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**Biography:**

Srivatsan Lakshminarayan is a Lecturer in Accountancy at Brunel University London. He holds a PhD in accounting from SOAS University of London. He is a Chartered Accountant (India) and a CFA Charterholder. His work experience spans two decades across the accounting profession, financial services industry and international higher education. He has taught at undergraduate and postgraduate levels, both, at business school and the university finance department. His doctoral dissertation critically examined the IASB's revised (2018) conceptual framework. His research interests include historical and current accounting frameworks, standard-setting and the interaction of accounting with ideas from contiguous disciplines - primarily, economics and law.

## **Title**

Jurisprudence and the Conceptual Framework project: The enduring ideas of Scott, Spacek and Stamp

## **Abstract**

Conceptual frameworks of accounting issued by standard-setting bodies have traditionally represented provisional resolutions of intricate and intense conflicts about desirable objectives and qualitative characteristics of financial information. Recent changes by the IASB (including jointly with the FASB) have been criticised for the elimination or dilution of established framework concepts. Such criticisms call into question, processes of reasoning underlying framework development. Since predetermined assumptions and improvisations cannot reliably resolve normative conflicts, a juridical approach offers viable alternatives. Analogous to law, robust framework principles assume a form of constitutional authority through appeals to fairness and justice. This paper examines and synthesises insights from three key accounting thinkers of the twentieth century. Their pioneering contributions emphasise the philosophical and methodological salience of jurisprudence for establishing a credible framework. Originating primarily in the pre-FASB period, the persistent relevance of their ideas offer compelling possibilities for developing a substantive, inclusive and responsive Conceptual Framework.

## **1. Introduction**

The International Accounting Standards Board (IASB) recently concluded (2013-2018) a comprehensive stand-alone review of the Conceptual Framework (CF) following a limited-scope joint project with the Financial Accounting Standards Board (FASB) (2006-2010). Coming in the wake of the global financial crisis, these developments have rekindled debates about the role and

significance of a CF of accounting. Concerns have been expressed over whether a unified accounting framework can and should explicitly address both, valuation and stewardship objectives, or whether a trade-off is unavoidable, resulting in the subordination (or even exclusion) of stewardship to decision-usefulness. Accompanying critiques have confronted changes related to the content and hierarchical significance of qualitative characteristics of financial information.

The 2010 CF revision has been criticised for subsuming stewardship within valuation-usefulness and downgrading “the importance of existing” and “long horizon investors” [Gebhardt and Dean, (2008), p.221]. Whittington (2016, p.186) interprets the removal of “the traditional stewardship objective” in the joint CF as reflecting “the influence of FASB thinking” that predicates financial reporting on the primacy of capital market considerations. This has been attributed for the: (a) substitution of “representational faithfulness for reliability as a fundamental property of good accounting information”; and (b) deletion of “prudence” from the framework (ibid). The replacement of reliability with faithful representation has been described as a “collapsing (of) reliability into relevance” [Power, (2010), p.200], wherein faithful representation represents “the process of determining an estimate, rather than faithful representation of the balance sheet item itself” [Barker and McGeachin, (2013), p.587]. The accompanying reconstruction of verifiability as consensus has been interpreted as broadening the concept of faithful representation while weakening its meaning owing to an inclusion of “both observable measurement and subjective estimation” (ibid). Further, the dissociation of verifiability and the inclusion of freedom from error have been regarded as weakening the significance of faithful representation and facilitating the recognition of uncertain information as “representationally faithful as long as the degree of uncertainty (is) disclosed” [Erb and Pelger, (2015), p.29].

Despite the restoration of stewardship and the introduction of measurement uncertainty (MU) in the 2018 revision, the IASB's direction and approach have remained unchanged. Pelger (2020, p.47) discerns reluctance by the IASB to fundamentally deviate from the FASB's approach and states that "the positioning of a tolerable level of measurement uncertainty in the CF2018 does not seem fully convincing" owing to the non-association of MU with verifiability. The Board has also been criticised for a perceived dilution of historically significant attributes essential for the contractual fulfilment role of conventional financial reporting. Thus, the elevation of decision-usefulness attributes i.e., comparability and neutrality, have been attributed for weakening the importance of preparer discretion in applying accounting attributes e.g., conservatism [Mora and Walker, (2015), p.642]. Gebhardt et al. (2014) and Miller and Oldroyd (2018a) emphasise contracting efficiency (and by implication, institutional stability) as key for the significance of verifiability under stewardship. Through an emphasis on historical information and conservative interpretation of forward looking information, reliability (accompanied by verifiability and asymmetric prudence) has been interpreted as serving contracting requirements (and associated stewardship obligations) in a manner that decision-usefulness with a forward looking or predictive focus cannot [(Shivakumar, (2013), p.379; Miller and Oldroyd, (2018b), p.75)]. Amidst persistent corporate governance failures, agency implications of marginalizing the stewardship role of financial reporting coupled with a narrow focus on the decision-usefulness paradigm are identified as major fault lines. In a trenchant summary, Bayou et al. (2011, p.122) interpret standard-setters as having effectively "replaced responsibility for truth" with "the ambiguity of decision-usefulness" that is too weak "to guide ethical conduct". In summarizing 50 years of discourse on framework development, Williams and Ravenscroft (2015, p.780) identify a lack of progress attributable to the adoption of the decision-usefulness paradigm, within which discourse is

constricted by an overwhelming focus on a mythical construct rather than fairness of outcomes, that requires the embracement of substantive criteria.

Such prefatory criticisms are better appreciated when situated in the context of a historical and inconclusive debate, largely sceptical of standard-setter efforts to develop credible accounting frameworks. Persistent philosophical and methodological critiques of the CF projects of the FASB and the IASB (Archer, 1992; Dennis, 2008; 2018; 2019; Dopuch and Sunder, 1980; Macve, 1981; 2010; 2014; Power, 1993) provoke a fundamental conundrum – what alternative processes of reasoning can overcome conflicts over accounting value judgements? A complementary and crucial question is – whose information needs should the CF seek to address? Thus, for example, the FASB's (1976a) early position in its tentative conclusions that general purpose financial statements should focus on the needs of investors and creditors, has been criticised as inherently contradictory and lacking “the rigour and cogency required to support a fundamental decision in building a conceptual framework” [Archer, (1992), p.212]. The FASB's arguments regarding the primacy of investment decisions have assumed axiomatic proportions over time and represent a consistent premise underlying the IASB's framework revisions. Dennis (2019, p.266-7) highlights the relative ease of agreement on decision-usefulness as a desirable objective of financial reporting in the 2010 joint CF, allowing circumvention of the need to challenge historically contentious assumptions that would otherwise not have been possible in a principles-postulate debate. Zeff (2013: 264) highlights that despite the prolonged shift in focus towards decision-usefulness, a separate role for stewardship had always found reference in earlier efforts to formulate objectives of financial reporting until 2010, when, the Boards “dismissed it from separate standing”. In its' most recent revision of the CF, the IASB (2015a, p.22-3; 2018a, p.8-9) repeatedly emphasises the

primacy of “existing and potential investors, lenders and other creditors...to whom general purpose financial reports are directed”.

Accounting concepts such as neutrality, fairness, reliability and relevance are capable of various formulations. Some abstract element is usually invoked at the base of each formulation. Neither the accounting profession (in the pre-FASB era) nor contemporary standard-setting bodies have successfully evaded tautological outcomes in defining norms or in establishing a hierarchy of normative propositions. Thus, Power’s (1993, p.44) emphasis on the need to answer the fundamental question regarding “what kind of thing a CF could be” or whether the idea of a CF for financial reporting is clear, remains largely unaddressed despite six decades of effort (commencing with the AICPA through Moonitz, 1961). The objective of this paper is to re-examine this challenge by drawing upon the thoughts of important accounting thinkers of the twentieth century. I highlight an alternative (but under-appreciated) approach that can overcome the circular reasoning underpinning current methodologies and discourses of framework development. I argue that reviving and applying ideas about the philosophical and methodological significance of jurisprudential reasoning can transcend the reductive focus underpinning current CF development approaches.

In section 2, I highlight the ‘constitutional’ character of a CF of accounting that emerges from a synthesis of standard setters’ professed objectives, and relevant literature. I argue that interpreting CFs as constitutional rather than technical, invites the adoption of jurisprudential approaches to framework development. In section 3, I summarize recent accounting literature in highlighting the lack of attention to the salience of legal reasoning in developing credible accounting frameworks that seek resolution of value judgement conflicts. In section 4, I discuss a selection of relevant ideas expressed by three key accounting thinkers (DR Scott, Leonard Spacek

and Edward Stamp) before, and immediately, following the emergence of institutionalised standard-setting (FASB) that holds possibilities for resolving the current impasse. I summarise my arguments and conclude in section 5 by underlining the significance of crossing disciplinary boundaries and (in particular) drawing from juridical approaches, so that the contemporary narrow focus on financial market investment decision-usefulness can be effectively transcended towards a socially relevant CF of accounting.

## **2. The Conceptual Framework as constitutional text**

The outcome of standard-setting can be classified as either axiomatic (postulative) i.e., CF, or as principles of application that coalesce through the development of specific standards. In either case, provisional resolutions of contentious normative claims regarding the primacy of accounting norms (such as fairness, neutrality, consistency, representational faithfulness etc.) are sought. Efforts to establish a codified CF of accounting since Moonitz (1961) and extending to ASOBAT (AAA, 1966), Statement of Financial Accounting Concepts (SFAC) 1 (FASB, 1978), the IASC's framework (IASB, 1989) and the CF projects of the IASB and the FASB since 2010 (IASB, 2010; 2018a), represent episodic initiatives in an enduring search to classify, dissect and codify axioms for the development of accounting statements and standards of practice. The emergence of institutionalised standard-setting (within which provisional resolutions are politically negotiated) with the establishment of the FASB (1973) has coincided with the rise of positivist approaches to the development of accounting theory since the late 1960s. An implication of the latter is that the production of accounting knowledge is increasingly predicated on the philosophical foundations of ontological realism and science-like incrementalism in regard to cognitive claims (Chua, 1986; Palea, 2017; Reiter, 1998). Accounting attributes such as reliability, consistency and comparability and, (with the rise of the information content perspective to accounting theory since the 1970s)

predictive value and relevance, are regarded as fundamental qualitative characteristics. The persistent assertion is that the instability of accounting numbers resulting from non-adherence to these attributes would render financial statements non-comparable across firms and over time, impeding market efficiency and adversely affecting the perceived 'value' of accounting.

While these developments have intensified a felt need for resolving value judgements, they have also constricted appeals to moral or ethical values by rejecting such appeals as claims lacking relevance for an empirically grounded, investment decision-usefulness paradigm. Thus, it has been observed that:

“The proponents of fairness-as-a-basic-financial-reporting-principle view in practice (Spacek, 1969) and in academia (Briloff, 1976) have very eloquently offered justification for their position. However, such a view has been rejected, in the naive positivist spirit, as unsatisfactory because of its deemed subjectivity while recognizing that, ultimately, “the results of any purposive human activity must be judged in the light of the value judgments inherent in ethical concepts” (Moonitz, 1961).” [Gangolly and Hussein, (1996), p.391].

Where then do the possibilities for a more enlightened development of a CF of accounting inhere?

Since the commencement of framework development initiatives, the FASB and the IASB have persistently articulated their justification for establishing a CF. These include (i) providing “a frame of reference for resolving accounting questions in the absence of a specific promulgated standard” [FASB, (1976b), p.5-6], (ii) serving “the public interest by providing structure and direction to financial accounting” and guiding “the Board in developing accounting and reporting guidance by providing the Board with a common foundation and basic reasoning on which to consider merits of alternatives” [FASB, (2010), paras 3, 5], (iii) assisting in the development of

“standards that are based on consistent concepts” and “consistent accounting policies when no Standard applies to a particular transaction or event or when a Standard allows a choice of accounting policy” [IASB, (2015a), p.6], and (iv) in enabling “the Board in promoting harmonisation of regulations, accounting standards and procedures relating to the presentation of financial statements by providing a basis for reducing the number of alternative accounting treatments permitted by IFRSs” [IASB, (2010), p.A31]. The FASB’s early efforts and stated intent in evolving a CF as “a constitution, a coherent system of interrelated objectives and fundamentals that can lead to consistent standards” [FASB, (1976b), p.2] have been interpreted as evidence that the FASB viewed the CF project as ‘constitutional’ (albeit in a limited sense) rather than ‘theoretical’ (Archer 1992; Stamp, 1980), thus contributing to the notion that the development of legal precedents in jurisprudence have relevance for similar developments in accounting.

Such an interpretation of the purpose of a CF is fundamental to my argument. Even critical interpretations (Archer, 1992; Dopuch and Sunder, 1980; Peasnell, 1982) of the earliest CF documents issued by the FASB or the erstwhile Accounting Standards Committee in the UK as a rationalizing technical project undertaken in the absence of enforcement powers to establish an acceptable basis for the development of underlying accounting standards, recognize the possibility of alternatives. Thus, Peasnell (1982, p.255) concedes that an alternate, more substantive and “real” CF can instead be accomplished by specifying “broad general objectives...and constraints...for financial reporting” that address the resolution of “conflicts of interest” by “encouraging a feeling of common destiny”, raising “the moral tone of the profession” and, fostering “a professional attitude” amongst accountants and businessmen. In so doing, the CF is described as providing “the elements of a constitution”, namely:

“the basic principles of and source of authority for ‘accountability’ and ‘rights to know’; the consequences which financial reports are intended to have (and to avoid); the trade-offs which have to be made.” (ibid).

Significantly, Archer invokes Wittgenstein in emphasising that:

“if the role of a CF is to provide a discourse within which conflicts over financial accounting issues may be resolved, ‘there must be agreement not only in definitions...but also in judgements’ (Wittgenstein, 1953: 88)”. [Archer, (1993a), p.103].

Stamp (1980, p.92-3) highlights that the evolution of accounting standards “is not merely a technical matter” but is also dependent (among other factors) on ethical values, insofar as they are meant “to aid in the resolution of potential conflicts of interest between management and users” and within user groups inter se.

Consequently, a refined interpretation of standard-setter assertions about framework purposes reveals that judgements about values such as justice, equity and fairness are fundamental to framework development. At an abstract level, there are moral and philosophical implications associated with such value judgements. Arguably, accounting discourses that seek to establish fundamental postulates are also artefacts of philosophy insofar as these represent a quest for a settled understanding of accounting norms such as fairness, neutrality and faithfulness which are analogous to a metaphysical quest for justice and equity. At a practical level, there is a long history in jurisprudence, demonstrative of a certain *juridical logic* exhibited in courtrooms that renders judicial decision-making attainable on the basis of precedent, interpretation and application, thus yielding substantive and workable definitions of theoretically amorphous concepts, such as the notion of justice. The analogous relevance of such common-law approaches to accounting for the establishment of precedents in the form of ‘case-laws’ by transparently enabling the interpretation,

application and development of accounting principles has been emphatically (yet, in the history of accounting thought, only marginally) highlighted by prominent accounting practitioners in the pre-FASB era.

In a pioneering research study conducted by the Canadian Institute of Chartered Accountants on developing a CF of accounting, Stamp (1985, p.112) exhibits a “distillation of (his) thoughts” in emphasizing juridical notions that underlie a fundamental pre-commitment required by standard-setters for framework development. Accordingly, standard-setters need to acknowledge the plurality of user groups and their needs, recognizing that multiple measurement bases, income definitions, suitable presentation and disclosure methods (e.g. multi-columnar financial statements, enhanced notes and disclosures) and, information dissemination techniques (e.g. annual reports, special purpose reports available on demand, online customizable reports) would need to be balanced rather than endorsing any particular user group or their information needs (Stamp, 1980). Despite criticisms of a lack of conciseness and absence of integration into a coherent structure, Stamp’s ideas on a framework for financial reporting, have been characterised as exhibiting “a sensitivity to different cultural (social and political) systems among countries”, and as being “thoughtful and provocative” [Zeff, (2013), p.300-1]. His approach has been described as evolutionary rather than normative (as in the case of the FASB), whereby the CF is functionally interpreted as “providing objectives and criteria” for the development of standards “in a manner analogous with common law” [Peasnell, (1982), p.246]. From such a perspective, the relevance of jurisprudence in developing a CF of accounting as a constitutional document transcends definitional or procedural considerations and encompasses processes of reasoning underlying the resolution of value judgements. This is consistent with the distinction between “legal method in a technical-professional sense” and “jurisprudence in the sense of the philosophy

of law and the methodology of legal theory” that Archer (1992, p.205) makes in highlighting the relevance of legal thinking for framework development.

Thus, the notion of a “jurisprudence of accounting” that Archer (1992, p.204) refers to, is not a mere strategy to avoid or side-step the controversy associated with answering the epistemological question of whether accounting is ready for development through the methods of natural sciences [Archer, (1992), p.205-6] (I return to this aspect in our reference to the Sterling-Stamp debate in Section 4). Instead, it constitutes a substantive approach to make explicit, and resolve issues of interpretation regarding value judgements underlying accounting discourses. In such a vision, resort to jurisprudence is less about developing a discourse akin to law for the resolution of definitional controversies and more about utilising such a discourse for an on-going, evolutionary approach to the development of a CF, in which, change is achieved by making agreements possible on judgements, not just as to facts but also those that concern values.

The methodological relevance of such an approach is located in its potential to address “problems of practical reasoning” that would address confusion over the purpose of developing a CF of accounting by moving such a project beyond mere technical or rationalizing considerations [Archer, (1992), p.206]. Instead, it would enable the justification of a framework for underlying financial reporting standards on “the cogency of the reasoning used to establish its social desirability” (Ibid.). Central to understanding the feasibility of such an effort is the willingness to take a leap of faith in favour of the following inter-related assertions: (i) a jurisprudential approach has *philosophical* and *methodological* significance for the development of an *effective* CF of accounting, (ii) the history of pre- and (to a lesser extent) post-FASB accounting thought reveals thinkers who have highlighted this significance, and (iii) such an approach can overcome fundamental inadequacies in the current methodology of developing an *effective* CF for adoption

by standard-setters. The appeal to effectiveness here, is a direct attempt to reclaim the rejected possibility in an elusive “search” for a credible CF [Dopuch and Sunder, (1980), p.15], by persistently seeking to “provide a discourse similar to that of the law, whereby conflicting interests can be discussed and adjudicated according to agreed rules of discourse” [Archer, (1992), p.202].

### **3. A survey of recent literature: an opportunity (and an imperative) to restore attention to legal reasoning in framework development**

Interpreting CFs as constitutional documents and drawing from the logic of jurisprudence centres attention on legal reasoning as a form of argumentation for resolving conflicts over accounting value judgements. Argumentation is a wider construct and is manifested in philosophical, scientific and public discourse. However, since scientific discourse is highly structured by apriori rules and methods of inquiry such that argumentation often follows a specific form and content, the question arises: how can one reason or argue in the matter of value judgements or norms? Accounting norms refer to the body of evolving Generally Accepted Accounting Principles (GAAP) and comprise postulates such as CFs, fundamental concepts and values expressed in GAAP or assumed from law such as fairness, truth and faithfulness, and principles of application either codified by specific standards or under statute e.g., the requirement of True and Fair View (TFV) as codified under UK company law. There is an intermittent history of conceptual literature that engages directly with the substantive, procedural or philosophical implications of legal reasoning in arriving at decisions relating to accounting norms (e.g., Berle, 1938; Gangolly and Hussein, 1996; Lyas, 1984; Stamp, 1981). The recent literature, however, is sparse. Legal reasoning has been considered in contexts such as analysis of judicial discourse in the area of tax legislation (Edgley, 2010) and peripherally in a critique of accounting formalism (Murphy and O’Connell, 2017). Apart from philosophical motivations in addressing long-standing

differences over interpretation and codification of value judgements underlying accounting norms codified in GAAP, the lens of legal reasoning is vital in the identification and use of a tractable methodology that can address these differences while simultaneously retaining a practical focus.

Murphy et al. (2013, p.74) provide a brief survey of literature highlighting interdisciplinary scholarship on the study of law and accounting. These studies (conceptual and empirical) include comparative institutional analyses of both disciplines in terms of organizational and social control, impact of law on private sector accounting policy, judicial influences over the direction of change in accounting, impact of the rise of legal systems for the growth of the accounting profession particularly in regulation of accounting standards and development of accounting legislation, ethical dimensions of accounting, analysis of specific accounting concepts such as TFV using legal approaches and, jurisprudential analyses of accounting issues (McBarnet & Whelan, 1992) including the legal validity of the CF of accounting from a systems perspective (e.g., Archer, 1992; 1993a; 1993b). Accounting institutions have often been viewed from a legal perspective, and have been intermittently characterized as quasi-judicial. These descriptions have tended to focus on the body of GAAP, particularly the legitimacy of standard-setting from the perspective of public interest (Noël, et al., 2010) and more specifically on the legal enforceability of GAAP-related clauses in matters of private contract enforcement (King and Waymire, 1994), the framework for interpretation of accounting doctrines such as TFV in the UK context (Stewart, 1988), structure of the FASB/IASB (Sunder, 2016), internal processes of the FASB as perceived by practitioners and Board members (Kirk, 1990, p.111), and the perception of courts towards the standard-setter owing primarily to due processes followed in standard-setting (see Ochoa, 2010; Pearson, 2005 in the US context). However, substantive theoretical or empirical analyses of the

significance of legal reasoning in the historical and contemporary evolution of accounting principles/postulates is an area that calls for attention.

The salience of legal reasoning for analysing modes through which accounting concepts and norms evolve, especially in common law jurisdictions, is heightened by the fact that legal interpretations and case law are often a basis for the origination, amendment or refinement of accounting concepts. Courts have not hesitated from invoking, interpreting and imparting meaning to key accounting concepts, that standard-setters have subsequently embraced. Two recent examples are provided here. First, in the persistent absence of a universally applicable definition of accounting materiality, and given episodic interpretations arising through judicial case law, accountants have had to borrow and adaptively interpret materiality on a case-by-case basis, while being mindful of quantitative and qualitative expectations evolved through legal reasoning evidenced in courts (Bean and Thomas, 1990; Edgley, 2014). Significantly, in response to a recent landmark US Supreme Court judgement, the FASB in its exposure draft on a proposed Accounting Standards Update (ASU 235) on materiality directly amended previous guidance on materiality by asserting that it is a legal concept (FASB, 2015). This development has been interpreted as formal acknowledgement by the profession that the authority to provide definitive guidance on the concept ultimately rests with the judiciary (Chen and Tsay, 2017). Although ASU 235 was subsequently withdrawn in the face of opposition from preparers, auditors and investors (including fears over jurisdictional encroachment over decisions on accounting terminology), the FASB has since endorsed SEC staff position by retaining the definition of materiality in SFAC 2 and asserted that it “is in substance identical to the definition of the U.S. Supreme Court” [FASB, (2018), p.5].

The second example is more directly related to framework development. The salience of economic and legal substance as opposed to the more restrictive accounting notion of economic

substance (over form) has been upheld by British judiciary. Interpreting SFAC 2 (in a case where the determination of whether there had been violation of US GAAP was central to adjudication), the court accepted the superiority of representational faithfulness over the “vagueness” of substance over form on the ground that “economic substance must reflect legal substance”, and also noted expert submission that “the form of a transaction will almost invariably shape its substance” [paras. 184 and 187 in *Mahonia Ltd v West LB AG and another*. (2004) All ER (D)].

The IASB has explicitly restored the notion of ‘substance over form’ to the 2018 CF after its elimination from the 2010 CF. However, in response to constituent feedback and consistent with judicial interpretation cited above, the IASB amended its interim stance that in order to faithfully represent an economic phenomenon, entities should report “the substance” of economic phenomenon, “not merely its legal form” [IASB, (2015b), p.56]. Instead, the Board asserts in the revised CF that “(i)n many circumstances, the substance of an economic phenomenon and its legal form are the same” [IASB, (2018a), p.15] and that “an entity should report the substance of that phenomenon” [IASB, (2018b), p.71]. This is accompanied by removal of references to ‘mere’ legal form. The Board’s change of position is clearly intended to avoid the misunderstanding “that legal form may be disregarded” and to clarify “that assessment of an economic phenomenon requires a balanced consideration of both substance and legal form.” [IASB, (2016), p.11].

These recent examples of the impact of judicial interpretation alongside the sparseness of literature examining the relevance of legal reasoning to the contemporary efforts of standard-setters in developing accounting principles and postulates, impels a search farther in history. In the next section, I turn to the ideas of three key accounting thinkers of the last century in order to fill this gap.

#### **4. The ideas of Scott, Spacek and Stamp: synthesizing the relevance of jurisprudence to framework development**

An appreciation of the relevance of law for framework development requires engagement with how the notion of legal reasoning has featured in twentieth century accounting thought. In particular, why has it been considered salient for the development of accounting principles? What are the key philosophical and methodological reasons invoked in support of legal reasoning in accounting? Although I commence with Adolf Berle, my attention is primarily centred on three important thinkers – DR Scott, Leonard Spacek and Edward Stamp. These thinkers were deeply concerned with the future direction of the accounting profession, particularly with respect to its broader societal role. In analysing the manner in which accounting principles should evolve, they were each pioneers in developing frameworks of analysis – Scott, from an institutional and an economic perspective (Scott, 1931; 1937; 1939; 1941), Spacek - primarily as a practitioner (Spacek, 1969) and Stamp, from philosophical and methodological viewpoints (Stamp, 1969; 1980; 1981; 1982). As subsequently highlighted, these thinkers select themselves for my purpose owing to the intersection of common themes central to their quest i.e., the value-laden nature of accounting principles in a philosophical sense, the relevance of juridical models to the development of accounting institutions, and the salience of appropriate methodologies for developing a framework of *just, objective* and *resilient* accounting principles.

An early, prescient and substantive analogy between accounting and law was drawn by Berle who compared “sound accounting principles” with “a body of accepted doctrine comparable (to) the law of contracts or corporations” under common law [Berle, (1938), p.10]. Berle (1938, p.11-2) argued in the period before the emergence of the Accounting Principles Board (APB) that accounting rules “made by specialized administrative tribunals” entailed the peril “that the

resulting body of doctrine may be lop-sided, if not positively dangerous; however conscientiously the rulings (may) have been made from the point of view of the administrators making them.”. He prefigured Spacek’s notion (1958) of an accounting court by advocating “the establishment of an Accounting Board of Appeals either as an autonomous body or within the SEC” (ibid). He asserts:

“Implicit in either the more (Board) or the less ambitious plan (SEC) is the hope that accountants will continue to be fertile in theoretical and professional discussion. Granted open, reasoned decision, and the professional comment, criticism, and review begins to operate.” [Berle, (1938), 14-15].

Berle further argues that the accounting profession would be well advised to borrow from law, models that ensure the robustness of jurisprudence through an opposing tension within the legal profession (ibid). On the one hand is the authority of the Supreme Court to pronounce reasoned final judgements upholding or creating new law that is itself produced subject to the opportunity of argumentative processes being provided to all parties concerned, and the availability of appellate rights at various levels. On the other is the on-going scrutiny through professional and well-reasoned critiques of judgements including that of the Supreme Court, conducted by competent voices in technical journals and authoritative publications. Berle’s emphasis on reasoned argumentation is thus integral to his recommendation that accounting should not only transcend the adoption of institutional and procedural arrangements from law but also address the substantive adoption of legal approaches to the reasoning of accounting issues and the maintenance of their validity.

Nearly two decades later, Spacek (1958, p.374) echoes this need for attentiveness to reasoning used in law, for arriving at robust accounting principles in place of then-prevailing vague notions of GAAP, and calls for documentation of arguments so deployed, as a basis for “progress,

teaching and research” in the systematic and on-going development of accounting principles. Spacek remains an influential voice in accounting history through the 1950s and 1960s, a troubled and eventful period in US public accounting. As a long-standing partner of Arthur Andersen & Co., Spacek was a vocal critic of status quo in the accounting profession and author of “The Need for an Accounting Court” - a paper presented at the American Accounting Association in August 1957 [Spacek, (1958), p.368] that radically argued for the establishment of a broad-based accounting tribunal for the settlement of disputes on matters of interpretation relating to accounting principles. Spacek rejected the profession’s previous efforts to establish accounting principles as unscientific, and was one of the earliest thinkers to openly espouse ideas such as the salience of the investing shareholder as user of financial statements and the articulation of investor needs from financial reporting in terms of the assessment of the true earnings power of the reporting corporation for making investment decisions. Zeff (2001, p.153, p.155) notes that as the “most controversial” appointee on the Special Committee on Research Program constituted by the AICPA in 1957 that eventually led to the establishment of the APB, Spacek was perhaps the sole champion of a deductive approach towards the establishment of “objective standards” from first principles, that would assimilate the criteria of fairness to identified user communities (including the stockholder, labour and consumer) as the cornerstone of standard-setting. As a practitioner, Spacek stood up for auditor scrutiny and the communication of client propriety in the selection and application of accounting principles through the audit report by de-linking the assessment of such propriety from compliance with GAAP. Zeff (2007, p.8) highlights the pioneering and outlying role played by Spacek and Arthur Andersen during 1946 to 1962 in enhancing auditor communication by recognizing the inadequacy or inappropriateness of GAAP to specific situations

and resorting to a two-part opinion in the audit report - one based on such propriety and the other on GAAP compliance.

Spacek compares the value of well-reasoned accounting principles to case laws in the legal profession, an approach that he considers essential for their careful construction and fair application (Bloom, 2007). A robust illustration of Spacek's emphasis on systematic reasoning is visible in his public intervention (Spacek, 1963) over a debate on the appropriate accounting method to be followed by the rate-regulated utility industry in the matter of the controversial investment tax credit (ITC) law of 1962. In determining how specific accounting choices should be made, his arguments combine the need for attention to legislative intent, reasoned refutation of counter-arguments advocating alternative methods of application, support for a deductive approach that seeks to establish 'objective standards' from first principles having regard to the criteria of fairness across various financial statement user categories (including current and future customers), and invocation of legal precedence by reference to previous enactments and their impact on accounting treatment. Thus, Spacek's arguments build on Berle's analogy of accounting and law in the matter of reasoned argumentation and suggest a significant ontological move by predicating accounting principles on the notion of fairness, in their design and application.

Spacek's emphasis on fairness, however, is prefigured by Scott (Bloom, 2007), who like Berle, draws upon legal analogy. However, unlike Berle's (1938, p.13) limited reference to the importance of "dignity of law" in a transparent quest for accounting principles, Scott (1941) emphasizes the importance of the fundamental values of justice, truth and equitable treatment for the development, maintenance and application of accounting principles analogous to the manner in which such values undergird principles of applied law in governing human relations. Through these values, Scott imports the notion of fairness into accounting as a formal principle and is

regarded as one of the first thinkers to develop a normative framework for the development of accounting principles (Arnett, 1967; Lawrence and Stewart, 1993). Scott interprets key accounting concepts such as consistency, matching and conservatism by connecting them through illustrations, to the pervasive principle of justice and conceptualizes accounting principles not as technical rules but as the medium that relates such technical concepts and procedures onto social values. The notion of justice forms the foundation on which he builds his case for truth and fairness in accounting, an idea that prefigured the FASB concepts of representational faithfulness of financial statements in a holistic sense, and neutrality respectively, which were developed four decades later (Lawrence and Stewart, 1993). Scott argues that the realization of an “objective validity” in accounting must eschew a ready-reckoner approach to the setting of rules in favour of a flexible, doctrinal approach to the building of accounting principles from fundamental premises [Scott, (1941), p.348-9]. Once developed, the profession must subject all aspects of accounting principles to a continuous process of scrutiny on the basis of justice, fairness and truth, by treating them as “tentative” and “dependent generalizations” (ibid).

Thus, in Spacek’s thoughts, an amalgam of the ideas of Berle and Scott is visible, although there is no apparent reference to them in his writings. Spacek’s public espousal of fairness, both individually and through publications by Arthur Andersen & Co., is significant as it fills a gap following Scott, revives continuity and restores to accounting discourse the emphasis on fairness as the cornerstone for the establishment of accounting principles (Arnett, 1967). Owing to Spacek’s personality and stature in the profession, his public talks and writings amplified the need for convergence of two important strands of thought that drew parallels between accounting and law. First, the salience of reasoning and argumentation techniques as adopted in jurisprudence is highlighted, a theme that Spacek continues to build upon through the years of controversy over

accounting postulates and principles in US public accounting (Spacek, 1964; 1969, p.412-3). Second, the pervasive significance of fundamental values long pursued by law in the dispensation of justice is emphasized through the notion of fairness. Spacek emphatically fuses these strands, laments their absence and highlights their significance for the development of accounting principles in a pithy speech delivered at the University of California, Santa Barbara in 1960:

“Look through accounting literature...and note the complete absence of any reasoning or demonstrated logic as to what constitutes fair presentation...to the specific segments of society...(O)nly one small body among all the segments of society (is) interested in the meaning of the word “fairness”...That is the higher courts of our land...it is the only spot where the views of all segments are heard and their rights determined...on the basis of the reasoning on which accounting principles should be, but are not, based – that is, the reasoning as to why they are fair or unfair.” [Spacek, (1969), p.153].

A decade later, the Stamp-Sterling debate emerged as a focal point of continuity. Echoing Scott, and in calling for a philosophical examination and construction of a CF of accounting by highlighting its inherent proximity to law rather than physics, Stamp rejects Sterling’s (1975) claim that accounting should define its problems and seek solutions in the manner that empirical sciences do. Stamp (1981, p.22) asserts that the “nature of accounting is such that its underlying philosophy (nascent though that may be at the moment) has more parallels with jurisprudence than it does with the philosophy of science”. He adds:

“accountants must adopt legal approaches to the solutions of their problems because accountancy, like the law, deals with problems involving equity and balance and the resolution of conflict between different groups of human beings with widely varying interests and objectives.” [Stamp, (1981), p.21].

He particularly highlights the value-laden nature of accounting concepts (Mumford, 1993) such as truthfulness, fairness and neutrality that underlie financial reporting objectives, in drawing the legal analogy. For Stamp, such concepts i.e., “‘justice’, ‘rights’, ‘duties’” do not lend themselves to analysis through “either empirical or formal methods” of analysis such as “mathematics or logic” [Stamp, (1981), p.22]. Of the thinkers highlighted in this paper, Stamp is perhaps most forthright in directly drawing upon legal analogy with respect to the development of accounting principles. Archer (1993b, p.68) highlights from personal experience that “Stamp was an advocate of the application of a jurisprudential approach to conceptual problems in financial accounting”.

Like Scott, Stamp rejects rigid, rule-based approaches and emphasizes the importance of developing a set of consistent precedents to be used in making well-reasoned judgements in the development and modification of accounting principles. Highlighting common law jurisprudence as a model for accounting, in which the interpretation of legislation and precedence forms the basis of judge-made law that, in itself, combines judgement, integral reasoning and obiter dicta in providing principled guidance for future cases, Stamp compares company law and notified accounting standards as akin to “statute law, whilst the daily decisions made by management and auditors throughout the country in interpreting standards are the equivalent of case law” [Stamp, (1980), p.95]. Akin to law, Stamp thus envisions an evolutionary rather than a “deterministic or authoritarian” approach to the development of accounting principles but highlights key challenges that thwart such an approach i.e., the absence of an acceptable, systematic mechanism for the publication of widely scattered and often confidential accounting judgements made in daily practice and, (echoing Spacek), the absence of appellate procedures in accounting (ibid). Despite these challenges, his vigorous justification for such an approach rests on a need to secure the core

values of accounting – a theme that, in addition to legal analogy, is evident in the thoughts of Scott, Spacek and Stamp:

“The development of such a framework into an effective instrument to secure ‘truth and fairness’ in financial reporting will be no easier than the development of a system of laws and legal administration that secures justice for all.” [Stamp, (1982), p.124].

Stamp’s critique has inspired further philosophical insights (Lyas, 1984; Power, 1986) highlighting that just as reasoning and argumentation are practical aspects of law that enable judicial decision making, which does not, ipso facto, render such legal decisions invariably unreasonable, so also, accounting decisions made on the basis of common sense and practical reasoning do not necessarily render such decisions irrational or arbitrary. Stamp’s parallel between accounting and legal arguments that facilitate the making of judgements in each domain so as to apply concepts in practice has the potential of “establishing agreement within the profession” through “effective processes of debate” that may otherwise be supplanted by “questionable definitions” through the pursuit of a “rigorous and formalist methodology” [Power, (1986), p.392]. The role of practical reasoning in both domains and the established role that reasoned argumentation plays in practically interpreting amorphous concepts such as justice, equity and fairness are central to Stamp’s arguments about a normative frame of reference in both domains.

Stamp’s contributions are of particular significance when examined in the context of Scott’s ideas. Scott’s institutionalist thesis in “The Cultural Significance of Accounts” (1931/1973) centres on the decline of market as the locus of economic control and its replacement by the rise of accounting control as an integrating social institution. This is attributed to the emergence of an objective, scientific viewpoint based on the methodology of accounting in which the “principles of accounting adjustment are destined to become a closer approximation of the principles or “laws”

of physical science than has ever been achieved by the principles or “laws” of competitive economic control” [Scott, (1931/1973), p.260]. Johnson and Gunn (1974, p.650) argue that “Scott's thesis was developed during the euphoric 1920s” and “should not be considered a product of the great depression”. This suggests a possible explanation to the subsequent divergence in his later views, as the full effect of the great depression emerged. In his critique of the tentative Statement of Accounting Principles (AAA, 1936) - one of the first major institutional efforts undertaken to develop a framework of fundamental accounting principles - Scott (1937, p.296) draws a parallel between accounting and law and introduces the notion of “protection-of-equities” as a key function of accounting alongside its traditional functions of record-keeping and control. Thus, accounting is interpreted as an “instrument of economic adjustment and social control” that combines principles and techniques to “differentiate and protect” various economic and business interests wherein accounting rules must be predicated on such principles as “afford the most equitable adjustment” of conflicting business interests [Scott, (1937), p.301].

The twin aspects of legal analogy and the role of accounting in maintaining equity through the mediation of conflicting interests, as a basis for the development of “comprehensive and consistent” accounting principles, continued to gain centrality in the evolution of Scott's ideas through the late 1930s [Scott, (1939), p.400]. Scott compares his notion of accounting principles as guidelines for consistent practice (rather than comprehensive rules of application), to a “system of legal principles” and states that accounting principles can no more replace the need for the accountant's judgement and discretion, as legal principles have replaced the need for jurists, who continue to exercise judicial interpretation (*ibid*). Commenting on “the absorption of accounting into the law” through case laws and regulatory orders developed in the resolution of conflicts over economic interests, Scott compares the emergence of accounting control through its co-option into

legal authority with developments of an earlier generation in which market control was sought to be exercised through the co-option of merchant law and practices into common law [Scott, (1939), p.401]. He emphasises the need for the development of accounting principles based on sound theory that can overcome the risk of “half-baked” principles being “frozen into the rigid requirements of the law” (ibid). In a more direct comparison, Scott emphasises accounting’s social significance as being predicated on its operation as a “process of valuation” and states that “the accounting profession is responsible for the evolution of accounting principles and practices in the same sense that the legal profession is responsible for the evolution of law”, so that good rules of procedure are evolved that can ensure an equitable treatment of all interests involved” in matters such as the determination of net income [Scott, (1940), p.509]. Thus, Scotts’ ideas, while retaining an institutionalist view and emphasizing the ‘reality’ of accounting principles as objective yet dynamic, show evidence of transition from science to social science and physics to law, with increasing emphasis on values such as equity, that are beyond the realm of scientific reasoning. In a substantive sense, this transition also prefigures the Sterling-Stamp debate.

In aggregate, there are common, notable elements arising from the foregoing strands encountered in the decades preceding the FASB’s development of its concepts statements (SFAC). Accounting principles are conceptualized as constituting ‘objective’ reality, but not in an ossified sense. There is a strong presumption in favour of their continuous review arising from an obligation that accounting principles must satisfy the test of ongoing validity in light of economic and social developments based on new modes of reasoning about how fundamental values such as justice are to be applied in practice. Analogously, some later scholars have interpreted codified GAAP particularly SFAC 1 (FASB, 1978) and SFAC 2 (FASB, 1980) as setting the foundations of a hierarchical and utilitarian GAAP, with decision-usefulness at the centre. They argue that an

accounting framework as laid out in these conceptual statements can be interpreted either as forming a part of the overall legal system, with an inherent requirement to conform to a minimum standard of fairness analogous to enacted law that must conform to a certain minimum standard of morality or, as constitutive of a normative order within GAAP, with usefulness being the underlying norm – where usefulness must be construed as natural law doctrine based on the “condition of experience” rather than the “data of experience” [Gangolly and Hussein, (1996), p.393]. In either interpretation (moralistic or utilitarian), a purely positivist conception of accounting norms cannot escape ultimate recourse to a metaphysical notion: either fairness drawing from morality, or usefulness as subjectively experienced and socially constructed. In either interpretation, the nexus between accounting norms and fundamental values as understood in law, is inescapable – accounting norms (interpreted as fundamental principles or a CF) are predicated either on extensions of juridical values such as fairness or they constitute a normative order on the founding norm of utilitarianism as conditioned by human experience and interpreted by natural law. An intricate intersection of a quest for fundamental values, salience of juridical reasoning and the quest for contingent (as opposed to final) truths, emerges from the foregoing.

## **5. Discussion and Conclusion**

The need for a robust CF of accounting has existed in English-speaking jurisdictions since the latter half of the twentieth century and particularly in the United States since the 1930s [Archer, (1992), p.199-200]. However, this need has changed from an earlier quest for sound *accounting principles* as decision guidance for individual practitioners to the current search in the post-FASB period for *accounting standards* as an intellectual quest for informing the crucial self-regulatory role of standard-setting. Dopuch and Sunder (1980) argue that the FASB’s efforts to establish a CF are attributable to rationalization motives arising from twin considerations - a lack of adequate

representation of diverse social interests in the standard-setting process and the absence of enforcement authority. Consequently, they reject the possibility that CF development arises from genuine efforts to resolve definitional controversies since “definitions, no matter how carefully worded, cannot bear the burden of the struggle for economic advantage between various interest groups” given the absence of legal authority [Dopuch and Sunder, (1980), p.16]. Peasnell (1982, p.254) echoes this view and argues that the FASB’s “professed faith in its CF program...given its obvious lack of power” reflects a perceived need “to demonstrate that it is trying by logical means to develop accounting standards based on principles of general appeal”.

Select accounting scholars and practitioners in the pre and early-post FASB period have highlighted the limitations of formal logic when resolving conflicts on value judgements such as justice and fairness, while simultaneously recognizing the crucial importance of resolving such conflicts for a credible and responsive CF. Their work reveals an appreciation of the processes of reasoning and argumentative analysis in the juridical domain, and the normative aspect of postulates underlying jurisprudence in understanding how accounting principles *can* evolve. Viewed thus, the ineffectiveness of standard-setters to develop a credible CF is attributable less to the superficiality or impossibility of the project and more to failures in breaking disciplinary boundaries and borrowing from a contiguous field i.e., jurisprudence. The relevance of law for developing an accounting CF merits attention from two aspects. First, technical considerations require the development of a CF that can provide principled attestation guidance to preparer and auditor judgement, capable of withstanding the test of judicial scrutiny. Contemplated herein is a dyadic relationship between accounting concepts and judicial interpretation, such that well-defined concepts can enhance standard-setter legitimacy despite absence of legal authority, through judicial scrutiny and reliance. Second, social expectations regarding resolution of conflicts of

interest among financial statement user-groups assume significance in view of the declared emphasis on fairness, faithfulness, freedom from bias and neutrality that framework documents issued by stand setters repeatedly emphasize. Archer (1993a, p.102-3) concludes that the failure of the FASB to develop a coherent, credible CF – one that would lend intellectual and moral, therefore institutional authority to its pronouncements is attributable broadly to an intellectual stultification arising from the epistemological autonomy assumed by the leaders of the profession i.e. “the idea of accounting as an independent discipline”, the absence of “a critical, enquiring, socially aware approach” to the development of a CF of accounting and the emphasis on “political, consensus-building” processes rather than a reliance on the findings of an active research community in informing the theoretical structure of a CF of accounting. Simultaneously, a disproportionate emphasis on fundamentally technocratic, quantitative and rational decision-models would be inadequate in resolving normative conflicts relating to the interpretation of justice and equity in credible framework development.

Such normative conflicts can neither be completely divorced from a pragmatic realism nor treated as resolvable through objective ‘fact-finding’ exercises as has been the implication under positivist accounting theory. The ‘hollowing out’ of constructed norms can only be overcome by establishing a distinction between formal and substantive. In a formal sense, a norm may defy definition, yet a substantive definition may be possible as a norm deployed in action. Such a definition would entail a process of reasoning that connects truths and premises which are situationally accepted with what is preferable in that situation - thus a formal norm then assumes a substantive, practical character in action. At stake here is the idea of substantive - a situational dependence where a normative definition is based on a dialogic reasoning in which accepted premises and truths become the basis for arguing and gaining adherence to a ‘preferable’. To the

accounting minds of an earlier era, jurisprudential reasoning offered an established recourse to such a basis and a way out of the impasse. In the face of mounting environmental, social and governance challenges, such an approach is long-overdue.

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