Transparency and accountability for the global good? The UK's implementation of EU law requiring country-by-country reporting of payments to governments by extractives.

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TRANSPARENCY AND ACCOUNTABILITY FOR THE GLOBAL GOOD? THE UK'S IMPLEMENTATION OF EU LAW REQUIRING COUNTRY-BY-COUNTRY REPORTING OF PAYMENTS TO GOVERNMENTS BY EXTRACTIVES

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ABSTRACT

We draw upon the critical accounting literature to theorise what we see here as an accounting mobilisation and functioning in context. The manifestation entails ostensibly a progressive transparency and accountability and merits critical attention vis-à-vis concerns to better link accounting with the common good. We here find Gallhofer *et al*. (2015) and Gallhofer & Haslam (2017), with their appreciation of 'emancipatory' dimensions of accounting and how accounting can become 'more (or less) emancipatory', a useful framing, especially if, informed by critical studies that have problematised dimensions of transparency and accountability systems, their notions of the complex and multifaceted ambivalence of accounting systems are elaborated more explicitly vis-à-vis transparency and accountability. We focus upon the UK's implementation of Chapter 10 of the EU's Accounting Directive (and the equivalent Transparency Directive provisions), which is ostensibly progressive legislation prescribing *Reports on Payments to Governments*. Our empirical study indicates both progressive and problematic dimensions of the accounting and its dynamics in context, extending theoretical appreciation including for praxis.

Key words: Extractives, transparency, accountability, country-by-country; emancipatory accounting

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INTRODUCTION

We here draw upon the critical accounting literature to theorise and gain insights from an instance of 'accounting'[1] mobilisation and functioning in context. We focus upon the UK's implementation of Chapter 10 of the EU's Accounting Directive (and its equivalent Transparency Directive provisions). This law requires in-scope extractive companies domiciled in member states (and, by the Transparency Directive, outside companies listed on EU stock exchanges) to each publish a *Report on Payments to Governments* (RPG). Ostensibly, it constitutes a victory for civil society organizations long campaigning for increased transparency and accountability through country-by-country reporting (CBCR). Such reporting can on the face of it pressurize governments, and corporations, to be more accountable, fostering challenges to corruption and/or to low corporate payments to governments, with benefits in terms of addressing poverty. Especially vis-à-vis countries hosting extractives, addressing poverty is often articulated in terms of overcoming the resource curse.[2] We focus upon the UK (an EU member at the time of writing and the EU country with the largest interests in the extractives' sector), exploring the law's transposition and companies' implementation of the law. The focus especially merits critical attention regarding concerns to better link accounting with a notion of the common good.

Gallhofer *et al*. (2015) and Gallhofer & Haslam (2017) here provide a useful framing in terms of their 'emancipatory accounting' theorising, including their articulation of accounting's complex and multifaceted ambivalence. The latter relies upon appreciation of continuum theorising, which recognises the mix (progressive and regressive) of forces at work in and through accounting and the relative character of dynamic shifts thereof. Gallhofer & Haslam's (2017) 'new pragmatism' emphasises both the rationale for intervention and the complex and multifaceted character of its impacts. We aim to elaborate and develop this theorising with reference explicitly to transparency and accountability, taking insights from critical studies problematising aspects of transparency and accountability (e.g. Messner, 2009; Roberts, 2009). We seek to develop the theorising through empirical analysis (which has been scarce

[1] Usage of quotation marks reflects our delineation of accounting here, which, if consistent with Gallhofer *et al*. (2015) and much of the social accounting and related literature, may be controversial for some vis-à-vis the phenomenon focused upon. This merits clarification later in the paper.

[2] This curse has been articulated as: '…the correlation between…abundance of oil, gas and mineral resources and low economic growth and human development in many countries. It is a critical issue as, paradoxically, two-thirds of the world's poorest people live in resource-rich developing countries' (Oranje & Parham, 2009, p. 26). Our usage here of words/expressions like 'ostensibly' and 'on the face of it' reflects appreciation of failings of Western-centric approaches to overcome issues of underdevelopment and poverty (on which there are many texts and perspectives, e.g., Bond & Dor, 2003, Young, 2016, and, nearer to our focus, Bakre & Lauwo, 2016; Lassou & Hopper, 2016; Hopper *et al*., 2017; Egbon *et al*., 2018, Ejiogu *et al*., 2018), leading us towards a reflexive approach in this analysis.

vis-à-vis this theorising). A further contribution here is in our particular empirical focus: an accounting prescribed in *law* that is ostensibly *progressive* (quite explicitly linked to common good aims to counter poverty and spread opportunities) is not easily categorised by the conventional/social/counter accounting scheme referenced by Gallhofer & Haslam (2003, 2017). It is here a worthy empirical focus promising insight.[3]

Focusing upon exploring processes of the UK law's construction and early adoption in context, we inform our analysis through applying a variety of research methods and gathering a range of empirical evidence. We contextualise the focal phenomenon by articulating aspects of its historical development and situating it vis-à-vis developments paralleling or overlapping with it. We examine documentary evidence pertaining to the accounting law's formation and related industry guidance, including: draft and final EU and UK legislation; debates and stakeholder commentary documented during consultations over the law's construction (BIS, 2014a,b) including associated industry guidance (notably the International Association of Oil and Gas Producers guidance, IOGP, 2016); legal counsel deliberations; Business Innovation and Skills (BIS)[4] reports; and evidence from civil society organisations, e.g. Publish What You Pay (PWYP), Transparency International and Oxfam UK, who actively lobbied for CBCR. We explore fifty RPGs (of first-time compliers) to understand how companies have so far interpreted the law. And we gain further insights into key constituency views and illuminate the process of translating and interpreting accounting law in practice by analysing transcripts of four semi-structured interviews (conducted in the months of 2017 preceding Trump's election as U.S. president[5]). The interviewees were a QC[6] who counselled civil society on interpretation of this accounting law, a senior UK legislator, a civil society corporate transparency campaigner and an extractives industry representative.[7]

Our analysis highlights several themes concerning how the accounting law has manifested: issues in the law's construction, language and opaqueness; conflicting views expressed by the accountancy profession, industry representatives and civil society during the law's

[3] The Extractive Industry Transparency Initiative (EITI) is in contrast voluntary, although once signed up to entails obligations. Research has been done on this (Ejiogu *et al*., 2018, is a recent example), which helps situate our focus.

[4] BIS and the Department of Energy and Climate Change merged in 2016, forming the Department for Business, Energy and Industrial Strategy (BEIS) (https://www.gov.uk/government/organisations/department-for-business-innovation-skills).

[5] We refer to this as it unfavourably changed the context promoting disclosure (*subter*).

[6] Queen's Counsel (QC) refers to an eminent lawyer formally appointed by the Queen in commonwealth countries (normally experienced barristers in England).

[7] We refer subsequently to the QC as QC, the legislator as LG, the campaigner as TC and the industry representative as IR. Our approach reflects Laughlin's (1995) 'middle-range' perspective in that (along with balance in philosophical assumptions brought to research and our critical stance) we have a prior theoretical position, reflecting an appreciation of the law's progressiveness and our worries that the law's potential may be undermined and will likely need to be defended and strengthened, but we are also open to being informed by fieldwork findings.

transposition from EU Law; how industry guidelines interpreted the law; and some issues in early reporting manifestations. We tend to confirm Gallhofer & Haslam's (2017) thesis (see their note 37) in so far as ostensibly progressive types of reporting have problematic as well as progressive actual and potential dimensions in their manifestations and functioning. Our analysis highlights in this regard ambivalence in the accounting/accountability mobilised. We uncover both progressive and problematic dimensions of the focal accounting and its dynamics in context. We find progressive dimensions of this accounting in practice, reflecting, e.g., at least partially the ostensible intentions to raise citizen-empowering transparency to hold governments accountable for extractives-generated revenues. Concurrently, we elaborate problematic dimensions, notably how some interpretations of the law in practice counter the law's spirit vis-à-vis relatively weak regulation. Appreciation of comparable efforts to enhance transparency and accountability is here helpful for the analysis. We illuminate circumstances fostering more progressive accounting/accountability. The empirical study extends and refines theoretical appreciation. Reflecting on our analysis, we summarise insights and suggest ways forward towards the better realisation of the intervention's stated aims, drawing from the appreciation of praxis in Gallhofer & Haslam (2003, 2017). Reflecting this in the current context we offer some recommendations for strengthening the law and the related reporting practice.[8]

Our analysis is thus structured as follows. We elaborate our theoretical framing. We explore the empirical case focused upon. We discuss and analyse our case in relation to theory elaboration and development. Finally, we offer concluding comments.

THEORETICAL FRAMING

Accounting and related practices, such as auditing, are often rhetorically supported as *professional* practices *serving the public interest* (Willmott, 1990; Baker, 2005, 2014; Gallhofer & Haslam, 2007). The more evident intersection of accounting manifestations with *the law* helps signpost their more general regulatory, as well as (contextually) their ethical, character. That is, one appreciates that accounting can be more clearly seen as at least having potential implications for social well-being. A regulatory dimension is quite pervasive in accounting's mobilisation and functioning. Critical perspectives on accounting, as well as on accountability and auditing, including critical appreciations of social and environmental accounting/auditing, have problematised these systems (sometimes seeing them as reflecting a conservative problematic hegemony) including vis-à-vis their public interest claims (see Willmott, 1990).

[8] Evidence-based policy recommendations have been published for interested stakeholders, particularly civil society organisations, to use in communications with government, regulators, standard-setters and general campaigners (**Reference withheld: blind review**). Civil society and industry representatives were asked by BEIS to contribute to a consultation reviewing the UK Law (submitted November 2017, see http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf) and by EC in respect of Chapter 10 (completed November, 2018, see https://ec.europa.eu/info/publications/181126-country-by-country-reporting-extractive-logging-industries-study_en).

The latter claims can constitute a symbolic discourse imposing institutional control over accounting, protecting institutional work and securing benefits for practitioners. The notion that serving presumed narrow economic interests of investors translates into the public interest or public good is controversial (see Baker, 2005, 2014; Gallhofer & Haslam, 2007; Dellaportas & Davenport, 2008): even where mobilised with an apparent aim to do good, much of the force of accountings in practice is found wanting, even contradicting that aim. Concurrently, there is a moderating and even counter discourse that also claims the status of a critical perspective on accounting, accountability and auditing. For some, accounting and related systems, actually and potentially, have enabling and emancipatory dimensions aligning them in some ways to serving progressive notions of the public good, 'beyond narrow shareholder wealth maximisation' (Killian & O'Regan, 2017): a range of academic accounting studies inform emancipatory projects through what Gallhofer & Haslam (2017) term a new pragmatist lens, e.g. Bebbington *et al*. (2007), Brown (2009, 2017), Bebbington *et al*. (2014), Atkins *et al*. (2015), Brown & Dillard (2015), Atkins *et al*. (2017), Crawford (2017), Gallhofer & Haslam (2017). [9]

In discourses of emancipatory accounting, Gallhofer & Haslam (2003, 2017) and Gallhofer *et al*. (2015) articulate a critical theoretical perspective drawing from post-structuralist, postmodern and post-Marxist theorizing. They suggest 'emancipatory accounting' is best seen as accounting positively serving an array of progressive interests, identities and projects: moving away from location of the construct in a kind of revolutionary Marxism (see also Brown, 2017)**.** In their 'continuum theorising', accountings (and related phenomena) are seen as complex and multi-faceted. Not only are accountings fusions of emancipatory and repressive forces, there is a dynamic in and through them whereby *they can become more or less emancipatory/progressive over time*. Following the post-structuralist and postmodern influences (and drawing upon Alvesson & Willmott, 1992, an acknowledged influence on Gallhofer & Haslam, 2003), Gallhofer & Haslam (2017) seek to uncover positive forces (which might especially be overlooked) *in the detail* of a focal research object and its functioning. Gallhofer *et al*. (2015) and Gallhofer & Haslam (2017) articulate a social analysis of accounting indicating how accounting can come to follow more positive or more negative trajectories in the above terms.[10] Gallhofer & Haslam (2017) do indicate the weight (in a subjective and relative sense) of the negatives in their perspective, while being concerned to redress something of a lacuna in the critical literature whereby positives are overlooked. We can here

[9] We in effect here use notions of public interest, public good, common good and global good interchangeably. The law's stated goal and civil society's interest in the law clearly indicate progressiveness in, e.g.: empowering local communities; countering tax abuse; assisting development (see European Commission, 2013, paragraph 7; PWYP, 2018) but one should critically interrogate practice. The nature of the public good is clearly contested and there are difficulties involved in serving it, indicating the need for critical assessment (Baker, 2005, 2014). Given the focus on accounting *law* here there are parallels between our theorising and theorising in critical legal studies, including the concern to work with progressive notions of the public good (see Unger, 1983; Kelman, 1987; Moore, 1991; Tushnet, 1991).

[10] They refer to complex dynamic impacts of interactions between accounting elements (e.g. the content, form, usage and aura of accounting) vis-à-vis contextual dynamics. They also indicate intervention's potential per their new pragmatist perspective.

deepen appreciation of negatives by further considering worries about accounting and related phenomena, especially concerning transparency and accountability, expressed by writers (e.g. Messner, 2009; Roberts, 2009) who have engaged in critical analysis of accounting and related practices. We then return to articulating appreciation of the multifaceted character of accounting and related phenomena.

Doubts and anxieties about accounting and related phenomena

Manifestations of accounting, accountability and auditing are not by their nature straightforward phenomena. To elaborate, we may first appreciate that such manifestations, as indeed manifestations of the law, always occur *in a context*. While abstract principles may be employed to provide a rationale for their mobilisation, construction, extension or modification, these phenomena always occur in a context of considerable complexity that is difficult to grasp. And, in practice, accounting and related phenomena may follow and engender complex and ambivalent trajectories, with consequences that are to an extent different from the intended and anticipated.

Theoretical and empirical research provides insights into this problematic. We can articulate some of the key insights helping us critically reflect upon efforts to ostensibly increase transparency, enhance accountability and impact behaviour to better well-being through various mechanisms of accounting and related phenomena (the focus of our empirical analysis). We should initially acknowledge that it is even the case that such efforts may from an early stage function more as tokenism, or even fraud. More generally, something less than an unambiguously positive impact may follow the efforts (see Peters, 1993; Power & Laughlin, 1996; Power, 1997; Strathern, 2000; Larrinaga-Gonzalez & Bebbington, 2001; O'Dwyer, 2001; Eisenberg, 2006; Hood & Heald, 2006; Christensen & Langer, 2009; Etzioni, 2010; Fenster, 2012, 2015; Bovens *et al*., 2014; Gallhofer & Haslam, 2017; Öge, 2014, 2016; Mejía Acosta, 2009, 2013; Ejiogu *et al*., 2018).

It has been elaborated how disclosure in the *public realm* cannot be easily restricted in terms of who uses it and for what purposes (see Stiglitz, 2002; Stiglitz & Walsh, 2006)**.** This is something that might facilitate *countering* of more negative or problematic regulatory phenomena in that negative intents and effects (from a critical perspective) of regulatory interventions can thereby be countered (see Gallhofer & Haslam, 2003, 2007; Gallhofer *et al*., 2006; Bebbington *et al*., 2014). It may also facilitate countering, undermining and displacing the more progressive and positive by those, for instance, whose projects are scarcely progressive (see Sikka, 2006, on the potential of internet disclosure).

Competing and conflicting interests may to varying degrees *capture* a nascent or introduced accounting-type practice, suverting socially progressive intentions. Those ostensibly rendered visible and accountable may to some extent capture or modify accounting and related mechanisms (e.g. as in 'regulatory capture', see Sikka, 2006; Spence, 2009; Cortese, 2011; Crawford *et al*., 2014; Öge, 2014; Mejía Acosta, 2009, 2013; Ejiogu *et al*., 2018). Law-makers

and standard-setters may effectively lean towards interests of particular constituencies (including those ostensibly rendered visible/accountable). This could reflect a perceived overlapping of interests of regulator and regulated from a broad regulatory perspective (e.g. one stressing national, local and/or powerful economic interests, which might be prioritised over global justice) (see Gendron *et al*., 2001; Gallhofer & Haslam, 2003; Chiapello & Mejdad, 2009).

Accounting and related practices emerging as influential may displace *alternative* practices (e.g., alternative State, quasi-state and/or professional regulations, forms of counter accounting, substantive critical investigation and practices of companies who might have been positively influenced more by pressures from their communities or even held themselves to higher accountability standards) (Power, 1997; Strathern, 2000; Curtin & Meijer, 2006; Christensen & Langer, 2009; Etzioni, 2010; Fenster, 2012; Meijer, 2013; Ejiogu *et al*., 2018). This could to some extent undermine ostensible positive intentions: e.g., if stakeholders placed too much trust in institutions, or investigative journalism for civil society was reduced due to it being perceived that a legal or quasi-legal practice was in place, or if the State rolled back other regulations to negative effect (see Power, 1997; Fenster, 2012; Ejiogu *et al*., 2018). For some, transparency's effectiveness depends on contextual factors such as other regulatory systems (Mejia Acosta, 2009, 2013; Öge, 2014, 2016).

Manifest accountings may be bolstered if reflecting *professional* expertise and language and *legal* authority. This may render them *difficult to challenge* in the public realm including by user constituencies, and including where the practices (perhaps reflecting specialist language, see Gallhofer & Haslam, 1993) are difficult to understand (see Bromwich & Hopwood, 1992; Power & Laughlin, 1996; Power, 1997; Meijer, 2013; Bovens *et al*., 2014; Ejiogu *et al*., 2018). And, established practices may lead key constituents to assume all is in order and fail to critically question what is ostensibly accounted for and/or audited. Practices may not be challenged, being presumed sound. Beyond power arising in some contexts from association with the law and expertise, there is the possibility practices like accounting can gain power by resonating with prevailing cultural preferences (e.g. where accounts are valued as 'facts', 'objective' or 'numerical') (Gallhofer & Haslam, 1991; Loft *et al*., 2006; Chiapello & Medjad, 2009; Humphrey *et al*., 2009; Durocher *et al*., 2007; Crawford *et al*., 2014). A danger is that accountings may be relied upon even where the assurances they suggest may be somewhat illusory or gross simplification based perhaps on narrow conceptions of transparency, displacing wider critical investigation (Gallhofer & Haslam, 1991; Roberts, 1991; Power, 1997; Roberts, 2002; Jos & Tompkins, 2004; Fenster, 2015; Öge, 2016).

Researchers have elaborated how imposing formal accountability-type systems, most obviously by law but more generally in organisational/social interaction, involves ethical issues and suggests problematic possibilities (see Fox & Miller, 1995; Strathern, 2000; Arendt, 2003; Bevir, 2004; Hood & Heald, 2006; Etzioni, 2010; Fenster, 2012, 2015; Meijer, 2013; Bovens *et al*., 2014). Negative dimensions of 'juridification' as understood by critical scholars

on law and governance (e.g. as where a formal prescription or legal rule becomes overly dominant, restricting beneficial social outcomes) are here included (see Teubner, 1987; Laughlin & Broadbent, 1993; Power & Laughlin, 1996; Roberts, 2002). Accounting and auditing practices may amount to 'tick-box' exercises overly detached from the substance or spirit of their mobilisation (Power, 1997). Through framing and design, they may impact on auditee behaviour to problematic effect (Power, 1996). Some worry about implications of not trusting or negatives of a blame culture, the dangers of practices becoming synoptic policing tools and overly limiting autonomy (see Scott, 2000; Strathern, 2000; O'Neill, 2002, 2006; Dubnick, 2003; Eisenberg, 2006; Dubnick & Yang, 2011; Meijer, 2013; Bovens *et al.*, 2014). Messner (2009) draws upon Butler's work (see Butler, 2005) to inquire into the limits the accountable self faces when giving an account. The accountor (rendering the account) may be unclear as to the reasons for their actions. Further, what can become a burden of accountability can colonize accountor conduct in problematic ways. Expecting the accountor to be responsible and accountable for multiple conflicting things may be ethically questionable. And the mode or medium of accountability is usually scarcely of the accountor's own making (Messner, 2009).[11] While Messner focuses on accountability's limits, Roberts (2009), also referring to Butler, articulates similar insights about transparency and emphasises problematic issues involved in translating transparency/accountability into practice, e.g. measurement issues (see Fung *et al*., 2007). Such matters may have differing levels of significance and meaning in different cultures (on accounting, see Evans, 2004).

Further, initiatives mobilising accountability and related practices are costly. Aside from more obvious direct costs involved are possible indirect impacts, e.g., on socio-economic motivations and activities. Costs may here fall disproportionately on particular types of companies or countries and potentially their citizens (see insights in: Zeff, 1978; Zhang, 2007; Etzioni, 2010; Leuz & Wysocki, 2016; on extractives, see Cortese *et al*., 2009).

For Power (1997), these various negative aspects or possibilities have in substantive respects scarcely halted the influence of accounting/auditing practices. Where these practices have been found somehow wanting, e.g. vis-à-vis financial failings, crises or more generally poor performance, so strong is their normative underlying image that the proposed remedy (often followed) is *more* accounting, accountability and auditing mobilisation.[12] Where accounting and related practices are directly tainted by scandal this often leads to *some* questioning and reforming (perhaps temporary) of these practices, even on their extension, but the questioning has tended to be constrained, being bound up in the intensity of a crisis and need to act (Gallhofer & Haslam, 1991; Power, 1997).

[11] This involves relative rather than absolute influence. Politics is pervasive and effective negotiation and mediation complex (Norval, 2009). Determining accountability's nature and scope requires ethical judgement as to 'for whom, for what' vis-à-vis the reporting organization's underlying ideology (Crawford *et al*., 2018).

[12] E.g., after the 2008 crisis, calls from regulators and academics to reform Europe's audit market to preclude conflicts of interest and introduce greater competition engendered extensions of auditing, accounting standards and audit law (Sikka, 2009; Sikka *et al*., 2009; Humphrey *et al*., 2011; European Commission, 2010).

We need to take negative aspects and possibilities seriously. Concurrently, there is a danger, in appreciating the negatives predominant in critical discourse, of overlooking or misinterpreting progressive actualities and potentialities of accounting and related systems. Let us return to these in seeking to articulate the more balanced position.

Continuing to appreciate the positive and progressive: theoretical refinement

If one hears anecdotal calls to even end accounting and related practices (noted in Gallhofer and Haslam, 2003, 2017), these are presumably akin to hyperbole and irony rather than substantive argument. Gallhofer & Haslam (2003, 2017), analysing branches of accounting discourse, notably of social and environmental accounting discourse, suggest that it is as if particular types of accounting (conventional, mainstream) are seen as absolutely corrupted but for them such allusion is problematic, akin to crude 'straw-manning' (they emphasise here the crucial issue of accounting delineation). A close reading of texts highlighting doubts and anxieties about accounting-type systems suggests typically that they are not one-sided. The 'negative' literature more properly tends to emphasize the need to limit or balance different tendencies and does not negate accounting-type systems entirely (Roberts, 2017, explicitly supports positive dimensions of accountability in particular contexts, including vis-à-vis countering corruption). The argumentation involves more relative emphasis and reference to particular types of the focal phenomena rather than more extreme universal and absolutist positions. And in the critical theoretical literature, one finds explicit emphasis on accountability's positive potential (see Bronner, 1994; Florini, 2007; as well as Gallhofer & Haslam, 1997, 2003). From this, one can argue that while accounting-type phenomena (and dimensions thereof) are problematic in various ways, too little of their presence and functioning in society would also be problematic.

None of the doubts and anxieties suggest, then, leaving aside issues of feasibility, that jettisoning, or not mobilising, accounting and related practices (and the law) equals the best way forward. Yet, we might note here that aspects of the appreciation of doubts and anxieties (which might be exaggerated in policy discourse) may be used to try to negate *socially progressive* accounting and related developments in practice. The appreciation rather indicates the need to critically assess particular accounting-type manifestations carefully, to explore the detail (of positives and negatives) to better assess and construct ways forward aligned with the desired social aim. We suggested above that there may be particular reasons to question an accounting supported by or associated with the law but, regarding the theoretical concern to look for positives and negatives including in the detail, those principles are the same whatever the type of accounting focused upon.

Gallhofer *et al*. (2015) summarise a critical and socio-analytical model (outlined earlier in Gallhofer & Haslam, 1991) that they deem useful for framing empirical research into accounting practice in this regard. They stress the need to understand the dynamics in context of accounting elements such as accounting's content, form, aura (how it is perceived in society), usage (who uses it and how) and the 'network' of actors around accounting. This

defines a field of interactions consequential in terms of shifts in progressive/regressive dimensions of accounting's functioning.[13] Their framing applies to *any* accounting phenomenon and related practice, including accounting advocated as progressive from a critical perspective (see suggestions for analysis of 'counter' and 'shadow' accounting in Gallhofer *et al*., 2015; Gallhofer & Haslam, 2017).[14]

Following Gallhofer & Haslam (2017), the critical researcher seeks to theorise the emancipatory/progressive and repressive/regressive forces running through accounting in context, at particular moments and over time, and seeks to transform the focal object (and context) towards a better vision of its manifestation/functioning. Gallhofer & Haslam (2003, 2017) see here their theorising as praxis while they also promote various interventions to progressively change things in society (we draw from this later). They emphasise the need for more empirical work to illuminate, e.g., what is problematic, what is progressive and what can be rescued in the domain delineated around the focal accounting object (or related practice). Informed by reflection on Habermas, Power & Laughlin (1996) conclude similarly: '…the distinction between accounting practices as 'distorting' or 'enabling' can never be made absolutely but is nevertheless a constant problem that must be worked out in empirical research…' (p. 462)(see also Walker, 2014)[15]. We now turn to our case.

A CASE ANALYSIS: REALISING THE POTENTIAL OF ACCOUNTING AND RELATED PHENOMENA TO ENHANCE TRANSPARENCY AND ACCOUNTABILITY ON BEHALF OF THE WORLD'S POOR?

We here explore our focal accounting manifestation, the accounting law written into Chapter 10 (with its equivalent Transparency Directive provisions), [16] in relation to our theoretical framing and its concern to uncover multifaceted dimensions of accounting. In our analysis, we: provide key contextual appreciation by elaborating upon developments leading to Chapter 10 and developments paralleling and/or overlapping with it; critically assess the legal text transposed in the UK; review comments submitted to a consultation when the law was being transposed and related interviewee perceptions; analyse industry guidelines; critically assess early reporting by extractives. Throughout, we reflect insights from key constituencies

[13] Gallhofer & Haslam (2017) promote developing critical orientation in various theorisings and, in the critical theoretical tradition, draw from these in refining articulation of progressive/regressive dimensions.

[14] If counter and shadow accountings (Gallhofer *et al*., 2006; Bebbington *et al*., 2014), in principle, challenge elements of the established order (typically contrasting with legislative provisions, see Spence, 2009), here there is ostensibly a parallel challenging through the law itself of prior business positions for progressive purposes, meriting analysis.

[15] Gallhofer *et al*. (2015), following new pragmatism, seek to uncover here emancipatory insights through appreciating and engaging with different ways in which accountings are developed and administered (see also Vinnari & Dillard, 2016).

[16] As noted, some may find it problematic to call the focus 'accounting'. We do so here partly following Gallhofer *et al*. (2015), who articulate possibilities of accounting delineation that would clearly include the reports prescribed by Chapter 10, and much social accounting and related discourse, which promotes quite a broad 'accounting' delineation (see Spence, 2009; Catchpowle & Smyth, 2016; Lehman, 2017). We are not, however, in using this delineation or categorisation, implying that the focal phenomenon has the same status or characteristics as conventional mainstream accounting: e.g., we later emphasise the focal phenomenon's relatively weak regulation (including vis-à-vis auditing).

on the accounting law, informed by interpretation of interviewee transcriptions. We then discuss and analyse the case in more explicit theoretical terms before offering concluding comments.

Context

Chapter 10 ostensibly aimed to increase transparency, enhance accountability and impact behaviour to better well-being, reflecting civil society's long-fought campaign to introduce CBCR for extractives (PWYP & Global Witness, 2005; Tax Justice Network, 2006; Gallhofer & Haslam, 2007; Murphy, 2012; European Commission, 2013; Sikka, 2013; Litvinoff, 2015; Transparency International, 2015; Baudot & Cooper, 2016; Crawford, 2017). The European Commission (2013) especially highlighted the law's enabling benefits for stakeholders:

> [It will allow]…communities to better demand that government accounts for how the money has been spent locally…[and]…civil society will be in a position to question whether the contracts entered into between government and extractive…companies…[have]…delivered adequate value to society and government.

And that this would be achieved through EU law requring:

> "… large extractive and logging companies to report the payments they make to governments (the so called country by country reporting-CBCR). Reporting would also be carried out on a project basis, where payments have been attributed to specific projects. … The new disclosure requirement will improve the transparency of payments made to governments all over the world by the extractive and logging industries. Such disclosure will provide civil society in resource-rich countries with the information needed to hold governments to account for any income made through the exploitation of natural resources".

Thus, quite explicitly, transparency and accountability is proposed to help alleviate local poverty and overcome the resource curse: such explicit intention is already a positive. The curse (see PWYP & Global Witness, 2005; Oranje & Parham, 2009) is one aspect of the wider issue of global poverty and under-development. If continuing basic problems globally are shocking then especially so is this curse, whereby resource-rich countries somehow find themselves worse off due to being resource-rich, an extreme instance of the more general phenomenon alluded to, i.e. poor performance vis-à-vis expectations for a country relatively richly endowed with extractables. Numerous studies have explored this problematic (e.g., Dollar & Easterly, 1999; Gary & Karl, 2003; Ferguson, 2005; Craig & Porter, 2006; Chang, 2007; Humphreys *et al.*, 2007; Moss, 2007; Collier, 2008; Woods, 2008; Kolstad & Søreide, 2009; Gillies, 2010; Arakan Oil Watch, 2012; Cunguara & Hanlon, 2012; Robinson & Acemoglu, 2013; Dowden, 2014; Burgis, 2015), some calling for greater accountability and transparency in suggesting ways forward. Legal and accounting practicalities of such calls have until relatively recently scarcely been appreciated or elaborated (Crawford, 2017).

Calls for greater accountability and transparency have here focused substantively on key areas. There is an interest in making clearer the socio-economic impact of extractive activities undertaken in countries upon the countries themselves. More specifically, there is concern to

disclose how much extractives-generated money is received directly by every relatively resource-rich country's governments and by whom the payments (e.g. taxes, fees, licenses and royalties) are made (in as granulated detail as can be useful). Further, there is concern to disclose how these government revenues are then spent by governments to facilitate evaluation. Such transparency is intended to potentially raise further issues, including in the public domain, entailing accountability relations (e.g., if corporate payments were found scant or government spending was controversial regarding its size and/or character) (Gallhofer & Haslam, 2007). While such a transparency system might in practice be fraught with difficulties and imperfections, commentators deem it considerably better than no regulatory prescription of transparency, a serious constraining lack (e.g., as reflected in deficiencies of investigative journalism, which has found accessing information difficult).

A prominent campaigner vis-à-vis seeking greater accountability and transparency here is PWYP.[17] PWYP formed a global coalition of civil society organizations 'united in their call for an open and accountable extractive sector' (http://www.publishwhatyoupay.org/our-work/mandatory-disclosures/). With support from George Soros and the Open Society Foundation, it pursues:

> …a world where all citizens benefit from their natural resources, today and tomorrow…a more transparent and accountable extractive sector, that enables citizens to have a say over whether their resources are extracted…how…and how their extractive revenues are spent (PWYP, 2017).

PWYP advocates transparent CBCR of payments to governments as crucial for stakeholders concerned to assess extractive operations' impact on the well-being of relatively resource-rich countries (e.g., Angola, Indonesia, Kazakhstan, Venezuela, Nigeria, Algeria, Sudan and Equatorial Guinea). They have sought to advance towards confronting and mobilising legal and accounting practicalities of the enhanced accountability and transparency vision (PWYP & Global Witness, 2005; Oranje & Parham, 2009; Crawford, 2017). Collaborating with legal and accounting experts, PWYP have sought to influence prominent accounting and disclosure policy-makers internationally, notably the International Accounting Standards Board (IASB), the US Financial Accounting Standards Board (FASB) and the US Securities and Exchange Commission (SEC), towards the more disaggregated disclosures that would help realise the vision. Specifically, PWYP actively sought to shape two accounting standards (International Financial Reporting Standard 6, IFRS6, on extractives' accounting, and IFRS8, on segmental reporting) and policies of stock exchanges and governments (Gallhofer & Haslam, 2007; Crawford *et al*., 2014; Baudot & Cooper, 2016).

PWYP have ostensibly impacted in the domains of their engagement. In accounting policy-making, appreciation of the IFRS8 case even bears witness to this (Gallhofer & Haslam, 2007; Crawford, 2017). The alternative standard for IFRS8 submitted (following IASB consultation criteria, requiring comments on proposed standards or changes thereto to be in line with the IASB framework's investor perspective) by PWYP and supported by some 300 members of their coalition (including charities like Oxfam and Save the Children), received substantial

[17] In 2012, PWYP expanded their remit from revenue transparency to all value chain steps (their 2020 vision).

publicity, with *The Guardian*, *The Financial Times* and *Accountancy Age* lending the initiative support and Soros making explicit that as an investor he supported the PWYP-formulated standard. Two IASB members (a significant number) went on record expressing their view that PWYP's desired changes were 'decision-useful' for investors. Arguably, the political opportunity structure of IASB's due process was in substantive ways hostile to PWYP's campaign (Crawford, 2017). If IASB decided by majority to reject PWYP's proposal, opting for a most permissive revised 'standard' (deemed by IASB to assist IASB's aims to align with FASB), IASB acknowledged further consideration should be given to the issue, increasing interaction with the UN and the International Financial Institutions. Gallhofer & Haslam (2007) also report some IASB members understanding IASB's decision as 'realpolitik' and expressing hope that legislation might intervene to yield the desired disaggregated disclosures.[18]

One aspect of the relationship between IASB standards and the law indicates a further area of PWYP influence. From 2005, the EU required all companies listed on EU stock exchanges to comply with IASB standards. In turn, the EU had to ratify new/revised IASB standards prior to their becoming mandatory. Often effectively rubber-stamping, this was not so with IFRS8 (Crawford *et al*., 2010; Crawford *et al*., 2014). PWYP asks combined at this juncture with prominent investment bodies seeing the revised standard as a backward step, prompted Members of the European Parliament to require the European Commission (EC) to undertake a Europe-specific potential effects assessment before endorsing (European Commission, 2007; Crawford *et al*., 2014). While IFRS8 was subsequently ratified, this event increased pressure for EU-level legislation to reflect the needs of users including civil society; the IFRS8 endorsement instrument specifically called for relevant CBCR disclosures by extractives (European Parliament, 2007; Crawford *et al*., 2010).

Meanwhile, lobbying activity in the US led to provisions being inserted into the Obama administration's Dodd-Frank Act (s.1504), so that desired disaggregated disclosures would be required of US-listed extractives (Dodd-Frank, 2010). The US legislation has so far disappointed in practice. The corporate sector took legal action arresting its application: the powerful American Petroleum Institute (API) brought a lawsuit (Ross, 2015). The US courts effectively left a politically constrained Obama administration failing to re-enforce the original law (Baudot & Cooper, 2016). Subsequently, the Trump administration sought to abandon the provisions: ensuing struggle continues.

It must be appreciated that the CBCR originally sought by PWYP and allies, when campaigning to influence IFRS8 (PWYP & Global Witness, 2005; see Murphy, 2012, on CBCR's potential), was more extensive than that incorporated into Chapter 10. Chapter 10 requires reporting entities to disclose payments identifying the government and country to which payment is made, 'whether in money or in kind' by payment types: production entitlements; taxes levied on income, production or profits; royalties; dividends; signature, discovery and production bonuses; fees and concessions (licence, rental, entry); payments for infrastructure improvements. The CBCR PWYP earlier campaigned for also included accruals-based performance and position information and non-financial disclosures (including information on the workforce, asset base, reserves, subsidiaries and nature of activities by country).

[18] The IASB appears to have given CBCR in this area low priority from 2012 (Deloitte, 2012; Crawford, 2017).

Moreover, this was to be in the *audited* financial statements. However, PWYP's efforts were subsequently overtaken by IASB's response and the US Dodd-Frank (s.1504) developments (*supra*). S.1504 required only disclosure of payments to governments: and without audit.

PWYP's response to the EC's original consultation on draft legislation (PWYP, 2011) included a request for audit. But a PWYP representative (personal communication, 2018) stated that they were:

> …informed by the UK government…that auditing was out of…question…maybe because there was no…auditing…in the Dodd-Frank Act, and perhaps because companies opposed auditing on…grounds of cost.

If the EC's consultation over draft legislation did not ask specifically whether CBCR should be audited, the envisaged NGO users expressed strong support for audit, e.g. arguing that:

> CBCR is more of an accounting issue than a CSR issue. It needs to be subject to the same standard of consistency and auditing as all other data in financial statements…to be credible and comparable (European Commission, 2011, p.21)

This contrasts with arguments raised by preparers, e.g.:

> CBCR is not an accounting issue and should not be included in the audited financial statements. (European Commission, 2011, p.27).[19]

This lack of audit requirement, together with no requirement for reconciliation to audited statements, is a weakness of Chapter 10.[20] Currently, data in the reports cannot be adequately appraised for accuracy or scale/appropriateness (except alongside other information sources including from investigative journalism), which is clearly a limitation (we shall later see that some companies have voluntarily undertaken limited assurance audits or reconciliations to main financial statements but this does not negate what is a strong negative aspect of the current accounting law). If securing legislation is a strong outcome, it does appear to have involved compromise, meriting investigation.

To appreciate Chapter 10, one should appreciate other relevant contextual developments that in some way parallel or overlap with it. Chapter 10 has parallels with EITI, the voluntary initiative (promoted by the UK government during the Blair administration and hence in place before Chapter 10) that governments and companies sign up to, agreeing to publish receipts from extractives' sectors and payments made regarding extractive activities. EITI requires companies to publish information with substantive similarity to that required by Chapter 10 but has the advantage of requiring independent reconciliation of company payments to

[19] We acknowledge that this language (taking both quotes together) distinguishes between 'accounting' (proper, as it were) and CBCR/CSR reporting. In our accounting delineation these are *different kinds* of accounting. The quotes may be taken to illustrate how language is used rhetorically in political argumentation. 'Accounting' is given a status in these statements to differentiate it from other phenomena which might be termed non-accountings or e.g. 'reportings' (which actually, *could*, *in principle*, be audited of course, while reference is to reports not *currently* audited and as if that was a *natural* and/or *proper* state of affairs).

[20] The EC is conducting a post-implementation review of Chapter 10 which includes consideration of extending the legislation to include auditing of RPGs.

government receipts.[21] Yet the voluntary nature of the initiative means that participation across industry and resource-rich countries is not assured. Further, the scope of payments to be disclosed is subject to agreement between civil society, industry and governments on a continuous basis in each separate jurisdiction. While this dialogue provides opportunities for the initiative to progressively develop it also can engender inconsistency between jurisdictions.[22] And rules can be co-opted by one constituent group.[23] The process, reliant on year-on-year trilateral agreements deciding publication dates rather than statutory deadlines, also raises concern over the timeliness of EITI disclosures (in practice lagging behind Chapter 10 disclosures).

More recently, the OECD proposed CBCR to tax authorities: Action 13, integral to its Base Erosion and Profit Shifting initiative (BEPS, adopted in the UK for large groups in all sectors with effect from 1/1/2016). If BEPS is itself a voluntary initiative, "soft law" according to the OECD, Action 13 is part of the OECD's "inclusive" BEPS framework and thus one of four minimum standards that must be adopted by countries wishing to join BEPS. Currently over 100 countries (including the UK) have signed up to BEPS, thus committing to Action 13 reporting (OECD, 2014). While there exists pressure for it to be so, the reporting is, however, not publicly available. If it was, it would in principle give users information needed to assess whether companies are paying *appropriate amounts* of tax in jurisdictions where they operate (beyond provinces of Chapter 10 and EITI). The lack of public transparency, including concerning tax authorities' usage of the data and corporate compliance with the rules, impacts Action 13's usefulness to civil society.[24]

A further development has been the passing of Capital Requirements Directive IV (CRD IV), an EU law (EC, Article 89a), prescribing prudential rules for banks, building societies and investment firms, most rules established from 1/1/2014 (FCA, 2018, https://www.fca.org.uk/firms/crd-iv). CRD IV requires more extensive disclosure than Chapter 10 for in-scope institutions. As CRD IV and Chapter 10 developed in parallel but came to different finishing points, questions arise over the appropriateness of regulating sector-by-sector versus a more comprehensive basis. If this facilitates more tailored regulation (including beyond Western-centricity) with associated benefits, the sector-by-sector

[21] While voluntary, EITI is influential, gathering momentum from its 2002 launch and now implemented in 52 resource-rich countries (https://eiti.org/who-we-are#supporters). However: "The UK EITI is due to begin a study to assess the usability and comparability of the publication of company payments under the EU Transparency and Accountability Directive. If the data submitted under the Directive are consistent, then they could be used as a lighter and timelier mechanism for collecting company data on payments to government – a more systematic disclosure mechanism." (GOXI, 2018).

[22] Some variability should be expected, however, if local contexts are to be treated seriously vis-à-vis their specificities. We are conscious of the problem of Eurocentric failings to appreciate cultural difference here (see Gallhofer & Haslam, 2003).

[23] In this regard, Ejiogu *et al*. (2018) appreciate how EITI can be undermined, e.g. by presidential control of appointments.

[24] Insightful critique is provided in Murphy (2018), who also indicates the value of the views of the Independent Commission for the Reform of International Corporate Taxation (ICRICT, 2018). Arguments here indicate the need for better globally co-ordinated regulation of corporate taxes. Our argumentation here has the same critical orientation: we are exploring pragmatic ways of advancing such an agenda (not to suggest that there are no pragmatic elements in Murphy, 2018, or ICRICT, 2018). There are issues in taking BEPS disclosure as is and making it public: it was set up for internal government use for particular purposes.

approach also opens up possibilities of inconsistency. A point could here be made (as it could for EITI and Action 13) about the need to seek to ensure that any parity or convergence sought between initiatives is to level up rather than down.

In the above context, we have indicated some advantages other contextual developments have over Chapter 10 (e.g. the reconciliation provisions of EITI and the comprehensive features of BEPS, which stimulate on-going debates about increasing relevant public disclosures, including at the EU level). There are positives and negatives in all the developments. Chapter 10 does, however, on the face of it constitute campaigner success as we write (and in terms of its potential), being legislation for transparency and accountability governing key corporations. But, if we focus upon it, what can we uncover about its construction and mobilisation in practice? Our focus is the UK Department of BIS' transposition into UK law of Chapter 10, with its equivalent Transparency Directive provisions (EU Accounting Directive, 2013). The resulting UK Reports on Payments to Governments Regulations (2014) became law on 1/12/2014, requiring certain undertakings active in upstream oil, gas and mining extraction or primary logging industries to publish reports on payments (arising directly from extractive activity) made by them to governments. By the regulations, companies domiciled or listed in the UK (listed companies from outside the UK are governed by the equivalent Transparency Directive provisions[25]) must disclose certain payments to governments[26] country-by-country. The UK here is an early (the first) implementer of the EU law, requiring disclosure for financial years starting on or after 1/1/2015. Substantively, this appears a straightforward legal requirement.

Critically assessing the legal text

The UK law was substantially meant to be a direct translation of the EU directive. Yet, we sought to assess whether there was anything problematic in transposition, noting that:

> Legal drafters have where possible used 'copy out' from the Directive but on occasion deviated from this approach to improve reading and clarity of the UK regulations…it is extremely important that the regulations give as much clarity as possible. (BIS, 2014b, p. 18)[27]

There are observations one can quite readily make on reading the law in context. These gain greater support when, for the UK case, constituency views and guidelines are considered and the law's early implementation is assessed. One observation is that the law's language is not as straightforward as one might have presumed given its basic aim to provide:

> …citizens of resource-rich developing countries with the information they need to help hold their governments to account…(BIS, 2014a, p.3)

Prior to issuing the law, BIS noted conflicts over language between civil society and industry 'in relation to the definitions, in particular undertaking, payment and project' (BIS, 2014b, p.18). Another initial observation is to note the inclusion of size criteria, e.g. concerning payment size (companies domiciled or listed in the EU must disclose payments 'greater or

[25] Article 6 Directive 2013/50/EU of the European Parliament and of the Council.
[26] Government means 'any national, regional or local authority of a Member State…[including]…a department, agency or undertaking controlled by that authority' (EU Accounting Directive, 2013, Article 41).
[27] The UK likes to draft laws in 'UK style' (QC).

equal to 100,000 Euros or the equivalent' made to governments relating to extractives' projects), which may facilitate avoiding disclosure.

The lack of audit requirement, albeit non-compliance penalties, is also noteworthy, regarding which:

> …[commentators]…noted that there was no requirement to have extractive reports audited and the use of civil and criminal penalties related to audited financial reports may add burdens to business as they may decide that auditing the reports is necessary to provide comfort that they have met legislative requirements. (BIS, 2014b, p.15)

It is noteworthy that the law is subject to review and soon after implementation (*supra*) by the UK and at the EU level to assess usefulness. The UK government's intention appears to be to inform the EU-level review:

> The…Commission is committed to completing a review of the directive by 21/7/18. The UK believes that it will be important to inform that review and therefore the government will include a three-year review clause in the regulations. This review will allow the government to consider whether the regulations and associated penalties have been effective and suggest appropriate amendments to the Commission. (BIS, 2014b, p.18)

Another observation from exploring the law's introduction is the government's expectation that supplementary guidance be produced (BIS, 2014b). The government 'encourage[d] industry and civil society to work together to produce guidance for companies' (p.5), being 'clear that it is industry that is best placed to develop guidance' (p.10). LG was less equivocal when the process of drafting guidance started:

> …there…[was]…debate as to the level of input…civil society would have to that guidance and I wasn't around at the initial stages to know what the deal was, whether they would input or whether they would see or whether they would be consulted on the guidance...that was always a bone of contention.

These points already provide insights for the accounting law's critical appreciation and indicate suggestions for how the law might be improved.

An especially interesting aspect of the initial EU law, appreciated by QC, was how the law defines 'projects' vis-à-vis the required *project-by-project* reporting (adding granularity to CBCR[28]). The law allows project aggregation where projects are 'substantially interconnected' (Article 41). However, this term is not explained in the EU law, which means legal interpretation is required. QC advises a range of interpretations possible, from narrow to broad (as relating to projects undertaken within the vicinity of others, it can be interpreted to cover a vast area: TC gave examples of expansive aggregations by BP across the Gulf of Mexico and Shell across the Niger Delta), but there is a question of reflecting the law's spirit. 'Substantially interconnected' is *illustrated* in the Directive's pre-amble (in Recital 45, which has no strict legal force). This may reflect controversy over the term: to get the Directive passed within a parliamentary timeframe, putting this in the pre-amble may have been seen

[28] Along with CBCR of different payments to governments at the aggregate corporate level, the law requires disclosure of payments at the level of company projects, offering greater granularity and allowing civil society to contrast payments from a particular region (nesting the project) with that region's poverty.

as expedient compromise (QC). Interestingly, Recital 45's illustration was taken into the UK law's *main body* at pp.5-6 (raising questions about this aspect of the UK law).[29] The illustration, considering the law's 'strict letter', may not effectively discourage some from aggregating expansively.

Interviewees with TC and LG suggested attempts at regulatory capture here. Initially, civil society wanted contract-by-contract reporting (the more granularity the better vis-à-vis assessing flows, alongside particular areas of both poverty and extractive activity[30]), whereas industry saw this very negatively ('costly'). Industry tended to favour aggregating payments even where accepting CBCR. The substantially interconnected clause was introduced to avoid what industry saw as (and the EC acknowledged to be) excessive burden on companies with thousands of contracts and sub-contracts (sub-contracting being common in the extractives industry). But the project-by-project compromise as inserted does not appear to have satisfied any party well. IR preferred a clearer definition of 'project' and maintained project-by-project reporting could also be very onerous for many companies (especially if audit requirements were added). TC saw the project-by-project regulation as unsatisfactory, exploitable by industry given lack of precise tie-up to the law's spirit (and given the difficulties of unravelling contesting practices).

Reviewing comments submitted as the law was in process and related interviewee perceptions

BIS invited comment on a discussion paper 'UK implementation of the EU Accounting Directive: Chapter 10: Extractive industries reporting' (BIS, 2014a). This reflected a limited autonomy that the UK government had in transposing the law: autonomy being in principle confined to the nature of any penalties and the precise timing of the law's introduction. It also helped get stakeholder positions on record: civil society expressed support for early implementation and the penalties suggested by government; industry claimed the penalties excessive and preferred the law implemented later. 31 comment letters were received from: 14 extractives; 3 industry representative groups; 2 professional bodies; 2 Big4 accountancy firms, 9 civil society organisations and 1 all party parliamentary group. It is helpful to review these submissions including vis-à-vis the production of industry guidance (*subter*). Especially when analysing comments alongside interviewee perceptions, one sees a situation where government appears to decide on the law in the face of conflicting and passionately held civil society and industry views.

Civil society submissions were substantial and tended to support the law and its principles linked to NGO aims.[31] They stressed swift implementation crucial to avoid costs to both:

> Citizens of many resource-rich developing countries…[who are]…not currently receiving the full benefit of their natural resource wealth…[and]…investors in UK regulated markets by delaying

[29] For QC, a better approach would have prefaced the wording at pp.5-6 with 'substantial interconnection *encompasses*' (indicating a *particular* illustration).

[30] This view is not shared across civil society. In a currently partially transcribed interview with a prominent tax campaigner, the view was expressed that this data may not be readily useable.

[31] PWYP returned a 36-page consultation response, supported by individual letters from eight international NGOs campaigning for extractive transparency (ABC Colombia, Cafod, Christian Aid, Global Witness, ONE, Revenue Watch, Tearfund and Transparency International).

> access to information which could inform investment allocation decisions and help mitigate risk (PWYP, 2014)

Civil society stressed implementation would much benefit 'international equity' but argued that certain companies downplayed benefits while exaggerating compliance costs, competitive disadvantage, commercial risk and alleged legal prohibitions (arising from having to comply with certain countries' laws)[32] (PWYP, 2014). LG observed, overall, that civil society's main agenda was:

> …pushing as far as possible, making as much information as clear as possible…really wanted penalties that were biting…and didn't want…in particular…that…oil companies…[might be able to]…wiggle out…[of requirements].

Given project-by-project reporting was already a compromise for civil society vis-à-vis contract-by-contract and given industry expressed concerns about that compromise itself being too costly, civil society emphasised the value of at least (appropriate) project-level disaggregation. For TC, 'corruption happens at…project level' and 'a primary aim of the legislation is to deter illicit payments happening in the first place', and:

> …if a company knows that a payment from a certain project is going to be put in the public domain it might think twice about setting up a deal whereby the money from that deal gets diverted…a really good example is Shell and Eni [Anglo-Dutch and Italian companies, respectively] in Nigeria…on one project called…oil prospecting license 245…it's one of the most lucrative oil blocks in the west of Africa off the coast of Nigeria, they paid in 2011 $1.1bn to purchase the project…[that is]…80% of Nigeria's entire annual health budget…they knew in order to get the deal, to acquire the license that the money would be diverted, immediately…into…an anonymous/opaque company…[account]…So that's $1.1bn from one project…[diverted]…from…public finances in a very poor country where a lot of people suffer from disease and malnutrition into a private account. Shell is being prosecuted now for that.

One of the Big4 accountancy firms, PricewaterhouseCoopers (PwC), while prefacing their submission by emphasising their own commitment to transparency vis-à-vis corporate tax payments, expressed concern that 'mandatory public disclosure requirements can become a tick-box exercise rather than enabling a clear articulation of the information…useful to the user'.

PwC also refer to 'additional costs involved…[which]…should not be underestimated' and 'the risk of a disproportionate burden being placed on UK registered or listed entities if implementation results in inconsistency internationally'. They refer here to 'reassessment' of s.1504 of Dodd-Frank after API's lawsuit. They thus stress that '…[i]t…is important that the implementation guidance is drafted so that it is at least consistent with other jurisdictions and does not place disproportionate burden on UK registered/listed entities…'. This concern was echoed by IR:

> …it's not a level field because the rules are odd in who has to disclose and who doesn't. The regulations are not global in nature…not harmonised. We have a situation now in which, you know, the US is withdrawing, so there isn't a level playing field at all, there was never going to be one but it could have been if there were global standards, if Dodd-Frank had…been…implemented as

[32] E.g., API argued that China, Qatar, Cameroon and Angola would prohibit disclosure of payments to their governments. For PWYP (2014) and BIS (2014c), no persuasive evidence for this allegation materialised.

> planned…which would have been an OK place to start on and then maybe through other international initiatives you may have brought in other countries, beyond the UK, Europe, Canada over time.

However, LG countered this on the moral grounds of avoiding a race to the bottom:

> I think the view…we took during this discussion is that it is the Europeans that are raising the bar, and therefore that would put pressure on Canada and the US to move forward…that's the position we were in, probably until 6 months ago. Canada pretty much mirrored what we are doing. [33]

PwC also indicate in their submission the 'potential for adverse consequences for companies of putting commercially sensitive data into the public domain' and agreed with BIS' suggestion that industry should be encouraged to lead in producing best practice guidance. IR noted:

> BIS acknowledged that their experience in representing the UK in relation to chapter 10 taught them how little they knew about the oil and gas and mining sectors and therefore…they felt the better approach was for those who understood the sector to come up with industry guidance that would ultimately be endorsed by government…so, IOGP and ICMM,[34] the mining body, then were asked by government to develop…guidance.

However, this industry-developed guidance was never *endorsed* by government, which IR felt was due to a 'blizzard of messages' from civil society who objected to industry guidance proposed on projects and joint ventures (JV) (*subter*):

> Jo Swinson…Minister at the time…said she wasn't going to give…government support so it wasn't published. This was just before the UK elections in 2015. So, it wasn't published then jointly by IOGP and ICMM. It was only subsequently published by IOGP in its own name a year later.[35]

PwC's submission also raises issues: '…clarity may be required for an organisation listed in more than one jurisdiction and if there is a 'primary' jurisdiction, when determining if the organisation is in the scope of the regulations'. This raises the prospect that a company, e.g., with a 'primary' listing in Japan, could escape the regulations.

Extractives echoed PwC. They expressed concern about basic and immediate compliance costs (many wanted more time), including costs of the legally prescribed electronic filing (to render reports user-friendly). These "were legitimate concerns" per IR, as:

> [Industry]…hadn't done it before so they were speculating…Lots of assertions were made…[by non-industry groups]…that this information is easily obtainable. That I know is not true…companies had to put…in place new processes in IT systems

However, IR, concurring with civil society, felt cost magnitudes were sometimes exaggerated:

> …I do think claims on costs…were clearly on a high end…I was shocked to see how…[some were]…extrapolating statements and costs…to such big numbers. It surprises me how they had just

[33] The US political landscape was then changing. Dodd-Frank's s.1504 was deemed threatened, a view later strengthened, with Trump's administration opposing related SEC rules early in 2017. The Brexit vote adds uncertainty regarding the UK law's future, if the UK's review, whose findings indicate affinity with ours (*subter*), suggests a promising conclusion at this stage at least as far as keeping the law (BEIS, 2018).

[34] International Council on Mining and Metals.

[35] Latterly the IOGP assumed authorship.

> taken certain numbers at face value and extrapolated that to create an extreme estimate of what cost would be.

Extractives often reported that proposed penalties (similar to those for failing to properly prepare and file the annual report and accounts, involving criminal liability for company directors and civil liability for companies) were harsh and that government should show leniency in initial years of compliance. They variously preferred monetary penalties, leniency or no penalties (several argued reputational effects enough). Some argued heavy penalties might deter companies and reduce the foreign investment that actually tended to promote anti-corruption business, economic reform and capacity-building. However, direct compliance 'cost' concerns, as per LG, apparently were:

> …dropped down the agenda…[as]…companies were concerned with issues around anti-competitiveness because of the US position in particular, they were concerned about…secrecy laws and laws in other countries where they would be reporting on the payments made and the effect that would have on their staff, particularly.

Some referred to negative prospects of reduced economic competitiveness, including through finding themselves conflicting with host-government laws and confidentiality obligations. This indicates the challenge in the context of globalization of countering the race to the bottom in standards and laws globally. Some companies sought to be excused from compliance to avoid conflict with host-government laws, and in so doing, as TC suggested, tried to exclude themselves from non-disclosure penalties, e.g.:

> So, what Shell and Exxon thought was that the UK has discretion over the penalties regime so why don't we ask the UK government to introduce a penalties regime that won't penalise us, there will be no sanctions for countries that we say have banned…[disclosure]…That's what they put in their consultation in the section about penalties, 'don't penalise us in countries where we don't want to disclose'…I'm paraphrasing (sic).

QC advised that such reliance on local laws is impermissible (based on prior legal cases). And the UK government confirmed that the law's impact assessment unearthed no plausible evidence for significant conflict (BIS, 2014c), albeit LG's view that 'you can't see the secrecy laws, because they are secret'.[36]

Many company comments reflect views appearing in the industry guidance, indicating companies' knowledge of and/or affinity with the guidelines.

Analysing the IOGP Guidelines

It was agreed early in transposition that industry representatives would compile guidance to clarify companies' reporting obligations. The Industry Guidance (IOGP, 2016) coming to be most influential was originally prepared by a working group of representatives of ICMM and IOGP (the latter subsequently being named author). The group, including representatives of major extractives and referred to as an IOGP-ICMM-BIS implementation guidance working

[36] Petrofac interestingly requested clear guidance in areas 'such as whether or not interest and penalties associated with a payment should be included within the amount disclosed for that payment or should be itemised separately'.

group, indicates BIS' support for having industry guidance. As noted, BIS stopped short of endorsing the guidance. LG noted:

> …there was draft guidance on…[the government]…website, there was draft guidance knocking about…consulted on…never agreed formal guidance between IOGP, government and civil society.

This was confirmed by TC:

> In the end [the government] didn't endorse the industry guidance…[while industry communicated]…by the way we have got our own guidance and we are about to send that round to every single company.

IOGP guidance notes that BIS 'reviewed' the guidance. The guidance was provided to civil society representatives for feedback but the latter expressed concern about poor consultation over the final draft and disappointment anyway by relative failure to take into account their feedback. Consultation over development of guidelines was fraught, LG reflecting:

> I think, between the two parties…[civil society and industry]…there is a feeling of distrust. You know, I think you're always going to get that with big oil companies…I think that civil society felt they were making real changes, it was something…they had been wanting for years…I remember…the guy from Global Witness, saying 'I have been waiting for this for ten years, or twenty years…all my working life'. So, they were seeing this as an absolute major change. Whereas industry saw it as 'it's good, but we've got to do it in the right way and we don't want to…give everything in the first instance, so we will do what the law says, we won't do the gold standard, we will do what the law requires us to do because that is our obligation'. And it came to a point where industry felt…civil society wanted best practice, they wanted to go further…than what the law said. Whereas civil societies view was that it's the law on the page plus the intent of the European agreements. Now, the intents were never written down and that's the problem. So, their feeling was that industry weren't being as flexible as they could, whereas industry was saying 'we are doing what the law's told us to do and you can't ask us to do anymore'. So, there were arguments over tiny words, there were arguments over phrases, there were arguments over almost every part of the industry guidance. And that went quite a long way. They were leafleting this building – civil society.

TC passionately recalled meetings with government and industry to develop guidelines:

> …there was a big fight between NGOs and industry and yeah for sure we met but they weren't positive, they were negative meetings…they were very adversarial with government actually trying to…[intervene]...

The Industry Guidance includes interpretation of 'substantially interconnected' criticised by QC. The construct allows an ostensibly narrow set of circumstances when companies can treat operations with multiple licenses or governing contracts as one 'project' in reporting (*supra*). It has been interpreted in the guidance so as to *potentially* pave the way for practices against the spirit or a reasonable interpretation of the law. Companies might disingenuously aggregate payments in their reports to avoid providing substantive project-level data. TC remembered 'substantially interconnected' originating (in the EU legislation's drafting) in arguments advanced by a mining company:

> I do remember going to one meeting in the UK, Department for Business…Rio Tinto was there…I remember it was Rio Tinto that wanted to add to the language for a project definition…my understanding is initially it was "you will report contracts" (the first line of the project definition)

> but Rio Tinto said actually in some countries more developed e.g. Australia, Canada, US which have different regimes than your average resource-rich developing country some of our projects are made up of hundreds of contracts. So, if we had to report on a strictly contract-by-contract basis that would be too onerous for us and in some instances, this is clearly one project even if it's made up of hundreds of contracts so they wanted language introduced that would give them flexibility. And that was…"substantially Interconnected", as I remember it came from Rio Tinto.

TC stressed the phrase came from mining not oil companies:

> Yes…the UK government…were convening meetings between civil society and industry to get people round the table and work through…technicalities, for example definition of project was the really big kind of sticking point. But I remember being at a meeting where Rio Tinto explained they would like this extra sentence about substantially interconnected introduced because this reflects our operations…if just specific to these mining projects then that's OK…I think it really wasn't meant for oil companies…[and]…this additional language allowed them to exploit that ambiguity to aggregate…[artificially]…projects.

Further, by IOGP (2016), payments made on behalf of participants in *JVs* by the operator should be reported by the operator not by the JV participant on whose behalf the payments are made.[37] This approach again potentially paves the way for practices arguably against the spirit or reasonable interpretation of the law. Companies might (in principle) evade disclosure by adjusting payment structures employed by their JVs. By this interpretation, if a JVproject is operated by a company not subject to the EU Directive and the JV is structured so that payments are made by the operator on participants' behalf, no payments would be reported for the project (unless reporting ensues under another applicable reporting regime).[38]

Furthermore, the Industry Guidance advises on reporting payments to State-owned enterprises (SOEs) acting as field operators, stating that disclosure is only required when in-scope payments (including satisfying size criteria) are distinguishable from other costs. This could again permit practices against the spirit or a reasonable interpretation of the law.

The industry guidance (reflected in the IOGP's comment letter to UK's Chapter 10 consultation) refers to the need to establish a common reporting mechanism which 'is user-friendly, not overly-prescriptive and not over-engineered or over-designed…as this would create unnecessary cost'.

Petrofac includes a text in its submission letter to the Chapter 10 consultation similar to that of ExxonMobil and the guidelines:

> This transparency initiative is intended to be for the benefit of the public and whilst we fully support the intentions, we feel…the nature of the penalties suggested is excessive and disproportionate to the legal obligations of company directors…[UK government]…should recognise that the Chapter 10 payment reporting process is not intended to serve as a statutory, and therefore externally audited, financial procedure to be relied upon by investors and the City

[37]Where an oil concession is granted and operated by independent companies acting through a JV, one venture participant will take on the operator role, carrying responsibilities such as paying creditors, including governments, for the venture as a whole.

[38]Industry stress that JV arrangements are extremely complex with compositions reflecting many commercial and legal risk factors (IR). It seems unlikely these agreements have been or would be modified to avoid disclosure. Yet, the industry view is nonetheless problematic in apparently condoning practices that, if arguably meeting minimum legal requirements, minimise disclosure, potentially entailing unreported payments.

> in the same way…statutory annual reports are…the payment reporting process has entirely different objectives.

This problematic view contradicts that of PWYP who have argued that the transparency serves investors (as two members of IASB agreed, *supra*, Gallhofer & Haslam, 2007). And, BIS noted in their consultation document that transparency is good for business (BIS, 2014a), something echoed by LG who asserted that *'some investors now are…[demanding]…transparency'.*

Early reporting manifestations

Early reporting by UK in-scope companies indicates practices deserving in-depth scrutiny.[39] Report form and content varied across our sample, from a statutory minimum spreadsheet uploaded to Companies House, to a separate pdf report, comprising statutory and some voluntary disclosures, available from reporting entities' websites. There were also evident variations in payment types disclosed (Table 1). Our analysis of 50 companies[40] showed that 'taxes levied' and 'fees' were payments reported most frequently. Dividends and bonuses paid to governments are scarcely disclosed, although they may be codified as different payment types (e.g. payments-in-kind).

Insert Table 1 about here

In-depth analysis of seven companies producing an additional long-form pdf report (BP, Glencore, Evraz, Rosneft, Royal Dutch Shell, Rio Tinto, BHP Billiton) indicated areas of apparent non-compliance. Glencore disclosed they made payments-in-kind but have not complied with requirements to elaborate on explanation, valuation and volumes. Yet Glencore provided non-mandated disclosure of 'customs, import and export duties' and reconciled their total payments to governments to the amount disclosed in their 2015 Sustainability Report (Glencore, 2015**,** p5). BP, while complying with formal legal requirements, rely on IOGP guidance in stating: 'Payments made to governments in connection with joint ventures are included in the report and to the extent that BP makes the relevant payment. Typically…where BP is the operator of the joint venture'. A further quote from BP's report (BP, 2015, p.3) is: 'Where a state-owned enterprise undertakes activities outside of its home jurisdiction, then it is not considered to be a government'. Further, one cannot reconcile BP's RPG to its annual financial statements, although BP refers to its RPG having a clean 'limited independent assurance report'.

In their 'voluntary disclosures', BP and Glencore indicate that the Directive could be increased in scope and cover more things. In their annual reports and accounts and sustainability

[39] Of the 70 reporting companies, 50 were analysed (early compliers available to us at the time of our research). We benchmarked disclosures made by the 50 companies against a minimum disclosure checklist, constructed by analysing the law and applicable guidance. Type and frequency of payments were also noted across the sample.

[40] The sample reviewed comprised 47 companies listed on the London Stock Exchange and 3 unlisted companies filing reports with Companies House (the sample is detailed in [**WITHHELD:BLIND REVIEW]**). Two further companies submitted a file to Companies House but did not report any payments, disclosing a zero value: from their published accounts performing poorly with large tax losses and unlikely to have reportable payments, they were excluded here.

reports they narrate a 'broader contribution' to the socio-economic environments of the countries where they operate. In its RPG, BP emphasises its 'broader socio-economic contribution to countries in which we operate in addition to the payments…required to be reported under the Regulations'. And the following quote from BP's Report is interesting here: 'Payments made to governments that relate to trading, export (pipelines), refining and processing activities are not included in this Report as they are not within the scope of extractive industries as defined by the Regulations'. Consultation with these companies' operations teams may illuminate what might be reported (or how regulations might be better specified).

Our analysis of the reports of Rio Tinto and BHP Billiton[41]highlighted an area of potentially emerging good practice. They produced reconciliations of their tax payments in the report to their annual report and accounts. This arguably makes the reported information more useful, contextualising payments to governments within wider company performance and giving stakeholders the opportunity to assess the group's economic contribution to wider society.

DISCUSSION AND ANALYSIS

Our analysis indicates ambivalence of the focal accounting law's manifestation and functioning in a complex contextual dynamic. The social analytical framing promoted in Gallhofer & Haslam (2017), with its emphasis on complex interactive dynamics of accounting elements in context as entailing progressive/regressive implications (in and through accounting), here particularly illuminates what has facilitated more positive dimensions. Focusing in and following Gallhofer & Haslam's (2017) advice to appreciate the detail, we find a complex and rich ambivalence. Our analysis is informed by critical theorising of transparency and accountability. Theoretical appreciation is here advanced. We elaborate on this below. In our concluding comments we especially reflect on praxis implications of our analysis as well as summarise our paper.

We found some evidence that aspects of the reports' *contents*, this area being weakly regulated by the law, threatened to undermine their usefulness. Yet content was given more validity by a number of manifestations beyond legislative provisions, including limited assurance auditing, published reconciliations to audited statements and cross-reference to other information (whether manifest in parallel/overlapping developments or investigative journalism). Perhaps corporate practices of reporting/disclosing beyond the law in some cases are surprising, if less so when combined with appreciation of corporate strategy and deficiencies in compliance by the same companies offering 'voluntary' disclosure, pointing to ambivalence. More generally there are limits to the accounting law's subversion and related accounting inaccuracy (in terms of credibility as well as legality), albeit that the appropriateness of payments made (other than that they appear big or small) is off the radar of this legislation.

[41] Rio Tinto (see, http://www.riotinto.com/documents/RT_taxes_paid_in_2015.pdf) and BHP Billiton (see, https://www.bhp.com/-/media/bhp/documents/investors/annual-reports/2015/bhpbillitoneconomiccontributionandpaymentstogovernments2015.pdf).

And reports are being *used* and *in ways the legislation ostensibly anticipated*. Indeed, reports were found useful (often alongside other information). The interview with TC (and the authors' interactions with NGOs) indicated that reports' usage by NGOs was helping them in their campaigns, despite the reports' limitations, limitations which many appreciated (and are also challenging). *Usages* and *users* so far based on the UK-focused analysis are much as anticipated (but it seems likely that groups like ethical investors and journalists and others, such as governments and other companies in reputational battles, for instance, will increase their usage with the further establishment of the reporting). For now, civil society usage is a positive, tending to increase, rather than decrease, pressure on governments hosting extractives and receiving payments from them and upon extractives too.[42]

Regarding the reports' *form*, the electronic form of reporting indicated inconsistencies in practice and access does not appear to be so user-friendly. At least in the UK, however, there has been no formal charge set for access. The *aura* of the reporting does not appear to be such as to put civil society activists off questioning or doubting the information, while the same activists make use of the information in conjunction with other sources, i.e. they do not over rely on it. The legal and expert nature of the reports, and other cultural attributes thereof, did not prevent NGOs from questioning and finding fault with the reports. Some reporting practices meant that the substance that civil society activists were interested in could not easily be discerned but this became a basis for criticising RPGs rather than failing to question them. Here, the civil society groups were aided by legal and expert allies. These groups were not afraid to question the reports but were concerned to use them, appreciating how they can help now and in future. Prevailing cultural aspects, such as preference for numerical and financial 'facts' and presumed objectivity, rather lent support to civil society campaigns than undermined them. The very reporting prescriptions of the law are bound to displace alternative practices in some way. But the reports did not appear to displace alternative practices of information search by civil society activists. Effective *joint* usage of the reports with investigative journalism was deemed successful by TC. Joint usage with EITI reports is also deemed helpful (TC)**.**

Focusing on the accounting law's manifestation, our priors were that it would be very difficult to introduce a substantive workable law reflecting civil society's progressive aims. Industry concerns about the law reflect globalisation and economic interests of corporates, and some of these concerns are shared by governments (to the extent that they are dependent upon and influenced by corporations). We anticipated some regulatory capture by interests concerned about the law (the prevalence of which being emphasised by Baker, 2005; Archel *et al*., 2009). One may wonder why from this perspective the EU had been persuaded to introduce the law. And, similarly, one may wonder why the UK transposed the law early (earlier than much of industry wanted if the comment letters are taken as evidence): and introducing the law earlier than the EU required was a form of 'gold-plating' of the EU law, going the extra mile. To some extent there were good intentions: and enormous efforts by civil society lobbyists. The good intentions are to some extent shared by key regulatory bodies

[42] We acknowledge that other contextual forces are at work in determining whether these pressures are significant or not relative to other forces (see Mejía Acosta, 2009, 2013; Öge, 2014).

involved (and on some level industry). The international shifts (buttressed by the initial Dodd-Frank s.1504), which also reflected substantive civil society effort, was helpful here. Take up of EITI and other developments helped fertilise possibilities for legal intervention. Perhaps regulators found some of industry's claims exaggerated or saw a balance in the law industry could substantially work with. The UK government likely introduced the law early accelerating its own review so as to better input into the main EU review.

Another factor acknowledged by the BEIS interviewee in discussion was that there were economic interests that favoured the regulation (in some form). For instance, the development of poor countries can contribute in some ways to global economic development, which may not only be in the interests of poorer countries. And all governments have an interest in maintaining/enhancing their revenues. Here appreciation of the wider contextual developments such as BEPS helps with the analysis: Nation States are worried about the relatively small revenues they are getting from corporations (compared with the potential). Industry also on some level benefits from stable and well-regulated States (which costs money) but it is not always easy for industry (and indeed government) to see the bigger picture (Dowling, 2014). Industry do appreciate not only a level playing field argument but also that some common standards may be better than none (including since the latter situation could engender costly reputational battles). So, the case helps to locate the accounting law and its trajectory vis-à-vis contradictions and tensions of globalism/globalisation in the context of the global democratic deficit, whereby people are subject to global forces that they are unable to control through democratic forces in the absence of global democracy (see Dryzek, 2011).

One can reflect on whether the laws introduced were modified by attempts at regulatory capture, albeit that what we have presented above indicates at least something less than complete regulatory capture. Did industry lobbying shape the law negatively in this regard? Are aspects of the law more in the nature of token gestures? It seems reasonable to conclude that industry sought to influence the law (reflecting an interest different from openness and transparency, however much it was important economic interest and/or *realpolitik*) and that government was concerned to listen to industry's views. The accountancy firms echoed industry in their comments. PwC used the argument that the law threatened to reduce compliance to a 'tick-box' exercise (a point they may find easier to make here than vis-à-vis conventional and prescribed audit provisions). Further, NGOs were scarcely involved in a substantive and dialogic way in consultation and felt that the BIS' attempt to involve them in discussions over the law was tempered by industry having a direct line to government outside of the BIS framework for negotiation (as per LG and TC). Civil society, it should be noted, did have to compromise on their demands (e.g., notably accepting the weak regulation with no audit requirement or no requirement that RPGs be reconciled to the audited statements: serious weaknesses that nevertheless have not totally negated emancipatory actualities, and clearly not potentialities, in practice[43]). And the industry guidelines were problematic in areas like JV and project-by-project reporting. Such dimensions can clearly be interpreted in terms

[43] Industry also can be seen as having compromised given its prior stance. Compliance costs and tensions with host countries had been cited in opposing the law. In the UK transposition, industry wanted to limit penalties and delay implementation but had to compromise on these things (*supra*).

of partial regulatory capture and are negatives highlighting ambivalence in the ostensibly progressive law (see Mercer, 2002).

The accounting law could be written more clearly, with greater attention to project-by-project reporting and appropriate coverage of JVs and related areas, and clearly the provisions could be better regulated. At the same time, QC (advising the NGOs) held the law substantively reflected (most clearly in spirit) aims of enhancing transparency and accountability on behalf of a significant number of the world's poor.

The industry guidelines, which BIS pulled back from fully endorsing (they simply state they 'reviewed' them), as QC suggested, do pave the way for practices against the law's spirit or against a reasonable interpretation of the law. This is found, e.g., in the guideline's interpretation of 'substantially interconnected' and JV arrangements and reference to distinguishability of payments to SOEs acting as field operators. The comment letters indicate that companies (along with accountancy firms) were concerned to modify the law towards perceived corporate interests. Concurrently, cost arguments may be exaggerated but should be acknowledged: underlying them are concerns about economic consequences stemming from international competitive pressures that may promote particular relationships with host governments. Such concerns appear to have impacted the initial EU law, indicating some industry influence here (e.g., the lack of requirement for audit and/or reconciliation to the statutory accounts, the clear distinction of the RPG from the statutory annual report, the size criteria and perhaps those areas of the law effectively permitting differing interpretations). Such concerns are reflected in the industry guidance by the plea that law not be overly prescriptive, engineered or designed (*supra*). Civil society would prefer regulation applying globally and industry see appeal in this too (if they may differ on the terms) compared with more fragmentary regulation (where companies in different jurisdictions are subject to regulations differing in strength). This reflects globalization's governance deficits and difficulties of regulating the global context for the common and global good, if it is problematic to yield to such private interest concerns: a struggle on all fronts for better global governance infrastructure is needed (Held & McGrew, 2000).

We find some early company reporting practices in the UK worthy of further investigation vis-à-vis compliance with the law's spirit (if it is difficult finding supportive evidence given lack of clarity in the reports). It is hard to tell whether companies between themselves interpreted the law's payment types consistently. Our in-depth analysis of seven company cases indicated areas of apparent non-compliance or interpretations which could be deemed contrary to the law's spirit. At least one major player appears to have followed the industry guidelines' JV interpretation and interpreted SOE activity outside the home jurisdiction as outside the law's scope. Some companies did appear to follow the law's principles quite closely.

An issue is what happens when there is non-compliance. Regarding the UK law, it is noteworthy that the Secretary of State or the Director of Public Prosecutions must agree to any prosecution brought. The Company Registrar can in principle act but needs the support of one of these persons. Here, we might remember that many industry comments stressed that proposed penalties were harsh, appealing for leniency in the early days of the law's operation (and most industry commentaries sought that the law be introduced in 2016, not

2015). It is an offence to 'knowingly or recklessly' make a false report. The defence of arguing that IOGP guidelines are being followed is not the soundest but may help vis-à-vis 'knowingly and recklessly' (QC). Rather than trying to prosecute (or along with this), civil society could seek to engage in dialogue more especially with government (at the EU level, especially the EC) to indicate concerns about what is or might be happening. This could enhance comments made by civil society and supporters vis-à-vis reviews of the legislation. But here we may see indications of why practice is and likely will be disappointing in this area. Civil society are forewarned but still, as noted, along with seeking improvement are using transparency achieved to further their aims (TC).

We found some companies using the reports to legitimate activity, with some even noting the law's deficiency and disclosing beyond the law's requirements (e.g. Glencore and BP). Some companies apparently attempted to substantively reflect the reporting principles, a positive. No obviously serious economic consequences for industry have so far manifested from the current law's operation. Companies have not felt too restricted: the seven companies we analysed went beyond prescriptions, making voluntary disclosures. Indeed, these companies indicated that the Directive could be broader in scope. BP provided a 'limited independent assurance report'.

There is a lack of trust, of course, involved in the accounting process here. Civil society groups would argue that based on experience information has not been forthcoming without prescription. It is a question of balance, perhaps. Something is lost in lack of trust but something is gained in the reporting: moreover, the issue is not so much not trusting the companies or probing their intentions but more about challenging problematic structures and opening them up to change. A similar point about balance applies to the difficulty of furnishing proper accountability and transparency, albeit the spirit of the accounting law is suggestive of quite straightforward disclosure in this case (and argumentation of Messner, 2009, and Roberts, 2009, arguably has less purchase on the specific case in question). The law does not appear to colonize conduct through over-prescription.

We thus found, consistent with the appreciation of emancipatory accounting, ambivalences in the trajectory of the accounting focused upon, on-going if dynamic mixtures of progressive and regressive forces reflective of a contextual complexity and its dynamic. Various sites of regulatory influence (themselves reflecting contradictions and tensions), including governments and even transnational corporations (along with civil society with its key campaigns), can foster emancipatory as well as regressive interventions and processes. The case illustrates that the critical theorising of accountability and transparency we highlighted can usefully be emphasised in theoretical argumentation. Accounting here becomes emancipatory in various ways, including through actors' pragmatic engagement with accounting elements in context.

While the above summarises some of the key moments and trajectories we found a rich detail illustrating ambivalence and complexity, whereby some manifestations were relatively progressive and some otherwise but both were mutable in the contextual dynamic, these including: explicit common good rationales; compromised law; issues of legislative phrasing; issues of the law's operation and implementation; negotiated and complex capturing;

languages of negotiation over regulation and accountabilities/visibilities; issues of co-ordinating/regulating (weakly in terms of levelling down/strongly in terms of levelling up; the role of 'joined up' approaches) in the global context with its regulatory deficits and contradictions and tensions; corporate image management; review processes and their timing. All these aspects illustrate progressive/regressive dimensions of the accounting manifestation/functioning, a rich complexity.

CONCLUDING COMMENTS

Reflecting critical appreciation of manifestations of accounting and related practices, we sought here to understand better and assess the early operation of an accounting law transposed into the UK from the EU implicating CBCR. We explored and assessed processes of the law's construction and its early operation by focusing on its implementation in the UK (first adopter). We sought insights to indicate ways forward.

In our analysis, we elaborated how some industry interpretations of the law ran counter to the law's spirit. And we began to indicate how such interpretations engendered different and apparently problematic translations of the law into practice. We articulated, however, progressive dimensions of the accounting law's operation along with more regressive ones. The analysis tends to confirm that aspect of the Gallhofer & Haslam (2017) thesis: manifestations of accounting, even ostensibly progressive types, have problematic dimensions in their actual manifestations and functioning. Concurrently, the analysis also suggests that the law is already having a progressive impact and promising more in the future. Through recognising (via Gallhofer & Haslam's, 2017, new pragmatism) those aspects facilitative of progressive ends the law can become even more emancipatory.

That the law is being reviewed provides an opportunity to improve it and reflecting on our analysis we can suggest ways in which the accounting law might be more emancipatory in a 'new pragmatist' sense. We highlighted regulatory weakness and can make recommendations as to ways forward for the law consistent with sensitive interpretations of our analysis. The expression 'substantially interconnected' might be helpfully clarified to encourage principled, consistent and substantive reporting practice. The UK law should reflect the clarified meaning and not take something from the Directive's pre-amble into the main law. The law's clarified meaning should ensure that practices companies might be tempted to follow currently (*supra*) should be explicitly outlawed. Companies subject to UK law should disclose in-scope payments made on their behalf (by operators or other agents). When in-scope payments are made by operators on behalf of participants in JVs, participating companies should disclose at least their share of the payments. Companies should have regard to underlying liabilities for payments under local law. Proper legal provision should be made for independent professional audit of RPGs (a pragmatic possibility is for the audit to be of the 'limited assurance' kind included in international auditing standards). Provisions requiring reconciliation of figures to statutory accounts might be introduced. The size of payments criteria might be dropped as it currently may facilitate evasion of the law's spirit (or other ways of countering this evasion should be prescribed). Regarding payments, the

suggestion that they be distinguishable from other costs in the context of payments to SOEs operating as field operators appears unreasonable: a revision of the Directive can clarify the position explicitly. To avoid doubt it should be clarified that there is no 'primary listing' exemption *per se*. There should be a clear procedure for challenging non-compliance that does not depend on the permission of the relevant Secretary of State or Director of Public Prosecutions and ideally a system of automatic penalties for non-compliance as reported by audit. One might expand disclosures required and perform social audits of the impacts of the companies on their hosts. A comprehensive joined-up approach is sensible and in some respects may be welcomed by industry, compared to current regulatory forces that tend to embroil companies in excesses of reports the contents of which overlap and are subject to different regulations. The challenge is to prevent levelling down of regulation in the process: such levelling down in effect would stimulate further proliferation of overlapping regulatory pressures.

In addition to implications of the above points, our analysis suggests more general insights for praxis. For instance, the need to deploy a contextual and holistic approach is indicated in our contextual analysis of differing developments. Using the different streams of information together appears to make good sense. Points of co-ordination did appear to surface in terms of mutual overlapping interests between key protagonists: even big energy companies are threatened by instabilities and thus there may be at least some excesses of neo-liberalist policy that might be something of a common enemy. Yet there is concurrently a permanent struggle with interests opposed to transparency and accountability agendas. It is clear that while pressing on all regulatory fronts and seeking to join these forces up, civil society should also not give up on investigative journalism (and they are not doing). There are also areas where potential for civil society has been untapped in this area including ethical investment and more general ethical stakeholderism (we found little evidence of RPGs being used so far in relation to this). Usage of RPGs by journalists is as yet limited and should be encouraged more. But these are early days. Transparency across all value chain steps is still limited and there is scope to do more here. Direct interaction with governments of resource-rich countries could be enhanced (if some relatively close interaction has occurred through local NGOs, sometimes assisted by educational input from international civil society, which could be enhanced).

Our analysis is substantively consistent with our prior positions. We regard Chapter 10 (and related developments) as reflecting worthy aims. And we find after the analysis we are still seeking to enhance and improve the accounting law rather than to negate it. Finally, we note that the law cannot be taken for granted. It was passed with a condition that it be reviewed (at both member state level, where a review can feed into the EU level review, and at the EU level): an opportunity to better it (e.g. to overcome regulatory deficiencies) or a threat to reverse positive potentialities.[44]

[44] See Vinnari & Dillard (2016), who offer insight into the iterative process here, drawing upon appreciation of agonistics consistent with new pragmatism.

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Table 1: Analysis of 50 companies' payments to governments

Panel A: Content of Reports - Number of companies disclosing, The Regulations, Section 5(1)			
Mandatory Requirement	**Disclosed**	**Not**	**Partial**
Government to which payments made	40	10	
The country of the government to which payments are made	50		
Total amount paid to each government	40		10
Total amount per type of payment made to each government	39		11
Total amount of payment made for each project	36	6	8
Total amount per type of payment made for each project	38	6	6
Panel B: Types of payments – Number of companies disclosing, Section 2			
Mandatory Requirement	**Disclosed**	**Not**	**Partial**
Production entitlements	16	34	
Taxes levied	46	4	
Royalties	31	18	1*
Dividends	2	48	
Bonuses	5	45	
Fees	38	11	1**
Infrastructure improvements	22	28	
Panel C: Substance over form - The Regulations, Section 5(5)			
Of the 41 companies presenting a PDF file, one company (BP) refers to the term substance over form in the report that is available online. Of the 29 companies presenting a CSV spreadsheet, none of the companies refer to the term substance over form.			
Panel D: Payments in kind - The Regulations, Section 5(6)			
Of the 41 companies presenting PDF files: 6 companies report that they have made in-kind payments, while 3 more companies include information on in-kind payments without clearly identifying that they have made such payments; One company claims that payments were in cash, then discloses the following under production entitlements: *'This includes non-cash royalties and amounts paid in barrels of oil or gas out of the company's working interest share of production in a licence. The figures disclosed are produced on an entitlement basis rather than a liftings basis and are valued at the actual price used to determine entitlement.* Of the 6 companies, 4 state the value of payment in-kind, volume and an explanation of how the value is determined, 1 states the value of the payment only and 1 states how the value of in-kind payment is determined only. Of the 29 companies presenting CSV spreadsheets, despite the fact that only one refers to payments in kind, 6 of them state the value of payments in kind, their volume and provide an explanation of how this value was determined.			

Note:
* A company reports zero in the report prepared, but does not mention it did not pay any as it does when it comes to other types of payments
**A company disclosed that payments were made but were not above the threshold, and therefore were not reported.
Regs: reference to relevant legislation paragraph.