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The Decline of Substance over Form in Accounting: A Problematic Dichotomy

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Abstract: This essay is a comment on the paper authored by Fischer, Ellman and Schocet (2021, *The decline of substance over form in accounting. Accounting, economics, and law: A convivium.* (2023)) who argue that the trend in financial reporting regulation involves de-emphasizing the important of economic substance relative to form in how auditors are to perceive their role. The danger foreseen by the authors is the further shrinking of the leeway for professional judgment, which is an important hallmark of a true professional. Agreeing the authors have raised a crucial issue for any group claiming professional status, I try to add to the discussion by pointing out that form and substance in the realm of financial reporting regulation are not antipodes but complementary parts of a process of continuous redefining of what economic substance is. Social reality is socially constructed and as such choices of form made by humans effectively shape substance. Given the capture of accounting by economics during the 1960s, accountants have lost an appreciation for the tentativeness of economic substance and now serve not as participants in shaping economic substance but as enforcers of an imaginary economic substance that derives from the assumptions and values in the ideology of neoclassical economics.

Keywords: economic substance, auditor judgment, FASB, concepts

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Symposium: Substance over Form in Accounting

1. The Decline of Substance over Form in Accounting, by Dov Fischer, Ortal Ellman and Sholom Schochet, <https://doi.org/10.1515/ael-2019-0052>.
2. The Decline of Substance over Form in Accounting: A Problematic Dichotomy, by Paul F. Williams, <https://doi.org/10.1515/ael-2021-0119>.
3. FASB to Practitioners: ‘Substance Over Form’ for Me but Not for Thee – An Apologia, by Dov Fischer, <https://doi.org/10.1515/ael-2022-0046>.

1 Introduction

Fischer, Ellman and Schochet (2021) have raised an important accounting issue, one that should probably command more attention from academics and practitioners than it does. Fischer, et al. treat form and substance as antipodes akin to appearances versus reality. This characterization makes form connote concealment of some true, underlying state. A defense attorney makes his client well-groomed and well-dressed to appear respectable to conceal how the substance of his client’s character is anything but respectable. In financial reporting, the presumption is firms will likely dress up their actions to appear to be something they are not in order to make themselves appear to be more capable and successful than they are.¹ Fischer, et al. focus on a debate between Defond, Lennox, and Zhang (2018) and Palmrose and Kinney (2018) whereby DeFond, et al. take the position that auditors’ responsibilities require them to look beyond technical compliance with an accounting rule and judge financial reports on the basis of how well they represent the economic substance of firms’ financial performances. In other words, there is an economic reality independent and discernible from that revealed through mere compliance with the rules standard-setters promulgate.

Palmrose and Kinney take the opposing view that auditors are responsible to insure that firms are compliant with the letter of accounting rules. In other words, according to the view of Palmrose and Kinney (2018) the form of financial reports

¹ There is a technical term that describes this behavior – “regulatory arbitrage.” I explicitly avoid using the term since by applying the term to describe management behavior lends an air of legitimacy to the behavior. However, the basic motive behind such behavior could justify labeling it appropriately as an act of dishonesty. Regulatory arbitrage is a euphemism for dishonesty. Managers are not so naïve as to be oblivious to the reason a rule exists (the spirit) or else they would not spend the time and intellectual talent they due to create behavior that obeys “the letter” but not the “spirit.”

produced by compliance with those rules effectively is the economic substance of the firm. Fischer et al. (2021) seem to share a concern of West (2003) that the proliferation of rules diminishes the professional status of accountants. A classic feature of professions understood in the conventional, functionalist sense is that a professional possesses arcane knowledge applied in various contexts. That application is “professional judgment,” without which one is not truly a professional. According to Fischer et al. (2021) the trend in changes to the FASB’s conceptual framework seems to be shaping financial reporting in line with the Palmrose and Kinney’ position, which the authors believe threatens auditors’ status as professionals. The following commentary on the Fischer et al. argument attempts a positive contribution to continuing this important debate by identifying some additional problematic issues, namely that of just what is economic substance and that of whether society should trust the profession with the authority to determine what that substance might be.

2 The Problem of “Economic Substance”

To make a convincing argument that substance should take precedence over form it should be the case that “economic substance” has substance. That is, one should be capable of unambiguously identifying what is the economic substance that stands in contradistinction to the form. That is problematic for numerous reasons, two of which I will discuss. The first reason has to do with the point so effectively illustrated by Hines (1988) in her classic allegorical treatment of the socially constructed nature of accounting. Accounting is a purely human invention; it is not of nature but of human imagination. According to Dworkin (2011), the conceptual language of accounting and economics consists of referents that are interpretive in nature. Accounting does not deal with “natural kind” concepts as do the natural sciences. Terms like asset, liability, equity, revenue, expense, etc. do not refer to things that are in nature but to things that are subject to reinterpretation as circumstances change and concepts are amended to retain their usefulness for their intended human purpose. Accounting concepts are more like those of philosophy and law than they are physics, biology, or chemistry. For instance, to take a term like “asset” and claim it has a basic substance strongly implies that asset describes a natural kind, but it does not. Asset is a social construction whose existence depends on a set of social conventions and institutions to make something an asset in fact. There is, thus, an inherent subjectivity to “substance,” that depends on one’s point of view.

For example, take the case the authors used to illustrate the distinction between form and substance – that of leases.² Assume a businessperson deems it a sound business decision to “lease,” rather than buy an asset for \$1,000 per year from which she expects with high confidence to receive \$1,200 per year in return. The asset, a machine that turns water into wine, will provide the expected benefit to her for five years. The economic substance for her is the benefit of the cash she receives with which she can obtain the things that give her “utility.”³ From her perspective, then, the economic substance of obtaining and using the asset is that over five years she will spend \$5,000 and receive \$6,000. The relevant time horizon for her is five years since that is how far into the future her decision has relevant consequences. Regardless of the form the lease contract takes, the economic consequence for her is that she is \$1,000 better off over the five years she has the asset. However, accountants take the position that the form of the lease contract matters, i.e. it actually determines the substance. Indeed, in some cases the lease ceases to be a lease and becomes something else – a purchase, which is also a concept subject to changing interpretations as conventions about property and its ownership change. Because accountants have arbitrarily partitioned economic life into one-year periods about which there is nothing magical (unless you are a farmer), the five year perspective of the businessperson must be broken into five yearly pieces to satisfy the perspectives of someone else. That someone else could be an investor, a taxing authority, a regulator, a creditor, a supplier, a stakeholder⁴, whomever. The accountant declares that the form of the lease matters. If the lease contract meets certain conditions specified by accounting rule makers, then the lease is not a lease but a purchase/financing relationship. Given that is the form, then the accountant dictates that one must arbitrarily choose a representative interest rate that reflects the appropriate level of cost of capital for our businessperson and record an asset and a liability reflecting the present

2 Another classic example is goodwill. Originally, accountants thought it was a liquidating dividend to the shareholders of the acquired company. Later they decided it was an asset and should be capitalized and amortized over no more than 40 years. Even later, they decided it was actually a proxy for all unidentifiable intangible assets and was a permanent asset unless the investors told them otherwise creating the incoherent situation of impairment to inform investors about what they apparently already knew. So what is the economic substance of paying more than the sum total of identifiable assets value? Take your pick unless you are an auditor who must believe it is a proxy for intangible values because that is the current rule. Score a point for Palmrose and Kinney (2018)?

3 John Searle (1995) uses the example of money as the quintessential “social fact.” Certain things are money only because people believe them to be money.

4 A colleague of mine cynically defines a stakeholder as a vampire slayer’s assistant, a definition with more specificity than the so-called stakeholders that business allegedly serves.

value of future lease payments. Assuming 3 percent is the selected rate the purchase/financing relationship produces a journal entry as follows:⁵

Asset	4717
Cash	1000
Lease liability	3717

Even though the form of the lease does not change the cash flows, which are \$1,000 out and \$1,200 in each year, the form does affect the annual representation of the decision. Conceived as an operating lease each income statement of the next five years would report \$200 (\$1,200 - \$1,000) of “income” for a total of \$1,000 over the five years, just as the businessperson planned. In the form of a purchase/financing relationship things get more complicated as illustrated in Table 1.

Regardless of how you slice it over the five year life of the asset, the result is the same as far as the businessperson is concerned since the substance for her is not the profit but the net cash she generates to satisfy her wants. Is \$145.09 in year one and \$256.60 in year five the economic substance? Is \$200 per year the economic substance? Is the economic substance \$1,000 over the five year period the businessperson deploys the asset? Seems we have not one representation of economic substance, but three equally plausible ones (and who knows how many in future if

Table 1: Net income per period if machine is “purchased”.

Year	Revenue	Depreciation ^a	Interest	Net income
1	\$1,200	(\$943.40)	(\$111.51)	\$145.09
2	“	“	(84.86)	171.74
3	“	“	(57.40)	199.20
4	“	“	(29.12)	227.48
5	“	“	(0.00)	256.60
Total				\$1,000.11

^aStraight line; sum-of-years-digits or declining balance options would produce even more income dispersion across the years.

⁵ This entry results by applying APB Opinion No. 5 (APB, 1964). It was the first accounting standard dealing with the alleged problem of financing leases. As businesses have become more global, enormous, powerful, and ingenious FASB has increasingly made the lease standard more complex to the extent that it has altered the concept of asset abstracted to being something to which a firm has a “right.” For a history of lease accounting see IASB (2007).

you consider the FASB's continuous alterations to the lease standard). In the example of the dispute over leases, one might say that form defined by an accounting rule is substance, but the ambiguity over what is a lease remains unresolved (Kunkel, 2021). The journal entry the accountant dictates to be made becomes the economic reality regardless of how anyone else views it. Accounting has the power to write the financial history of a business and thus it is written, so it shall be. This illustrates Hines (1988) point of the social constructivism of accounting that accounting brings to the table every time it claims to "faithfully represent" economic phenomena. Accounting is itself a particular *form* for shaping economic substance.⁶

A second reason that substance is problematic for accounting is that the prevailing belief among too many accountants (particularly academic ones) about economic substance is largely a myth. For example, for the African forager who, in terms of sustainability, had the most successful economy in human history (Suzman, 2020) economic substance was substantively different from that described by Fischer et al. (2021). For thousands of years, prototypes of *Homo sapiens* lived successfully without concepts of profit, wealth, capital, private property, money, "The Economy" as a separate partition of their way of life, or working hard as an ethic (Suzman, 2020). Making a living can be accomplished in a multitude of ways following the open systems principle of equifinality.⁷ Around each way of making a living emerge concepts to explain and justify that way – a particular economic narrative. Concerning the peculiar narrative we are concerned with here, the radical information turn taken by economics post WWII was mimicked by accounting (Ravenscroft & Williams, 2021). This information turn in accounting also had a radical effect. Rather than accountability, which has been the foundation of the concepts known as Generally Accepted Accounting Principles (GAAP) (Ijiri, 1975), the purpose of accounting was radically redefined as being about decision usefulness. Ravenscroft and Williams (2009, 2021), Williams and Ravenscroft (2015), and Reiter and Williams (2002) provide analyses of the consequences for accounting of this movement of accounting from an autonomous

⁶ Accounting standard setting may just one manifestation of what Graeber (2015, p. 9) describes as the "iron law of liberalism" whereby in a market society the more governments attempt to loosen restrictions on market forces, the more restrictions there are. Relying on Davies (2017), Williams (2019) explains that a competitive order will invariably ratchet up the number and complexity of rules as competitors bend existing rules in order to win.

⁷ Equifinality is a characteristic of open social systems. According to Katz and Kahn (1966, pp. 25–26) the principle of equifinality states "... a system can reach the same final state from differing initial conditions and by a variety of paths." Graeber and Wendgrow (2021) document how human ingenuity has resulted in innumerable different solutions to human social life over the past millennia; no way of living is inevitably the final way.

discipline into a sub-discipline of positive economics. In brief, the events described as the financial reporting revolution (Beaver, 1981) attempted to convert accounting into a discipline whose problems were all amenable to technical solutions, i.e., an empirical science aimed at producing “optimal” information systems. However, rather than endure the painstaking task of developing its own “science” accounting simply imported another disciplinary theory – neoclassical economics – as its own. Unlike historical GAAP, which identified economic substance through a narrative of practical business norms, laws, and ethical norms, the decision usefulness rebranding replaced that narrative with one that identified economic substance via the concepts and assumptions forming the foundation of neoclassical economics. In the hands of accountants, any nuances or anomalies of neoclassical economics debated by economists are elided to produce what Kwak (2017) describes as “Economism,” which “... is like an ideology” (ibid, 9) serving to justify the existing social order.

Anyone who studied for a Ph.D. in the late 1960s and early 1970s was vividly aware of this radical transformation in the intellectual superstructure of accounting as Efficient Market Theory and Principal Agent Theory became *de rigueur*. Since emending such theories is the province of economists, in the hands of accounting scholars these positive economic theories lose the tentative status of all scientific theories and become a rigid narrative structure within which to explain all accounting phenomena. As Rosenberg (1992) argues, such positivistic economic theories are not scientific theories at all but a form of mathematical politics described as neoliberalism, a political movement to reshape the nature of the state to support a competitive economic order whereby the shape of society is to be left mainly to the workings of the market (Mirowski, 2013; Earle, Moran, & Ward-Perkins, 2017). The financial reporting revolution in accounting emanating from the University of Chicago during the 1960s and 1970s (Jeanjean & Ramirez, 2009; Ravenscroft & Williams, 2009) has substantially shaped what accountants seem to believe is “economic substance” via a process Graeber (2015) describes, thusly:

... if one gives sufficient social power to a class of people holding even the most outlandish ideas, they will, consciously or not, eventually contrive to produce a world organized in such a way that living in it will, in a thousand subtle ways, reinforce the impression that those ideas are self-evidently true (ibid, p. 37).

Economists themselves have effectively demonstrated the scientific and ethical inadequacies of the Chicago School positive economics of the 1960s and 1970s (see e.g. Basu, 2011; Chernomas & Hudson, 2016; Foley, 2006; Galbraith, 2014; Keen, 2001; Kwak, 2017; Marglin, 2008; Marick, 2014; Medema, 2009; Nelson, 2001; Omerod, 1997). Yet in accounting this view of economic substance

persists in the U.S. and, alarmingly, with increasing vigor in the rest of the world. Even as economics (with some notable exception) has moved past the falsehoods of positive economic science, accounting is intellectually (and morally) still “stuck in the ‘60s.” It is this “underlying economics” to which Defond and Zhang (2014, 280) refer in their paper. The problematic is this particular “underlying economics” is from a perspective of questionable value to a profession that allegedly has a public interest mission. Politically enacted in the 1980s (Hacker, 2006; Hacker & Pierson, 2010; Kleinbard, 2015), this “underlying economics” has turned the U.S. into the most economically unequal society among O.E.C.D. countries. At this historical juncture, it would be presumptuous for accountants to claim as their exclusive province the right to determine economic substance (singular) when there exist such disparate economic substances.

3 Why Would We Trust Accountants?

Suppose you tasked someone to design a system to provide assurance that anyone serving food to the public would serve food that was safe to eat. Suppose further that the person tasked responded with the following system. A private, profit making group of health inspectors, in collaboration with an association of for-profit restaurant owners, organizes to choose what rules food service businesses are to follow to assure food safety. The choice of those rules is guided not by scientific facts (assume the discipline of food science has not actually achieved scientific status so no scientific basis has been established for deciding on rules e.g. we are not aware that salmonella, e. coli, or rat feces can make people very sick or dead), but merely by beliefs about food safety held by health inspectors and restaurant owners. As profit making groups these beliefs tend to bias toward only those ones conducive to the interests of those groups. To assure the public, by dint of law, restaurants employ the health inspectors who must inspect them. In addition, restaurants pay the inspectors; inspectors then post a grade indicating the degree to which the restaurant complies with the rules. This assures the public that the sanitation grade of 98% they see prominently displayed at the entrance is a reliable indicator of how safe it is to sample the bill of fare within? A child could see through the flaw in such a design. Of course, children have yet to become health inspectors and restaurant owners and have yet to see the wisdom exhibited by the Supreme Courts’ *Citizens United* decision that money is speech (Avi-Yonah, 2011; Cohen, 2020).

However, this is precisely the system of financial reporting we have in the U.S. (and the rest of the developed world). Private, profit driven audit firms who depend for their revenues on payments by the auditees automatically creates an

environment where independent, informed judgment is jeopardized. The “economic substance” of professional accounting has changed so radically since the 1980s that it has distorted “professional judgment.” As Rostain and Regan (2014, 55) explain, “By the 1980s, audits had become commoditized,” with the consequence that nothing distinguished audits among the then Big Eight firms (now just Four). Audit firms turned to other revenue sources by becoming consulting firms and sellers of tax shelters for the very wealthy. Rather than agents enforcing the spirit of law (legal substance), accountants instead used the law as a lever to benefit clients and themselves. Accounting professionals by the 21st century had become an essential part of the expanding wealth defense industry, gleaning more and more of their profits by abetting the process of redistribution of wealth upward that was enacted by the neoliberal political revolution. As Rostain and Regan (2014, 53) describe an important effect of the new “economic substance” of professional accounting,

In these instances, organizational pressures and business rationalizations did not so much displace professional judgments as distort them. The rise of the shelter industry reflects the vulnerability of professional judgment to organizational imperatives in a period of intense market competition.

With a privatized system of financial reporting the clear danger in relying on accountants to have the power to judge “economic substance” is that indeed those judgments will be distorted and not likely to be of service to the public welfare as the functionalist concept of a profession requires.

4 Conclusion

Fischer et al.’s (2021) concern with the decline of substance over form in accounting expresses an admirable, underlying sentiment. That sentiment is one I share and that is accounting has a principal role in regulating the power of business. “Economic substance” maybe the currently acceptable way of saying, “revealing the lie.” Accounting rules will never be formulae for producing decision useful information, but they are statements about how business should be conducted. Any accounting rule establishes something for which a business is accountable; accounting is inherently a regulatory function. Accounting information is information about whether the institution of business is conducting itself in ways acceptable to society. Accounting standards are just one part of the array of laws and rules designed to regulate corporate behavior and the role of the auditor is as the police enforcing those rules. Those rules do not reveal economic substance; they determine what economic substance is or, perhaps more accurately,

determine acceptable economic behavior. Pistor (2019) describes this as the code of capital, i.e. law determines “economic substance.” Law establishes property rights, which give power over the use of property. The corporation is exclusively the creation of law so the economic substance of the corporate form is in laws pertaining to the corporate form more so than in neoclassical theories of economics.

The debate between Defond et al. (2018) and Palmrose and Kinney (2018) about form over substance is not the real debate. In the realm of social reality, demarcating form from substance is difficult, if not impossible. The premise of Fischer, et al. that I take issue with is that there exists some eternal economic substance apart from form that accountants impose forevermore. In the social reality of financial reporting substance and form engage one another in a dialectical process. For this process to work for accounting to be a force for human welfare, accountants should probably follow the advice Earle et al. (2017, 5) provide their economics colleagues.

To prevent these catastrophes [financial meltdowns, global warming, food and energy insecurity] and build sustainable, stable and prosperous societies our generation must have the ability to reimagine the economy. And to be able to do that it must reclaim economics from the experts, transforming it from a technical discipline into a public dialogue.

Given the lack of success accounting demonstrated in producing the optimal information systems the financial reporting revolution promised, perhaps it is time for accountants to reflect upon whether an economic engineering approach to the practice is a fruitful path upon which to continue. Acknowledging that accounting is an important element of the governing process implies that accountants are not (and should not be) the exclusive arbiters of economic substance. Corporate power and the potential consequences of malevolent uses of that power do not seem to yield to market forces acting with decision useful information alone. Accounting rules are simply one kind of rule within a constellation of rules that can be brought to bear on regulating the behavior of corporations (Langenbucher, 2021; Friedrich & Thiemann, 2021). For example, instead of writing a rule for “measuring” the value of esoteric financial instruments, the solution to the consequences of those instruments may better be served by simply making them illegal. Finance is the one industry that can sell its products without having to demonstrate that they pose no significant harm to the public. If something can’t be accounted for why is it allowed to prosper and grow? Government auditors observe compliance with all manner of laws and rules other than accounting ones, yet auditors of private companies assess compliance with accounting rules only. Such an acknowledgment cannot help but focus some attention on whether accounting is, as Soll (2014) opined, a light cast on corruption or a curtain behind which corruption hides.

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