

***Stakeholders' capabilities-as-entitlements:
Sen's capability approach and the
new foundation of corporate governance***

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ABSTRACT

This paper provides a new theoretical foundation for analysing corporate governance regimes through the lens of Amartya Sen's capability approach. By developing the concept of capabilities-as-entitlements, we reframe corporate governance as a structure of legal entitlements – essentially liberties versus residual control rights (à la Oliver Hart) - allocated to various stakeholders and corresponding to Sen's notion of capability. In order to accomplish this, we propose the distinction between minimal (necessary) and sufficient conditions for having stakeholders' capabilities. This framework offers a legal, economic and philosophical basis for understanding how corporate governance impacts stakeholders' capabilities and well-being as well as how corporate hierarchy should be constrained to enhance stakeholders' capabilities.

Keywords: Capability approach; Stakeholder; Corporate governance, Residual control rights.

Abbreviations: Residual Control Rights (RCRs); Corporate governance (CG); Capability Approach (CA); United Nations Development Programme (UNDP); Corporate Sustainability Due Diligence Directive (CS3D)

1. Introduction and the main thesis of this essay

Corporate governance (hereafter CG) is defined as “the structure of *rights* and *responsibilities* among the *parties with a stake* in the firm” (Aoki, 2000:11, italics added), that is, the configuration of entitlements among *stakeholders* such as workers, consumers, suppliers, clients, and the local community, in addition to shareholders.¹ Drawing on the capability approach (hereafter CA) originally formulated by Amartya Sen (e.g., Sen, 1992, 1999, 2009; cf. also Chowdhury *et al.* 2023, *in this journal*), this paper shows how such entitlements *should be* allocated among stakeholders and, consequently, how corporate governance *should be* shaped to enhance their capabilities. Here, corporate governance is conceptualized in terms of entitlements: legal liberties attached to capabilities (or capabilities-as-entitlements) which limit residual control rights (RCRs) in the sense of New Institutional Economics (Williamson, 1985, Hart, 1989, 1995). Our analysis furnishes a *new* theoretical framework for rethinking how CG should be restructured in consideration of stakeholders’ capabilities.²

The CA offers a theory of justice centred on the actual opportunities for human flourishing, encompassing various achievements in human functionings, i.e., states of being and doing that a person has reason to value (such as being healthy, being well-nourished, being able to participate in community life, having access to education). Basing on the CA, the Human Development Index (HDI), developed by the United Nations Development Programme (UNDP), relies on a set of key functionings that reflect essential dimensions of human well-being. These are ‘living a healthy life’ (measured by life expectancy at birth), ‘achieving and valorising competencies’ (proxied by mean years of schooling and expected years of schooling) and ‘enjoying a decent standard of living’ (measured by gross national income per capita). Two additional indices developed by the UNDP specifically address the functioning of ‘not being discriminated against’: the Gender Development Index (which compares the level of human development between women and men) and the Gender Inequality Index (that captures losses in human development due to gender inequality). The latter also incorporates the functioning of ‘participating in choices of the community’ (proxied by share of parliamentary seats held by women, and by the female and male labor force participation rates). From a CG perspective, this paper examines functionings relevant to the business domain, *such as* functionings of ‘working in a healthy, safe and clean environment’ (a subset of the HDI functioning of ‘living a healthy life’), ‘obtaining fair economic returns from one’s own investments’ (which combines the functionings of ‘achieving and valorising competencies’ and ‘not being discriminated against’) and ‘participating in decisions of the firm’ (a subset of ‘participating in choices of the community’).

To do that, we introduce and develop the concept of capability-as-entitlements, operationalising the philosophical conception of agency inherent in the concept of capability by means of the jural notion of liberty. For this reason, we draw from the well-established jural taxonomy developed by Wesley N. Hohfeld (1917; see also Sumner 1987). Intuitively, in the famous 1943 Bengal famine case (Sen 1981), though food was available in shops, people still died because they lacked the legal entitlement, specifically, the legal liberty, to access the food shops, while shop owners had the legal entitlement, namely the property right that included the legal claim

¹ Similarly, according to the OECD, CG is “the system by which business corporations are directed and controlled. The corporate governance structure participants in the corporation, such as the board specifies *the distribution of rights and responsibilities among different, managers, shareholders and other stakeholders, and spells out the rules and procedures* for making decisions on corporate affairs” (OECD, 2005, italics is added).

² It is important to note that in the management literature, references to “capabilities” most often refer to organizational dynamic capabilities (e.g., Teece *et al.*, 1997). In contrast, we refer to Sen’s concept of human capabilities—the ability to achieve the kinds of lives that people have reason to value.

to exclude starving people from their shops. As Sen explicitly states: “in the Bengal famine of 1943 the people who died in front of well-stocked food shops protected by the state were denied food because of lack of *legal entitlement*, and not because their entitlements were violated” (Sen 1981, p.49, emphasis added). This means that the capability to be adequately nourished (or, at least, to stay alive) would have required the starving people’s legal entitlement to access food shops, specifically the *liberty to do*, i.e., to access food shops, to achieve the functioning of ‘being adequately nourished’ (a subset of the HDI functioning of ‘living a healthy life’). We refer to this legal liberty as “unilateral” liberty or half-liberty. Capability can also take the form of “bilateral” liberty or full liberty: *both* the half-liberty to do *and* the half-liberty not to do. In the case of the 1943 Bengal famine, this would mean that starving individuals had not only the liberty to enter food shops, but also the liberty not to enter, e.g., out of religious fasting (such as during Ramadan), voluntary hunger strikes (see also Sen 1999:75), or because they could access adequate nourishment through alternative liberties, such as the liberty to enter a canteen or a soup kitchen. In this respect, a person’s capability to be well nourished requires, *at a minimum*, a half-liberty to enter a food shop. This represents the necessary or minimal condition for a capability, as without at least the liberty to access the shop, it would be impossible to achieve the functioning of ‘being well nourished.’ However, beyond this necessary condition, we also consider the sufficient condition **for** a capability to represent a full freedom of choice i.e. the bilateral liberty to both enter and not enter the shop.

Agency, which is at the core of CA, is reflected in both necessary condition (the agency expressed being active by willingly entering a food shop) and sufficient condition (the agency to choose between entering or not entering, without any duty to do so or refrain from doing so). While bilateral liberty more fully embodies the notion of capability as freedom of choice, the necessary condition of having a half-liberty should not be underestimated. Admittedly, it does not fully satisfy the notion of freedom of choice and hence, in terms of Senian notion of well-being, the functioning achieved by an half-liberty has a lower value than the same functioning achieved by choosing it from a choice set of multiple capabilities. Nevertheless, half-liberty still signifies a relevant step toward achieving a functioning. It identifies the minimal form of agency, that is the lowest threshold of freedom required to activate a capability and to actively pursue (rather than passively receive) a functioning.

This jurial interpretation of capabilities-as-entitlements is highly relevant to CG. What matters most for our analysis is that both half-liberty and full liberty place limits on the entitlements (property rights) of owners of the firm as well as shop owners. Firms have an inherent hierarchical nature (Coase, 1937) where Residual Control Rights (hereafter RCRs) exercised by a “boss” (the subject who exercises authority in the firm) can significantly impact the functionings and capabilities of other stakeholders. Specifically, RCRs as understood in New Institutional Economics relies on the right to exclude stakeholders from the firm’s physical assets, thereby influencing their capabilities—much like the property rights over food shops curtailed the capabilities of starving individuals during the Bengal famine. We employ the concept of capabilities-as-entitlements to operationalize capabilities in the CG domain, showing that stakeholders’ capabilities act as constraints on the boss’s RCRs. More broadly, we argue that stakeholders’ capabilities impose limits on the boss’s power, particularly because the legal liberties associated with these capabilities prevent the exclusion of stakeholders from the firm’s physical assets, even when stakeholders make decisions that conflict with the boss’s directives. For example, a boss cannot fire an individual who has recently becoming a parent for refusing to return to work immediately. The individual has a liberty, which is related to the functioning of ‘being in good health’ (and also to the functioning of ‘not being discriminated against’ on the basis of gender) that may take the form of a half-liberty, i.e., the liberty *not* to return to work immediately after becoming a parent, which in cases of mandatory parental leave also entails a duty not to return, or a full liberty, in cases where the individual has the liberty to choose whether or not to return to work, as in optional parental leave. In both cases, the boss cannot terminate the employee, and the employee does not lose her job (her

access to the firm's physical resources) because of her decision related to the functioning of 'being in good health.' Further examples of capabilities-as-entailments and their limitations on the boss's residual control rights are described and discussed in the paper for all classes of stakeholders.

In the next section, we position our paper within the academic discourse. In the subsequent section, we underscore the importance and motivations of integrating justice considerations à la Sen into CG. The fourth section introduces Hohfeld's well-known taxonomy to elucidate the concept of capability-as-entitlement. This legal framework allows us to distinguish between the *necessary* and the *sufficient* condition of capabilities and to illustrate how capabilities impose limitations on exclusionary claims traditionally embedded in property rights. We then apply Hohfeld's taxonomy and reasoning to the business domain, demonstrating that stakeholders' capabilities constrain the boss's RCRs, particularly by limiting the boss's claim to exclude stakeholders from the firm's physical assets when they do not comply with orders. Our analysis reveals that capabilities-as-entitlements introduce new constraints on boss's authority, redefine the bundle of control rights encompassed by RCRs and reframe CG as domain subject to legal and ethical considerations that safeguard the well-being of all stakeholders. Finally, we conclude by summarizing our main findings, acknowledging the limitations of our study and outlining potential avenues for future research.

2. Related literature

Our paper develops the idea that firms encompass functionings and capabilities that shape the well-being and agency of stakeholders—an idea that has been largely overlooked, with only a few notable exceptions. For instance, Chowdury *et al.* (2024) employ the CA to develop a model of the firm that accounts for marginalized stakeholders, specifically those belonging to vulnerable social identities or lower social classes. These stakeholders frequently experience racial profiling, generate very low incomes relative to their locations, and face stigmatization based on factors such as sexual orientation, physical disabilities, or mental health conditions. Their work underscores how CG structures can either reinforce or mitigate these disparities. In another paper, Goodstein (2019), building on Westermann-Behaylo *et al.*'s (2016) model, examines the relationship between rights and capabilities in the employee-worker relationship. Goodstein analyses hiring practices in the context of critical community engagement, exploring how employee rights to protect property, ex-offenders' rights to uphold their dignity, and the interests of external stakeholders such as families and residents can be balanced with the CA. The CA provides important insights into how firms can navigate ethical tensions and trade-offs when integrating marginalized individuals into the workforce. However, while these studies offer valuable contributions, they primarily focus on a limited subset of relationships, notably the worker-employer relationship, or on specific groups of stakeholders, namely marginalized stakeholders. This selective focus leaves a broader conceptual gap in understanding how CG can be examined through the lens of CA. By contrast, our paper proposes a more comprehensive framework that is applicable to all stakeholders and all relationships within a firm. Rather than restricting the CA to labour relations or vulnerable groups, we explore how the CA can systematically structure CG to ensure that all stakeholders—employees, shareholders, consumers, and broader communities—can enhance their capabilities and functionings. Our analysis provides a normative foundation for rethinking CG as an institutional framework that actively shapes and supports stakeholders' capabilities, rather than merely maximizing efficiency or shareholder value.

Our paper also contributes to the literature on stakeholder approach to which we adhere. According to this perspective, the CG configuration should take into account the interests of all stakeholders—defined as parties who have stakes in the firm, such as specific investments, and, in turn, expect returns on their stakes (cf. Aoki, 1984; Blair & Stout, 1999; Sacconi, 2006, 2007). While the stakeholder approach challenges the traditional CG paradigm, which grants unilateral and exclusive rights to the holder of RCRs (Donaldson, 1992; Donaldson & Preston, 1995; Freeman, 1984, 2010), relatively few exceptions have specified the legal entitlements that should define rights, liberties and responsibilities of stakeholders. Notable exceptions include the works of Sacconi (2006, 2007, 2011a,b) and Fia and Sacconi (2019), which have advanced the stakeholder approach by grounding the deduction of stakeholders' rights and responsibilities in the idea of a constitutional and post-constitutional social contract of the firm (cf. Sacconi 2011a,b). We build on this literature by demonstrating that the CA offers a powerful conceptual and normative framework for defining stakeholders' entitlements. By linking the stakeholder approach and the CA, our analysis bridges a critical gap in the literature and offers a new pathway for the development of CG models that are both morally justified and normatively implementable.

Furthermore, our paper shares key conceptual similarities with the scholarship of Elinor Ostrom (particularly, Schlager & Ostrom, 1992; Cole & Ostrom, 2012). Ostrom reconceptualizes property right (over commons) as a *bundle* of control rights that challenges the traditional view of property as a single, absolute and indivisible right and emphasizes the modular nature of entitlements, which can be allocated among multiple agents. Ostrom's taxonomy of control rights over commons identifies five key entitlements: (i) access — the right to enter a resource; (ii) withdrawal — the right to extract benefits from that resource; (iii) management — the right to

regulate and make decisions regarding resource uses; (iv) exclusion — the right to determine who has access to the resource; and (v) alienation — the right to transfer these rights. This framework has been further developed by Simon Deakin in his work titled “The Corporation as Commons: Rethinking Property Rights, Governance and Sustainability in the Business Enterprise. Deakin is one of the first scholars to explore the correspondence between commons and corporations, as well as between the governance of commons and CG. Table 1 illustrates these correspondences.

Table 1. HERE

By drawing such a parallel between the firm and Ostrom’s common-pool resource, we argue that these five control rights, composing the bundle of control rights, can be reinterpreted and leveraged in the analysis of CG to provide a more nuanced understanding of different CG models. For instance, in German codetermination, workers exercise management rights by electing their representatives to the supervisory board and the works councils—a mechanism absent in U.S. public companies. In the analysis on the US companies, the exclusion of other stakeholder groups, especially employees, from participation in managing the firm is frequently justified by reference to agency-cost considerations (Fama and Jensen 1983), or more simply, by appeals to the importance of shareholders’ property rights (Hansmann and Kraakman 2001). This highlights how corporate control rights can be distributed (or not) across multiple stakeholders and in different modes across countries. By “unpacking” a firm’s control rights, we show that CG does not consist of the boss’s absolute (property) right but rather of a bundle of entitlements, and each entitlement that can be distributed, in different modes, among stakeholders.

Also, we point out that this redistribution of control rights inherently limits the boss’s RCRs and creates or supports a CG structure that enhances stakeholders’ capabilities and well-being. In this way, our analysis bridges the CA, CG theory, and the commons framework, providing a new lens through which CG can be understood as a system of entitlements, specifically a bundle of control rights, rather than a hierarchical, property-based model.

Finally, recent contributions from legal scholars on the CA are also highly relevant to our work. A seminal volume edited by Brian Langille (2019) applied the CA to labour law, incorporating contributions from leading scholars such as Langille, Salais, Deakin, Del Punta, and Nussbaum, among others. In particular, Salais (2019) identifies four key capabilities of workers: capability to choose, capability for personal accomplishment, capability to do or to realize, and capability to deliberate (or voice). Our work extends this line of analysis by specifying the entitlements that underpin these capabilities and pointing out how these stakeholders’ entitlements necessarily limit the boss’s RCRs. Moreover, while this perspective predominantly focuses on workers as stakeholders, we broaden it by incorporating a wider range of stakeholders and examining their capabilities-as-entitlements within the CG structures. By doing so, we provide a more comprehensive framework that applies the CA beyond the labour domain, offering a nuanced understanding of how shape stakeholders’ agency and well-being within firms.

3. Motivations for rethinking corporate governance in terms of justice.

Our discussion begins with the meaning of RCRs, as this concept has played a central role in the analysis of CG among economists (e.g., Hart 1989, 1999), legal scholars (Hansmann and Kraakman 2000, Blair and Stout 1999), and across other disciplines, including organizational theory (e.g., Williamson 1985), business ethics (e.g., Sacconi 1999, 2000) and political science (e.g., Ciepley 2013). Market transactions require contracting parties to draft state-contingent contracts and rely on an external, third party or enforcer to resolve their potential conflicts *ex post*. However, in the parlance of incomplete contract theory, the parties' conduct and the exact characteristics of their transaction cannot always be fully anticipated *ex ante* in contractual terms. Unpredictable events may arise, or at least, may not be verifiable upfront by the enforcer (e.g., Williamson, 1985; Hart, 1995, see also Vatiero 2021). This issue becomes particularly significant when market transactions involve investments in asset specificity *à la* Williamson (1985), namely investments that are costly to redeploy in alternative economic relationships. To incentivize investments in asset specificity, contracting parties might move from a market transaction between two contractual parties to a hierarchical relationship, that is the firm, in which a boss holds *residual control rights* (Hart 1995). RCRs represent “the right to decide all usages of the asset in any way not inconsistent with a prior contract, custom, or law” (Hart 1995:30).

In this framework, an institutional setting in which two firms (or economic agents) interact using the price mechanism and incur transaction costs associated with market transactions is replaced by a more efficient institutional setting in which, for a vertical integration, one firm *acquires the physical assets* of the other one, which becomes a branch of the first firm, and subsequent interactions are *governed* by the hierarchical orders of the acquiring firm rather than by price mechanism. Within this conceptual framework, RCRs are directly linked to and dependent on the ownership of physical assets. Here, it is important to explicitly define the meaning of authority: in line with New Institutional Economics, because of the ownership of physical assets, RCRs grant the boss the power to exclude others from the firm's assets if they fail to comply with orders in circumstances not explicitly specified (and governed) by the contract, and such a threat of being excluded from the firm's assets—exercised at the boss's discretion—grants the stakeholders' acceptance of the boss authority. That is, the stakeholders are willing to treat the boss's directives as premises of their own action. In this view, authority is thus grounded in the credible threat of exclusion. Admittedly, a quite rough view of the concept, but this is the essence of authority in these models (cf. Hart 1989, 1995).³

The hierarchical ‘fiat’ governance within a firm arises from the fact that the boss, who holds RCRs and consequently controls the firm's physical assets, can selectively exclude other stakeholders from accessing those physical assets if stakeholders fail to comply with boss's orders. In small and medium (closed) firms, the entrepreneur typically owns the physical assets and, consequently, holds RCRs. However, as a firm grows, management complexity increases—a phenomenon described by Coase (1937) as diminishing returns to management. Consequently, in

³ A more persuasive account of authority should rest on stakeholders genuine consent, not merely on the threat of exclusion. Beyond the threat of exclusion for disobedience, there must be a perceived benefit in staying in the authority relationship. Accepting the boss's directives as the basis for stakeholders' decision-making process should reflect the recognition that subordination can be advantageous. Otherwise, why would stakeholder accept the boss's directives that override their preferences? (J. Raz 1984, Authority and justification, *Philosophy and Public Affairs* 14 (1):3-29 (1985); C. McMahon, Managerial authority *Ethics*, 2000, n.1). This does not rule out the possibility of serious disadvantages, such as the “abuse of authority” (Sacconi, 1999). Abuse undermines not only the legitimacy but also the stability of authority in firms. While the New Institutional Economics assumes the threat of exclusion ensures compliance, recent work (e.g., Frydinger, David, and Hart 2024) challenges this premise. Earlier, Kreps (1991) and Sacconi (1999, 2000) emphasized the need for general principles or ethical codes to guide authority, grounded in a firm's social contract.

large firms, it becomes necessary to delegate management to a class of specialized professionals, such as those with expertise in finance, logistics, and engineering, who are better equipped to handle these complexities: the class of managers. This leads to the separation of control (managers) from other roles, such as corporate financier. Following a shareholder-oriented approach (e.g., Hansmann and Kraakman, 2001), shareholders are considered the owners of public companies because they own shares, but they delegate control rights to their agent, the manager. Within this perspective, RCRs exercised by the manager are aimed at protecting and advancing interests of the principal, the shareholders. From this New Institutional Economics perspective, CG is reduced to the allocation of RCRs to an agent (the manager) related to a specific principal (the class of shareholders). This results in a unilateral, indivisible and absolutist model of hierarchy and CG,⁴ in which control rights are concentrated in the hands of an agent that serves interests of a single stakeholder group (shareholders), rather than interests of a broader set of stakeholders.

In the sense of New Institutional Economics, RCRs represent a mechanism to enforce boss' orders: the threat of exclusion from physical assets works as a *private* enforcement mechanism for the boss's directives, compensating for the fact that such orders are not enforced through public legal mechanisms (tribunals, judges, etc.) due to the incompleteness of contracts. However, while this exclusion-based incentive mechanism may be considered efficient in some cases (cf. Hart 1995), it raises concerns both in terms of justice, specifically regarding stakeholders' capabilities and wellbeing. We consider three key problems that call for a *new* theory of justice, based on CA and applied to the firm. When the CG structure is designed so that the manager acts as an agent of a specific stakeholder group (in the shareholder-oriented perspective, the manager *should* represent and protect the interests of shareholders), this arrangement encourages investment from that group while discouraging investments contributions from other stakeholders, who remain protected only by *incomplete* contracts. If RCRs are aligned exclusively with the interests of a single class of stakeholders (i.e., shareholders), they may siphon off the value created by the investments of other stakeholders (Blair and Stout, 1999). This risk has been described by some scholars as an "abuse of authority" (Sacconi, 1999; Gibbons, 2010). To protect and encourage the specific investments of *all* stakeholders, an *efficient* CG should enable the manager to act as a neutral third party, akin to a judge in a market transaction, rather than as an agent serving a particular class of stakeholders (Aoki 1984, Blair & Stout 1999). This issue of efficiency also intersects with principle of justice (see also Fia & Sacconi, 2019): If the manager acts in the interest of only one party, RCRs discourage investments by creating the expectation that certain contributors will not fairly benefit from their efforts. In terms of CA, if the manager prioritizes the interests of a particular class of stakeholders, other stakeholders may be prevented from achieving the functioning of 'obtaining fair economic returns from one's own investments.' This is one capability-based reason to move away from the shareholder-oriented perspective.

Another issue that calls for a new theory of justice applied to the firm is the lack of accountability within a firm's hierarchy: the boss is neither elected nor removable by *all* stakeholders. For instance, in a US public company, the manager is elected by the shareholders' assembly, but not by other stakeholders who also participate and contribute to the firm's operations and performance. This hierarchical governance structure raises concerns about democratic legitimacy and stakeholder participation. In Elizabeth Anderson's (2017) terminology, such a hierarchical structure constitutes a *private government*, as opposed to a *public* government, which despite also being hierarchical includes democratic channels of accountability. This means that

⁴ While Oliver Hart's perspective is the most mentioned and followed (at least by economists) viewpoint on hierarchy in the theory of incomplete contracts, it is not the only one. It is worth mentioning that Oliver Williamson had a different idea of governance in the firm, where the boss played the role of a third party, like an internal judge, in internal disputes over resource allocation within the firm (see Grandori 2023). Blair and Stout (1999) share a similar idea that they applied to the stakeholder value approach.

stakeholders within a firm are subject to the arbitrary and unaccountable will of the boss, who exercises significant power over their functionings. RCRs, which grant the boss unilateral decision-making authority over all unforeseen contingencies, create a structure in which autonomy of stakeholders is often neither recognized nor respected. As a result, the abdication of stakeholders' autonomy and agency, in Sen's terms, leads to broader social justice concerns (Lee 2018). This means that RCRs can obstruct stakeholders' functioning of 'participating in pivotal choices of the community,' violating both the minimal and sufficient condition for that capability.

A third critical issue that calls for a new theory of justice applied to the firm is that the boss's RCRs can impoverish individuals' capabilities developed and financed by the state. Fia and Sacconi (2019) describe this phenomenon as the "Penelope canvas paradox": what public welfare institutions build *during the day*—by creating and enhancing citizens' capabilities—private institutions, such as firms, may unravel *at night* by restricting or negating those capabilities. The role of the state within CA is to create or expand capabilities for citizenship. For example, the public education system is designated and financed to foster employability, ensuring that students develop skills and competences that will allow them to achieve valuable functionings, such as 'obtaining economic returns from own investments' (such as human capital investments) and 'achieving and valorising competences' (gaining expertise and applying it meaningfully). However, once individuals enter the firm, the functionings created or facilitated by public education can be restricted or even denied by the boss's discretionary authority based on RCRs. For example, a boss may assign repetitive, unskilled, and boring tasks that fail to utilize or enhance the skills developed through public education, and/or create workplace environments that devalue skills and expertise, thereby eroding the very capabilities the state has invested in developing. This creates a contradiction between public investment in human capital and private corporate practices. Essentially, while the state seeks to empower individuals through education, training, and welfare programs, firms may systematically undermine these efforts by reducing workers to passive executors of routine tasks, thereby preventing them from realizing their full potential. To address this paradox, CG should be restructured to redistribute the bundle of entitlements, ensuring that the capabilities fostered by the state and public institutions are preserved and not diminished within the firm. This requires revising RCRs so that they do not conflict with publicly developed capabilities, in particular, reshaping CG to ensure that workplace practices promote, rather than stifle, the application and development of skills.

Those considerations are highly relevant when viewed from the perspective of CG reforms, as exemplified by the European *Corporate Sustainability Due Diligence Directive (CS3D)*. The CS3D aims to ensure that firms, particularly large companies operating in the European markets, actively contribute to sustainable development of economies and societies.⁵ It does so by requiring firms to identify and prevent potential or actual human rights violation or adverse environmental impacts connected with their own operations, subsidiaries, and value chains. While illustrating the link between capabilities and human rights is beyond the scope of this work, it is essential to recognize that capabilities encompass many of the entitlements being stressed in human rights discourse. For instance, Nussbaum (2003) developed a list of basic capabilities that mirrors human dignity, including achieving minimum levels of education, protection of individuals from harm, access to healthcare, and fostering different forms of affiliations, among others. To illustrate how the human

⁵ While the CS3D is a European reform, it has a global impact. The Trump administration threatened import duties on European companies unless U.S. firms were given leeway from the CS3D requirements. Recently, the Omnibus package, adopted by the European Parliament on April 3, 2025, and the EU Council on April 14, 2025, delays the implementation of the CS3D (and CSRD), giving companies more time to prepare. The U.S. Chamber of Commerce has welcomed the delay <https://www.uschamber.com/international/u-s-chamber-welcomes-delayed-implementation-of-cs3d-csrd>

rights discourse can be operationalized in the context of multinational corporations through the capability approach, see Enderle (2013). According to CS3D, stakeholders are workers and other relevant parties, such as individuals, groups, communities or entities whose human rights or environmental interests are or could be affected by the company's products, services and operations, subsidiaries and business relationships. In other terms, the directive establishes entitlements to key functionings, requiring that firms assess the risk, adopt preventive policies, mitigation or elimination, and redress measure concerning possible infringements upon stakeholders' well-being directly committed by the main firm or across its value chain traceable back to the responsibility of the main form (for example very low prices paid to the supplies compatible only with work exploitation and environmental pollution). In this sense, the CG structure is reshaped to limit RCRs, prohibiting corporate decisions that cause environmental degradation, unequal treatment, among other forms of harm. Furthermore, beyond setting these entitlements, the CS3D also strengthens stakeholders' agency, requiring companies to actively engage with stakeholders through consultation channels when making decisions that (adversely) impact their functionings.

4. Hohfeld's jural relations and Sen's capability-as-entitlements

In this section we put forward the premises of our plan to work out the inherent analytical relation between the CA, as a theory of justice, and CG as a domain of legal entitlements. In order to work out this essential relation, and hence to operationalize the concept of capability in the domain of entitlements recognized to stakeholders, an intermediate analytical step is needed, i.e. to identify which entitlement is essentially required to support an agent capability. To this aim we draw on and extend the famous taxonomy of Wesley Newcomb Hohfeld, used to map what he called the fundamental jural conceptions (Hohfeld 1917).

Hohfeld taxonomy

His analysis consists of two core components: 1) the action A, for instance, doing (or refraining from doing) an action, and 2) two parties, X and Y, involved in relation to action A. For example, in the case of the Bengal famine, X can be understood as the owner of a food shop, Y as a starving person, and A as the act of entering the food shop. The (first-order)⁶ legal relations are presented in Table 2 (adapted from Sumner 1987:27).

Table 2. HERE

Table 2, explain the notions of liberty and right (claim-right) through their *correlatives* and *opposites*. Hohfeld's *correlatives* (i.e., liberty and no-claim-right, and right-claim and duty) represent the logical equivalents when switching the roles of the two parties in a given jural relationship: If individual X (e.g., the owner of a food shop) has a *claim right* against individual Y (a starving person) not to perform an action A (entering the shop), then individual Y has a *duty* not to perform action A (a duty not to enter the shop). Similarly, if individual Y (a starving person) has a *liberty* against individual X (the owner of the shop) regarding action A (entering the shop), this means that X has *no-claim* to prevent Y from performing A.

Beyond correlative Hohfeld also uses *opposites* which involve the same subject and a *negated* action. For instance, the *liberty* of individual Y to do an action A is the *negation* of Y's duty *not* to do A and hence of X's claim-right that Y not to do A. On the contrary, the individual X's claim-right of that individual Y not to do action A is the negation of Y's no-duty to do the action and hence of the agent Y's liberty to do A.

A logical consequence is that, while correlatives (i.e., liberty and no-claim-right, or duty and claim-right) coexist within the same legal relation, opposites (liberty and duty, and no-claim-right and claim-right) cannot coexist in the same jural relation; for instance, either 'Y has a duty to stay outside the food shop', or 'Y has a liberty to enter the shop,' *tertium non datur*.

Capabilities including the legal transformation factor

Now, let us introduce CA into the discussion, using and extending notations from Sen (1985) and Kuklys and Robeyns (2005). Analytically, the capability set of the agent i , denoted as Q_i , relative to the goods set X_i can be formulated as follows:

$$Q_i(X_i) = \{\mathbf{b}_i = f_i(c(\mathbf{x}_i) | \mathbf{z}_p, \mathbf{z}_c, \mathbf{z}_l) \forall f_i \in F_i \text{ and } \forall x_i \in X_i\}$$

Where:

- \mathbf{b}_i is the vector of functionings for agent i .

⁶ Hohfeld (1917) also defined second order jural relations: While first-order jural relations are exogenous for individuals, second-order jural relations can be modified by individuals (see also Fiorito & Vatiéro, 2011; Pagano and Vatiéro, 2019).

- $f_i(\cdot)$ denotes the transformation function for agent i , which belongs to the set of all possible functions F_i that transform the characteristics of commodities onto the space of functionings.
- $c(\mathbf{x}_i)$ is a vector representing the characteristics of the agent i 's commodity vector (\mathbf{x}_i) belonging to the set \mathbf{X}_i of all possible agent i 's commodity vectors.

Additionally, there are two conversion factors \mathbf{z}_p and \mathbf{z}_c :

- \mathbf{z}_p is a *personal* conversion factor at the individual level. It includes both innate abilities and “acquired” skills (Fia & Sacconi 2019 refer to these as cognitive skills).
- \mathbf{z}_c is a *non-personal* conversion factor at the social and environmental level, which concern how the context influences the agent i 's choices.⁷

To these conditions however we add a further conversion factor which capture the legal liberty to *access* the good's characteristics in order to function (cf. also Fia & Sacconi 2019):

- \mathbf{z}_l : the *legal* conversion factor, which relates to the liberty of access to the characteristics of a good.

This legal conversion factor allows us to formally incorporate the transformation function into a legal framework. In the Bengal famine example, although food was available in the shops (\mathbf{z}_c) and people had the ability to eat (\mathbf{z}_p), they lacked the entitlement (\mathbf{z}_l) to access the food shop. Using the example of the bicycle (Sen, 1985), a bicycle represents a commodity, \mathbf{x}_i , with its own characteristics, $c(\mathbf{x}_i)$ (e.g., with or without pedal assistance, frame type, etc.), belonging to a vector of commodities, \mathbf{X}_i , related to the functioning of “moving freely around.” However, owning a bicycle alone does not generate well-being for the owner unless conversion factors are taken into account. These include personal conversion factors (\mathbf{z}_p) and non-personal conversion factors (\mathbf{z}_c). The former includes the individual's ability to ride a bicycle. This ability can be partly innate and partly acquired. For example, a person with a physical disability may rely more on acquired skills to develop the ability to cycle. Non-personal conversion factors include, among others, the conditions of the roads (e.g., whether they are paved or unpaved, and the presence of bike lanes). Moreover, there is a legal conversion factor. Indeed, legal entitlements play a crucial role in determining whether an individual can convert commodity (bicycle) into the functioning of ‘moving freely around,’ e.g., the law can permit accessing bike lanes and prohibiting bicycles on highways or pedestrian-only zones.

Capability legal conversion factor as Hohfeldian liberty.

Hence, we can now formulate an argument linking the jural notion of liberty and that of capability, bridging the gap between the philosophical conception of agency and the structure of jural relations.

First, the substantive liberty to access the characteristics of a good in order to use it, i.e. the capability to do so, is (in addition to being a skill) an effective liberty in the legal sense, i.e. a

⁷ For instance, consider the good “apple” (\mathbf{x}_i) taken from the broader set of food items available to individual i , denoted by (\mathbf{X}_i) (which may include sugar, pears, meat, insects, etc.). The capability set $Q_i(\cdot)$ represents the set of functionings individual i can achieve. In this example, we focus on the specific functioning b_i ‘being adequately nourished’ which is associated with the consumption of the particular good \mathbf{x}_i . The ability to achieve this functioning depends on a transformation function f_i which maps the characteristics of the good $c(\mathbf{x}_i)$, such as nutritional qualities and taste into the functioning b_i . The effectiveness of this transformation is shaped by personal and non-personal conversion factors that influence how well the good can be turned into nourishment. Personal conversion factors (\mathbf{z}_p) consist of innate abilities (such as the metabolic rate: a child requires more protein than an adult to achieve a similar level of functioning ‘being adequately nourished’) and acquired abilities (an individual may have acquired knowledge on how to cook an apple to exploit its nutritional value). Non-personal conversion factors (\mathbf{z}_c) include aspects like climate (for instance, in warmer climates, individuals may prefer choosing more fruit, such as apples and pears) and socio-cultural factors (e.g., social norms and cultural traditions, for instance in some societies, horse meat is not eaten, in others, insects are considered a common food source).

permission to access a good or perform action A on the good, which is related to the absence of a duty not to do so and the absence of a claim to refrain from doing so.

Nevertheless, we must recognize that the legal liberty, in Hohfeld's sense, is a unilateral liberty or half-liberty. This means that Y's liberty to do action A entails *only* the absence of an opposing duty, i.e., Y is not obligated to refrain from doing action A. However, this liberty does not necessarily imply that Y has the liberty *not* to do A, which instead is component of a bilateral or full liberty (freedom of choice, defined as the liberty to do A and the liberty not to do A). For example, 'Y has the liberty to enter X's food shop' is not compatible with its opposite, 'Y has a duty to not enter X's food shop,' but it is compatible with 'Y has a duty to enter X's food shop' (cf. Table 2). Thus, according to Hohfeld's taxonomy, Y could simultaneously have *both* the liberty to do action A *and* the duty to do action A.⁸ One could be free of doing A and at the same time obliged to do A—as Sumner underlines, "having the liberty to do something is compatible with *lacking* the liberty not to do it" (Sumner, 1987:26, italics added). To be sure, stating that a person has Hohfeldian half-liberty to do A while being under Hohfeldian duty of doing A does not mean that this person has lost her/his agency. An individual acting in accordance with a duty still retains the choice to comply with or violate the obligation. Instead, an individual loses their agency only in the presence of a physical necessity—that is, when it is physically impossible not to do A.⁹

Second, notwithstanding the previous point, the Hohfeldian half-liberty represents however the *minimal* condition for a capability: it entails the liberty to activate a functioning or, alternatively, to remain inactive (which may include the choice to violate the law). Although this condition is not *sufficient* for having a complete freedom of choice, it remains *necessary* and should not be overlooked. Without half-liberty—that is, without a limitation on the counterparty's (owner's) claim—an individual cannot access the characteristics of goods required to willingly activate a transformation function that enables them to achieve a state of being or doing. In such a case, one cannot say that the functioning is achieved through an exercise of agency.

As previously noted, bilateral freedom more fully embodies the notion of capability as freedom of choice and thus holds greater value in terms of well-being. However, the necessary condition of possessing at least unilateral liberty should not be underestimated. It defines the minimum requirements for activating a capability and, consequently, achieving a functioning. This represents the minimal form of legally granted autonomy, that is, the lowest degree of freedom necessary to exercise a capability and actively pursue (rather than passively receive) a functioning. It constitutes a baseline level of autonomy, in which capability holds its minimal value in terms of the well-being derived from the realization of functionings. (in terms of Senian notion of well-being, the functioning achieved by an half-liberty has a lower value than the same functioning achieved by choosing it from a choice set of multiple capabilities.) Although it does not fully satisfy the ideal of freedom of choice, it nonetheless marks a meaningful step toward achieving a functioning. In this context, the individual still exercises a degree of agency, however limited, and this can be of substantial value to the agent.

⁸ To see the point better, let us use language of logical modalities: necessary and possible. Hohfeld's liberty is the normative possibility to do an act, e.g., 'Y has the normative possibility to enter the shop'. However, the 'necessary' is a subset of the 'possible': what is 'possible' can be 'necessary', and consequently the normative possibility of an act ('Y has the normative possibility to enter the shop') is compatible with the normative necessity to do the same act, e.g., 'Y has the normative necessity (or obligation) to enter the shop'. Normative possibility and normative necessity are compatible: what is permissible can also be obligatory (exactly because the obligatory cannot be not permitted). At the same time being under the obligation of doing an action does not prejudice agency, given that compliance is still a voluntary action.

⁹ Consider the case of the mask mandate during the COVID-19 pandemic. People could achieve the functioning of "being in good health" through a *liberty* to access to masks (in some cases provided by the state for free or at regulated prices), but they also had a *duty* to wear them (at least outside their homes and especially if they had flu-like symptoms). This liberty of access to masks, combined with the duty to wear them, still entails agency on the part of the individual. This agency corresponds to the willing activation of a transformation function, in which the characteristics of a medical device (the mask) enable the individual to achieve the functioning of 'being in good health' (or at least the functioning of 'surviving the pandemic').

Third, in so far as a half-liberty represents an “instrument” to access a functioning, it captures only the instrumental aspect of capability, that is necessary but not sufficient. More broadly, Amartya Sen (1999:37) differentiates between the intrinsic and instrumental value of freedoms:

The intrinsic importance of human freedom as the preeminent objective of development has to be distinguished from the instrumental effectiveness of freedom of different kinds to promote human freedom. [...] I shall now concentrate more on the effectiveness of freedom as means—not just as an end. The instrumental role of freedom concerns the way different kinds of rights, opportunities, and entitlements contribute to the expansion of human freedom in general, and thus to promoting development.

When Sen considers the role of capabilities in human well-being in a comprehensive way, he neither reduces them to nor limits them to their *instrumental value* in achieving valuable functionings. A comprehensive understanding of capabilities also includes the *intrinsic value* of choice: the act of choosing as a valuable functioning in itself and as a direct component of a meaningful life. To fully account for the intrinsic value of capability as freedom of choice, what is required is a bilateral liberty: the liberty to function and the freedom not to function in a given domain, that is, the liberty to perform action A, which is incompatible with the duty not to perform A, and the liberty not to perform action A, which is incompatible with the duty to perform A. This means that an individual with bilateral liberty can make a choice without legal duties constraining their decision. As Sumner (1987, p. 27) points out: “Unlike [Hohfeld] half-liberties, full liberties ensure a normatively unencumbered choice between options.”

Hence, we can state the following proposition, which establishes the minimal (or necessary) and sufficient conditions for a capability understood in its comprehensive meaning.

Proposition 1. A Hohfeldian half-liberty constitutes the *minimal* (or *necessary*) condition for a capability, whereas a bilateral liberty represents a *sufficient* condition for a capability.

The next step is to note that even the minimal condition for capability—and even more so, the sufficient condition—limit property rights. The capabilities of one party (e.g., a starving individual) places limits to the property rights of others (e.g., food shop owners cannot exclude starving people). However, this limitation occurs without involving a transfer of ownership (of the food shop); rather, it leads to a reconfiguration of the *bundle of control rights*.

As illustrated in Table 2, the liberty of Y (e.g., ‘Y has a liberty to enter X’s food shop’) represents the legal opposite or negation of Y’s duty (the negation of ‘Y has a duty not to enter X’s food shop’). Because Y’s duty is, in turn, the correlative of X’s claim, Y’s liberty also represents the negation (or limitation) of X’s claim (the negation that, or limitation of, ‘X has a claim that Y does not enter X’s food shop’). We can conclude that capabilities, because they are based on half-liberty or bilateral liberty, represent limits against claims, in particular the claim of excludability (not entering the shop)—even if it does not imply that property right is transferred from one party to another. Therefore, we can formulate the following proposition:

Proposition 2. Capabilities for one party may limit property rights for another, not by necessarily transferring ownership from the latter to the former, but at least reconfiguring the bundle of these rights.

In the next section, we reformulate Propositions 1 and 2 by applying them to stakeholders’ liberties in the domain of CG (Propositions 3 and 4). This requires unpacking the *full* meaning of RCRs, which directly determine whether and how non-controlling stakeholders may access and use the firm’s physical assets. Additionally, we introduce a further proposition (Proposition 5) to address stakeholders’ *auxiliary* claims. These claims serve as effective instruments for protecting both half-liberties and full liberties. Although they are not a constitutive element of the notion of capability, they are instrumental in making capabilities operational. We define these auxiliary claims in the next sections.

5. Capability-as-entitlement and corporate governance

Let us now apply Hohfeld's taxonomy to the business domain. The Table 2 can be reformulated as follows. On the one hand, the boss (X) has a claim-right that stakeholder (Y) not perform an action A, such as accessing or using the firm's resources, unless Y complies with X's orders (this is a reformulation of residual control rights). In contrast, stakeholder Y has the liberty to perform action A, i.e., to access and use the firm's resources *even without* following the boss's orders (see Table 3).

Table 3. HERE

Hohfeld's concept of liberty allows to formulate the minimal condition for stakeholder Y's capability. For example, the legal liberty of a woman Y to stay at home during the postpartum period (action A), which relates to the functioning of 'being in good health' represents a minimal condition. Thus, stakeholder Y retains the liberty to access the firm's assets even while she stays at home (Action A) and then to return to work. However, this minimal condition is still compatible with stakeholder Y having a duty to perform action A, i.e., the duty to stay at home, as in the case of mandatory parental leave. Instead, bilateral liberty, which constitutes the sufficient condition for capabilities, includes stakeholder Y's liberty either to stay at home (action A) or to return to work (non-A), as in the case of optional parental leave. In such a case, the worker Y may resist the boss's order without risking to be fired. Hence, keeping of the employment relation become the status quo in a new bargaining between the worker and the boss, where the worker may impose the status quo and the boss may try to renegotiate by offering an improvement of the job conditions. For instance, in the case of optional parental leave, the worker may obtain a reduced work schedule and a wage increase to support the functioning of 'being in good health.' From this, we can reformulate Proposition 1 as follows:

Proposition 3. A Hohfeldian half-liberty constitutes the minimal (or necessary) condition for a stakeholder's capability in the firm, whereas a bilateral liberty represents a sufficient condition for a stakeholder's capability in the firm.

Furthermore, the minimal condition and, even more so, the sufficient condition, which is more stringent, place a limitation on the boss X's claim. Due to the logical opposites in Hohfeld's taxonomy, stakeholder Y's liberty to enter in relation with the firm's assets - whatever the order issued by the boss - is the negation of stakeholder Y's duty not to enter in relation with the firm's assets. Consequently, it also limits its correlative, namely the boss X's claim that stakeholder Y does not enter in relation with the firm's assets. In other words, this limits the boss's RCRs, which would otherwise impose an obligation on the stakeholder to stay out of the firm's assets unless the stakeholder complies with the boss's orders regarding the use of these resources. For instance, a mandatory or optional parental leave implies that the boss X has no claim-right to prevent Y from doing so (not-A), thereby curtailing the bundle of RCRs held by boss X. In other words, the boss does not hold an *absolute right* to exclude the stakeholder Y from the firm's asset *simply* because the stakeholder Y refuses to comply with the boss's authority. From this, we can reformulate Proposition 2 as follows:

Proposition 4. The recognition of stakeholders' capabilities (whether as a minimal or sufficient condition) places limits on the boss's residual control rights. Specifically, it challenges the claim that stakeholders must remain excluded from the use of the firm's assets unless explicitly authorized - due to their compliance with the boss's orders concerning unspecified contingencies. This limitation does not entail a transfer of ownership from the boss to the stakeholders, but rather a reconfiguration of the bundle of control rights.

While practical examples will be presented in the next subsection, the focus here is to develop a clear theoretical understanding of Propositions 3 and 4. Within the CA, the firm's physical assets can be understood as commodities, x_i , which contribute to expanding the stakeholder's capability set Q_i . From the perspective of New Institutional Economics, RCRs are grounded in property rights over these physical assets. The legal relationship between the boss and the stakeholder can thus be described in terms of asset access: the boss (X) holds the claim that the stakeholder (Y) may be excluded from accessing the firm's physical assets unless Y complies with X's orders in contingencies not covered by incomplete contracts. Therefore, an exclusionary mechanism that restricts or fails to ensure stakeholders' capabilities poses fundamental issues of justice, and potentially also of efficiency. Stakeholders' capabilities involve liberties, \mathbf{z}_L (whether half-liberties or bilateral liberties), including the liberty to access physical assets (Proposition 3), even when stakeholders do not comply with the boss's orders. In this view, capabilities-as-entitlements define liberties that allow stakeholders to access the firm's physical assets independently of compliance. This, in turn, limits the domain and the scope of the boss's authority, namely, the area where the boss may exercise RCRs (Proposition 4). However, while capability-as-entitlements reduce RCRs, they do not imply a transfer of ownership of the firm (e.g., from the boss to the stakeholder), but rather a reconfiguration of control within the existing property framework.

6. Auxiliary stakeholders' claims

So far, we have drawn on the concept of capability as entitlement, defined using Hohfeld's notion of liberty (specifically, the correlatives "liberty" and "no-claim"). This allows us to frame a central concern of CG, namely, the allocation and balancing of RCR), in terms of capability. However, Hohfeld's framework also include the notion of correlatives "duty" and "claim" (see section Hohfeld's jural relations), where a claim is defined as an entitlement that corresponds to a duty held by another party. That is, Y has a claim against X if and only if X has a duty toward Y. This concept ~~add depth to our analysis as it~~ opens to the possibility that non-controlling stakeholders (Y) can be entitled not only to a liberty, but also to certain benefits from the boss (X), i.e., claims that the firm or its management has a duty to fulfill. ~~In fact, Hohfeld's framework includes both liberties and claims, and an individual can hold both at the same time.~~ This raises an important question: *Should non-controlling stakeholders have not only liberties but also claims, thus meaning that the firm or its managers would have a duty to provide certain benefits?*¹⁰

Sometimes, simply having a liberty (such as the freedom to access or not be excluded) is not enough to make a capability effective. This is because certain actions still depend on the boss, who controls key decisions or resources. Take the example of worker Y and the capability to work in a healthy environment. X (the boss) has a limited property right, which does not allow her to impose whatever organization of work. Correspondently, Y has the liberty to assess health risks and to refuse tasks that are too dangerous. But this liberty alone may not be enough to grant the functioning of working in a healthy environment. If X does not design safe work processes or share relevant information, Y's capability remains incomplete or *unsupported*. To make Y's liberty truly effective, it may be instrumental to introduce a claim: a duty on X to organize work in a way that avoids health risks. This is a *positive claim* that gives Y a *positive right*. The purpose of such a claim is to support or help Y's liberty, this is why we refer to it as an *auxiliary right*.

To see this point clearly, let's outline the logic of situation. Individual X holds a property right that grants discretion and authority over decisions concerning the organization of the work in which individual Y is involved. However, this right is limited by Y's liberty not to perform tasks that pose a serious risk to her health. Yet, this liberty may be insufficient to secure Y's capability to work in a healthy environment. This is because key actions (such as developing a work organization plan and circulating information about health risks) remain under the *de facto* control of X. Y has neither discretion nor authority over these decisions. This leads to a *decision-making stalemate*: there is a domain of actions, i.e., the design and communication of safe work processes, that does not clearly fall under the authority of either party, but that only X is in a position to carry out. At the same time, the realization of Y's capability depends precisely on these actions.

There is no logical contradiction in this picture. It reflects a well-known point in Hohfeld's framework: *liberties do not entail duties for others*. My liberty to speak does not impose a duty on you to listen. This gap between liberty and obligation opens a space for governance negotiation.

From a normative point of view, particularly one that aims to deduce stakeholders' entitlements from the idea of capabilities, this situation provides a justification for introducing the hypothesis of an *auxiliary entitlement*. Specifically, it supports the idea of a *positive right that helps the liberty to become effective*. Such a right would not equally support the employer's liberty to refuse collaboration. Rather, it imposes a *claim* on X to act in ways that support Y's liberty and thus protect her capability. In the example, this would mean that X has a duty to design work organization plans that do not endanger Y's health, and to provide Y with the information needed to assess potential risks. This is what we refer to as an auxiliary right.

¹⁰ This doesn't mean that property rights (and related RCRs), already limited by stakeholders' liberties, should be fully transferred to stakeholders. That would go beyond what we are exploring here. Of course, there are special cases (like cooperative) where workers or users are also owners. But our focus is on the more common situation, where a board of directors or the owner (the "boss") holds RCRs but still faces limits based on stakeholders' capabilities-as-entitlements. In particular, these include the liberty to access the firm's resources to carry out basic functionings.

Reapplying these auxiliary claims into CG domain, we can formulate a further proposition:

Proposition 5. Stakeholders' auxiliary claims help capability-as-entitlements, i.e. half and full liberties that limit the boss's residual control rights, to be effective by creating duties on the boss, without implying a transfer of ownership from the boss to the stakeholder(s) but rather a reconfiguration of the bundle of control rights.

7. Examples of stakeholders' capabilities-as-entitlements that reshape corporate governance

In this section, we present examples from the corporate context to illustrate how the concept of capability-as-entitlement can operate in business settings, particularly as a means to counterbalance boss's authority, i.e., to limit RCRs (in line with Proposition 3 and 4).

Each example shows how institutional arrangements may support stakeholders' capabilities (understood as the freedom to achieve a functioning) through the recognition of stakeholder liberties (typically half-liberties or, in some cases, bilateral liberties) that place limits on managerial authority. When such liberties are not sufficient to make the corresponding capability effective, we consider the introduction of auxiliary claims (Proposition 5). Let us therefore start with the capabilities as entitlements that most directly concern stakeholder participation in the decision-making process and, therefore, in making residual decisions in the event of unforeseen circumstances that characterise CG.

7.1 Workers' capability to protect worker-specific human capital investments and valorize competencies.

A key capability for workers is the capability to protect worker-specific human capital investments and valorize their contribution to surplus creation. When a worker makes such specific investments, there is a risk that the boss may abuse their authority by appropriating part of the rent generated by that investment (Sacconi 1999)—this is the normally disregarded distributive justice side of the well-known hold-up problem. In such scenarios, the worker anticipates that their efforts will not be fairly compensated and, as a result, may choose to underinvest. This leads moreover to an inefficient equilibrium, showing that efficiency and justice are interlocked in the working of corporate governance. Therefore, the worker's investments must be protected. For instance, the institutional setting should ensure that workers receive economic compensation or career advancement opportunities that correspond to their investments in human capital. This means a liberty from arbitrary decisions by the boss regarding the revenues generated by investments and/or a duty for the boss not to appropriate the returns produced by workers.

To secure this capability, workers must have: (i) the liberty to keep their job and access to the company's physical asset for the purpose of performing their work, even when the boss resorts to the threat of unfair dismissal, i.e. dismissal aimed at expropriating the worker's specific investments or forcing the worker to accept the forfeiture of the value of these investments.; (ii) the liberty to refuse downgrading or skill underutilization, protecting them from being assigned to tasks below their skill level; (iii) a liberty to raise claims and participate in discussions about compensation and work organization (e.g., through collective bargaining or work councils). Also, auxiliary claims can support the liberty to be effective, such as the right to access relevant information, attend consultation meetings during work hours, and receive justified responses to proposals or concerns raised. These entitlements place clear limits on managerial discretion, especially over how the firm allocates and rewards labor. They do not imply co-ownership, but they reconfigure governance entitlements, ensuring that workers' contributions—particularly those involving personal investment—are not exploited through asymmetrical control (cf. Proposition 4). Where necessary, auxiliary duties support the effective exercise of these liberties, in line with Proposition 5.

7.2 Workers' capability to participate in decisions

Now let us focus on the employees' capability *to participate in pivotal choices of the firm* (as a subset of the broader functioning of 'participating in pivotal choices of the community'). The

worker's liberty to participate in a firm's decision-making process typically satisfies both the necessary and sufficient conditions of capabilities. It constitutes a bilateral liberty, that is, the freedom to choose whether or not to participate (e.g., in collective decision-making), without any obligation to do so. It is important to underline that participation is both a capability in itself, possessing intrinsic value, and a means to achieving other capabilities, holding instrumental value. As an intrinsic value, participation ensures that individuals have the agency to engage in decisions that shape their lives. The intrinsic value lies in experiencing the possibility of choosing and therefore being in control of one's own life and future. Instrumentally, it enables stakeholders to secure additional entitlements through deliberative mechanisms. For example, workers may assert claims on company revenues or advocate for improved labor conditions by actively participating in corporate decision-making. Or they can prevent collective or individual dismissals that would prejudice the possibility of benefiting from their specific investments. In this sense, participation not only embodies liberty but also serves as a mechanism for expanding other liberties, reinforcing both individual agency and collective well-being.

Within CG, participation can take various forms (cf. Sacconi, 2019; Frega, 2021) and may involve different levels of entitlements:

- The entitlement to access information, ensuring that stakeholders are adequately informed about relevant corporate decisions.
- The entitlement to be consulted, allowing stakeholders to express their views before decisions are finalized.
- The entitlement to co-decide, as in co-determination or representation mechanisms that require stakeholder agreement prior to implementing certain decisions (e.g., restructuring plans, wage adjustments, corporate welfare policies).¹¹

These entitlements may consist of both liberties (half- or full liberties) as in Proposition 3. For instance, the European Union directive CS3D enhances stakeholder capabilities by establishing bilateral liberties for all stakeholders to gather information and assess actual or potential adverse corporate impacts on human functionings. It also imposes obligations on companies to consult affected stakeholders and implement mechanisms to prevent, mitigate, or end such impacts. By institutionalizing multi-stakeholder dialogue and accountability, CS3D reinforces stakeholders' capabilities-as-entitlements, particularly the functioning of participation in pivotal community choices.

Also, a long-standing institutional example of stakeholder participation in corporate governance is the German Mitbestimmung system, which grants workers co-determination rights through representation on supervisory boards. In this case, workers hold a bilateral liberty to participate in strategic decision-making, and firms have corresponding duties to provide access to meetings, information, and deliberative processes.

Therefore, we can observe here auxiliary claims arising in this context, as discussed in Proposition 5. A particularly important example is the employer's general duty to provide timely and accurate information on decisions under discussion, and to facilitate stakeholder access to participatory process. This includes, for instance, the obligation to ensure that work council meetings take place on company premises and during working hours, thereby enabling effective participation without imposing additional burdens on workers. Such duties are not merely procedural; they are instrumental in ensuring that stakeholders can meaningfully exercise their liberty to participate in decision-making processes. Without them, the corresponding capabilities

¹¹ A clear example of co-determination is found in German CG, where workers as stakeholders elect representatives to the supervisory board (Aufsichtsrat) and works councils (Betriebsräte). This legally mandated participation ensures that employees have an institutionalized role in shaping company policies, labor conditions, and restructuring processes, thereby limiting the unilateral exercise of RCRs by the firm's management and strengthening workers' functioning of participation in pivotal choices of their community.

would remain incomplete or ineffective, especially in contexts where information and access function as critical conversion factors.

Finally, in line with Proposition 4, the capability-as-entitlements related to stakeholder participation in CG also serve to limit the boss's power, specifically the threat of excluding stakeholders from the firm's activities if they do not comply with the boss's directives. A notable example of this dynamic is worker participation in corporate decision-making. A boss may attempt to dismiss an employee who seeks to voice concerns or represent collective interests, especially when those interests diverge from the boss's interests. However, in many jurisdictions, labor law provides safeguards against such retaliatory actions, ensuring that workers cannot be dismissed without just cause.¹² These protections constrain the boss's RCRs and support a reconfiguration of CG through the lens of the CA.

These cases provide several illustrative examples of Propositions 3, 4 and 5, demonstrating how capabilities-as-entitlements limit the boss's RCRs and contribute to the reconfiguration of CG.

7.3 Suppliers' capability to participate in decisions

Beyond workers, this functioning is equally relevant for suppliers and customers who make specific investments in their relationships with firms. The firm's RCRs must be reconfigured to ensure that stakeholders' relationship-specific investments do not become mechanisms of economic dependency or exploitation. For instance, parties in an economic transaction follow and respect the principle of good faith and fair dealing that requires contracting parties to act honestly, fairly, and in accordance with reasonable expectations during both the formation and performance of a contract. It serves as a safeguard against opportunistic behavior, furnishing to both suppliers and customers sufficient entitlements to make strategic decisions without experiencing negative consequences of being locked into asymmetric power dynamics. It is worthy to underline that the entitlements protecting the capability of 'achieving and valuing competencies' for stakeholders (workers, suppliers, customers) minimizes the hold-up problem, and enhances the efficiency of CG (cf. Blair and Stout, 2019) as well as improves the functionings of 'achieving and valorising competencies' of those stakeholders.

7.4 Customer's capability to participate in decisions

Finally, consumers can also engage in specific investments when they devote time, effort, or financial resources to learning how to use a particular product or service. These investments, though often overlooked, can create a form of dependency that significantly increases the cost of switching to alternative providers. For instance, a consumer who spends considerable time mastering the use of a complex software application, or who purchases accessories compatible only with a specific brand of device, becomes effectively "locked in" to that brand or ecosystem. In such contexts, the consumer's capability of 'achieving and valorizing competencies' becomes vulnerable to corporate strategies that exploit this dependency. Firms may take advantage of these specific investments by raising prices, introducing restrictive terms of service, or designing systems that reduce interoperability with competitors. These tactics limit the consumer's liberty to choose alternatives and can undermine their agency in the market. To preserve this capability, it is essential that consumers' entitlements are protected through appropriate safeguards. These may include regulations ensuring transparency, interoperability, and the right to data portability, as well as limits on unilateral contract changes. From a capability-oriented corporate governance perspective, firms

¹² Stronger dismissal protections serve as legal liberties that empower workers to actively engage in corporate governance without fear of losing job and retribution. When workers feel secure in their employment, they are more likely to participate in discussions about workplace policies, organizational strategies, and fair labor practices. This, in turn, fosters a more democratic and inclusive decision-making process within the firm, aligning with the principles of CG that prioritize stakeholder engagement.

must refrain from using their RCRs to extract excessive rents from consumers' specific investments, just as they are expected not to exploit similar investments made by workers or other stakeholders

Even though not directly related to the exercise of decision rights and the participation of stakeholders in wide scope decision processes, we now will instantiate how other, more specific capabilities may be supported by stakeholder entitlements that will nonetheless limit the owner or management RCR, hence intervening in the distribution of entitlements that defines corporate governance.

7.5 Workers' capabilities to be in good health and contribute to the family wellbeing : Parental leave

Let us begin with the abovementioned example of parental leave, which relates to the capabilities to be in good health both for the parents and the child, understood not just physically, but also in terms of psychological balance, especially during early parenthood. In some cases, parental leave is mandatory, ensuring that the worker remains at home for a prescribed period. This institutional structure constitutes a *half-liberty*: the boss is not permitted to call the worker back to work during the protected period, nor to penalize them for staying home. The worker cannot even "agree" to an early return under pressure, thus eliminating coercive bargaining. It represents a minimal condition for the capability and, even if it is not granting the bilateral liberty, it protects the worker from implicit coercion, limiting the boss's RCR – i.e. the threat to fire the worker if s/he exercises the parental leave liberty. In other cases, parental leave is optional and structured as a *bilateral liberty*, especially for non-birthing parents. In such situations, the worker is free to choose whether or not to take leave. This satisfies the sufficient condition that further enhances the worker's capability to be in good health by adding discretion over how to manage work and caregiving responsibilities.

In all these cases, the boss has, in Hohfeldian terms, no claim-right to dismiss the worker for refusing to come to work during the protected leave period. That is, the employer cannot lawfully dismiss an employee for taking leave, even if this goes against direct orders. Similarly, the boss cannot suspend salary or assign the worker to a lower role during or after the leave period. These are not positive rights in the strict sense, but restrictions on the employer's exercise of RCRs.

Some of these liberties are complemented by *auxiliary claims*. For instance, in some ordering, workers have a right to a defined procedure for career evaluation excluding that having used periods of family leave can count negatively in the assessment of the employee. This may be framed as a positive auxiliary claim: not a right to promotion, but a claim to a fair and unbiased process for professional advancement.

7.6 Workers' capabilities to be in good health: healthy, safe, and clean environment

Workers' capabilities to be in good health also includes the liberties to work in a healthy, safe, and clean environment. This capability is supported by entitlements to workplace safety and accident prevention measures, which are largely enshrined in national labor regulations and supranational frameworks such as the CS3D. These entitlements operates as limit on the boss's RCRs. Without such entitlements, the boss might prioritize cost-saving measures over safety, neglecting necessary safety training and protective equipment, increasing the risk of accidents and occupational diseases, and thereby undermining workers' health and well-being. In this respect, the liberty to work in a safe working environment implies that the worker is not obligated to carry out dangerous or unhealthy task, even when ordered to do so. It also includes the liberty to access information needed to assess workplace risks. This institutional design constitutes a *half-liberty*, or minimal condition, for the capability to be in good health: workers are permitted to refuse unsafe work. Moreover normally regulations require as a duty that they abstain from working when safety procedure are not respected (for example no safety equipment are provided by the firm) not leaving

the option to work in risky conditions as a matter of bargaining in which (according a libertarian perspective) the worker could exchange risky work conditions for higher wages.

Also, the liberty to work in a safe environment is typically protected by worker's *auxiliary claim*. For instance, workers may have the claim (not only the liberty) to be provided with safety equipment and adequate training. In Hohfeldian terms, these claims correspond to duties for the employer, i.e., not merely permissions, but legal obligations to act in ways that secure safety.

Ensuring this capability requires that the employer (X) contributes to stakeholder's (X) both personal conversion factors (such as knowledge of procedures and risks) and non-personal conversion factors (such as physical infrastructure and protective equipment). The realization of the capability therefore depends on the boss (X)'s duty of having an active role, i.e., in enabling safe conditions; for instance, by drafting safety plans, distributing information, and supplying safety tools. These duties are instrumental to the worker's liberty, and their justification lies precisely in supporting the effective exercise of that liberty (cf. Proposition 5).

This example illustrates the interdependence between legal, personal, and non-personal conversion factors, and the need for governance arrangements that make stakeholder capabilities effective. Legal conversion factors (including occupational safety laws and corporate codes) play a key role in supporting this capability, in line with Proposition 3. Legal protections must prevent retaliation against workers who exercise these liberties, including dismissal for refusing unsafe tasks or for taking paid leave. Also, stakeholder's capability depends partly on the boss's contribution to both the personal conversion factors (cognitive elements, like knowledge of the safety plan) and non-personal factors (physical safety infrastructure). Recognizing such capabilities as entitlements (whether as minimal or sufficient conditions) places clear limits on the boss's RCRs. These limits do not imply a transfer of ownership but rather a reconfiguration of governance entitlements, as stated in Proposition 4. In practical terms, they remove the employer's claim-right to compel work under unsafe conditions and may, where necessary, require auxiliary claims to make the liberty effective, in line with Proposition 5.

7.7 Consumers' capabilities: satisfy fundamental needs & to consume without risk

Consumers, like workers, require certain capabilities to function in key areas of life. From a capability-based perspective, firms are not merely profit-generating entities but serve a purpose connected to enabling those functioning by creating and supporting the relevant capabilities. This includes capabilities to *satisfy basic needs* granted by accessing essential goods for nourishment and diets (food and beverage), health (e.g., medication), mobility (transportation), basic services (electricity, digital connectivity), adequate housing and many other. In these cases, the firm's purpose lies in satisfying fundamental needs and must be pursued through product and service provision that meets standards of adequacy and quality, in line with the firm's role in enabling consumer capabilities.

The consumers' *capability to satisfy basic needs* / ~~*being able to satisfy basic need*~~ in domains such as nourishment, health, communication, housing, and energy implies that the product or service must actually function for its intended use. Therefore, firms face constraints on their RCRs: they cannot compromise quality or functionality for profit. If a food is unhealthy, a medicine ineffective, a train service unreliable, or energy supply unstable, the consumer's capability is undermined. The following entitlements are implied to protect the relevant capabilities: (i) *a full liberty*, i.e. freedom of choice must be guaranteed even in contexts of information asymmetry and incomplete contracts, so the company cannot use its margin of discretion to provide inferior (or simply diverse) quality or quantity that does not allow the consumer to exercise her/his chosen capability. Not only: what matters in CA is not the satisfaction of any preference revealed by choice, but the provision to the consumer of a good whose characteristics enable her/him to activate a capability and obtain a functioning that the consumer values positively. Hence misleading information about the fact that certain commodities characteristics allows a certain functioning does

not allow the capability to operate as a means for the relevant functioning. Therefore, the consumer full liberty to access relevant characteristics must overcome two challenges: the ex ante problem arising from misleading information, and the ex post problem consisting in the reduction of quality or increase in price (under unforeseen events).

(ii) and potentially *auxiliary* claims, for example, the duty to provide usage information or training that allows the consumer to turn the product into actual functioning (e.g., using a medical device safely).

Consumers' *capability to satisfy basic needs* / ~~*being able to satisfy basic need*~~ also need the liberty to consume safely and without endangering their health. This entails limits on the producer's discretion in designing, manufacturing, and marketing unsafe products. Quality standards and safety regulations impose these constraints. They prevent producers from exploiting informational asymmetries or minimizing costs at the expense of consumer health.

Also, consumers should have access to a *sufficient quantity of essential goods* particularly when industries operate under conditions of market concentration or monopoly. The exercise of market power, for example by raising prices or restricting output (e.g., housing in urban areas, energy in emergencies), can effectively exclude consumers from satisfying basic needs. Thus, (i) there is a collective constraint on the industry's discretion (e.g., through antitrust, regulation) ;(ii) and potentially an auxiliary duty at the industry level: to ensure adequate supply (e.g., of food, energy, or medication). This can be framed as an auxiliary claim in favor of consumers, necessary to make the liberty of access effective.

7.8 Local Community capabilities to pursue well being

We now turn to the capability to pursue well being in case the firm's stakeholder is the *local community*. This capability requires access to the commons understood as common pool resources (such as clean air, safe drinking water, fertile soil, and cultural heritage) which are essential for both physical health and overall well-being (through the achievement of different functionings) . When such commons exist, the community holds a liberty to access and use them, which reflects the non-excludability even if they are rival in consumption. These commons may be collective ownership. But also when a private enterprise is given a public procurement or concession to use them in order to provide a public service or a private commodity, the capability to access in order to achieve the different functionings places direct limits on the firm's exclusionary powers. In legal and governance terms, this means that a private firm, particularly in the case of public concessions or contracts, cannot restrict or degrade access to commons for the sake of profit. Tariffs, for instance, may be used to share the cost of maintaining the common good but not to exclude those who cannot pay profit-maximizing prices. whatever the form of property right over the commons (collective, private or public), this liberty of access diminishes the firm's RCRs over the common, replacing them with governance duties toward community access.

Moreover, the firm may bear auxiliary duties to support the capability of the local community. These include obligations to prevent harm (e.g., avoiding pollution) and, when harm occurs, to restore or regenerate the common good. For example, if a firm pollutes a river, the community may hold an ancillary claim to demand remediation or restoration.

In sum, commons governance represents a particularly clear case in which community capabilities limit private residual control rights. These constraints do not change the ownership of the firm, but they entail a reconfiguration of its governance entitlements, in line with Propositions 4 and 5.

Note that the conflict between commons and the private ownership is particularly sharp when commons are non-divisible or lose value if fragmented—as is the case for natural landscapes, watersheds, large-scale infrastructures, and cultural heritage assets. In such contexts, maximizing accessibility is essential for converting commons into actual capabilities.

Similarly to the case of workers, for local communities participation includes the entitlement to be informed about corporate decisions that directly impact them—such as plant closures, large-scale layoffs, relocations, or environmental consequences. In some cases, this leads to co-determination mechanisms; for example, in Germany, Länder representatives may sit on supervisory boards. More broadly, participation entails the claim to demand corporate accountability for activities that affect community well-being. Some innovative governance models propose including community representatives in advisory bodies similar to works councils, thereby extending the principles of co-determination to broader stakeholder engagement (Sacconi, 2019).

Concluding remarks and research agenda

We have adapted and applied the CA to the firm, offering a new theoretical foundation for the analysis of CG. In particular, our work conceptualizes CG regime as a structure of entitlements specifically designed to create and support stakeholders' capabilities. By embedding the jural notion of liberty within the concept of capabilities-as-entitlements, whether in its minimal or sufficient condition, we have shed light on the necessity of constraining RCRs and, consequently, how CG structures should be reshaped. In particular, stakeholders' capabilities limit the boss's RCRs, which include the claim to exclude other stakeholders from the firm's physical assets if they fail to comply with boss's orders. By this token, stakeholders' capabilities, understood as legal liberties, serve as constraints on that boss's power, without changing the ownership of the firm.

Despite the theoretical contributions put forth, our study presents certain limitations that open avenues for further research. A first limitation of our work lies in its insufficient engagement with the adversarial nature of capabilities-as-entitlements, a characteristic they share with Hohfeldian jural relations, as explored by Pagano and Vatiero (2019). In business domain, we have previously examined how stakeholders' liberties inherently conflict with the boss's RCRs, but this is but one facet of a broader tension. In reality, stakeholders' capabilities may come into conflict with other stakeholders' capabilities, giving rise to what can be described as a *liberty-versus-liberty* dilemma. Consider, for instance, the capability of workers related to the functioning of 'being in good health.' Ensuring safe working conditions and stringent occupational health protections may entail increased production costs, which could, in turn, limit the accessibility of essential goods and services to consumers, thereby impinging upon their capability related to consumers' functioning of 'achieving a decent standard of living.' A similar conflict arises in the case of environmental protections: Guaranteeing the local community's functioning of 'living in a healthy environment' may necessitate the restriction or closure of polluting industrial activities, yet such measures could simultaneously threaten job security, thereby undermining workers' functioning of 'achieving a decent standard of living.' These examples illustrate how the capabilities of one class of stakeholder can directly impinge upon those of another, making the resolution of such tensions an imperative consideration for just and effective CG. Addressing these conflicts presents a formidable challenge, one that future research must engage with in earnest.

Various theoretical perspectives offer possible pathways for reconciliation, each of which warrants careful exploration within the domain of CG. Amartya Sen (2009) contends that public reasoning constitutes the most effective mechanism for resolving both social justice dilemmas and conflicts concerning the distribution of capabilities within institutions. In this view, a democratic and deliberative process is necessary to determine which capabilities should be prioritized for different stakeholders and to what extent. Martha Nussbaum (2011), by contrast, adopts a more prescriptive approach. Rather than relying on public deliberation to define capabilities, she articulates a predefined list of fundamental capabilities based on human dignity, such as access to education, protection from harm, healthcare, and the ability to form meaningful affiliations. This list serves as a universal baseline, ensuring that all members of society can realize these essential capabilities, while still allowing for institutional variations in their implementation. A third approach is provided by Elizabeth Anderson's sufficientarian criterion, which argues that distributive justice within the capability approach should be oriented toward ensuring that all individuals attain a sufficient level of capabilities to exercise equal democratic citizenship. A further, yet complementary, option for addressing conflicts between stakeholders' capabilities is to apply the tradition of studies on the constitutional and post-constitutional social contract of the firm (Sacconi 2011a, b) to the CA. This approach allows for determining which capabilities the different classes of stakeholders would accept and prioritize in a social contract of the firm, behind a Rawlsian-like veil of ignorance (Fia and Sacconi 2019). Each of these theoretical perspectives offers valuable insights into the challenge of balancing competing stakeholder capabilities. Future research should aim to operationalize these approaches within CG frameworks, exploring how firms

can mediate conflicts between stakeholder classes and develop a more refined CG model that acknowledges the plurality of stakeholders' capabilities.

While there are potential conflicts *between* stakeholder classes, potential conflicts can also arise *within* each stakeholder class. Indeed, another limitation of our work stems from the assumption that stakeholder classes—such as shareholders, workers, and consumers—are internally homogeneous. In reality, considerable heterogeneity exists within these classes, introducing complexities that warrant deeper examination. Among shareholders, for instance, a significant distinction arises between majority and minority shareholders. Majority shareholders often wield the power to control managers, who hold RCRs, and may extract private benefits of control, sometimes to the detriment of both minority shareholders and other stakeholders. This divergence has critical implications for the structuring of CG, particularly in the establishment of mechanisms aimed at protecting the capabilities of minority shareholders. Such mechanisms might necessitate limitations on the influence exerted by majority shareholders in both shareholder assemblies and managerial boards. Furthermore, shareholders pursue significantly different objectives. While some align with the traditional profit-maximization paradigm, as advocated by Friedman (1970), others—such as those described by Lynn Stout (2012) and Hart and Zingales (2017)—may be driven by broader considerations, including environmental, social, and ethical concerns. This distinction carries significant implications for defining capabilities-as-entitlements and determining the extent to which the exercise of RCRs should be constrained to foster a more stakeholder-oriented approach to CG.

A similar complexity arises within the class of workers, which, like shareholders, is far from monolithic. Some workers benefit from stable, long-term contracts that provide strong protections against dismissal and meaningful avenues for voice, while others are engaged under flexible employment arrangements, which often entail weaker protections and a diminished capacity for influence. Given these legal disparities, the design of capabilities-as-entitlements must be attuned to the specific conditions of different categories of workers, including the establishment of legal entitlements that mitigate such conflicts.

Beyond inter-class and intra-class conflicts, another key limitation of our analysis is the implicit assumption that capabilities at the individual level (e.g., those of a worker or consumer) align seamlessly with capabilities at the class level (e.g., the class of workers or the class of consumers). This assumption is problematic, as the former relies on individual agency, whereas the latter necessitates the exercise of collective agency. Ingrid Robeyns (2005, 2017) acknowledges that an individual's ability to achieve valuable functionings also depends on collective action. Social movements and trade unions can create and strengthen capabilities that individuals alone would not be able to access. Applied to the field of CG, this perspective suggests that firms should not only acknowledge individual stakeholders' capabilities but also recognize the collective agency and the resulting capabilities that emerge from participatory and shared governance processes. Mechanisms such as stakeholder councils, labor unions, and cooperative models can enhance the collective agency of stakeholders, reducing conflicts. However, collective agency may require limitations on individual agency. For example, for worker representatives to exercise effective agency, it may be necessary to restrict the ability of individual workers to act in direct opposition to collective decisions. This creates an additional layer of conflict: beyond inter-class and intra-class conflicts, there is a potential conflict between individual and collective agency.

Future research should address this issue to understand how entitlements within firms, and thus CG structures, should be designed to mitigate and resolve such conflicts.

Tables

Bundle of control rights	Description in the case of commons	Description in the case of public companies
Access	Rules governing entry to a resource	Entry conditions for participation in the firm as a shareholder, employee, creditor, consumer, etc.
Withdrawal	Rules on harvesting products from a resource such as timber, water or food for pastoral animals	Rules on distribution of capital (e.g., dividends), employee remuneration and benefits, rights of secured and unsecured lenders, claims of fiscal authorities, etc.
Management	Rules on usage patterns and transformation of a resource system through improvements	Rules concerning the division of powers between the boss (i.e., the manager) and other stakeholders in corporate decision making (shareholders' rights to vote, employees' rights to be consulted on restructurings, creditors' rights in insolvency, etc.)
Exclusion	Rules determining who has access rights to a resource—note that the commons are not defined by “open access” or the absence of a right to exclude	Rules defining the scope of voice, participation and income rights of different constituencies (e.g., distinctions between holders of common and preferred stock, “core” employees vs. temporary workers, and different categories of creditors). More generally, rules governing access to the firm’s physical assets (for instance, a hostile takeover can change access to those physical assets for all stakeholders)
Alienation	Right to sell or lease any of the above rights	Rules governing the alienability of shares, securitization of financial claims on the firm, and other forms of transferability

Table 1. The correspondence between (the governance of) commons and (the governance of) corporations; adapted from Deakin (2011) **non citato in biblio**

	Correlatives	
Opposites	<p>X's claim [Property right]</p> <p>For instance: X has a claim that Y not do action A</p> <ul style="list-style-type: none"> • X has a claim that Y not enter X's food shop (e.g., in the Bengal famine case) 	<p>Y's duty</p> <p>For instance: Y has a duty not to do action A</p> <ul style="list-style-type: none"> • Y has a duty not to enter X's food shop
	<p>X's no-claim</p> <p>For instance: X has a no-claim that Y not do action A</p> <ul style="list-style-type: none"> • X has a no-claim that Y not enter X's food shop 	<p>Y's liberty</p> <p>For instance: Y has a liberty to do action A</p> <ul style="list-style-type: none"> • Y has the liberty to enter X's food shop

Table 2. Hohfeld's fundamental legal conceptions (adapted from Sumner 1987)

	Correlatives	
Opposites	<p>Boss X's claim [RCRs]</p> <p>For instance, boss X has a claim that stakeholder Y not do action A</p> <ul style="list-style-type: none"> • Boss X has a claim that stakeholder Y not access the firm's physical assets if stakeholder Y fails to comply with the boss's orders 	<p>Stakeholder Y's duty</p> <p>For instance, stakeholder Y has a duty not to do action A</p> <ul style="list-style-type: none"> • Stakeholder Y has the duty not to access the firm's physical assets if stakeholder Y fails to comply with the boss's orders
	<p>Boss X's no-claim</p> <p>For instance, boss X has a no-claim that stakeholder Y not do action A</p> <ul style="list-style-type: none"> • Boss X has a no-claim that stakeholder Y not access the firm's physical assets, even if stakeholder Y fails to comply with the boss's orders 	<p>Stakeholder Y's liberty</p> <p>For instance, stakeholder Y has a liberty to do action A</p> <ul style="list-style-type: none"> • Stakeholder Y has a liberty to access the firm's physical assets, even if stakeholder Y fails to comply with the boss's orders

Table 3. Applying Hohfeld's fundamental legal conceptions to the business domain

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