to the security forces designated to protect its operations (Rodman 2002, p. 33).

In this context, Rodman is actually referring to firms as foreign direct investors, rather than institutional investors that own shares in firms. He also notes that unlike calls for divestment which dominated the Apartheid campaign, the Burma campaign focused more on filing shareholder proposals calling for firms to disclose the impacts of doing business in Burma (p. 16). What remains unclear from this analysis however, is the nature of the relationship between the FCB and the filers of these proposals – mainly socially responsible investment firms, religious investors working through the Interfaith Centre for Corporate Responsibility and labour-managed pension funds. As such, Rodman's analysis treats NGOs and investor activists as a homogenous "NGO" group leaving little room to explore competing or diverging capacities to exert authority over firms. This conflation makes his conclusion that "NGOs cannot command a corporation to withdraw when private calculations of risk and reward point in the other direction" (Rodman, 2002, p. 34) problematic, as this view underemphasizes the instrumental leverage institutional investors have over firms in terms of the threat of divestment or their relative size and influence as major providers of capital in global markets.

Emily McAteer and Simone Pulver (2009) investigate the dynamics of transnational advocacy networks (TANs) that target not states, but multi-national corporations. Extending Keck and Sikkink's (1998) framework, they develop a corporate boomerang model to describe how TANs exert leverage over corporate targets. They use this model to analyze two case-studies of corporate-focused TANs, where corporate shareholders play a central role in the network – shareholder transnational advocacy networks (STANs). They explain differential goal attainment across two STANs (aimed at the Chevron Corporation and Burlington Resources respectively) by the relative cohesiveness of the two networks and the respective vulnerability of their corporate targets. The Chevron STAN was focused on getting the company to commit to environmental remediation in Ecuador a decade prior, while the Burlington STAN focused on preventing oil extraction in the Ecuadorian Amazon and to change its policy on indigenous rights.

In McAteer and Pulver's (2009) account, corporate-focused TANs emerge when local communities living at points of production or extraction are blocked in their efforts to influence the operating practices of a corporate subsidiary. Appeals to local corporate managers may fail because they are protected by local governments loath to challenge corporate practices or have weak regulatory and enforcement capacity. In such situations, local communities engage in the strategy of creating external linkages to other groups in order to drive change via top-down pressure at a corporation's headquarters. This pattern of influence is called the corporate boomerang model, and differs from NGO boomerang models in terms of the strategies they employ, the determinants of network effectiveness and assessments of goal achievement (McAteer and Pulver, 2009, p. 3). Unlike Rodman's analysis, McAteer and Pulver (2009) pay much closer attention to mapping diverse actors collaborating via STANS, that networks in both cases are “complex strucures with actors operating at four levels: local nodes (including indigenous and settler communities); domestic actors (mainly domestic NGOs); international NGOs and corporate shareholders (p. 10). Across both cases, an international NGO (Amazon Watch and Amnesty International) served as a crucial link to a socially-responsible investor (Boston Common Asset Management and Trillium Asset Management), which then invited other institutional investors to co-file a shareholder proposal on the advocacy topic at hand.

On reflection, McAteer and Pulver’s (2009) study offers a much more granular understanding of network relationships at different levels, when the target is a firm and the network involves a mix of civil society and shareholder activists. For example, they allude to an investor “fact finding” mission to Ecuador whose goal was to promote increased understanding and coordination between network members and to familiarize shareholders with the governance structures of the indigenous communities in Burlington’s concessions (McAteer and Pulver, 2009, p. 15). Likewise, the Chevron STAN also facilitated direct contact between shareholders and indigenous communities. Their study offers rich insights into understanding the interplay of network, target and contextual variables in explaining differences in goal attainment of two STANs. However, I take issue with the degree of centrality accorded to investors in McAteer and Pulver’s analysis. While shareholder pressure, through the filing of shareholder resolutions in partnership with socially responsible investors was a key advocacy strategy, it was not necessarily the only strategy employed by Amazon Watch and Amnesty International respectively. Here, shareholders were approached by INGOs to join a pre-existing advocacy campaign, and their relationships with affected communities were brokered by INGOs. Hence, although empirically and conceptually very rich, McAteer and Pulver’s analysis does not offer very much insight into power differentials and diverging sources of authority within the STAN.

It is also unclear how these relationships might shift when shareholders invite NGOs to join pre-existing investor-driven campaigns, rather than when shareholders are invited to join pre-existing NGO campaigns.

Morton Winston's (2002) survey of NGO strategies for promoting corporate social responsibility also includes shareholder activism. He acknowledges that since large pension funds often hold large number of shares in many companies, they can often exert considerable economic as well as moral influence at annual shareholder meetings (Winston, 2002, p. 80-81). However, while helpful in providing a broad-view of corporate-focused NGO activism, Morton (2002) like Rodman (2002), treats NGOs and investors interchangeably, offering few in-roads into understanding power relations between the two. He writes for instance:

> Shareholder activism makes use of the accountability of corporations to their investors in order to widen the sphere of corporate accountability to other stakeholders, and is regarded by a number of NGOs as an effective way in which to influence corporate policy and practice (Winston, 2002, p. 81).

Ultimately though, the focus for Morton is on NGOs and not investors. He concludes by noting that NGOs involved in corporate social responsibility campaigning should "combine stigmatization with other pressure tactics, such as shareholder resolutions and boycotts, with parallel attempts to change corporate thinking about human rights by means of dialogue, rational persuasion and the sharing of best practices" (Winston, 2002, pp. 85-86), but that they are unlikely to be successful in the long-run unless they mobilize consumers and governments. Hence, in Morton's estimation, shareholder pressure may be a viable campaigning tactic, but investors (as shareholders) are not necessarily an important mobilization target or ally for NGOs. Morton's analysis, like much of the literature, emphasizes the relationship between firms and NGOs, but leaves the relationship between investors and NGOs largely ignored.

Emma Sjöström's (2007) work on this subject also adopts INGOs rather than investors as the entry-point. She explores how civil society organizations use financial markets to pressure corporations regarding their social responsibilities, particularly in the area of human rights compliance. Her paper includes two case studies: the first shows how Amnesty Business Group (ABG) bought shares in 12 Swedish firms in order to use shareholder rights as a mechanism for pressuring them to adopt a policy on human rights, whereas the second case evaluates how Friends of the Earth (FOE) put pressure on the construction company Balfour Beatty regarding a controversial dam project in Turkey. FOE first sought to influence shareholders and then became a shareholder itself. Like Morton (2002), Sjöström distinguishes the NGOs as confrontational (FOE) or non-confrontational (ABG) in their approach, noting that less powerful actors (here, NGOs) can achieve sought-after change by translating the problem at hand so that it fits the ideology of actors (in this case firms) who have the power to resolve it.

Sjöström's (2007) treatment of power relations does not just focus on material imbalances between NGOs and firms. She observes that through shareholder activism, civil society organisations can educate investors on risks with a company's approach to human rights, and the investors in turn can be a powerful force for pressuring corporations to change. In other words, by helping the financial sector to become more knowledgeable about human rights, and how these rights relate to corporate risks and opportunities, the financial sector can be an ally to civil society organisations (Sjöström, 2007, p. 165). For Sjöström, this education mechanism taps into the ideology of financial actors. Ideologies guide action and can be operationalized through the pursuit of ideals. These are principles or values that organisations can actively pursue as goals (Sjöström, 2007, p. 166). She notes that the profit maximising imperative of firms can be an impediment to a self-view that transcends economic rationality. This is contrasted with the ideology of civil society organizations such as FOE which may be grounded in interconnectedness of ecosystems and the intrinsic value of non-human life, or ABG which may be guided by the view that every person enjoys a certain set of universal rights. Despite competing ideologies, civil society organisations capable of translating their own guiding logic to that of firms, can be successful. She writes: "ABG and FOE are not talking about human rights primarily as a moral issue, but are directing attention to risk and shareholder value" (Sjöström, 2007, p. 167). Sjöström acknowledges that a risk posed by this translation of moral issues into financial risk may signal corporations are obligated to act only when it is in their financial interest to do so, and that an emphasis on such issues may lead to the neglect of other more pressing human rights issues. However, her study does not interrogate how power leveraged by civil society groups may shift when they take on the persona of investors through share ownership. Importantly, the perspective of investors remains opaque in this account.

Anastasia O'Rourke (2003) explores whether shareholder activism can deliver the change desired by activists and which strategy seems to work best for this purpose (p. 228). In providing context for her study, O'Rourke (2003) provides a helpful breakdown of the composition of shareholder activist groups, noting they may be composed of individual share owners, NGOs, socially responsible investment (SRI) funds, institutional investors such as public pension funds, private pension funds and insurance companies and umbrella investor groups such as the Council of Institutional Investors (CII). The author conducts a case study of a shareholder proposals filed at BP Amoco between 2000-2002, aimed at getting the firm to halt the development of the Northslope oil field in Alaska and redistribute the investment to the firm's solar energy division. O'Rourke (2003) examines this shareholder activity as part of a larger campaign launched by a consortium of activists including Greenpeace, the WWF, SRI funds, public interest associations and individual investors. This group organized a campaign website, held meetings with other shareholders ahead of the vote and were in contact with senior management at BP to encourage a positive response to the proposal. Given the study's emphasis on campaign outcomes, intra-network politics (particularly on the change in campaign leadership from Greenpeace to WWF in 2002) and relationships between investors and INGOs are not explored in any detail. Like Sjöström (2007), O'Rourke (2003) also tends to treat shareholder activists as a cohesive group, noting "the shareholder activist community currently seems to need a dedicated research effort to establish firm connections between CSR and core business issues in order to bring more shareholders on board" (p. 238) but notes that "As a society, the broader questions still need to be addressed as to what point we are willing to allow a model of 'shareholder democracy' to take over from other democratic processes of controlling corporations' behavior and guiding them towards developing the motive for sustainability" (O'Rourke, 2003, p. 238).

In general, the trend in the literature examining NGOs in the context of shareholder activism is to treat them as a homogenous group with other actors, including institutional investors (see also Guay et al., 2004; Ivanova 2015; 2016; Waygood and Wehrmeyer, 2003; Waygood, 2013; Voorhes, 2005). NGOs are treated as central nodes within activist networks that adopt the language and tools of finance in order to influence firms. Investors are seen as secondary actors, who join or adopt an NGO campaign, but rarely initiate or lead these efforts. As the proliferation of IGNs on sustainability issues suggests in the next section, these assumptions may not always hold. Moreover, it is clear that the existing literature has left the governance mechanisms of IGNs largely unexplored, making the present study a unique contribution to advancing knowledge on IGNs as pathways for transnational political action.

4.2 Analytic framework

To systematize my analysis, I evaluate INGO-IGN relations along two dimensions a) the degree to which civil society actors, in this case INGOs, are recognized as a contributing force towards the IGN's mandate and whether a formal mechanism exists to include INGOs in the initiative's governance or membership framework **(recognition)** and b) the actual level of INGO **participation** in activities toward the implementation of the IGN's mandate. Working definitions and the operationalization of these concepts within my analysis are elaborated next.

4.2.1 Defining recognition

The concept of 'recognition' occupies an important role in the discipline of political science, and political theory in particular. It denotes the idea that the idea of 'self' at the individual or group level, is informed in part by others' recognition (or absence of recognition) of this self. From interpersonal relationships, to multiculturalism, identity politics, new social movements, economic inequality, human development and diverse modalities of power, theories of the ethics and politics of recognition have been widespread (Hayden and Schick, 2016). In the area of global governance, Greta Snyder (2016), for example, focuses on the role the politics of recognition plays in constructing global struggles against injustice. She argues that recognition politics serves at least two important functions: integrative and performative.

Recognition politics is integrative in that it fosters solidarity and enables individuals to recognize themselves as part of a cohesive political grouping (such as the 'global left' in Snyder's study). By performing a democratic will, the group can engender a kind of global democracy even in the absence of global democratic institutions. In doing so, Snyder illuminates the importance of real-world political institutions like the World Social Forum and campaigns like the anti-War protests of 2003. Similarly, Matthew Weinert (2015) uses recognition theory to challenge and extend the notion of world society, which captures a web of relations between diverse actors operating outside the formal rubric of the state. Within this study of IGNs, I draw on Snyder's (2016) distinction between the integrative and performative aspects of to gauge whether INGOs are recognized as a vital social partner for aligning capital markets with long-term sustainability. I argue that this analysis matters because it speaks to the capacity of INGOs to serve as democratizing forces within a key institutional form that is driving global governance arenas of sustainable finance and human rights.

4.2.2 **Defining participation**

Waygood's ideas about the potential benefits of INGO-investor advocacy coalitions resonate with the broader scholarship on the role of INGOs in global politics. Some scholars suggest INGOs deserve to be embraced by transnational governance bodies because they have better access to more ideas and issue expertise that can improve the results of deliberations (Esty, 1998). INGOs are seen as providing organized channels of political influence, enhancing civic participation, and raising public awareness about particular issues (Ayres, 2003). Moreover, INGOs, as representatives of civil society, contribute to the "democratic governance of the global economy" through increasing the transparency of governing authorities, enhancing public accountability through citizen monitoring, and enhancing representation of the marginalized communities (Scholte, 2004). To fulfil this democratizing function in global governance, certain institutional choices and provisions may affect how INGOs participate, or indeed, if they participate at all.

As Avant, Finnemore and Sell (2010) explain, participants in global governance engage in four types of activities: 1) setting agendas and creating issues; 2) making rules; 3) implementing mandates; and 4) evaluating, monitoring, and adjudicating outcomes (14-16). Through this rubric, the authors (2010) offer a helpful framework for measuring the institutional determinants of participation by INGOs in IGNs. It is important to note that each of these four practice areas correspond to a distinct phase in the larger process by which new norms, such as those related to corporate social and environmental responsibility (CSR), are diffused transnationally. This three-phased norm life-cycle process (Finnemore and Sikkink, 1998) comprises issue emergence (agenda setting), norm-diffusion/cascade (rule-making, implementation and enforcement) and norm internalization (evaluating outcomes).

Rather than assuming that the issues requiring global governance are obvious, international relations (IR) scholars have shown the variety of ways in which "agenda-setting" activities involve a struggle between actors to persuade others that a problem or issue exists (Avant, Finnemore and Sell, 2010, 14, also Price, 2003 and Carpenter, 2007). According to Carpenter (2007), in order for an issue to emerge onto a transnational advocacy agenda, two steps are required. First is the construction or definition of an issue as problematic and the second is the adoption of that issue as a subject of advocacy. Hence, the "'governance of a problem cannot begin until someone defines a problem as an issue and succeeds in placing it on a consequential agenda" (Finnemore, Avant and Sell, 2010, 15).[61] Carpenter locates issue emergence and its constituent effects as being temporally and logically prior to norm-diffusion

[61] In addition to issue-based characteristics such as salience or urgency, norm entrepreneurs (Nadelmann, 1990, Lessig, 1995, Finnemore and Sikkink, 1998) and issue gatekeepers (Carpenter, 2010) also influence outcomes in transnational agenda-setting.

through building campaigns, negotiating agreements, and holding targets (corporations in this case) accountable to new norms.

However, taking a different view, I propose that Carpenter's valuable insights about issue-emergence can travel to the norm-diffusion phase as well. Even after an issue emerges onto the transnational advocacy agenda (such as climate change or corporate compliance with human rights), we do not know why norm promoters/entrepreneurs, working through platforms such as IGNs, may choose to diffuse particular aspects of that agenda over others (Carpenter, 2007, 101). I suggest that IGNs occupy a unique space in the norm-life cycle on issues related to CSR because they can serve simultaneously as norm-entrepreneurs *and* norm-diffusers. As norm-diffusers, they tend to have a common principled commitment to the obligations of corporations to fulfil certain environmental and social responsibilities, and see their role as providing a particular degree of influence of firms to adopt these responsibilities. In this role, they are not raising CSR, responsible investment, human rights or climate change as a "new" subjects of advocacy per-se. However, as norm-entrepreneurs, they are capable of broadening the scope and content of what is considered CSR or responsible investment by using IGNs as platform to new issues, tools and approaches. In this unique position, what is not clear is whether the composition of IGNs affects the types of issues they advance, or indeed how they advance them. Therefore, opening up the black box of IGNs and studying how INGOs participate in key functional areas may not only shed light on norm-diffusion dynamics, but also serve as a broader illustration of how investors are wielding power in the context of global governance. The authority to select stakeholders and to define stakeholder categories is critical for transnational decision-making, as it grants the power to determine if and how stakeholders can participate in a partnership or coalition (Dingwerth, 2007). Understanding when and how investors choose to include social partners in their transnational activism may also shed light on how these processes of participation themselves are contentious and possibly historically contingent (Bruhl 2010; Dingwerth 2007, p. 125).

4.2.3 **Data, research strategy and measures**

My analysis of how INGOs are recognized and included in IGNs proceeded via a qualitative review of thirty-two IGN websites. Through purposive sampling (Palys, 2008), I sought to build a foundation for analysis that covered a broader universe of cases of IGNs than examined by MacLeod and Park (2011) (which was restricted to four cases focused on environmental politics). While the resulting list of IGNs cannot claim to be exhaustive, the universe of cases was generated based on the unique characteristics of the target population and objectives of the study (Palys, 2008). Specifically, the objective was to achieve maximum variation (heterogeneous purposive sample) in order to capture the full range of IGNs in the first instance. Starting with one of the earliest examples of a formalized global IGNs (the International Coalition for Corporate Responsibility), I followed a chain-referral method to build up the universe of IGNs in the sample. This method included identifying additional IGNs listed within "members" or "partners" sections of websites of IGNs. This approach included a number of limits – it focuses on initiatives that have an on-line presence and the search was restricted to English websites (though a few non-Anglophone European IGNs were captured using this method). IGNs that are regional and global in scope were identified through the sampling method described (see Table 4.1 for a full list of initiatives). [62] Fusch and Ness (2015) note that

[62] Note: As the focus of this study is on transnational advocacy and global governance, I did not include IGNs that operate primarily within a specific domestic context. National IGNs such as the United States' and United

there is no one-size-fits-all method to reach data saturation because study designs are not universal. To enhance the validity of one's findings, they recommend that scholars aim for "thick and rich" data. To achieve this standard for the present study, case illustrations are used to support key claims.

Table 4.1 List of IGNs studied

1. 2º Investor Initiative	2. Global Unions Committee on Workers' Capital
3. Asia Investor Group on Climate Change	4. Inter-faith Centre on Corporate Responsibility (ICCR)
5. Association for Sustainable & Responsible Investment in Asia	6. Investor Group on Climate Change (Australia & New Zealand)
7. African Sustainable Investment Forum	8. International Investor Group on Climate Change
9. Carbon Disclosure Project (CDP)	10. Intentional Endowments Network
11. Coalition for Environmentally Responsible Economies (CERES)	12. International Corporate Governance Network
13. Climate Bonds Initiative	14. Investor Alliance for Human Rights
15. Confluence Philanthropy	16. Investor Environmental Health Network
17. Ecumenical Council for Corporate Responsibility (ECCR)	18. Natural Capital Finance Alliance

Kingdoms' Sustainable Investment Forums or the Canadian Responsible Investing Association were excluded for this reason, even though they appear on the membership lists of some global IGNs.

19. Emerging Markets Investor Alliance	20. Responsible Investment Association Australasia
21. European Responsible Investment Network	22. The Asian Corporate Governance Association
23. Eurosif	24. The Green Infrastructure Investment Coalition
25. Farm Animal Investment Risk and Return (FAIRR)	26. The International Integrated Reporting Council Investor Network
27. Global Impact Investing Network	28. United Nations-backed Principles for Responsible Investment
29. Global Investor Coalition on Climate Change	30. UNEP Finance Initiative
31. Global Sustainable Investment Alliance	32. Workforce Disclosure Initiative

The method used in this study was qualitative content analysis. Holsti (1969) provides a broad definition of content analysis as the application of scientific methods to documentary evidence, whereas Krippendorff (1980) defines this approach as “a research technique for making replicable, valid inferences from data to their context” (in Kim and Kuljis, 2010, 370). Qualitative content analysis is primarily interpretive in nature. As an unobtrusive and highly contextual method, qualitative content analysis enables researchers to investigate phenomena without influencing the research procedure or outcomes, and it therefore may be less biased compared to other techniques such as questionnaire surveys and interviews. If data is readily available and accessible, as with web-based content, it is also relatively simple and economically efficient technique (Ozaki and Rivas, 2002 in Kim and Kuljis, 2010). This research approach has been applied by international relations and business ethics scholars alike. For example, Charli Carpenter (2007) conducted a content analysis of 36 advocacy websites in the children and armed conflict issue area to advance claims related to agenda-setting in transnational advocacy networks. Similarly, Jose and Lee (2007) conducted a content analysis of the environmental reports of Fortune's Global 200 companies in order to identify which environmental issues become the subject of environmental disclosures as well as how environmental concerns are institutionalized and structured.

Within my study, **recognition** was evaluated by examining whether civil society organizations, non-governmental organizations or other social partners such as trade unions were specifically mentioned a particular IGN's statement of purpose through website content that describes the organization's vision, mission and mandate. This variable was measured dichotomously (yes/no). Following Avant, Finnemore and Sell's (2010) rubric, I measured **participation** along four dimensions: agenda-setting, rule-making, activity implementation and evaluation. To determine if INGOs are involved in **agenda-setting**, I took a historical approach. The formation of an IGN can serve as an indication that a group of actors has been successful in identifying the issue being addressed by the IGN as a subject worthy of advocacy. From this view, an IGNs existence itself is an indicator of 'successful' agenda-setting. Therefore, examining the role of INGOs in an IGNs founding can shed light on whether they were part of this agenda-setting process. Here I reviewed available website information on an organization's creation story. In general, this included content from IGN website sections entitled "about us", "background" or "history". As well, INGO participation was evaluated dichotomously as well (yes/no) – either INGOs played a role in establishing the IGN or they did not.

With regard to **rule-making**, I explored the degree to which a formal mechanism exists to include INGOs as members of the IGN and within its governance mechanisms. For this element, I also paid attention to whether any restrictions were placed on membership (such as through second-tier membership categories with limited influence over governance decisions). The coding structure for membership denoted whether INGOs were permitted as members (yes), whether there were any restrictions placed on membership (yes, with restrictions) or whether they were excluded altogether (no). The coding structure for governance mechanisms denoted whether INGOs were included (yes) or excluded (no). Data for this component of the analysis was drawn from website sections that related to "membership" or "signatories" and "governance" or "about us".

INGO participation within an IGNs **activities** was evaluated using information disclosed on website sections pertaining to activities, programs, projects, tools, issues, themes, policy, events and conferences. Here I adopted a very low threshold and simply mapped whether NGOs were directly involved in *any* mandate-implementation activities or not (yes/no). Finally. monitoring and evaluation activities were deemed relevant only for initiatives where IGN members were obligated to submit an annual report or disclosure as a condition for continued membership, or where an advocacy target's compliance with an IGN's demands and requests was required. In both instances, I reviewed related IGN website content to determine if INGOs were involved in such activities. This form of participation was measured dichotomously (yes/no).

One limitation of the coding scheme deployed in my study is that the degree or intensity of participation across the four functional areas was not covered. For instance, within agenda-setting and mandate implementation, I did not specify whether one or many INGOs were involved and whether this involvement was sustained over a long period of time. In-depth case studies are especially well-suited for process-tracing how participation may vary over time, and would be a good follow-up research project that builds on this initial exploratory effort.

4.2.4 **Description of sample**

Across the sampled IGNs, a few features are noteworthy: the relatively recent addition of IGNs to the global governance landscape, the geographic concentration of IGNs and a fair degree of isomorphism in the preferred institutional identity for IGNs (DiMaggio and Powell, 1983).[63] First, IGNs are a relatively new phenomenon, as the mapping exercise revealed that an overwhelming number of IGNs (75%) were founded after the year 2000 (see Figure 4.1) and fifteen of the 32 IGNs in the study sample were formed after the global financial crisis of 2008. There is also a very distinct thematic trend, where over 40% of IGNs are dedicated to environmental issues and climate change. The first exclusively human-rights focused IGN, the Investor Alliance for Human Rights launched in 2017.

[63] DiMaggio and Powell (1984) define isomorphism as "a constraining process that forces one unit in a population to resemble other units that face similar environmental conditions" (149). Their hypothesized mechanisms for institutional isomorphic change (coercive, mimetic and normative) could offer a useful framework for future research seeking to explain why such isomorphism is observed in the responsible investment domain (DiMaggio and Powell, 1984, 150-154).

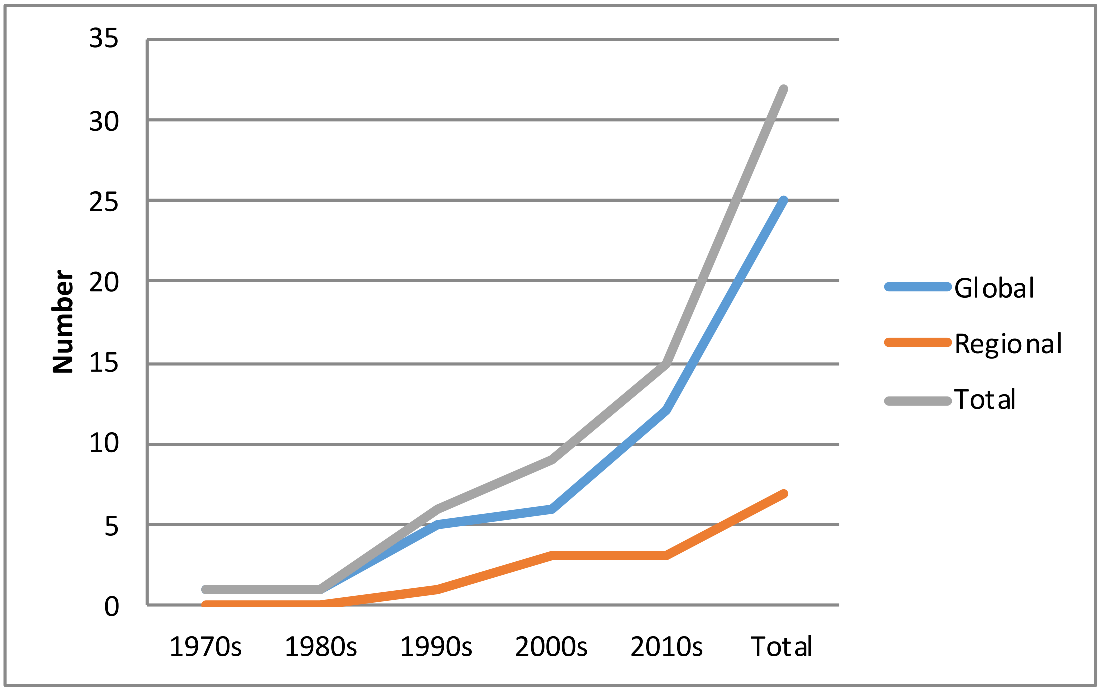

Figure 4.1. Growth of IGNs, 1970-2017

Second, perhaps due to pragmatic reasons in acting as the collective voice of investors, IGNs are mainly headquartered in global financial capitals, with 70% being located in the United States (New York and Boston area), United Kingdom (London area) and Switzerland (Geneva) (see Figure 4.2). Although members of these IGNs may be more geographically dispersed, participation from organisations outside of Europe, North America and Australia is quite limited, with the exception of dedicated regional networks. It should be noted however, that even in groups like the Asian Corporate Governance Association, the presence of regional subsidiaries of European and North American investors, banks and asset managers somewhat skews the actual number of truly domestic participants.[64] In the context of human rights, this level of geographic concentration in IGNs also reveals a considerable distance between groups and affected

[64] A study of membership lists using network analysis could be a fruitful avenue for future research that seeks to document intra-network and cross-network politics, gatekeepers and influencers within IGNs.

communities that are often the subject of an investor's concerns and the investors themselves. Examples include advocacy by European and North American Investors on land grabs in the Brazilian Amazon Rainforest and adverse impacts for local communities in Brazil (CERES, Press release, 11 November 2016), or the investor engagements with multinational food companies about slave labor in their Ghanaian and Ivory Coast cocoa supply chains (UNPRI, 2016, p. 7).

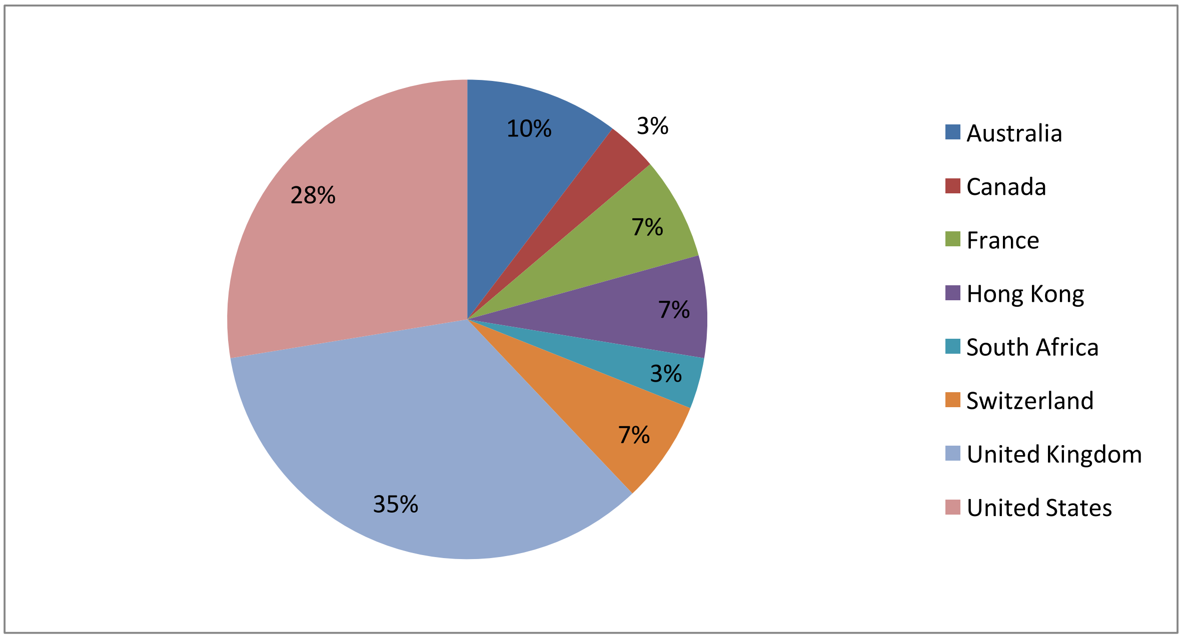

Figure 4.2. Where are IGNs headquartered?

Third, although there is some variation in the how IGNs choose to structure their collective action platform, there appears to be a preference for non-profit status, with 84% of IGNs opting for this model either as a non-profit trade body, a non-profit association or as a sub-project of a pre-existing non-profit IGN or charitable foundation (See Figure 4.3). For-profit companies, informal networks and public-private partnerships are less frequently used to structure investor activism. It should be noted, that MacLeod and Park's (2011) reference to both informal and formal pathways for INGOs to engage with IGNs is important given prevalence of the “trade-association” model. This model usually restricts participation for non-financial actors, making informal participation pathways for INGOs potentially more salient.

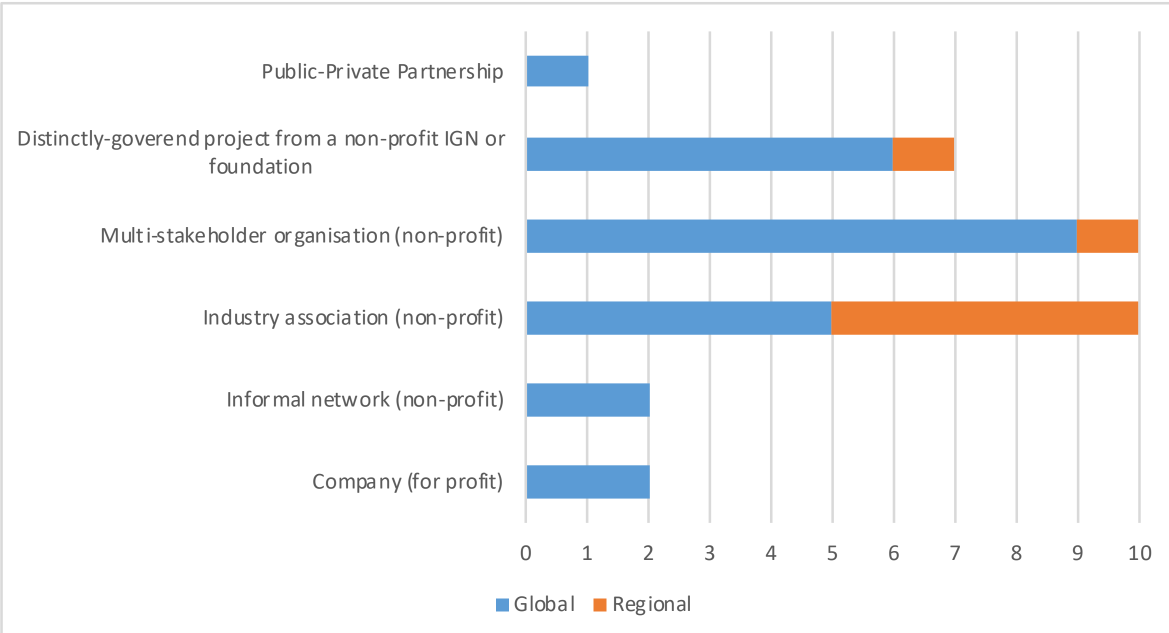

Figure 4.3. IGNs studied by organisation type

4.3 Findings

Having identified the universe of cases within the study sample, I now move onto mapping the actual degree to which IGNs recognize and allow for the formal and informal participation of INGOs in transnational shareholder activism in each of these cases.

4.3.1 **Recognition**

Within the study sample, at the aggregate level there no significant difference between IGNs that recognize civil society organizations (as a proxy for INGOs) as necessary partners in advancing sustainability within global capital markets and those that do not. Fifteen IGNs do make this recognition compared to seventeen that do not. For example, the Investor Environmental Health Network allocates differentiated roles between actors in the IGN, but nonetheless is inclusive in its approach vis-à-vis civil society. The group describes itself as a "collaborative partnership of investment managers, advised by nongovernmental organizations, concerned about the financial and public health risks associated with corporate toxic chemicals policies" (IEHN, 2018, ¶1). A similarly inclusive self-description is offered by The International Integrated Reporting Council (IIRC), which presents itself as "a global coalition of regulators, investors, companies, standard setters, the accounting profession and NGOs" (IIRC, 2018, ¶1). Other IGNs do not appear to reference civil society at all, and define themselves in exclusive terms. For instance, although the Responsible Investment Association of Australasia describes its work as shifting "more capital into sustainable assets and enterprises and shape[ing] responsible financial markets to underpin strong investment returns and a healthier economy, society and environment," (RIAA, 2015, p. 2) the organization makes no commitment to working with social and environmental partners in delivering this goal. Rather, it views itself as "the peak industry body representing responsible and ethical investors across Australia and New Zealand" (RIAA, 2018, ¶1). Likewise, The Global Investor Coalition on Climate Change "advances global investor collaboration to improve investor practices, corporate actions and international policy responses to climate change" while leaving the social partners relevant to this goal invisible (GICCC, 2018, ¶3).

It would appear that institutional roots may matter in explaining such variations, though they generate noticeable patterns (see Figure 4.4) It is clear IGNs with a strong industry orientation (namely companies, public-private partnerships and industry associations) are far more less likely to recognize civil society as being relevant to their vision, mission or mandate, whereas multi-stakeholder organizations, informal networks and independent projects that arise from non-profit IGNs and philanthropic foundations are more likely to accord this form of recognition to civil society. While these results may not be surprising, they raise a few important implications. First, the results shows that there are two competing visions of how best to advance the global financial sustainability agenda. On the one hand, the systemic importance of institutional investors appears to warrant a focus on this group of actors, to the exclusion of others. On the other hand, because financial sustainability is shaped by a host of environmental and social factors, it seems unlikely segregated approaches will generate the desired goal of aligning capital to the needs of society and avoiding harm to the environment.

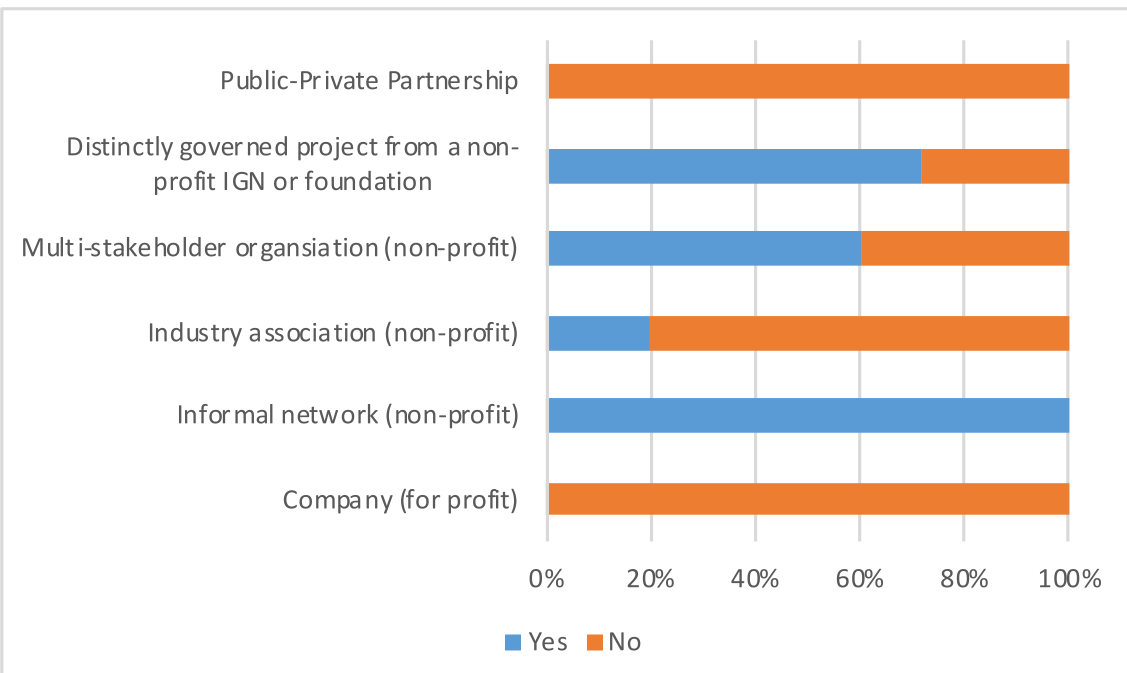

Figure 4.4. Recognition of civil society by IGN type

Furthermore, the results suggest that the institutional underpinnings of an IGN matter in terms of who is recognized as a vital player in the systemic transformation of capital markets towards sustainability. If the industry-dominant IGN model prevails over multi-stakeholder approaches, the responsible investment movement risks losing out more democratic modes of deliberation that diversity would bring to bear on their strategies, principles and commitments. However, it would be erroneous to assume that the triumph of multi-stakeholder models are ethically superior or neutral, or that they are always capable of representing local communities adequately. Civil society groups who guard their independence fiercely or who may adopt a more combative stance towards the private sector may actively resist their inclusion in IGNs, thereby precluding cooperation and partnership between IGNs and INGOs.

4.3.2 **Participation**

As explained previously, Avant, Finnemore and Sell (2010) identify four functional areas intrinsic to global governance: agenda-setting, making rules, implementation and enforcement and monitoring and evaluating outcomes. Examining these four areas within an IGN can offer valuable insights on who participates in these activities and how.

Agenda-setting

For the purpose of this chapter, I examined whether civil society groups have a role to play in setting the responsible investment agenda from a historical perspective. As per the research framework explained previously, I suggest that an IGN's formation can itself be a signal that an issue has been adopted as subject of transnational advocacy by a set of principled actors. Based on this assumption, the presence of civil society groups in an IGN's founding story signals their inclusion in agenda-setting within the broader responsible investment space. The data in my sample of IGNs mimics patterns with regard to recognition such that industry-associations, companies and public-private partnerships tend not to involve INGOs in their inception (see Figure 4.5). The ten multi-stakeholder non-profit organisations are evenly split in terms of INGO participation in agenda-setting. Of those that did include civil society organizations in their formative phase, two have a significant membership base of religious investors (ICCR and ECCR) and three are focused on climate action (CERES, Natural Capital Finance Alliance and the 2 degree Investing Initiative). The multi-stakeholder groups that do not reference civil society groups in an agenda-setting context are more industry-oriented in their mandate. These include Confluence Philanthropy, the IIRC, Climate Bonds Initiative and AfricaSif. Interestingly, while there is some thematic clustering in multi-stakeholder groups that include CSOs in agenda-setting (here in climate action) a similar trend is not evident across those that exclude CSOs.

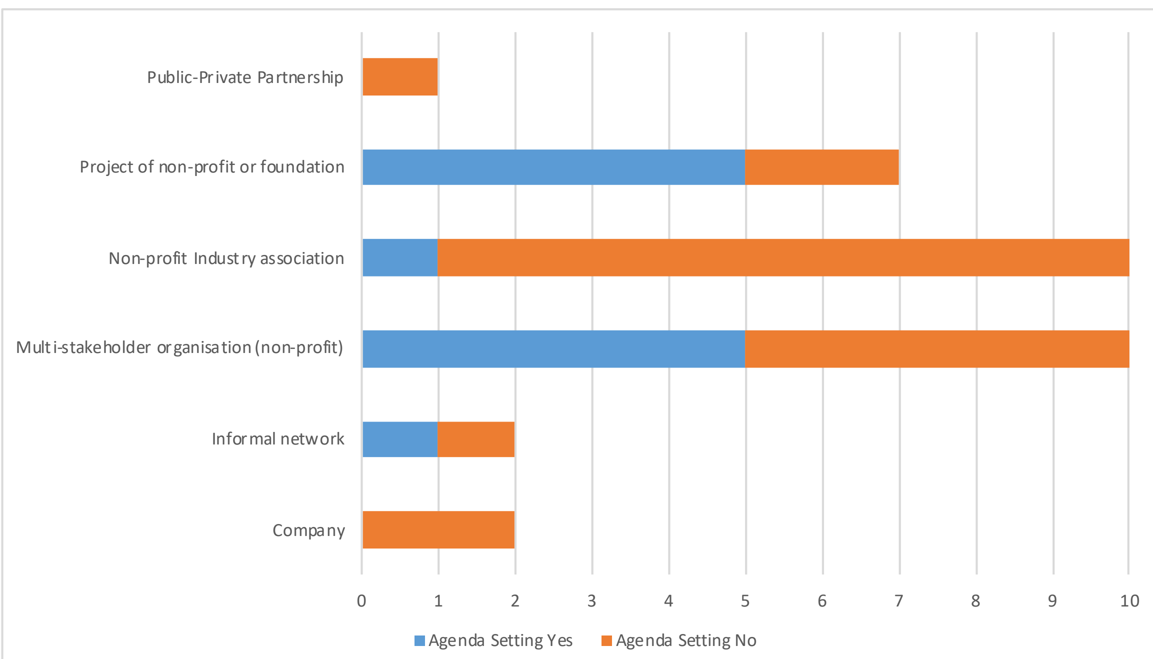

Figure 4.5. CSO participation in IGN agenda-setting

Rule-making

Even within IGNs that recognize the potential role of civil society in advancing responsible investment and sustainable finance more broadly, this recognition does not necessarily lead to a seat at the table for INGOs. This claim is advanced from the data that evaluates whether governance processes include civil society or whether they are permitted membership. These two criteria – formal membership and a role in an IGN's governance – may not both be necessary conditions for an INGO to participate in rule-making processes, but at least one would be sufficient to do so.

Within the sample of IGNs, fifteen organizations permit INGOs to hold membership without restrictions, assuming that INGOs fulfil membership criteria such as being able to pay annual dues etc. Four IGNs may permit civil society members, however certain restrictions may be placed on their membership status. For example, while the ICCR permits only religious investors to hold full-membership, its counterpart in the United Kingdom, the Ecumenical Council for Corporate Responsibility does not follow suit but rather welcomes "corporate and individual church investors, and other campaigners, in working for a more just and sustainable economy" (ECCR, 2018, ¶ 9). In a similar vein to the ICCR, the Global Unions Committee on Workers Capital is open only to representatives from the trade union movement and the UNEP-Finance Initiative restricts membership to financial institutions, but offers supporter status to "other players within the financial system who have a key role in delivering sustainable finance" (UNEP-FI, 2018, ¶ 1).

Thirteen organizations exclude civil society groups altogether. This trend is especially true for industry-associations. The PRI case is particularly interesting in this respect. Until recently, non-profit organizations were permitted to participate in the PRI via a Network Supporter membership category.[65] Organisations under this category did not pay membership fees and did not have any role in governance, however they were to express public support for the initiative with their constituency, and raise awareness within the investment community about responsible investment. However, this category is no longer offered and membership in the PRI is restricted to asset owners, asset managers and responsible investment service providers (PRI, 2018). One explanation for this retraction could be that supporting organizations were needed to ensure that the PRI was able to reach a critical mass, which once achieved, negated the need for this additional membership category. While this is a speculative guess, such reversals in membership categories provide limited evidence that INGOs are not perceived as key influencers for sustainable finance by 'mainstream' financial institutions.

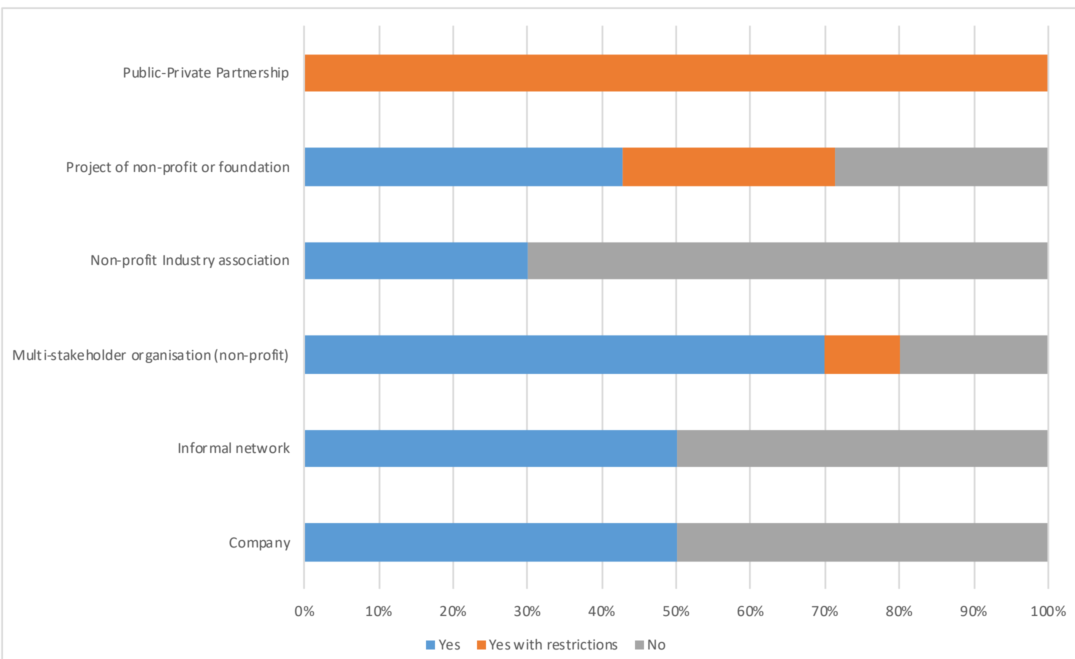

Figure 4.6. Do IGNs offer INGOs membership?

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[65] I am aware of this category, having led the application for the Global Unions Committee on Workers' Capital to acquire Network Supporter status with the UN-PRI, which was subsequently awarded around 2011. However, during my research for this chapter, I noticed that this category of membership was no longer on offer.

A second way to investigate the role of INGOs within an IGN's rule-making activities is to determine whether they are permitted to hold Board-level positions (or comparative positions on Steering Committees etc.). Within the study sample, four IGNs do not disclose their specific governance arrangements via their website (ASrIA, AIGCC, AfricaSIF and the ERIN).[66] This suggests that in general IGNs are transparent about how they make decisions governing the initiative, but also that transparency standards across IGNs are not uniform and may be geographically contingent. Of the remaining twenty-eight IGNs in the sample, the majority (64%) do not have civil society representation in their key governance bodies (see Figure 4.7). Here again, the consistent divide between industry-led and multi-stakeholder groups is evident. All eight of the industry association-based IGNs that disclose governance data do not include CSOs. The picture for multi-stakeholder organizations is more mixed, with six of these permitting CSOs a role in governance and three excluding CSOs from their governance forums.

[66] There is a clear geographic trend here, with responsible investment industry associations in Asia and Africa providing less information on governance. It should be noted that ERIN is a project convened via the UK-based ShareAction. While the project's information note references a separate steering committee, its composition is not yet disclosed. The initiative is in its third year of operation. I chose to include ERIN as a separate IGN because it has its own governance mechanism.

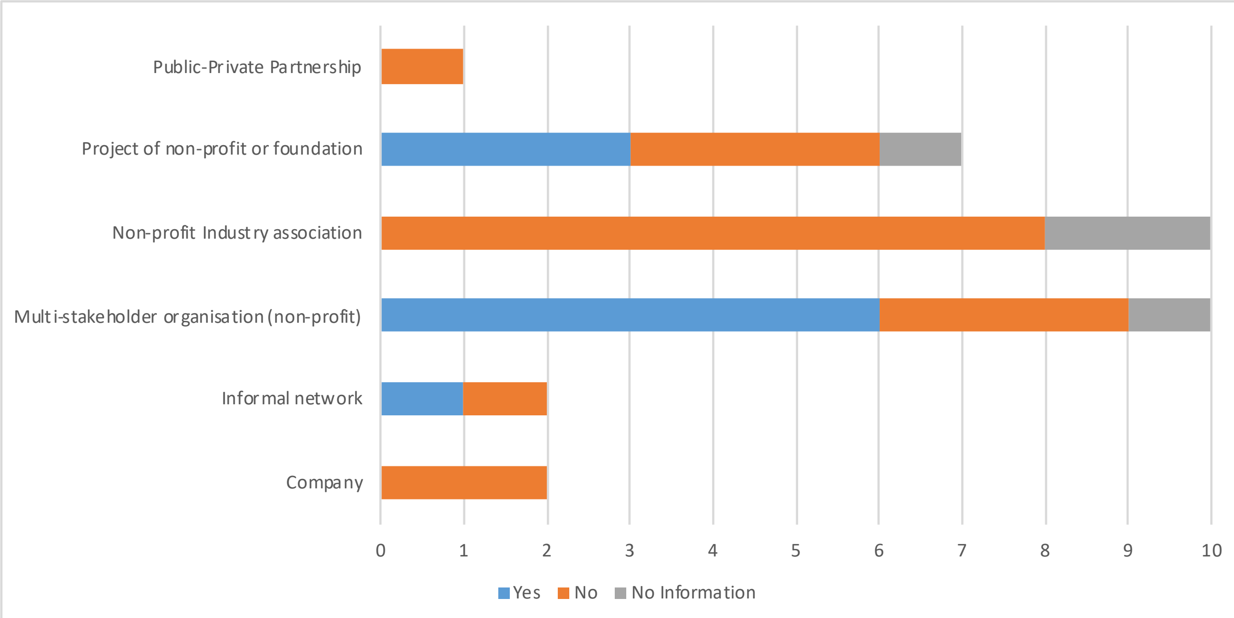

Figure 4.7 Can INGOs participate in IGN governance?

Implementation

Formal rules alone do not necessarily dictate levels of actual participation by INGOs within IGNs. Informal or ad-hoc participation as experts on webinars, conferences or events, or as invited sources of specific social and environmental technical expertise are some of the ways INGOs are engaging with IGNs. In my review of the data disclosed on the IGN websites in the study sample, I paid particular attention to evaluate how INGOs were participating in activities related to holding corporations to account for aligning their operations with environmental and social sustainability. While seven of the ten multi-stakeholder IGNs involve the participation of INGOs in implementation and three do not, the numbers are reversed for industry-association IGNs. There does not appear to be any evidence that an IGN's thematic priorities may affect this outcome. For example, a total of fourteen past and current projects of the Institutional Investor Group on Climate Change were reviewed and there is no evidence to suggest that INGOs are actively engaging through this IGN. However, the 2 Degree Investing Initiative takes a radically different approach, noting: "We seek genuine inclusion of all stakeholder groups in research projects, engagement activities, and governance of affiliated entities, including members and board members. By implementing this approach, we aim to 'bridge the gap' between groups that don't traditionally work together and secure multilateral support as facilitators for soft or hard policy making (e.g. standard development, disclosure requirements)" (2 Degree Investing, 2018, ¶12). The initiative further stress that "at the project level, the participation of target stakeholder groups ensures buy-in for ideas and recommendations, and increases impact. For example, 2°ii (sic) created a panel of French economists and practitioners to get critical feedbacks (sic) on its project related to the inclusion of climate-related criteria in tax incentives on savings. To our knowledge we are the only organization in this industry with this governance model worldwide." (2 Degree Investing, 2018, ¶14).

Nonetheless, the general trend suggests that INGO participation in industry-led IGNs is mainly at the invitation of key network members or secretariats. The data from this study suggests that environmental INGOs (particularly WWF) have a better track record of getting a seat at the sustainable finance table than human rights INGOs. This finding is somewhat skewed given that the majority of IGNs in the sample address environmental issues and climate action, whereas IGNs focusing only on human rights are a very new addition to the landscape.

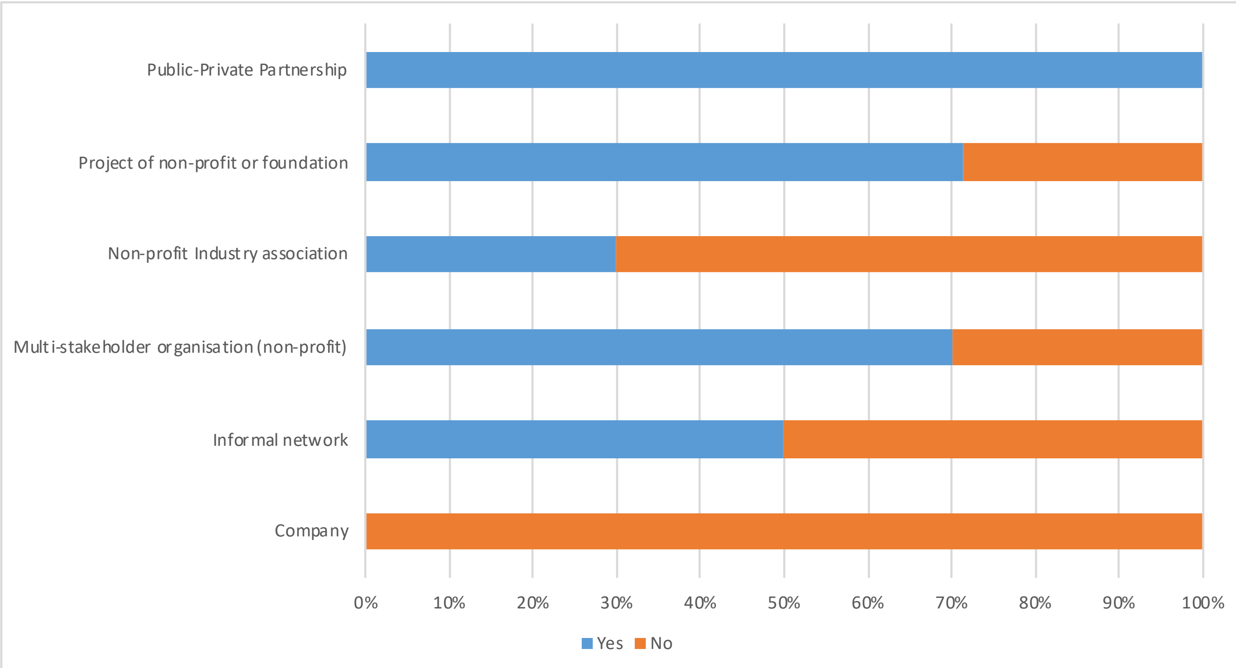

Figure 4.8. Do INGOs implement IGN activities?

Monitoring and evaluation

A number of IGNs function mainly to offer networking and education opportunities to their members. Examples include the ASrIA, Eurosif, Responsible Investment Association Australasia and AfricaSif. Unlike organizations that had an active policy-advocacy or corporate compliance function, it was difficult to gauge what kind of role INGOs could play with regard to monitoring and evaluation of an IGNs influence over global governance processes in thematic areas of concern such as climate change, animal welfare or human rights (see Figure 4.9).

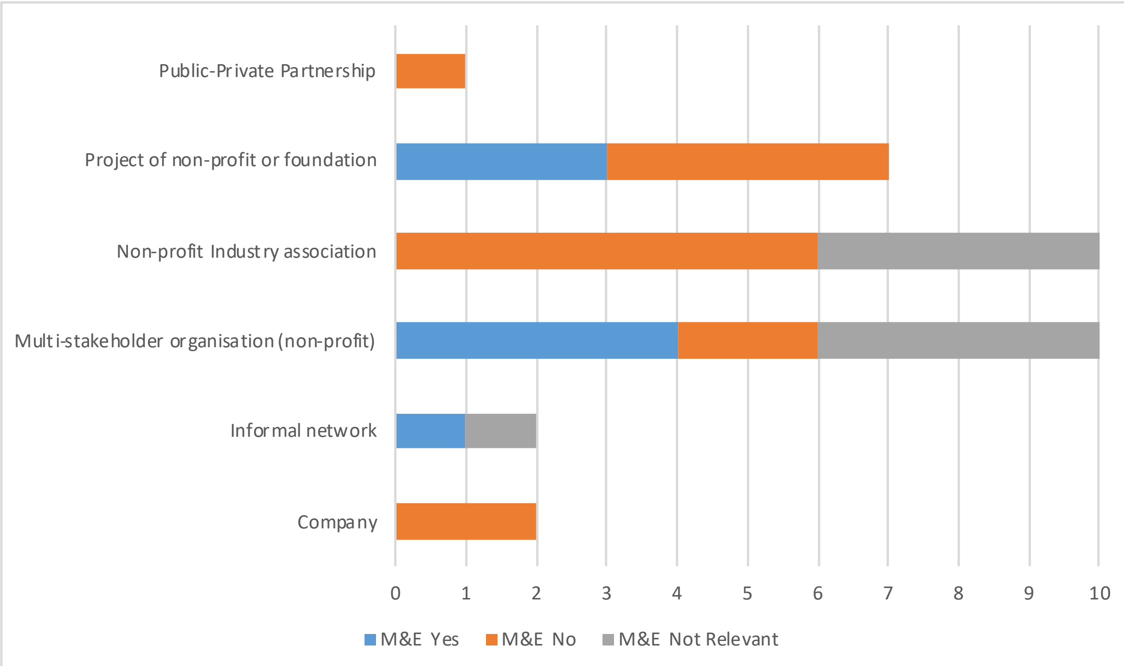

Figure 4.9. Do INGOs participate in an IGN's M&E activities?

One implication of this finding is that IGNs that do not include monitoring and evaluation of how their members uphold commitments to responsible investment, may be more interested in growing responsible investment as a niche market strategy, rather than ensuring feedback loops from various stakeholders about what the uptake of responsible investment and its diffusion in a particular market entails for society and the environment.

As observed across the previous criteria, multi-stakeholder IGNs and those that were initiated through existing non-profit IGNs and foundations are most likely to have INGOs participate in some sort of Monitoring and Evaluation activity (M&E). For example, the Workforce Disclosure Initiative (WDI) is funded by the Department for International Development (DFID) and run in partnership with Oxfam (ShareAction, 2017). The WDI brings investors together to request comparable data from companies via an annual survey. Its ultimate goal is to improve the quality of jobs in multinational companies' operations and supply chains, and is modelled on the Carbon Disclosure Project (ShareAction, 2017). A wide range of other stakeholders are also helping to shape the WDI, including Canada's Shareholder Association for Research and Education (SHARE), consultants Lake Advisory, and other private sector and civil society organisations (ShareAction, 2017). Within this multi-stakeholder initiative, Oxfam's role is three-fold: Firstly,

> "Oxfam is using its extensive knowledge of supply chain issues in developing countries to ensure the WDI survey collects useful data which drives meaningful company engagement. Secondly, Oxfam will bring to life the issues workers face for companies and investors through case studies and research in targeted developing countries. Finally, Oxfam will engage with investors, companies and civil society in the targeted countries to pinpoint how companies can improve their employment practices (ShareAction, 2017, ¶14).

4.4 Conclusion

Paul Pierson (2002) writes that political scientists have paid much more attention to the effects of institutions than to issues of institutional origins and change. In his view, one result of this attention "has been a marked tendency to fall back on implicit or explicit functional accounts, in which the effects of institutions explain the presence and design of those institutions. Institutional effects may indeed provide part of such an explanation. Yet the plausibility of functional accounts depends upon either a set of favorable conditions at the design stage or the presence of environments conducive to learning or competition" (p. 475). Hence, Pierson calls on the discipline to attend to variability in the relevant social contexts makes, as this feature makes it possible to both establish the restricted range of functional accounts and specify some promising lines of inquiry into the subject of institutional origins and change (Pierson, 2002).

In light of the key findings from the present study, Pierson's arguments appear to be instructive for how responsible investment scholarship may need to cover more ground in examining these design features and related social contexts. As the chapter has laid out, a narrow focus simply on the proliferation of the number of investor initiatives devoted to sustainability issues masks important power dynamics at play. A critical evaluation of where these IGNs are headquartered and who is included in their ranks reveals that by and large the "mainstreaming" of responsible investment continues to prioritize the interests of financial actors. Although these interests may themselves be shifting in more sustainable directions, these changes have not seen investors ceding any real authority to other social actors via IGNs. As with other institutional mechanisms for "performing" responsible investment such as shareholder engagement discussed in the previous chapter, the ways in which IGNs are structured suggest that beneficiaries and civil society groups who could play a role in linking financial and social goals are not typically included in the governance arrangements of IGNs.

Although the issues being taken up through shareholder advocacy may resonate with the work of INGOs in areas such as the Arms Trade Treaty, Conflict minerals disclosures, the UN-Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights, the patchy inclusion of INGOs within the governance mechanisms of IGNs certainly raises questions around whose norms are being advanced through these networks, and if these norms are serving a more holistic view of systemic sustainability that goes beyond financial interests (Soederberg, 2004; Acharya, 2004). The relatively weak integration of INGOs in industry-facing IGNs is not unusual in terms of broader trends in civil society participation in global governance initiatives related to corporate social responsibility generally. For instance, in an analysis of over 100 relevant initiatives (Sundstrom, Henry, Bala-Miller and Winston, forthcoming), the general trend showed that close to 60% recognize civil society actors as playing a key role in the advancement of the initiative's mandate and goals, 55% had a formal mechanism for civil society participation in the initiative's development, while fewer are involved in formal monitoring or implementation roles (45%). What is noteworthy from this analysis is that, in general, finance-oriented sustainability initiatives are not inclusive of civil society participation/multilateralism, posing an interesting challenge in light of deep questions about the accountability of the sector and its ability to regulate itself in the wake of the global financial crisis and general trends towards financial de-regulation since the 1980s. Although IGNs are proliferating, the high degree of membership over lap across IGNs and limited participation of non-finance stakeholders suggests responsible investment IGNs function as an echo-chamber – where information, ideas, or beliefs are amplified or reinforced by communication and repetition inside a defined (and arguably rather closed) system.

Overall, the study of private actors within transnational politics, and responsible investment in particular is still a relatively new subject, but there are many creative and engaging opportunities to broaden the scope of the existing research agenda. The early phase of the literature on transnational activism sought to demonstrate the influence of transnational networks, and in a way legitimated them as viable political actors at the global level (Price, 1998; Keck and Sikkink, 1998). The next decade or so focused on the dynamics between INGO-led networks and state actors by exploring how these interactions impacted political outcomes (for example Sundstrom, 2006). Based on these impressive foundations it is time to open-up private-sector led transnational networks such as the PRI and the regimes they are embedded in rather than to treat each as a black box, as rightly noted by Orenstein and Schmitz (2006). This effort, as this chapter has sought to demonstrate, could productively bridge scholarship on international relations and corporate governance, with important implications for how we understand private power and authority in global governance.

Chapter 5: Using or Abusing Shareholder Power? Reframing Shareholder Proposals as a Discourse Structure

The exercise of power and authority by private non-state actors is now viewed as an important subject of inquiry within the global governance literature (Cutler, Haufler and Porter, 1999; Hall and Bierstecker, 2002; Büthe, 2004; Büthe and Mattli, 2011; Büthe and Cheng, 2013; Green, 2014). Although global governance scholarship originated with concerns of how to get states to cooperate on transnational issues in the absence of a central government, there is growing recognition that private, profit-seeking entities wield considerable authority in establishing rules, norms and institutions that guide the behavior of the participants and affect the opportunities available to other actors (Cutler, Haufler and Porter , 1999, p. 3-4). For instance, Peter Dauvergne and Jane Lister's (2013) *EcoBusiness: A Big Brand Takeover of Sustainability* shows how corporate power is leveraged by leading-brand companies to compel down-stream suppliers in transnational value chains to adhere to sustainable practices, not necessarily out of a commitment to environmentalism, but rather as a way to curb operational costs. In general, empirical studies that have explored private power typically focus on multi-national corporations (MNCs) and international non-governmental organizations (NGOs) and have covered a wide range of sectors such as infant health (Sikkink, 1986); agribusiness and forestry (Cashore, 2002; Haufler, 2003; Clapp and Fuchs, 2009; Dauvergne and Lister, 2011), security services (Avant, 2016; Avant and Haufler, 2012); extractives (Haufler, 2010) and consumer goods (Esbenshade, 2001, 2004; LeBaron, Lister and Dauvergne, 2017).

A common thread across these works is the idea that private power and authority tend to emerge in areas where states show little inclination to regulate corporate behavior, favoring corporate self-regulation and voluntary measures instead. This pattern is evident in the domain of human rights as well, where a particularly intractable challenge has been how to hold multi-national corporations to account for their role and complicity in human rights violations, particularly when these occur outside the firm's home state (Ruggie, 2017). Governments have generally been reluctant to regulate corporate obligations around human rights, with existing initiatives mainly focused on companies to report on due diligence measure to avoid complicity in human rights violations. Through the 2011 UN Guiding Principles on Business and Human Rights (Guiding Principles), UN member states were able to agree on differentiated responsibilities for states and corporations when it comes to upholding human rights (UN Human Rights Council, 2011). However, the Guiding Principles were not binding under international law and specifications on regulatory measures remain vague. Likewise, private efforts to diffuse human rights norms and standards vary significantly. As Jolyon Ford (2015) notes:

> Even if it is true to claim that the human rights discourse is shaping global economic relations, it is doing so in a very uneven way. Like states, businesses are responding to the agenda with very differing degrees of intensity. Beyond reinforcing incentives on bigger, more sophisticated or higher-profile firms and funds to improve monitoring and reporting initiatives, 2011's events alone have not been – and will not necessarily be – the decisive factor in driving such activity. Only a small proportion of businesses and funds globally are fully incorporating these issues into business strategy and risk management systems. Most will lack the awareness, capacity or incentives to respond. (p. 7)

Given this context, how private authority and power are exercised to advance human rights compliance by firms gains salience as an important area of study within global governance. As I have elaborated in previous chapters, the role of institutional investors in advancing human rights has not featured substantially in the existing literature on this topic. Additionally, I have already explained that shareholder power is a very specialized and unique form of private power that is used by institutional investors to engage in the politics of human rights – both domestically and internationally. The authority of investors to influence the behavior of firms gains legitimacy through legally-endowed shareholder rights that sanction and even require this kind of oversight. In addition, by virtue of their relative size in global financial markets, institutional investors enjoy significant materially-derived authority to compel firms they are unhappy with to yield to their demands. This is especially true if investors are able to act in concert and overcome barriers to collective action (Gifford, 2010). Shareholder power itself is leveraged through various mechanisms such as direct dialogue with firms (shareholder engagement), filing shareholder proposals or resolutions that can be voted on at a firm's annual meeting, media campaigns, public-policy engagement and even the threat or actual withdrawal of capital (divestment).

As noted in Chapter 2, current approaches to shareholder power confront some limitations.[67] First by viewing shareholder power as analytically prior (Archer, 1995) for shareholder activism, the literature tends to feature shareholder power as an independent variable. That is, particular mechanisms of shareholder power such as shareholder engagement and shareholder proposals are studied in terms of how their impact on firm behavior and shareholder value (See for example Gifford, 2010; Allen et al., 2010; Goodman et al., 2014, Majoch et al., 2017). However, little work has been done on how investor-led activism itself may subsequently affect shareholder power. Existing studies tend not to examine how the use of shareholder power in given contexts and over certain issues may serve to further legitimize private market authority (Hall and Biersteker, 2002) over other complementary or competing sources of authority in the international political system (such as moral authority) (Price and Reus-Smit, 1998). A second limitation is that the work on shareholder advocacy has tended to frame shareholder power mainly as a relationship between investors and firms, such that the

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[67] I elaborate this critique of existing theoretical approaches to shareholder power in chapter 2 of the thesis, and for the sake of brevity the arguments are not replicated in great detail here.

implications of shareholder power as it relates to other actors or stakeholders operating at different political levels are rarely considered (See for example: Solomon, 2007; Shleifer and Vishny, 1997; Hawley and Williams, 1997).

I propose in this chapter that institutional investors and the power they wield do not exist in a vacuum. The main argument I seek to convey in this chapter is that institutional investors are socially and politically embedded actors, whose interests and needs are articulated through specific formal and informal institutions (Granovetter, 1985). In making this argument, my goal is to demonstrate that the social contingency of investor activism on human rights means that such activism can serve as a site through which certain socially-produced power relations could be maintained and reinforced or alternatively, dismantled and transformed. When institutional investors use shareholder rights to advocate for better firm alignment with global human rights norms and standards, they become engaged in power dynamics (either directly or indirectly) with a range of actors beyond just firms, including industry associations, states/state agencies, regional and global inter-governmental bodies, issue-specific advocacy coalitions, NGOs and affected communities on whose behalf rights-claims are being articulated. An unfortunate consequence of ignoring these multi-dimensional power relationships between investors and other actors is that the existing literature does poorly at accounting for the true diversity of mechanisms through which shareholder power finds expression.

To convey this central idea of investors as socially and politically embedded actors who are engaged in power relationships with a wide variety of actors, I focus on a particularly neglected mechanism of shareholder influence: discursive power (Fuchs, 2007). As Foucault explains in *Discipline and Punish: The Birth of the Prison* (1995)[68], discourses are defined as ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and relations between them. Discourses are the vehicle through which we share, favour and accept some knowledge systems over others (Foucault, 1995).[69] As such, discourses are inextricably linked with power. Barnett and Duvall's (2004) typology of power also makes this sociological link. Recall that in their framework, productive power involves the constitution of social subjects with varying social powers thorough systems of knowledge and discursive practices. Hence, discourses are especially influential because they denote the social context within which certain practices, norms or ideas emerge as possible, permissible or desirable. Foucault's work and related research programs have focused our attention on how some discourses have shaped and created meaning systems that have gained the status and currency of 'truth' (Pinkus, 1996). Therefore, these hegemonic discourses dominate how we define and organize both ourselves and our social world, whilst other alternative discourses (and forms of authority) are marginalised and subjugated and yet potentially offer sites where hegemonic practices can be contested, challenged and resisted. A persuasive example of this research program in action is Carol Cohn's (1984) *Sex and Death in the Rational World of Defense Intellectuals*. As a year-long participant observer within a university centre on defense technology and arms control, Cohn draws on feminist theories of gender and language to expose the ways in which (predominantly) male defense intellectuals rely

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[68] Original in 1975.
[69] This relationship between discourse, knowledge and power is traced by Foucault via the evolution from a top-down form of social control through physical coercion by sovereigns to a more diffuse and insidious form of social surveillance and process of 'normalisation' in more contemporary prison systems.

on a techno-strategic discourse to simultaneously legitimize and rationalize a deeply inhumane view of nuclear war.

In applying these ideas about the relationship between discourse and power to the terrain of shareholder activism on human rights, this chapter critically interrogates what forms of authority are privileged and whose rights are advanced when investors exercise shareholder power to call for greater corporate compliance with global human rights norms and standards. In this respect, my work echoes Amitav Acharya's (2004) view that "questions about norm diffusion in world politics are not simply about whether and how ideas matter, but also which and whose ideas matter" (p. 239). The chapter narrows in on one particular mechanism through which shareholders leverage discursive power – the filing of shareholder proposals, as they offer a rich textual repository of investor discourses on issues of concern. The empirical work supporting my main arguments involves a systematic text-based analysis of shareholder proposals filed in Canada over a thirty-three-year period. I limit the scope of the analysis to proposals dealing with human rights issues only, yielding a sample of seventy-two cases. Another reason I focus on Canada is that empirical work on shareholder proposals thus far has tended to focus (almost exclusively) on the United States and the United Kingdom. The framework for coding these texts draws on critical discourse analysis (VanDijk, 1993; Wodack, 1997; Fairclough, 1993; Dunn and Neumann, 2016)

The remainder of the chapter is structured as follows: By way of background, Section 5.1 takes a comparative approach to highlighting the processes for filing shareholder proposals across four jurisdictions where this form of investor activism has been more prominent: The United Kingdom, The United States, Australia and Canada. Section 5.2 provides a brief review of existing work on shareholder proposals as a mechanism for investor-led activism. The review identifies the key theoretical approaches that have been applied to previous work on this topic in order to demonstrate that the social embeddedness of investor activism, and the implications of this activism for private power and authority have not been considered in great detail. In Section 5.3, I present my arguments for why shareholder proposals should be viewed as discourse structures that are socially constructed in a dialogue between actors, institutions, and historical contexts that straddle the local and the global (Berger and Luckman, 1991; Wendt, 1992; Price and Reus-Smit, 1998). With a view to testing the empirical validity of this argument, Section 5.4 explains the analytical framework used. It lays out the key concepts, themes and representations of shareholder power and corporate social responsibility[70] that are coded qualitatively and systematically across the sample of shareholder proposals. The outcomes and implications of this analysis for the relationship between institutions and shareholder power are detailed in Section 5.5. The findings from this review confirm the need to better understand the social context within which institutions related to responsible investment are embedded. They do so by revealing discursive shifts in investor discourses on human rights that mirror global and domestic political developments related to the governance of human rights. These discursive choices largely frame corporate accountabilities for human rights primarily as a means to preserve shareholder value, rather than the morally or ethical preferable option. A key risk from this discursive shift is that shareholder power leveraged through shareholder proposals in Canada accord primacy to a firm's obligations to private actors, rather than other social actors, especially vulnerable and

[70] In this context, shareholder power is being leveraged through the filing of shareholder proposals with the intention of influencing a firm to better align its policies and practices with human rights norms and standards. This alignment is broadly viewed as part of a firm's social responsibility. Hence, my analysis needs to account for both the subject (shareholder power) and object (corporate social responsibility) involved within the discursive text.

marginalized groups. Section 5.6 provides a few concluding remarks and directions for future research on these themes.

5.1 The mechanics of filing shareholder proposals: A comparative overview

When investors want to raise particular environmental, social or governance (ESG) issues with a firm's directors, senior executives or other shareholders, they may do so by filing a shareholder proposal or resolution. From the shareholders' perspective, filing a proposal offers an opportunity to present matters to the company's owners for a vote. Corporate governance proposals request such things as changes in the way directors are elected to the board, or reductions in the level of executive compensation, especially in cases where a firm may be under-performing financially. On the other hand, environmental and social responsibility proposals cover a wide range of actions, including adopting cleaner production methods, disclosing data on a firm's social and environmental impacts, avoiding direct or indirect complicity in human rights violations and environmental degradation or implementing ethical conduct codes for overseas manufacturing operations. To provide a general context for the chapter, I briefly outline the mechanics involved with filing a shareholder proposal, drawing on examples from the United Kingdom, the United States, Australia and Canada. I focus on these markets as they fall within the Anglo-American model of corporate governance, where the use of shareholder proposals as a tool to advance corporate social responsibility has been relatively more prevalent compared to other Scandinavian, Continental European/German or Japanese models of corporate governance (Deakin, 2005; Clarke, 2009; Soederberg, 2003; Bruner, 2010).[71]

5.1.1 **United Kingdom**

The United Kingdom displays a pattern of dispersed share-ownership in publicly traded companies, in contrast to the dominance of controlling shareholders in other advanced economies such as Japan or Canada (La Porta et al., 1999). According to Davis (2015), a distinct feature of the U.K. system has been the ability of dispersed shareholders (primarily pension funds and insurance companies) to achieve a sufficient level of coordinated action to be able to influence their investee companies. This is primarily attributed to the success of institutional investors in pushing market practice and self-regulatory law in a shareholder friendly direction (Stapledon 1996).[72]

The U.K. Companies Act (2006) permits shareholders to put forward a resolution to be considered at the next annual general meeting of a firm, if they hold at least 5 percent of the issued share capital or the group of shareholders numbers at least 100 and holds shares having an

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[71] One reason for this difference is that board composition at the firm level incorporates a high degree of social dialogue with social partners. This format allows for discussion and diffusion of potential conflicts, perhaps averting the need to file shareholder proposals (see for example: Aoki, 1988; Cioffi, 2006; Jackson, 2009; Saito, 2012). There may also be legal and institutional barriers for minority shareholders to file proposals under these alternate models (Saito, 2012).

[72] The primary sources of law and regulation that are relevant to shareholder activism are the Companies Act 2006 (the Companies Act), the Listing Rules, the Disclosure Guidance and Transparency Rules (DTRs) and the City Code on Takeovers and Mergers (the Takeover Code) (Solomon, 2013). The Listing Rules and the DTRs are made and enforced by the Financial Conduct Authority (FCA). All companies (whether incorporated in the United Kingdom or elsewhere) with a listing of equity shares on the premium segment[72] are subject, on a 'comply or explain' basis, to the United Kingdom Corporate Governance Code (the Governance Code) issued by the Financial Reporting Council (FRC, 2016). In addition, the FRC's (2012) United Kingdom Stewardship Code sets out good practice for institutional investors seeking to engage with boards of listed companies and also applies on a 'comply or explain' basis.

aggregate value of at least GBP£10,000 in nominal value (Brown et al., 2018). In the U.K. system, shareholders may pass three types of resolutions: binding, advisory or conditional resolutions (Solomon, 2013). A resolution which is intended to be binding on the directors will often need to be passed as a special resolution as such a resolution will override the provisions of the company's constitution that give the board of directors the power to manage the business of the company (Solomon, 2013). As compared to ordinary resolutions, special resolutions require a higher voting threshold in order to be passed (75%, rather than a simple majority) and require compliance with additional formalities in terms of notice requirements and restrictions on the ability of directors and shareholders to make amendments to them prior to or at the vote at the relevant meeting (Kastiel, 2014). It is possible for shareholders to propose and approve both advisory and binding resolutions that in each case are conditional upon the occurrence of another event and/or the passage of time (although it is essential that the occurrence of the event(s) upon which the relevant resolution is conditional is capable of being objectively and irrefutably determined) (Kastiel, 2014).[73]

Among the conditions attached to filing shareholder proposals in the United Kingdom are requirements that resolutions must not be ineffective (eg, due to illegality), defamatory, frivolous or vexatious (Buchanan and Yang, 2009). If a valid requisition request is made, the board must call a general meeting within 21 days and the meeting itself must be held not more than 28 days after the date of the notice of the meeting. Where the board fails to do so, the shareholder who requested the meeting may call the meeting and must include statement to shareholders that is

[73] Typical examples of such conditional resolutions include the adoption of new constitutional documents following a capital reorganisation or the application for the listing of the shares in a de-merged business following the dividend *in specie* of that business to shareholders.

limited to 1,000 words (Solomon, 2013). The company must send the statement to every member entitled to receive notice of the meeting in the same manner as the notice of meeting and at the same time as, or as soon as reasonably practicable after, it circulates the notice of meeting (Solomon, 2013). Subject to limited exceptions, the shareholder who requests the circulation of the statement will be responsible for the costs associated with its circulation, unless the company determines otherwise (Kastiel, 2014).

5.1.2 **The United States**

In 1942, the Securities and Exchange Commission (SEC) adopted Rule 14a-8 to strengthen shareholders' voice in corporate affairs by permitting them to place certain types of proposals in annual corporate proxy statements where they would be voted on by all shareholders (Black, 1998). Despite its longevity, the usefulness of the rule has been questioned on the grounds that many of these proposals were frivolous, that they generally received little shareholder support, that they were widely ignored by managers even when shareholders did support them, and that they did nothing to increase the value of targeted firms. As a result, there have been calls to limit or eliminate shareholder proposals based on its cost and limited success (Murphy and Van Nuys, 1994; Pound, 1991; Romano, 2001; Bainbridge, 2005).

Ultimately, rule 14a-8 attempts to provide shareholders with a means of informing corporate boards about issues that are important to them. It permits qualified shareholders, who own 1% of company securities or shares with a market value greater than $2,000, to propose a shareholders' vote on any topic within shareholders' purview concerning the corporation with limited exceptions (Buchanan and Yang, 2009). As with the U.K. procedures, there are a number of conditions that delimit this right to file a proposal. For instance, shareholders are not allowed to ask for a shareholder vote requesting that the company violate extant laws, rules or regulations, redress personal or personnel issues, or that related to matters involving the company's normal business operations (Black, 1998). However, the corporation bears the costs of distributing these proposals to all shareholders, which means that Rule 14a-8 operates essentially as a tax on all shareholders to facilitate the voice of all shareholder proposals' proponents (Thomas and Cotter, 2007).

5.1.3 **Australia**

In Australia, the Corporations Act (2001) permits shareholders with at least 5 per cent of the votes that may be cast at the general meeting to requisition a meeting of shareholders where they may wish to put forward a shareholder resolution (Anderson and Ramsay, 2005; Schipani, 1994). As with the UK, shareholders with at least 5 per cent of the votes that may be cast on a resolution, or at least 100 members who are entitled to vote at a general meeting, may give a company notice of a resolution that they propose to move at a general meeting (Cifelli and Lester, 2016). In addition, they may request that a company circulate a supporting statement related to the proposed resolution to all other shareholders prior to the meeting where it will be voted on (Jacobsen, 2013).

However, mirroring limits observed in other jurisdictions, there are constraints on some of these shareholder powers. Shareholders cannot instruct directors on how to run the company, unless specifically allowed for in the company's constitution (Jacobsen, 2013; Cifelli and Lester, 2016). Most Australian company constitutions exclusively vest in the board the power to manage the business of the company and to exercise all powers that are not otherwise required to be exercised by members at a general meeting, and any change in a company's constitution requires a special resolution passed by at least 75 per cent of the votes that may be cast on the matter (Jacobsen, 2013).

5.1.4 **Canada**

Within Canada, The Canada Business Corporations Act (CBCA), the Bank Act and Canadian provincial corporate statutes[74] govern the shareholder proposal mechanism (Oshionebo, 2012). For instance, under the CBCA, a shareholder may "(a) submit to the corporation notice of any matter to be raised at the meeting and (b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal" (CBCA, s 137 [1]). These statutes require a corporation to include such proposals in any management proxy circular distributed before an annual general meeting, allowing shareholders to communicate about matters of interest at the expense of the corporation" (Oshionebo, 2012, 627).

Under the CBCA, a registered shareholder is entitled to submit a shareholder proposal for consideration at a company's annual meeting if the shareholder holds, or is supported by shareholders who hold, the lesser of 1 per cent of the outstanding voting shares of the company and voting shares of the company whose fair market value is at least C$2,000 (Ciardullo et al., 2018). As noted by legal firm Stikeman Elliot, other limits on the filing process include the

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[74] *Canada Business Corporations Act*, RSC 1985, c C-44, s 137 (1) [CBCA]; *Bank Act*, SC 1991, c46, s143 (1); *Business Corporations Act*, RSA 2000, c B-9, s 136 (1) [ABCA]; *Business Corporations Act*, SBC, 2002, C57, S 187 (1) [BCBCA]; *Corporations Act*, CCSB 2010, C c-225, s 131(1) [MCA]; *Business Corporations Act*, SNB 1981, Cb-9.1, S 89(1) [NBBCA]; *Corporations Act*, RSNL 1986, c C-36, s 224 [NLCA]; *Companies Act*, RSNS 1989, C81 Schedule III, S 9(1) (a) [NSCA]; *Business Corporations Act*, SNWT 1996, c 19, s 138 (2) [NWTBCA]; *Business Corporations Act,* RSO, 1990, c B-16, S 99(1) [OBCA]; *Business Corporations Ac*t, RSS 1978, c B-10, s 131 (1) [SBCA]; *Business Corporations Act*, RSY 2002, c20, s 138 (1) (a) [YBCA] in Oshionebo (2012, 624) "Shareholder Proposals and the Passivity of Shareholders in Canada: Electronic Forums to the Rescue?" (2012) 37:2 *Queen's Law Journal* 623-662.

requirements that the shareholder or shareholders filing the proposal must have held their shares for a period of six months prior to the day on which the proposal is submitted (Ciardullo et al., 2018). In addition, the proposal must be submitted to the company at least 90 days before the anniversary date of the notice of meeting that was sent to shareholders in connection with the previous annual meeting, and the shareholder is entitled to provide a supporting statement for the proposal, not exceeding 500 words.

Upon receiving a shareholder proposal, a company is able to request proof that the proponent meets the shareholding requirements. There are exemptions to a company being required to accept a proposal, including, among other things: it appears the primary purpose of the proposal is to enforce a personal grievance; the proposal does not relate in a significant way to the business or affairs of the company; the proposal mechanism is being abused to secure publicity; or substantially the same proposal was submitted to shareholders in preceding years and it did not receive the prescribed amount of support (Oshionebo, 2012).

5.2 Literature review

My objective in undertaking this literature review on shareholder proposals is to provide a general background to the main trends covered so far, and to determine the extent to which existing work has grappled with issues related to private power and authority in the context of investor-driven activism. The review avoided restricting the scope of literature to the niche area of human rights alone as this topic is relatively under-explores. Taking this broader thematic approach leaves open the possibility for lessons from shareholder activism in other issue areas (particularly on the environment) to inform the present study. On the empirical side, the existing literature on shareholder proposals has focused on two dominant themes. The first seeks to determine whether shareholder proposals are a successful strategy in achieving changes in corporate policies and practices, while the second focuses on particular variables that can explain vote outcomes or trends. On the theoretical front, agency, organisational and stakeholder theories have loomed large. However, these approaches face a coordinated critique for failing to adequately consider the social embeddedness of investor activism. This critique forms a point of departure for this chapter's key arguments for re-framing shareholder proposals, as a discursive expression of private power, with radically different implications for who and what counts within investor discourses on a firm's social responsibilities.

Drawing on mainly U.S. and U.K. shareholder proposal data , existing studies argue that the success of shareholder proposals can vary as a function of the identity of the proposal sponsor, the type of proposal, the prevailing corporate governance structure and economic performance record of the target firm.[75] With regard to the identity of shareholders, Gordon and Pound (1993) found that proposals sponsored by institutions, unions, the United Shareholder Association, and dissidents gained higher levels of shareholder support. Their findings were confirmed by Thomas and Martin (1998) who found that labor unions were relatively successful in attracting shareholder support for their proposals. Other studies, such as Gillan and Starks (2000), found that proposals sponsored by institutional investors (including union-sponsored pension funds) received significantly more favorable votes than those sponsored by independent individuals or religious organizations.

[75] In general, studies on this topic appear committed to methodological pluralism, with strong exemplars of both qualitative and quantitative methods being used.

Since Gordon and Pound's (1993) early work, numerous studies have differentiated between corporate governance proposals, which directly relate to issues affecting shareholder value and receive significant shareholder support, and social responsibility proposals, where the connection to firm value is more tenuous and which attract low levels of shareholder approval (Romano, 2001). This research has generally concluded that corporate governance proposals raise important substantive issues, while the social responsibility proposals are frequently viewed as frivolous (Black, 1998; Karpoff, 2001). Corporate governance proposals were most frequently made at underperforming companies in the 1980s and early 1990s (Black, 1998; Karpoff, 2001; Romano, 2001). This suggests that corporate governance improvements might be needed at these firms, raising the question of whether their boards should be listening closely to their investors. Thomas and Martin (1999) found that U.S. shareholders generally target their proposals at relatively poorly performing companies exhibiting higher levels of executive compensation than other similarly-sized firms in their industry.

However, vote outcomes are not the only way to measure the success of shareholder proposals. Other scholars argue that evaluating the degree to which a firm adopts recommendations made in a shareholder proposal are a stronger indication of success. Tkac (2006) suggests that withdrawn proposals can be used as a measure of activism's success as an influencing strategy because they usually signal an action by the corporation-dialogue, agreement to resolution, or some other compromise. A noteworthy effort at a more comparative approach is Buchanan and Yang's (2008) discovery of systematic differences in proposal sponsors, proposal agendas and voting outcomes between the U.S. and U.K. samples. They found that U.K. shareholder proposals are primarily sponsored by institutional investors or former corporate executives, and almost none are sponsored by small, individual investors.

Additionally, more than 80% of U.K. shareholder proposals aim to elect or remove specific directors and only 2% are social or environmental related, compared to none and 30% in the United States for the same proposal categories respectively. U.K. shareholder proposals receive significantly more favorable votes than their counterparts in the United States. In contrast to prior empirical evidence, they find that shareholder proposals have a significant, positive impact on firm performance and corporate behaviors. Their findings are attributed to the differences in the rules governing shareholder activism across the two countries. Overall the existing literature's focus on explaining vote outcomes and the impacts of shareholder proposals on firm behaviour, has meant that most studies tend to be descriptive in nature. In addition, most studies on shareholder proposals (and shareholder activism more broadly) tend to focus on the United States and United Kingdom (see for example: Ferri, 2011; Gillan and Starks, 1998, 2007; Karpoff, 2001; Romano, 2001; Becht et al., 2010).

Theoretically, agency (Jensen and Meckling, 1976), organizational (Hirschman, 1970) and stakeholder theories (Freeman 1984; Mitchell et al., 1997) inform existing work on shareholder proposals. For the most part, these studies are more interested in theoretical debates around the monitoring role of shareholders, principal-agent dilemmas between investors and firms and information asymmetries in the market for control over firms. As such, discussions around themes of central concern in this dissertation – private power and authority – typically do not feature in great detail. Examples of work that have touched on these themes from a sociological and/or global governance lens, are briefly discussed next.

Erin Reid and Michael Toffel (2009) investigate the conditions under which firms will participate in the collaborative efforts to reduce greenhouse emissions, given this task will involve costs and require firms to give up a vast amount of information on their carbon risks, opportunities, strategies and emission levels. Building on social movement theories on organizational change, the authors posit that shareholder pressure and regulatory threats are likely to prime firms to adopt practices consistent with the aims of a broader social movement for climate action. In this work by Reid and Toffel (2009), shareholder proposals mainly serve as an exemplar of the private political sphere, just as state regulation serves as an illustration of the public political sphere. The authors maintain that shareholder resolutions directly challenge prevailing organizational field frames by disputing both the morality and financial sustainability of current corporate practices. Field frames are "the technical, legal, or market standards that define the normal modes of operation within that specific field' that help to structure firms' activities and interactions and 'provide order and stability in an organizational field" (den Hond and de Bakker, 2007, p. 905 in Reid and Toffel, 2009, p. 1159). These standards, in turn, "define the set of appropriate practices, norms, and beliefs that govern the behavior of firms within institutional fields" (Lounsbury, Ventresca and Hirsch, 2003 in Reid and Toffel, 2009, p. 1159). Though interesting, Reid and Toffel (2009) do not elaborate on the implications of shareholder resolutions as form of private politics for political power and authority more broadly and could have benefitted from a deeper exchange with international relations scholarship on transnational advocacy and norm diffusion.

Philip Pattberg's (2005) article provides an integrated model through which the necessary conditions for the emergence of private governance can be assessed and understood. Specifically, he suggests that enabling conditions for this emergence occur at the macro and micro levels, with a focus on cooperation between firms and non-profit organisations. For the former, he focuses on global economic transformations and contextual factors at the international level, whereas for the latter he examines the structure of the specific problem at hand, and the available organizational resources of the actors involved (Pattberg, 2005, p. 590). The two empirical cases used to illustrate his model are the Forest Stewardship Council and the Coalition for Environmentally Responsible Economies (CERES). The cases represent some variation with the former being focused on a single issue (sustainable forestry) while the latter covers a broader set of issues related to corporate environmental responsibility. Pattberg (2005) engages with the literature on private governance in some detail and his discussion of three relevant analytical dimensions is especially helpful:

> Private governance consists of at least three analytical dimensions: first, the procedural dimension of governance, which emphasizes the activities of private transnational actors; second, the structural dimension of governance, which highlights the distinct "architecture" of a governance arrangement, including norms and rules, networks and actor constellations, as well as formal or informal links to other areas of governance; and third, the functional dimension of governance, which focuses on the material and ideational outcome of a private governance arrangement as a functional equivalent to forms of national or international public governance. (p. 592)

In elaborating the connection between private governance and authority, Pattberg (2005) argues that cooperation and forms of private governance differ based on the authority involved in a specific actor constellation (p. 593). While rich both theoretically and empirically, it should be noted that the case study on CERES does not focus on the group's shareholder resolution filing activities specifically. Therefore, Pattberg's insights on private governance and authority relate more to his thematic concern on likely conditions of for cooperation between NGOs and firms, rather than on how power dynamics play out in the proposal filing process itself.

Although writing from a legal perspective, Backer (2008) shares Pattberg's interest in how processes of global governance are shifting traditional boundaries and divisions between the state, market and civil society. Backer (2008) observes that corporate governance issues "once considered strictly economic and confined to internal corporate stakeholders, have been broadened to include outside stakeholders beyond the regulatory authority of the chartering state" (p. 1807). The author analyses a series of cases related to golden shares – a type of share that gives its shareholder veto power over changes to the company's charter. He does so in order to explore whether, when taken together, the cases articulate a system of rules governing both the choice of law applicable when states seek to act as investors and the substance of the choice under European law (Backer, 2008, p. 1828). He notes that the cases suggest that

> states have begun to avoid legislation in favor of either soft law or influencing behaviour in the manner of private entities. In a world in which public authorities seek to act like private corporations and private corporations seek to act like public authorities, choice-of-law issues become more complex. In addition to the usual issues of choices among private legal regimes, the current realities of public and private entity behaviour now suggest that the choice of law in international private transactions might involve consideration of the application of public law as well (Backer, 2008, p. 1846).

In this context, "states as shareholders" represent an old activity with a potentially significant both in quantity and quality from the past. State shareholders are no longer limited to the old Marxist-Leninist state enterprises of Eastern Europe, Maoist China and Castroist Cuba. States no longer solely invest in the shares of domestic corporations. Nor are state holdings of private corporate shares limited to strictly passive holdings. Instead, "states appear ready to invest in private companies, and to exercise the rights of shareholders to the full extent permitted under the law" (p. 1863). Backer's article is complex and covers a tremendous amount of ground. Despite valuable insights on the legal implications of blurred boundaries between public and private actors in the context of shareholder voting, a detailed exposition of the implications of these shifting boundaries beyond the realm of jurisprudence remain (justifiably) outside the scope of Backer's analysis. As a consequence, little ground has been covered linking shareholder resolutions and private power and authority specifically.

As explained in Chapter 2, the broader social impacts of investor activism usually remain outside the scope existing studies on the topic, and my review of work on shareholder proposals serves as a deeper illustration of this claim. Critical, sociological and constructivist perspectives, though prevalent in the literature on corporate social responsibility (CSR)[76], are only recently being taken up in studies of responsible investment and shareholder activism. Recall that Chapter 2 argues existing theoretical approaches are limited in their ability to move discussions of shareholder power beyond the investor-firm dyad, vary in their genuine engagement with the influences of a broader set of actors (including the state and civil society) and generally do not consider how the exercise of shareholder power via shareholder advocacy may entail particular implications for the issues and actors that are the subject of these efforts, and that these implications may occur at varying geographic scales: local, national and international. Consequently, I propose that moving away from materially and instrumentally-rooted conceptions of power towards a more socially-contingent conception is essential for moving towards a more holistic understanding of shareholder power that overcomes the aforementioned limitations.

In this regard, I return to Barnett and Duvall's (2004) framework of power in order to tackle the under-socialized view of shareholder power that has persisted in the literature on shareholder activism and shareholder proposals thus far. Their framework not only captures both material and normative dimensions of power, but also enables an understanding of investors as co-creators of social systems and as agents who are actively shaping and legitimizing a particular discourse around the social responsibilities of firms through their shareholder advocacy work. Viewing the existing literature on shareholder proposals from Barnett and Duvall's (2004) framework, it is evident that discussions of shareholder power may have paid attention to

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[76] See for example Gond and Moon, 2012; Gond and Piani, 2013; Gond and Boxenbaum, 2013; Cabantous, Gond, . and Johnson-Cramer, 2009.

compulsory, structural and institutional dimensions. However, the productive aspect has not been addressed in any meaningful way as yet. Productive power concerns the constitution, through systems of knowledge and discursive practices, of social subjects with various social capacities and interests. The involves a move away from structures to systems of signification and meaning. Thus, productive power concerns the social discourses through which meaning is produced, fixed, lived, experienced, and transformed. These discourses in turn produce or consolidate social identities and capacities.

Responding to this gap in understanding shareholder proposals in terms of productive power, the remainder of the chapter departs from the well-travelled routes in the literature and seeks instead to re-frame shareholder proposals as a discourse structure. Doing so, I suggest, creates a broader space within which to engage with how the filing of shareholder proposals serves to inform, legitimize and consolidate private power in a myriad of ways that have previously been ignored. On the empirical side, I convey this argument through a focus on the Canadian context, given the country's relative neglect as a site for analysis.[77] I generally accord closer attention to examples of Canadian proposals filed on human rights issues. This is because while traditional corporate governance and environmentally-focused shareholder proposals have been analysed, at the time of writing this chapter I am not aware of any study that examines human rights-related proposals exclusively.

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[77] Existing work on the shareholder proposals in the Canadian context includes: Hutchinson, 1996; MacIntosh, 1996; Montgomery, 1996; Foerster and Huen, 2004; Morgan and Wolf, 2007; Chowdhury and Wang, 2009; Wang et al., 2005; Yaron, 2003; Dhir, 2012; Coumans, 2012; Oshionebo, 2012; Yang, Wang, An, 2012.

5.3 Framing shareholder proposals as a discourse structure

Building on the work of social theorists,[78] discourses are viewed as "systems of meaning-production that fix meaning, however temporarily, and enable us to make sense of the world and to act within it" (Dunn and Neumann, 2016, p. 2). Scholars who employ a focus on discourse often do so because they reject notions that knowledge is separate from the social realm and rather see knowledge as constitutive of reality. In this section, I outline an argument for why shareholder proposals can be viewed as a discourse structure. I do this by showing how shareholder proposals cohere with three defining properties of a discourse structure as presented by Dunn and Neumann (2016) to the extent these proposals are a) *structured* b) *relational/emergent* and c) *a conduit through which social power is expressed and/or reinforced*.

By undertaking the task of highlighting the sociological properties of shareholder proposals, my work builds on the ideas of scholars such as Peter Katzenstein (1996), Nicholas Onuf (1998) and Alexander Wendt (1992) who have argued that the interests of actors are not fixed and dependent solely on the structure of the system, but depend on the 'collective meanings that constitute the structures' within which states operate (Wendt, 1992, p. 394-397; Price and Reus-Smit, 1998). This analytical task matters because if shareholder proposals can be viewed as repositories of social power hierarchies that are mutable or liable to change, then we can begin to imagine and indeed advance ways in which such mechanisms of shareholder power can be harnessed to deliver on the promises of social transformation that purportedly define the responsible investment movement. If these mechanisms of shareholder power serve only private

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[78] Typically works by leading social theorists including Marx, Gramsci, Althusser, Habermas, Foucault and Bourdieu are employed in order to examine ideologies and power relations involved in discourse.

interests while marginalizing others, dissatisfaction with the gap between the rhetoric of the responsible investment movement and its actions may prompt a crisis of legitimacy in the future.

5.3.1 **Structured properties of shareholder proposals.**

Discourses are structured in the sense that they produce a "field of intelligibility" – or a measure of how comprehensible a piece of communication is, under given conditions within the social realm (Dunn and Neumann, 2016, 3). I argue that this "field of intelligibility" in the case of shareholder proposals draws from (i) the technocratic language of corporate discourse involved in crafting and submitting these proposals, and (ii) the performative aspect of filing proposals, in that the overt goal of investors filing such a proposal is always to elicit some type of response or change in behaviour from the firm's managers.

The first way that shareholder proposals are "structured" is through the use of language. Language, in this sense, is social - a series of collective codes and conventions through which things – objects, subjects and material realities – are given meaning and endowed with particular identities (Dunn and Neumann, 2016). The language within shareholder proposals follow predictable rules and rhetorical strategies anchored in corporate discourse. Yet, as Chelli and Gendron (2012) argue, "the universe of corporate discourse is not an open cosmos. It tends to favour certain perspectives, while marginalizing and excluding others" (p. 3). There is a direct link between the discourse involved in filing shareholder proposals on social or environmental issues, and the "performance" (performativity) of corporate social responsibility between investors and firms. In this respect, discourses are more than purely ideational, and have direct materiality because of the inextricable link to practice. Dunn and Neumann (2016) suggest that: "since discourse maintains a degree of regularity in social relations, it produces preconditions for action. It constrains how the world is ordered, and so, how people categorize and think about the world. It constrains what is thought of at all, what is thought of as possible, and what is thought of as the 'natural' thing to do in a given situation" (p. 4). This ordering and naturalizing function of discourse is legitimated through prevailing legal, normative and corporate governance systems that delineate the bounds of shareholder proposals. In this way, the regular filing of shareholder proposals become sites that naturalize what the text of a proposal may contain, who can file proposals, the circumstances under which a shareholder proposal may be ignored by the firm, or what behaviour is considered appropriate for a firm.

5.3.2 **Relational/emergent properties of shareholder proposals**

Although shareholder proposals are structured as described above, this structure is permeable, fluid and subject to change. Hence, shareholder proposals are relational or emergent as well. Without re-visiting the considerable agency-structure debates, here it is helpful to draw on Margaret Archer's (1995) *Realist Social Theory: A Morphogenetic Approach* to explain what I mean by relational/emergent properties of social structures. Archer's central idea of morphogenesis conveys that processes of change occur for agents and social structures in interlocking and temporally complex ways. Agents are formed within a set of social structures – norms, language communities, power relationships–however, on a larger time scale, the structures themselves change as a result of the activities and choices of the historically situated individuals who make them up (Archer, 1995, p. 16). Given their constructed nature, discourses are continuously contested, open-ended and incomplete (Dunn and Neumann, 2016, p. 3). The Canadian example that follows illustrates how the properties of emergence and contestation manifest through changes in who constitutes a legitimate filer of shareholder proposals or what counts as acceptable subject for such proposals.[79]

As noted in section 5.1, shareholder proposals are regulated in Canada via the Canada Business Corporations Act (CBCA) and the Bank Act. Provisions on shareholder proposals within these Acts were amended in 2001 and 2005 respectively (Yang et al., 2012). The amendments included restrictions on who could file shareholder proposals and on what issues. With regard to the former, existing provisions stipulated that only shareholders who were eligible to vote at a company's annual meeting could submit proposals, thereby precluding beneficial owners[80] of shares from submitting proposals. In relation to the latter, exceptions under the CBCA and Bank Act restricted the scope of shareholder proposals (Yang et al., 2012). Specifically, under the CBCA, a corporation was not required to include a proposal in its proxy circular, if the proposal's primary purpose was to promote "general economic, political, racial, religious, social or similar causes" (Oshionebo, 2012, 628). Consequently, proposals touching on social issues such as human rights were not required to be included in a corporation's proxy solicitation materials. Thus, in *Varity Corporation v Jesuit Fathers of Upper Canada*, the Ontario High Court would not compel the corporation to distribute a proposal aimed at abolishing apartheid in South Africa (Oshionebo, 2012, p. 628). These constraints made filing shareholder proposals an unattractive route to influence corporate practices, especially on social

[79] This example is used as an illustration for how shareholder proposals (as a discourse structures) are prone to change based on socio-political factors. This example should not be confused with the detailed case analysis of shareholder proposals presented in Section 5.5.
[80] Refers to a person who owns shares through a trustee, legal representative, agent or other intermediary. Specific property rights in equity belong to a person even though legal title of the property belongs to another person (Black's Law Dictionary, 2001, p. 508).

and environmental issues, and very few proposals were filed before 2001.[81] The breadth of exceptions under the pre-amendment CBCA and the Bank Act prompted calls for a re-evaluation of the shareholder proposal mechanism. In response, the House of Commons passed Bill S-11 in 2001, liberalizing the mechanism under the CBCA and in 2005 it amended related provisions under the Bank Act. In particular, the eligibility rules were relaxed in both statutes and the prohibition on proposals aimed at "general economic, political, racial, religious or similar causes" was abolished (Oshionebo, 2012, p. 629).[82] The changes represented the "liberalization" of the shareholder proposal framework in Canada (Yaron, 2003, p. 111) and created optimistic expectations for greater willingness for institutional shareholders to express their governance preferences (Sarra, 2003).

Under the amended rules, the CBCA allows a shareholder proposal to be submitted by someone who has been a registered holder or beneficial owner of the "prescribed number of shares" and for the "prescribed period of time" (Oshionebo, 2012, p. 630).[83] These restrictions aimed to strike a balance between the concerns of management around frivolous proposals/operational costs of dealing with many proposals, and the abuse of the right to submission enshrined in the privy of shareholders to participate in corporate governance. The CBCA addressed criticisms that its new provisions pose an economic barrier for minor

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[81] Based on Oshionebo's (2012) research, less than three shareholder proposals were filed per year from 1982-1996 with modest increases in the following years (p. 629).

[82] The amended CBCA, the amended Bank Act and provincial statutes in Alberta, BC and Ontario grant "registered holders" and "beneficial owners" the right to submit proposals. Provincial corporate statutes in Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, The Northwest Territories, Saskatchewan and the Yukon have not been amended to that effect and the right to submit proposals is confined to shareholders entitled to vote at AGMS (Oshionebo, 2012, p. 630).

[83] These restrictions are covered in Section 46 Canada Business Corporations Regulation. The prescribed number of shares is the number of voting shares that is one percent of the total number of a corporation's outstanding voting shares, or whose fair market value is at least $2000. The prescribed period is six months prior to the submission of the proposal.

shareholders by allowing them to pool their shares in order to meet the minimum requirements (Oshionebo, 2012, p. 631).

Although the amendments broadened the scope of shareholder proposals to include general economic, political, racial, religious, social or similar issues, parallel amendments were not made at the provincial level.[84] These gaps provide a legal loophole for corporations who wish to ignore some proposals and exclude them from proxy solicitations (Oshionebo, 2012, p. 632), thereby potentially barring proposals on topics like human rights. In addition, several exceptions based on shareholder status, timing and content continue to limit the rights of shareholders to include proposals in the corporation's proxy circular.[85] A provision that retained from the pre-amendment version is especially noteworthy. A corporation may exclude a proposal if the shareholder's right to submit a proposal is "being abused to secure publicity' (Oshionebo, 2012, p. 635). However, by their very nature, proposals on human rights and environmental protection issues tend to attract publicity and public debate, and the likelihood of such publicity does not

[84] Canada's regulatory landscape is somewhat unique in this regard. The CBCA is the regulatory framework for corporate law in Canada, while the regulation of capital markets is provincially regulated via ten separate securities regulators. As a result, corporate and securities laws have different policy goals, jurisdictional reach and enforcement mechanisms (Puri, 2004). Corporate law is generally concerned with the internal governance of the corporation and is primarily focused on the responsibilities, duties and liabilities of directors and mangers and the rights of shareholders (Puri, 2004, p. 8), A uniform corporate law code facilitates the efficient operation of business, reduces transaction costs and enhances economic efficiency by providing a default set of rules that governs provides a set of default rules that govern the relationships between the shareholders, directors and managers (Puri, 2004,p. 8). Securities laws are concerned with protecting investors and fostering fair and efficient capital markets (Pur, 2004, 9). Securities laws achieve these objectives by regulating corporations that issue their securities to the public. They mandate disclosure of material information to the market. Whereas corporate law is focused on shareholders, securities laws are focused on investor (Puri, 2004).

[85] See Oshionebo (2012): Exclusions of a shareholder proposal are permissible if: requirements to submit the proposal within 90 days before the anniversary date of the notice of meeting that was sent to shareholders in connection with the previous annual meeting are not met; if the shareholder failed to present a proposal that was circulated in the management proxy circular at a shareholders meeting within the previous two years; a similar proposal presented previously at a meeting that took place within the last five years did not receive the prescribed minimum level of support and if the submitting shareholder no longer holds the prescribed number of shares on the day of the meeting and may exclude from any meeting held in the following two years any proposal submitted by such a shareholder (p. 633-634).

necessarily amount to "abuse" of the shareholder's right to submit a proposal on controversial topics (Oshionebo, 2012, p. 635). Another major limitation in the amended legislation is the "significant business or affairs" exception, allowing a corporation to exclude a proposal if it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation. This potentially could allow management to exclude a proposal on human rights because it did not significantly relate to the corporation's business or affairs (Oshionebo, 2012, p. 635). For that reason, it has been suggested that this exception in effect, mirrors the pre-amendment CBCA's exclusion of proposals that sought to promote general causes (Oshionebo, 2012, p. 635). Tracing changes to "who counts" and "what counts" in the context of filing shareholder proposals in Canada highlights the interlocking processes by which the behavior of firms and investors is shaped within a set of social structures, corporate discourse and power relationships, but more importantly, that over time, these structures themselves may evolve as a result of the historic contingency of the agents who inhabit them.

Here, I am in broad agreement with Aaron Dhir's (2012) assessment that "[s]hareholder proposals, while under-theorized, provide a valuable lens through which to consider the argument that economic behaviour is embedded within social relations" (p. 99). Dhir comes to this conclusion through case study analysis of a shareholder proposal filed at Canadian mining firm Goldcorp Inc.[86] that problematizes the proposal as a human rights advocacy tool and examines it as a site of contestation between diverse stakeholders. Rooted within Third World

[86] Dhir's (2012) case study focuses on the 2008 shareholder proposal to Vancouver-based Goldcorp Inc. filed by a consortium of investors. The consortium requested that the firm's Board commit to an independent human rights impact assessment of business practices in Guatemala, in particular, with respect to the Marlin mine in the western highlands. This mine is operated by Montana Exploradora de Guatemala S.A., a wholly-owned Goldcorp subsidiary.

Approaches to International Law (TWAIL), Dhir notes that his analysis of the Goldcorp case serves as a reflexive pause for his earlier support of corporate law tools in advancing the international human rights enterprise and the view that investment activism can be an essential component of this advancement. The main concern he raises is that although socially conscious shareholder proposals strive to address potential corporate involvement in human rights–violating activities, this goal is pursued only under the overarching umbrella of financial risk reduction (Dhir, 2012, p. 107). While conceding that these two goals – financial risk reduction and avoiding corporate complicity in human rights violations may be in harmony, the fact that the interests of affected communities may conflict with those of proposing investors cannot be ignored (Dhir, 2012, p. 107). In the Goldcorp scenario, there is a clear divergence in interests; investor risk mitigation on one hand, juxtaposed against Guatemalan communities' desire to end the firm's subsidiary operations altogether (Dhir, 2012, p. 107).

Mutua (2001, in Dhir, 2012) "argues that contemporary human rights advocacy and discourse is characterized by a 'damning metaphor' consisting of savages, victims, and savior. He asks human rights actors to engage in a process of critical self-reflection and cautions against perpetuating the image of agency-lacking victims who are rescued by Western saviors operating upon the tenants of liberalism. Despite good intentions, there is a real danger of replicating the dominant/submissive binary of the colonial encounter" (p. 201-207). Dhir (2012) therefore suggests that "the act of Western, human rights–concerned shareholders submitting a proposal that may affect local communities in the Third World country of business operations, followed by an investor-corporation memorandum of understanding (MOU) that does not contemplate representation from affected communities on the body overseeing an impact-assessment process, falls squarely within the metaphor that Mutua impugns" (p. 108). In Dhir's (2012) assessment, the Goldcorp situation had the potential to perpetuate power differentials, fortify race hierarchies and undermine the goals of autonomy and self-determination.

5.3.3 **Shareholder proposals as a conduit for social/shareholder power**

Dhir's assessment above points to a third way in which shareholder proposals can be viewed as a discourse structure, via their ability to act as a pathway through which social power relations are expressed. The view that discourses are productive of "reality" - what can be known and acted upon – underscores a well-established link between discourse and power (Foucault and Gordon, 1980; Derrida, 1981). For social theorists examining the nature of social power and power abuse, a key task is to investigate the ways dominance is *expressed* or *enacted* in discourse.

Discursively implemented dominance involves "preferential access to text and context taken as a basis or resource of power, comparable to such social resources as wealth, income, status, knowledge and education" (Van Dijk, 1995, p. 20). Patterns of discourse control and access are closely associated with the expression of social power (Fairclough, 2015; Wodack and Meyer, 2016). Thus, whereas ordinary people only have active access to, and control over discourse genres such as everyday conversations with family members, friends, or colleagues and more passive access to bureaucratic and media discourse, elites have access to and control over a vast array of both informal as well as public and institutional forms of text and talk (Van Dijk, 1995, p. 20). In this respect, shareholder proposals are a highly restricted, privileged form of discourse and the language of shareholder proposals cannot be considered "lay" or "everyday" language.

Attending to the substance of shareholder proposals as a conduit for social power means unpacking how this discourse structure serves to sustain and reproduce power relations in specific communicative situations[87] (Habermas, 1984; Fairclough, 2015; Goodman et al., 2014). As elites, shareholders have preferential access to corporate discourse, where this access is defined in terms of their social or institutional position as shareholders in the firm, or their function as providers of capital in financial markets. The preferential access to and control over the discourse and properties of shareholder proposals are forms of the direct enactment of social or institutional power held by investors (Van Dijk, 1995). Through shareholder rights, institutional investors are permitted to engage in action that is prohibited to others (non-investors, affected communities, regulators), or they may force or oblige others (in this case the firm, society and regulators) to engage in discourse or use discourse properties as desired, thereby limiting the power of marginalised social actors (VanDijk, 1995; Coumans and Kirsch, 2011; Coumans, 2012).

Discourse however, is not limited to verbal action, but involves meaning, interpretation and understanding as well. This means that preferential access to corporate discourse entailed in shareholder proposals or control over its properties (eg. specific, preferred topics) may affect the minds of others (VanDijk, 1995, p. 21). That is, institutional investors, as powerful social actors not only control communicative action, but indirectly the minds of recipients (firms, society and

[87] A communicative situation is one where language is used to frame cooperative action undertaken by individuals based upon mutual deliberation and argumentation (Habermas, 1984). In Habermasian-derived scholarship, this situation is dependent on 'communicative rationality' which unlike purely instrumental forms of rationality as presented in traditional economic theory is self-reflexive and open to a dialogue in which participants in an argument can learn from others and from themselves by reflecting upon their premises to question assumptions on which knowledge is grounded. Communicative action is action based upon this deliberative process, where two or more individuals interact and coordinate their action based upon agreed interpretations of the situation (Habermas, 1984).

regulators) through exceedingly complex mechanisms of influence. For example, recipients in a specific context and given their extant knowledge and beliefs, may disregard, reject, disbelieve or otherwise act in opposition to the intentions of powerful speakers or writers (Van Dijk, 1995, p. 22). These may be a function of power, status or credibility of the speaker/writer, as well as a function of the properties of text or talk. These dynamics are highlighted, for example, in the ways corporate managers may disregard or resist efforts to align firm behaviour with global human rights norms by making use of legal exceptions to what topics may be included in the firm's proxy circular discussed earlier.

To illustrate how these discursive shareholder mechanisms function to influence actors beyond the firm, it is helpful to consider Hill's (2015) elaboration of debates around shareholder power that discursively cast investors either as hapless principals at the mercy of devious agents (firms/managers) or as aggressive owners whose powers of interference in the firm need to be curbed. Depending on which image of the shareholder is employed, Hill convincingly argues that the resulting perceptions can affect the self-image of not only regulators, but also the courts, which can in turn, influence legal outcomes relating to shareholder rights (Hill, 2015, p. 61).

In a similar vein, Jackie Cook's (2012) article assesses shareholder activism through investor-driven networks. Although not focused on shareholder proposals exclusively, she finds that through corporate engagement, investors not only shape the behaviour of individual companies, as well as influence the public policy and regulatory agenda in order to spur systemic changes. These mechanisms of influence study two shareholder campaigns in the United States on climate change and hydraulic fracturing respectively. Taking a more critical view, Coumans (2012) explores consequences for community agency in defense of social and environmental values as a result of relationships that evolve between "socially responsible investment" firms and mining companies through collaborative undertakings. Examined in the context of concerns about the human rights violations related to Goldcorp's Marlin mine in Guatemala, Coumans' (2012) assessment concludes that the relationship Goldcorp entered into with SRI firms through the latter's shareholder resolution led to a flawed human rights impact assessment process that was protective of the company's interests but harmed the ability of affected communities to defend their interests.

Having argued that shareholder proposals meet key defining properties of a discourse structure as presented by Dunn and Neumann (2016), my analysis can now move on to testing the empirical validity of this proposition.[88] In the section that follows, I suggest critical discourse analysis (CDA) as a valuable approach for this effort. I first define the CDA approach and then move on to elaborating the key analytical questions and strategies needed for a robust empirically-grounded assessment of shareholder proposals using this approach.

5.4 Analyzing shareholder proposals as a discourse structure

When studying the role of discourse in society, CDA especially focuses on (group) relations of *power*, *dominance* and *inequality,* and the ways these are *reproduced* or *resisted* by social group members through text and talk. Much work in CDA is about the underlying ideologies that play a role in the reproduction or resistance against dominance or inequality.

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[88] Some observers may point out that an inherent limitation of the approach I have adopted here is that it is illegitimate to derive a theoretical proposition from a case and then test it against the same case (Bennett, 2004). This critique would be based on the fact that observations from the Canadian context inform Section 5.2 and that the Canadian case is further analyzed in Section 5.4. However, as Andrew Bennet (2004) notes "it may be possible to develop a hypothesis from a case and then test it against different evidence in the same case" (23). I suggest that my study fulfils this criterion given its large-N design which departs previous from single-N studies. By looking for new evidence in support of the theorised idea of shareholder proposals as socially-embedded phenomenon, this study can be viewed as an "independent corroboration" (Bennett, 2004, 24).

Among the descriptive, explanatory and practical aims of CDA-studies is the attempt to *uncover, reveal* or *disclose* what is implicit, hidden or otherwise not immediately obvious in relations of discursively enacted dominance or their underlying ideologies (VanDijk, 1995, p. 18). According to Fairclough (1993), CDA:

> aims to systematically explore often opaque relationships of causality and determination between (a) discursive practice, events and texts and (b) wider social and cultural structures, relations and processes; to investigate how such practices, events and texts arise out of and are ideologically shaped by relations of power and struggles over power; and to explore how the opacity of these relationships between discourse and society is itself a factor securing power and hegemony (135). Moreover, discursive practices and social structures are co-constitutive.
> (p. 134)

Thus, the analytic method derived from this view includes the "linguistic description of the language text, interpretation of the relationship between the discursive processes and the text, and explanation of the relationship between discursive and wider social processes" (Fairclough, 1989, p. 97).

In line with these broader objectives of CDA and recalling my earlier arguments for framing shareholder proposals as a discourse structure, my framework for evaluating shareholder proposals through this lens involves attention to the following three areas:

1. how shareholder proposals are structured as expressions of corporate discourse and link to the performativity of corporate social responsibility (CSR). This link is important because shareholder proposals on human rights issues are filed with the intention of effecting a change to corporate policies and practices relating to their social responsibilities.

2. how shareholder proposals are relational and emergent, in the sense that investor discourses on human rights influence behavior of other social actors/vice-versa and may shift over time.

3. how the social power of different stakeholders is confirmed, consolidated or contested through the discourses used by investors within shareholder proposals.

To address these issues systematically, I adopt the research strategy offered by Dunn and Neumann (2016) that suggests organizing the analysis of discursive data (in my case shareholder proposals) into three domains: *concepts, representations* and *themes*. Each of these terms are explained next.

Concepts are cognitive tools that help us to draw inferences about the entities we encounter. I suggest two concepts are central to the subject of study: shareholder power and corporate social responsibility. The links between these two concepts are key because, at its core, the filing of a shareholder proposal on a particular human rights issue is an exercise in how investors leverage shareholder power to enhance corporate social responsibility. A critical approach to analysing these key concepts within shareholder proposals involves evaluating multiple understandings of each concept that are referenced in the text (representations) and how language around a concept has been framed (themes), by whom and to what ends, as well as how the meanings and practices have changed over time and space (discursive shifts) (Dunn and Neumann, 2016, p. 6).[89]

Representations consolidate the idea that meanings are socially reproduced. "Representations that are put forward time and again become a set of statements and practices through which certain language becomes institutionalized and 'normalized' over time…When

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[89] Note that cognition is a key element here. I do not evaluate cognition by looking at how individual agents understand key concepts, but rather how discursive elements within the texts of shareholder proposal convey how investors understand, interpret and apply these concepts in practice. This is in line with the emphasis on structural factors in analysing the impact of shareholder activism on human rights.

people who articulate the same representations organize, they make up a position in the discourse" (Dunn and Neumann, 2016, p. 5). In this study, I examine what positions investors take up in the global discourse around private actor human rights compliance by looking at the representations they adopt within the texts of shareholder proposals. Demonstrating institutional discourse can simply be done by revealing metaphors that regularly appear in the same texts. Here, I investigate contrasting representations of corporate social responsibility by drawing on Arikan et al., (2017) in order to evaluate whether the discursive strategies used by investors within shareholder proposals on human rights reinforce a limited set of social responsibilities for the firm (firm as trader) or whether they take a more expansive, stakeholder-driven view (firm as citizen). Furthermore, I examine diverse representations of shareholder power by studying the varied forms of authority investors use within the texts of shareholder proposals in order to advocate for corporate compliance with global human rights norms and standards.

Finally, **themes** are meaningful categories within a body of data (Fulcher, 2010, 5).[90] For the two key concepts in my study, corporate social responsibility and shareholder power, I returned to the existing literature to identify related themes and representations so that the text could be coded systematically. The process was structured iteratively so that additional themes or representations not uncovered in the literature could be added into the framework as the text was coded. However, as the initial set of codes identified were fairly comprehensive, very limited changes were made once the coding process was underway.[91] Sections 5.4.1 and 5.4.2 provide a

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[90] In essence, concepts are the big ideas being considered, representations are competing versions of this big idea and themes are the bite-sized pieces of text within a shareholder proposal that speak to one or more of the competing versions of the big idea. We should think of these as nested such that themes aggregate into representations, and representations aggregate into concepts.
[91] Where changes to the coding structure were made, an explanatory footnote is included.

brief overview of the key representations and themes on CSR and shareholder power that are evident in the literature.

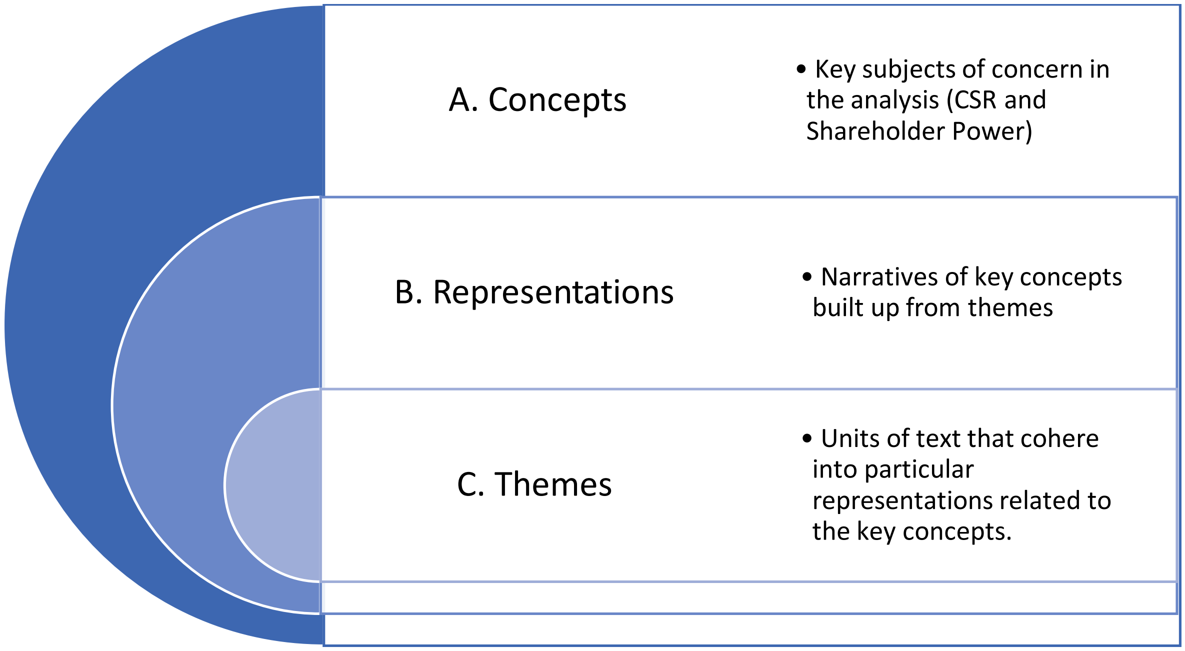

Figure 5.1. Strategy for organising text data in CDA
(Adapted from Dunn and Neumann, 2016)

5.4.1 **Discursive representations of corporate social responsibility (CSR)**

Shareholder proposals on human rights are about eliciting better corporate social responsibility (CSR) from firms, and hence CSR itself is key concept of concern within this analysis. Much of the CSR literature has revolved around the shareholder/stakeholder debate regarding whether firms indeed have social responsibilities. The economic theory of the firm as articulated by Jensen and Meckling (1976) conceptualizes the firm as a nexus of contracts between parties – primarily shareholders, directors, employees, suppliers and customers. Essentially, the firm is a “trader” and viewing the corporation as an entity with independent existence is rejected (Jensen and Meckling, 1976). Accordingly, CSR - defined as “actions that appear to further some social good, beyond the interest of the firms and which is required by law" (McWilliams and Siegel, 2001, p. 117) is seen as being outside the firm's purpose and obligations. As Margolis and Walsh (2003) note, this view holds that firms already advance social welfare in the economy, and do so best, by creating economic wealth through maximizing firm value for shareholders (see also: Jensen, 2002; Friedman, 1970). In other words, maximizing shareholder value advances social welfare (Arikan et al. 2017, p. 4). This view leads to a very narrow conception of corporate responsibilities, which as Scherer and Palazzo (2011, 904) note is based on three premises: First, is a very clear separation of roles between states and firms, where social problems are best dealt with by states; second, the core responsibilities of firms are fiduciary duties to their shareholders; and third, promoting social welfare beyond legal duties is permissible only if it advances long-term shareholder value. This assumption drives much of the academic scholarship devoted to showing that CSR is consistent with maximising wealth, and even contributes to it (Margolis and Walsh, 2003).

Taking a different view, under the notion of "corporate citizenship," firms have an "obligation to constituent groups in society other than stockholders" (Jones,1980, p. 59). This view stresses that the corporation is a state-created entity with a legal personhood. As a person, the corporation assumes "its rightful place in society, next to other "citizens," with whom the corporation forms a community. Citizenship then focuses on rights and responsibilities for all members of the community, which are mutually interlinked and dependent on each other (Waddell, 2000). This new political role of the corporation is normatively reflected in the 'willingness and capacity of the corporation to participate in the public process of exchanging arguments, its engagement in solving broader societal challenges, and its accountability and transparency (Scherer and Palazzo, 2007, p. 1109). As political actors, corporations can protect or underpin the rights of individual stakeholders, particularly in contexts where there is incomplete regulation (Matten and Crane, 2005). The redrawing of lines separating the state and the corporation are especially salient in the context of globalization. In the global economy, and where supply chains span borders, the state has often failed to act as the guarantor of social, civil and political citizenship rights. Matten and Crane (2005) argue that the outcome is a form of "civil regulation" where transnational corporations co-create new global regimes of private governance, such as multi-stakeholder forms of CSR alongside civil-society actors.

In practice, where corporate responsibility is heavily contested and complex such as in the domain of human rights, corporate discourse on the appropriate role of firms in society might be more fluid. For instance, Arikan et al's (2017) analysis of written submissions to the United States Securities and Exchange Commission's consultation on proposed legislation regarding 'conflict-minerals' showed that corporations, investors and civil society[92] each employ "citizen" and "trader" arguments. However, they argue that the politico-ideological coordinates underlying this rhetoric are readily identifiable. CSR discourse, even when appearing to change direction depending on prevailing institutional winds, can be revelatory of more fixed material interests. It is the responsibility of researchers to penetrate discursive facades and expose the political programmes that underpin CSR rhetoric" (Arikan, et al., 2017, p. 14). Taking up this task, the analytical framework that follows could help evaluate the extent to which competing views of the social responsibilities of the firm (citizen vs. trader) are evident within the discourses employed by Canadian investors within shareholder proposals on human rights.

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[92] Note their analysis groups "ethical investors" with civil society.

5.4.2 Discursive representations of shareholder power

Just as debates around the appropriate role of firms in society characterize much of the CSR literature, there exists an important debate about whether or not investors should be further empowered to engage in shareholder activism (social or otherwise). Accepting that shareholders are not a homogenous group, Hill (2015) argues that diverse images or representations of the shareholder lie across a continuum in terms of shareholder power (See also: Anabtawi, 2006, p. 564-565; p. 577; Strine, 2006, p. 1976-6). Some regard shareholder power as innately dangerous, and therefore meriting stronger legal rules, and greater managerial discretion as a constraint (Hill, 2015).

An opposing perspective is that shareholder power should be seen a positive corporate governance attribute (Coffee, 1986). These developments assume that shareholders' power can be harnessed for positive corporate governance purposes – for example to protect their own interests (such as when addressing conflicts of interests between firms and managers), the interests of other shareholders (through the concept of stewardship) and the economy as a whole (quasi-regulators, where shareholder approval can be a check on board power and restore trust in financial markets) (Hawley and Williams, 2000; McNulty and Nordberg, 2016). Furthermore, it is possible, to describe particular shareholders as institutional investors or hedge funds, as inherently 'powerful' because of the financial resources at their disposal and their significant role as providers of capital. Additionally, shareholders may possess power to collectively influence corporate managers (Wells, 2015) and lawmakers (Davies, 2015). Finally, context is crucial. Shareholder power plays out in profoundly different ways, depending on whether corporate ownership structures are dispersed or concentrated (Hall and Soskice, 2001; Hopt, 2011, McNulty and Nordberg, 2015).

Discursive representations of shareholder power matter because, as Hill (2015) demonstrates, they can have very real consequences in other dimensions such as the law, policymaking and indeed capital markets themselves. She notes for instance that a legal distinction between 'sophisticated' and 'unsophisticated investors exist in a number of common law jurisdictions. The definition of a 'sophisticated' investor is by no means uniform, but generally hinges on the presumed enhanced ability of certain shareholders to understand and evaluate investment risk. This is used by regulators to control access to certain types of investment (McNamara, 2010 in Hill, 2015). In addition, the disclosure requirements placed on firms varies, with a distinction made between 'qualified' professional investors and ordinary retail investors.[93] The selective dilution of regulatory protection by reference to investor sophistication can however have the paradoxical effect that disclosure requirements are often waived vis-à-vis members of the very investor groups which are best equipped to understand and interpret such information (Hill, 2015, p. 58). A chilling illustration of this paradox is seen during the global financial crisis of 2008, where evidence suggests that institutional investors did a lackluster job of protecting their own interests over this period (Langevoort and Thompson, 2013, p. 362-363; Tuch, 2015 in Hill, 2015). Hill contends that "there is no clear divide between shareholders in terms of power and sophistication. Rather, some powerful institutional investors are more astute and sophisticated than others. Furthermore, financial sophistication is not boundless – it can be both context, and deal specific (Tuch, 2015 in Hill, 2015). Viewing the global financial crisis through the lens of shareholder power sheds light on the important ways dominant representations of institutional investors are conveyed effects the functioning and rules governing global capital markets.

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[93] See for more information: EU Directive (2003); FMSA (2000) s 86 (7) (b); MiFID (2004), ANNEX 11, S. 11.2.

Building on Hill's arguments, I suggest that an alternative way of analyzing shareholder power is to examine the underlying forms authority that investors may use in a particular communicative situation, such as the filing of a shareholder proposal. I do so by drawing on the work of Avant, Finnemore and Sell (2010) who suggest that the political consequences of the exercise of authority in global politics can be examined through the various sources of authorities that agents draw upon (p. 11). Their typology of these sources of authority is summarised in Table 5.1. The table also lays out a series of implications that would be observed if investor discourses on human rights were drawing on a particular form of authority within in the typology.

It should be noted that Finnemore, Avant and Sell's (2010) framework primarily deals with normative aspects of authority – that is how investors justify their activism on human rights issues and related demands for firm responsiveness to these issues. However, Cutler, Haufler and Porter (1999) remind us that authority is composed of two elements – a normative dimension as noted above, but also an analytical dimension that speaks to how authority itself is structured. To capture this analytical dimension, my framework explores discursive shifts over time with regard to which topics are addressed in shareholder proposals, what demands are being placed on firms, whose human rights are being claimed, which rights are being claimed and geographies of concern within human rights activism by institutional investors.

Table 5.1. Sources of authority in global governance and related observable implications (Avant, Finnemore and Sell, 2010, pp 11-14)

Institutional authority	Derives from holding office in some established organizational structure. This authority is defined and limited by the rules and purposes of the institution that authorizes them. *(OI: 1) If investors are drawing on this form of authority, we would expect to see references to their legally endowed shareholder rights that require them to exercise oversight of a firm's human rights policies.* *(OI: 2) We would also expect to see references to a firm's legal obligations to respect human rights and legal sanctions that could result from failing to meet these obligations.*
Delegated authority	This is authority on loan from some other set of authoritative actors (typically states). The nature of delegation arrangements can vary greatly, as can the ways in which governors interpret, improvise or shirk in these delegation arrangements. "Chains" of delegation may attenuate or sever completely the relationship between preferences (or intentions) of the delegators and governance outcomes on the ground. It should be noted that most institutional investors are acting on the delegated authority of the beneficiaries of the investment fund, endowment or trust. These relationships are mediated by a complex chain of regulators, asset owners, asset managers and investment service providers. *(OI: 3) If investors are drawing on this form of authority, we would expect to see references to their fiduciary duties to these beneficiaries.*

Expert authority	This form of authority is based on specialized knowledge where authority for complex tasks is delegated to technical experts. In addition, this has a principled or moral dimension as most professionals believe that the practice of their profession is a social good and furthers goals of the larger community. *(OI: 4) If investors are drawing on this form of authority, we would expect to see references to their investment-decision making tasks, such as the need for corporate disclosure on particular sustainability topics such that they can make informed investment decisions.* *(O1: 5) We would also expect to see references to concepts like materiality (i.e. the financial impacts of human rights) in line with an emphasis on preserving shareholder value, since institutional investors are expected to deliver on this outcome via their technical expertise in how capital markets work and capital allocation decisions should be made.*
Principled authority	This form of authority is legitimated by service to some widely accepted set of principles, morals or values. Principled claims might be used to galvanize partisan supporters, as with NGOs that are trying to create new issues or set agendas. Appeals to moral values like peace, security and freedom are common authorizing tools for actors seeking to govern globally.[94] *(O1: 6) If investors are drawing on this form of authority, we would expect to see the use of moral frames such as ethics, justice, freedom, equality and harm to justify their advocacy on human rights issues and the need for firms to respond to these issues.* *(OI: 7) We would also expect to see a number of normative frames such as references to reputational issues, appropriateness vis-à-vis peer behaviour and global standards in justifying investor activism (and firm responsiveness) to these issues.*

[94] Avant, Finnemore and Sell (2010) argue that the profit-driven nature of corporations makes it harder for them to attain principled authority because their motives are assumed to be utilitarian. NGOs, by contrast, benefit from an aura of moral authority because of perceived altruism (13).

Capacity-based authority	This form of authority involves deference based on perceived competence. This has a close relationship with institutional, delegated and expert authority, but is its own distinct form. It derives from and is justified by the task that the authority is supposed to perform. The capacity for effective action is what creates legitimate authority for the governor. For example, the perceived capacity of corporations working in conflict zones to monitor funds and implement policies was central to efforts to assign authority to them for reducing conflict. *(OI: 8) If investors are drawing on this form of authority, we would expect to see references to their identity as institutional investors via references to assets under management (as a signal of capacity). We would also expect to see references to the threat of divestment as tool to ensure credible commitments for human rights compliance on the part of firms.*

In sum, my study of shareholder proposals as a discourse structure applies Dunn and Neumann's (2016) strategy of organising text data into three domains: *concepts, representations* and *themes*. Table 5.2 provides an overview of how this framework is applied in the present study. This framework offers a systematic approach to linking investor discourses on human rights to particular (arguably dominant) images of shareholder power and corporate social responsibility. Making these links can offer a window into competing visions of the legitimate role of private actors in global governance, as well as areas where these roles may be contested. Much of the existing literature on shareholder proposals have focused on what kinds of actors file shareholder proposals. This study also considers which social actors are not able to access shareholder power as a form of influence over firms, and the consequences of these processes of marginalization for whose norms, ideas and interests are advanced through the mainstreaming of responsible investment.

Table 5.2. CDA-based strategy for analysing shareholder proposals

Concept	Representations	Themes
Corporate social responsibility	Firm as trader (1100)	• Responsible to: shareholders (1110), customers (1111), employees (1112) • Responsible for: profit maximization (1120), shareholder value (1121), legal compliance (1122), meeting industry standards for performance (1123)
	Firm as moral citizen (1200)	• Responsible to: society (1210), stakeholders (1211), affected communities (1212) (in addition to shareholders, employees and customers); environment (1213) • Responsible for: values alignment (1220) based on globally-accepted norms (1221), long-term systemic sustainability (1222)
Shareholder Power	Normative elements of authority (2100) based on justifications for shareholder	• Institutional authority: shareholder rights of oversight (2110) • Delegated authority: Fiduciary duty (2120), beneficiaries (2121) • Expert authority: materiality (2130); decision-making (2131) • Principled authority: ethics (2140), justice (2141), freedom (2142), equality (2143); harm (2144; reputational issues (2145), appropriateness (2146), peer-behaviour (2147)

	activism on human rights.	• Capacity-based authority: identity as long-term investors (2150), collective assets under management (2151), divestment (2152);
	Analytical elements of authority (2200)	• Agenda-setting: Which topics are addressed? (2210), Whose rights are being claimed? (2211), Which rights are being claimed? (2212), What are the geographies of concern? (2213) • Rule-making: What are firms being asked to do? Types of demands (2214)

5.5 Data and Findings

To demonstrate the empirical validity of framing shareholder proposals as a discourse structure, I draw on data from the Shareholder Association for Research and Education (SHARE Database, 2018) shareholder proposal database. The full data-set included shareholder proposals submitted to every corporation governed by federal or provincial statues in Canada between 1982 and 2017. During this time period 1405 shareholder proposals on corporate governance, environmental and social issues were filed. In order to systematize the research and in response to gaps in understanding shareholder activism on social issues, the sample was truncated to cover only those proposals dealing with human rights.[95] The truncated sample yielded seventy-two cases that were reviewed using the analytic method described in the previous section. The full list of cases is available for reference in Appendix C.

5.5.1 **General description of data and key trends**

Over the thirty-five-year period examined, four distinct temporal periods can be distinguished (see Figure 5.2). The first period runs from 1982 to 1990, characterized by a very low number of proposals (usually just one). Of the ten proposals filed during this period, eight related to divestment or disclosure of a firm's policies with regard to operations on South Africa during the Apartheid era. Of the remaining two, one proposal sought to tackle apartheid-type

[95] Mirroring its use in practice, I use the term 'human rights' in the context of corporate compliance with established global human rights norms and standards Including, but not limited to: The International Bill of Human Rights (UN General Assembly, 1948), the International Labour Organisations Core Labour Standards (ILO, 2018), UN Declaration on the Rights of Indigenous Peoples (UN General Assembly, 2008), OECD Guidelines for Multinational Enterprises (2011), UN Guiding Principles on Business and Human Rights (UN Human Rights Council, 2011) and the International Finance Corporation Performance Standards for Environmental and Social Sustainability (IFC, 2018).

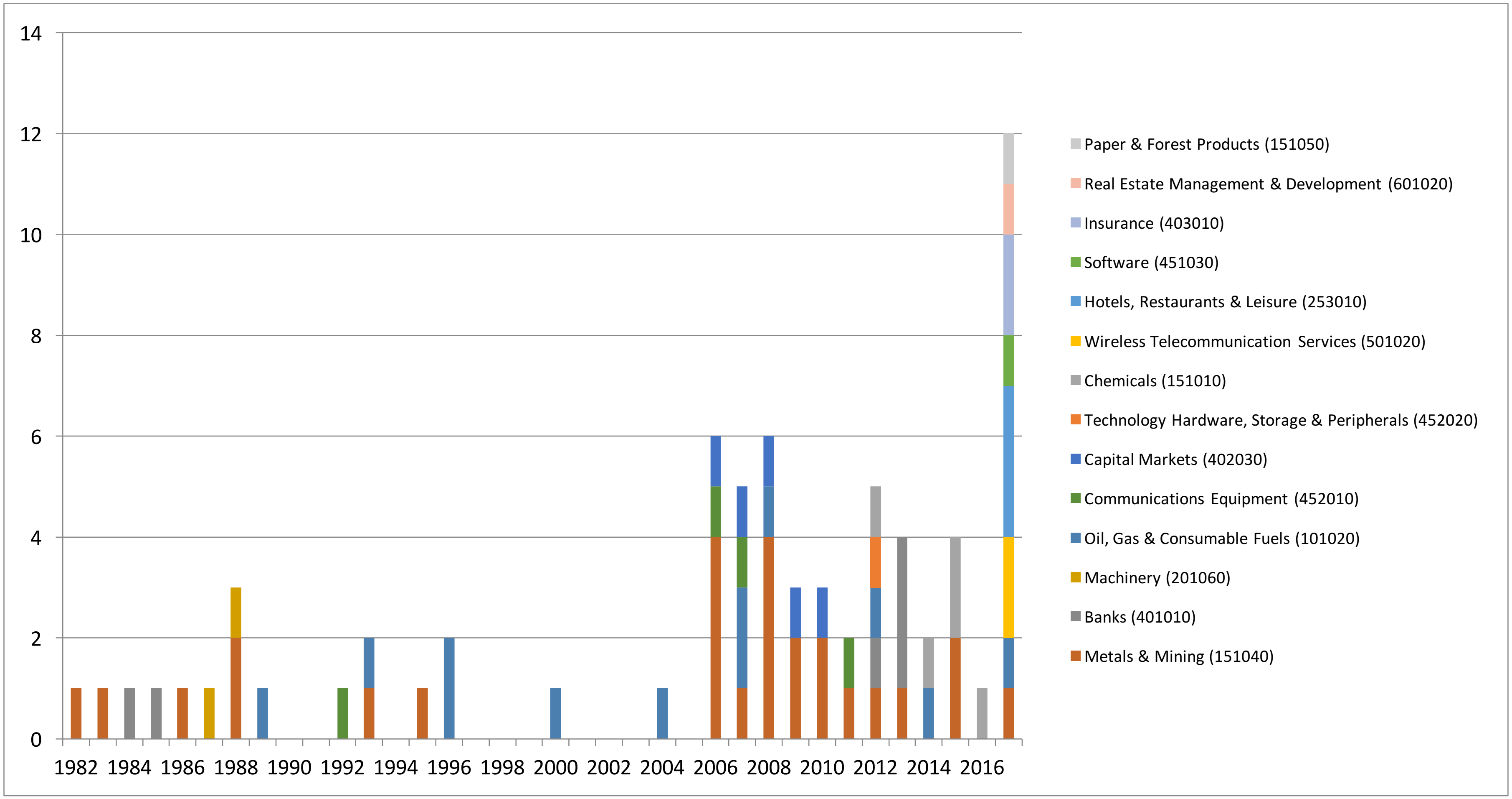

Figure 5.2. Overview of sector distribution of proposals, 1982-2017

policies in Namibia while the other was focused on “an independent assessment of the environmental, health-related and socio-economic impacts of the operations of [the Placer Dome] Marcopper Mine in the Philippines, and [for the firm to] report on measures, if needed, for environmental clean-up and alternative livelihood program” (HR 009). All the proposals were submitted by a single filer – The Taskforce on Churches and Social Responsibility (TCCR) an ecumenical coalition of Canadian churches and religious organizations that was established in 1975 (Pratt, 1997).

Between 1990-1996 (the second period), religious investors working either through the TCCR or independently continued to be the main filers (six of the seven filers) of shareholder proposals, though with reduced frequency. This period is decidedly domestic, with five of the seven proposals raising human/labor rights issues within Canada. With the political measures in place for dismantling Apartheid in South Africa, religious investors turned their attention to other issues, but focused their efforts on the Oil and Gas or mining sectors. In 1993, the TCCR advocated for PetroCanada to adopt a public code of conduct while the Dominica Sisters of Sinsinawa Wisconsin focused on Noranda Incorporated to request a shareholder’s report on the social and environmental impacts of Wisconsin Mining. In 1995 and 1996, the TCCR pioneered efforts to call on companies to improve diversity, requesting that “the nominating committee of the (firm’s) Board make a greater effort to include qualified women and men with a variety of life experiences and backgrounds not presently represented on the Board, and report to next year’s annual meeting on its plans” (HR 014, 015 and 016). In general, these proposals received very little support from eligible voting shareholders, were omitted by the company or withdrawn by the filer (usually because the firm was receptive to addressing the issue). Omitted proposals are particularly striking because they offer an insight into how firms were able to rely on legal stipulations to skirt addressing issues such as diversity. For instance, Rangers Oil Limited, refused to circulate the proposal on the grounds that the proposal was "submitted for the purpose of promoting general economic, political, racial, religious, social or similar causes" (HR016).

This period also saw the first proposal coordinated by the labor movement in 1992, where the Communications and Electrical Workers of Canada Multi-Employer Pension Fund filed a proposal at Northern Telecom Limited requesting "the Board of Directors establish a Facilities Closure and Relocation of Work Committee, composed of an equal number of outside board members and employees, to perform an advisory role in weighing decisions on closure of facilities and movement of work" (HR011). The company rejected the proposal because the filer was not a registered shareholder, citing section 137 of the CBCA. The company also defended its decision as a rejection of special interest group resolutions and confrontational tactics. The stock was held through the nominee account of an investment advisor, and the investment advisor supplied a letter confirming the Pension Fund holdings. When the proposal was refused, the Pension Fund pointed out that under SEC rules it is common for shareholders to file resolutions while holding stock through nominee accounts. However, the company pointed out that as a result of the Multi-Jurisdictional Disclosure System established between the United States and Canada, Canadian companies were no longer required to request a no-action letter from the SEC with respect to shareholder proposals. This contentious process may have accounted in part for the slow uptake of shareholder proposals as advocacy tools by labor-sponsored pension funds, who only return to this strategy almost a decade later.

The third period from 1996-2004 is characterized virtually no activity by investors on the human rights front. In 2000, the United Church's proposal aimed at Talisman Energy Inc. was the only proposal submitted during this phase, but nonetheless is highly salient for number of reasons. The proposal was the first to benchmark corporate performance against national and international standards for human rights. It also marked a clear discursive shift where religious investors were foregrounding their case to the firm based on the idea that *shareholder value* was at risk due to human rights violations, rather than requesting a firm change its policies and practices on the merits of human rights claims alone. The supporting statement submitted with the proposal notes (HR017):

> Because Talisman Energy owns a 25% interest in the Greater Nile Petroleum Operating Company in Sudan, our company risks sanctions by investors and governments that could harm shareholders financially. These threatened sanctions arise from the Sudanese Government's record of human rights abuse, from a civil war in Sudan that has resulted in two million civilian deaths, and from the major role of petroleum in that conflict. As shareholders in Talisman Energy, we believe such risks are best dealt with by the company adhering to internationally accepted standards of human rights and providing shareholders, governments, and the general public with independent verification of the company's compliance with these standards. The company's adoption of the International Code of Ethics for Canadian Business will limit shareholders' exposure to significant negative impacts only if its implementation is accompanied by independent monitoring and reporting. Shareholders require adequate factual information on which to base their judgments. If through such a process the Board concludes that it cannot operate in Sudan in a manner consistent with internationally accepted human rights standards, the Board should consider ceasing operations there until such time as the board determines that it can meet those standards.

The proposal also marked a first for the unique coalition of co-filers that supported the filing, including a mix of religious investors, endowment funds, asset managers and public pension funds.[96]

The final period runs from 2004-2017 and is characterized by an increase in the number of proposals filed each year (on average 4 proposals per year between 2006 -2016). This period

[96] The coalition of filers included: Les Soeurs de Sainte-Anne; Scarboro Foreign Mission Society; Christian Brothers Investment Services Inc; Evangelical Lutheran Church of Canada; Fonds Esther Blondin (Sisters of Sainte Anne); Grandin Provident Trust; Missionary Oblates of Grandin Province; Ursuline Religious of the Diocese of London; Jesuits of Upper Canada; The Daly Foundation; The General Board of Pension and Health Benefits of the United Methodist Church; The Trustee Board of the Presbyterian Church in Canada; The State Comptroller for the State of New York and The Comptroller of the City of New York.

also involved a broader range of lead filers including religious organizations, SRI mutual funds and labor-sponsored pension funds. The most active group of filers shifted from religious investors to social-responsible investment (SRI) funds such as Ethical Funds (now Northwest and Ethical) and IA Clarington Inhance Funds (by number of proposals filed). While the emphasis on firms within Oil and Gas and Mining and Metals sectors continues, there is an additional focus on banks after 2012. The year 2017 represents an anomaly against historical patterns with record twelve shareholder proposals on human rights (doubling previous records of 6 proposals filed in 2006 and 2008). Furthermore, we see unprecedented sector variation across targeted firms including: Paper and Forest Products; Real Estate; Insurance; Software; Hotels, Restaurants and Leisure; Telecommunications; Oil and Gas and Mining and Metals. For the most part, these proposals raise concerns about human rights issues abroad (particularly in conflict zones and areas of weak governance). This shifts to some degree in 2017 with half the proposals filed being focused on improving board diversity at Canadian firms and requesting Canadian firms to adopt the living wage for workers domestically, as well as abroad.

Over the temporal period examined, the filing of shareholder proposals on human rights issues was spearheaded by religious investors in the 1990s, while SRI mutual funds have taken up the mantle since the mid-2000s (see Table 5.3 below). Examining the organizational profile of shareholders in this context suggests that triumphant claims that "responsible investment" is now mainstream require some contextualization. While it may be that larger institutional investors such as public pension funds and banks are emphasizing responsible investment strategies in asset selection and allocation, this does not necessarily translate into their proxy voting behavior and the exercise of their rights to file shareholder proposals on human rights issues. It should be noted that although this mechanism is more frequently used by religious investors and SRI funds, shareholder proposals are not necessarily a "weapon of the weak". As the subsequent sections will illustrate, discursive underpinnings in existing proposals rarely challenge notions of shareholder primacy in establishing to whom a firm is primarily responsible. Likewise, although the firm's sphere of responsibilities include compliance with global human rights norms and standards, it is rare that shareholder proposals on these topics are grounded in and respond directly to the needs of communities whose human rights being denied.

Table 5.3. Proposal filers by category

Filer category	Number of proposals listed as lead filer	% of Total	Number of proposals listed as co-filer
Individual shareholders	6	8.3%	5
Institutional-Public Pension	0	0.0%	4
Institutional-Labour Pension	6	8.3%	1
Institutional-Insurance	0	0.0%	0
Institutional-Banks	0	0.0%	0
Institutional-Mutual funds	27	37.5%	1
Institutional-Hedge funds	0	0.0%	0
Institutional-Endowments & Foundations	0	0.0%	2
Shareholder Association-Religious	16	22.2%	0
Shareholder Association-Non-religious	1	1.4%	0
Trade Unions Associations	0	0.0%	0
Religious Institutions/Orders	8	11.1%	15
NGOs	3	4.2%	0
Asset Managers	5	6.9%	1
Responsible Investment Service Providers	0	0.0%	0
Total	**72**		

5.5.2 **Discursive representations of CSR in Canadian shareholder proposals on human rights**

The textual analysis of shareholder proposals sought to establish whether shareholder proposals on human rights tend to view the social responsibilities of firms as primarily rooted within their sphere of influence as market actors – traders, or whether investors see firms as socially embedded citizens. In the former representation, we would expect shareholder proposals to convey that firm responsibilities are towards those actors within its immediate operational boundaries – shareholders, employees and customers. Likewise, firms would be seen as primarily responsible for maximizing profits by minimizing risks and maintaining operational efficiency, thereby preserving or maximizing shareholder value. Additionally, we would expect to see an emphasis on meeting minimum standards for regulatory and legal compliance. In the latter representation, we would expect investors to articulate the social responsibilities beyond their immediate activities as a trader. Firm responsibilities would extend to a society in general, encompassing a broader range of stakeholders such as civil society organisations, affected communities and the environment, in addition to employees, customers and shareholders. In this view of CSR, the pursuit of a firm's core business is expected to align with certain values based on globally-accepted norms and performance standards, as well as support long-term systemic sustainability.

Overall, the textual analysis shows that within shareholder proposals on human rights in Canada, themes that related to representations of the "firm as a trader" occur more frequently than those related to the "firm as a citizen". This finding suggests that although firms are increasingly viewed as being responsible for respecting human rights, investors seeking to advance corporate compliance in this area have a slight preference for framing their discourse in a firm's core business rather than broader notions of social responsibility.

Who are firms responsible to?

Within the proposals, when we start to tease out investor views on who a firm is responsible to, we see an interesting pattern emerge. Comparing across both representations of CSR, a hybrid sense of firm responsibility emerges that is grounded in shareholder primacy, but certainly encompasses the view that a firm is embedded in a broader social contract (see Table 5.4).

Table 5.4. Discursive representations of CSR by frequency

Representations	Themes - Firms are responsible to	Frequency	Illustrative text from proposals (proposal text in parentheses)
"Firms as Trader"	Shareholders	63	*"That the Board of Directors provide a full written report to shareholders on the human, social and environmental impact of the mining project in Wisconsin" (HR013)* *"Because Talisman Energy owns a 25% interest in the Greater Nile Petroleum Operating Company in Sudan, our company risks sanctions by investors and governments that could harm shareholders financially." (HR017)* *"A proposal filed last year on this issue gained approximately 32% of shareholder votes. Despite this level of support Nortel has not responded to shareholder concerns…Report and disclose to shareholders the company's policies and management systems for human rights." (HR025)*
	Customers	5	*"Consumers are increasingly concerned about injudicious antibiotic use. Without meaningful action, RBI will lose market share to companies who have stronger policies in place." (HR062)*
	Employees	15	*"Unlike the minimum wage, the Living Wage is a voluntary commitment to pay wages which reflects the income necessary to support families in specific communities. The wage is paid to all full-time, part-time and casual employees, includes base wages and non-mandatory benefits. The wage covers employees of suppliers and contractors who provide a set number of hours of labour or services per year." (HR065, HR06, HR067).*

Representations	Themes - Firms are responsible to	Frequency	Illustrative text from proposals (proposal text in parentheses)
"Firm as Citizen"	Society	32	*"By request of the shareholders, Alcan sponsors an independent advisory committee to work in Kashipur in order to issue recommendations on improving UTKAL's impact assessment, notably the definition of the project-affected persons, as well as community relations with a view to strengthening the acceptance needed for the social licensing of the project, consistent with industry best practices based on the principle of free, prior and informed consent of the whole population." (HR020)* *"It is now widely accepted that companies have the responsibility to actively respect human rights in their sphere of influence. Adequate community engagement practices, prevention of health and environmental impacts on local communities, and the prevention of threats to human security are all captured under a company's duty to respect human rights" (HR039)*

Representations	Themes - Firms are responsible to	Frequency	Illustrative text from proposals (proposal text in parentheses)
	Stakeholders	18	*"The Extractive Industry Transparency Initiative (EITI http://eitransparency.org) is an independent international multi-stakeholder initiative, which has developed tools to enable extractive companies and host countries to define, together with the stakeholders, the best way to disclose the sums paid and received from mining, oil and gas." (HR026, HR32).* *"In 2006, Barrick Gold released a set of Community Engagement and Sustainable Development Guidelines "to ensure that affected stakeholders gain net positive benefits from mine development" and "to acquire and maintain broad stakeholder support for the company's operations. Three years later, evidence indicates the policy is underperforming" (HR036).*
	Affected communities	27	*"community engagement practices, prevention of health and environmental impacts on local communities, and the prevention of threats to human security are all captured under a company's duty to respect human right" (HR039)* *"WHEREAS the current surety bond is insignificant relative to independently estimated reclamation costs, exposing affected communities to significant long-term environmental risk." (HR044).*

Representations	Themes - Firms are responsible to	Frequency	Illustrative text from proposals (proposal text in parentheses)
	The environment[97]	16	*"WHEREAS the communities surrounding the Marlin mine are particularly vulnerable to inadequate closure and post-closure due to the potential for: -pollution from heavy metals that are potentially toxic to humans and wildlife;* *-acid mine drainage which leaves water and soil unusable for drinking and agriculture;* *-permanent environmental damage, jeopardizing subsistence farming as a means of survival;* *-tailings ponds to spill, leak, or break; and* *-climate change effects to exacerbate these risks." (HR044)* *"Human rights and environmental due diligence are essential to assessing the full risk of an asset acquisition. Where such risks are not adequately considered, acquisition and investment decisions can lead to reputational damage, regulatory intervention and/or financial loss." (HR064).*

[97] It may be curious that I have included the environment as subject of responsibility in proposals that are mainly focused on human rights. As the coding process was done iteratively (moving back and forth between the text and analytical framework) I realised that the environment was uniquely raised in issue-linkages on human rights. For example, access to clean water is framed as human right, or in other instances weak compliance with environmental regulations is cited as a risk for firms along with human rights compliance. I think this suggests a "bundling" of CSR issues on the part of investors, so as to legitimise certain topics, and therefore subject to a firm's responsibilities.

Investor proposals on human rights tend to frame a firm's responsibilities as being oriented towards shareholders with far greater frequency than responsibilities towards other actors. Specifically, duties towards shareholders are mentioned 63 times, whereas a firm's responsibilities towards specific communities where human rights violations occured are only mentioned 27 times. In general, when investors request firms to take a particular course of action on human rights, this is framed primarily in terms of the firm's responsibilities back to shareholders – that is firms are expected to primarily report back to or disclose certain information to shareholders (see Table 5.5). Although it is feasible for investors to stipulate that such information is shared with other stakeholders or affected communities, they rarely do so.

Table 5.5. Discursive approaches to framing a firm's responsibilities

Examples of proposal text that reinforce shareholder primacy (proposal number in parentheses).	*"Power Corporation does not disclose having in place a human rights policy and management system necessary to protect human rights and corporate reputation. BE IT RESOLVED THAT: The company prepare a report to shareholders by November 2006, at reasonable cost and omitting proprietary information, describing Power Corporation's policies and management practices that promote and protect human rights in China and Tibet." (HR023)* *"Absent a human rights management system, CNRL and its shareholders are exposed to significant legal and reputational risks. RESOLVED: Shareholders request the Board to adopt a comprehensive human rights policy and report to shareholders on the plan for implementation by October 2007." (HR027)*
Examples of proposal text that take a hybrid approach to firm responsibilities.	*"Despite several requests to that effect by shareholders, Alcan has not succeeded in reconciling the wide variance between its impact assessment, notably regarding the number of persons affected by the project, and the assessment of other stakeholder. BE IT RESOLVED THAT: By request of the shareholders, Alcan sponsors an independent advisory committee to work in Kashipur in order to issue recommendations on improving UTKAL's impact assessment, notably the definition of the project-affected persons, as well as community relations with a view to strengthening the acceptance needed for the social licensing of the project, consistent with industry best practices based on the principle of free, prior and informed consent of the whole population." (HR020)*

However, shareholder primacy is tempered with the acknowledgement that society writ large, and other stakeholder groups are mentioned as legitimate subjects of concern for a firm. A surprising finding is that proposals related to a firm's responsibilities towards customers and employees are exceedingly rare, even though the proximity of these actors to a firm's operational capacity and reputation might generate the expectation that investors would be monitoring a firm's performance on these factors more closely. Proposals that relate to labor rights issues have typically focused on child labor and forced labor either in specific commodity chains (HR 033, 034, 068), or as a general indicator of weak governance (HR 025, 027, 029, 033, 050, 051, 052). A snapshot specifically on labor rights and employee rights issues suggests that investors may have been sufficiently assured that domestic employees enjoy a high degree of labor rights, thereby focusing attention on labor rights in other countries (see Table 5.6). It is interesting to note that the exception to this trend includes three proposals filed in 2017 with regards to providing the Living Wage which cover both types of employees. The proposal credits local civil society campaigns as successfully raising the salience of this issue, thereby highlighting domestic civil society as a newer influence in shaping the content of shareholder proposals on human rights. Prior to 2017 only international organisations – UN agencies, the European Union or the International Labour Organisation (ILO) and international NGOs such as Amnesty International, Human Rights Watch and the RF Kennedy Centre for Human Rights were cited as sources of data and information on salient human rights issues. Although it is too early to suggest this is a durable shift, the departure from previous practice is noteworthy.

Table 5.6. A snapshot of Canadian shareholder proposals related to employees and labor rights

Proposal number (s)	Proposal summary
HR001, HR002	Militia training of a subsidiary's employees during South African apartheid as a rationale for divestment
HR011	Request for the establishment of a Facilities Closure and Relocation of Work Committee, composed of an equal number of outside board members and employees, to perform an advisory role in weighing decisions on closure of facilities and movement of work.
HR025	Citing risk of kidnappings for employees in Iraq as an indicator of operational risk
HR027	Citing poor labor standards as a risk metric in Cote d'Ivoire and Gabon: "*Canadian corporations operating in countries with repressive governments, ethnic conflict, weak rule of law, endemic corruption, or poor environmental and labor standards face significant risks to their reputation and shareholder value if they are seen as responsible for, or complicit in, human rights violations*."
HR029	Citing poor labor standards as a general risk metric in China: "*Rural migrant labor continued to suffer dire conditions, and hundreds of thousands of peasant farmers were increasingly marginalized through land expropriation, lack of health care and the failure of the state to provide education for millions of children in rural areas.*"
HR033	Citing poor labor standards as a general risk metric: "*Transnational corporations operating in countries with volatile governments, ethnic conflict, weak rule of law, endemic corruption, or poor labor and environmental standards face serious risks to shareholder value, reputation and social license to operate, particularly if companies are seen as responsible for, or complicit in, human rights violations*."

Proposal number (s)	Proposal summary
HR034	Forced labor and child labor diamond supply chain "*Exploitative labor practices and human rights abuses by suppliers in the precious metals, gem and diamond mining industries, as well as in the gem cutting and polishing industry, could have detrimental effects on the exclusive Harry Winston brand and on the company's competitive position in the luxury jewelery industry…Human and labor rights abuses by suppliers can affect corporate risk and reputation. For example, perceived ties to Burma's gem trade, which is controlled by the ruling military Junta, has increased public and media scrutiny of jewelery retailers…The Kimberly Process Certification Scheme has slowed the flow of diamond revenue to warring militias. However artisanal and small-scale miners continue to face human rights abuses and unsafe, unhealthy and exploitative working conditions...The International Labour Organization and The Observer have reported child labor and health and safety concerns in the diamond and gem cutting and polishing industry in India, where over 90% of all rough diamonds are processed.*"
HR049	Shareholder concerns that Excellon has not upheld its responsibility to respect its workers' associational rights or the rights of those protesting its operations in Mexico as the basis for requiring the Board to have at least one independent director with expertise in human rights, as improved human rights performance is important to the success of the company.
HR050, HR051, HR052	Citing poor labor standards in the DRC as the basis to report exposure to conflict-minerals supply chain. *"Whereas, Human Rights Watch, a highly respected non-governmental organization, has raised concerns regarding war crimes by rebel groups operating in the Democratic Republic of the Congo (DRC), including summary executions, forced recruitment and sexual assault."*
HR065, HR066, HR067	Requesting feasibility studies for paying the Living Wage
HR068	Child labor and forced labor in coffee supply chain at RBI

What are firms responsible for?

In meeting social responsibilities for human rights however – that is drawing out what investors are seen as being responsible for, investors tend to privilege the “firm as trader” narrative – focusing mainly on obligations for profit maximization, shareholder value, legal compliance and industry standards rather than on values alignment. The exception here is the notion that firms are viewed by investors to be responsible for alignment with global norms and standards as benchmarks for performance and compliance on human rights, which relate more to the citizenship view (see Table 5.7).

Table 5.7. Discursive representations of CSR by frequency

Representations	Themes - Firms are responsible for	Frequency	Illustrative text from proposals
"Firms as Trader"	Profit maximization	26	"An accident, natural or industrial, could have major and irreversible consequences on both the quantity and quality of water, as well as on Barrick's reputation and profitability" (HR 035)
	Shareholder value	24	"The Board of Directors has a duty to protect the interests of shareholders. Reputational and political risks brought on through strategic investment and partnership have the potential to negatively impact shareholder value." (HR047)
	Legal compliance	30	"Companies operating in countries with conflict or weak rule of law face serious risks to shareholder value, reputation and social license to operate, as well as potential legal risks, particularly if companies are seen as responsible for, or complicit in, human rights violations." (HR057).
	Industry standards for performance	22	"In September 2004, Petro-Canada was removed from the FTSE4Good Index Series for failure to meet FTSE's human rights policy, management systems and reporting criteria." (HR023) "Other companies in similar context, notably Hydro-Québec, HSBC and BHP, have developed processes and tools based on the principle of free, prior and informed consent of the communities to ensure that they address the concerns and requests of the people affected by their projects, and to secure their trust and acceptance" (HR020).

Representations	Themes - Firms are responsible for	Frequency	Illustrative text from proposals
"Firm as Citizen"	Values alignment	0	None of the proposals make an explicit reference to alignment with broader social or religious values.
	Globally-accepted norms and standards	26	"Power Corporation of Canada adopted a Corporate Social Responsibility Statement in 2006 that asserts: in making and overseeing investments consistent with its objective of providing superior long-term returns to its shareholders it will strive to comply with applicable laws and regulations and to conduct itself in a manner consistent with the goals that form the basis of the Universal Declaration of Human Rights." (HR030) "It is now widely accepted that companies have the responsibility to actively respect human rights in their sphere of influence. Adequate community engagement practices, prevention of health and environmental impacts on local communities, and the prevention of threats to human security are all captured under a company's duty to respect human rights" (HR039) "The International Labor Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations has asked the Guatemalan government to suspend mining operations that have violated ILO Convention No. 169 (Indigenous and Tribal Peoples. The United Nation's Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) protects the right of indigenous communities to free, prior, and informed consent (FPIC) regarding development projects and other use

Representations	Themes - Firms are responsible for	Frequency	Illustrative text from proposals
			of their lands. The Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations has found that corporations have the responsibility to respect international human rights." (HR041)
	Long-term systemic sustainability	10	"Power Corporation of Canada ("Power") adopted a Corporate Social Responsibility (CSR) Statement in 2006 asserting: in making and overseeing investments, consistent with its objective of providing superior long-term returns to its shareholders, it will strive to conduct itself in a manner consistent with the Universal Declaration of Human Rights." (HR040) "The indirect benefits include increased social capital and sustainable economic growth. Paying a Living Wage allows families to thrive and human capital to flourish by contributing to a more supportive environment for positive childhood outcomes, contributes to prosperity and helps overcome economic stagnation by increasing consumer demand among lower wage earners." (HR066, 067) "As long-tern shareholders, we believe that Morguard (Canfor) will benefit from expanding its recruitment pool and promoting a more diverse board" (HR070, 071)

5.5.3 **Discursive representations of shareholder power in Canadian shareholder proposals on human rights**

As per the analytical framework outlined previously, my review of Canadian shareholder proposals on human rights paid particular attention to forms of authority investors use when making their demands to companies on this issue. Authority was measured along two dimensions – a normative one that measured the frequency of themes related to institutional, delegated, expert, principled and capacity-based forms of authority and an analytical one that evaluated how shareholder power exercised through shareholder proposals serves to reinforce the ability of investors to set agendas and establish rules regarding corporate compliance with global human rights norms and standards. The key findings for both dimensions are presented below.

Institutional authority

As explained in the analytical framework, if investors are drawing on institutional forms of authority, we would expect to see references to their legally endowed shareholder rights that require them to exercise oversight of a firm's human rights policies. We would also expect to see references to a firm's legal obligations to respect human rights and legal sanctions that could result from failing to meet these obligations.

Sixteen of the seventy-two proposals in the study sample refer to the obligations of investors to exercise oversight over corporate policies and practices. This type of reference was first used in 2008 in the proposal filed by Meritas Mutual Funds to the Harry Winston Diamond Company over concerns regarding "conflict" gemstones being mined in Burma and entering the firm's supply chain. The proposal argues that "the lack of clear policies and procedures on supply chain management limits Harry Winston's ability to compete with other luxury goods retailers and restricts shareholders' ability to make informed decisions about the company's exposure to legal, reputational and financial risks" (HR034). We also see that feedback loops from prior experience may affect how an investor frames their proposal. It is noteworthy that Meritas' proposal filed in 2015 with the Potash Corporation of Saskatchewan mimics the aforementioned claim, stating "the fact that no reports done by an independent party have been made publicly available makes it impossible for investors to assess the scope of assessments, criteria used, and qualifications of assessors, nor to what extent the authoritative United Nations Guiding Principles on Business and Human Rights were used as benchmarks for determining the responsibilities of Potash (in the Western Sahara)" (HR059).

This right of oversight for a firm's human-rights related performance also extended to investor demands regarding the composition of a firm's Board of Directors. For example, in 2010 NorthWest and Ethical Investments (NEI) argued that "risk management in regard to company performance on human rights should reside at the highest level of strategic oversight. Freeport-McMoRan, one of Barrick's mining peers, currently has a board member with specific human rights background. An independent director who is widely acknowledged as an expert in the field of human rights would likewise bring critical expertise to Barrick" (HR039).

More recently, some investors becoming more explicit in demanding their rights of corporate oversight. A noteworthy illustration of this approach is found in the proposal filed by the asset manager Montrusco Bolton Investments in 2014, filed at the TransGlobe Energy Corporation. Their proposal stated:

> the Corporation's investment in Yemen, a country with one of the poorest Rule of Law rankings, illustrates the type of investment that falls short of shareholders expectations. Given that the Board does not have enough skin in the game,

> shareholders will strive to protect their investment. Shareholders require that the Corporation disclose sufficient information and obtain minimum written assurances from the country's government before proceeding with such investment. Shareholders aim to minimize expropriation and bribery risks while seeing their corporation promote corporate and human rights. Shareholders believe that a formal and transparent process is required before making any investment in a country that ranks in the World lower 10th percentile of the most recent Rule of Law indicator. (HR054)

Of the proposals analysed, nineteen make reference to domestic and international legal obligations for corporate alignment with global human rights norms and standards. An early example of this type of reference is found in Ethical Funds Co.'s 2004 proposal filed at PetroCanada which states: "Seven international oil and gas companies are now being sued for alleged complicity in human rights violations under the United States Alien Tort Claims Act (ATCA). On June 30, 2004, the United States Supreme Court validated the ATCA, allowing cases to proceed against both corporations and government officials. A human rights management system will provide assurance to shareholders that the company is implementing procedures that will allow Petro-Canada to avoid potential legal action and safeguard long term share value" (HR018).

Similarly, Ethical funds' proposal at PowerCorp in 2006 notes that "Under Canada's Crimes Against Humanity and War Crimes Act and the Rome Statute of the International Criminal Court, a number of these violations fall under the category of crimes against humanity. Corporations, their officers, and their directors may be criminally liable if found to be complicit in human rights violations. Corporations may also be sued in the United States for human rights violations under the Alien Tort Claims Act" (HR023). This legal emphasis is replicated in subsequent proposals field by Ethical Funds at Nortel Networks in 2007 and 2007 (HR024, HR025), Canadian Natural Resources in 2007 (HR027), PowerCorp in 2007 (HR029). Legal liabilities were also flagged as a key concern of shareholders in a number of other proposals such as those filed at Alcan in 2006 by the Missionary Oblates of Mary Immaculate (HR020), by Batirente in 2008 at PetroCanada (HR032) and Meritas in 2008 at the Harry Winston Diamond Company (HR034).

Delegated authority

Most analysis of the mainstreaming of responsible investment will point to the 2005 report on the topic of fiduciary duty led by the United Nations Environment Programme's Finance Initiative (UNEP-FI) as a critical contribution. Developed by the leading international law firm Freshfields Bruckhaus Deringer, the report sought to offer a legal framework to for integrating ESG issues into institutional investment. Fiduciary duties (or equivalent obligations) exist to ensure that those who manage other people's money act in the interests of beneficiaries, rather than serving their own interests (UNEP-FI and PRI, 2016). The most important of these duties are (Richardson, 2007):

- **Loyalty**: Fiduciaries should act in good faith in the interests of their beneficiaries, should impartially balance the conflicting interests of different beneficiaries, should avoid conflicts of interest and should not act for the benefit of themselves or a third party.
- **Prudence:** Fiduciaries should act with due care, skill and diligence, investing as an 'ordinary prudent person' would do.

By demonstrating the consideration of ESG issues was consistent with fiduciary duties, the report broke new ground to allay the concerns of asset owners who were concerned that including so-called extra-financial risks in investment decision-making would leave them vulnerable to legal action for abdicating their fiduciary duties which had previously been narrowly restricted to include consideration of financial data alone.

In view of the significant role of fiduciary duties in enabling investors to take action on ESG issues, it is striking to note that only one of the seventy-two proposals reviewed make a direct reference to this form of authority in relation to human rights issues. This proposal was filed in 2017 by the asset manager Harrington Investments at the Bank of Nova Scotia in relation to the Bank's financial relationships to the Dakota Access Pipeline. The proposal notes that the pipeline project had "received extensive media coverage and public condemnation because of its environmental destruction, pollution, and encroachment upon sacred land of the Sioux Nation – a blatant violation of indigenous peoples' human rights" (HR072). Given that "it is a fiduciary duty of the board and management to consider human rights when making all executive decisions (such as loan agreements and related business affairs) where there is significant potential impact or consequence of our company's involvement" (HR072), the proposal specifically requested that the firm create a separate Board Committee on Human Rights, to assess the company's policies and activities on an ongoing basis and make recommendations for improving the management of human rights concerns (HR072).

Expert authority

According to the analytical framework, if investors are drawing on their functional expertise to wield expert authority in the context of filing shareholder proposals, we would expect to see references to their investment-decision making tasks, such as the need for corporate disclosure on particular sustainability topics such that they can make informed investment decisions. Evidence for this form of authority overlaps with that cited under institutional authority, but there is a small distinction worth highlighting. In the context of institutional authority, the emphasis was on evidence focused on the rights of shareholders to exercise oversight over firms. In the context of expert authority, the evidence is analysed insofar as it relates to specific functions associated with being an investor, which includes but may not be limited to oversight over firms. We would also expect to see references to concepts like materiality (i.e. the financial impacts of human rights) in line an emphasis on preserving shareholder value.

Aside from the examples noted earlier, the reviewed proposals did not shed much light on which functions investors see as being part of their purview. A handful of proposals referenced the role of information disclosure as a vital input for investment decision making, but beyond this, there were no references to other functions that investors needed to fulfil. It is interesting to note however, that investors did see a role for themselves in shaping corporate-level decision making on human rights both in terms of influencing how these decisions are taken and the competencies and expertise required to take these decisions in line with shareholders' expectations. The proposal filed by the Sisters of Charity in 2016 at Enbridge illustrate the former, noting that "Human rights and environmental due diligence are essential to assessing the full risk of an asset acquisition. Where such risks are not adequately considered, acquisition and investment decisions can lead to reputational damage, regulatory intervention and/or financial loss. At the time of the agreement to acquire an interest in the Dakota Access Pipeline (DAPL) Enbridge should have been aware of the Indigenous rights and environmental risks of the project… (the company is requested to) prepare a report to shareholders, at reasonable cost and omitting proprietary information, detailing the due diligence process used by Enbridge, its affiliates and subsidiaries to identify and address social and environmental risks, including Indigenous rights risks, when reviewing potential acquisitions" (HR064). With regard to corporate competencies for human-rights aligned decision-making, the

British Columbia Teachers Federation pension plan's proposal filed in 2017 at Morguard Corp stated: "competing in a global marketplace requires companies to promote and select individuals for leadership positions who will bring diverse perspectives to the decision-making process. Research has demonstrated that companies that have women on their board have outperformed peers that do not" (HR070).

Principled authority

Normative forms of authority feature prominently in the sample of shareholder proposals analysed. Norms such as business ethics (26), justice (12), freedom (14), equality (17) and freedom from harm (30) may be referenced relatively frequently within the text of proposals. However, these references to progressive norms are usually made in the context of providing background for specific shareholder demands related to human rights. That is, referencing how these ideals may be violated in particular contexts where firms are operating adds granularity to the descriptions of human rights concerns being expressed by investors, but are almost never in and of themselves used as a justification for improving corporate compliance with human rights. Examples are noted below:

> Tens of thousands of people continue to be detained or imprisoned in violation of their rights to freedom of expression and association and are at serious risk of torture or ill-treatment. Thousands of people were sentenced to death or executed. (HR024)
>
> The 2005 US State Department Report on Human Rights Practices for both Gabon and Cote d'Ivoire cite numerous human rights violations including use of excessive force; arbitrary arrest and detention; widespread government corruption; forced labour; child labour; disappearances; violence by pro-government militias; and child abuse and exploitation during 2005. (HR027)
>
> The most recent report issued by The United Nations High Commissioner for Human Rights in Guatemala in February 2007 raises concern regarding the

> right to life, citing 6,000 violent deaths reported in 2006 a sharp rise in political violence; an increase in violence against women; and threats and attacks on human rights defenders. (HR033)
>
> The North Mara mine has experienced riots, the most recent of which (December 2008) involved the death of a protester. (HR036)
>
> The regime is criticized for severe human rights violations, including the violent suppression of anti-government protests, the denial of religious freedom and the extensive use of forced labour. (HR040)
>
> a highly respected non-governmental organization, has raised concerns regarding war crimes by rebel groups operating in the Democratic Republic of the Congo (DRC), including summary executions, forced recruitment and sexual assault. (HR050)

This outcome is noteworthy as it is frequently assumed that religious investors would tend to adopt norms-based language to advance their claims as shareholders, whereas more mainstream financial actors would resort to more instrumentally-grounded language. However, my analysis shows little differentiation, particularly after the 2000s, across investor types and the use of principled authority. Rather, the analysis shows that regardless of identity, shareholder proposals on human rights draw on both normative and instrumentally-grounded discourses, but that the latter tends to dominate arguments for why firms should improve human rights performance. For instance, aside from arguments about materiality, normative mechanisms such as reputational threats (23), the appropriateness (or lack thereof) of a firm's conduct (22) and comparisons with peer-behaviour (23) were each mentioned in over twenty proposals (precise count in parentheses). The implication of this finding is that the mainstreaming of responsible investment is coalescing around the business case for human rights, rather than the ethical case.

Capacity-based authority

Recall that if investors are drawing on this form of authority, we would expect to see textual references that highlight their role as investors. This may include notes about the volume of assets under management and the threat of divestment as tool to ensure credible commitments for human rights compliance on the part of firms. Unlike shareholder engagement letters submitted to companies, none of the shareholder proposals analysed mention the volume of assets under management by the investor. This is a curious trend, as many of the filers who submit shareholder proposals also have active corporate engagement programs that include this detail in letters to companies (PRI, 2018). The only instance where assets under management were referenced was in relation to the proposal filed by the U.S. non-profit As You Sow regarding antibiotic resistance at Restaurant Brands International. The proposal noted that the previous year a "a group of investors holding over $1.4 trillion in assets" had called on the firm to set timelines to prohibit the use of medically important antibiotics in its global meat and poultry supply chains (HR062).

Likewise, there is little evidence that investors use shareholder proposals to signal likelihood of divestment for low responsiveness to their demands therein. Where divestment is referenced, it generally pertains to proposals requesting a firm to divest assets from a particular country or report on plans for such divestments (as in the case of South Africa, Sudan, Burma and Syria). An illustrative example is the 2012 proposal filed at Suncor Energy by IA Clarington Inhance SRI funds which requested the Board to undertake a review of the firm's joint venture investment in Syria to "determine the probability and potential impact of U.S. imposed sanctions on Suncor; and develop a contingency plan to divest assets held in Syria and terminate agreements with Government of Syria entities" (HR047).

Analytical elements of authority

Within this study, I examined the analytical elements of private authority exercised by shareholders in the context of their proposal-filing activities on human rights issues in terms of agenda-setting and rule making. For the former, I examined patterns related to which topics are raised via shareholder proposals, whose human rights and which rights are addressed, and which geographies are of key concern to Canadian institutional investors.

As noted in Table 5.8, corporate activities in Canada are mentioned most frequently in human rights-related proposals analysed in this study. However, this domestic focus is very recent, given that 9 of these proposals (almost 70%) were filed in 2017, and focused mainly on the living wage (HR065, HR066, HR067) and board diversity (HR060, HR063, HR069, HR070, HR071), with one on a human rights impact assessment (HR068). The remaining four proposals were filed in the early-mid 1990s. The first of these was filed by the Communications and Electrical Workers of Canada Multi-Employer Pension Fund in 1992 and pertained to the establishment of a facilities closure and relocation of work committee at Northern Telecom (HR011), while the others were filed by the Taskforce on Churches and Corporate Responsibility on the issue of board diversity in 1995 and 1996 (HR014, HR015, HR016). Hence, the human rights impact of Canadian firms in the domestic context have not dominated investor concerns on this issue. Instead the primary concern of investors has been around the decisions taken by firms to operate in weak governance zones, where human rights violations are endemic.

Table 5.8. Geographic areas of concern [human rights] for Canadian institutional investors

Algeria	2	Global	4	Qatar	1
Argentina	4	India	2	Saudi Arabia	1
Australia	1	Iraq	1	South Africa	8
Brazil	1	Libya	2	Sudan	3
Canada	13	Mexico	1	Syria	3
Chad	1	Mongolia	1	Tanzania	1
Chile	5	Morocco	1	Tibet	1
China	5	Myanmar	5	Tunisia	2
Conflict zones	3	Namibia	1	UAE	1
Cote d'Ivoire	1	Oman	1	USA	5
DRC	3	Papua New Guinea	1	Western Sahara	5
Gabon	1	Philippines	1	Yemen	1

The temporal clustering of geographic priorities is a persistent trend across the data sample, as we see proposals focused on human rights concerns in certain countries grouped in particular timeframes. For instance, all of the eight proposals pertaining to South Africa were in relation to apartheid and filed between 1982-1989. Similarly, all five proposals related to Myanmar were filed between 2006-2010, and three of these were filed by Ethical Funds (later known as NorthWest and Ethical Funds), whereas all five proposals related to the Western Sahara were filed by mutual funds (three by Meritas Mutual Funds) between 2012-2016.

The implications of this pattern suggest that institutional investors can have an important signaling and agenda-setting effect on which topics rise up the agenda of other similar investors, but also within target firms. However, the reason why these particular issues get taken up and not others remains rather opaque and offers a ripe avenue for further empirical testing. It should be noted that the filing of shareholder proposals pertaining to particular geographies appears to coincide to their status as a political risk hotspots – as was the case with South Africa (apartheid), Myanmar (military rule) Western Sahara (UN-debated sovereignty claims), Iraq (active conflict), Syria (active conflict) and Sudan (active conflict). Process-tracing these temporal patterns against broader political flashpoints would provide a strong evidence that the advocacy decisions made by institutional investors are shaped by interactions with domestic and international political structures and actors. Moreover, this evidence would provide an effective counterpoint to the notion that the responsible investment decisions taken by institutional investors are immune to political and social influences. Beyond agenda-setting, shareholder resolutions also show particular patterns with regard to the types of demands that investors levy on firms with regard to human rights compliance. Across the data sample, it is evident that investors choose from a fairly limited menu of options when crafting their demands to firms. Typically, they may ask a firm to review a policy or practice, disclose the findings of such a review, adopt, endorse or change a particular policy, initiate or change a particular area of practice, consult with affected communities or divest its shares form an area of concern. Examples of demands from each category are noted in Table 5.9.

Table 5.9. Types of demands made within Canadian shareholder proposals on human rights

Type of Demand	Resolution	Text of Proposal
Review a policy or practice	HR029	*"The company prepare a report to shareholders by November 2007, at reasonable cost and omitting proprietary information, disclosing how Power Corporation is developing policies and management practices that promote and protect human rights in China."*
Disclose and report to shareholders	HR019	*"Shareholders request the Board of Directors to prepare a report to shareholders (at reasonable expense and omitting proprietary information) describing how the company has implemented its human rights policy by October 1, 2005."*
Adopt, endorse or change a policy or area of practice	HR026	*"Shareholders request the Board of directors to endorse the Extractive Industry Transparency Initiative and to contribute to its implementation in all the countries where the company has operations or land positions, within reasonable costs and delays."*
Consult with communities whose rights are being violated	HR020	*"By request of the shareholders, Alcan sponsors an independent advisory committee to work in Kashipur in order to issue recommendations on improving UTKAL's impact assessment, notably the definition of the project-affected persons, as well as community relations with a view to strengthening the acceptance needed for the social licensing of the project, consistent with industry best practices based on the principle of free, prior and informed consent of the whole population."*

Type of Demand	Resolution	Text of Proposal
Divest	HR047	*"Be it resolved that the Board undertake a review of Suncor Energy Inc.'s joint venture investment in Syria to: determine the probability and potential impact of U.S.-imposed sanctions on Suncor; and develop a contingency plan to divest assets held in Syria and terminate agreements with Government of Syria entities."*

Attention to discursive shifts over time suggests that direct requests by investors that firms divest from countries with weak human rights protections have not carried over into the post-Apartheid period. This raises questions about whether divestment continues to serve as an unstated, but credible threat in prompting firms to respond to shareholder demands on human rights. It would appear that SRI mutual funds, religious investors, asset managers and non-profit organisations share a common perspective on the power of constructive engagement over divestment as a sharper instrument for affecting change within firms.

Examining the types of demands articulated in shareholder proposals poses some interesting implications for existing social power relations. For instance, investors are far more likely to request firms to report or disclose information regarding human rights compliance back to shareholders rather than to orient their demands in relation to affected communities. Exceptions to this orientation are evident in four proposals that suggest that using the proposal mechanism to signal accountability relationships between firms and affected communities is not out of the realm of possibility. As it stands, individual (HR031, HR041, HR044) and religious (HR064) investors, not institutional investors, raise a firm's direct obligations to engage with affected communities into shareholder proposals.

Reviewing discursive shifts over time with regard to the types of performance benchmarks referenced in shareholder proposals points to additional evidence of the social embeddedness and responsiveness of institutional investors to changes in the broader political environment. For instance, following the launch of the UN Guiding Principles on Business and Human Rights in 2011 (UN Human Rights Council, 2011), we see a number of human rights proposals filed from 2012 onwards referencing the principles as the normative standard for corporate performance in this area (HR045, HR046, HR047, HR068). Similar trends are observable in relation to the regulation of conflict minerals in a number of states.

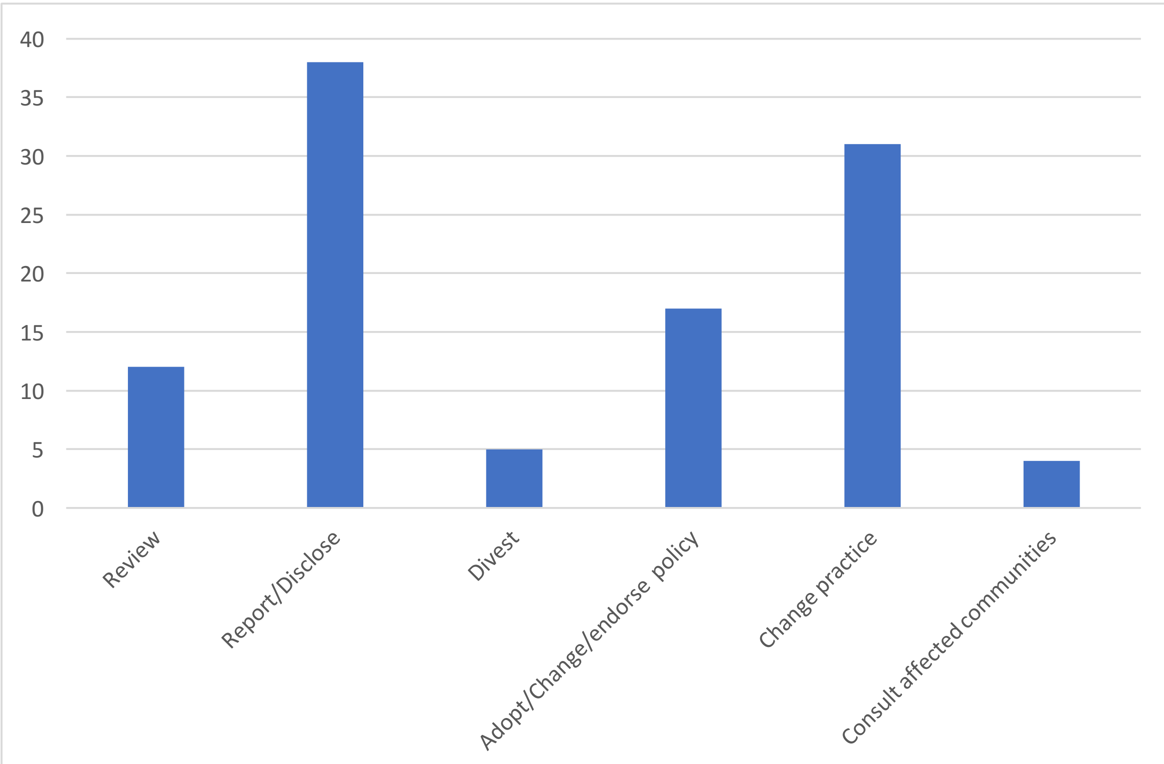

Figure 5.3. Types of demand by frequency

5.5 Conclusion

Cumulatively this chapter has sought to bridge disciplinary silos between international relations on the one hand, and studies of corporate governance and business ethics on the other. With regard to the former, the chapter demonstrates the validity of adopting institutional investors as an important locus of analysis in prevailing debates about the nature of private power and authority in global governance. With regard to the latter, it offers a fundamentally new way of examining shareholder power, and as such offers unique analytical leverage to understand how this form of private power can be self-reinforcing and exclusionary at the same time. Furthermore, drawing on the work of social theorists and critical constructivists, it systematically explains why viewing shareholder power as a discourse structure is warranted.

Finally, in anticipation of the need to demonstrate the empirical viability of the arguments presented, it offers a CDA framework that can offer a more holistic account for the diverse sources of authority that investors rely on when advancing proposals on subjects such as global human rights norms and standards. Looking ahead to future research, this framework can not only be applied within specific domestic contexts, but across geographies in order to better account for a wide range of variables that may affect investor discourses on human rights.

Chapter 6: Conclusion

> *Power exists even when those who dominate are unconscious about how their actions produce intended let alone unintended effects. Those who are hurt when aid and investment go bad certainly experience the power of the deliverer, even if it was not the latter's intention to inflict damage (Weiss, 2013, p. 148).*

In September 2009, I was offered the opportunity to coordinate an international trade union network on responsible investment. Little did I know that accepting this role in the aftermath of the global financial crisis would launch me head-first into vibrant and timely discussions on the role of investors in advancing social, economic and environmental sustainability, and the importance of transnational solidarity in realising this goal. Having had very little prior exposure to institutional investors or their sustainability agenda, entering this discursive arena was both exciting and daunting. A few weeks into the job, I found myself discussing the network's priorities for action in a hotel conference room with approximately thirty senior labour leaders and trade union-nominated pension trustees from all regions of the world. The network's theory of progressive social change was rather simple: to ensure the trillions of dollars invested on behalf of workers' pension funds were not being used in ways that harmed workers themselves. My role gave me a unique front-row view of the decisions that could steer capital allocation towards this end. Among the topics discussed, this group debated the merits of continuing to prioritize investor engagement with companies operating in Burma, versus replicating the learning from these engagements in other contexts where multinational firms were enabling repressive regimes or conflict dynamics. Passionate pleas to expand the scope of the network's advocacy efforts to Colombia and Indonesia were unsuccessful, and in the short term, the network's focus on Burma was retained.

At the time, I recall being struck by the observation that the trade union movement's proven ability to connect frontline workers with powerful transnational advocacy campaigns for workers' rights did not necessarily inform their *decision-makin*g with respect to the stewardship of pension capital. Instead, pragmatic factors such as whether network members had significant share ownership in targeted firms, and whether evidence of corporate labour rights violations were 'material', shaped these advocacy decisions. In the five years that followed, I observed the network's members doing a phenomenal job of ensuring that workers' voices featured in global responsible investment advocacy spaces. For example, security van drivers who were required to purchase their own health and safety equipment (including guns) following corporate cost-cutting measures, or hotel workers denied the right organize were able to tell their own stories at international responsible investment conference panels or webinars with investors and their asset managers. These efforts were vital in translating the language of labour rights violations into the language of 'human capital risk management'. Nonetheless, across the dozens of similar discursive spaces I participated in over the past nine years, discussions about the ethical representation of such workers or indeed pension beneficiaries in the context of the agendas, rules and impacts of transnational responsible investment advocacy were virtually non-existent.

The above observation not only germinated some of the main ideas advanced in this dissertation about the need to interrogate power relations in global responsible investment advocacy, but it also pushed me to grapple with what my role as a scholar-practitioner means in this context. Henry Giroux aptly describes the work of scholar-practitioners as "intellectual work that, at its best, represents a response to questions and issues posed by the tensions and contradictions of public life and attempts to understand and intervene in specific problems that emanate from the material contexts of everyday existence" (Giroux, 2001, p. 215). With this aim in mind, by adopting the label of a scholar-practitioner, I view myself as part of a broader project to bridge the gap between academia and the "real world" by undertaking scholarly research that has practical applications and problem-solving potential. However, this intellectual choice also commits me to appreciating that academic research itself is, in part, an exercise of power and authority that begins with questions of justice, democracy, and the dialectic between individual accountability and social responsibility (Weiner, 2003). Therefore, as Chantal Mouffe (1992, pp. 30-31) cautions, the scholar-practitioner must direct their authority self-reflexively and critically (pp. 30-31), as well as convey strategies of social engagement and transformation.

In an effort to heed Mouffe's advice, in this concluding chapter, I reflect on the findings of the thesis in light of the question: *Who wins and who loses via the 'mainstreaming' of responsible investment*? At its core, this question is about whether the exercise of shareholder power through investor-centric institutions serves as a catalyst to ameliorate broader social power imbalances arising from processes of globalization and global governance.

The remainder of the chapter is structured as follows: Section 6.1 recaps the project's scope. By retaining institutional investors as the key unit of analysis across the dissertation, this project draws attention to how private-led regimes, not just IGOs and NGOs are shaping global governance. Yet, this dissertation's inspection of the institutions through which responsible investment practices are carried out draws attention to a few concerning trends in terms of how private authority is exercised and the impact on social power relations. In this regard, the theoretical contributions of the thesis are summarised in Section 6.2.

My assessment of who wins and who loses via the mainstreaming of responsible investment in Section 6.3 focuses on three key implications drawn from the dissertation:

a. the shrinking capacity for ethical deliberation on human rights advocacy by institutional investors;
b. exclusionary patterns of responsible investment sector consolidation, and
c. a strong emphasis on the business case for human rights compliance.

These patterns lend support for the view that the global sustainable finance agenda remains the purview of powerful financial interests, and not those who occupy vulnerable or marginalized spaces within the context of global governance. As mentioned earlier, scholar-practitioners should not only draw attention to practical problems but also convey ideas on how these might be productively addressed in ways that enhance democratic qualities of accountability and social responsibility. Accordingly, Section 6.4 concludes with a few reflections on some institutional adaptations that could make investor advocacy on human rights more accessible and meaningful for beneficiaries and communities whose human rights may be infringed by private actors.

6.1 Project scope

Over the past two decades, the market for responsible investment has grown exponentially. With institutional investors leading the charge for the 'mainstreaming' of responsible investment, they have increasingly championed better corporate performance on a variety of social and environmental issues. The three papers within this dissertation draw mainly on qualitative data to study of the local and global institutions that mediate such processes of transnational activism by institutional investors.

As a cohesive project, the objective of this dissertation was to investigate a broad set of power relations involved in such activism. Much of the scholarship on shareholder power has focussed on the interplay between firms and investors. However, viewing investor activism as a socially-embedded phenomenon, as I have done in the project, brings to light some important implications for the broader study of private authority (Cutler, 2003) in global governance. The responsible investment arena, as described in the dissertation conforms to Scholte's (2004) conceptualisation of global governance as a diffuse phenomenon, emanating from multiple locales at once, with points and lines of authority that are not always clear. In his estimation, the dispersal of governance has occurred not only across different layers and scales of social relations from the local to the global, but also with the emergence of various regulatory mechanisms in private quarters alongside those in the public sector (Scholte, 2004; Cutler et al., 1999; Cutler, 2003). Although this private governance has generally depended on support, or at least tolerance, from government agencies, it too has maintained substantial autonomy from the state. This situation of multi-layered and diffuse governance might be called 'polycentrism', to denote its distinctive feature of emanating from multiple locales at the same time (Scholte, 2004).

If, as some claim, the responsible investment movement is humanising global capital (Hawley and Williams, 2000; Hebb and Clark, 2004; Lydenberg, 2007), it would be reasonable to expect that over time the activities and institutions of the movement become more inclusive of diverse social actors, with polycentric sources of authority at play (Cutler, 2003). In other words, given that social actors draw on different sources of authority, depending on their role and function in global governance (Avant et al., 2010), it follows that if institutions for investor-led activism involve greater social inclusion, then the resulting diversity should extend to sources of authority that are deployed to call for greater alignment between capital provision and positive social outcomes. In this regard, my dissertation argues that while aspirational commitments by institutional investors are to be lauded, investigating shareholder activism in the area of human rights reveals that much heavy lifting remains, if these aspirations are to deliver on the responsible investment movement's promises of aligning capital markets with the needs of society and long-term systemic sustainability.

6.2 Theoretical contributions

The primary theoretical contributions of the dissertation are twofold: it brings institutional investors into the frame of analysis on how human rights norms are diffused internationally, and undertakes a first systematic effort at validating a sociological theorisation of shareholder power beyond its effects on investor-firm relations. The theoretical underpinnings for this project were drawn from a variety of disciplines and directed towards advancing a more nuanced understanding of shareholder power, as a unique form of private authority.

In theoretical terms the project's findings resonate with broader observations from the global governance scholarship that international institutions do not meet always democratic standards. Democratic deficits include the lack of identifiable decision makers who are directly accountable for decisions made at the international level, the inscrutability of international decision-making processes and thus the advantage of executive decision makers have over others in terms of information, and strong asymmetries of power among the participants of governance arrangements (Koenig-Archibugi and Zurn, 2006, p. 243).

For instance, the analysis of IGN-INGO relations in Chapter 4 confirms that although IGNs stress the importance of achieving a sustainable financial system, by and large, realising this goal is viewed as a private enterprise. Evidence to support this view is drawn from an in-depth, comparative review of the degree to which IGNs recognize the role of social partners in achieving sustainable finance, as well as the ability of civil society to participate in the agenda-setting, rule-making, implementation and monitoring and evaluation activities carried out via IGNs. The data suggests that IGNs modeled as trade associations offer few institutional mechanisms by which private power is checked and balanced by other stakeholders, whereas IGNs that are structured as multi-stakeholder initiatives offer investors the option to draw from diverse sources of authority but also open up prospects for more democratic forms of deliberation on the implications of the sustainable finance agenda for communities at different scales of governance. Importantly, the data indicates that the former approach is more diffuse.

Such findings validate the claim that through the exercise of shareholder power, private interests continue to enjoy a position of relative privilege over other social actors who may ultimately be impacted by responsible investment policies and practices. Support for this view is also echoed in Chapter 5's analysis of how corporate accountability for compliance with global human rights standards are structured. The chapter finds that investors rarely use the shareholder proposal mechanism to signal the need for firms to inform affected communities about their human rights policies and practices.

6.3 Key implications

This dissertation reviewed responsible investment advocacy on human rights through a number of institutional mechanisms – direct engagement with firms, collective action forums and filing shareholder proposals. This review covered investor groups in a number of geographies, as well as a broad cross-section of institutional investor types from religious investors to public pension funds and socially-responsible mutual funds. Cumulatively findings from this analysis reveal how investor-led activism on human rights may institutionalise patterns of exclusion, affirm the dominance of business-case logics and constrain opportunities for ethical deliberation on human rights compliance by private actors. These implications are discussed in greater detail below.

6.3.1 **Institutionalised patterns of exclusion**

Each of the empirical chapters in the dissertation demonstrates that responsible investment involves a suite of practices that cumulatively move the business and human rights agenda away from collective publics towards individual and private solutions, that offer few pathways for beneficiaries or affected communities to co-design changes to corporate policies and practices that are initiated on their behalf. Therefore, although responsible investment institutions can claim a high degree of legal-procedural accountability towards members (who delegate authority to institutional investors through fiduciary duties and trust laws), these institutions also serve to reinforce existing power hierarchies in a number of ways.

The first way status-quo power hierarchies are maintained by responsible investment institutions is through the use of legal norms and voluntary standards that advantage private and state-based actors. As discussed in Chapter 3, the direct engagement of PetroChina by ABP and the GPFG reveals that institutional investors use a fairly sophisticated set of arguments for advancing corporate compliance with global human rights norms and standards, but do so in ways that reinforce private and state-based authority over that of local communities or civil society. For example, the GPFG's decision to continue investing in PetroChina was drawn from corporate law, affirming that subsidiaries cannot be held liable for weak human rights compliance by parent firms. Both cases also show that institutional investors legitimize and promote convergence with private voluntary standards such as the UN Global Compact. Likewise, the GPFG's hybrid institutional character, as a market actor bounded by a state-based governance framework, challenges assumptions that neat divisions between states, markets and society (in the context of global governance) can always be maintained. For hybrid institutions like the GPFG, it is important to note that state interests and motives are shaped by interactions with other states, and that institutionalised state-based veto points can over-ride ethical concerns with issues such as human rights compliance.

A second way, responsible investment institutions do not fundamentally challenge existing power hierarchies is through their governance arrangements. Many of the IGNs discussed in Chapter 4 have clearly defined governance models that match leading practices for member-based institutions. However, by restricting the scope of membership to financial actors or creating "dual-class" membership structures where certain financial or functional criteria determine the level of access non-financial actors enjoy with regard to governance and decision making, IGNs can be self-reinforcing and exclusionary at the same time. These types of governance arrangements echo the observation that financial actors such as institutional investors are, at best, accountable to a fraction of the people affected by their activities (Keonig Archibugi and Zurn, 2006, p. 243).

Finally, responsible investment institutions can deepen existing forms of social exclusion through the formal and informal rules they adopt to guide collective action. As discussed in Chapter 5, shareholder resolutions are seen as a 'low-cost' mechanism for investors to exercise oversight over corporations. However, minimum share ownership thresholds (number of shares and length the shares are held) determine how these shareholder rights of oversight are exercised. In practice, these thresholds pose a considerable cost barrier for communities or civil society groups with fewer material resources, and who may want to utilize this mechanism to demand corporate accountability for human rights compliance. Such institutional barriers for non-financial social actors to engage in responsible investment processes also means that these actors lose out on a critical pathway for signalling poor human rights performance by firms.

6.3.2 The dominance of business-case logic

Overall, Dutch and Norwegian responses to PetroChina imply that institutional investors and firms benefit from status-quo approaches to responsible investment. In particular, the broad scope for interpretation in how responsible investment policies are implemented afforded investors in Norway and the Netherlands the luxury of responsiveness to demands from domestic publics for greater alignment with global sustainability principles and human rights norms and standards. At the same time, we see how business-case logic and corporate law are used to justify policy implementation in ways that trump the ethical or moral obligations of firms to avoid complicity in human rights violations. The diverging responses by institutional investors to weak human rights performance by firms, as discussed in Chapter 3, can send mixed signals about acceptable thresholds for human rights compliance before they are deprived of investment capital. Firms may be able to exploit the lack of consensus around these thresholds to shirk their responsibilities to respect human rights and continue “business-as-usual” models where human rights issues remain externalized. These outcomes further point to persisting tensions between material and sociological modes for rule following in the context of global governance.

6.3.3 The erosion of capacity for ethical deliberation

Thomas Weiss (2013) argues that the of power of institutions is revealed when the common principles and ideas embedded therein emerge and gain prominence, and in doing so make alternatives less attractive (p. 39). In this regard, the dissertation's sociological focus has also discussed how the uptake of responsible investment is shaping new forms of identity, new expectations of institutions and privileging certain sources of legitimacy and social value over others. Tracing an arc from early forms of social activism by a small group of religious investors in the 1970s, it is clear that shareholder activism on human rights today involves a much broader universe of investors who use diverse tools at their disposal to engage stakeholders, states and firms. Nonetheless, critical reflection on the dissertation's findings points out a few ways in which the mainstreaming of responsible investment has eroded rather than reinforced capacity for ethical reflection by investment decision-makers. This erosion is exemplified by institutional choices shaping how the field of responsible investment is being consolidated domestically and internationally.

On the domestic front, recent developments in Norway are a case in point. In 2014, the Norwegian government announced its decision to disband the Council on Ethics, the independent institution responsible for recommending ethically-grounded investment exclusions for the GPFG, and transferred this responsibility to Norges Bank, the financial institution which administers the fund (Norwegian Ministry of Finance, 2014d). From the Ministry's perspective, consolidating all responsible investment activities within Norges Bank was meant to clearly signal that exclusions were immune from undue political influence and the result of restrictions governing asset management. However, critics charge that shrinking institutional capacity for independent ethical deliberation consolidates too much power within the central bank, and that reduced openness could reduce debate on the human rights implications of the Fund's investments (Woodgate and Berglund, 2014).

The consolidation of responsible investment and accompanying decline in space for ethical deliberation in the Norwegian case is also replicated at the global level, and evidenced by increasing levels of consolidation in the 'responsible investment industry'. The acquisition of the Conflict Risk Network (CRN) in 2013 by the U.K. responsible investment services provider The EIRIS Foundation (VigeoEiris, 2013) is an illustrative case-in-point. Prior to the acquisition the CRN was a project of the U.S.-based charity United to End Genocide. It was comprised of institutional investors, financial service providers and other stakeholders who called on corporate actors support peace and stability in areas affected by genocide and mass atrocities, with a focus on Sudan and Myanmar. The acquisition was announced as a win-win for both organizations, where the CRN could enhance its analytic capacity and global reach through EIRIS, and the latter could enhance its client base in the United States (VigeoEiris 2013).

In December 2015, EIRIS merged with French competitor VIGEO. Following the merger, the CRN manager role was fused with 'Business Development' (Ethical Corporation 2016). The post-holder was expected to take responsibility for new business development and account management for VIGEO-EIRIS and EIRIS-CRN. The post was targeted towards an 'experienced sales professional' with a proactive approach to sales and knowledge of the CRN's areas of focus (Ethical Corporation, 2016). Since the merger, VIGEO-EIRIS has come under scrutiny by civil society groups such as Western Sahara Resource Watch for failing to raise ethical objections to investments in the region, going so far as to accuse the company of a conflict of interest given its role in certifying 'green-bonds' for three projects being run by the

Moroccan Agency for Sustainable Energy (Western Sahara Resource Watch, 2017).[98] In effect, the 'mainstreaming' of the CRN turned what was primarily an ethically-driven network that served as a voice for moral outrage at corporate complicity in gross human rights violations into a subscription-based service through which responsible investors can purchase data about companies that operate in conflict zones.

Evidence reviewed through this dissertation appears to confirm these larger patterns of ethical erosion within processes of responsible investment advocacy. For example, Chapter five's focus on discursive shifts points to how values-based or ethically-driven investors such as religious investors or socially-responsible mutual funds have increasingly pegged their justifications for corporate compliance with human rights to the business-case logics and concerns about shareholder value, rather than the ethical issues of justice and freedom from harm.

Why are spaces for ethical deliberation by investors on human rights issues in decline? One explanation is that the diffusion of sustainability considerations across the financial system is not necessarily a victory of morals over material self-interest. The subversion of values over value[99], I argue, has been buttressed by the dual concepts of fiduciary duty and materiality. Recall, fiduciary duties (or equivalent obligations) exist to ensure that those who manage other people's money act in the interests of beneficiaries, rather than serving their own interests (UNEP-FI and UN-PRI, 2016). While traditional interpretations of fiduciary duties restricted

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[98] To be clear, this is not a position on the veracity of the complaints. Vigeo-Eiris disputes these allegations, stating that it does not believe that international law or other human rights due diligence require them to seek any particular consent to carry out its bond certification work in the region. The full correspondence regarding this issue is available via the Business and Human Rights Resource Centre.
[99] As in shareholder value.

investors from considering extra-financial risk, they are generally permitted to do so, if these risks can be shown to have a material financial impact on the firm's profitability. As a result, mainstream investors who now make up the majority of the 'responsible investment community' have been focused in defining what they expect of companies and the optics of responsible investment, rather than on what society expects of long-term investors.

This discursive choice matters because by emphasizing the former, the conversation on investor responsibilities for human rights has been constrained to specific mechanisms of corporate control – such as lowering information asymmetries by asking companies to disclose human rights policies or requiring firms reporting against recognized global standards. In this context, 'firm-performance' has been defined narrowly in terms of material financial impacts that can be traced neatly to particular value drivers, rather than on the broader social impacts of these firms or indeed their investors.

The findings from my dissertation corroborate this claim on a few counts. For example, in Chapter 3, neither divestment from PetroChina nor its retention for further observation generated any tangible improvements for corporate human rights compliance in either Burma or Sudan. Likewise, in Chapter 5 we see that the demands investors place on firms within Canadian shareholder proposals on human rights overwhelmingly focus on improving corporate disclosure of how these issues are managed as part of broader risk management approaches. Often these disclosures are primarily directed to shareholders rather than affected communities or investment beneficiaries.

Against this milieu, critics are perhaps right to argue that social measurement metrics to date have been largely inadequate for investors to reach meaningful decisions. Research by the

NYU-Stern Centre for Business and Human Rights pointed out that investors have been too willing to accept data that does little to actually assess the social performance of the companies in which they invest and that many financial actors still view social issues like human rights compliance as a check-the-box exercise in which investors and companies can appear to comply with rising consumer expectations around sustainability, while avoiding the actual costs of improving performance (O'Connor and Labowitz 2017). This conclusion echoes findings from a Institute for Human Rights and Business and UNEP Inquiry report that noted one of the key challenges in moving from modern finance to sustainable finance is the methodological disconnect between the capabilities of mathematical finance and ethics, as the direct social impacts of financial processes are not captured directly within the underlying quantitative models or technical rules (Wachenfeld et al 2016). Such lags in investment decision-making speak directly to Louche and Hebb's (2014) observation that insufficient attention has been paid to date when it comes to addressing the true social impacts of responsible investment.

6.4 Final reflections – Who wins and who loses in the mainstreaming of responsible investment?

The responsible investment movement has historical roots dating back to the abolition of slavery (Ray, 1989). Nonetheless, these early examples of investor-driven activism wrestled deeply with moral-political engagement in ways that current forms of shareholder activism generally do not (Brahm and Rosenhaft, 2016). The cases discussed in each of the dissertation's three papers suggest that the mainstreaming of responsible investment does not necessarily represent the triumph of ethical ideals over narrow self-interest and instrumental rationality. Instead, the mainstreaming story is really about the professionalization of an industry that is seeking to align with environmental and social sustainability primarily because it makes financial and political sense to do so.

From this lens, I propose that the primary beneficiaries in the mainstreaming of responsible investment are private actors who are capable of financially capitalizing on rising demand for responsible investment approaches. If this current trajectory persists, the risk is that mainstreaming of responsible investment may leave institutional investors vulnerable to similar critiques leveled at the 'CSR' industry in terms of the latter's role in corporate 'green-washing' and glossy public relations or philanthropic efforts that mask the true extent of harms meted out by the private sector on communities and the environment.

To mitigate this risk, truly responsible investors will need to measure not only companies' real-world effects (O'Connor and Labowitz, 2017), but their own impacts as well. Moving towards this goal can involve promising avenues for expanding, or indeed recovering, ethical reflection in investment decision-making. Such efforts will require, at minimum, investment staff with specialized skill sets on social metrics, and more thoughtful engagement with affected-communities and civil society stakeholders who are best placed to speak about these real-world social impacts.

A more inclusive approach to responsible investment advocacy also offers a valuable corrective to instances where inaction is justified on the basis that material human rights issues for institutional investors at any given time are too numerous and complex to address systematically. The UNGP Reporting Framework exhorts firms to engage with stakeholders as means to identify, manage and report on human rights risks that are most salient and severe for its operations. There is no credible reason why this guidance cannot be extended to investors.

Initiatives such as ShareAction, CERES and the 2degree investor initiative offer encouraging templates for how multiple stakeholders can work as equal partners in co-designing strategies for enhancing corporate accountability that draw from share-ownership.

To conclude, whether institutional investors will rise to the ethical challenge of championing human rights depends, in part, on how their internal governance and risk management systems will evolve to accommodate ethics. Some scholars suggest that as the responsible investment field continues to mature, we can expect to see more attention to procedural ethics, engendering a shift in focus from what issues get decided on to how issues are decided upon and by whom (Vandekerckhove et al., 2012). A deeper foray into procedural ethics will necessitate that investors articulate their commitment to fundamental ethical principles such as freedom, social justice, equity and fairness, and perhaps more interestingly, what kinds of decision-making processes will be needed to address instances when these principles may conflict with each other or with other investment beliefs around how markets and societies function.

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Appendices

Appendix A Fund Profiles

This appendix provides a brief overview of key features of the Norwegian Government Pension Fund – Global (GPFG) and the Dutch pension fund ABP. It provides additional details on why these two cases were chosen in keeping with a "most similar systems" research design.

A.1 Position in the domestic pension system

In the Netherlands, the pensions system consists of three pillars: a public tier funded by the Algemene Ouderdoms Wet Savings Fund (AOW), a second quasi-mandatory tier comprised of occupational/collective pensions and voluntary private pensions in the third tier (OECD, 2008).[100] Together these three pillars determine the pension a person receives during retirement. The Dutch state pension (AOW) benefit paid to people aged 65 and older, is funded by contributions that are paid by people younger than 65 (OECD, 2008a). Due to the pressures of meeting retirement security for an ageing population the government decided to increase the retirement age to 66 years in 2020 and to 67 in 2025 (Reuters, 2009). Stichting Pensioenfonds ABP falls under the second pillar of the Dutch pension system. ABP was originally a government-controlled entity that fell under the authority of the Minister of Home Affairs in The Hague. In January 1996, ABP was privatized although its primary function remains unchanged (Lutgens, 1999). It is the pension fund for employees in the government, public and education

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[100] Pension funds in the Dutch system are largely a hybrid model that combines features of defined benefit (DB) and defined contribution (DC) plans.

sectors. For the quarter ended 31 March 2014, ABP had 2.8 million participants and assets under management of EUR€309 billion, making it the largest pension fund in the Netherlands and among the three largest pension funds in the world (ABP, 2011, p. 4).

Similar to the Dutch three-pillar model, the Norwegian system consists of a public pension system, a mandatory occupational pension system and personal pension saving arrangements (OECD, 2008b). The state pension scheme provides a pension level based on a flat-rate basic pension and an earnings-related supplement that covers all employed and self-employed persons, with a statutory retirement age of 67 (OECD, 2008b). Unlike ABP however, the Norwegian Government Pension Fund falls under the first pillar of the pension system.

In 1966, Norway established the National Insurance Scheme Fund (NIS Fund), which was intended to be the funding vehicle for reserves stemming from a surplus in the social security system (Clark and Monk, 2010). To further strengthen Norway's financial position to meet future pension liabilities, the Petroleum Fund was established in 1990. Both funds merged in 2006 to make up the Government Pension Fund that consists of two sovereign wealth funds, owned by the government: The Government Pension Funds – Global (GPFG)[101] and the Government Pension Funds – Norway (GPFN). It should be noted that the case analysis focuses on the GPFG alone. The GPFG is commonly referred to as The Oil Fund[102] because it is financed by the surplus wealth produced by Norwegian petroleum sector. This income is garnered mainly from corporate taxes, payment for exploration licenses and dividends from the partly state-owned company Statoil. As of June 30, 2014 its total value $889.1 billion, holding

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[101] Norwegian: Statens pensjonsfond – Utland, SPU
[102] Norwegian: Oljefondet

one percent of global equity markets (NBIM, 2009, pp. 18-19). With 1.78 percent of European stocks, it is said to be the largest stock owner in Europe (NBIM, 2009, 18). The Norwegian Ministry of Finance forecasts that the fund will reach 1 trillion by the end of 2019 (Norway Ministry of Finance, 2011, 56).

A.2 Fund governance and management

In terms of governance, the Stichting Pensioenfonds ABP is an independent body with its own Board of Trustees. Social partners, represented by employers and employees, act independently from the organizations they represent and are responsible for ABP’s performance (ABP, 2014a). 'De Nederlandsche Bank' (DNB) is an important external institution that supervises ABP’s board (ABP, 2014a). In 2008, ABP's subsidiary APG was designated to manage the fund’s assets, which also currently includes oversight for responsible investment activities (ABP, 2014a).

Likewise, the management of the GPFG is premised on a clear governance structure. The GPFG is managed by Norges Bank Investment Management (NBIM), a part of the Norwegian Central Bank on behalf of the Ministry of Finance (Myklebust, 2010). In this structure, duties and authorisations are delegated downwards through the system (Norwegian Parliament – Ministry of Finance – NBIM Board – Internal and external asset managers) (Myklebust, 2010). Responsible investment approaches are implemented primarily through the Norges Bank, though the Norwegian Council of Ethics plays an advisory role regarding the observation and exclusion of companies from the fund’s investment universe based on the compliance with global human rights norms (Myklebust, 2010).

A.3 Strategic investment mix

The ABP Board of Trustees defines the risk frameworks within which ABP Investments can operate. The fund is aligned to a strategic investment plan which aims to provide “an attractive, affordable pension that follows the developments of the salaries in government and education to the highest possible extent.” (ABP, 2011, p. 1). The basic principles used by ABP when executing its investment policy are recorded in the Statement of Investment Principles. Based on these strategic directions, the ABP investment portfolio is made up of thirteen asset classes allocated as below (ABP, 2014b).

Table A.1. ABP portfolio by asset class 2010-2012

Investment mix	Percentage of Portfolio
Treasuries	10
Index Linked Bonds	12
Credits	16
Alternative Inflation	7
Global Tactical Asset Allocation (GTAA)	3
Equities Developed	2
Equities Emerging	7
Private Equity	5
Real Estate	9
Infrastructure	2
Commodities	1
Opportunity Fund	4

Investment mix	Percentage of Portfolio
Hedge Funds	4
Total ABP	100%

The GPFG's investment strategy is based on the premise that one needs to assume risk in order to achieve a satisfactory expected return over time (Norway Ministry of Finance, 2014a). Principles of diversification and long-term investment horizons are identified as key aspects of the fund's risk mitigation approach. The investment strategy of the GPFG stipulates a fixed equity portion of 60%, a fixed income portion of no less than 35% and a real estate portion of no more than 5% (Norway Ministry of Finance, 2014a). This allocation is reflected in the strategic benchmark index of the Fund, which forms part of the management mandate from the Ministry to Norges Bank (Norway Ministry of Finance, 2014a)

Responsible investment approach

- ***Division of responsibilities and key policy frameworks***

The ABP Board is responsible for providing strategic direction with regard to the fund's responsible investment policy, while day-to-day implementation is delivered by their asset manager APG (ABP, 2014a). ABP's Corporate Governance Policy sets out expectations on transparency, independent board membership, accountability and shareholders' rights (ABP, 2014a). It evaluates the quality of corporate governance on the basis of international principles and codes, as well as on the basis of the 2003 Dutch Tabaksblat Code (Corporate Governance regulations) (ABP, 2011). ABP aims for transparency and accountability in how it exercises engaged ownership and shareholder rights through the annual ABP Responsible Investment Report, the ABP Corporate Governance Framework and the Vote Disclosure Tool (ABP, 2011).

The implementation of responsible investment for the GPFG is somewhat more complicated than the process observed for ABP. To date, the Norwegian Ministry of Finance, Norges Bank and the Norwegian Council of Ethics each have had a distinct role to play in the implementation of the fund's responsible investment policy (Myklebust, 2010).[103] Norges Bank manages the Fund on the basis of the Mandate for the Management of the GPFG, laid down by the Ministry (Myklebust, 2010) This mandate stipulates that the ownership rights of the Fund are managed by Norges Bank and that the Bank shall integrate sound corporate governance, environmental and social considerations in such management (Myklebust, 2010). The Council on Ethics adheres to the *Guidelines for Observation and Exclusion* adopted by the Ministry of Finance and provides advice on individual companies that merit observation or exclusion from the Fund (Norwegian Government Pension Fund Global, 2004). Any decisions to exclude or observe companies from the investment universe of the Fund are made by the Ministry of Finance (Myklebust, 2010; Norwegian Government Pension Fund Global, 2004).

The mandate from the Ministry stipulates that active ownership shall be based on the UN Global Compact, the OECD Principles of Corporate Governance and the OECD Guidelines for Multinational Enterprises (Norwegian Government Pension Fund Global, 2004). These principles and standards are voluntary recommendations that express good corporate governance

[103] In 2013, a Strategy Council was requested to prepare a report addressing the overarching responsible investment strategy for the GPFG. The Council's recommendations were published in late 2013 and a number of changes to the implementation and structure of responsible investment activities will come into effect as a result in 2015. The Strategy Council made a number of suggestions for the further strengthening of responsible investment practice. The most significant change is that the Council on Ethics will cease to operate as a distinct organization and the Norges Bank will assume responsibility for excluding companies based on criteria laid down by the Ministry of Finance.

expectations and impose requirements concerning responsible corporate environmental and social practices (Norwegian Government Pension Fund Global, 2004). Norges Bank also has its own governance documents for responsible investment. These specify how such considerations are integrated in the investment activities and in company follow-up (NBIM, 2009). Both ABP and GPFG are also signatories to the UN-backed Principles for Responsible Investment (UN-PRI, 2014).

- ***Policy implementation***

The range of tools used by ABP and the GPFG to implement responsible investment policies are very similar. ABP's approach to responsible investment is exercised through proxy voting, corporate engagement, exclusion and policy engagement with national and international policymakers and civil society organizations (APG, 2014). Similarly, the GPFG states that it implements its responsible investment policies through international cooperation and contribution to the development of best practices, environment-related investments, active ownership (proxy voting), and the observation and exclusion of companies (Norway Ministry of Finance, 2014a; 2014c).

With regard to exclusions, both funds use product-based and conduct-based criteria to implement their stated policies. Product-based cases entail avoiding investments in companies that are linked to the production of certain goods or services that are prohibited within the fund's investment mandate. ABP has a firm exclusions policy based on negative screening of companies involved in products or services prohibited by Dutch or international law (ABP, 2014b). Specifically companies involved in the production of land mines, cluster bombs, or chemical or biological weapons are excluded from the investment universe (ABP, 2014b). In cases where a company may become exposed to these sectors through acquisitions or suppliers, the fund is expected to exclude the company (ABP, 2014b). For ABP, conduct-based exclusions are based on company violations of the UN Global Compact (ABP, 2012 and APG, 2014).

In the Norwegian context, the GPFG's assets are prohibited from being invested in companies that are engaged in the production of chemical weapons, biological weapons, anti-personnel mines, undetectable fragmentation weapons, incendiary weapons, blinding laser weapons, cluster munitions and nuclear arms (Norwegian Government Pension Fund Global, 2004). The GPFG is also not permitted to be invested in companies that develop or produce key components for these types of weapons. Investments in tobacco companies and bond investments in countries restricted due to sanctions are also prohibited (at the time of writing Iran, North Korea and Syria) (Norway Ministry of Finance, 2014a). In terms of conduct-based criteria, a company may be excluded from the GPFG if there is an unacceptable risk that the company contributes to serious human rights issues outlined the Council of Ethics' mandate, including aspects such as murder, torture, deprivation of liberty, forced child labour, severe environmental damage and corruption (Norway Ministry of Finance, 2014a; 2014c).

Table A.2. Scope of corporate engagement, 2013

Institutional Investor	ABP (Dutch)	GPFG (Norwegian)	
Engagement leader	APG	NBIM	Ethics Council
Companies engaged[104]	196	2,304	40
Topics addressed	• energy and climate change • responsible human capital policy • integrated reporting • board composition • executive remuneration • human rights • labor rights • environment • anti-corruption	• climate change • equal treatment of shareholders • roles and responsibilities of the board • well-functioning financial markets • children's rights • water management	• labour rights [electronics agriculture fisheries] • oil extraction in Equatorial Guinea
Companies divested	2	27[105]	21[106]

[104] These figures refer to direct contact through letters, phone calls and meetings. Proxy voting-related engagements are disclosed separately.

[105] 11 coal-mining and 16 gold-mining companies

[106] 13 for environmental damage, 3 for human rights violations, 2 ethical norms, 3 for violations related to war or conflict. For observations: 1 was retained for observation on corruption and 1 for confidential observation.

Appendix B Interview Information

Below is information pertaining to interviews conducted by the author in Norway, Netherlands, the UK, United States and Canada, and used in Chapter 3. The information includes the name and affiliation of interview subjects, interview pool and the interview questions.

Table B.1. List of interview subjects

Type	Organisation	Name	Position
1. Institutional Investor	Norwegian Council of Ethics	Ola Mestad	Chair (former)
2. Institutional Investor	Folketrygdfondet (Norwegian Pension Fund)	Melanie Brooks	Senior Analyst – Responsible Investment (former)
3. Institutional Investor	ABP	Xander Den Uyl	Chair
4. NGO	Amnesty International - UK	Peter Frankental	Economic Relations Program Director
5. NGO	Amnesty International - UK	Howard Baker	Investment Relations Advisor
6. NGO	Global Witness	Annie Dunnebacke	Head of Campaigns
7. NGO	Institute for Human Rights and Business	Salil Tripathi	Director of Policy
8. Responsible Investment Research Provider	EIRIS	Peter Williams	Shareholder Engagement Manager
9. Responsible Investment Research Provider	SHARE	Kevin Thomas	Director of Shareholder Engagement
10. Responsible Investment Network	UNPRI	Fiona Reynolds	Chief Executive Officer

Type	Organisation	Name	Position
11. Responsible Investment Network	UNPRI	Valeria Piani	Associate Director – ESG Engagements
12. Responsible Investment Network/Institutional Investor	UNPRI/Batirente	Daniel Simard	Chief Executive Officer
13. Anonymous Interviewee	Not disclosed	Not disclosed	Not disclosed
14. Responsible Investment Network	Share Action	Louise Rouse	Head of Campaigns
15. Responsible Investment Network	Network for Sustainable Financial Markets	Raj Thamotheram	Senior expert
16. Academic/ Expert	Various	John Ruggie	UN Special Representative for Business and Human Rights

Interview sample and details

- Total elites contacted: 27
- Affirmative responses: 16
- Declined: 3
- No response: 6
- Accepted but delayed and not rescheduled: 2
- Interviewed in person: 14
- Interviews recorded: 12

Appendix C List of Shareholder Resolutions on Human Rights Issues, 1982-2017

Table C.1. List of shareholder resolutions on human rights issues, 1982-2017

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR001	1982	Military implications of investment in South Africa	Alcan Aluminium Ltd.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR002	1983	Disclosure of involvement in supplying products to South African Army	Alcan Aluminium Ltd.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR003	1984	Disclosure of policy criteria used for South African loans	Bank of Montreal	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR004	1985	Discontinue purchase of South African Krugerrand coin	Bank of Nova Scotia	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR005	1986	Disinvestment from Huletts Aluminium in South Africa	Alcan Aluminium Ltd.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR006	1987	Termination of South African investments and license agreements	Varity Corporation (ex Massey-Ferguson)	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR007	1988	Termination of South African investments and license agreements	Varity Corporation (ex Massey-Ferguson)	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR008	1988	Disclosure of financial, legal & ethical implications of investments in Namibia	Rio Algom	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Namibia
HR009	1988	Independent assessment of impact of Philippine mining operation	Placer Dome Inc.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Philippines

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR010	1989	Royal Dutch Shell Group withdrawal from South Africa	Shell Canada Ltd.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	South Africa
HR011	1992	Establishment of “facilities closure & relocation of work” committee	Northern Telecom, Ltd	Communications and Electrical Workers of Canada Mutil-Employer Pension Fund	Canada
HR012	1993	Adoption of a public code of conduct	Petro-Canada	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Canada
HR013	1993	Shareholder report on human, social &	Noranda Inc.	Dominica Sisters of Sinsinawa Wisconsin	Canada

Proposal ID	Year	Topic	Company	Filer	Country of concern
		environmental impact of Wisconsin mining			
HR014	1995	Imbalance in board composition and representation	Federal Industries	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Canada
HR015	1996	Imbalance in board composition and representation	IPL Energy Inc.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Canada
HR016	1996	Imbalance in board composition and representation	Rangers Oil Ltd.	Member of TCCR (Taskforce on Churches & Corporate Responsibility)	Canada

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR017	2000	Human Rights Compliance	Talisman Energy Inc.	United Church of Canada	Sudan
HR018	2004	Report on Human Rights Policy	Petro-Canada	Ethical Funds Co.	Algeria,Libya,Tunisia,Syria
HR019	2006	Local Support for Pascua Lama	Barrick Gold Corp.	Ethical Funds Co.	Chile,Argentina
HR020	2006	Consult with community at UTKAL project	Alcan Inc.	The Missionary Oblates of Mary Immaculate	India
HR021	2006	Report on local effects of Pascua-Lama project	Barrick Gold Corp	Les Soeurs de Sainte-Anne	Chile,Argentina

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR022	2006	Report on security measures & human rights	Ivanhoe Mines	Joi Warnock	Myanmar
HR023	2006	Report on Human Rights Policy in China	Power Corporation of Canada	Ethical Funds Co.	China,Tibet
HR024	2006	Report on policy re. human rights in China	Nortel Networks Corp.	Ethical Funds Co.	China
HR025	2007	Report on human rights policy and implementation	Nortel Networks Corp.	Ethical Funds Co.	China,Iraq

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR026	2007	Endorse the EITI	Encana Corporation	Regroupement pour la Responsabilité Sociale des Entreprises (RRSE)	Chad,Brazil,Oman,Qatar
HR027	2007	Adopt human rights policy	Canadian Natural Resources	Ethical Funds Co.	Gabon,Cote D'Ivoire
HR028	2007	Adopt a human rights policy	Ivanhoe Mines Ltd	Anonymous individual shareholder	Mongolia
HR029	2007	Report on Human Rights Policy in China	Power Corporation of Canada	Ethical Funds Co.	China

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR030	2008	Report on Implications of Investment in Myanmar	Power Corporation of Canada	Ethical Funds Co.	Myanmar
HR031	2008	No mine expansion without consent of affected communities	GoldCorp Inc	Brenda Cooper	Guatemala
HR032	2008	Endorse the EITI	Petro-Canada	Batirente	Tunisia,Morocco,Algeria,Syria,Libya
HR033	2008	Produce a human rights impact assessment	GoldCorp Inc.	Public Service Alliance of Canada Staff Pension Fund	Guatemala

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR034	2008	Develop code of conduct for suppliers	Harry Winston Diamond Group	Meritas Mutual Funds	Myanmar,India,Conflict zones
HR035	2008	Best Practices at Pascua Lama	Barrick Gold Corp.	Les Soeurs de Sainte-Anne	Chile,Argentina
HR036	2009	Review compliance with Community Engagement & Sustainable Development guidelines	Barrick Gold Corp.	Ethical Funds Co.	Australia,Tanzania,Chile,Papua New Guinea,USA

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR037	2009	Report on human rights implications of investments in Myanmar, Sudan & China	Power Corporation of Canada	Ethical Funds Co.	Myanmar,Sudan,China
HR038	2009	Appoint an independent, expert oversight panel	Barrick Gold Corp.	Regroupement pour la Responsabilité Sociale des Entreprises (RRSE)	Chile,Argentina
HR039	2010	Board to contain one director with human rights expertise	Barrick Gold Corp.	Northwest and Ethical Investments L.P.	Global

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR040	2010	Human Rights Policy Implementation	Power Corporation of Canada	Northwest and Ethical Investments L.P.	Myanmar,Sudan
HR041	2010	Right to FPIC	Goldcorp Inc.	Brenda Cooper	Guatemala
HR042	2011	Suspend operations at the Marlin mine	Goldcorp Inc.	Brenda Cooper	Guatemala
HR043	2011	Internet Freedom of Expression	Research in Motion Ltd.	As you Sow	UAE,Saudi Arabia
HR044	2012	Closure plan and reclamation process for the Marlin Mine	Goldcorp Inc.	Mary Swain	

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR045	2012	Review and report on human rights policy and performance	Canadian Imperial Bank of Commerce	IA Clarington Inhance SRI funds	Conflict zones
HR046	2012	Review and report on human rights policies and performance	Potash Corporation of Saskatchewan	IA Clarington Inhance SRI funds	Western Sahara
HR047	2012	Divest Syrian assets	Suncor Energy Inc	IA Clarington Inhance SRI funds	Syria
HR048	2012	Report to shareholders on human rights policies and procedures	IAMGold Corporation	IA Clarington Inhance SRI funds	Conflict Zones

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR049	2013	Director with expertise in human rights issues relevant to mining	Excellon Resources	Ejido La Sierrita	Mexico
HR050	2013	Report on exposure to conflict minerals supply chain	Canadian Imperial Bank of Commerce	IA Clarington Inhance SRI funds	DRC
HR051	2013	Report on exposure to conflict minerals supply chain	Toronto Dominion Bank	IA Clarington Inhance SRI funds	DRC
HR052	2013	Report on exposure to conflict minerals supply chain	Royal Bank of Canada	IA Clarington Inhance SRI funds	DRC

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR053	2014	Independent human rights assessment of operations in Western Sahara	Agrium Inc.	VanCity Investment Management	Western Sahara
HR054	2014	Investment in countries with weak rule of law	TransGlobe Energy Corporation	Montrusco Bolton Investments	Yemen
HR055	2015	Resolution regarding Rechtsstaat standards for international investments	Argonaut Gold Inc.	Montrusco Bolton Investments	Precautionary

Proposal ID	**Year**	**Topic**	**Company**	**Filer**	**Country of concern**
HR056	2015	Implementation of the Rechtsstaat standards for international investments	Primero Mining Corp	Montrusco Bolton Investments	
HR057	2015	Independent human rights assessment – Western Sahara	Potash Corporation of Saskatchewan	Meritas Mutual Funds	Western Sahara
HR058	2015	Independent human rights assessment – Western Sahara	Agrium Inc.	Meritas Mutual Funds	Western Sahara

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR059	2016	Independent human rights assessment – Western Sahara	Potash Corporation of Saskatchewan	Meritas Mutual Funds	Western Sahara
HR060	2017	Female Representation in Senior Management	BCE Inc.	Mouvement d'éducation et de défense des actionnaires (MÉDAC)	Canada
HR061	2017	Human Rights Impact Assessment (“HRIA”) of Marlin Mine	Goldcorp Inc.	United Church of Canada	Guatemala
HR062	2017	Request: Phase-out Non-Therapeutic Antibiotics Use	Restaurant Brands	As You Sow	USA

Proposal ID	Year	Topic	Company	Filer	Country of concern
			International Inc.		
HR063	2017	Adopt and publish a formal Board diversity policy	Constellation Software Inc.	Fonds de solidarite des travailleurs du Quebec (FTQ)	Canada
HR064	2017	Environmental and Indigenous Rights Due Diligence	Enbridge Inc.	Sisters of Charity (Halifax)	USA,Canada
HR065	2017	Adopt the living wage	Sun Life Financial Inc.	IA Clarington Inhance SRI Funds	Canada
HR066	2017	Adopt the living wage	Manulife Financial Corp.	IA Clarington Inhance SRI Funds	Canada

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR067	2017	Adopt the living wage	BCE Inc.	IA Clarington Inhance SRI Funds	Canada
HR068	2017	Human Rights Risk Assessment: Forced and child labour in the supply chain	Restaurant Brands International Inc.	United Church of Canada Pension Fund	Canada
HR069	2017	Adopt and publish a formal Board diversity policy	Restaurant Brands International Inc.	Oceanrock Meritas Jantzi Social Index Fund	Canada

Proposal ID	Year	Topic	Company	Filer	Country of concern
HR070	2017	Adopt and publish a formal Board diversity proposal	Morguard Corporation	BC Teachers' Federation	Canada
HR071	2017	Adopt and publish a formal Board diversity policy	Canfor	Canadian Labour Congress Staff Pension Plan	Canada
HR072	2017	Committee on Human Rights	Bank of Nova Scotia	Harrington Investments Inc.	Canada