



*Corporate Social Responsibility  
and  
the Role of Transnational Corporations  
in Global Justice*

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A thesis submitted to the Department of Philosophy, Logic and Scientific Method  
of the London School of Economics and Political Science for the degree of  
Doctor of Philosophy, London, January 2009.

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## **Declaration**

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## Abstract

This thesis poses two questions: (1) Why should transnational corporations (“TNCs”) have responsibilities in global justice, and (2) If the business of business is business, why should it care about global justice? My objective is to lay the foundation for a coherent theory of corporate social responsibility (“CSR”) – one that presents a normative account of the moral basis for, and the constraints on, CSR. The conception of CSR here is about the role TNCs ought to play in global justice, which is distinct from what business ethics is about.

Addressing the first question, my thesis is that, only when we have a rigorous conception of *what* responsibility is, will we be able to construct an account of *who* is responsible. So instead of asking ‘What does an ideal cosmopolitan just global order look like?’ and then trying to “fit in” TNCs, a constructivist approach that asks the basic question: ‘What is responsibility?’ is adopted. Moreover, the theme of ‘responsibility’ is supported by a notion of ‘global justice as duty’, contrary to the predominant rights-based approach to global justice. I then articulate a category of corporate responsibility based on capabilities and the scope of that responsibility.

Despite its normative intentions, a theory of CSR cannot offer action-guiding principles unless it takes into account the real-life business constraints corporations face. I address the second question and suggest how we can think philosophically about these non-moral constraints on CSR – chiefly, companies’ fiduciary duty to maximise profits and shareholder value. The question is how these business considerations fit into our philosophical remit. Contrary to normative theories that attempt to “squeeze” everything into ideal theory (e.g. theories based on economic rationality), I argue that a full realisation of the role of TNCs in global justice should prompt theorists to devote more attention to non-ideal theory.

## **Acknowledgements**

I would like to thank Professor Luc Bovens for his guidance and friendship over the years, as well as my colleagues at the LSE Centre for the Philosophy of Natural and Social Sciences (CPNSS) for their feedback as I presented my arguments.

I owe my deepest gratitude to my parents, Dr and Mrs Lim Liang Boon, and to my now husband, Aaron Akins, for their love, unwavering support and belief in me. This thesis is as much the product of their sacrifices as it is my labour, and it is dedicated to them.

This PhD thesis was partially funded by research grants from the London School of Economics and the Sir Richard Stapley Educational Trust. I would also like to thank the Department of Philosophy, Logic and Scientific Method for their numerous travel grants.

## Abbreviations

ATCA	Alien Tort Contracts Act (1789)
BITC	UK Business in the Community
BOP	Bottom of the pyramid
CSR	Corporate social responsibility
ECJ	European Court of Justice
ECOSOC	UN Economic and Social Council
EU	European Union
FDI	Foreign development investment
GCO	Global Compact Office
GDP	Gross domestic product
GSM	Global social movement
ICJ	International Court of Justice
ILO	International Labour Organization
IMF	International Monetary Fund
INGO	International non-governmental organisation
Interpol	International Criminal Police Organization
IPCC	Intergovernmental Panel on Climate Change
MDG	Millennium Development Goals
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
ODA	Overseas development assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPEC	Organization of Petroleum Exporting Countries
R&D	Research and development
SME	Small and medium enterprise
SRI	Socially responsible investment
TNC	Transnational corporation
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNDHR	United Nations Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USA or US	United States of America
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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# Introduction

This thesis presents a philosophical analysis of CSR and the role of TNCs in global justice. It poses and examines two questions: (1) Why should TNCs in particular have any responsibilities in global justice, and (2) If the business of business is business, why should it care about global justice?<sup>1</sup> The first question is concerned with articulating a normative account of the moral foundations for CSR, and the second with the business constraints on CSR and how to think about them in philosophical terms. In addressing these two questions, the objective is to lay the foundation for a coherent theory of CSR.

## 1. Why CSR?

In the last ten years, CSR has become the byword of business and corporate governance, spawning an entire industry revolving around it – ranging from consultancies specialising in CSR, fund managers promoting socially responsible investments, social enterprises, as well as prominent UN- and government-led initiatives like the UN Global Compact. In the UK, the British government has also given its blessing to both the general notion and the label of “CSR”: In 2000, formal responsibility for the oversight of CSR across the country was assigned to a minister in government under the Department for Trade and Industry,<sup>2</sup> and a website was set up “to provide a forum where businesses can promote corporate social responsibility in a more effective manner”.<sup>3</sup> The government has also initiated schemes like the Ethical Trading Initiative (to encourage British firms to ensure the observance by their overseas suppliers of “core labour standards”), the Global Citizenship Unit in the Foreign and Commonwealth Office (to enlist business support in the conduct of British foreign policy), and the establishment

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<sup>1</sup> The terms ‘responsibility’, ‘duty’ and ‘obligation’ are used interchangeably throughout the thesis. See fn 50.

<sup>2</sup> Stephen Timms was succeeded by Malcolm Wicks following a ministerial reshuffle in January 2008.

<sup>3</sup> The initiative is mainly targeted at small and medium- sized enterprises with a strong emphasis on their role in local communities in Britain.

of a Business Partnership Unit by the Department for International Development (to promote business cooperation in meeting goals for reducing poverty in developing countries). In an attempt to transition to the next stage of UK competitiveness and depend less on the government to set policy, businesses themselves are adopting the language of CSR and have formed social responsibility-oriented coalitions like the UK Business in the Community (“BITC”) and the Prince of Wales Business Leaders Forum.

CSR has also attracted considerable academic interest. ‘CSR’ is now routinely taught as a separate module in most business schools around the world, and an increasing number of schools like Harvard Business School and the University of Nottingham have separate faculties dedicated to CSR research and teaching. Although the majority of academic involvement in the study of CSR remains within the business and management faculties, there is increasing research interest from other fields. These include business ethicists,<sup>4</sup> lawyers,<sup>5</sup> economists,<sup>6</sup> development theorists,<sup>7</sup> even geographers!<sup>8</sup> Such broad-ranging interest is not surprising, considering that CSR engages diverse issues – ranging from descriptive and predictive theories about why corporate entities behave the way that they do, to normative ideas about how they should behave. From the corporate point of view, CSR engages issues like corporate governance and risk management. From the legal point of view, it involves discussions about the various types of regulation needed to bring about certain corporate behaviour,<sup>9</sup> as well as the conceptual and legal issues that attach to more “decentred”<sup>10</sup>

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<sup>4</sup> For example, see Freeman (1984), Bowie (1999a), Donaldson *et al* (2002).

<sup>5</sup> For example, see Ward (2003), Hillemanns (2003).

<sup>6</sup> For example, see Arrow (1973), Baumol (1991), Sen (1993).

<sup>7</sup> For example, see Bendell (2004), Blowfield (2004).

<sup>8</sup> For example, see the LSE Department of Geography and Environment’s project on *Global Governance and Corporate Social Responsibility: Policy and Practices, Outcomes and Impacts*: [http://www.lse.ac.uk/collections/geographyAndEnvironment/research/Currentresearchprojects/AG\\_GlobalGovernance.htm](http://www.lse.ac.uk/collections/geographyAndEnvironment/research/Currentresearchprojects/AG_GlobalGovernance.htm)

<sup>9</sup> For example, state regulation, civil society regulation and self-regulation.

<sup>10</sup> That is, decentred from the state. See Black (2002).

understandings of regulation. From the development point of view, the history and impact of CSR and its associated outcomes is also of importance to those who are concerned about global social issues like poverty alleviation, child labour, climate change and the environment.

Many – including businesses themselves – hold the belief that the future of sustainable development must involve corporations, not just state and individual action. Hence, for example, the Global Compact was created to catalyse corporate action in support of broader UN goals such as the UN Declaration of Human Rights and the Millennium Development Goals. Indeed, the importance of engaging new actors like corporations to further our global social ideals was emphasized even before the dawn of the new millennium:

“The participation of new actors on the international scene is an acknowledged fact; providing them with agreed means of participation in the formal system, heretofore primarily the province of States, is the new task of our time.” (Boutros-Ghali, 1996: 25)

“Globalisation is a fact of life. But I believe we have underestimated its fragility... Our challenge today is to devise a similar compact on the global scale, to underpin the new global economy... Specifically, I call on [businesses] to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices.” (Annan, 1999: 2)

The interest in harnessing the capabilities of corporations – particularly large corporations like TNCs – to further social goals is, in many ways, not surprising. There are over 60,000 multinational corporations active today, with over 800,000 affiliates abroad (UNCTAD, 2001). According to the Financial Times, at least 37 of the top one hundred economies of the world today are corporations, the revenues of just five of the world's largest corporations more than double the combined GDP of the poorest 100 countries (Utting, 2000). It would not be unreasonable to suggest, from these statistics, that TNCs wield an

enormous amount of economic power and influence today, so much so that it has been described as the “new Leviathan of global capitalism”.<sup>11</sup> Moreover, statistics show that private investment in the developing world spiralled from US\$44 billion in 1990 to over US\$167 billion in 1995 (World Bank, 1996), overtaking official development assistance (“ODA”), which fell slightly to US\$59 billion in 1995 (OECD, 1996b). A growing number of major corporations are also embracing social causes, but not only as a matter of compliance or as a defensive response to external pressure. Rather they are taking a leading role in addressing social and environmental issues that may seem to be far from, even counter to, their core business interests. The statistics show that large corporations have not only the capabilities, but also the will, to engage in addressing the global social issues of our time.

The increasing role of large corporations in the global social arena is compounded by the advent of globalisation and the growing visibility of TNCs, whose activities are thought to have a profound and sometimes damaging impact on the quality of life in the environment in which they operate. Interest in CSR increased dramatically after several very public fiascos involving large corporations over issues of, *inter alia*, corporate governance (for example, Enron), the environment (for example, Royal Dutch-Shell Group and the Brent Sparr episode), and human rights (for example, Nike and the exploitation of child labour in Pakistan) (Owen, 2002). In addition, modernisation and the two world wars saw the decline of paternalism, the blurring of class boundaries, and a corresponding breakdown in deference to authority – particularly in the UK (O’Mahony, 2004). As a result, it has become more acceptable to question the actions of corporations and to be suspicious of any perceived lack of transparency. Hence there is a greater legitimacy in demanding transparency from corporations than before. Moreover, with increased social complexity, there is a growing sense that no single person or agency can have all the answers, or all the solutions.

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<sup>11</sup> This description of the TNC is Ross and Trachte’s (1990). It is meant to distinguish the TNC from the “old Leviathan”, that is, the sovereign state.

For these reasons, the topic of CSR has attracted a wide range of interest from all corners. The rise of the corporation, and its predominant presence in our daily lives – whether we are in London or Cote D'Ivoire – makes it a central object of interest. Its immense power and influence casts it as an enemy of justice in cases of oppression and abuse. At the same time, it inspires untold possibilities for social justice because its vast capabilities can also be (and have been) harnessed to do good. On the other hand, this is not a reason to exhort CSR like “rabid egalitarians”.<sup>12</sup> While the increasing interest in the topic of CSR and number of CSR initiatives have turned it into somewhat of a phenomenon, there are those who oppose it on quite legitimate grounds and question why, for example, if the business of business is business, it should care about things like human rights and the environment. The challenge, therefore, is to develop a normative argument that justifies corporate engagement in CSR. This thesis takes up the challenge of developing such a theory of CSR.

## **2. CSR and global justice**

Because the topic of CSR is so broad and touches so many disparate and sometimes seemingly disconnected issues, there are many paths to developing such a theory of CSR. So it is important to get an angle on the task first. In this thesis, CSR is defined in terms of the role of TNCs in global justice. In other words, the task at hand for developing a theory of CSR is to develop a normative argument for why and how much TNCs ought to play a role in global justice. Global justice, in turn, is concerned with the way our social world ought to be structured – that is, the principles by which the laws and practices that regulate our human interaction are assessed (the ‘justice’ aspect), and the ethical reasoning for why we owe moral duties beyond our current social borders to distant poor persons whom we have no apparent relationship with (the ‘global’ aspect). Put in another way, this thesis is concerned with the issue of global just agency – that is, how global responsibility should be distributed, and why TNCs in particular ought to act as moral agents in our ideal of a just global society. In

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<sup>12</sup> This pithy description is Brittan’s (1993: 20).

this thesis, particular focus will be given to the global issues of poverty alleviation and child labour.

Taking a global justice angle on the topic of CSR is interesting because of the issues and challenges that thinking about the corporation as a just agent presents – not only for the study of global justice, but also the way we understand agency and the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science. Within the framework of global justice, there are two particular challenges to developing a theory of CSR that stand out. Firstly, there is the problem of conceiving the corporate entity as a “moral agent”. There are two parts to this problem: (1) There is the issue of construing the corporate entity, not as an aggregate or collective of *individual* agents, or part of some scheme to broaden the *individual* agent’s scope of responsibility, but as a separate singular entity capable of agency in its own right. This goes against the traditional way of doing political theory, which has traditionally been methodologically individualistic – it is ‘methodological’ because it subscribes to the doctrine that we cannot understand social phenomena without understanding actions; it is ‘individualistic’ because it is concerned with analysing the individual in order to deduce explanations of phenomena, since actions must be motivated by intentional states which (arguably) only individuals possess (Heath, 2005). Methodological individualism, therefore, precludes thinking about the corporate entity as an “agent” in its own right. (2) There is the issue of construing the corporate entity as a “moral” agent. Even if TNCs were capable of agency in their own right, it does not naturally follow that they ought to assume the role of moral agents. The challenge, then, is to get a handle on how to think about the moral responsibilities of TNCs – the type of framework that allows us to construe them as agents in their own right, the normative reasoning that leads to the conclusion that they have global responsibilities towards others, particularly the world’s poor, how far those responsibilities extend and what their limits are.

Secondly, there is the problem of thinking about “businesses” as having a role in global justice in the light of the non-moral demand on them to maximise profits and shareholder value. The question is how these practical business

considerations can be fitted into our philosophical remit. Some normative theories have attempted to “squeeze” everything into a single theory – for example, rational choice theories based on ‘enlightened self-interest’. However, these theoretical strategies are problematic in themselves. For example, the problem with rational choice theories like ‘enlightened self-interest’ is that they concern individuals and individual choices. Thus, applied to corporations, they encounter the same objection concerning the moral agency of corporate entities and taking theories that have traditionally applied to individuals and applying them to corporate entities. We end up, again, questioning what sort of entity the corporation is, and whether or not it is capable of moral agency. The challenge here, then, is to find a methodology that allows us to think about this non-moral, profit-maximising aspect of the corporation: whether it poses a constraint on corporations’ global responsibilities, and how this fits together with the moral argument that TNCs have global responsibilities.

I believe that these two challenges – breaking past the methodologically individualistic way of understanding agency in political theory, and even if one is successful on this count, reconciling the conception of corporations as just agents with the prevailing understanding of corporations as non-moral business entities – have created a mental barrier to thinking about the role of corporations in global justice. This may in part explain why, although recent publications have seen a shift in philosophical focus from individual charity<sup>13</sup> to institutional agency<sup>14</sup> to corporate agency specifically<sup>15</sup>, the global justice literature on corporations is still relatively scant compared to the vast resource of literature and case studies on CSR. Hence, there is what may be described as a theoretical lag. This thesis, then, aims to redress the imbalance. Its objectives are to raise what I think are the normative issues that arise from conceiving CSR as the role of TNCs in global justice, and to provide some insight into these issues. If, at the end of the day, the discussion of these issues helps us to break past the mental

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<sup>13</sup> For example, see Singer (1972) and (1999).

<sup>14</sup> For example, see Kuper (2005c) and Green (2005).

<sup>15</sup> For example, see O’Neill (2001), Lane (2005) and Kreide (2007b).



barrier created by the aforesaid two challenges, then this thesis would have achieved what it set out to do.

### **3. The structure of this thesis**

In chapter 1, I begin by setting the discussion about CSR firmly in the context of global justice rather than the traditional context of business ethics. This serves to outline the intellectual framework for the rest of the thesis. I then take the first step to addressing the first question stated in the beginning, namely, ‘Why should TNCs in particular have any responsibilities in global justice?’. I present three cosmopolitan approaches to global justice that advocate a pluralized understanding of global just agency – that is, agency which is essentially non-state-centric and includes actors other than states and individuals, like TNCs. The three cosmopolitan approaches are the ‘extreme cosmopolitanism’ position, the ‘strong cosmopolitanism’ position and the ‘weak cosmopolitanism’ position – positions represented by Kevin Jackson, Andrew Kuper and Samuel Scheffler respectively. The first posits the claim that cosmopolitanism results in a non-state-based world order, the second that global justice is achieved through radical reforms to create a ‘plurarchic sovereignty’ composing of state and non-state actors, and the third that a cosmopolitan conception of global just agency entails a balance between our special responsibilities and global responsibilities. I critically analyse how each of these positions accommodates a role for TNCs in global justice, and explain why they are problematic when it comes to locating the site of cosmopolitan global justice in which TNCs may feature. My core argument is that the three cosmopolitan approaches beg the central questions of corporate just agency by adopting at the outset a ‘thinly cosmopolitan’ conception of the role of TNCs in global justice – either because they are not practicable, or not genuinely, or not sufficiently “cosmopolitan”. I conclude that, instead of asking the question ‘What does an ideal cosmopolitan just global order look like?’ and how TNCs “fit in” the ideal picture, a better way of conceptualizing the role of TNCs in global justice lies in taking a constructivist approach and asking a more basic question: ‘What is responsibility?’. Only when

we have a rigorous conception of *what* responsibility is, I argue, will we be able to construct an agent-centred account of *who* is responsible.

Taking up this theme of ‘responsibility’, I go on in chapter 2 to lay the first plank in the construction of a theory of corporate responsibility by critically addressing the predominantly rights-based approach to global justice and providing arguments for a duty-based theory of CSR. The focus of my critique of the rights-based approach is Henry Shue’s rights-based account of the role of TNCs in global justice presented in his paper *Mediating Duties* (1988), because I think that it captures most of the things I think are problematic with linking CSR and the doctrine of human rights. The issues that I raise revolve around the requirement of correlativity between rights and duties, that is, the proposition that for every rights claim, there must be a correlative duty to fulfil that claim. The thrust of my argument is that Shue’s theory begs the central questions of CSR by adopting right from the outset a limited role for TNCs – as institutional mediators of a correlative relationship between distant right-holders and duty-bearers that would not otherwise exist, rather than duty-bearing institutional agents in their own right. Setting aside the rights-based account of global justice then, I go on to develop the case for a notion of ‘global justice as duty’ as the moral foundation for a theory of CSR, with critical attention to Onora O’Neill’s duty-based account of the role of TNCs in global justice presented in her paper *Agents of Justice* (2001).<sup>16</sup>

Notwithstanding, I conclude by pointing out that even those who insist on couching global justice in human rights terms must eventually still address the question of who must deliver on rights. In this case, our preoccupation with corporate just agency brings us – both rights- and duty- based theorists – right back to the question: ‘Why TNCs?’. Chapter 3, then, draws the foregoing two chapters together to focus on the question of ‘corporate responsibility’ – to explain what it is and to elucidate an account of the categories of corporate responsibility that underpin the moral claim that TNCs ought to play a role in global justice. In this chapter, I focus on constructing a capabilities argument for

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<sup>16</sup> See fn 50.

CSR. The capabilities argument is that, in addition to being responsible for harmful outcomes that they have directly contributed to, TNCs may be attributed with a responsibility to act in cases of global injustice where they are more capable than states and individuals to do so. In other words, I argue why *can* implies *should*, that is, why the fact that TNCs are more capable than individuals in addressing global problems leads to the stronger conclusion that they ought to address these global problems. In this chapter, I also explain the difference between responsibility in the sense of *attributability* and responsibility in the sense of *accountability*, and why it is important to attribute global responsibilities to TNCs rather than just holding them accountable for delivering on these responsibilities. In this regard, I critically engage Iris Marion Young's conception of 'political responsibility', which I suggest amounts to an argument for accountability without attributability.

After laying the normative foundation for a theory of CSR, I then turn to its moral content. In chapter 4, I explore the scope of corporate responsibility, or what I call the "CSR agenda". With reference to a UN report (UNDP, 2004) recommending the various ways in which the private sector could go beyond remedial responsibility (that is, responsibility for righting wrongs that they have directly caused) and harness their capabilities innovatively to aid developing countries, I take up the task of presenting a normative argument for the scope of this extended agenda. I ask: What responsibilities exactly do TNCs have towards the very poor? In this regard, I focus my attention on Thomas Pogge's well-known argument for extending the scope of responsibility to cases where there is no direct causal culpability: that individuals in rich states have, as a matter of human rights, a moral responsibility to ensure that they do not unduly harm the distant poor by supporting a global economic order that promotes poverty. Pogge calls this responsibility an "institutional responsibility". Distinguishing between institutional and interactional understandings of duty, I test out Pogge's theory on the CSR agenda and critically analyse its usefulness in grounding the CSR agenda morally. I conclude that, in drawing the boundaries of corporate responsibility, the active distinction is not between institutionalism and interactionalism as Pogge suggests, but between ideal and non-ideal theory. I

then propose and outline one form such a non-ideal approach might take, that is, to theorize the business case for CSR. Theorizing the business case for CSR is a recognition of the extent to which business considerations like companies' fiduciary duties to their shareholders to maximise profits and shareholder value constrain what companies can and cannot do outside their business mandate. It is non-ideal, I claim, because it poses an obstruction to the full realisation of the ideal that we have constructed so far: the argument that TNCs have responsibilities in global justice as a matter of duty.

Chapter 5, then, elucidates the issue further and explains what non-ideal theory is. On the one hand, there is the "moral" view that TNCs ought to be responsible for some of the global injustices in the world as a matter of duty. On the other hand, there is the "strictly business" view that the sole responsibility of a company is to maximise profits and shareholder value. TNCs, then, appear to face a dilemma – what I call the "CSR dilemma". This raises the second question stated at the beginning, namely, 'If the business of business is business, why should it care about global justice?' I argue that the widespread failure in global justice to recognise the extent to which what I describe as the "business case for CSR" shapes corporations' choice of CSR issues and delineates the boundaries of CSR, causes and/or perpetuates a historical and ideational exclusion of corporations in global justice. This, in turn, represents a great loss for the poor. The normative challenge for global justice, therefore, is to find a way of theorizing the business case for CSR, that is, where the "moral" and the "strictly business" views overlap and where companies "do well by doing good". This, I suggest, better reflects the social reality of what TNCs are doing. Drawing from the ideal/non-ideal theory debate, I offer some methodological principles for doing this. I explain what non-ideal theory is and why I think that it is the best methodology for this purpose. Theorizing about the role of corporations in global justice, I conclude, involves theorizing the non-ideal.

In this regard, I suggest that there are lessons to be learned from some non-idealists, particularly those who emphasize the business case for CSR. In chapter 6, I provide a descriptive account of the business case for CSR from the point of view of some non-idealists, that is, theorists (for example, economists

and CSR and business practitioners) who have conducted extensive empirical research on how CSR and the economic performance of firms are linked. I argue that this account, although descriptive, is important for our normative theorizing, because it provides empirical support for the need to theorize the business case for CSR in particular, and offers empirical evidence for the need to theorize about the role of corporations in global justice in general. Hence, this chapter is devoted to the task of laying an empirical foundation for the theory of CSR developed in this thesis.

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I am aware that the promise to deliver a coherent theory of CSR within a single text is a big one. For this reason, a large portion of this thesis is devoted to addressing the challenges that developing such a theory might raise. Also, I do not ask the reader to rest content on mere abstract reflections, but throughout the text as well as in chapter 6, illustrate my arguments with reference to concrete developments in practice and to various case studies that detail the role and impact that TNCs are making on various global social issues – with a particular focus on poverty and the problem of child labour.

In our time, the pressing task of political theory becomes not only offering normative arguments that justify the role of TNCs in global justice, but also action-guiding arguments that can generate practical principles to help corporations navigate the tightrope between their business and their social responsibilities. In an increasingly complex world where corporations are facing an increasing number of demands on them from different directions, and where their decisions affect an increasing number of people in an increasingly globalised world, the ability of a theory of CSR to provide principles that can guide corporations in their actions and decisions becomes even more important. In this thesis, I hope to offer a systematic account of how we might respond to this challenge and begin to think about CSR and the role of TNCs in global justice.

# 1

## **What is global justice, and how do TNCs fit in? A critical review of three cosmopolitan approaches and an alternative suggested**

What is the role of TNCs in global justice? In addressing the question, our answer depends at first glance on what we imagine ‘global justice’ to be. In particular, a right conception of what an ideal just global order looks like can act like a map that enables us to locate where and how TNCs fit in as agents of justice, if at all. In order to begin formulating an answer, then, it seems logical to start by asking the following questions: How can we best structure our world in a way that best serves human interests?<sup>17</sup> What political institutions should we choose to sustain or establish in order to best further the claims of each and every human being as free and equal individuals? More importantly, what is the *approach* that will shape our answers to these questions? That is, what kind of normative reasons can we give for our conception of an ideal just global order, and how do TNCs fit in?

This chapter starts the ball rolling by, firstly, providing an argument in section 1.1 for locating the discussion about CSR in the context of global justice rather than the traditional context of business ethics. This serves to outline the intellectual framework for the rest of the chapter.

Within the context of global justice, the particular brand of global justice conducive to a discussion of CSR is *prima facie* a cosmopolitan one. I say “*prima facie*” because, as we shall see, the various ways in which cosmopolitans have tried to carve out a conceptual space in political theory that is conducive to a conception of global just agency which includes TNCs, are problematic. Broadly-speaking, adopting a cosmopolitan conception of global justice means that the discussion of TNC engagement in issues of global justice happens within a

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<sup>17</sup> Although the question is framed provisionally as an instrumental one here, the results-based approach is rejected later on (see fn 43).

framework of international liberalism that advocates a pluralized understanding of agency in global justice which is essentially non-state-centric. That is, what is envisioned is an ideal just global order that includes actors other than states and individuals, like TNCs. But this needs explanation as well as qualification. There is no one distinctive or complete moral conception of cosmopolitan global justice, and cosmopolitans themselves are agnostic about much of the *content* of cosmopolitan global justice. An indication of this is that a wide range of normative positions might count as cosmopolitan, so long as they espouse as a foundational requirement the moral worth of every person as a free and equal individual. These positions, in turn, can be constructed in different ways for the justification of a range of political structures. So “the bare idea of the cosmopolitan is too protean” to settle the question (Beitz, 2005: 18).

This chapter, then, expands on the concept of cosmopolitan global justice by examining it through the lens of the topic of CSR. In the following three sections 1.2 to 1.4, I provide a critical review of three cosmopolitan approaches to conceptualizing an ideal just global order, what I call the ‘extreme cosmopolitan position’, the ‘strong cosmopolitan position’, and the ‘weak cosmopolitan position’. The first posits the claim that cosmopolitanism results in a non-state-based world order, the second that global justice is achieved through radical reforms to create a ‘plurarchic sovereignty’ composing of state and non-state actors, and the third that a cosmopolitan conception of global just agency entails a balance between our special responsibilities and global responsibilities. In each section, I explain why these three approaches are problematic when it comes to locating the site of cosmopolitan global justice in which TNCs may feature.

The focus of the discussion trains on the normative reasoning that leads to these particular cosmopolitan end-states of the world. My core argument is that the three cosmopolitan approaches beg the central questions of corporate just agency by adopting at the outset a ‘thinly cosmopolitan’ conception of the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science. They are ‘thinly cosmopolitan’, either because they do not result in practicable schemes, or because they do not

move away enough from a formally statist position that allows no place for corporations, or because they cannot do so without placing a wider arbitrary restriction on the domain of global just agency. In other words, the three cosmopolitan approaches are ‘thinly cosmopolitan’ because they are not practicable, or not genuinely, or not sufficiently “cosmopolitan”. In turn, this problem casts doubt over the veracity of the normative reasons that underpin their respective constructions of a cosmopolitan just global order that includes TNCs. Thin cosmopolitanism, then, represents a feature of the problem with the concept of cosmopolitan global justice itself.

Once an account of the problem reflected in the concept of cosmopolitan global justice is explicated, it points the way to an alternative conception that solves the problem. In section 1.5, I argue that the correct conception of cosmopolitan global justice in which TNCs feature should not begin with asking what a ‘cosmopolitan just global order’ looks like and then trying to fit TNCs in. That is to say, the way to begin thinking about why TNCs should be agents of justice in a just global order lies not, in fact, in trying to carve out a conceptual space for ‘cosmopolitan global justice’. Instead of staking our claim on various versions of global justice – whether extreme cosmopolitan or strong cosmopolitan or weak cosmopolitan (or even anti-cosmopolitan) – depending on which particular agent(s) of justice we wish to promote, I argue in conclusion that a better approach to conceptualizing the role of TNCs in global justice lies in asking a more basic question: What is responsibility? Only when we have a rigorous conception of *what* responsibility is, I argue, will we be able to construct an agent-centred account of *who* is responsible.

### **1.1. An alternative framework for CSR**

In engaging the issue of CSR, I have intentionally avoided the traditional philosophical stomping ground of business ethics. Instead, I have set the discussion about CSR firmly in the context of the global justice agenda. The reason is that I believe that the notions of ‘business ethics’ and ‘CSR’ should be distinguished from each other. The distinction that I have in mind here is between how companies ought to behave towards others ethically-speaking, and what



justice requires of them outside their business agenda. The distinction essentially taps on the Rawlsian distinction between *ethics* and *justice*. ‘Ethics’ is concerned with the way we ought to treat each other – that is, the principles that govern our moral conduct. It is not uncommon for corporations nowadays to engage in some form of business ethics rhetoric or another as standard practice. In the business ethics literature, several normative theories have been developed to underpin the claim that companies ought to ensure that they conduct their businesses morally according to what is good. What is “good” is, in turn, arrived at by applying Aristotelian virtue ethics (Solomon, 1992a; 1992b), or using Kantian ethics and Rawls’ theory of justice to justify a stakeholder theory of the firm, *viz.*, why stakeholders in the company should treat each other morally (Freeman, 1984; 1994; 2002; Bowie, 1999a; 1999b; Donaldson and Dunfee, 1995; Donaldson and Preston, 1995; Evans and Freeman, 1993). Business ethics, then, concerns itself with the principles that govern one’s moral conduct towards others.

‘Justice’, on the other hand, is not so much concerned with one’s moral relations with others, as it is with the way our social world ought to be structured – that is, the principles by which the laws and practices that regulate our human interaction are assessed. *Given* a particular conception of justice then, a theory of CSR based on justice asks whether, why and how corporations fit in. The moral responsibilities of corporations, in this sense, derive from the demands of justice, as opposed to emanating from some ideal conception of a moral corporate entity. The pressing question, of course, is what a just theory of CSR that balances the normative needs of the poor and the function of corporations to maximise profits and shareholder value looks like: Why should corporations be agents of justice in our ideal of a just society or world? If the business of business is business, why should it care about justice?

Another crude way of distinguishing ‘justice’ from ‘ethics’ is to say that discussions about ethics are conducted within the confines of moral philosophy, whereas justice is concerned with questions of political theory. I say “crude” because, ultimately, justice is concerned, at its most “basic” level (Beitz, 1994: 125), with the way we stand in certain moral relations to one another. While it may be primarily concerned about the justice of the institutional schemes that

govern our moral conduct and the way society ought to be structured, nonetheless the ultimate unit of moral concern is said to be the human individual. In other words, the distinction does not mean that justice and ethics are incompatible. It merely points to different orders of responsibility lying “within the [same] domain of the moral (Pogge, 1992a: 50), and that the concerns of justice are “not reducible to individual morality” (Caney, 2005: 2).

There are important reasons why I have presented an alternative framework for CSR based on justice rather than ethics here. Firstly, my concern is primarily with poverty and development. So instead of talking abstractly about doing business “ethically”, the focus is specifically on the role of corporations in alleviating poverty and promoting sustainable development in the world’s poorest communities. This latches onto the literature on global justice, a lot of which focuses on addressing the issue of poverty on a world-wide scale. In this regard, the discussion about CSR is domain-specific and company-specific. It is domain-specific because, as mentioned, it draws specifically on theories of *global* justice. That is, it is not concerned with domestic justice falling within the boundaries of any particular society or state or nation or peoples, but rather with the principles of justice that should govern the global domain. We shall return to the idea of global justice in the next section.<sup>18</sup> The discussion is also company-specific, since it is concerned with carving out a role for *transnational* corporations in global justice. That is, it focuses on companies that operate across borders. Case studies indicate that they are more likely than small- and medium-sized enterprises (SMEs) to be implicated in issues of global justice.

Secondly, recent developments in the study of poverty suggest that poverty alleviation engages issues of justice more than it does issues of ethics. Today, we know that the causes of poverty are more complex than we thought. World poverty is not just the outcome of corruption and the failure of the governments in poor countries, but also of the way our social world and its institutions are structured. Today, we also know that poverty creates other

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<sup>18</sup> The term *global* also signifies a distinction with *international* political theory - the latter being traditionally associated with state-centric approaches and the former referring to cosmopolitan approaches.

injustices – not only that the poor are poor, but that being poor leads to various forms of social exclusion which need to be addressed. This means that the poverty agenda must encompass a broad range of mechanisms not only to combat poverty itself, but also address its wider consequences. All these facts mean that a paradigm shift in our thinking about world poverty is needed: (1) We can no longer see the world's poor as merely “aid victims”, or “discuss our moral obligations mainly in [ethical] terms of donations and transfers, assistance and redistribution”. (Pogge, 2004: 260). This means moving away from the idea of poverty alleviation as merely a matter of foreign aid between agent and recipient, and consequently, the idea of CSR as merely a form of individual corporate altruism and philanthropy. Instead, we need to be addressing the justice of the social structures that create and sustain poverty. (2) We must acknowledge and accept that altruism alone is simply not enough. A broader agenda for poverty alleviation is needed, one that engages in social change and sustainable development, not just assistance and aid. In other words, what is needed is “an analysis from the broader perspective of political philosophy” as opposed to seeing poverty through “the simple individualist lens of a purportedly ‘practical ethics’” (Kuper, 2005c: 170). Accordingly, the same logic that moves the poverty agenda from the question of aid to the question of development compels us to move the idea of CSR beyond the narrow domain of business ethics, or to defining it merely in terms of corporate altruism and philanthropy. Instead, the more interesting story lies in analysing the strategic role corporations can and should play in developing and securing a more just world society.

Thirdly, a survey of the business ethics literature will show that it appeals in almost all instances to ideas about morality that have traditionally been applied to human individuals. The concern is that applying these ideas to corporate entities leads to all sorts of conceptual problems about the corporate form, specifically whether the corporate entity is or can be a moral agent. Some argue that moral responsibility can attach, not just to individuals, but to corporate entities (French, 1984; Pettit, 2007). Others who adopt a methodologically individualistic view, reject any “reified” or “organic” conception of a corporate collectivity apart from its individual members (Buchanan and Tullock, 1962).

While such philosophical questions are important in themselves, there seems to be an over-emphasis on the ontology of the corporate form (Kreide, 2007b). There is a danger that dwelling on these sorts of questions too much detracts from the more compelling question of what TNCs should, can and are already doing for the global poor. Corporations have demonstrated themselves capable of changing their behaviour in response to external demands of the market. Moreover, it is widely accepted that the corporate entities have separate legal personalities apart from the individual members who make them up under the law.<sup>19</sup> A company can own property on its own behalf,<sup>20</sup> and may sue and be sued in its own name.<sup>21</sup> In the United States, even the question of whether a company has rights under the constitution has been raised.<sup>22</sup> A company is also immortal (that is, it lasts until it is properly wound up or struck off the register). Its identity persists independently of any change in the shareholding of the company's individual members,<sup>23</sup> and it survives even if all its members and controllers die.<sup>24</sup> So there are many practical reasons why a "commonsense" approach to corporate agency should be adopted. In practice at least, the overwhelming consensus is of a corporation as a separate entity created by law, with its own personality and capacities. Moreover, the increasing role that corporations play in the international human rights regime seems to have created a climate conducive to the normative discussion of the moral responsibilities of

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<sup>19</sup> *Saloman v A Salomon & Co Ltd* [1897] AC 22 (House of Lords); *Lee v Lee's Air Farming Ltd* [1961] AC 12 (Privy Council on appeal from New Zealand).

<sup>20</sup> *Macaura v Northern Assurance Co Ltd* [1925] AC 619 (House of Lords).

<sup>21</sup> *Foss v Harbottle* (1843) 2 Hare 461 (Vice-Chancellor's Court, England); *Daimler Co Ltd v Continental Tyre & Rubber Co (Great Britain) Ltd* [1916] 2 AC 307 (House of Lords). The separate personality of the company is not to be disregarded in this respect even if it is wholly controlled by the persons sought to be made liable: *Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd* [1921] 2 AC 465: 475 *per* Lord Buckmaster (House of Lords).

<sup>22</sup> The issue was tested in the Supreme Court of the United States in the case of *Nike, Inc. v Marc Kasky* (14 October 2002), which involves a company's rights to freedom of speech under the First Amendment. The case was settled out of court in September 2003.

<sup>23</sup> *Abdul Aziz b Atan v Ladang Rengo Malay Estate Sdn Bhd* [1985] 2 MLJ 165 (High Court, Malaysia).

<sup>24</sup> *Re Noel Tedman Holdings Pty Ltd* [1967] QdR 561 (Supreme Court, Queensland).

corporations: “Because they affect people’s lives in massive, not marginal ways, corporations are being said to bear some responsibility for their actions” (Kreide, 2007b: 7, 8). Given this, it seems natural to propose an alternative discussion about CSR that acknowledges this moral dimension to the corporation, bypassing the ontological questions that remain indeterminate, and going straight on to the normative consideration of their responsibilities. Casting the discussion in the context of global justice and the role of TNCs therein, rather than business ethics, allows the discussion to move forward thus – particularly since, as it has been observed, “a corporation does not turn into a moral person simply because one recognises its obligations of justice” (Kreide, 2007b: 14).

Given the focus on political justice, then, the central moral question that this thesis focuses on is not what duties TNCs owe to the very poor, ethically-speaking. Rather, the question it asks is why, on principle, TNCs should be agents of justice in an ideal just global order. This, in turn, depends in part on how we think an ideal just global order should be structured, what political actors it should consist of, so as to best further the claims of each and every human being as free and equal individuals – and why.<sup>25</sup> The central issue, then, is about *just agency* – specifically, the normative reasoning that motivates the identification of different basic political units, which in turn generates theories with different normative content. Different theories offer their own perfectionistic conception of an ideal just global order consisting of certain political institutions that achieve the political ideals that they uphold. Which political institutions, however, and why TNCs, is the question.

Within the context of global justice, the particular brand of global justice conducive to a discussion of CSR is *prima facie* a cosmopolitan one.<sup>26</sup> At the very heart of the matter, cosmopolitanism “is opposed to a view that posits principled restrictions on the scope of an adequate conception of justice”

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<sup>25</sup> See *supra* fn 17.

<sup>26</sup> On a point of terminology, it is worth noting again that this is why the more traditional term of *international* justice is eschewed in favour of *global* justice here. As mentioned previously, the former phrase is almost always employed to refer to the ethical relations between states and/or a just international order in which states are the only agents of justice of moral and political importance (Caney, 2005: 2). Cosmopolitans, therefore, tend to favour the latter phrase.

(Scheffler, 1999: 256). Cosmopolitans, therefore, reject realist or nationalist or other state-centric arguments, which argue that the state or a state-based world order is or will be (with reform) sufficient to secure the political ideals that cosmopolitans invoke, but without the risk of concentrating absolute power in non-state-based global political institutions.<sup>27</sup> Cosmopolitans argue that global political institutions are, in fact, necessary to secure political justice.<sup>28</sup> With regard to a theory of CSR, adopting a cosmopolitan conception of global justice means that the discussion of TNC agency in global poverty alleviation happens within a framework of international liberalism that advocates a *pluralized* understanding of agency in global justice – that is, a just global order made up of not just states and individuals, but various other non-state, non-person actors like TNCs (Beitz, 1999b).

So what is cosmopolitan global justice, and how do TNCs fit in? In the following three sections 1.2 to 1.4, I provide a critical review of three cosmopolitan approaches to restructuring the global basic order, what I call the ‘extreme cosmopolitan position’, the ‘strong cosmopolitan position’, and the ‘weak cosmopolitan position’. The first posits the claim that cosmopolitanism results in a non-state-based world order, the second that global justice is achieved through radical reforms to create a ‘plurarchic sovereignty’ composing of state and non-state actors, and the third that a cosmopolitan conception of global just agency entails a balance between our special responsibilities and global responsibilities. In each section, I explain why these three approaches are problematic when it comes to locating the site of cosmopolitan global justice in which TNCs may feature.

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<sup>27</sup> Caney (2005) provides a comprehensive taxonomy of the traditional state-centric theories. This includes three possible camps: (i) those who affirm that states should pursue their national interests (an ethical claim) and do in fact pursue their own interests in practice (an empirical claim) (“realists”), (ii) those who subscribe to a ‘society of states’ view – that is, the idea of a just international order comprising of an association or international “society” in which states (or if we adopt Rawls’ terminology, “decent peoples”) accept that they have moral duties to other states (or decent peoples), and (iii) those who hold the view that nationality carries with it special obligations, and that these special obligations have ethical significance (“nationalists”) (7-16). Beitz (1999a) posits a similar taxonomy.

<sup>28</sup> Although some cosmopolitans, like Caney (2005), endorse the weaker claim that they are insufficient because, as he argues, in a transnational democratic culture, a cosmopolitan global order should go hand in hand with a global civil society (Caney, 2005: 173).

## **1.2. The extreme cosmopolitan position :**

### **A supra-state cosmopolitan court for CSR**

Some cosmopolitans argue that a cosmopolitan world view results in a supra-state world order. In his article *A Cosmopolitan Court For Transnational Corporate Wrongdoing* (1998), Jackson argues for such a non-state-based world governing body to oversee and adjudicate wrongdoing on the part of TNCs (Jackson, 1998). The conception of a cosmopolitan court for transnational corporate wrongdoing that he presents is of an international court whose function is to adjudicate corporate liability at the global level, covering both civil and criminal jurisdictions. He posits its functions as follows: (i) to enable victims from weak or failed states who are harmed by TNC activities to sue for damages which would otherwise be unavailable to them (what he calls ‘compensatory justice’), (ii) to adjudicate conflicting judgments from different domestic courts and conflicts between regional legal blocs (what he calls ‘procedural justice’), (iii) to criminally sanction TNCs for committing internationally recognised crimes (what he calls ‘retributive justice’), and (iv) to level the playing field between different domestic legal systems with varying abilities to regulate TNCs, and to interpret norms and set global minimum standards for corporate behaviour (what he calls ‘distributive justice’) (Jackson, 1998: 759, 762). The court is envisioned as a supra-state, neutral and objective jurisdiction, free from politics, accessible to victims from less developing countries, with the power to interpret norms and set global minimum standards for corporate behaviour, as well as to impose sanctions such as fines and probation<sup>29</sup> in cases of corporate non-compliance. Let us examine Jackson’s four points in turn.

Firstly, I am not persuaded that a supra-state world court is necessary or advantageous for victims of corporate injustice. I think that domestic legal systems are adequate and sufficient to meet the functions that it is hoped such a court will serve. Firstly, access to civil courts for victims from less developing countries can be obtained without recourse to such a court. For example, the

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<sup>29</sup> Conditions of corporate probation may include requiring the firm to publicize its conviction and punishment, to have periodic, unannounced reviews of its books and records, interrogation of its employees etc.

Alien Torts Contract Act (1789) (“ATCA”) grants jurisdiction to US Federal Courts over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. Recent developments<sup>30</sup> have seen an increasing number of individuals using ATCA to sue corporations for violations of international law in countries outside the US. Although, jurisdiction is confined to American courts for the moment, ATCA demonstrates that access to the judicial machinery for distant and underprivileged victims is possible without recourse to a supra-state court. Moreover, the actual impact of ATCA law suits does not lie in winning; more than anything else, it is about forcing a settlement with the company in question, and about generating publicity over international corporate human rights abuses, forcing a political debate about the issues, and making TNCs focus more stringently on accountability.<sup>31</sup> Thus, although no action brought under ATCA against a TNC has actually reached a hearing to date, this is because most cases have been settled out of court. Thus, in these aims, ATCA has been very successful.

Secondly, the argument that a supra-state world court would provide the kind of procedural justice envisioned by Jackson is a non-starter. Jackson’s worry is that determining corporate civil and criminal jurisdiction is “often a complicated and controversial matter”, and that “the internal governance structure of corporations are not adequately equipped to deal with the complicated process of conflict resolution that international ethics demands” (Jackson, 1998: 759, 773). Thus, a supra-state court would provide TNCs with a sort of “one-stop” extra-jurisdictional legal recourse to clarify the ethical standards that they are held to. Furthermore, those who argue for a supra-state

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<sup>30</sup> In 2004, the US Supreme Court, in response to an amicus brief submitted by the International Chamber of Commerce and major American business groups calling for clarification of ATCA because it allegedly “interfered with international investment flows and US foreign relations” and was “an unacceptable extraterritorial extension of US jurisdiction”, ruled that foreign citizens would be allowed to bring cases to American courts under ATCA (*Sosa v Alvarez-Machian* 124 S. Ct. 2739 (2004)). This has mostly led to human rights cases being brought by foreign nationals against TNCs for human rights violations, and it empowers judges to decide which international legal standards should apply in particular cases, and whether the conduct in question violated those standards.

<sup>31</sup> Global Policy Forum articles on ATCA:  
<http://www.globalpolicy.org/intljustice/atca/atcaindx.htm>.



court point out that parties in international business contracts also benefit, because they are not subject to the variances of biased or incapable domestic courts. However, these arguments do not prove that a supra-state court is *necessary* for the following reasons: (1) There is already a procedure in place. Almost every law student has to study what lawyers call ‘the conflicts of law’ in law school – that is, the procedure of working out which jurisdiction a case falls within. (2) The procedure may be complicated, but it is not impossible. No one should presume that justice has easy answers. (3) Contractual parties ideally function in a free market. If they choose to do business in a state where the government and law courts are weak or failed, then they should be willing to bear the risk that the domestic courts will be biased or otherwise ill-equipped to handle complex issues that arise from their transaction (although, admittedly, some corporations use that to their advantage). Moreover, they would presumably have lawyers (who are presumably familiar with the conflicts of law) to draft contracts that protect them jurisdictionally. It is incumbent on those who argue for a supra-state court to prove, in this case, that it is procedurally necessary and that the existing legal infrastructure is insufficient. On both counts, this has not been proven for the reasons given.

Thirdly, holding TNCs *criminally* liable for wrongdoings in a supra-state world court presumes the existence of an established body of international penal law that can apply to corporations.<sup>32</sup> At the moment, there are a number of tribunals in existence which have international jurisdiction, but only with respect to inter-state disputes and human rights violations.<sup>33</sup> None of these international institutions exercise criminal jurisdiction over corporate crimes or corporations. Moreover, where international business law exists, it pertains mostly to

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<sup>32</sup> This is distinct from the *civil* law of torts that tribunals relying on ATCA, for example, draw on.

<sup>33</sup> The International Court of Justice (“ICJ”), for example, exercises jurisdiction over disputes, but only disputes as between states; it is not open to private individuals or to corporations. Other supra-state institutions like the European Court of Justice (“ECJ”), the European Court of Human Rights and the Inter-American Court of Human Rights exercise jurisdiction over criminal matters, but only with regard to human rights violations (or, in the case of the ECJ, violation of EU law) by member states, not individuals or corporations.

intellectual property, which falls under non-criminal jurisdictions.<sup>34</sup> A supra-court for transnational corporate crimes would, therefore, require the creation of international criminal legislation that can apply to corporations which does not yet exist (for example, international anti-bribery legislation), and/or the implementation of existing criminal legislation against corporations which does not yet apply internationally. It is also worth noting that the abovementioned international tribunals exercise their jurisdictions only on the basis of treaties entered into by states (for example, under the UN Charter), and even then, their jurisdictions are only invoked by virtue of the parties' consent. In other words, their jurisdiction is consensual, not compulsory. So even if the problem of the lack of international corporate criminal legislation could be overcome, it would be difficult to imagine any corporation submitting themselves to criminal liability voluntarily in the same way. So perhaps, in the final analysis, the biggest problem that the proposal for a cosmopolitan criminal court for corporate wrongdoing faces is not necessity or viability – although these are big problems in themselves – but simply one of motivation. Why would TNCs voluntarily subject themselves to the jurisdiction of a criminal court?

Finally, there is an argument that a supra-state world court for transnational corporate wrongdoing will level the playing field. The idea here is that corporate liability that currently falls under domestic legal systems operate in “a variety of unilateral, bilateral, and sometimes multilateral arrangements which are subject to numerous political tensions and diplomatic conflicts, requiring compromises and negotiations that frequently interfere with the objectives of justice, fairness and due process of the law” (Jackson, 1998: 757). Conversely, a supra-state court would, ideally-speaking, be able to render judgment at a level above often politicized issues waged between sovereign states. There are two assumptions behind this argument. Firstly, it assumes that politicking is a bad thing. But why should this be the case? There has been no evidence provided to suggest that political and diplomatic power struggles lead ultimately to injustice.

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<sup>34</sup> For example, the UN Commission on International Trade Law (UNCITRAL), the World Intellectual Property Organization (WIPO), the Bern Convention for the Protection of Literary and Artistic Works, and the Madrid Protocol Concerning the International Registration of Marks.

If anything, it adds another layer of checks and balances, and any allegations of injustice caused in this way would be legitimate grounds for a mistrial or an appeal. Secondly, it assumes that a supra-state court will be free from politicking. But why should such a court be any more or less free from politics than any other global political institution? Contrary to Jackson, international law *is* “politics by other means” (Jackson, 1998: 772). A transnational court is not exempt from politics simply because its jurisdiction transcends borders. If anything, the court’s inception would most certainly have to be a cooperative venture as between states in the first place and, if the model of the ICJ and other regional courts is anything to go by, its jurisdiction would have to be subject to state consent. What it will give is an alternative voice to individuals in developing countries, an alternative course of action against alleged wrongdoings by corporations. This does level the playing field to a certain extent. But it would be naïve to claim that the legal process in such a court would be free from politics.

In any case, Jackson never intended his proposed cosmopolitan court for transnational corporate wrongdoing to wield absolute power in corporate disputes. Indeed, he emphasizes that it is to be “supplemental” to the domestic courts and other dispute resolution mechanisms (Jackson, 1998: 772). However, he is vague on how this balance of power is supposed to be struck. Also, this means that it is unlikely that a case would reach an international court without having gone through the domestic legal system first. So state sovereignty will always be an issue, and it is hard to imagine how the cosmopolitan court for transnational corporate wrongdoing would be non-state-based. Moreover, there are other legitimate practical questions to ask about such a supra-state court, for example, whether and how it would have the “teeth” to enforce its judgments against corporations. For all these reasons, I argue that the empirical case has not been made for a supra-state cosmopolitan court for transnational corporate wrongdoing. Such a court is, for the reasons given, both impractical and unnecessary to achieving justice. Thus, the extreme cosmopolitan approach is ‘thinly cosmopolitan’ here because it does not result in a practicable scheme.

Moreover, we need to be aware of what the normative trade-offs are of such a proposal. In question here is a cosmopolitan line of reasoning that focuses on the creation of a “community of law” that takes the form of “a borderless world through the establishment of laws, rules, procedures, and institutions that will gradually supersede particular sovereignties and political loyalties... a world in which global standards of justice are virtually applied universally, without restriction by particular states or local laws” (Dahbour, 2005: 203). According to Jackson, the advantage of such a supra-state world court is that it approximates equality in relations of power between states, and avoids the forms of social organisation that sustain the exploitation of weak states. A normative political theory that advocates an extreme cosmopolitan position would, it is argued, address these “considerations of political sociology” which political theory cannot evade (Nielsen, 1983: 609). However, it is equally possible that an extreme cosmopolitan position would conversely make the problem of domination by certain hegemonic states worse. If this were the case, it would at the same time erode the sovereignty of other states. The point here is that state sovereignty itself has value: the principle at stake in developing the sovereignty doctrine and upholding the legitimacy of states is that of peace, of preventing war and conflict between different communities (Dahbour, 2004). However, a cosmopolitan theory of global justice that seeks to transcend the state – in this case, by the establishment of a supra-state world court – would be de-legitimizing state sovereignty in the name of cosmopolitan principles of human rights. So the proper question to ask is this: Why is state sovereignty a less important goal than cosmopolitanism?

Adopting a cosmopolitan worldview necessitates moving away from a categorically state-centric position. But, as I have argued in this section, the other extreme which claims that a cosmopolitan conception of global justice results in a supra-state or non-state-based world order – in this case, a cosmopolitan court governing transnational corporate wrongdoing, whether civil or criminal – is problematic; in fact, most cosmopolitans explicitly reject this claim (Caney, 2005: 165). Between the two extremes then – that is, statism and a supra-state world order – there lies a spectrum of possibilities for a middle ground to be struck.

Herein, I think, lies the site of cosmopolitan global justice. Let us consider two such cosmopolitan positions.

### **1.3. The strong cosmopolitan position:**

#### **Plurarchic sovereignty and responsive representation in the UN**

One methodology used by philosophers to locate this cosmopolitan middle ground is to distinguish between two forms of cosmopolitanism: Samuel Scheffler discriminates between ‘extreme’ and ‘moderate’ views of cosmopolitanism (1999b), Simon Caney between ‘radical’ and ‘mild’ cosmopolitanism (2001) or ‘ambitious’ and ‘modest’ cosmopolitanism (2005), and David Miller between ‘strong’ and ‘weak’ (1998). Here, I shall adopt the terms ‘strong’ and ‘weak’ cosmopolitanism. Weak cosmopolitanism is the belief that there are global principles of justice that generate moral obligations between all individuals regardless of their proximity to each other. Strong cosmopolitanism goes one step further and claims additionally that there are no state- or nation-wide domestic principles of justice: “state boundaries can have derivative, but they cannot have fundamental, moral importance” (Caney, 2005: 105).<sup>35</sup> How do these distinct cosmopolitan approaches translate into conceptions of a just global order? And how do TNCs fit in?

An active advocate of the strong cosmopolitan position is Andrew Kuper. In his book *Democracy Beyond Borders* (2004a) and several other places, he argues for an extended model of representation for the core organs of the UN that is strongly cosmopolitan (see also Kuper, 2004b; 2005d; Ruggie *et al*, 2004). His starting point is a quote by the former UN Secretary-General, Boutros Boutros-Ghali:

“The participation of new actors on the international scene is an acknowledged fact; providing them with agreed means of participation in the formal system, heretofore primarily the province of States, is the new task of our time.” (Boutros-Ghali, 1996: 25)

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<sup>35</sup> The quote is Charles Beitz’s (in Caney, 2001: 976), who affirms this radical view.

Kuper's response to this task is to suggest a new model of representation for the UN that, in his view, is more in keeping with the phenomenon of globalisation. In his proposed model, the core organs of the UN - the General Assembly and Security Council – are extended so as to formally include not only states, but also regional and inter-governmental organisations, and non-state actors like international NGOs, TNCs, trade unions and professions. These non-state actors would first have to fulfil a set of practical criteria,<sup>36</sup> whereupon each group would appoint a representative to sit on the Assembly or Council, the number of representatives totalling no more than 600 or 24 respectively. His proposal also lays out new election procedures and veto powers to enable decision-making and interaction between the representatives and institutions within this more complex UN structure. By including these non-state actors alongside state actors on a formal rather than the present consultative status conferred on some, sovereignty is dispersed not only vertically but also horizontally (Kuper, 2000). That is to say, in addition to a vertically multi-layered institutional scheme consisting of states and regional and inter-governmental organisations, the division of labour also extends horizontally over a plurality of organisations not defined by state or other territorial lines.

Kuper's radical proposals to reform the structure of the UN are strongly cosmopolitan because, if implemented, these reforms effectively tie the hands of states from exercising their veto purely along the lines of national interest - or, at least, their veto power is significantly circumscribed. In other words, it shifts the boundaries of justice away from the state both by being inclusive of certain non-state actors, as well as exclusive of any "domination by a majority coalition of illiberal and anti-democratic states, by hegemonic rich and powerful states, or... by a fitful combination of the two" (Kuper, 2004a: 171). In more formal terms, Kuper's new model is strongly cosmopolitan because it results in a legally sanctioned political framework in which *all* of the properties of sovereign

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<sup>36</sup> Kuper lists these criteria as (i) basicness (i.e. concerned with basic human interests), (ii) inclusiveness, (iii) distributive subsidiarity (i.e. concerned with some kind of global shared interest better pursued at a global level of governance), (iv) democratic control (i.e. democratically run), (v) permanence, (vi) non-deception (i.e. transparent), (vii) audit, (viii) non-dependence (i.e. receiving funding from a variety of sources), and (ix) non-partisanship (i.e. no conflict of interests with their UN role).

statehood are relaxed, as opposed to just one or two. According to the properties identified by Caney (2005: 149-152), it is a political framework in which membership is not 'territorially defined', where the political units lack 'comprehensive authority' (that is, authority over all issues, not only some), and no political institution has 'absolute and final authority'.

Twin cosmopolitan arguments work together to underpin this radical transformation of the UN for Kuper: 'plurarchic sovereignty' and 'responsive democracy'. 'Plurarchic sovereignty' is the argument that the tasks of political governance, and hence the division of responsibilities, should be divided along functional rather than territorial lines. Kuper offers several bases for this argument. Firstly, the phenomenon of globalisation has significantly changed the nature of global interaction.<sup>37</sup> Many issues now transcend territorial boundaries - for example, crime on the internet, environmental protection, the problem of child and sex trafficking. Hence, the spheres of actions are also different, what Kuper calls "non-territorial spaces of interaction" are playing an increasingly significant role in human affairs (2004a: 31). Hence also, our conception of a just global order must change in order to put in place non-territorially-based political agents who are able to better regulate these non-territorially-based spheres of action. The re-construal of political identities along functional rather than traditional territorial lines merely reflects the re-construal of the spheres of action in a globalised world.<sup>38</sup> In a changing world with changing needs, the idea of sticking to a global order based only on states is no longer traditional but, rather, "arbitrary" (Kuper, 2004a: 165).

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<sup>37</sup> David Held identifies five ways in which the notion of self-governing states is "disjunct" from the reality of an increasingly interdependent world because of globalisation: (i) The development and expansion of international law, (ii) the increasing power and influence of international institutions like the IMF, the World Bank, the UN, the WTO, the EU, over people's lives, (iii) the impact of supra-national military institutions like NATO, (iv) the way in which cultures are increasingly influenced by other cultures, compounded by increasingly borderless media and communications networks, and (v) economic globalisation, particularly in financial markets and the multi-national operations of TNCs (Held, 1995).

<sup>38</sup> The phrase "reconstrual of political identities" is attributable to O'Neill (1997).

On the other hand, do the winds of globalisation necessarily call for radical reform of the global basic structure? Traditionally, the non-territorial spaces of interaction that Kuper identifies have been filled by inter-governmental organisations and global civil society (made up of NGOs, social movements and other non-state, issue-based actors). For example, trans-border crimes like sex and drugs trafficking, money-laundering, intellectual property crime, and terrorism are addressed by inter-governmental agencies like Interpol. The UN Office on Drugs and Crime (UNODC), which has 21 field offices and 500 staff members worldwide, coordinates research and supports states in responding to the inter-related issues of drugs trafficking, international terrorism and corruption. Many states are, in turn, party to multilateral UN conventions and protocols that regulate how these trans-border crimes should be addressed. UN-led initiatives like the Intergovernmental Panel on Climate Change (IPCC), which is made up of governmental representatives and independent scientists, also play a supporting role in providing information and assessment to aid policy-makers in their decision-making on environmental issues. Many have, in addition, pointed to the success of global civil society in lobbying international institutions and states on global issues ranging from corruption to climate change to child labour. These organisations “have as their primary purpose the promotion of social and/or environmental goals rather than the achievement of economic power in the marketplace of political power through the electoral process” (Murphy & Bendell, 1999: 6). Indeed, campaigning bodies actively representing the interests of individuals, consumer associations, charities, single-interest groups and NGOs are credited with being the main driver for the rise in CSR (Owen, 2002; O’Mahony, 2004). These modern strategies are particularly significant where the state is weak or otherwise incapable of tackling the issues. In other words, the trans-border issues that Kuper is concerned about seem to be addressed by the current global just agency structure already.

In reply, other strong cosmopolitans like Simon Caney (2005) argue that the current status quo of ‘state and state-based bodies plus global civil society’ is not enough. It is insufficient because formal governance and power still resides in one group of actors – states – and “a statist order possesses certain deep structural



features that frustrate cosmopolitan ideals” (Caney, 2005: 172). The problems are familiar and well-covered in the literature, including the collective action problem and the asymmetry of power between states. And these problems bear out in practice. Caney highlights the observation that the majority of NGOs accredited as consultants by the UN and WTO are from developed or industrialized countries, such that the voice of the most disadvantaged is least able to make itself heard. Thomas Pogge, too, has long held the view that trade agreements entered into by members of the state-based WTO, which are intended to liberalize international trade, in fact protect rich countries at the expense of poor countries (Pogge, 2002). The IPCC itself also been accused of climate bias, that it is motivated by pre-conceived agendas and political factors, on the grounds that scientists are quick to find what they are looking for if it means getting more funding from governments.<sup>39</sup> These are but a few examples, but they weigh convincingly in favour of the strong cosmopolitan position: Given the apparent problems and uncertainties surrounding a state-centric global order, a formal system that does not concentrate power in one group of actors, but instead divides power between states and global authorities, will lead to more equitable and just outcomes.

Nonetheless, one might still reply that a cosmopolitan solution does not necessarily point its way to the radical ‘system of functionally plural sovereignty’ that Kuper has proposed. Before one takes that leap, there are three questions one needs to ask here: Firstly, are the kind of functions played by the non-state actors in question functions that are necessarily exercised by them as formal members of the UN? Secondly, are the issues in which these non-state actors can play a role in resolving issues that cannot be resolved apart from the UN? Thirdly, even if we answer ‘yes’ to the previous two questions, do they necessarily point to a blanket reform of the UN’s membership?

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<sup>39</sup> The debate is ongoing. As a sample of the opposing sides of the debate, see:

- (sceptics) Open letter to the UN Secretary-General, 12<sup>th</sup> December 2007: <http://www.nationalpost.com/news/story.html?id=164002>
- (anti-sceptics) Richard Black’s article for the BBC: <http://news.bbc.co.uk/1/hi/sci/tech/7092614.stm>

With regard to the first question, Kuper offers two examples, in separate places, of the functions that specific non-state actors exercise. First of all, he points to the role of certain non-state actors in plugging the “serious informational deficit” within the UN (Kuper, 2004a: 176). He argues that NGOs and TNCs are better placed, being on the ground and in the field, and face fewer conflicts of interests to access contextual information and to create and maintain up-to-date information databases on pertinent social issues, particularly within difficult “failed states” and “grey markets” (Kuper, 2004a: 176-177). Presumably, the end result is that UN action is always falling behind the ongoing situation. Hence, he argues for the inclusion of such “grassroots” organizations in the UN formal structure.

The question here is: Is it necessary for these non-state actors to be formal members of the UN in order for them to be the kind of grassroots-level information providers that Kuper thinks they can be? Article 71 of the UN Charter already empowers the Economic and Social Council of the UN (ECOSOC), which coordinates and oversees several major UN agencies including the Commission on Human Rights, to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”. Under this Article, several NGOs now have accredited consultative status in one UN initiative or another, and Kuper himself recommends that the scheme be expanded in the short- and medium-term (Kuper, 2004a: 175-176).

Of course, not all non-state actors exercise an informational function only. In a separate example, Kuper highlights the hitherto unacknowledged role that TNCs and NGOs have played in conflict resolution. For example, they were able to take effective action to curb hostilities in the war in Angola: Because the war was fuelled in a large part by trade in ‘conflict diamonds’, De Beers – which was the world’s major corporate buyer and seller of diamonds – entered into an agreement to restrict trading in these diamonds. The agreement was in turn initiated by the INGO, Global Witness. This agreement played a central role in resolving a chief cause of political instability in this situation (Kuper, 2004a: 172; 2004b: 12-13). Similarly, corporate interests have provided some of the strongest

incentives to resolve the conflicts in other areas as well. Given that non-state actors like these already play a central role alongside states in reducing and resolving conflict, despite not possessing characteristics of states like military capabilities or the capacity to tax, Kuper argues that they should be represented in the decision-making structures that aim at conflict resolution and maintaining peace.

However, can the above example not be used to show instead that the non-state actors in question are capable of acting outside the domain of the UN? Thus the second question: Are the issues in which these non-state actors can play a role in resolving issues that cannot be resolved apart from the UN? Kuper might reply by arguing that their representation alongside states in decision-making structures that aim at conflict resolution and maintaining peace would lead to better coordination and more immediate responses to volatile situations (Kuper, 2004a: 173). However, all that these examples show is that specific situations call for a specific combination of actors exercising specific functions. It is not clear from the examples that it should result in a blanket reform of the UN. Kuper himself admits that some governmental functions may still “be best exercised within territorial demarcations” (Kuper, 2004a: 31). If this is so, then the question becomes *which* functions and *which* issues call for the kind of multi-player institutional configuration that he has in mind, and *which* non-state actors to include for *which* issues. Without further guidance than the set of practical criteria that Kuper has laid out for non-state participation, there is a danger that the ‘plurarchic model of representation’ for the UN will be as “arbitrary” as the state-based model of representation for the UN. Hence, ‘plurarchic sovereignty’ cannot justify the radical reforms that Kuper has proposed.

The normative weight of Kuper’s argument for political globalisation, then, falls on his second argument, ‘responsive democracy’ (Kuper, 2004a: 75-136; 2004b). ‘Responsive democracy’ is the idea that democratic representation goes beyond the traditional electoralist and statist models. Rather, what it is after is “substantive representation”, that is, representation that is responsive to the public interest and where citizens have “a degree of ongoing, systematic and active control over their elected representatives”. In other words, the issue is

more about “overall control over governance and its outcomes than about whether any particular agent is elected or not” (Kuper, 2004b: 16).<sup>40</sup> Kuper also points out separately that it cannot be assumed that a state-based system best secures the interests of each and every person as free and equal individuals, because “the interests of all human individuals and those of the same persons assumed to be grouped as members of states do not necessarily coincide” (Kuper, 2004a: 14-18). We only need to think about the specific interests of minority persons in a democratically-elected state for an example of this.

Substantive representation requires a complex division of labour between state and non-state actors. A multi-institutional system serves two purposes: it provides a framework in which states and non-state actors can check and balance one another, while at the same time collectively improving the level of substantive responsiveness globally. In other words, political globalisation leads to responsive democracy. Descriptively-speaking, it does no more than to capture the “system-centric” (as opposed to “agent-centric”) way in which political institutions function and interact in order to secure democratic representation of the interests and views of the public. Normatively-speaking, however, it provides a democratic argument for the pluralized system of governance that Kuper has proposed. The argument is that such a pluralized system best allows citizens to exercise control over the social, economic, and political forces that structure and govern what they can do in life – what Simon Caney alternatively terms ‘cosmopolitan democracy’ (Caney, 2005: 156-159).

The concern here is that responsive democracy is only ‘thinly cosmopolitan’. While it provides the normative justification for a system of global governance that formally includes non-state actors, it does not actually explain why one non-state actor should be included but not the other. Kuper seems to identify NGOs and TNCs as the main contenders in the ‘non-state actors’ category for his expanded vision of UN representation, but his reasoning

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<sup>40</sup> This echoes Caney’s argument (2005: 152-164) for what he calls the ‘rights-based’ justification, which maintains that people must have the right to exercise control over the social, economic and political forces that govern what they are able to do. This is contrasted with what he calls the ‘intrinsic’ approach, which he rejects, which maintains that people must have the freedom to decide who governs them and where the boundaries of justice fall.

is based entirely on the empirical assessment of their capabilities. Empirically-speaking, as we know, there are several functions that NGOs and TNCs can and do exercise which, in conjunction with state action, lead to just outcomes. However, these empirical reasons cannot be generalised. Instead, they represent specific values discoverable in TNCs and NGOs alone. The principles expressed by these values, therefore, justify the inclusion of TNCs and NGOs in the 'plurality of powers' envisioned by Kuper, but they are not principles that can be deployed to justify the existence of the 'plurality of powers' itself. Nor can they be used generally to identify the other basic non-state political units that make up an ideal just global order. This is compounded by the problem that what constitutes a "non-state" actor is itself ambiguous (Alston, 2005b: 14-17).

Furthermore, because these principles apply to specific actors acting in specific spheres of action, they also suggest *ad hoc* constellations of state and non-state actors that are contingent on circumstances rather than on principle. So, rather than providing justification for radical reform of the global basic structure, the end result is in fact contingent on "what combination of actors produces the highest level of systemic responsiveness overall to the best interests and judgments of the public" at any given time (Kuper, 2004a: 165). Accordingly, the principles do not provide a complete answer to the question 'Why TNCs?' either. The answer, as things stand, turns out to be merely a phenomenological one, insofar as it is based on how we conceive the social world according to our experience. According to the phenomenological argument, TNCs should be included in a strongly cosmopolitan global structure because they can and have contributed to the achievement of global justice in specific ways. But our perceptions of the world can change. Not too long ago, corporations were treated with "visceral loathing" by theorists of justice and development (Kuper, 2004b; 2005d). Yet, today, they are hailed as potential agents of justice by both. Moreover, as we have seen, these empirical reasons are no answer to the question 'Who else?'. Therefore, the argument is 'thinly cosmopolitan', because while the strong cosmopolitan argument for including TNCs in the radical vision for reform of the UN proposed here succeeds in moving away from a staunchly state-centric position, the normative reasoning for why one set of actors should be

included but not another turns out, in the end, to be bounded by what we see and know of our present world, instead of resting on cosmopolitan principles that can be deployed generally.

For these reasons, the strong cosmopolitan approach that underpins Kuper's expanded model of representation for the UN is 'thinly cosmopolitan' because it moves away from a state-centric position while placing a wider arbitrary restriction on the domain of global just agency. It is "arbitrary" and "restrictive" because it has as its foundation not universal principles of justice or any sort of normative basis, but is rather historically contingent on what we know about our social world. In other words, there are no generalisable principles of inclusion that make Kuper's strongly cosmopolitan model of representation truly cosmopolitan, in the sense that it can apply to other non-state actors, not just TNCs and NGOs. Hence, it is 'thinly cosmopolitan' because it is not genuinely cosmopolitan in this sense.

Given the problems with the strong cosmopolitan position, is there an alternative cosmopolitan approach that can pick up the gauntlet? On this note, we turn to the weak cosmopolitan position.

#### **1.4. The weak cosmopolitan position:**

##### **Balancing special and global responsibilities**

Weak cosmopolitanism begins with an idea that all cosmopolitans, whether weak or strong, accept: that each person has equal moral worth. Pogge sums up the key features of this notion as follows:

"Three elements are shared by all cosmopolitan positions. First, *individualism*: the ultimate units of concern are human beings, or persons – rather than, say, family lines, tribes, ethnic, cultural or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, *universality*: the status of ultimate unit of concern attaches to every living human being equally – not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims. Third, *generality*: this special

status has global force. Persons are ultimate units of concern for everyone – not only for their compatriots, fellow religionists, or such like.” (Pogge, 1992: 48-9)

Individualism, universality and generality form the three pillars of cosmopolitan global justice. Where weak cosmopolitanism departs from strong and extreme cosmopolitanism is that it does not go further to make the additional claim that the recognition of the universal moral worth of every individual as free and equal persons entails the correlative view that individuals ought to treat all others equally *without exception*. Nor does it make the claim that accepting these basic moral tenets of cosmopolitanism entails political structures that reflect and institutionalise a flat hierarchy of moral obligations across the board, one that does not distinguish between the needs of a stranger and one’s own child,<sup>41</sup> a distant person and a fellow countryman – in other words, a truly non-exclusive ‘world without borders’. On the contrary, those who espouse weak cosmopolitanism recognise that we sometimes desire to prioritise individuals whom we have a special relationship with, and indeed, make the moral claim that we owe special duties to these persons as a matter of justice – while at the same time acknowledging the equal moral worth of every individual, near or far to us. Justice, then, must take into account both the demands of social and global justice.

According to this formulation, weak cosmopolitanism is committed to two very diverse values: compatriotism and universal equality (Scheffler, 1995a). Each reflects tendencies that pull us in different directions. Each reflects a different conception of the individual’s normative responsibility – one seeks to delineate and restrict the size of one’s moral world according to particularistic types of relationships, while the other seeks to expand it to apply to everyone equally without restriction. Both are equally supported by the different social contexts within which they arise – one by a commonsense understanding of human social interactions and the phenomenology of agency (for instance, we

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<sup>41</sup> Although this particular contrast could alternatively be argued along the lines of public/private justice.

tend to prioritise things and people that are closer to us)<sup>42</sup>, the other by an awareness of the growing interdependence between individuals of the world and the far-reaching impact of their actions in an increasingly globalised world. Both generate responsibilities that are morally salient and required of us as a matter of justice, whether this takes the form of social justice or of global justice. The task of weak cosmopolitanism, therefore, is to find ways to jointly accommodate the two conflicting responsibilities, to find that elusive cosmopolitan middle ground where they meet: “Caught between powerful universalistic and equally powerful particularistic tendencies, [weak cosmopolitanism] define[s] a widely held intermediate position which seems increasingly to require defence.” (Scheffler, 1995a: 34)

Hence, we return to the question of the cosmopolitan middle ground. The question here for weak cosmopolitanism is this: How do we reconcile our special duties with our more expansive global duties, and what does a global order that balances the two look like? How should the division of political labour be deployed? As we have seen, different cosmopolitan theorists have approached the question differently, and accordingly assigned the categories of normative responsibility along different lines. On one extreme, there are those like Kevin Jackson for whom the idea of a cosmopolis of different political actors cannot be detached from the need for a supra-state world government that transcends the boundaries demarcating the different spheres of political action, state and non-state (in section 1.2). Then, there are those like Andrew Kuper who, like Thomas Pogge, reject the “righteous idiocy” of the extreme position (Pogge, 2002b: 89), but who nonetheless hold on to the strong position that universal equality only makes sense in combination with the political demand for a pluralistic global order that can collectively represent all sections of global society (in section 1.3). As we have seen, both the extreme and strong cosmopolitan positions succeed in diluting the dominance of state sovereignty in our political thinking, but have

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<sup>42</sup> To elaborate on this, the phenomenology of agency states that we tend to give primacy to the things that are near rather than remote, spatially- and temporally-speaking, because we feel that we have more influence over them. Similarly, we are more willing to make sacrifices for our families, friends, communities and comrades because they are spatially closer, and because the social context in which we find ourselves situated ordinarily interprets such acts as good or virtuous (Scheffler, 1995a).



been less successful at presenting a viable alternative conception of just global agency to replace the traditional state-centric models – importantly, in our case, one that provides the normative justification for why and how TNCs fit into our global imaginations, if at all. Does the weak cosmopolitan position do any better?

To get an answer, we turn to the work of Samuel Scheffler, who has treated the question of locating the cosmopolitan middle ground in great length and detail. In *Boundaries and Allegiances*, a collection of his essays on the topic over a period of ten years, Scheffler systematically takes the reader from the dilemma facing cosmopolitans that we have laid out here, to a defence of what turns out to be, as elaborated below, a weak cosmopolitan position. However, contrary to the radical revisionist propositions of the extreme and strong cosmopolitan positions, he is more cautious in suggesting that cosmopolitanism has any ready answers. He concludes early on that

“the most immediate effect of coming to see the global perspective as morally salient may be, not to present us with a developed, non-restrictive conception of normative responsibility, but rather to generate doubts about our practice of treating the individual agent as the primary locus of such responsibility... and we are unlikely to find a solution to the political problem without attaining greater stability in our thinking about normative responsibility more generally” (Scheffler, 1995a: 44, 47).

For Scheffler, the cosmopolitan objection to realist, nationalist and other state-centric theories – what he calls the ‘distributive objection’ – is not that the demands of global justice should negate all claims of special responsibility (whether these be to one’s family or fellow countrymen etc.), or even that one can never take precedence over the other (Scheffler, 1995b; 1997; 1999a). Rather, the purpose of focusing on the normative pull of global perfect egalitarianism and contrasting it with the starkly inegalitarian character of our special interests, is to show up the tension between our global responsibilities and our special responsibilities. The problem is, for most people, these tensions are not mutually exclusive; they merely represent different moral values – that of

justice and equality, and of personal friendship and compatriotism – that we find ourselves simultaneously drawn and committed to. If conceptualised in a vacuum, these values are in conflict. But when placed together in the context of our internal moral outlook, they are in fact not incompatible in the minds of most people. Hence, the tension between the two cannot be resolved by theory taking one side or the other, nor can it be eliminated.<sup>43</sup>

However, according to Scheffler, it may be made “less problematic” by “resolv[ing] such problems, to our own satisfaction at least, when we fix on a course of action, or design a policy or institution, or identify a set of principles, that will enable us to claim, in good faith, to have found a way of doing justice to both” (Scheffler, 1999a: 94). The only way to do this, and still remain cosmopolitan, is to assert that our local attachments and special affiliations must be “balanced and constrained” by our global responsibilities and the interests of other citizens of the wider world (1999a; 1999b: 115). This is the weak cosmopolitan position. For Scheffler, weak cosmopolitanism is what he calls “traditionalism with a cosmopolitan inflection” (Scheffler, 1999b: 275). By this, he means that even a citizen of the world must legitimately be allowed special relationships and affiliations with particular persons or groups of persons and owe them some things, as a matter of justice, that he/she does not owe to non-members.<sup>44</sup> But these special relationships may consistently co-exist with one’s moral standing and responsibilities to other human beings in general; one does not need to replace the other. Rather, to say that one is concerned about justice is to say that, *in addition to* the principles of social justice that govern our particular

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<sup>43</sup> The need to choose between our social responsibilities and our global responsibilities can, of course, be eliminated by taking one side to the exclusion of the other. The first would result in a state-centric theory, which can take the form of either realism, or nationalism, or a conception of the world as a ‘society of states’ (*supra* fn 27). The second would result in an extreme or strong cosmopolitan position, which we have discussed in the previous sections. A third way of eliminating the dilemma is to say that it does not matter because we ought to choose an approach – any approach – that achieves maximum human welfare. This is the consequentialist approach, which Scheffler rejects as going against our commonsense understanding of normative responsibility (Scheffler, 1999a). The consequentialist position is also unhelpful for our purposes, because it does not make any explicit claims about just agency, or provide any non-derivative, normative reasons why TNCs should play a role in global justice.

<sup>44</sup> Of course, it is not just concerns of justice that constrain our particular relationships, but also factors like commitment, adherence to behavioural norms etc.

relationships, one also subscribes to the principles of global justice. These global commitments, in turn, circumscribe and direct how and to what extent we act on our domestic commitments.

Is this the only way of resolving the tensions between global and special responsibilities? In the first place, if the boundaries of our special responsibilities are much narrower than those of our global responsibilities, should they not constrain our global responsibilities, instead of the other way round as Scheffler has posited? That is to say, should it not be the case that the expansive scope of our global responsibilities is somewhat curtailed by the necessary investment of scarce resources to our special responsibilities? It is unlikely that this is an unintentional lapse. Rather, I think that it reveals a conservatism on Scheffler's part, by which weak cosmopolitanism is defined not in terms of how to move away from a state-centric position, but in terms of finding cosmopolitan solutions to the problem of preserving the domestic domain against the pressures and demands of global justice. The goal, therefore, is not to make us better world citizens, but to protect our special interests from the things that threaten to pull us away from our commitments to family, friends and countrymen. Scheffler's conservatism is, in fact, not uncommon. Both academics and practitioners alike "genueflect in this way before the altar of 'State' sovereignty" (Alston, 2005b: 4). Philip Alston, for example, points out that the continued practice of defining actors in terms of what they are not (referring to the prevalent usage of the term "*non-state actors*") underlines the old-fashioned assumption that the state, not individuals, is the primary actor in international human rights around which all other entities revolve.<sup>45</sup>

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<sup>45</sup> Alston suggests a few reasons for this cognitive bias, *viz.*, why academics and practitioners alike have been reluctant to rethink the role of the state and expand the analytical framework (in this case, of international law) to take into account the role non-state actors: "an intrinsic lack of imagination; a natural affinity with the status quo; a deeply rooted professional commitment to internationalism... premised on the continuity of the system of sovereign equality; a reluctance to bite the hand that feeds; or simply the conviction that respect for that system has taken a great deal of time and human suffering to achieve and that it continues to offer a better prospect than any alternative that has so far been put forward." (Alston, 2005b: 21).

In this case, Scheffler's formulation of the weak cosmopolitan position is still *cosmopolitan*, because it gives weight to our special responsibilities without precluding the needs and demands of global justice. By emphasizing the need to balance the two, he departs from a strictly state-centric position, which places all weight on our special responsibilities as the only source of independent reasons for moral action. However, Scheffler's weak cosmopolitan position is only '*thinly cosmopolitan*', because the conservative approach with which he addresses this balancing act suggests that, if it is actually operationalised and translated into principled judgments and action-guiding policies, more weight will be given to our special responsibilities in the trade-off. Is there another weak cosmopolitan interpretation that avoids this charge of thin cosmopolitanism?

Martha Nussbaum suggests that there is. She agrees with Scheffler that "[n]o one of the major thinkers in the cosmopolitan tradition denie[s] that we can and should give special attention to our own families and to our own ties of religious and national belonging" (Nussbaum, 1996: 135). However, she adds that "the primary reason a cosmopolitan should have for this is not that the local is better *per se*, but rather that this is the only sensible way to do good" (Nussbaum, 1996: 135-136). In other words, our special responsibilities are justified because acting on them contributes to the wider good of all humankind. For example, 'love thy neighbour' is not a good principle in and of itself, but it is good because it promotes peace-seeking behaviour towards others further away from us. That is to say, there are no independent reasons for promoting the interests of the people we care specially about that are not derived from the global interests of humanity as a whole. Social justice is a servant of global justice, according to Nussbaum, and it is the bigger global picture that is of ultimate concern here.

On the one hand, Nussbaum's position is still a weak cosmopolitan position, insofar as it is "weaker" than the strong cosmopolitan position that we have seen, which claims that we ought to treat all human beings equally without exception. On the other hand, it represents a "thicker" form of the weak cosmopolitan position than Scheffler's because, instead of advocating balance and constraint between two equally competing norms of justice, it treats as

fundamental only the substantive norms of global justice. At this level, there is no balancing act to be performed, because there is no dilemma. Any comparison between social and global justice can only be justified on practical or instrumental grounds. But on a basic level, the principles of global justice take precedence. Nussbaum's interpretation of weak cosmopolitanism is, in this sense, "more" cosmopolitan than Scheffler's interpretation.

However, Scheffler rejects Nussbaum's argument on the grounds that it is "implausible" and "flies in the face of the experience and conviction of many people" (Scheffler, 1999b: 118, 119). He points out, quite validly, that it is "pathological" to attach nothing but instrumental value to all of our personal relationships (Scheffler, 1999b: 121). We do not love our own children, for example, because it promotes the virtue of parental love universally, but because we love our own children period. Scheffler argues that we should be careful about exaggerating the conceptual incompatibility of our social and global responsibilities, but rather embrace them – as most people do in reality. He suggests that, instead of escaping the problem by what could be perceived as a conceptual slight of hand – that is, the bifurcation of social and global justice in a way that does not gel with our commonsense understanding of the problem – we should face it plainly and acknowledge that its resolution will require "considerable social imagination and ingenuity, psychological sophistication and sensitivity, and political determination and skill" to resolve (Scheffler, 1999b: 124). And why should we not? Our everyday experience tells us that life is full of such contradictions; we hold up simultaneously seemingly contradictory sentiments like hope and death, love and hate etc., yet we are still able to execute decisions, moral or otherwise, based on these conflicting values. They may entail difficult decisions, perhaps a long and painful process of moral wrangling, but most of us do manage to strike a balance between them.

The only issue with balancing acts is that they must tip to one side or the other eventually. The test of a normative theory comes when a specific situation calls for a principled judgment based on theory. Scheffler presents the situation as a tractable balance between our special and our global responsibilities, but as we have seen, closer analysis suggests that, when push comes to shove, the

balance falls in favour of special responsibilities in Scheffler's account. Weak cosmopolitanism, as it turns out (according to Scheffler, at least), is not radically revisionist but basically conservative. In itself, there is nothing inherently wrong with this conclusion, but neither is there anything distinctive about it. Even anti-cosmopolitans and state-centric theorists do not deny that we have global responsibilities in addition to our special responsibilities, only that our responsibilities have to be differentiated – that is, we owe more to some than to others (Miller, 2002; Pogge, 2002b). For example, David Miller, who is a strong critic of cosmopolitanism, posits weak cosmopolitanism as merely the claim that morality is “cosmopolitan in part” (Miller, 1998: 166). That is to say, our obligations to distant persons may be restricted either in type or in scope: one may owe only certain types of obligations of justice to those who do not stand in a relationship with him/her,<sup>46</sup> or one may owe obligations of justice to some but not all those who do not stand in a relationship with him/her.<sup>47</sup> But he points out that one can accept this normative position, and still hold a state-centric position like he does. In other words, the weak cosmopolitan position does not necessarily translate politically into a cosmopolitan global order. In this case, the question of TNCs' role in global justice does not even arise because the boundaries of justice never quite transcend the scope of one's special responsibilities.

Scheffler's weak cosmopolitanism, then, is anodyne. At best, it retains the state-centric status quo without giving us an account of why and how TNCs should play a role in global justice – or, for that matter, any other non-state agent. At worst, it is unable to normatively underwrite all the pressing reasons that call for global reform. It is emblematic, I think, of the kind of obstacles faced when a normative theory that seeks to expand the scope of agency gets overly caught up in what a cosmopolitan global order looks like or how to justify it. Even if the above interpretation is misguided, and Scheffler turns out to be less conservative

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<sup>46</sup> For example, Miller suggests that we may owe a distant person a duty of care if we have the capability of relieving their distress, but not an other type of duty if to do so would lead us to deny our particular identities as members of a community or association.

<sup>47</sup> For example, Andreas Follesdal has suggested that the British may have obligations of distributive justice to other members of the European Union but not to, say, Malaysians (in Caney, 2001: 975).

than we think, the questions remains: How should the balance be struck? Again, in the absence of a definitive answer, it is not clear how weak cosmopolitanism translates into principles that can guide us on how we should organise the world for the sake of justice, let alone give us normative reasons why TNCs should play a role.<sup>48</sup>

Again, there may be nothing wrong with this conclusion. It may be that the biggest contribution of the weak cosmopolitan position to our political thinking is that it leads us to the conclusion that TNCs have no role to play in global justice. But is the conclusion premature? Is there really no space in our political thinking for TNCs? There seems to be a compelling empirical case for the role of TNCs in global justice to warrant pressing the normative question further. Perhaps the problems with the various cosmopolitan approaches highlighted so far in this chapter are, as Scheffler concludes in his earlier works, a blessing in disguise – not only because they force us to challenge the conventional wisdom in political theory of treating the individual (and the state) as basic political units, but because they cause us to re-think our thinking about normative responsibility in general (Scheffler, 1995a). To conclude our analysis, then, I wish to briefly explore an alternative approach to the issue of TNCs in global justice.

### **1.5. An alternative approach to CSR**

In this chapter so far, I have provided a critical analysis of three main cosmopolitan approaches to extending global just agency in our normative thinking – in this case, to include TNCs in the picture. To recapitulate, my core argument is that the three cosmopolitan approaches have begged the central questions of global just agency by adopting at the outset a ‘thinly cosmopolitan’ conception of the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science. According to the argument, the three cosmopolitan approaches are ‘thinly

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<sup>48</sup> Another interesting possibility is, of course, if we think that the balance tips in favour of our global responsibilities. Given that the scope of our global responsibilities is always bigger than that of our special responsibilities, will there still be the need for the kind of balancing that characterizes weak cosmopolitanism?

cosmopolitan' because (i) in the case of extreme cosmopolitanism, it moves away from a formally statist position that allows no place for corporations as agents of global justice in their own right, but to such an extreme position as to take the implausible position of denying any value to state sovereignty and is, not to mention, also unnecessary and impracticable; or (ii) in the case of strong cosmopolitanism, it cannot move away from a formally statist position without placing a wider, empirically-contingent restriction on the domain of global just agency, or (iii) in the case of weak cosmopolitanism, it does not move away from a formally statist position at all, or otherwise has no story to tell about TNCs. Given this analysis, the crux of the problem, it seems, is two-fold: Firstly, a legitimate cosmopolitan position must move away from a strictly statist position, but not too far. Secondly, the cosmopolitan middle ground envisioned must be able to generate a normative account that is generalisable – that is, it must be capable of identifying specific non-state agents of global justice (like TNCs) while not excluding potential others.

With regard to the first arm of the problem, the relevant methodological question here is this: Why should cosmopolitan global justice be constructed in this way – that is, as an extension from the statist position – in the first place? Why define it in relation to states and not start with the world as a whole, with its own distinctive form of justice whose principles may well “differ in content and foundation” from those that have traditionally applied (Beitz, 2005: 21)? The methodology of making fine distinctions between strong and weak cosmopolitanism may lend some definition to the cosmopolitan middle ground, but it may still be too superficial to enlighten us as to, say, the moral reasons for TNC action, or what the scope of action should be, its limitations etc. As Beitz puts it: “We need a better grasp of the *content* of these apparent reasons and of the processes by which reasons of these kinds may be integrated when it is necessary to make judgments about how to act. The result may be something like ‘weak’ or ‘strong’ cosmopolitanism, but more likely it will be some third conception, more richly described, that we have not yet clearly anticipated” (Beitz, 2005: 19, emphasis is my own).



Approaching the question of cosmopolitan global justice from a fresh angle may lend some solutions to the second arm of the problem as well. The issue there is the lack of generalisable principles of inclusion (of non-state actors) in some of our theories of cosmopolitan global justice. The question then is whether there is some feature of the problem that will show us the way to an alternative solution? Perhaps the solution is not to begin with a “grand theory” of ‘cosmopolitan global justice’ that asks what a ‘cosmopolitan just global order’ looks like, or which cosmopolitan approach or what cosmopolitan principles can be applied to a particular division of political labour in the first place. That is to say, perhaps the way to begin thinking about why TNCs should be agents of justice in a just global order lies not, in fact, in trying to carve out a conceptual space for ‘cosmopolitan global justice’ or to provide the specifications for a cosmopolitan just global order, and then trying to fit TNCs into the cosmopolitan picture that we have painted. Perhaps, in the interest of generalisability, it is not even to ask ‘Why TNCs?’, but ‘Why any non-state actor?’. If this is the case, then the foregoing analysis suggests that a conception of cosmopolitan global justice will not be able to drive this agenda for the reasons given. What we need is a new approach to the concept of global just agency.

One alternative approach suggested by Saladin Meckled-Garcia (2008) is to take a constructivist approach towards the question of global just agency. According to Meckled-Garcia, constructivism is “a method for elaborating moral principles that apply to a given sphere of human action” (Meckled-Garcia, 2008: 3). In other words, rather than imposing a big-picture conception of an ideal cosmopolitan just global order on the distribution of political responsibilities, his approach is to construct this ideal social world and its duty-prescribing principles from ground up, based on the particular agents themselves and the values reflected in the particular dimension of political reality in question. The methodology of this approach, then, is to firstly “partition the moral world” in a way that reflects the categories of agents or types of agents that have what he calls the ‘moral powers’ to affect the achievement of global justice, each adding value to our social world in different ways within their own context. Then secondly, within each domain, to design principles expressing these distinct

values that can guide the actions of specific agents within their specific sphere of action. For example, if the focus was on TNCs as agents of justice and on poverty, a constructivist theory of CSR would have to specify the distinct values towards poverty alleviation that TNCs serve, and describe the principles that justified claims on TNCs in this respect. According to him, the advantage of this approach – what he calls the ‘domain-restriction’ of principles – is that it generates an agent-centred theory of justice that is more contentful because, rather than grasping at abstract (cosmopolitan) principles that postulate an ideal state of affairs, it actually knuckles down to the job of specifying the agents responsible for achieving this ideal. In contrast, “purported principles... that do not specify relevant agents must at least be said to be *incomplete* – they are not really principles at all, but descriptions of a desirable state of affairs” (Meckled-Garcia, 2008: 8). It is this “subject-specifying quality”, in Meckled-Garcia’s words – the ability to specify who is responsible to who and for what – that makes our moral principles action-guiding.

Thus, this subject-specifying quality tells us both ‘Why TNCs?’ and, more generally, ‘Why any non-state actor?’ – namely, because they have the requisite ‘moral powers’ to affect the achievement of global justice. Thus, it solves both arms of the problem that we saw earlier with the cosmopolitan global justice approach. As the term ‘constructivism’ suggests, our use of the concept of global just agency, when guided by this domain-restricted / subject-specific conception of agency, “*constructs* an essentially human reality that solves the problem from which the concept springs” (Korsgaard, 2003: 117). The conception of the world as “partitioned” is correct not because it describes a piece of external reality or some desirable outcome, or because conceiving it this way leads to just outcomes. What makes it correct is that it solves a problem reflected in the concept of cosmopolitan global just agency. By explicating an account of the problem here, it points the way to an alternative conception that solves the problem – that is, a domain-restricted conception of global just agency.

It is proper to note, however, that Meckled-Garcia does not think that TNCs or other non-state actors can be potential agents of justice. According to his argument, the “morally powerful” agents that he has in mind would need to

make more than a short-term impact. They would also need to possess the capability of continually adjusting to background conditions, in order to maintain a pattern of (in this case) fair distribution over the long-term. Such agents, he claims, only include such “authoritative bodies” with the power to “assign rights and impose duties on all agents” (Meckled-Garcia, 2007:12). Moreover, their role in global justice must be primary, in the sense that the value that they add to global justice should not crowd out the other ways that they add value to our social world. He goes on to claim that only states satisfy these criteria: only states have the moral power to assign rights and impose duties domestically, and to seek agreements with other states internationally. I disagree with him on this particular point, and develop a capabilities argument for CSR later on in chapter 3. What is pertinent for the current discussion, however, is his constructivist approach, which I adopt with qualification here.

Regarding Meckled-Garcia’s constructivist reasoning, I think that there are two important gaps. Firstly, it is not clear how the principles that guide the actions of the specific agent in the specific domain in question are generated. For instance, what is it that “justifies” the moral claims on TNCs towards poverty alleviation? To be sure, the answer to this is guided by the value(s) that TNCs can serve in this domain, which we have seen examples of. But this only describes the end-value which the principle is meant to aim for. It does not in itself generate a moral theory that can normatively underpin the principle. Secondly, Meckled-Garcia indicates separately that, because “different agents have different moral powers, and are consequently bound by different primary principles”, any such underpinning moral theory would be “in [an] important sense ‘deontological’” (Meckled-Garcia, 2008: 6-7). In other words, depending on which agent acting in which capacity was under consideration, the principle would regulate the “relationships of duty” between that agent and the beneficiaries of his/her actions – what they owe to which others, and how much. It is not clear, however, how subject-specificity necessarily leads to a deontological understanding of agency here. Even if we accept that the claims about the values that TNCs serve towards global justice justify them doing something about it on moral grounds, nothing in the argument makes the moral

reasons for CSR deontological, that is, right based on the act of doing something alone regardless of the outcome. Meckled-Garcia himself acknowledges that there are certain natural, non-assignable human rights that are not captured deontologically.

What if the conception that is at work in Meckled-Garcia's constructivist account is not, in fact, the subject-specifying quality that he proposes, but a theory of responsibility? I say that because he goes on later to argue that, for a violation of such a right to count, there must be an appropriate agent who is in breach of their duty correlating to that right: "a theory of rights must presuppose a theory of responsibility" (Meckled-Garcia, 2008: 15, 24). Moreover, a theory of responsibility would not only be able to normatively underwrite the duties owed by specific agents, but also the human rights claims (justified separately) imposed on the agents in question. It is also a legitimate moral theory capable of generating the principles of justice that would govern the agents' response to these claims of duty and rights. And it would explain the deontological understanding of agency that Meckled-Garcia wishes to get at.

The point is that domain restriction is not the only way to deploy a constructivist approach to the question of global just agency. I argue in this thesis that one can also construct a theory of CSR based on the notion of 'responsibility'. The idea here is that, by latching onto the notion of responsibility, we will be able to develop a conception of global responsibilities that can, in turn, give us the principles to underwrite a theory of CSR *and* is at the same time generalisable to all potential actors. In other words, instead of staking our claim on various versions of cosmopolitan global justice, my argument is that an alternative constructivist approach may lie in asking a more basic question: What is responsibility? The reasoning here being that, only when we have a rigorous conception of *what* responsibility is, will we be able to construct an agent-centred account of *who* is responsible. Only then, will we be able give an answer to the question 'Why TNCs?'. This is not to say that domain restriction is not a valid way of approaching the question of global just agency, but that the notion of responsibility gets at something more fundamental that underpins Meckled-Garcia's moral partitioning of the world.

My suggestion is, like Meckled-Garcia's proposal, to construct a coherent theory of CSR from ground up, but in a different way, and to see where this leads us. It does not position itself on any middle ground or offer easy taxonomies of cosmopolitanism, nor does it extrapolate conceptually from any state-centric position. Rather, the hope is that, by asking more specific questions about the moral responsibilities of one type of potential agent of global justice, we will develop a better sense of where our cosmopolitan affiliations lie, if at all. For example, it is entirely possible that we arrive at the conclusion that TNCs are not implicated in global justice at all and should not have to play the role of just agents, which might then cast a shadow of doubt over the need for a cosmopolitan just global order. Or we might conclude that there is room for a cosmopolitan just global order, but that it does not include a role for TNCs. This, too, is entirely possible, since cosmopolitans can subscribe to the moral conviction that the basic political units of our existing global order and their roles need to be reconsidered, without necessarily subscribing to the institutional claim that one form of global political institutions or the other is required to bring about a just global order: "cosmopolitans are fundamentally committed to the moral claims but are not thereby necessarily committed to the institutional ones" (Caney, 2005: 5).<sup>49</sup> Or, for that matter, we may conclude that states alone should be the primary bearers of global responsibilities.

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These are, of course, matters that require further enquiry, and will become clearer in the later chapters. The aim of the present discussion has simply been to agitate a realisation that the notion of cosmopolitan global justice alone is unable to normatively underwrite a theory of CSR. We saw this from the critical analysis of the three cosmopolitan approaches to conceptualizing an ideal just global order in this chapter, namely, the 'extreme cosmopolitan position', the 'strong cosmopolitan position', and the 'weak cosmopolitan position'. The criticism was

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<sup>49</sup> Beitz (1994: 126) points out that the reverse is not always true, however. Whilst "one need not adopt the point of view of moral cosmopolitanism to adopt a cosmopolitan view about world political institutions", it would be "hard to think of anyone who has defended institutional cosmopolitanism on other than cosmopolitan moral grounds".

that the three cosmopolitan approaches were only ‘thinly cosmopolitan’, either because they did not result in practicable schemes, or because they were not genuinely or sufficiently “cosmopolitan” for various reasons. Once an account of the problem reflected in the concept of cosmopolitan global justice was explicated, however, I argued that it pointed the way to a new (normative) approach and conception of global just agency that may solve the problem – namely, a constructivist approach that was not based on the thin ideals of cosmopolitanism, but on more basic foundations grounded in the notion of responsibility. This suggestion is picked up in the next chapter, where the case for ‘global justice as duty’ as the moral foundation for CSR is developed.

## 2

### **Global justice as duty: Beyond the human rights case for CSR**

In the last chapter, it was suggested that, instead of asking the question ‘What is an ideal cosmopolitan just global order?’, a better way of conceptualizing the role of TNCs in global justice lay in taking a constructivist approach and asking a more basic question: ‘What is responsibility?’. Only when we had a rigorous conception of *what* responsibility is, it was argued, would we be able to construct an agent-centred account of *who* is responsible. Only then, would we be able to give a moral answer to the question ‘Why TNCs?’. This aim of this chapter, then, is to develop the case for a notion of ‘global justice as duty’ as the moral foundation for a theory of CSR.<sup>50</sup>

However, an observer would not be faulted for thinking that it is talk about rights, rather than responsibility, that is the “ethical lingua franca” in the discourse about global justice (Tasioulas, 2007: 75). The role of TNCs in global justice itself has also always been closely tied to human rights. Two UN initiatives in particular illustrate this:

(1) *The UN Global Compact (the “Compact”)*. First proposed by the then UN Secretary-General Kofi Annan at the 1999 Annual Meeting of the World Economic Forum in Davos, the UN Global Compact was envisioned as a compact between business leaders and various UN agencies to “initiate a global compact of shared values and principles” and “give a human face to the global market” (Annan, 1999: 1). In its codified form, the Compact derives its desiderata from, among other places, the Universal Declaration of Human Rights and, in its first two principles, seeks the cooperation of TNCs in “the protection

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<sup>50</sup> The terms ‘duty’ and ‘responsibility’ and ‘obligation’ are used interchangeably here. However, note that Pogge (1992b) distinguishes between ‘duty’ and ‘obligation’ by reserving the term ‘duty’ for fundamental obligations and using the term ‘obligation’ to refer to obligations *simpliciter* (that is, non-fundamental obligations).

of international human rights” and “mak[ing] sure they are not complicit in human rights abuses”.<sup>51</sup> Interestingly, a fundamental rationale of the proposal was stated as the increasing influence of TNCs because “power brings with it great opportunities – and great responsibilities”.<sup>52</sup> I say interestingly because I think that the mixed language of “rights” on the one hand and “responsibilities” on the other reveals the dichotomy of moral arguments for CSR engagement on a global level that is central to my argument.

(2) *The Norms On The Responsibilities Of Transnational Corporations And Other Business Enterprises With Regard To Human Rights (the “Norms”)*. More recently, the UN Sub-Commission on the Promotion and Protection of Human Rights unanimously approved a draft of a comprehensive set of international human rights norms specifically targeted at and applying to corporations.<sup>53</sup> While the Compact is not binding on corporations, the Norms are intended to evolve into a binding instrument and are seen as complementary to the Compact (Hillemanns, 2003).<sup>54</sup> In its Preamble, the drafters recall the Universal

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<sup>51</sup> *The Global Compact: Corporate Citizenship In The World Economy*. UN Global Compact Office:  
<http://www.unglobalcompact.org/>.

The Global Compact’s ten principles cover human rights, labour standards, environmental practices and recently, anti-corruption, the tenth principle adopted at The Global Compact Leaders Summit at the UN Headquarters on 24<sup>th</sup> June 2004 (*The Global Compact Leaders Summit, Final Report*. UN Global Compact Office (October 2004):  
<http://www.globalcompactsummit.org/docs/2004SummitReport.pdf>).

<sup>52</sup> *Ibid.*

<sup>53</sup> *Norms On The Responsibilities Of Transnational Corporations And Other Business Enterprises With Regard To Human Rights*. UN Sub-Commission on the Promotion and Protection of Human Rights. E/CN.4/Sub.2/2003/12/Rev.2 (26<sup>th</sup> August 2003):  
[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En).

<sup>54</sup> As far as I can tell, and given the often long and tortuous road between initial actions by a sub-commission and its adoption by another UN agency, the Norms are as yet not legally binding on corporations. At its 56<sup>th</sup> meeting on 20<sup>th</sup> April 2004, the Commission on Human Rights decided to recommend that the Economic and Social Council request the Office of the High Commissioner for Human Rights (OHCHR) to compile a report setting out the scope and legal status of the draft’s initiatives and standards, and to identify outstanding issues (*Report To The Economic And Social Council On The Sixtieth Session Of The Commission*, E/CN.4/L.11/Add.7, 2004/116 (22<sup>nd</sup> April 2004):  
<http://www.unhchr.ch/Huridocda/Huridoca.nsf>).



Declaration of Human Rights as a natural starting point, proclaiming it “a common standard of achievement for all peoples and all nations”.<sup>55</sup> The first section, on “General obligations”, states that

“States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.”<sup>56</sup>

The statement is telling because it reflects several paradigm shifts that have occurred in the discourse on global justice, and that in turn have repercussions on the way CSR (defined here as the role of TNCs in global justice) is conceived, namely:

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This report was compiled in cooperation with the Global Compact Office (GCO) for submission to the Commission at its 61<sup>st</sup> meeting, although by then, it seems that the escalating human rights situation in Darfur, Sudan, had taken priority on the Commission’s agenda.

However, in the said report, both the OHCHR and GCO were in agreement on the value of having an agreed framework of universal human rights responsibilities of business at the international level (*Consultation On Business And Human Rights: Summary of Discussions*, OHCHR, in cooperation with the GCO (22<sup>nd</sup> October 2004): [http://www.unglobalcompact.org/Issues/human\\_rights/business\\_human\\_rights\\_summary\\_report.pdf](http://www.unglobalcompact.org/Issues/human_rights/business_human_rights_summary_report.pdf)).

Moreover, even if corporations are not legally bound by the Norms, the responsibilities set out therein have already generated extensive comments from human rights watch groups and legal commentators, and it seems to be an accepted view that they will provide detailed guidelines with respect to CSR for companies as well as government bodies regulating corporate behaviour. In other words, despite its non-legal status, there will be considerable pressure on TNCs to comply with the Norms (Hillemanns, 2003).

<sup>55</sup> *Supra* fn 53.

<sup>56</sup> *Supra* fn 53.

(1) *Rights-based approach*. That the responsibilities of TNCs in global justice stand in a correlative relationship with what is assumed by the drafters to be universal human rights. Human rights, then, is like a ‘one size fits all’ model that applies to various different situations facing businesses (Hillemanns, 2003);

(2) *Rule of law*. That what “human rights” entails is elucidated by formal and informal institutions – including legally binding treaties, non-binding guidelines, existing international practice, and self-imposed company codes of conduct – although it has been vehemently (and, in my opinion, correctly) argued that the rights themselves are justified in political theory apart from their institutional form (Tasioulas, 2007);

(3) *State-centricism*. That states, not TNCs, are and should be the primary agents of human rights / global justice;

(4) *Constrained CSR*. That TNCs have human rights obligations only insofar as corporate entities created under a state’s rule of law or its constitutive individuals can be said to have international legal obligations.

Hence, in order to make a case for ‘global justice as duty’ as the moral foundation for a theory of CSR, the dominance of ‘global justice as rights’<sup>57</sup> must first be challenged. To my mind, there are philosophical reasons to be concerned about each of these four trends. After laying the groundwork in section 2.1 by presenting a political theory perspective on the current state of affairs, I go on in section 2.2 to explain what the problems with it are. The main worry underlying my concerns is the ascendancy of the doctrine of human rights as a justification for the role of TNCs in global justice (see point 1 – “rights-based approach”). This chapter is devoted to disentangling the close alliance between human rights and CSR in international politics. The focus of my critique is Henry Shue’s account of the role of TNCs in global justice in his paper *Mediating Duties*

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<sup>57</sup> Indeed, this is the title of Thomas Pogge’s latest book *Freedom From Poverty As A Human Right* (2007).

(1988), because it captures most of the things that I think are problematic with linking the doctrine of human rights and CSR. Also, as his book on *Basic Rights* (1996a) exemplifies, Shue is a huge proponent of the rights-based approach to global justice. To state briefly here in response to the points listed above, I think that a conception of global justice that is based on a doctrine of human rights limits the role of TNCs. Specifically, the way that rights-based accounts of global justice have incorporated institutions like TNCs into their theories limits what they can and should do to liberate the world's poor from extreme poverty. I think that TNCs can and should be primary, not secondary, agents of global justice alongside states (see point 3 – “state centrism”). Specifically, this means that their engagement in CSR is not merely a response to state-imposed legislation and other corporate governance measures or pressures, but emanates from a particular conception of corporate moral responsibility that transcends the rule of law (see point 2 – “rule of law”).<sup>58</sup> For these reasons, I think that rights-based accounts of global justice are *inadequate* for the purposes of pushing for a bigger role for TNCs in global justice.

Furthermore, I also argue that purely rights-based accounts of global justice are *insufficient* for identifying TNCs as agents of global justice in the first place. If the weight of the UN and other international pressures are to be brought upon TNCs to engage in issues of global justice, often at great expense to themselves, then we need a substantive account of why TNCs, in addition to individuals and states, owe a moral duty towards the world's poor. My contention is that if the moral principles guiding the distribution of global responsibilities must ultimately still be argued in order to tie human rights to TNCs, then we need to ask what the doctrine of human rights adds to the story that cannot be provided by a purely duty-based account of CSR. In my estimation, not a lot.

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<sup>58</sup> Regarding point 4 (“constrained CSR”), which I discuss in greater detail in chapters 5 and 6, I agree that the role of TNCs in global justice should be constrained in order to take into account their business considerations. But I also think that these constraints can be established without recourse to the metaphysics of the corporate form or the particularities of stakeholder relationships. Neither does it require us to accept an abridged set of distribution principles. In fact, I think that they do not necessarily need to be “squeezed” into ideal theory at all. Instead, I think that they can be incorporated into a political theory of CSR by the non-ideal theorization of the business case for CSR. But this is a separate discussion altogether for later on (see chapters 5 and 6).

The question that follows naturally is whether a duty-based account of global justice can do all the normative work that a rights-based account cannot. In section 2.3, I ask two specific questions in this regard: (i) Is ‘global justice as duty’ adequate and sufficient to ground a theory of CSR?, and (ii) Does ‘global justice as duty’ present TNCs as primary agents of global justice? I argue ‘yes’ on both counts. The moral foundation for CSR, I argue, is founded ultimately on the notion of ‘global justice as duty’, and this is reason to look beyond the rights argument for CSR.<sup>59</sup>

## 2.1 Two approaches to the question ‘Why TNCs?’

As recent trends indicate, academic thinking and practice seems to have corralled around the doctrine of rights as the moral foundation for extending global just agency to non-person, non-state actors like TNCs. Whether corporate moral agency concerns environmental sustainability or access to healthcare or labour issues or, in our case, alleviating poverty, the label “human rights” is prevalently attached, with the assumption that it somehow confers a moral imperative on TNCs to take action to uphold the cause in question (at least, for those who argue for just agency beyond the state and individual). Even corporate executives are not immune to adopting the language of rights when talking about CSR. Recently, the President and CEO of Philips stated with regard to healthcare that “[i]n the 21st century, access to quality healthcare is *a basic human right*... Universal access to quality healthcare is not only an ethical goal in itself; it is also an essential condition for economic development and social welfare”.<sup>60</sup> In addition, the theoretical literature is a fertile field for academic debate on global justice and human rights: for example, whether or not freedom from poverty is a universal human right, and the nature of the interests that entails – whether it be

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<sup>59</sup> The specific grounds of TNCs’ moral responsibilities, as well as the scope of their duties, are argued in chapters 3 and 4. Here, my sole intent is to argue for the sufficiency of ‘responsibility’ as a concept to ground a political theory of CSR, against the prevailing backdrop of ‘human rights’.

<sup>60</sup> Speech by Gerard Kleisterlee, President and Chief Executive Officer of Royal Philips Electronics, at ASEAN Symposium on Access to Healthcare in Kuala Lumpur, Malaysia (3 September 2007) (emphasis is my own): <http://www.wbcsd.org/plugins/DocSearch/details.asp?type=DocDet&ObjectId=MjYyMzQ>.

the assured right to individual well-being (for example, Tasioulas, 2007) or mere subsistence (for example, Shue, 1996a) – as well as the measures needed to obtain this right (for example, Caney, 2006).<sup>61</sup>

The dispute is not whether the issues that CSR addresses are issues of human rights or not – clearly, some of them are. The argument is about the starting point for moral deliberation, and my concerns in that regard are purely action- and agent-centred<sup>62</sup>: Are human rights a sufficient moral reason to convince large corporations that they owe a moral duty towards the world’s poor? What kind of corporate action does a rights-based approach to CSR demand, and is this adequate? Given these considerations, should global justice be based on the doctrine of rights? My object here is to bring into question the type of moral reasoning behind why and what actions justice demands of TNCs with regard to CSR.

Two preliminary observations here: (1) Firstly, although a pluralized theory of distributive responsibilities (as opposed to state-centric theories) does not carry a commitment to any particular world political organization, there is an enduring assumption among cosmopolitans that the agents most capable of fulfilling those responsibilities are institutions, not individuals<sup>63</sup>; (2) secondly, because of the pervasiveness of the language of rights in international political thought, human rights claims have quickly become the moral basis on which to

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<sup>61</sup> The recently published collection of essays on *Freedom From Poverty As A Human Right*, edited by Thomas Pogge (2007), provides excellent up-to-date analyses of the various debates.

<sup>62</sup> Moral reasoning based on *action* is concerned with why justice demands that agent X should do action Y, independent of the outcome Y produces. This is contrasted with moral reasoning based on *results*, such as utilitarianism, which advocates corporate agency on instrumental grounds (O’Neill, 1986: especially chapters 4 and 5) – for example, because corporate entities, with their greater resources and capacities for coordinating individual action or information-gathering, are more efficient in achieving poverty-alleviating outcomes, or because the corporation provides a psychological buffer whereby individuals can support firms that are socially responsible without having to confront the realities of poverty themselves (Shue, 1988). Results-based ethical reasoning actually avoids the question of agency, which is what we are concerned about here. It does not make explicit claims about agency because its sole aim is to seek out choices or actions that maximise utility, whether these are pursued by individuals or states or TNCs or other entities (O’Neill, 1986: 34).

<sup>63</sup> Charles Beitz, for example, states that “any theory of human rights with pretensions to political relevance certainly must be institutional...: its requirements, that is, should apply mainly to institutions and practices rather than to individuals” (1999: 289).

ground the agency of particular institutions. But we should be careful that the first argument does not slip into the second. The question why X and/or Y owe(s) a moral duty to the distant needy (issue 2) is a separate and distinct question from whether X or Y is better equipped to take action to meet these needs (issue 1). Issue 2 is a question of moral justification, whereas issue 1 a question about expediency. So while the doctrine of human rights may *ground* corporate agency with respect to issue 2, it does not *necessitate* corporate action with respect to issue 1.

However, this analysis is only true in the context of a moral discourse on rights. On a *rights-based account*, the unit of concern is the individual human being who is the potential beneficiary. And it is his/her human interest that forms the basis for moral action; whether this action should be taken up by an institutional or individual actor entails a separate argument. Therefore, a conflation of the two questions would be taboo. On a *duty-based account*, however, the unit of concern is the institution or individual who is the potential contributor. The fact that corporations are more politically capable than individuals can be a reason for saying that corporations, not individuals, should assist the world's very poor.<sup>64</sup> In this case, the two questions would rightly be one and the same.

The point of this little exposition is to establish that there is more than one way to answer the question 'Why TNCs?'. The debate between rights-based and duty-based accounts of global justice is not a new one. Historically, the two discourses have been the main contenders for practical reasoning about moral agency and why we owe a moral duty towards the distant poor – that is, until the ascendancy of rights talk eclipsed the debate. A reason for shifting the attention back on the 'rights versus duties' debate is that this is precisely where the divergence occurs with regard to practical reasoning about a different sort of agency – in this case, *corporate* agency – in global justice. As interests that apply to all human beings *qua* human, human rights is a natural language to use when talking about human agency or the agency of the states that represent them. But

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<sup>64</sup> The move from 'can' to ought' is discussed in the next chapter (chapter 3).

human rights resonate less intuitively when it comes to non-person, non-state actors like TNCs. However, because rights talk has dominated the field for so long, we need to reach back in time a little to resurrect an old debate, in the light of new actors and new questions.

Conceptually, the single most significant factor that differentiates rights-based and duty-based approaches to global justice is *correlativity*: correlativity is “by far the most fundamental structural feature of action-centred ethical reasoning” (O’Neill, 1986: 99). The differentiation comes about because correlativity applies to rights-based approaches but not duty-based approaches. Correlativity, in this case, refers to correlativity between rights and duties, and it is the proposition that for every rights claim, there must be a correlative duty to fulfil that claim. The question of correlativity is activated when a rights-based approach is taken towards global justice, on the notion that justice is only achieved when the right that is claimed is met by a correlative duty to fulfil that right. On the other hand, the question of correlativity does not arise in a duty-based approach to global justice, since it does not appeal to the notion of rights for its normative footing. So while both approaches eventually necessitate a discussion about the principles of allocation of duties among various agents, the difference between them is that rights-based approaches additionally require that these duties correlate to the human right in question.

Given that correlativity is the single most distinguishing factor between rights-based and duty-based approaches to global justice, the question is this: What is it about correlativity that makes rights-based approaches more compelling than duty-based approaches? It seems to me that, unless we can show how the discussion about correlativity adds to our moral understanding about why TNCs ought to take action to address poverty, then we need to reconsider why we should base our argument for corporate engagement in CSR on the doctrine of human rights at all.

On an abstract level, correlativity is not a problem – talking about rights and obligations is akin to talking about two sides of the same coin since, for

example, where A has a right against B to refrain from or do X, then B has an obligation to A to refrain from or do X. On a less abstract, practical level, however, it appears that correlativity becomes less straightforward because, at this level, agency (which is what we are concerned about here) becomes an issue. At this level, rights and obligations are no longer abstract conceptions, but must be tied to specifiable individuals or agents who can take action about them. In other words, the question is no longer what rights or correlative duties there are or are needed, but more exactly, ‘who owes what to whom?’.<sup>65</sup> Put in another way, the question whether or not correlativity between rights and duties holds is conditional on whether or not there exists an ethical relationship between the right-holder and the duty-bearer.

In this vein, correlative duties are either perfect or imperfect. If they are *perfect*, then they are owed by specifiable individuals against whom the right to performance can be claimed or enforced. Negative duties – that is, the duty not to unduly interfere with another’s human right – are by definition perfect duties, because they are necessarily universal duties. In order for non-interference to work, everyone must have a duty to refrain from causing harm to another person.<sup>66</sup> However, the more compelling discussion revolves around positive duties – that is, the duty to benefit others or protect their human rights – because, unlike negative duties, which require us only to hold back action, the fulfilment of positive duties entails the expenditure of scarce resources, whether that be money, time, energy or emotions. Positive duties are perfect where the duty-bearer and the right-holder are closely tied, either causally or associatively. Family members, or members of a nation-state or society, for example, are said to have such a special ethical relationship. Perfect duties can also be owed where there is a causal relationship between parties – for example, if X causes harm to

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<sup>65</sup> Indeed, practical reasoning seems to be turning on this most practical of issues – see, for example, the recently published collection of essays on *Global Responsibilities: Who Must Deliver On Human Rights?*, edited by Andrew Kuper (2005).

<sup>66</sup> There are debatable exceptions to this rule – for example, when doing so causes harm to oneself or one’s family. Also, this is not to discount the opportunity costs that may be incurred from fulfilling a negative duty. However, these issues are bracketed here, since our focus is on positive rather than on negative duties.



be inflicted on Y, then X owes Y a duty to compensate him/her for the harm caused. In many cases of CSR, this would be a straightforward case of corporate responsibility – the dispute is usually factual (whether there is causality) and/or legal, rather than normative.

The problem arises, of course, when there is no apparent ethical relationship between the duty-bearer and the right-holder. This is the case when correlative duties are *imperfect*. The existence of the right in question, or the need to take action about it, is not disputed here; but action that is not based on an ethical relationship cannot be allocated to any specifiable duty-bearer and so its performance cannot be fulfilled. Correlativity between rights and duties, in this case, does not hold. Unless the right-holder can identify or specify an agent against whom his/her right is held, her right amounts to little more than mere rhetoric, a “manifesto right”.

It should be pointed out that correlative duties can also be either *wide* or *narrow*. While imperfect duties arise because there are not specifiable duty-bearers, wide duties arise where there are no specifiable right-holders. They are often two sides of the same coin: the claim that no one has a duty to feed X (imperfect duty) may be based on the claim that Y cannot be expected to feed everyone (wide duty), and *vice versa*. In both cases of imperfect and wide duties, correlativity does not hold; in both cases, there exists a “correlativity gap” between the right-holder and the duty-bearer.

Why would a correlativity gap arise? The problem of imperfect and wide duties is that human rights, while themselves universal, unfortunately do not entail universal duties in a non-ideal world. So while everyone is a claimant to a human right, which is by definition universal, not everyone owes a correlative duty to meet the human right of another – it depends, as we have said, on how closely tied they are. One might ask, does our common humanity not tie us together? In an abstract sense, yes. However, on the less abstract, practical level at which we are conducting our analysis of agency, the answer is no. The problem of ethical relationships at this level is summarized by Onora O’Neill as follows:

“No agent or agency can have obligations to provide services, help and benefits for all others. Nobody can feed all the hungry, so the obligation to feed the hungry cannot be a universal obligation, and most of those who are hungry have no special relationship in virtue of which others should feed them, so special obligations will not be enough to remedy poverty and hunger. Hence it seems that obligations to provide food, or other material needs and services, can *at best* have subordinate status in ethical deliberation in which the notion of rights is fundamental. This is the heaviest cost of the shift to the discourse of rights.” (1986: 101-102)

This does not mean that the problem of imperfect duties is merely a problem of scarce resources. Rather, it means that, because of the unequivocal reality of scarce resources and the constraints that it places on action, one will always need to justify one’s expenditure in benefiting others, in order to plug the inevitable correlativity gap that arises. The way rights-based theorists do this is by claiming that there is an ethical relationship between the right-holder and the duty-bearer.<sup>67</sup>

So, for those who advocate justifying CSR on grounds of human rights, it is not enough to establish that a human right exists; correlativity with duty and a specifiable duty-bearer must also be established. In the absence of this ethical relationship, any action to alleviate poverty is a matter of charity or optional beneficence, subject to the uncertainty and vicissitudes of individual preferences and values. So the question for CSR here is *prima facie* this: Can TNCs play any role in plugging the correlativity gap? That is to say, can TNCs somehow intervene to tie specific duty-bearers to specific right-holders? Or do they have bigger roles as institutional agents of global justice in their own right?

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<sup>67</sup> According to this view also, action may be limited by scarce resources, but it is not limited by relational distance. Rather, on a rights-based approach, an individual owes a moral duty to a poor person where an ethical relationship between them can be established, even if that poor person is not part of the same society and he/she has never met them. This is essentially the argument for global justice – that our moral duties transcend state borders – as opposed to the more traditional views of (domestic) distributive justice.

## 2.2 CSR: Beyond human rights?

In this section, a critical analysis of the notion of TNCs as institutional mediators that plug the correlativity gap between individual agents and individual beneficiaries is presented. The focus of my critique is Henry Shue's account of the role of TNCs in global justice presented in his paper *Mediating Duties* (1988), because I think that it captures most of the problems that arise from linking CSR and the doctrine of human rights, particularly with regards to the need to establish correlativity.<sup>68</sup> It is also the most explicit rights-based account of global justice that intentionally attempts to carve out a conceptual space for corporate actors and corporate action, rather than assuming that TNCs will be part of any extended network of just agents.<sup>69</sup> I shall briefly introduce my argument here, before going into it in more detail.

The thrust of my argument is that Shue's theory begs the central questions of CSR by assuming right from the outset a limited role for TNCs – as institutional mediators of the correlativity gap rather than as institutional agents in their own right. This, I argue, limits what they can and should do to liberate the world's poor from extreme poverty. Once this limiting assumption is removed, the nature and boundaries of basic political units that the principles of global justice coordinate might look quite different, but as I go on to argue, so might the principles themselves. The conclusion I wish to push here is that, in the final analysis, Shue's rights-based approach still begs the question: Why TNCs? I argue that, in order to answer this question, Shue's central preoccupation with correlativity, which is endemic to rights-based approaches, needs to be taken out of the equation – for example, by adopting a duty-based approach which does not entail the need for correlativity or plugging any “correlativity gap”.

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<sup>68</sup> Although Shue's 1988 paper is the focus of my analysis here, many useful inferences and nuances can also be gleaned from his other works, both pre- and post- this paper. See, for example, Shue (1977), (1983), (1984), (1996a) and (1996b).

<sup>69</sup> Or not: Pogge, who advocates a non-state-centric version of moral cosmopolitanism, only goes as far as to propose a multi-layered scheme of agency that is still defined along territorial lines (“vertically dispersed agency), rather than along functional lines (“horizontally dispersed” agency) (Pogge, 1992a: 99-100; Kuper, 2000: 656-657). According to this demarcation of basic political units, non-state alliances like neighbourhoods, towns, counties, provinces, states, regions etc. are included, but not other transnational political bodies like TNCs.

Shue's argument (1988) for incorporating institutional actors like TNCs into our conception of global justice agency is two-fold. On a practical, strategic level, TNCs play a role in global justice by being efficient coordinators of cooperation on human rights action between distant individuals. So, for example, instead of each of us donating a computer to a poverty-stricken distant community, it would be more efficient for us to do our part by creating incentives for companies that can do this on a larger scale and more efficiently to embark on such a project, say, by investing in them based on extra-financial criteria like their involvement in community development initiatives. The individual's positive duty here is an indirect duty, the duty to create and support institutions that directly fulfil human rights. I say "duty" perhaps prematurely here because, philosophically-speaking, the moral imperative to do this must still fall on "a pre-existing, right connection" (Shue, 1988: 699) between the individual contributor and the distant poor beneficiary being established. That is to say, in order for a duty to exist, correlativity must first be established in Shue's argument.

This is where TNCs come in again. On a philosophical, moral level, Shue envisions TNCs playing a role in global justice in rights-based theories by also being institutional mediators of the ethical relationship between the potential right-holder and the potential duty-bearer. This ethical relationship, in turn, underpins the notion of correlativity in a rights-based approach. The idea is that the interposition of TNCs creates a relational bridge between two parties, particularly when the two parties are not closely tied. Other examples include the market and the stock exchange – these institutions connect consumers and investors like you and me with farmers, manufacturers and the disenfranchised poor who, although they do not interact directly with us, feel the effects of our economic decisions acutely. After all, as Shue argues, relationships are social, not natural, facts. They can be created, chosen, manipulated and controlled. Hence, we can design and create positive-duty-performing institutions or modify existing institutions that currently ignore rights and their correlative duties. These shared institutions can be used to foster a sense of community between individuals who would otherwise feel as if they did not have any ties with each other, and thus no rights or duties towards each other which they had to acknowledge. In other

words, the demand for correlativity is conditioned not only on *prior* existing relationships but also on *future* possible relationships built on shared institutions. In this “conceptual space” (Shue, 1988: 702) that Shue has built then, this is the role that he envisages TNCs playing in global justice.<sup>70</sup>

But what exactly does this conceptual role for TNCs look like in the real world? One possible interpretation is that Shue is thinking that people like shareholders in large companies ought to be morally linked to people like the third world farmers and textile-producing families who supply their goods to these companies that the said shareholders have invested in. Another example would be that people who are consumers of goods produced by large companies ought to be morally linked to the young children who have devoted their childhood to producing these goods, or to the people who have lost their homes in order to make way for factories producing these goods. But if this is the case, then the possibilities for arguing a conceptual link are endless, particularly in an age where the world’s population is increasingly interdependent. This, I think, leads to a *weak* form of correlativity. Strong correlativity occurs where the right-holder is closely tied to a specifiable duty-bearer against whom the right can be claimed, whereas weak correlativity merely requires a *type* of duty-bearer to be specified. Indeed, Shue seems to concede this point when he concludes that “the demand to be shown “why it is Benny who owes just this to Al” [is not] a demand to be shown that a special relationship already exists before a special relationship is created... Benny may owe just this to Al only if a new institution is created or an existing institution is modified so that people *like* Benny owe this much to people *like* Al” (Shue, 1988: 702). Again, the problem of imperfect duties kicks in. Unless a right claimant can identify a specifiable agent who owes the correlative duty, then her right amounts to nothing more than rhetoric. So I am not sure how useful weak correlativity is to the human rights camp in practice.

An alternative interpretation of Shue’s argument is this: If, by creating a new conceptual space of ever-evolving ethical relationships, Shue means to do

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<sup>70</sup> Other potential institutions that Shue identifies as being able to play this role include powerful national governments, international organisations and regimes like the OPEC and the IMF.

away with the concept of correlativity altogether instead, then it turns out that rights-based theories are no different to purely duty-based accounts of CSR. Shue says, “[i]t is crucial, however, not to attach too much significance to whether a duty is perfect or imperfect – there is in particular *absolutely no difference* in how binding they are... All that follows from Benny’s duty being imperfect is that if Benny prefers not to help Al, he is at liberty to help anyone else like Al. He is, however, most definitely not at liberty to help no one whose rights remain unfulfilled” (Shue, 1988: 703, emphasis is my own). In other words, the imperfectness of a duty does not negate the existence of Al’s right and Benny’s duty. If this is the case, then the claim that every duty is a correlative duty will almost always be true, whether it is a perfect or imperfect duty. In a world where correlativity is apparently (according to Shue, at least) so easily established through various institutional mediators, the notion of correlativity becomes insignificant.

If this is indeed Shue’s interpretation, then one must question what further argument the doctrine of human rights provides that cannot be provided by a purely duty-based account of CSR. The problem with the second line of argument (that is, that correlativity is not necessary to establish the duty to fulfil rights that remain unfulfilled) is that it is what duty-based theorists claim as well. Duty-based approaches to global justice also claim that, although X cannot be expected to feed everyone, X should still feed someone (where duties are wide); conversely, although no one person has a duty to feed Y, someone still should (where duties are imperfect). What is fundamental in both cases are the *duties* rather than the rights. The difference is that, in the case of moral reasoning based on duties, they do so without the need to appeal to the language of rights. As Onora O’Neill succinctly puts it, “imperfect obligations remain obligations” (O’Neill, 1986: 103). Thus, in the absence of the question of correlativity, Shue’s institutional defence of rights-based approaches (that is, against the charge that, because of the limits on just action that the scarcity of resources imposes, correlativity will always be a problem) arrives right back to the original question of duty allocation.

In any case, whether it is weak correlativity or no correlativity, using TNCs to plug the correlativity gap limits the role of TNCs in global justice. Shue's argument rests on "the design and creation" of new duty-respecting institutions or "the modification or transformation" of existing duty-ignoring institutions (Shue, 1988: 703). But what does this really translate into in practice? Where TNCs are concerned, the only feasible way that I can see this being implemented is to create new laws or to revise existing laws governing how corporate relations between remote individuals are to be defined, for example, as between investors or consumers of a company and the company's sub-contractors and suppliers. Aside from whether this can be done, my concern is that this relegates the corporate entity to the position of being merely an "empty vessel" whose role in global justice is to be a carrier of these legal relations between individuals *simpliciter*. The corporation itself does not bear any moral duties *per se*. Its actions are not in themselves moral, but are there to facilitate *individuals'* moral actions. It is, in this sense, a secondary agent (as opposed to a primary agent) of global justice.<sup>71</sup>

Why is this limited view of TNCs' role in global justice so objectionable? To begin with, it is hard to reconcile with the relatively proactive role envisioned by the UN for companies with regard to addressing issues of global justice, that is, to fulfil "the obligation to *promote, secure the fulfilment of, respect, ensure respect of and protect* human rights recognized in international as well as national law".<sup>72</sup> Some might object to this vision anyway, on grounds that corporations are constrained by their business obligations to their shareholders to maximise profits and shareholder value – but that is a different sort of limitation from what we are talking about here.<sup>73</sup> The limitation that we are talking about here is a conceptual one, a limitation on the role of TNCs in global justice that arises from

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<sup>71</sup> The distinction between 'primary' and 'secondary' agents of justice is O'Neill (2001)'s. Her unique conception of TNCs as agents of justice in this framework is discussed below in section 2.3.2.

<sup>72</sup> *Supra* fn 53. Emphasis is my own.

<sup>73</sup> The issue of the "moral" versus the "strictly business" views (the CSR dilemma) is covered in more detail in chapter 5.

trying to plug the correlativity gap, which in turn originates from the need for correlativity in the first place (that is, with rights-based approaches to global justice). The problem with it is not that we ask too much of corporations, but that we ask too little. Large corporations do not merely “connect” people. They are capable in their own right of initiating aid programmes, entrepreneurship schemes, importing their technological know-how, building schools and hospitals in poor countries etc. The conception of TNCs as institutions that merely mediate positive duties is, on the whole, too subservient to the status quo of individuals (and states) as primary agents of global justice. There is more TNCs can do on the behalf of poor individuals than is envisioned in Shue’s theory, and we should not demand of corporations less than they can give. For these reasons, I think that rights-based accounts of global justice – at least where Shue’s theory is concerned – is *inadequate* for the purposes of pushing for a bigger role for TNCs in global justice, that is, as primary rather than secondary agents of global justice.

Ironically, Shue’s original intention was to precisely break away from the philosophers who “thought in hopelessly individualistic terms”, by positing TNCs in the picture (Shue, 1988: 696). The problem is that, he did not go far enough. Conceptually-speaking, his notion of TNCs as mediating institutions is still hopelessly trapped in a methodologically individualistic framework. As mentioned previously, methodological individualism is a doctrine that says that we cannot understand social phenomena without understanding actions. Since actions must be motivated by intentional states which (arguably) only individuals possess, we must analyse individuals (the “micro” foundations of social phenomena) in order to deduce “macro” explanations of the phenomena (Heath, 2005). Shue’s theory is methodologically individualistic because it is concerned ultimately with correlativity as between *individual* right-holders and duty-bearers, with TNCs as an intermediary – rather than TNCs as institutional agents in their own right.

Without going into the metaphysics of the corporate form, I see no reason why we should accept this framework and suddenly impose on the theory of global justice a structure of interpretive social science that is committed to individual action only. What about action by TNCs as institutional agents of



justice in their own right? If we are able to envision states, which are themselves collectives, as basic political units in our political theories of global justice, why not other collective (but separate) entities like TNCs? It seems to me that, instead of talking about new ethical relationships created by institutions that stand between potential individual right-holders and potential duty-bearers, and that are designed expressly to allocate previously unallocated duties – duties and rights which exhibit weak correlativity at best – we should be talking about what moral duties institutions like TNCs have – for example, what responsibilities a TNC that exploits poor workers has towards them, or what responsibilities a TNC has towards its investors and consumers – relationships that retain strong correlativity. The issue, then, should turn on what the moral relations between the potential duty-bearing institution and the individual rights claimant are, rather than attempting to generate what seem to be *ad hoc* close ties through institutional means.

But even then, it does not follow from the positing of institutional agents of global justice that we can posit *TNCs* in particular as primary agents of global justice. To do so would be to rely on a built-in assumption that TNCs are one of the institutions in the running as primary agents of justice in the first place, which brings us back to the question ‘Why TNCs?’. Intuitively, while the talk of human rights resonates with the idea of those rights being fulfilled by individual or statist agents, the connection does not come as naturally when we think about corporations or corporate agents. Theoretically-speaking, the principles of duty allocation must still be argued, in order to answer the question ‘Why TNCs?’. Even rights-based theorists concede that fact: “The allocation of the duties will have to be done according to principles that, after argument, seem reasonable... But justifying a particular principle and the assignment it dictates is a task for another occasion, even though what has been said so far can be neither fully practical nor fully persuasive until that task is completed” (Shue, 1988: 703).

My contention here is merely that, if the distribution of responsibilities must ultimately still be argued in order to tie human rights to TNCs, then we need to ask whether engaging the doctrine of human rights adds normative value to an account of responsibilities as compared to just going on a purely duty-based

account of CSR. From what we have seen, it does not seem like a lot. To summarise my critique so far, the way rights-based theorists like Shue have incorporated TNCs into their framework of pluralized global just agency revolves around the central concern of establishing correlativity between rights and duties, which turns on how closely tied the rights claimants and duty-bearers are. As I have argued, using institutions like TNCs to mediate this ethical relationship generates weak correlativity on one interpretation (that is, correlativity that only requires the *type* of duty-bearer to be specified, not the specific duty-bearer). On another interpretation, it negates the need for correlativity altogether (because the rights and duties of specific individuals exist whether or not correlativity can be established). Moreover, I have also argued that viewing TNCs as mediating institutions in this way unnecessarily limits the role of TNCs to being secondary, rather than primary agents, of global justice. For these reasons, I think that rights-based accounts of global justice are *inadequate* for a theory of CSR.

Even if these problems were only specific to Shue's argument and not generalisable to all rights-based accounts, the question 'Why TNCs?' still remains. All rights-based accounts must eventually still return to the issue of duty allocation, as we have seen. For this reason, rights-based accounts of global justice are also *insufficient* for a theory of CSR, because they still entail a philosophical enquiry into the moral bases for corporate responsibility. If this is the case, and given the problems elucidated here, why bother with rights-based theories then? As demonstrated later on, human rights are not required to determine what roles TNCs should play in global justice. In a duty-based approach, the criterion to determine these moral reasons is set by providing a normative account of the moral basis for CSR, rather than talking about human rights.

But perhaps it is the case that, despite these conceptual problems, there are other reasons to present a human rights case for CSR. After all, it seems natural to ask why, despite the philosophical problems highlighted here, rights-based theories have nonetheless dominated the discourse on global justice and CSR for so long. The predominance of the language of rights and rights-based reasoning in discussions about CSR has various sources. It is partly historical and

partly political. International cooperation has historically relied heavily on the discourse of rights (no matter how flimsy). The first evidence of corporate activism that appeared in the 19<sup>th</sup> century was over the issue of slavery: boycotts of companies participating in the slave trade or the shipping and sale of slave-grown products, the eventual abolition of slavery –these were all done on the basis of claims about the rights of man, thus launching the world’s first international human rights movement (Oliveiro and Simmons, 2002). In the 21<sup>st</sup> century, the authority of these claims has continued. The UN is committed to several declarations and conventions on human rights, in particular the 1948 Universal Declaration of Human Rights (“UNDHR”) and the UN Millennium Development Goals (“MDG”). It is unsurprising then that the agenda of the UN Global Compact, being a UN initiative and indeed the world’s largest global corporate citizenship initiative, should be to exhibit and build the social legitimacy of business around the UN’s own commitments to human rights as enshrined in the UNDHR and MDG. Moreover, the concerns of corporations themselves are often also tied to that of their lobbyists. International non-governmental organizations (INGOs) like Amnesty International, for example, whose agenda is focused on human rights issues, are increasingly well-organised, with a growing international membership and greater media coverage, and have become a very real force in trying to lobby or compel corporations to cooperate in advancing human rights (Owen, 2002; O’Mahony, 2004). Historically-speaking, therefore, a grand movement to secure respect for human rights has always underpinned the evolution of CSR.

In terms of politics, no one denies that the concept of universal human rights is an ennobling one. It invokes universal standards, and therefore reaches each person on a very individual and deep level. This makes ethical deliberation conducted in terms of rights accessible to everyone, whether it be policy-makers, corporations or the man on the street. For this reason, it also makes good publicity for companies. But good rhetoric is still rhetoric. Moreover, as we have seen in this section, the “reifying vocabulary” for individuating rights obscures underlying correlativity problems (O’Neill, 1986: 118). Philosophically-

speaking, I hope to have shown here the reasons why we should reject a rights-based approach to a theory of CSR.

### **2.3 Global justice as duty**

The question that follows naturally is whether a duty-based account of global justice is (i) adequate and sufficient to do all the normative work to ground a theory of CSR, and (ii) presents TNCs as primary agents of global justice? Although the rights-based approach has been discredited on both counts here, it does not naturally follow that the duty-based approach is poised to take up these tasks. For that, we turn to the arguments for a duty-based theory of CSR.

#### **2.3.1 Is ‘global justice as duty’ adequate and sufficient to ground a theory of CSR?**

As far as this question is concerned, the debate is really centred around the more general issue of imperfection in rights-based and duty-based theories. But as we shall see, the practical importance of poverty alleviation through CSR does become significant in the debate.

There is no avoiding the fact that duty-based theories sometimes face the same problem of imperfect duties as rights-based theories do – but with a difference! Where duty is based on contribution to harm or a special relationship (for example, spousal or parental duties), the duty-bearer in question is usually easy to specify, relatively-speaking. But imperfect duties become a problem when the causal or relational links are complex and not as straightforwardly traceable. Alternatively, there may be cases whereby there is no specifiable duty-bearer or claimant, but the existence of a duty is claimed on other philosophical grounds, such as capability (O’Neill, 2001) or political responsibility (Young, 2003; 2006). In these situations, it may be the case that no one particular actor has the duty to feed X, but political responsibility dictates that someone should (the problem of imperfect duties); or it may be the case that a particular actor is capable of feeding someone, but this does not mean that he/she should feed everyone (the problem of wide duties).

So far, so imperfect: the gap between claimant and duty-bearer seems impartial between rights- and duty-based reasonings. However, further reflection reveals several points of difference. Firstly, while the imperfection that arises in rights-based theories is captured by a correlativity gap, the imperfection that arises in duty-based theories is not a correlativity problem. Another way of putting it is that an appeal to some right must be able to demonstrate a correlative duty, even if it is an imperfect duty, but duty-based reasoning allows for imperfect duties without corresponding rights. The significance of this in terms of just action is that, where duties rather than rights are fundamental, imperfection leads to different outcomes. Where rights generate imperfect duties that cannot be allocated to a specifiable agent, just action will depend on the charity or optional beneficence of agents, which in turn depends on preferences and values.<sup>74</sup> However, when duties are fundamental, just action is required by justice even where duties are imperfect.<sup>75</sup> In other words, if the ‘from whom’/‘to whom’ questions are not answered, then on the rights-based account, I have no specifiable duty to meet an unfulfilled right, because the right cannot be shown to be correlative to any duty on my part. But on a duty-based account, my duty survives even if there is no specifiable right-holder; conversely, even if the duties cannot be allocated to me or any other specifiable agent, they remain duties at large as a matter of justice. Hence, “deliberation in which *obligations* rather than rights are taken as fundamental would not need to draw so sharp a distinction between obligations with and without assignable bearers and claimants” (O’Neill, 1986: 103). Just action, in this case, is not subject to preferences and values, but falls within the purview of justice and is constitutionally demanded by justice. In this sense, a theory of justice that treats obligations as primitive is more action-guiding.<sup>76</sup>

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<sup>74</sup> I present this here as an undesirable outcome. However, note that some theorists like John Tasioulas (2007) do not see a problem in casting imperfect duties as matters of altruism, charity, mercy, gratitude. Tasioulas merely sees them as falling outside the domain of justice.

<sup>75</sup> Although imperfect duties may still be met by charity in this case.

<sup>76</sup> Although, as O’Neill points out, neither rights-based or duty-based approaches to justice can guide action with the same precision as results-based approaches, since “neither offers an algorithm for identifying an optimal action for each context” (1986: 104). The objections to

This then leads us to the pragmatic question: Of what good is an imperfect duty to a petitioner, even if it exists independently of any appeal to rights? His/her claim is still a demand for others' action, albeit a demand of justice. If a petitioner is unable to obtain duty-fulfilling just action on the part of any specifiable agent, does his/her claim amount to mere rhetoric as in the case of manifesto rights claims? This line of argument is, in my opinion, misguided. It mistakenly picks up the rhetoric of the rights discourse, in which universal rights do not secure universal duties, yet whose appeal is accessible across social, political and ideological boundaries. The concern with rhetorical rights claims is that a discourse about justice conducted through the recipient's perspective skims over hard questions about correlative duties: "an appeal to rights can be heard so widely [only] because it depicts the holders of rights only under the most indeterminate descriptions, as abstract individuals with unspecified, unmet needs or desires or preferences and with unspecified plans and potential for action" (O'Neill, 1986: 117). The fear for the petitioner here, in this case, is that this "potential for action" based on a rights claim is not fulfilled because the potential bearer of the correlative duty is not specifiable. So even if the right itself can be established, respect for rights cannot be secured.

However, unlike the rights discourse, an appeal to duty has as its audience not a universal pool of right-holders, but rather a determinate pool of duty-bearers who meet a particular set of principles of duty allocation (whatever these may be). For this select pool, the key question that a duty-based approach to global justice asks is 'Who owes what to whom?'. The pragmatic significance of this shift from a recipient perspective to a donor perspective is that the onus is no longer on the suffering petitioner who must passively accept that his/her right may lie unclaimed or unenforced where there is no specifiable duty-bearer. Rather, the onus is now on the potential duty-bearer who has the power to bring about change, and whose just action can be actively and legitimately claimed based on the principles of justice. This is the difference between a rhetoric of rights that addresses the right-holder but not (or only correlatively) the duty-

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consequentialist reasoning for our present purposes have already been explained previously (see fn 43 and 62).

bearer, and a discourse of duties that addresses directly those whose action can institutionalize and secure respect for rights: “It is powerful agents and agencies who command and benefit; but the rhetoric of rights speaks mainly to the powerless” (O’Neill, 1986: 120).

Nonetheless, one may still come back with the following objection: even if our principles of duties are able to specify who the duty-bearers are, there remains the problem of wide duties, namely, the question ‘to whom’ these duties are owed. This guidance gap keeps cropping up in CSR in particular: companies may reasonably ask, even if they accept that they have a moral imperative to be socially responsible, to whom exactly should they be socially responsible towards? This is the reverse case of duties without correlative rights – that is, when there is no specifiable right-holder – which can occur even when obligations rather than rights are treated as ethically fundamental. In response, I am not convinced that the question of ‘what’ and ‘to whom’ duties are owed amounts to an argument against the case for global justice as duty, since the same questions apply when we talk about human rights. What is important is that fundamental duties will simultaneously secure some rights. Or, more accurately, the institutionalization of duties in our policies and laws will simultaneously secure the rights that we are concerned about – “[t]o will the end is to will the means” (Sen, 1984; Shue, 1984: 94)<sup>77</sup> – without the pitfalls of rights-based approaches.

On an institutional level at least, duty-based models of social regulation are not a foreign idea. Already, many of our attempts to legislate corporate governance – for example, company law, law of contracts, insolvency law, even criminal law – emphasize the duties of the company (as a separate legal entity with its own legal personality) towards other individuals. While some of the claims against the company are undoubtedly predicated upon some right that others hold, they are not prior in the sense that the articulation of these rights is not a necessary precondition for enforcing or claiming the duties in question, whether fiduciary or otherwise. For example, it is possible to argue for the obligations of a company in liquidation towards its creditors without reference to the rights of the creditors.

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<sup>77</sup> Although Shue maintains that these duties are correlative to their rights rather than fundamental.

This is not to say that institutional duties can be equated with moral duties, but merely to defend duty-based moral arguments from the criticism of practical irrelevance. Given the arguments on the whole so far, there seems to be no reason therefore to retain a rights-based model of CSR. In fact, if the arguments here have been persuasive, there seems to be more reason to push for a duty-based model of CSR instead, one that extends the responsibilities of TNCs in existing legal jurisdictions to include their moral responsibilities towards others as well.

### **2.3.2 Does ‘global justice as duty’ present TNCs as primary agents of global justice?**

This question concerns the “division of labour” between the plurality of agents of global justice, and how TNCs fit into the scheme of things. As we have seen, even rights-based theories of justice must eventually address the question of duty allocation and the principles that govern the assignment of duties (correlative to rights) to agents of different of varying types and capabilities. By now, I hope to have established that it is duties rather than rights that are “the active aspects of justice” (O’Neill, 2001: 42). One of the concerns about rights-based approaches to global justice (according to Shue’s theory, at least) was that they limited the role of TNCs in global justice. The criticism there was that rights-based theories relegated TNCs who had the potential to be primary agents of justice to the role of secondary agents instead, and this was objectionable because, among other things, it was too subservient to the status quo of individuals and states as the primary agents of justice. The question we turn to now is whether duty-based arguments for the plurality of agents of justice avoid this sort of “hidden statism” (O’Neill, 2001: 43).

At first glance, it seems that they do. In her 2001 paper *Agents of Justice*, Onora O’Neill soundly criticizes the UN Declaration of Human Rights (“UNDHR”) firstly for taking a “non-universalist view of the allocation of obligations” by treating states as the primary agents of justice *tout court*, and secondly for not making this “wholly explicit” (41, 42). The problem, it seems, lies in the disparity between the cosmopolitan rhetoric of contemporary discussions of justice and the statist nature of contemporary practices of justice, both of which are



by and large rights-based. Because rights-based theories say little or nothing about the allocation of duties, rights-based policies are similarly opaque about the allocation of the obligations of justice. This, according to O’Neill, has led to a situation whereby human rights initiatives like the UNDHR simply sidestep the question of duty allocation by privileging states as the primary agents of justice, while at the same time espousing cosmopolitan aspirations: “A cosmopolitan view of rights is to be spliced with a statist view of obligations” (O’Neill, 2001: 42). As we have seen from the beginning, the same can be said about the UN Global Compact and the Norms, which pursue a policy of inclusion aimed at TNCs, while at the same time positing states as the primary agents of justice. In other words, these rights-based initiatives assume a picture of “global citizenship” that is in reality exclusively made up of “a plurality of bounded states” rather than a plurality of different agents of justice (O’Neill, 2001: 42).

The expectation, of course, is that duty-based approaches, which have as their starting point the allocation of duties among various agents rather than appeals to human rights, will provide “a more robust view of the plurality of agents of justice” (O’Neill, 2001: 38). In reality, however, the momentum created by this move away from state-centric views is not carried very far in the end. Of special interest to us in the present case is Onora O’Neill’s (2001) attempt to broaden the role of non-state agents in global justice, since she has consistently argued for a deontic approach to global justice and specifically addresses the role of TNCs.<sup>78</sup> O’Neill’s first step is to create a bifurcated system of agency consisting of primary and secondary agents of justice. Primary agents of justice are defined as agents who may construct or assign powers to other agents. Secondary agents of justice are defined as agents whose contribution to justice is meeting the demands of primary agents and are (at least partially) controlled by primary agents. Her next step is to posit TNCs in this framework. On the one hand, she seems to pick up the concern about state centrism and TNCs’ limited role in rights-based theories of global justice by arguing that TNCs have the capabilities to contribute to greater

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<sup>78</sup> She also discusses briefly other non-state actors like international non-governmental organisations (INGOs) and what she refers to as global social movements (GSMs) – that is, “social, political and epistemic movements that operate across borders” (O’Neill, 1988: 47).

justice, to be more than secondary agents of justice – especially in weak states. In other words, O’Neill portrays TNCs as more than mere law abiders. They may, for example, insist on decent labour or environmental practices in the absence of any law that requires them to do so – and indeed, she points out that they already do so in practice.

On the other hand, she resists elevating TNCs to the role of primary agents of justice, a role which she reserves exclusively for states – even when they are weak. The result is a conception of the role of TNCs in global justice as more than secondary agents but not quite primary agents, one that lies somewhere along a spectrum in between the two, made up of a broad range of non-state actors with a broad range of capabilities: “But once we look at the realities of life where states are weak, any simple division between primary and secondary agents of justice blurs. Justice has to be built by a diversity of agents and agencies that possess and lack varying ranges of capabilities, and can contribute to justice... in more diverse ways than is generally acknowledged...” (O’Neill, 2001: 50). Like the rights theorists, therefore, it would seem that although O’Neill prioritises duties when contemplating the role of TNCs within a more pluralized understanding of just agency, her notion of TNC responsibility is still subservient to the status quo of states as primary agents.

There are a few possible reasons why this might be so. The first reason could be that O’Neill is appealing to a prevailing notion of the nation-state in political theory: that states are “the best primary agents available” because they work within a defined bounded territory, within which they legitimately exercise a monopoly of the use of coercion to those who are within that territory and against outsiders (O’Neill, 2001: 38). The worry here seems to be that, although TNCs may acquire “selected state-like capabilities”, still they do not possess “the range of capabilities held by states that succeed in being primary agents of justice” (O’Neill, 2001: 46). Examples of these capabilities that TNCs are missing include securing the rule of law, the collection of taxes and the provision of welfare - all of which O’Neill says are necessary for securing the full measure of justice. Hence, the conclusion is to agree that TNCs can and should do more, but to qualify that by saying that they are not able to do as much as a successful state could: “[a]lthough

TNCs may be ill constructed to substitute for the full range of contributions that states can (but often fail to) make to justice, there are many contributions that they can make especially when states are weak” (O’Neill, 2001: 50).

I think that this “middling” conception of the role of TNCs in global justice is the result of an exaggeration of the differential between the capabilities of states and TNCs. When we say that states are better equipped than TNCs, it is not enough to simply state that as a proposition. The question we should be asking is what exactly are they better equipped to do? If the argument is that TNCs cannot do all the things that states can, then my response is that this is not what we are asking them to do when we posit TNCs as primary agents of justice; we are not asking TNCs to become states. To do so would be to appeal to an in-built assumption that primary agency consists of the whole range of capabilities that only states possess. The argument is open to a tautologous interpretation, because whatever capabilities that TNCs lack but that states possess will be taken to define the scope of primary agency. This is my conceptual objection to O’Neill’s argument.

The empirical objection, of course, is that justice does not require that TNCs possess all the capabilities that states do. TNCs are called upon to do different things in their role as primary agents of global justice, and more often than not, they are called on to do so directly, not through the medium of the state. The question that a non-state-centric conception of agency should be asking is this: What exactly are the specific developmental goals that are being hoped will be achieved, and do TNCs possess the capabilities to achieve these goals? As I illustrate in greater detail in chapter 4, the private sector can harness its capabilities innovatively to aid developing countries. These include not just foreign development investment (FDI), but also the capability of creating new markets at the bottom of the pyramid, growing domestic enterprises and business networks, setting standards, and promoting broader cooperation with government and civil society initiatives. If we recall the definition of a “primary agent”, it would seem that TNCs do in fact possess the capabilities to construct or assign powers to other agents in order to operationalise these goals. By appealing to the characteristics of a nation-state to flesh out her conception of a primary agent, O’Neill is confusing

the issue of what constitutes a basic political unit and what constitutes a primary agent.

The second possible reason for O'Neill's constrained conception of TNC agency could be that she is indeed appealing to the prevailing status quo of states as primary agents of justice. According to this view, only when states fail as primary agents of justice, or when they are too weak to act as primary agents of justice, do other agents and agencies become important agents of justice. The role of TNCs is, in this sense, an interventionist one, which is activated only when states are weak or failed. Again, there are conceptual and empirical objections to this argument. Firstly, an interventionist role does not necessarily preclude TNCs from primary agency, if our understanding of a "primary agent" is consistent with O'Neill's own understanding. It is merely an appeal to the chronology of action by various agents (that is, TNCs only intervene when states fail or become weak), rather than constitutive of the character of that agency itself. Secondly, it is important to realize that capability is not the only moral basis for corporate responsibility. As I mention in the next chapter (chapter 3), there are other moral instances where TNCs' responsibility towards others is activated - for example, when they have contributed to the harm in question themselves. In this case, justice demands that TNCs take action on moral grounds which are not conditioned on the existence of a weak or failed state.

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At the end of the chapter, I have made the case for why we should think of CSR and the role of TNCs in global justice in terms of 'duties' rather than 'rights'. I have also countered the arguments why TNCs should not be primary agents of justice. As we saw, not only were theories that prioritise duties rather than rights more poised to guide corporate action, they also envisioned the possibility of TNCs as primary agents of global justice. But, even if one does not accept the conception of global justice as duty, we saw that an appeal to the doctrine of human rights must eventually still address the issue of allocation of duties. And it is to this task of filling out the categories of corporate duties that we turn to next.

### 3

## Why TNCs ought to play a role in global justice: The capabilities argument for CSR

This chapter picks up the question left unanswered in the previous two chapters, namely, ‘Why TNCs?’. In chapter 1, it was argued that the answer to this question should not be sought by “fitting” TNCs into the various “grand theories” of what an ideal cosmopolitan just global order looked like. Instead, I argued that a theory of CSR should be constructed from ground up, by building a theory of responsibility that would lead to answers regarding the global just agency of specific actors like TNCs. Taking up this theme of ‘responsibility’, Chapter 2 then laid the first plank in the construction of a theory of responsibility by addressing the predominant rights-based approach to global justice and providing arguments against a rights-based theory of CSR. Instead, the case for ‘justice as duty’ was presented. Notwithstanding, I concluded by pointing out that even those who insisted on couching global justice in human rights terms must eventually still “shift [their] approach to human rights, from a recipient-centric articulation of rights to an agent-centric approach, focusing on identifying those with the capacities and obligations to deliver on rights” (Kuper, 2005b: xi). Hence, our preoccupation with corporate just agency brings us - and that includes both rights- and duty- based theorists – right back at the issue of responsibility.<sup>79</sup>

This chapter, therefore, draws the two arguments together to focus on the question of ‘corporate responsibility’ – to explain what it is and to elucidate an account of the categories of corporate responsibility that underpin the moral claim that TNCs ought to play a role in global justice.

### 3.1 The notion of ‘responsibility’

The construction of a theory of corporate responsibility must start with asking what ‘responsibility’ means. There are several ways of looking at the notion of

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<sup>79</sup> Again, ‘responsibility’, ‘duty’ and ‘obligation’ are used interchangeably here (see fn 50).

‘responsibility’. In a mundane sense, we might say that inflation is responsible for higher food prices, for example. This sense of responsibility identifies a causal process or sequence of events, but it is not the sense of ‘responsibility’ that we are interested in here. The sense of ‘responsibility’ that we are interested in here is responsibility in a moral sense, or ‘moral responsibility’. Questions of moral responsibility are most often questions about the criteria for moral assessment, and they can arise in different ways.

For example, we might say that a parent has a personal responsibility to care for his/her sick child. If the child dies as a result of a failure to provide such parental care, then we might say that the parent has no one to blame but him/herself. This may in turn depend on associated questions of freedom, voluntariness and choice (Scanlon, 1998) – for example, whether the parent’s failure was due to the lack of resources to seek medical help or buy life-saving medicine that was beyond his/her control. These questions of moral responsibility pertain to responsibility in the sense of *attributability*.<sup>80</sup> Responsibility in the sense of attributability involves substantive claims about what we are or are not required to do for each other, which in turn depend on whether or how much we think a particular agent should be him/herself responsible for a particular outcome. In other words, judgments of substantive responsibility are sensitive to the particular agent’s choice in voluntarily bringing about the particular outcome and, indeed, his/her freedom and opportunity to choose (Scanlon, 1998). What is so special about violations of the morality of choice is that there is both a personal aspect and an internal aspect to responsibility in this sense. It is personal because one of the central ideas in judging whether someone can be attributed responsibility for his/her choice of action is “whether the action discloses something about the nature of the agent’s self” (Eshleman, 2004: 11). In other words, one’s actions not only depend on, but also reveal, one’s choices. It is personal because it reveals some inner attitudinal state or value commitment properly belonging to the actor and can be traced back to him personally. It is also internal because “the reasons one has failed to respond to are grounded not just in some value that others also recognize

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<sup>80</sup> Scanlon describes them as “judgments of substantive responsibility” (1998: 248).

but in *their own* value as rational creatures” (Scanlon, 1998: 271-2).<sup>81</sup> In other words, the reasons for attributing responsibility to an agent can also be the reasons for the agent’s self-reproach or negative evaluation of him/herself. So the analysis of whether responsibility can be attributed personally to an agent supports a parallel internal account of guilt on the part of the agent. This is responsibility in the sense of attributability.

Moral responsibility can also be understood in terms of *accountability*. To return to the above example of the sick child. A bystander who pays for his neighbour’s child to seek medical attention which the parent would not otherwise afford might attract our praise. Conversely, an individual who did not at least notify social services of the child’s plight might be regarded by us as worthy of blame. Here, responsibility in the sense of accountability pertains to moral questions about whether some action can be attributed to an agent as a precondition or basis for moral appraisal – praise or blame are the most obvious reactions.<sup>82</sup> It appeals to the agent’s judgment-sensitive attitude, that is, the agent’s sensitivity to the external judgment of others. Accountability is what makes the action wrong rather than merely harmful, appropriate for a third party to react with indignation rather than merely dismay or pity. In turn, one may react with praise or blame to the agent’s action either because we think it deserves such a response (the ‘merit-based view’), or because we think that our reaction will likely lead to a change in the agent’s behaviour (the ‘consequentialist view’) (Eshleman, 2004). Responsibility in the sense of *accountability* often presupposes attributability. In addition, to say that someone is responsible in the further sense of being accountable requires that the action attributed to him be judged against some objective criteria or interpersonal normative standard of conduct (Eshleman, 2004). These criteria create expectations between people of how the other should behave,

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<sup>81</sup> Although Scanlon states that moral responsibility in this sense can only be applied to rational creatures who are capable of reflective self-governance, he does not explicitly state that this includes only human individuals or that it excludes non-person entities (like TNCs). The issue harks back to the critique of the doctrine of methodological individualism in the previous chapter, which posits that only human individuals possess the requisite intentional states for action. The issue is revisited later on in this chapter.

<sup>82</sup> Confusingly, Scanlon calls this ‘responsibility as attributability’ (1998: 248).

and we appeal to them to justify our judgments of others. For example, we attach normative expectations to certain social roles, and hold those who take on those roles accountable for fulfilling our expectations. So accountability arises when a person is judged for his actions from an external perspective. To hold someone responsible in the sense of accountability is to expect him to acknowledge the validity of my judgment of him based on our commonly held standards of conduct, or to demand an explanation for his behaviour.

Put in another way, the distinction between responsibility in the sense of attributability and of accountability is the distinction between *being* responsible and *holding* one responsible. Responsibility in the sense of attributability allows us to identify the agent who is responsible and the justifiable scope of a claim against him. Responsibility in the accountability sense, on the other hand, allows us to identify who we can hold responsible to deliver on the set of claims delineated by the first question. The two often conflate, but one does not necessarily lead to the other; the person whose action gives rise to a claim in justice is not always the one responsible for doing something about it. Regarding this distinction, Thomas Scanlon cites as an illustration the sailors in Aristotle's example, where a group of sailors jettison the ship's cargo in order to save the ship from being sunk in a storm (1998: 291-2). Scanlon suggests that, in this example, while the action may be attributed to the sailors,<sup>83</sup> it may not be proper to hold them accountable for the loss of cargo or make them liable to compensate for the cargo they jettisoned.

Nonetheless, responsibility in both senses is required for what has been called "a complete attribution of responsibility" (Green, 2005: 118; Kuper, 2005b). However, the changing nature of our global world challenges the notion of a complete attribution of responsibility. Consider the case of child slavery in the cocoa industry.<sup>84</sup> In an increasingly seamless world market, it is clear that as long as there is demand for chocolate in the developed world, poor families in the developing world will continue to sell their children to work on cocoa farms. Yet,

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<sup>83</sup> Although presumably one could make the argument that they were coerced and that there was involuntariness of choice in this case.

<sup>84</sup> The following account of child labour and child trafficking and slavery in the cocoa industry is part of my own empirical research.



no one individual is the cause of the 284,000 children labouring on cocoa farms in Sub-Saharan Africa, of which approximately 12,500 are suspected to be victims of trafficking and slavery.<sup>85</sup> It is best described as a case of uncoordinated collective harm.<sup>86</sup> The fact that you or I go to the store and buy a single Mars bar does not necessarily make us personally responsible for the abuse and exploitation of children on cocoa farms in developing countries like Cote D'Ivoire and Ghana. Firstly, my unilateral contribution to the worldwide demand for cocoa is so negligible as to make no difference to anyone. Secondly, my action is considerably far removed from the harm – the cocoa harvested by a child slave is sold through at least two layers of middlemen, and then to exporters, distributors, chocolate manufacturers and retailers, before it reaches me. In the process, it is mixed with “slave-free cocoa”, such that it is impossible to trace the source of the cocoa that goes into the final product I purchased. So it would be hard to say that I, as the consumer, was responsible in the sense of attributability for the cocoa slave children’s plight because there are so many intervening factors standing between them and myself. To put it counterfactually, it would be unreasonable to claim that if I had not bought the single Mars bar, there would be no child slavery in the cocoa industry. But recent trends make it easier to say that I am responsible in the sense of accountability. The advent of movements like Fair Trade chocolate, for example, is increasing consumer awareness of our responsibility in the sense of accountability, because it changes our social notions of what is or is not morally acceptable and our expectations of each other. In this case, we have a situation where we may not be responsible in the sense of attributability, but are nonetheless responsible in the sense of accountability. Accountability without attributability fails the criterion of a complete attribution of responsibility.

Can theorizing the role of TNCs in global justice solve the problem of accountability without attributability? Different global justice thinkers have responded in different ways to meet the challenge. It has been suggested that TNCs

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<sup>85</sup> This is but a drop in the bucket compared to the 69 million child labourers in Sub-Saharan Africa, according to UNICEF figures published in 2007 (UNICEF, 2007: 43).

<sup>86</sup> The phrase is a common one, and used among others by Michael Green (2005) to describe the case of global climate change.

can “plug the responsibility gap”, so to speak, in three main ways: either (i) they stand as mediating institutions between potential individual duty-bearers and the victims of injustice (Shue, 1988), a proposition that I criticized previously in chapter 2, or (ii) they expand the scope of individual responsibility by being part of an unjust global institutional order that causes, perpetuates, and sustains poverty, which individuals are complicit in (for example, by being shareholders or consumers of the “tainted” products that these companies produce) (Pogge, 2002a etc.),<sup>87</sup> or (iii) in addition, Iris Marion Young (2006) argues for individual responsibility in relation to global injustices with a model similar to Shue’s – namely, the ‘social connection model’ of responsibilities. In this model, institutions like TNCs mediate a social connection between individuals and the distant poor through a complex global structure and process – for example, through the processes of production, investment and trade etc. Special attention is given to the case of our obligations as consumers towards sweatshop labourers in both developed and developing countries who produce goods that we buy. However, Young’s model differs from Shue’s in one respect: In the social connection model, the ethical relationship is “prior to” the institution (Young, 2006: 105). In other words, a social contract – albeit one that transcends political boundaries – exists between all human individuals independently of any political institutions.<sup>88</sup> Institutions like TNCs do not mediate or bring about these ethical relationships. They (merely) regulate the fairness of the social contract and provide the means through which the obligations under the social contract can be discharged: “A need for political institutions... *follows from* the global scope of obligations of justice, rather than *grounding* these obligations.” (Young, 2006: 105-106)

In these three models of global justice in which TNCs feature, the individual himself does not directly cause the harm, but is seen to play a strategic role in a process of events that lead to the harm.<sup>89</sup> The interposition of TNCs in the

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<sup>87</sup> Pogge’s theory is critically discussed in more detail in the next chapter.

<sup>88</sup> Young does not explain this social contract or how it comes about, for example, whether it is an implicit social contract based on our common humanity.

<sup>89</sup> In this sense, it is better to say that the individual “has a responsibility” towards the victim, rather than saying that he “owes a duty” towards the victim, which connotes a more direct causal link.

picture is intended to expand the boundaries of an individual's responsibility, either by extrapolating an ethical relationship between him and the victim (for example, if the individual buys from the company a product produced by a distant poor person under unjust circumstances), or by showing that he can be deemed to have caused more harm than he thinks (for example, by buying the product, the individual is personally endorsing the company's participation in a global trading system that causes and perpetuates such injustice, and the system itself). The three conceptions of the role of TNCs in global justice are distinctive in another way. They all appeal to a structure of interpretive social science that is methodologically individualistic, meaning that they privilege individuals as the only ones capable of intentional moral action.<sup>90</sup> Hence, the role of TNCs here is secondary, in the sense that the sole moral agent that this sort of political theory is concerned about is the individual. In an individualistic scheme, TNCs merely play an instrumental function, that is, in expanding the scope of the individual's responsibility as described.

This solves the problem of accountability without attributability in the individual's case. Increasingly, however, an individualistic understanding of responsibility is inadequate for understanding corporate responsibility and regulating large-scale global problems. As the international political order evolves into a "multi-level system" with "multiple players in functionally differentiated fields of activities", the role of the individual has diminished just as the role of large institutional entities such as TNCs has risen (Kreide, 2007b). The key reason for this shift is that large companies are better positioned to make the changes that our global problems need compared to individual agents.

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<sup>90</sup> Technically speaking, to reiterate here, the reason why analytical theory is committed to methodological individualism is not because it privileges the individual, but because it privileges an action-theoretic level of explanation. What makes methodological individualism 'methodological' is that we impose a structure of interpretive social science that says that we cannot understand social phenomena without understanding actions. Since actions must be motivated by intentional states which (arguably) only individuals possess, we must analyse individuals (the "micro" foundations of social phenomena) in order to deduce "macro" explanations of the phenomena. The 'individualism' in methodological individualism is, in a sense, no more than a by-product of analytical theory's central theoretical commitment to action theory (Heath, 2005).

Take the case of child slavery in the cocoa industry again. Most cocoa farms are run by independent small farmers. Low prices for their cocoa mean that income-poor farmers pull their children out of school to work on their family's cocoa farm instead of using paid labour. In the worst forms of child labour, children are outrightly trafficked and sold as slaves for money. The most urgent solution is to establish a "child slavery-free cocoa" certification system to eradicate the worst forms of child labour.<sup>91</sup> But the longer-term solution is to pay cocoa farmers a fairer price for their harvests, and to put in place a social program that takes care of those children whose families continue to need their income – including fair working conditions, education, health and welfare. The governments of the cocoa producing countries are too weak or failed to regulate this, being wrapped up in civil conflict (in Cote D'Ivoire, which produces 43% of the world's cocoa) and corruption. Individual African middlemen are too scattered to coordinate a pricing scheme, let alone any social programs. In any case, they have no incentive to do so. Of course, individual consumers like you and I can boycott chocolate in order to place pressure on chocolate companies to take action. But individual action, unless organized and publicised through the media, is too small to make a difference on its own. It only underlines the point that it is the large chocolate companies, not individual agents, who have the capabilities to make the changes that are necessary to eradicate child slavery. As an industry, chocolate companies are highly consolidated (Hershey's and Mars/M&M produce two-thirds of the world's candy) and highly organized (viz., the World Cocoa Foundation, Chocolate Manufacturers' Association of America). Unlike individual agents, they also have access to the resources and knowledge needed to implement the changes needed. Hence, it is wide acknowledged (even by NGOs, who have turned more and more from lobbying governments to lobbying TNCs) that large corporations are best positioned to solve the root cause of the problem of child labour: poverty.

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<sup>91</sup> In accordance with the Harkin-Engel Protocol signed in 2001, chocolate companies agreed to develop and implement certain initiatives to combat child slavery and child labour by the year 2005. Among other things, the Protocol states that companies must verify and certify that their cocoa is produced without the "worst forms of child labour" as defined by ILO Convention 182, and implement poverty remediation initiatives. The companies failed to meet the 2005 deadline and it was extended till July 2008. If they fail to meet the deadline again, a bill mandating a "child slavery-free" labelling system for chocolate is likely to be introduced in the United States in 2008.

Moreover, the Fair Trade movement, whose chocolate products make up 1% of the market, demonstrates that it is quite viable for companies to pay farmers a guaranteed fair minimum price and still remain profitable.

Given the increasing and potential role of TNCs in global justice as agents in their own right, is there a normative argument for TNC responsibility, both in the sense of attributability and of accountability? That is to say, instead of talking about global justice in terms of the *individual's* expanded responsibility through the conceptual intervention of TNCs, which does not correspond with the realities of tackling global justice,<sup>92</sup> is there a way of talking about it in terms of *corporate* responsibility instead? In practice, corporate engagement in addressing the world's social problems is not a new phenomenon (Oliveiro and Simmons, 2002). However, normative thinking about CSR and institutional just agency has remained doggedly individualistic. As we have said, TNCs play a role in global justice only insofar as they expand the boundaries of the *individual* agent's moral responsibility (at least, according to Shue, Pogge and Young). It is the individual, rather than TNCs, that is the subject of political scrutiny. This stands in stark contrast with political reality where, as we have seen, it is large corporations that possess the capabilities to address large-scale global problems, not individual agents. In many global situations, it is also large corporations that *are* making a difference, not individual agents (O'Neill, 2001: 49). We therefore face the awkward situation where the social circumstances of TNCs' role in global justice have changed, but the political conception of global agency has not.

Recent publications have seen a shift in philosophical focus from individual charity (Singer, 1972; 1999)<sup>93</sup> to institutional agency (Kuper, 2005c; Green, 2005)<sup>94</sup> to corporate agency specifically (Lane, 2005; Kreide, 2007b). By

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<sup>92</sup> And which, moreover, are problematic (as discussed in chapters 2 and 4).

<sup>93</sup> Peter Singer is probably the most famous advocate of individual charity as a solution to poverty. See his seminal article "Famine, Affluence And Morality" (1972), reprinted together with a collection of his articles in *Writings On An Ethical Life* (2000), including his New York Times Sunday Magazine article "The Singer Solution To World Poverty" (1999).

<sup>94</sup> Kuper's article - intended as a critique of Singer's individualistic approach to poverty alleviation - provides sound empirical reasons (and some theoretical reasons) why the question of how to organise ourselves politically and economically to meet human rights claims is more compelling

recognizing that large companies *can* do something to alleviate global poverty, we “cross a theoretical watershed” (Kreide, 2007b: 12). However, this does not automatically imply that large companies *ought* to do anything to alleviate global poverty. The first is an empirical claim, the second a normative claim. One does not invariably translate to the other. Moreover, as normative statements go, the more modest conclusion drawn in the literature is that, *if* they were responsible, and because they possess capabilities that individuals do not, “the responsibilities of institutional agents are always broader than those of individuals” (Green, 2005: 129).

In normative terms, one could say that accountability without attributability becomes a problem again, because it seems “natural” to say that we hold a company *accountable*, for example, for injustices that have resulted from their business operations, but not to *attribute* responsibility to them “personally”. Let me explain. Unlike individuals, TNCs are not moral beings in the sense that you and I are. Human individuals have moral responsibilities *qua* human because they are thought to be qualitatively different from other known living species, capable of rationality and self-control (Eshleman, 2004). But TNCs are not human, so the idea that they can have moral responsibility is not an intuitive one. Moreover, the way we conceptualize power as agents and what constitutes intentional action also explains the appeal of the individualistic conception of responsibility in the sense of attributability, because it “correspond[s] to my understanding of myself as an agent” (Green, 2005: 122). In contrast, the idea that non-person entities like TNCs can be moral agents has attracted not consensus but controversy and debate, because TNCs do not possess the attributes commonly understood as necessary for personal responsibility.<sup>95</sup> However, changing social norms and people’s attitudes towards TNCs may make it possible to ascribe to them responsibility in the sense of accountability: Because TNCs are in the position to do something to help the poor at relatively little cost to themselves, the prevailing view of third parties is

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than the question of what we owe to the poor individually. Chiefly, it is more reflective of the complex causal story that is ‘poverty’ which Singer’s individualistic approach obscures.

<sup>95</sup> It has also inspired at least two books that pose the question: *Can Institutions Have Responsibilities?* (Alston, 2005a). (This issue is also addressed in Erskine (2003).)

that they should. So when we say that TNCs “should” be responsible, we do not usually intend to say that they are responsible in the sense of *attributability*. What we mean is that we have made a judgment concerning their actions and hold them responsible in the sense of *accountability*. To hold a corporate entity responsible in this way is to be one who demands an explanation and to whom an explanation is owed, based on some commonly-held criteria, as explained earlier. But to say that TNCs are responsible in the sense of *attributability* is a different thing. It suggests that, *prior to* being held responsible for taking remedial action or compensating for the harm caused, the TNC in question is somehow deemed morally blameworthy (or praiseworthy, whichever the case may be). But attributing responsibility to TNCs is not the same as attributing responsibility to individuals, because it jars with our notion of moral agents as people, as we have said.

Can the distinction between TNCs and individual agents throw any light on the normative question at hand? In other words, can a moral account of corporate responsibility – that is, in the sense of *attributability*, not just *accountability* – be elucidated by asking the following question: Are there any fundamental differences in the nature of responsibilities that can be attributed to TNCs and those that can be attributed to individuals?

I think there are. Firstly, capabilities become important when it comes to TNCs, because they are so much better positioned to solve large-scale global problems than individuals are. In the remainder of this chapter, the capabilities argument for CSR is critically analyzed and defended. Secondly, motivation also becomes important for TNCs, because they are primarily in the business of business, not human rights. A theory of CSR based on the notion of responsibility must, therefore, be supplemented by an account of *why* TNCs should adhere to the moral framework. I believe that in order for a theory of CSR to work, we need to theorize the business case for CSR, without which CSR as a theory of responsibility would not work. This is explored in chapter 5. The present chapter, however, focuses on the first point concerning the capabilities argument for CSR.

### **3.2 The capabilities argument for CSR**

No one disagrees with the broad claim that everyone, whether individuals or TNCs, is responsible in a general sense for the consequences resulting from their actions. Contribution to harm is a recognized principle and category of responsibility (Barry, 2005a; 2005b). Even those who oppose the idea of ‘cosmopolitan global justice’ acknowledge that there is a place in political theory for remedial responsibility – that is, to have an obligation to make a bad situation right – when the bad situation is caused by one’s action or omission (Miller, 2001: 455-458). Whether the causal connection can be traced to an identifiable perpetrator, or in cases where there are several candidates, how responsibility should be apportioned – are separate matters. It has been commented, however, that in many cases, the complexity of tracking down the causes of global harms is exaggerated (Kreide, 2007: 10). Most global catastrophes that attract our moral reprobation are not unlimited; they are often localised or restricted geographically, and the risks and damages are calculable. Causal responsibility must, of course, be accompanied by moral responsibility. As pointed out earlier, the causal act or omission must be one that attracts moral praise or blame.

However, several theorists of global justice have suggested that, in addition to being responsible for harmful outcomes that they have directly contributed to, TNCs may be attributed with a responsibility to act on cases of global injustice where they are more capable than individuals to do so:

“What does matter is what TNCs can and cannot do, the capabilities that they can and cannot develop... it is plain that TNCs can have and can develop ranges of capabilities to contribute both to greater justice and to greater injustice... Fostering justice in specific ways is an entirely possible corporate aim...” (O’Neill, 2001: 50)

“Thus, in order to assign institutional responsibility for regulating global injustice, for example, it is less important to show that the putatively responsible institution has caused poverty or human rights abuse than it is to show that it is capable of taking effective steps against them... there is a



distinctive set of institutional responsibilities that are structurally different from individual responsibilities.” (Green, 2005: 125, 126)

“By addressing the *capacities* of collective actors we cross a theoretical watershed. The collective actor’s obligation becomes less dependent on their role in causing harm and it becomes sufficient to show that the collective actor had the means to prevent harm and respect human rights.” (Kreide, 2007: 12)

TNCs are more capable than individuals in several ways. Firstly, they enjoy an asymmetry of information: They are better at collecting and processing information, and therefore predicting the future or indirect consequences of their actions. Superior knowledge also means that, in some cases, they can be said to foresee the consequences of not only their actions but also their omissions. Hence, it has been said that TNCs are not caught by the distinction made in the individual’s case between positive and negative duties: A negative duty (for example, the duty not to harm) is said to be violated by an action, whereas a positive duty (for example, the duty to do X) is said to be violated by an omission. Since TNCs are capable of foreseeing the outcomes in both cases, the distinction is therefore said not to apply to them (Green, 2005: 124; Kreide, 2007: 12). Secondly, they enjoy an asymmetry of power and influence. Unlike individual agents, TNCs can influence masses of people, change the course of public policy, set world prices of goods and many more things. Because of their relative power, it means that TNCs are able to implement change in cases of injustice and adapt to the resulting changed circumstances at relatively little cost to themselves (Young, 2003: 42).<sup>96</sup> It is not surprising, then, that it has been suggested that rather than wooing more companies to join the Global Compact, the UN should instead target the largest and most influential companies to change the culture and behaviour in

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<sup>96</sup> Unfortunately, in cases of abuse, TNCs have also been reported to exercise this power over corrupt governments to quell the voices of justice – the allegations of Cargill’s involvement in the arrests of cocoa farmers in Africa, Shell’s alleged involvement in the hanging of environmental activist Ken Saro Wiwa in Nigeria, or the murder of Brazilian rural activist Chico Mendes in 1988 by a foreign investor, are often cited.

their respective industries (Kuper, 2005d). Again, this appeals to the intuition here that ‘bigger is better’. Moreover, unlike individual agents, companies can spread the costs of regulating a problem, for example, by passing it on to consumers.

However, it has been pointed out that *can* does not imply *ought* (Green, 2005: 129). The comparison between TNCs and individuals merely demonstrates that TNCs are more capable than individuals in addressing global problems.<sup>97</sup> It is tempting to draw the stronger conclusion that they ought to address global problems. But the empirical claim that TNCs are more capable than individual agents in addressing and regulating our global problems does not naturally lead to the normative conclusion that they ought to be responsible. So the question here is this: Can a moral argument based on capabilities be made for why TNCs should be attributed responsibility for global justice (that is, not just to be held accountable for global injustice)?

I argue that it can. The capabilities argument is that the points which distinguish TNCs from individual agents also provide justification why they should be responsible for global justice (in the sense of attributability, that is). It also justifies a departure from the traditionally individualistic way of thinking, namely, that only individual agents can be invested with moral responsibility. This is achieved by treating the propensity for risk as a form of responsibility. Let me explain.

When we say that a person can be attributed responsibility for an outcome resulting from his action or omission, we commonly mean it in a *retrospective* sense. That is to say, the person is attributed responsibility for the outcome, whether good or bad, because it can be causally traced back to something he did or failed to do. His behaviour is therefore regarded as worthy of praise or blame, whichever the case may be. However, we also mean it in another sense. We mean also to say that the person is responsible for ensuring – that he *ought* to ensure – that the outcome happens (if it is a good outcome) or does not happen (if it is a bad

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<sup>97</sup> Although Michael Green (2005) goes one step further to suggest that the comparison would also lead to the conclusion that the *responsibilities* of institutions are always broader than those of individuals – *if* it could be proven that institutional agents like TNCs ought to be attributed responsibility for these global problems. It seems to me that the latter proposition, then, should be argued first; the first proposition is irrelevant unless the second is proven first.

outcome). This is to attribute responsibility to him in a *prospective* sense. The justification for praise or blame in this instance lies in the more fundamental idea that, if he had taken this responsibility more seriously, the outcome in question would have been different. So for example, if I break a vase in a shop, I am responsible for the breakage that I caused. However, I am also responsible in the sense that I ought to have been more careful. If I had been more careful, the vase might not be broken now. Responsibility in the prospective sense, then, is a precondition for any blame that might follow. If I was not responsible in this prospective sense, my failure to be careful would not have been blameworthy; indeed, there would be no “failure” to speak of. It is in this prospective sense that corporate responsibility based on capabilities is conceived.

Corporate responsibility in the prospective sense can be measured in terms of the propensity for risk, that is, how much risk a corporation can and is willing to take. The fact is, all decisions and actions create risks – and when those risks materialize, retrospective responsibility and blameworthiness kicks in. TNCs assume certain risks when they choose to operate globally across political borders in distant lands with distant strangers. By choosing to take these risks, they also undertake certain responsibilities in the prospective sense to manage the risk. The further argument for saying that TNCs *ought* to factor in these risks as part of the cost of doing business overseas, that they *ought* to be responsible for global justice (in the prospective sense), is that they are more capable than individual agents in assessing and absorbing these risks. That is to say, they have a bigger propensity for risk than the individual agent. With their superior knowledge and power and other capabilities enumerated above, they are in a better position than individual and most other agents to foresee and to prevent any potential problems that might arise from their operations. They are also in a better position to remedy any fallouts that might occur subsequently. Prospective responsibility, in a sense, is the cost of doing business. It is the responsibility to manage the risks created by one’s decisions and actions. In a global just order, prospective responsibility attaches to TNCs because of their greater propensity for risk as compared to individual agents. The capabilities that distinguish TNCs from individual agents also provide normative justification for the attribution of global responsibility to them. In the

bigger picture, the capabilities argument provides argumentation for an expanded conception of the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science; it leads to the recognition of global just agents other than individuals, like TNCs. Therefore, understood prospectively, I argue that ‘capabilities’ is a valid category of (corporate) responsibility.

However, it is not for every business transaction that a company may be held responsible, nor even every business transaction that causes harm. The attribution of prospective responsibility depends, in this case, on whether the harmful outcome was *reasonably foreseeable*. The understanding of the concept of ‘reasonable foreseeability’ here owes much to the law of tort for negligence. Negligence as a tort is the breach of a legal duty to take care by one which results in unintentional damage to another. A man is only held legally liable in negligence if he is first and foremost under a duty to take care. Duty is the chief ingredient of the tort of negligence, and must be established before liability can be considered. Duty, therefore, acts as a “control device which allows the courts to keep liability for negligence within acceptable limits”, otherwise the courts would be overwhelmed with claims for every careless act that causes harm to others (Rogers, 1994: 79). There are several established categories of duty in law, but the underlying principle is that “[y]ou must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.”<sup>98</sup> The question in law is, ‘Who is my neighbour?’. The answer is, “persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”<sup>99</sup> Reasonable foreseeability, then, is the test for the standard of care that we owe each other. It governs the proximity of the relationship between the plaintiff and the defendant necessary to establish duty. This proximate relationship is different from the ethical relationship necessary to establish correlativity between rights and duties that we saw in

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<sup>98</sup> *Donoghue v Stevenson* [1932] A.C. 562 (Lord Atkin).

<sup>99</sup> *Ibid.*

chapter 2. Here, we are solely concerned with whether or not a duty exists; rights and the issue of correlativity do not feature. Similarly, reasonable foreseeability is the test for whether or not prospective responsibility should be attributed in any given case. A company is only liable for harm caused if responsibility in the prospective sense is first attributable to it.

According to the law of negligence, whether or not the defendant could have reasonably foreseen the harm suffered by the plaintiff or his property by his act differs according to the *type* of case. So, for example, the standard of care demanded of a reasonable man in a domestic situation is different from the standards of business, and a passer-by who renders first aid in an accident is not required to show the skill of a professional doctor. Similarly, because they possess superior capabilities, the standard of care demanded of a corporation is different from that required by an individual agent – this is the thrust of the capabilities argument.<sup>100</sup> Nonetheless, the standard in law is objective, in the sense that it is independent of the facts in the individual case itself or the personal idiosyncrasies of the particular person whose conduct is in question.<sup>101</sup> Rather, the standard applied here is ascertained by first deciding what is to be attributed to a hypothetical reasonable man: the question is not ‘Did the defendant do his best?’ (subjective test) but ‘Did the defendant come up to the standard of the reasonable man?’ (objective test) (Rogers, 1994: 125). In the case of TNCs, the question is ‘Did the company in question come up to the standard of a “reasonable company”,’

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<sup>100</sup> Other types of cases that have passed through the courts include cases of defects in the quality of goods supplied by the defendant to a third party and thereon sold to the plaintiff, economic loss on the part of the plaintiff resulting from damage caused by the defendant to property belonging to a third party (for example, if the plaintiff is a tenant of the property), harm or economic loss resulting from a failure to act, cases of psychiatric injury etc. The cases suggest that, where direct physical harm is inflicted on the plaintiff or his property by the defendant’s act, duty is more readily established. In contrast, where there is a failure to act or the loss is economic in nature, the court may insist on a substantially closer proximity between the parties.

Although the categories of duty are not closed, the courts have generally been cautious in expanding the tort of negligence, and have in certain cases taken into account public policy considerations in making a decision whether or not a duty of care existed.

<sup>101</sup> It is not a matter of probability either, which is independent of the knowledge and experience of anybody.

as if the reasonable company were a single person?'.<sup>102</sup> This means that not all risk carries with it responsibility. The test to be applied in all cases is whether or not the conduct demanded of a particular company in a particular case matches that which can be reasonably required of any company in the given situation.

How is reasonable foreseeability ascertained? There are many factors that enter into the consideration, but the general principle in law is that the degree of care demanded of the defendant must be commensurate with the risk of the harm being caused. The magnitude of risk, or how reasonably foreseeable the harm is, depends on a confluence of factors. In the cases that have come before the courts, these factors have included considerations like the remoteness or likelihood of injury being caused, the defendant's knowledge of any extenuating circumstances, the practicability of the precautions that would have to be taken, the consequences if an action was not taken etc. Similarly, when we consider the issue of corporate responsibility, a balance between risk and responsibility must be struck. Attributability is proportional to the magnitude of risk that a company knowingly undertakes in a given operation.

To give an example of applying 'prospective responsibility' and 'reasonable foreseeability' to TNCs, I revisit the case of child slavery in the cocoa industry here. Large chocolate companies may be said to be responsible in the sense of attributability because any company in their position should reasonably have known about the risk, given the prevalence of child labour on cocoa farms, and should reasonably have acted upon that knowledge. At least, when the first report of child slavery came out in 1998 from the Ivory Coast office of UNICEF, they should have taken immediate action and deployed some of their vast resources to investigating the allegations further. Upon being made aware of the situation, they should have put pressure down the supply chain for the worst abuses of child labour to stop, and to address the root causes of child slavery – that is, poverty and unfair prices. Instead, they chose – and some still choose today – to deny that child slavery exists in the cocoa industry and that it is a global problem. The persistence of child slavery in the cocoa industry is, given the evidence, a reasonably

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<sup>102</sup> For example, as in the case where companies are considered corporate citizens of the world alongside you and me.

foreseeable consequence of their failure to act, which constitutes the violation of a positive duty in this case. The chocolate companies can also be said to cause and/or perpetuate the problem of child slavery on cocoa farms, because they continue to purchase cocoa from the farms despite knowing about the problem. And they continue to do so while depressing the price of cocoa paid to these farmers at unfair levels, farmers who are in turn forced to employ cheap labour that more often than not takes the form of child labour. These constitute the violation of a negative duty – again highlighting how reasonable foreseeability blurs the distinction between positive and negative duties (Green, 2005: 124; Kreide, 2007: 12). The capabilities argument, then, is that they should have taken due care and managed this risk better, and their failure to do so constitutes a breach of the responsibility attributed to them.

At the end of what might be considered a protracted argument for capabilities as a valid category of corporate responsibility, one might reasonably ask: Why is attributability important? Would it not suffice to hold the chocolate companies in this case responsible in the sense of accountability? Recall the distinction made earlier between attributability and accountability. It is less intuitive, it was argued, to attribute responsibility to corporate entities than it is to individual agents. When we say that an individual agent “should” be responsible, we usually mean to say that we attribute to them some sort of moral blameworthiness or liability. When we say that a company “should” be responsible, on the other hand, we usually mean to say that we hold them accountable to an impersonal and external standard of conduct. However, a closer scrutiny of what exactly distinguishes corporate entities from individual agents seemed to provide the means to close this conceptual gap. Specifically, it was argued that the capabilities that distinguish companies from individuals (that is, that they are better able to foresee and absorb risks) also provide the ethical reasoning for saying that they are responsible for global justice in the same way that individuals are. The capabilities argument, then, is both a means of attributing responsibility to non-person entities like TNCs, and of mediating the gap between accountability and attributability. But why is attributability so important for CSR? We turn next to this question.

### 3.3 The importance of attributability

There are some who seem to think that whatever sense of responsibility we ascribe to TNCs should be distinguished from the notion of responsibility as blameworthiness (Williams, 2006).<sup>103</sup> Others have argued that the kind of responsibilities which arise indirectly between distant persons and which are highly mediated through market connections and other social structures can never be moral responsibilities. Rather, they are ‘political responsibilities’ which belong to a category of responsibility separate and distinct from the notion of blameworthiness or liability (Young, 2003; 2004; 2006). Iris Marion Young argues, for example, that it is “implausible” to hold each and every individual consumer in developed countries personally liable for sweatshop conditions in third world countries when they (the individual consumers) stand so remote from the harm. Nonetheless, they are responsible in some sense for this injustice because both parties are embedded in global processes and structures that connect them tightly. Hence, she concludes that the anti-sweatshop movement must “implicitly” be relying on another conception of responsibility (Young, 2006: 368). The notion of political responsibility is offered, in this context, as an alternative conception of responsibility to the liability model.<sup>104</sup>

The distinction between personal liability and political responsibility here parallels the distinction between attributability and accountability. What Young’s theory does effectively is to abandon the idea that action for global justice requires a sense that one is personally and morally at blame for the injustice in question; in other words, responsible in the sense of attributability. Rather, her claim seems to be that one’s sense of global responsibility is guided by and acted on by one’s participation in the public discourse about justice. The way one discharges one’s political responsibilities is to be rallied or by rallying others around one’s moral view of the problem, and persuading one another on how to alleviate the problem collectively (Young, 2004: 380). This is similar to the kind of interaction that

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<sup>103</sup> ‘Attributability’, ‘blameworthiness’ and ‘liability’ are used interchangeably here. They all connote the sense of personalized responsibility, as opposed to being held ‘accountable’ to an external standard, as explained further below.

<sup>104</sup> *Ibid.* How Young’s theory of individual political responsibility relates to TNCs will be made clearer later on in this section.



happens in a social contract, and it involves an ultimate shared understanding of what the problem is and what needs to be done.<sup>105</sup> So even though Young casts political responsibility as a personal responsibility to engage in such kinds of global activism, the sense of responsibility that it appeals to is ultimately propelled by what others say, think and expect, as well as what one thinks others should say, think and expect. To be held and to hold others to a common shared standard of behaviour is exactly what responsibility in the sense of accountability is about. According to Young, this is the type of responsibility that global justice should subscribe to, rather than the liability model or responsibility in the sense of attributability.

Young lists several features of political responsibility that distinguish it from the liability model of responsibility, in what I suggest amounts to an argument for accountability without attributability. Here, I have re-grouped her list to highlight what I think are the three main points that she makes, and offer a critical response to each of them in turn:

(1) Political responsibility solves the problem of imperfect duties.

The notion of political responsibility arises because of the phenomenon of uncoordinated collective harm: “People have difficulty reasoning about individual responsibility with relation to outcomes produced by large-scale social structures in which millions participate, but of which none are the sole or primary cause” (Young, 2004: 374) What this means is that no one perpetrator can be isolated and identified as the one responsible for the harm, such that any duties that are owed towards the distant poor will always be imperfect. (Recall that in chapter 2, perfect duties were said to be owed by specifiable individuals against whom the right to performance can be claimed or enforced, and imperfect duties arose when there was no specifiable duty-bearer.) Hence, the liability model of responsibility does not work for global justice because imperfection means that it is “implausible” to hold any individual consumer in developed countries personally liable for sweatshop conditions in third world countries.

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<sup>105</sup> See fn 88.

The solution, Young says without much further explanation, is not to continue working within the framework of the liability model of responsibility and try to “perfect” imperfect duties: “I am not convinced that what we need to respond to this predicament is a set of principles to which individuals might look for guidance about what to do in relation to global social processes” (Young, 2004: 374). Rather, she argues, what is needed is responsibility “in a different sense”, by which she means political responsibility. Political responsibility is different from the liability model of responsibility because it is not reducible to “the self-conscious collaborative acts of individuals”, since there is in fact no isolatable perpetrator (Young, 2004: 375). Rather than assigning responsibility to individual agents according to what they have or have not done in respect of the harmful outcome, political responsibility derives instead from one’s “embeddedness” in the collective processes and structures that have resulted in the harmful outcome. It does not require us to tie the particular harm to an identifiable duty-bearer (perfect duty); instead, *everybody* bears political responsibility for global harms – including the victims – because everybody is a participant in the global basic structure that links distant persons and everybody shares the responsibility for engaging in actions directed at transforming the wider structural injustices that are the root causes of these harms. For this reason, finding that some people bear responsibility for global injustice does not necessarily absolve others. So instead of solving the problem of imperfect duties by perfecting them (that is, tying specific agents to specific harms), Young’s argument makes everyone responsible. Political responsibility thus solves the problem of imperfect duties not by addressing the issue of perfection, but by abandoning it entirely.

Of course, by positing the capabilities argument in section 3.2 above, I would have already shown my cards, that is, that I do not agree that the liability model of responsibility is at all implausible. Analysing Young’s argument with respect to TNCs, we note that the capabilities argument is precisely an argument to attach responsibility in the sense of attributability to TNCs who stand remote from the harm. The question here is not why political responsibility is relevant, but why the liability model is so irrelevant. The claim that the capabilities argument makes here is that TNCs have a personal responsibility to manage the reasonably

foreseeable risks that their business decisions and operations create, lest liability or blame for any reasonably foreseeable harm that arises be attributed to them. When it comes to responsibility for global harms, the argument is more intuitive for attributing responsibility to TNCs than it is for individuals, because they have a bigger propensity for taking such risks. TNCs are more capable than individual agents in foreseeing the outcomes of their actions and addressing them, whereas Young's concern seems to be largely driven by the concern that *individuals* find it harder to pinpoint their place in the collective process that connects their personal action to the harm.<sup>106</sup> Of course, an individual agent who is in a position of power and influence might still be caught by the capabilities argument. But generally-speaking, TNCs (and other institutional agents) are more likely to be attributed responsibility under the capabilities argument. The capabilities argument, therefore, provides one category of corporate responsibility. More pertinently here, the capabilities argument actually provides a solution to the problem of imperfect duties (that is, by tying specific companies to specific harms), while working within the liability model of responsibility.

(2) Political responsibility is outcome-oriented, not rule-guided

Some philosophers like Young like to make a distinction between 'responsibility' and 'duty' (Pogge, 1992b; Young, 2004: 379-380).<sup>107</sup> Young's argument, for example, is that, like duties, responsibilities carry obligations; one *should* carry out one's responsibilities. However, unlike duties, responsibilities do not specify *how* those obligations should be carried out; this is a matter of judgment, and depends on what the desired outcome is, the capabilities of the agents, the practicality of the action etc. Carrying out a responsibility consists solely in seeking to bring about a specified outcome. Carrying out a duty, on the other hand, involves the duty-bearer discharging specific actions required by the duty in question. According to Young, then, duty is rule-guided, whereas responsibility is outcome-guided. Political

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<sup>106</sup> With regard to the anti-sweatshop movement, Young does identify non-person actors like universities and other bulk consumers, as well as large retailers, as bearing political responsibility for the labour injustices committed in sweatshop factories. However, the thrust of her thesis on political responsibility is directed at individual agents.

<sup>107</sup> See also fn 50.

responsibility is, in this sense, a responsibility. It is therefore open about what actions count as or are sufficient for discharging it, so long as it is aimed towards achieving a certain just outcome (Young, 2004: 387-388). It is not a duty as such, unlike in the liability model of responsibility.

I wish to suggest that, on the contrary, political responsibility is less likely to achieve its desired outcomes than a liability model of responsibility that posits a specific agenda for action. Young claims: “It is very possible to act in accordance with rules of morality and yet not have discharged one’s responsibilities, because one has not achieved the required outcomes even though it is feasible to do so” (Young, 2004: 380). I would claim that the critique applies *a fortiori* to Young’s conception of political responsibility. The intuition that Young is appealing to here is that political responsibility, unlike the liability model of responsibility, is not concerned about pointing fingers at who is to blame. Rather, it is concerned solely with what the goals of global justice are. It is not prescriptive of the means to that end (presumably these means still have to fall within some sort of moral framework), simply that we must aim for it. But *aiming* towards an outcome is different from *achieving* the outcome. Both political responsibility and the liability model of responsibility aim towards certain global just outcomes. But the liability model of responsibility not only identifies *who* needs to do what, but also specifies *what* needs to be done in order to achieve those goals. Political responsibility, on the other hand, is silent on who needs to do what, merely that *everybody* who participates in the world’s global and market processes has a “responsibility” to do *something*. This open-endedness seems to be borne out of Young’s resistance to having “a set of principles to which individuals might look for guidance about what to do in relation to global social processes” (Young, 2004: 374). She also worries that “there are significant disagreements both within and outside the movement about whether some tactics do more harm than good and thus about what are the best ways in the long run to encourage and enforce decent working conditions” (Young, 2004: 388). But action-guidance is precisely what moral agents need, and indeed, it is what political theory is about. And political responsibility fails in this respect to define the scope of just agency. This, I think,

is particularly important for CSR: that TNCs know what exactly the scope and limits of their global responsibilities are.

In contrast, there are several advantages to subscribing to the liability model of responsibility under the capabilities argument. Firstly, the discussion of capabilities shows that TNCs are not affected by the distinction between positive and negative duties in the same way that individual agents are (Kreide, 2007: 12). Under the capabilities argument, it is only relevant that the TNC in question has the capabilities to reasonably foresee and to address the risk of harm – whether this involves ensuring that others are not unduly harmed by its corporate action (negative duty), or the duty to benefit others or protect them from harm (positive duty). It might be argued that the conception of political responsibility is blind to the distinction between positive and negative duties too. However, note that while this is true of the liability model because it specifies a category of corporate responsibility based on capabilities, it is only true of political responsibility because it does not specify anything at all.

Secondly, it has been claimed that the conception of political responsibility is forward-looking because it “doesn’t reckon debts, but aims at results” (Young, 2003: 3). The question that political responsibility asks is what social changes can we make that will eliminate future harm, rather than compensating victims for past wrongs (Young, 2003: 3). But as we note, the capabilities argument is also forward-looking, when it is based on the notion of prospective responsibility. Moreover, the liability model is more comprehensive than Young’s conception of political responsibility, because it is both forward- *and* backward-looking: The capabilities argument, which is forward-looking, supplements the category of responsibility based on contribution to harm, which is backward-looking. Both categories of responsibility based on capabilities and on contribution are part of the liability model of responsibility, insofar as they both seek to attribute personal responsibility to a specifiable agent. In other words, unlike political responsibility, the liability model encompasses both forward-looking *and* backward-looking bases of moral responsibility.

(3) Political responsibility addresses the issue of limits and the problem of motivation

Lastly, Young turns to respond to concerns about the limits of political responsibility and the problem of motivation, which she terms “existentialist” questions (Young, 2004: 383).

On the limits of political responsibility, the worry is that the conception of political responsibility, with its wide and relatively undefined ambit, seems to make nearly everyone responsible for nearly everything. Under the conception of political responsibility, most of us would find ourselves participant in one or more structural processes that affect someone somewhere in harmful or unjust ways. Therefore, to say that almost everybody is politically responsible for all injustices might be regarded as over-demanding. Young rejects this criticism on the basis that political responsibility is *not* about every individual taking on the personal burden of righting all wrongs, or assigning such responsibilities to this person or that. Rather, the conception of political responsibility is intended to compel each of us to question how we “should reason about [our] own action in the face of structural injustice”, and decide how we can work together as a collective to make better institutions (Young, 2004: 384). The limits of responsibility come in the form of loose guidelines as to what our responsibilities are, instead of a principled assignment of responsibility. Rather than appealing to pre-assigned duties or tasks that people have, Young argues that each person can reason about their action in relation to structural injustice along the parameters of (1) their specifiable connection to the distant persons potentially affected by their action, if any (2) the power and influence that they wield according to their position in the relevant structural processes, and (3) their relative privilege, derived from structural inequalities, as compared to the distant poor who are affected by their actions (Young, 2004: 385-387).

On the problem of motivation, conceptualizing political responsibility as distinct from blame is, according to Young, important not only philosophically but also practically. That is, political responsibility is useful for the practical reason of motivating collective action for the sake of social change and global justice. The argument is that, while pointing the finger of blame has its place in moral and

political theory, in many global justice contexts, liability is not the issue. In fact, the traditional emphasis on blame and liability only succeeds, Young argues, in making these potential agents who are blamed defensive and hostile. In contrast, rather than adopting such a positional strategy of ‘me versus you’, political responsibility emphasizes a shared agenda that everyone can engage in. The issue, then, is not about discerning who is responsible for what, but about how to mobilize everyone concerned to acknowledge their shared responsibility in solving a particular global problem, and to organize forms of collective action to address it (Young, 2004: 381-383). This sort of global civil activism, Young seems to think, is more effective in inspiring action for change than any principled division of labour.

One gets the sense that, what Young’s arguments (for why political responsibility addresses the issue of limits and the problem of motivation more effectively than the liability model of responsibility) have in common with each other is that they are aimed at stirring the moral conscience of the individual. The thrust of these arguments seems to be that, while the liability model of responsibility banks on a set of principles that pre-assign our global responsibilities to identifiable just agents, the conception of political responsibility is in a sense more inspiring precisely because it is less defined and less perfect in these respects. It reminds us of our implicit participation in the market and other world processes, and our relative position of power and privilege. In projecting the idea of a shared agenda to act for global social change, it appeals to our nobler selves, and the sense that we are not helpless in the face of global injustice, but that we can act for global social change. If I am correct, then the conception of political responsibility is redolent of political rhetoric more than political theory.

There is a place and time for political rhetoric. The language of rhetoric is important for bringing people together and for inspiring them. The problem for CSR is that, while this “call to unite for a better world” may be attractive to many individual agents and may be motivating for you and me, it is hard to imagine corporations, who have as their primary objective maximising profits and shareholder value, being inspired in the same way. Others argue that political rhetoric is valid precisely because it serves a business purpose, for example, in

enhancing the reputation of a particular company among consumers. But this argument negates any moral weight political responsibility might have right from the start, since then it is the business motivation that is driving moral action, not the sense of political responsibility. Moreover, responsibility tends to be constrained by companies' profit-maximising agenda. Hence, as in the case of the chocolate industry, continued profitability means that the problem of child slavery remains virtually ignored by large chocolate manufacturers and retailers, despite it being a widespread and well-known problem.

It is interesting to note that, in the final analysis, rather than relying on the aforesaid sense of working for a common good, Young actually appeals to the notion of 'capabilities' in order to make the case for a separate model of responsibility. Her attribution of political responsibility, in fact, rests on our capability to invoke social change based on our power, privilege and connection to the problem. But it is not a 'capabilities argument' as such, because it does not *theorize* about what exactly the scope of the CSR agenda is, or what exactly motivates TNCs to become agents of global justice – that is, unlike the capabilities argument laid out in section 3.2. There is no room in the conception of political responsibility for acknowledging the distinction between TNCs and individuals, or that TNCs face constraints to moral action that individuals do not. Moreover, it cannot offer principled arguments for why TNCs *per se* should engage in CSR. I myself am not convinced that all these questions are necessarily solvable within the framework of ideal theory. However, I do think that a proper theory of CSR must offer principles that are practicable and action-guiding in all these respects, rather than mere rhetoric.

If political responsibility cannot offer principles that guide us in the moral content of a theory of CSR, the question then is: Can the liability model of responsibility? The argument so far has been critical of the alternative model of political responsibility that Young posits in favour of the liability model of responsibility, which I have suggested amounts to an argument for accountability without attributability. But what of the arguments for attributability? Why is attributability important? In my opinion, attributability is ultimately important because it invests TNCs with a personalized sense of moral agency. It means that



TNCs are personally responsible for global harms, rather than just saying that they should be held to account for these harms. In other words, instead of being an external judgment on the corporation as in the case of accountability, attributability reflects some inner perspective or internal value commitment on the part of the company. To attribute responsibility to a company is to make a moral statement about its ethos and corporate culture from the point of view of the company. To hold it accountable, on the other hand, is to make a judgment about its behaviour from the point of view of a juror standing at arms length to the company being judged.

In practice, responsibility in the sense of accountability is usually tied with the external imposition of rules and laws (or the expectations of others) to regulate one's behaviour. This quickly becomes rhetorical if the regulatory initiatives fail to change the behaviour of the subject in question. Responsibility in the sense of attributability, on the other hand, is meant to provoke a voluntary response from the one responsible. In the case of the individual, praise or blame is intended to prick one's conscience and/or to provoke a change of behaviour. In the case of the TNC, it provides the moral reason to do better. The reason why investing TNCs with a sense of personal responsibility (responsibility in the sense of attributability) is more effective than regulating their behaviour through the external imposition of rules and laws (responsibility in the sense of accountability) is based on research that shows that voluntary self-regulation is more effective, less costly, and politically more feasible.<sup>108</sup> Of course, the real-life business constraints on global agency that TNCs face and how to think philosophically about them must still be addressed. But the argument here is that, first and foremost, a theory of CSR must be founded on the firm ground of attributability *with* accountability.

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In conclusion, by considering the structural differences between institutional (corporate) responsibility and individual responsibility, we were able to extrapolate the normative framework of responsibility outside its individualistic schema to

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<sup>108</sup> See chapter 6 for a detailed discussion.

consider its application to non-person actors like TNCs. In doing so, a new category of responsibility was developed – one that was based on capabilities. The capabilities argument was that, in addition to the remedial responsibility for global harms that they had directly caused or contributed to, TNCs ought to be responsible for global justice because, among other things, they had a greater propensity for risk than individual agents. They had more capabilities than individuals to reasonably foresee the harms that may result from their actions. Therefore, they ought to manage these risks and address any harms that result from their failure to do so. This global responsibility was attributable to TNCs if we conceived of responsibility in the prospective sense – that is, the responsibility to ensure that a harmful outcome does not happen. The responsibility was understood in the sense of attributability, which was distinguished from responsibility in the sense of accountability. Although corporate responsibility is more commonly understood as accountability, it was argued that accountability without attributability was not sufficient for a complete attribution of responsibility. The category of responsibility based on capabilities should, therefore, be understood as responsibility in the sense of attributability.

The discussion also throws up potential gaps in our normative thinking about corporate responsibility. Specifically, what is the scope of CSR, and how can we theorize about real-life business constraints that TNCs face with respect to the scope of CSR? What about the problem of motivation? These issues go to the moral content of a theory of CSR, and it is to the first of these – the scope of CSR, or what I call the ‘CSR agenda’ – that we turn to next.

## 4

### **The scope of corporate responsibility: Testing out Pogge's theory on the CSR agenda**

In March 2004, members of the Commission on the Private Sector and Development of the UN Development Programme ("UNDP"), in consultation with top management consultants from McKinsey & Company, submitted a report to the UN Secretary-General, Kofi Annan (UNDP, 2004). The report was commissioned by Mr Annan to analyse how the potential of the private sector and entrepreneurship could be "unleashed" in developing countries, so as to advance the development process towards achieving the Millennium Development Goals and alleviating poverty. Based on these observations, it made several recommendations on how the private sector could harness their capabilities innovatively to aid developing countries. These included (i) foreign development investment ("FDI"), (ii) creating new markets at the bottom of the pyramid, (iii) growing domestic enterprises and business networks, (iv) setting standards, and (v) broader cooperation with government and civil society initiatives (hereafter "the CSR agenda").

What the various arms of the CSR agenda as presented here do is to outline for us the practical scope of CSR. In addition to saying that TNCs ought to have global responsibilities (in chapter 3), we are told what the content of these responsibilities consists of. The challenge that follows, then, is to provide the normative argument for the scope of CSR as presented here. Given their moral obligations towards the poor, then, I ask: What is the moral justification for the CSR agenda, if any? What responsibilities exactly do TNCs have towards the very poor?

One of the arguments for extending the scope of responsibility to cases where there is no direct causal culpability is put forward by Thomas Pogge. Pogge's argument is that individuals in rich states have, as a matter of human rights, a moral responsibility to ensure that they do not unduly harm the distant poor by supporting a global economic order that promotes poverty. According to

this theory, our moral responsibilities towards the poor occupies an intermediate position – we are less implicated than if it were ourselves withholding food from a starving person, but more implicated than if it were simply a third party and not ourselves causing the harm. The aim of this chapter is to test out Pogge’s theory on the CSR agenda.

Distinguishing between institutional and interactional understandings of duty, I critically analyse the usefulness of Pogge’s argument in grounding the CSR agenda morally. The advantage of focusing on the causes of poverty, as Pogge’s theory does, is that it reveals poverty not as a regrettable phenomenon but as the outcome of structural conditions – a conception of poverty endorsed by both development theorists and global justice philosophers. A better understanding of the underlying causes of poverty helps avoid simplistic explanatory theories and opens up creative options for addressing it, rather than consigning poverty alleviation merely as a matter of foreign aid or, in the case of CSR, FDI.

However, I argue that the philosophical trade-offs are too costly. Conceptually, I think that Pogge’s argument trades heavily on the distinction between institutionalism and interactionalism. Institutionalism is concerned with the way our social world ought to be structured – that is, the principles by which the laws and practices that regulate our human interactions are assessed. Interactionalism, on the other hand, is concerned with the way we ought to treat each other – that is, the principles that govern our moral conduct. This distinction has also been marked by Pogge as the distinction between *institutional* moral analysis and *interactional* moral analysis (2002), or the distinction between *legal* cosmopolitanism and *moral* cosmopolitanism (1992).<sup>109</sup> My critique is that the distinctions that Pogge makes are an ideal fallacy: While they meet certain ideal needs and challenges, the distinctions do not hold up as well outside an ideal context.

Following up on my criticism, I argue that a perspective that avoids the need for the kind of distinctions Pogge has attempted is far more practical all round. In drawing the boundaries of corporate responsibility, the line should not be

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<sup>109</sup> Beitz (1994), in contrast, uses the terms *institutional* cosmopolitanism and *moral* cosmopolitanism analogously.

dictated by a false distinction between institutionalism and interactionalism. Rather, I argue, the active distinction in this instance is the distinction between ideal and non-ideal theory. I propose and outline one form such a non-ideal approach might take, that is, the business case for the CSR agenda. I explain why I think that theorizing the business case for the CSR agenda is appropriate in this case, and indeed, why it offers an alternative approach that is normatively advantageous in the light of the problems with Pogge's approach.

This chapter is divided as follows: In section 4.1, the CSR agenda is presented in greater detail. The CSR agenda provides a starting point for outlining the practical scope of CSR. The normative argument for what responsibilities exactly TNCs have towards the very poor is then addressed in section 4.2. An account of Pogge's theory is presented, then critically tested out on the issue. The thrust of my argument is that, in drawing the boundaries of corporate responsibility, a perspective that avoids the kind of distinctions that Pogge has attempted is far more practical all round. Picking this up, section 4.3. concludes by introducing a non-ideal approach to the CSR agenda.

#### **4.1 The CSR agenda**

The fight against poverty has evolved over the years from a simple course of overseas development aid ("ODA"). The poverty agenda of today encompasses a broad range of mechanisms to combat poverty, including cancellation of third world debt, trade liberalization, child labour, employment standards, worker mobility, environmental sustainability, conflict resolution, human rights etc., as well as the possibilities of global taxation and the implementation of other forms of international standards and regulations.<sup>110</sup> The expansion of the set of tools to fight poverty parallels the evolving objectives of development, as exemplified by the

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<sup>110</sup> For a taxonomy of measures to address global poverty that meet a minimal conception of global justice, see Simon Caney's list of twelve measures (2006).

Millennium Development Goals.<sup>111</sup> The significance of the poverty agenda's growing diversity is that it illustrates the true extent of the injustice of poverty – not only that the poor are poor,<sup>112</sup> but that poverty leads to various forms of social exclusion which need to be addressed individually. The increased diversity of the poverty agenda also reflects changing conceptions of poverty in developmental theory, that is, the growing awareness that causality in poverty is more complex than we thought. In philosophical terms, the change can be traced as a move away from what Pogge (2004, 2002) calls 'explanatory nationalism' – this is the unilinear view that poverty in third world countries is caused by corruption and the failure of the governments in these countries and, for this reason, somebody else's problem. This narrow view of poverty is unhelpful because it leads to apathy and myopic solutions. Seeing poverty as somebody else's problem creates the tendency to "pass the buck" to somebody else, or to discuss our moral obligations (solely) in terms of donations and transfers, assistance and redistribution (Pogge, 2004), rather than addressing the many ways in which poverty is the outcome of the way our social world and its institutions are structured.<sup>113</sup>

A critical agenda for CSR is needed if we are to avoid such apathy and myopia. Even today, many developmental organisations still view poverty as "difference" from ourselves, "divorced from any structural causality" (Blowfield, 2004: 67). As a result, an environment has been allowed to flourish and influence the international development agenda whereby "CSR is based on the premise that if the right people with the right means sit together, they can reach a consensus that is for the benefit of all" (Blowfield, 2004: 67). But just as the poverty agenda has evolved and moved beyond ODA, contemporary views of CSR and what TNCs

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<sup>111</sup> The Millennium Development Goals include:  
(i) Eradicating extreme poverty and hunger  
(ii) Achieving universal primary education  
(iii) Promoting gender equality and empowering women  
(iv) Reducing child mortality  
(v) Improving maternal health  
(vi) Combating HIV/Aids  
(vii) Ensuring environmental sustainability  
(viii) Developing a global partnership for development.

<sup>112</sup> According to the UNDP report, a fifth of the world's population live on less than US\$1 a day.

<sup>113</sup> Institutional responsibility, as we shall see, is a cornerstone of Pogge's theory.

owe to the very poor must also progress and move beyond FDI. The poor need not so much our altruism, but a paradigm shift in our thinking about the problem of world poverty.

In their report “Unleashing Entrepreneurship” (2004), the UNDP lists five components that make up their conception of an extended CSR agenda, which our normative analysis is focused on:<sup>114</sup>

(i) *Foreign development investment (“FDI”)*. The OECD (1996) defines FDI as “the objective of obtaining a lasting interest by a resident entity in one economy (“direct investor”) in an entity resident in an economy other than that of the investor (direct investment enterprise)”.<sup>115</sup> In other words, it is the investment by a foreign entity into the domestic economy.<sup>116</sup> Between 2003 and 2004, inflows of FDI into developing countries surged by 40% to US\$233 billion, surpassing other private capital flows as well as flows of ODA; in 2004, it accounted for more than half of all resource flows to developing countries (UNCTAD, 2005).<sup>117</sup> The importance of FDI in developing countries goes beyond financial injection into the domestic economy. As the UNDP report points out, the value of FDI lies also in other things that foreign investment brings with it – the infusion of a developed corporate culture, managerial know-how and best practices, access to international markets, technology and innovation, and competition (especially in previously closed markets). In certain instances, FDI can also extend to the physical presence of TNCs, which is an important driver for the growth of local businesses that support the TNC’s local operations. Unequivocally, statistics show a direct causal

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<sup>114</sup> Other CSR agendas have also focus on the role of corporations in combating problems such as HIV/Aids, the economic exclusion of home-workers in the clothing industry and small-holder farmers etc.

<sup>115</sup> The “lasting interest” usually implies the existence of a long-term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise, usually associated with some degree of equity ownership (some sources suggest a threshold of 10%).

<sup>116</sup> Although does not typically include foreign investment in the stock market.

<sup>117</sup> Much of this phenomenon was driven by the internationalisation of research and development (R&D) by TNCs, particularly into developing countries.

link between annual per capita GDP growth and a decline in the rate of poverty.<sup>118</sup> Sustained economic growth, if translated into higher rates of employment and incomes of the poor, reduces poverty. Investing in developing countries also benefits firms trying to capture the competitive advantage of dividing their production process into multiple steps in different locations to take advantage of location-specific advantages in each step (for example, low labour costs, skill specialization).

(ii) *Creating markets at the bottom of the pyramid* (“BOP”). C.K. Prahalad and Stuart L. Hart (2002) were the first to suggest that the world’s poorest people at the bottom tier of the world economic pyramid, numbering 4 billion (and predicted to increase to 6 billion over the next 40 years) or two-thirds of the world’s population<sup>119</sup> – represent significant new growth opportunities for TNCs yet to be fully realised. New analysis has estimated that this tier represents \$5 trillion in purchasing power, with the Asian BOP market leading the pack (\$3.47 trillion), followed by Eastern Europe (\$458 billion), Latin America (\$509 billion), and Africa (\$429 billion) (World Resources Institute, 2007). The BOP market ranges from small sector markets like water, information and communication technologies, to medium-scale markets like health, transportation, housing and energy, to large markets like food.<sup>120</sup> In addition to consumption goods, it also covers microcredit services that make it possible to extend credit to lowest-income customers who would not otherwise have access to capital. Creating BOP markets benefits the disenfranchised poor, because it provides critical links to the marketplace for the world’s poorest, increases their consumer choices by bringing a greater variety of goods at lower prices to the market, and gives them a chance

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<sup>118</sup> The UNDP report gives figures for East Asia and the Pacific, South Asia, Latin America and the Caribbean, the Middle East and North Africa, Sub-Saharan Africa, Europe and Central Asia (UNDP, 2004: 7).

<sup>119</sup> The bottom tier is defined as persons having less than an annual per capita income of \$1,500 (based on purchasing power parity in US dollars), the minimum considered necessary to sustain a decent life.

<sup>120</sup> According to the report, as incomes rise, household expenditure on food as a percentage of income decreases, while spending on transportation, phone and internet access increases sharply.



for a better life. It also benefits TNCs, who are better positioned to leverage this potential market than local entrepreneurs, because the BOP market is not only an ideal early market testing ground for new products, but sustainable product innovations specially created to cater to the BOP market can also be adapted for sale and use in developed markets. However, the final verdict on the potential of BOP markets remains open for the moment. The current success of BOP markets remains largely anecdotal; because the idea of BOP markets is relatively new, there is a lack of data to measure how much it benefits the poor or companies. Moreover, entering the BOP market requires TNCs to adopt radically new business models,<sup>121</sup> and it is not obvious that they will eventually be able to beat the cost or responsiveness of local entrepreneurs. The most one can say for now is that engaging the BOP market gives companies an early advantage in gaining a share of what could potentially be a very big market.

(iii) *Growing domestic enterprises and business networks.* Domestic business ecosystems are created by building up networks of supply-chain relationships, clusterings of businesses in the same or complementary industries, informal entrepreneurial networks like ethnic- or religion-based chambers of commerce, alumni associations and incubators. As an example of how the different arms of the CSR agenda can be linked, domestic enterprises and business ecosystems often grow as an offshoot of the creation of a BOP market. A good example of this symbiosis at work is Hindustan Lever Ltd (HLL), a subsidiary of British TNC, Unilever PLC. A pioneer among TNCs exploring BOP markets, HLL entered the Indian BOP market in 1995 by offering a new environmentally friendly and cheap detergent called Wheel, formulated specifically for poor people who often washed their clothes in rivers. Today, it has 38% of the detergent market in India and is widely considered the best-managed company in India (Prahalad and Hart, 2002). The significance of the growth of domestic enterprises is the domestic business ecosystem that grows with it. The ecosystem of HLL includes some 80

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<sup>121</sup> For example, models in which profits are driven by volume and capital efficiency rather than high margins, distribution systems that need to be redesigned for rural areas, and for banks, risk assessment is based on a manual field-based operation rather than on paperwork.

manufacturing facilities, 150 small and medium enterprise (SME) suppliers employing up to 40,000 people, 7,250 exclusive stockists, 12,000 wholesalers and small retailers, 300,000 shop owners and 150,000 individual entrepreneurs in remote Indian villages who sell its products (UNDP, 2004). Networks have many spillover benefits for the poor in the form of, among other things, enabling the transfer of skills, technology, information and quality, opening markets and bringing smaller domestic firms into the formal sector, improving the ability of SMEs to get financing on commercial terms rather than relying on local loansharks, increasing wages, employment standards and the productivity of local companies. It is a relationship for mutual benefit, since TNCs also rely on domestic enterprises for local sourcing – although this trend is concentrated in only a few developing countries such as Brazil, China, India and Malaysia, with sub-Saharan African countries trailing behind in the number of commercial transactions between TNCs and small local companies.

(iv) *Setting standards.* Sustainable development requires a genuine commitment by TNCs to corporate governance and transparency, in order to safeguard against corruption and mismanagement, insider trading and cronyism etc., while promoting the values of a market economy in a democratic society like accountability, transparency, trust, the rule of law, fairness, ownership and protection for minority shareholders. Rules may be formal or informal. Business associations, such as chambers of commerce and industry groups, are good starting points for developing codes of corporate governance and behaviour for their members (UNDP, 2004). Rules may also be regulatory or voluntary. It has been argued that forward-looking corporations should welcome the regulation of industry standards, as it sets an objective standard for what constitutes acceptable practice, without which corporations will always be at the mercy of their critics and bear the burden of how to respond (Hertz, 2003; 2004).<sup>122</sup> At the same time, what is now commonly referred to as the “triple bottom line” – that is, the voluntary reporting by companies of their environmental performance, social

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<sup>122</sup> On the other hand, it has also been pointed out that the profusion of standards can create confusion as well as the opportunity for deliberate obfuscation (Oliveiro & Simmons, 2002).

equity, as well as financial profitability – has also entered the mainstream, accompanied by a huge range of environmental/social auditing and reporting standards available nowadays.<sup>123</sup> Whether formal or informal, regulatory or voluntary, a healthy private sector depends on the development of these market institutions. In turn, and for reasons given, a healthy private sector benefits both the poor and TNCs.

(v) *Broader cooperation with government and civil society initiatives.* The general consensus is that a major causal factor for the rise of CSR is the rise of campaigning bodies, both national and international, actively representing the interests of individuals, consumer associations, charities, single-interest groups and NGOs (O'Mahony, 2004; Owen, 2002). NGOs are defined here as third sector or civil society organisations “that have as their primary purpose the promotion of social and/or environmental goals rather than the achievement of economic power in the marketplace or political power through the electoral process” (Murphy and Bendell, 1999: 6). Historically, the relationship between TNCs and NGOs has been founded upon conflict. The tools NGOs used to change corporate policy ran from direct action protests to corporate boycotts, and resulted in some horrific human rights abuses, even death. Since the early 1990s, however, there has been a gradual transition from anarchy to partnership with “the emergence of formal sustainable development partnerships between these long-standing adversaries” (Murphy and Bendell, 1999:1). Increasingly, NGOs are using the tools of dialogue and collaboration to engage corporations instead. Partnership between TNCs and NGOs benefits the poor in indirect ways. Firstly, partnership often leads to codes of corporate behaviour that are arrived at by mutual agreement and can be independently verified. Secondly, it increases consumers’ sense of agency when they work with businesses via NGOs to promote positive change, resulting in “a more sustainable form of consumerism” (Murphy and Bendell, 1999: 51). Thirdly,

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<sup>123</sup> The most influential and successful being AccountAbility 1000 (Institute of Social and Ethical Accountability), the Global Reporting Initiative guidelines, and SW8000 (Social Accountability International). The growth of socially responsible investing (SRI) has also seen the creation of CSR indices such as the FTSE4Good, Dow Jones Sustainability Index and BITC’s Corporate Responsibility Index.

dialogue and partnership with business is more effective in terms of educating the public on ethical products, since many corporations have wider reach and influence. Fourthly, demonstrating that partnership solutions work may encourage governments to pursue innovative policy alternatives based on partnership as well. The advantages go both ways. Partnership also benefits TNCs, including avoiding the costs of confrontation, which can be very high, and cultivating and maintaining a good public image among their consumers. According to research commissioned by McKinsey & Company, companies also benefit from the free exchange of information that comes from partnership, because they are able to receive advice and learn from their critics.

What the various arms of the CSR agenda as presented here do is to outline for us the practical scope of CSR. In addition to saying that TNCs ought to have global responsibilities (in chapter 3), we are told what the content of these responsibilities consists of. The challenge that follows, then, is to provide the normative argument for the scope of CSR as presented here. Given their moral obligations towards the poor, then, I ask: What is the moral justification for the CSR agenda, if any? What responsibilities exactly do TNCs have towards the very poor?

The reason for going into relative detail about the various arms of the CSR agenda here is also to highlight something else that they have in common besides causal distance between the potential contributor and the potential benefactor, namely, that engaging in these socially responsible initiatives leads to mutual benefit – that is to say, CSR not only benefits the poor, it also benefits or is at least potentially advantageous for the contributing corporations themselves. Hence, the CSR agenda also hides a business agenda, and this, as we shall see, becomes important in the course of the discussion.

#### **4.2 The scope of corporate responsibility**

One of the arguments for extending the scope of responsibility to cases where there is no direct culpability put forward by Thomas Pogge is that individuals in rich states have, as a matter of human rights, a moral responsibility to ensure that they

do not unduly harm the distant poor by supporting a global economic order that promotes poverty.

The reason for focusing on Pogge's theory here is that it bears testing out on the CSR agenda in particular. This is because, in order to give an account of moral responsibility while avoiding all the potential pitfalls that have befallen alternative accounts, Pogge is forced to be very precise about the nature of the responsibility that he is talking about. Specifically, he makes very careful distinctions between institutional and interactional understandings of duty. Institutionalism, as we have said, is concerned with the way our social world ought to be structured – that is, the principles by which the laws and practices that regulate our human interactions are assessed. Interactionalism, on the other hand, is concerned with the way we ought to treat each other – that is, the principles that govern our moral conduct. Knowing what type of duties moral responsibility entails is necessary in order to flesh out a moral agenda. In this case, it is necessary in order to provide the normative argument for what responsibilities exactly TNCs have towards the very poor in general, and the CSR agenda in particular. Pogge's theory therefore provides a starting point to think about the CSR agenda and what corporations ought to do for the distant poor, in addition to why.

#### **4.2.1 Pogge's theory**

In his theory, Pogge makes the distinction between institutionalism and interactionalism, which has already been stated. In this regard, while many commentators have emphasized Pogge's distinction between institutionalism and interactionalism, what few realise is that he actually seeks to combine them. On the one hand, he departs from tradition by "making the institutional view primary" (Pogge, 1992: 50). Global justice is described as "institutional moral analysis extended to the realm of international relations" (Pogge, 2003: 4). On the other hand, global justice for him is still concerned, at its most "basic" level (Beitz, 1994: 125), with interactional morality. It is ultimately concerned with the way we stand in certain moral relations to one another, particularly vis-à-vis the world's poor. While it may be primarily concerned about the way our global institutional order is or should be structured and the causal impact of its institutional design on

the welfare of human beings worldwide, nonetheless the central idea in global justice is that “every human being has a global stature as an ultimate unit of moral concern” (Pogge, 1992: 49).

The question is, how can a theory privilege both the institutional *and* the interactional at the same time? The answer – and one that, as we shall see, characterizes Pogge’s methodology for almost everything – is to mark out an intermediate position. According to him, global justice is defined as the moral duty of every individual not to cooperate in imposing an unjust institutional scheme upon others. It privileges the institutional approach, but with two interesting qualifications. Firstly, what is being presented here is a “variant” of institutionalism (Pogge, 1992: 50), in the sense that it goes beyond a purely institutional moral analysis: “[w]e are asked to be concerned about human rights violations not simply insofar as they exist at all, but only insofar as they are produced by social institutions *in which we are significant participants*” (Pogge, 1992: 52, emphasis is my own). In other words, the worry is not so much about the justice of our existing social institutions, as it is about our individual moral responsibilities for the design and perpetuation of these unjust institutions. This is where the interactional element comes in. On the other hand, the interactional morality Pogge has in mind is really a variant itself. Although global justice is, at its very fundamental level, concerned with the moral duty of every individual (not to cooperate in imposing an unjust institutional scheme upon others), it goes beyond a purely interactional moral analysis. This is because the idea of global justice that is being envisioned here captures individual moral responsibilities that a purely interactional approach would not. A third party who may not be directly responsible for causing a moral wrong, may nonetheless be implicated far more directly than he/she thinks by virtue of supporting (or similarly, failing to make reasonable efforts to prevent) the institutional scheme under which that moral wrong is permitted.<sup>124</sup> According to this view then, our moral responsibilities towards the poor occupy an intermediate position, as previously stated – we are

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<sup>124</sup> The converse is also true though. Under Pogge’s scheme, a third party who directly causes a moral wrong, may nonetheless not be responsible for any human rights violation on the institutional view.

less implicated than if it were ourselves withholding food from a starving person, but more implicated than if it were simply a third party and not ourselves causing the harm.

Pogge's account departs from recent accounts of global justice and world poverty, for example, Peter Singer's *One World: The Ethics of Globalisation* (2002), which tend to focus more on our positive and interactional moral duties to assist the poor. However, Pogge has explicitly stated that he does not intend by this to offer a counter-thesis to the existing literature. Rather, his desire is to *add* to it – to show not only that we owe the poor more than what we think we do, but that there are more of us implicated in the mission for global justice than we think there are.<sup>125</sup> The exact nature of the intermediate duties that he has in mind involves several intertwining layers of distinction that narrow down our precise moral duties towards the poor, the essence of which can be discerned from a reading of Pogge's prolific works on global justice over the years, as well as his seminal book on *World Poverty and Human Rights* (2002). Gathering all these together, I have broken down Pogge's unique conception of our moral duty towards the world's poor into three components:

1. Poverty as a violation of human rights

Poverty can be seen as a lack of reasonable secure access to basic necessities. If reasonable secure access to basic necessities is seen as a human right, then the lack thereof is a violation of human rights. Conversely, ensuring freedom from poverty is a fulfilment of human rights. There is great controversy whether reasonable secure access to basic necessities is a human right or not.<sup>126</sup> However, this is beyond the scope of the present discussion. The focus here is on Pogge's distinction between institutional and interactional (as well as negative and positive) understandings of duties. For the present purposes, we shall accept that the lack of reasonable secure access to basic necessities constitutes a violation of human rights.

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<sup>125</sup> Comment made by Thomas Pogge on 21<sup>st</sup> November 2006, at: Conference on 'Pogge And His Critics', Newcastle University, 20<sup>th</sup>-21<sup>st</sup> November 2006.

<sup>126</sup> For further discussions about freedom from poverty as a human right, see Pogge (2007).

## 2. Poverty as a violation of a negative duty

Pogge defines a negative duty as the duty to ensure that others are not unduly harmed through one's own conduct, and a positive duty as a duty to benefit others or to protect them from harm. This can be confusing, because a negative duty is violated by an active tort, and a positive duty by a passive tort or omission. So the *positive* act of killing a person for the sake of some gain is a violation of a *negative* duty (not to harm others), whereas an *omission* like failing to rescue that person for the sake of a like gain is a violation of a *positive* duty (to protect others).

With regard to world poverty, Pogge's contention is that we could do more to ensure that the world's poor are not harmed by our actions, and for our own gain. In other words, our moral duty towards the world's poor engages "not merely our vague positive duty to help those badly off and worse off than ourselves, but also our sharper and much weightier *negative* duty not to harm others unduly, either single-handedly or in collaboration with others" (Pogge, 2002: 133).<sup>127</sup> This is Pogge's unique take on our moral duty towards the poor: that global justice consists solely of negative duties. The argument is not that Pogge thinks violations of positive duties do not count as human rights violations, but rather that they do not count in his particular conception of global justice. For Pogge then, the duty not to harm the poor constitutes a minimal standard of justice.

Why should global justice be limited to negative duties? Pogge invokes a minimal standard for two reasons. Firstly, he points out that there is a lot of disagreement about what *else* justice requires. A narrow conception of justice, then, allows Pogge to "bypass these issues" altogether, while making his argument "widely acceptable" (Pogge, 2005: 55-56). Again, Pogge is not saying that we do not have a positive duty to assist the poor. Rather, he is saying that, for the purpose of a theory of global justice, it is sufficient if we agree that "any institutional order imposed on human beings must be designed so that human rights are fulfilled under it insofar as this is reasonably possible", and that "an institutional order

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<sup>127</sup> Pogge notes that this negative/positive distinction is "doubly moralized, because its application requires us to decide whether A's conduct *harms* P (relative to some morality-stipulated baseline) and, if so, harms P *unduly*", presumably meaning for our own gain. (Pogge, 2002: 130)



*cannot* be just if it *fails* to meet the minimal human rights standard” (Pogge, 2005: 56). In other words, talking about global justice in terms of negative duties already covers a lot of ground, and it does so “without invoking any more demanding and less widely acceptable standard” (Pogge, 2005: 56). There is, thus, no reason to go beyond the conception of global justice as negative duties, and much reason to avoid the messiness of a discussion about positive global duties and what these are exactly.

Secondly, Pogge is attempting to reach out to libertarian sympathizers by agreeing with them in the first instance that human rights entail only minimal responsibilities. Libertarians agree that we should not violate human rights, but they do not accept that society has a positive duty to protect its most vulnerable members. With regard to CSR, for example, most people would agree that TNCs have a negative duty always to ensure that their foreign operations do not damage the environment, or force poor people to work in deplorable working conditions, or exploit child labour etc. But they would similarly agree that corporations do not have a positive duty in every case to clean up the environment (especially where they have not contributed to its degradation), build houses for the poor, set up schools and hospitals, or distribute free drugs in developing countries. To impose all of these responsibilities on corporations or, indeed, any of us, would rightly be too burdensome. CSR engages moral responsibility; it is not about altruism.<sup>128</sup>

Nonetheless, Pogge wants to capture some of these issues in his theory of global justice. But he wants to do so without going the whole hog and capitulating to the extreme opposite of the libertarian position, that is, the maximalist position. The maximalist account sees human rights as entailing both negative (avoiding harm) *and* positive duties (protecting and helping). For the maximalist, morality requires us to help the all human beings who are in need, however we can, wherever we can. With regard to CSR, this is (and in my opinion, rightly) asking too much of corporations. Pogge wants to avoid this, but he also wants to address some of the social issues which a wholly negative account of moral duty would exclude.

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<sup>128</sup> Although corporate philanthropy can be a strategic means of achieving the desired outcomes of CSR.

The way he chooses to have his cake and eat it, so to speak, is by interposing yet another layer of distinction to the conception of our moral duties towards the poor. This is the distinction between institutionalism and interactionalism, which we examine next.

### 3. Poverty as an institutional issue

As outlined earlier, interactional moral analysis is concerned with the ethical duties that individuals owe each other, whereas institutional moral analysis is concerned with the structure of our social world that produces just and unjust outcomes. An institutional understanding of human rights is concerned with the effect our formal and informal institutions, laws and conventions, and existing system of global governance, have on social justice.

One of Pogge's missions is to "challenge the claim that the existing global order is not causing poverty, not harming the poor" (Pogge, 2002: 13). Towards this, he marshals together an impressive army of data and factual information to show that the reason why almost half of humankind (46%) continues to live in severe poverty despite enormous economic and technological progress, why 34,000 children die everyday of malnutrition and preventable diseases despite the enlightened moral values and affluence of Western civilization, is that our global economic order ensures the continuation of this status quo.

Pogge (2002) cites the example of the World Trade Organization (WTO). Rich countries open their markets to imports from developing countries, only to close them effectively with protectionist measures like anti-dumping tariffs to prevent their markets from being flooded with imports they deem "unfairly cheap". This deprives developing countries of export markets, often in sectors they are most able to compete, namely, agriculture, textiles and clothing. A 1999 study showed that rich countries' average tariffs on manufacturing imports from developing countries were four times higher than that on imports from other rich countries. The causal claim depends on making a counterfactual comparison as well: If the WTO treaty system had not allowed the aforesaid protectionist measures, there would be less poverty in the world today (Pogge, 2003). UNCTAD

estimates, for example, that developing countries could have exported US\$700 billion more between 1999 and 2005 if rich countries had done more to open their markets.

The global institutional order can also impact the poor indirectly, by shaping the national institutional order under which they live. For example, international resource and borrowing privileges are accorded to some corrupt governments and military juntas of poor nations, who are then able to sell their countries' natural resources for their own gain. The oppressed poor of these nations have no say over how their countries' natural resources are used. It also gives their rulers more incentive to entrench themselves in power and for others to take power by force. Conferring resource and borrowing privileges to corrupt governments and military juntas of poor nations therefore amounts to a tacit endorsement of these rulers by the international community, and fosters the continued oppression of the poor under their rule.

These examples illustrate the impact, direct and indirect, that the global institutional order can have on the poor. The facts are compelling, and for the purposes of my discussion, I shall accept this factual premise as true: that our global institutional order is set up in a way that causes and perpetuates global poverty, and that this constitutes, as we have said, a violation of human rights.

The second challenge for Pogge is to establish the normative argument, namely, that this *ought* not to happen, and that we have a moral duty to ensure that it does not happen. This brings us back to the question of responsibility. So far, we have covered how Pogge responds to the libertarian critique by narrowing his conception of moral responsibility in global justice to negative duties. However, even libertarians (most of them anyway) agree that justice requires society to do more than just refraining from causing harm to others. They agree that justice requires us, for example, to take positive action to suppress domestic violence in our society, not just refrain from hitting our spouses ourselves.<sup>129</sup> But they do not go so far as to advocate that justice entails positive duties. So the question for global justice is this: How can Pogge capture the sense that we have some positive

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<sup>129</sup> This example is taken from Alan Patten's (2005) critique of Pogge (2005) in the same volume.

responsibilities towards the global poor, without actually saying that we have positive global responsibilities? In other words, how can a middle ground be struck?

Pogge's answer is to narrow the conception of moral responsibility even further, to include in his conception of global justice only negative duties that relate to our institutional rather than our interactional participation. On an interactional understanding of human rights, states and individuals have a moral duty not to violate the human rights of another. However, as we have said, there is a sense that this does not capture the full extent of our global responsibilities – that these must consist of more than the negative duty not to cause harm to others directly. On an institutional understanding, however, the argument is that states and individuals have a moral duty not to work for an institutional order that violates human rights – in this case, by excluding some members of society from secure access to basic necessities. By interposing institutionalism in the picture, Pogge is saying that, as individuals, we cause harm to others indirectly by participating in and therefore endorsing a global institutional order under which human rights are massively under-fulfilled. The normative argument, therefore, is that we have a duty to ensure that we are not complicit in such an unjust system, often to our own benefit but at the disproportionate expense of others.

This idea of “complicity”<sup>130</sup> has the advantage of capturing the positive duties Pogge is concerned about (that is, to alleviate global poverty and help the global poor), albeit in a negative way (that is, to refrain from supporting unjust institutions). According to Pogge, therefore, global justice does not involve a duty on the part of you and me to refrain from the act of taking food away from a hungry man (interactional negative duty), for example, or the duty to feed anyone and everyone who is hungry (interactional positive duty). Neither does it involve an obligation on the part of individuals to create political institutions that uphold the rights of the poor (institutional positive duty). That is not to say that these are not duties that should attract our moral attention, merely that they are not part of what Pogge considers the scope of global justice. According to Pogge, global

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<sup>130</sup> The word is Besson's (2003).

justice consists, in the final analysis, of the negative duty on our parts to refrain from supporting or participating in a global institutional order that causes and perpetuates poverty (institutional negative duty).

In other words, treating poverty as an institutional issue allows us to go beyond minimalist libertarianism without offending the libertarian. It promotes the idea that we are required by justice to take some sort of positive action to help the global poor, but enables us to phrase this in terms of a negative duty by engaging the distinction between institutionalism and interactionalism. By interposing an institutional understanding, we are able to widen the scope of our negative duties to include the indirect harms that we cause to distant others by endorsing and participating in a global institutional order that causes and perpetuates their poverty, which we treat here as a human rights violation. But it allows us to do so while retaining the central tenet of libertarianism: that human rights entail only negative duties. An institutional understanding of human rights

“thus occupies an appealing middle ground: it goes beyond (minimalist interactional) libertarianism, which disconnects us from any deprivations we do not directly bring about, without falling into a (maximalist interactional) utilitarianism of rights, which holds each of us responsible for all deprivations whatever, regardless of the nature of our causal relation to them” (Pogge, 2002: 66).

#### **4.2.2 Testing out Pogge’s theory on the CSR agenda<sup>131</sup>**

My contention is that this middle ground is neither middle nor appealing when tested out on the CSR agenda. The question here is not whether or not Pogge’s

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<sup>131</sup> A note on agency here. In Pogge’s theory, the agent who is said to have a negative duty not to support a global institutional order in which human rights are massively under-fulfilled is the individual. In our analysis here, the agent with this negative institutional duty is the corporation.

The argument for shifting our philosophical conception of agency from the individual to the institution to, specifically, corporations is covered in chapter 3. There, it was argued that the functions which distinguish TNCs from individual agents also (1) provide justification why they should be responsible for global justice, and (2) justifies a departure from the traditionally individualistic way of thinking, namely, that only individual agents can be invested with moral responsibility. I shall not repeat the argument here, and only mention it in order to avoid any confusion that might arise from the shift in philosophical focus from the previous section (that is, from individual to corporation).

theory is useful in grounding the CSR agenda morally, but *how* useful it is. Taking this up, I weigh the advantages and disadvantages of Pogge's theory, and argue that the philosophical trade-offs in this case are too costly in the balance.

Firstly, the advantages. The biggest advantage of Pogge's theory is that it focuses our attention on the causes of poverty, and reveals poverty not as a regrettable phenomenon but as the outcome of structural conditions – a conception of poverty endorsed by both development theorists (Blowfield, 2004; Blowfield and Frynas, 2005) and philosophers working on global justice (Kreide, 2007). World poverty is not a fact that simply exists, nor is it attributable simply to weak or failed states. This is not to deny that poverty in developing countries is, in many cases, caused partly by corruption and the failure of the governments in these countries. However, as with our earlier rejection of what Pogge calls 'explanatory nationalism' – that is, the uni-linear view that poverty in third world countries is caused by corruption and the failure of the governments in these countries – this is not the sole explanation for world poverty. Poverty is not a systemic problem but a "complexity of multilayered, structurally rooted problems" – and it should be presented to business as such, rather than as "something undesirable and soluble on par with, for instance, a malfunctioning valve or a quality control problem" (Blowfield and Frynas, 2005: 511).

The reason why it is important to invest in understanding and addressing the structural complexity of causality in poverty is because the failure to do so tends to lead companies into misguidedly applying simplistic solutions and incurring unnecessary opportunity costs. One of the concerns about contemporary CSR is that, "rather than encouraging more detailed understanding, it may be reinforcing the misguided belief that for every complex problem there is a simple solution." (Blowfield and Frynas, 2005: 511). An institutional approach to global justice is, for this reason, advantageous because it broadens our conception of poverty. It focuses attention on the fact that poverty is also the result of the way our social institutions are structured rather than merely the hand of a few individual entities (as the interactional approach implies), and that its causes are multi-faceted. A better understanding of the underlying causes of poverty helps avoid simplistic explanatory theories and opens up creative options for addressing

it rather than, as we have said, consigning poverty alleviation merely as a matter of foreign aid or, in the case of CSR, FDI. It follows from this that Pogge's approach has great practical relevance. It is supported by contemporary conceptions of poverty in development theory, as well as the multi-linear agenda recommended by the UNDP to fight poverty.

Conceptually, however, I think that Pogge's argument trades too heavily on the distinction between institutionalism and interactionalism. Let me explain:

1. Conceptual distinction between institutional responsibility and interactional responsibility as an ideal fallacy

The first difficulty for Pogge is that it is crucial for his institutional account of human rights that the distinction between institutional and interactional understandings be maintained. This, I argue, is not plausible outside an ideal context.

To begin, it seems rather artificial to "evade" the libertarian critique "simply by splitting negative and positive duties among two different levels of human rights recipients", that is, between the responsibilities of institutional agents of justice and of interactional agents of justice (Besson, 2003: 518). As Samantha Besson (2003) argues, theoretical delineations of who is responsible for what often do not reflect commonsense understandings of what is really going on. On the one hand, it is right to hold corporations that support institutions that do not respect human rights in violation of their institutional negative duties. On the other hand, it is important to recognise that what the corporations are ultimately being called to answer for are the violations of those interactional positive duties held by the institutions that represent them. So, for example, when the Ogoni campaign brought worldwide condemnation against Shell for, among other things, implicitly supporting human rights abuses through their close association with the Nigerian military regime, what Shell was ultimately being condemned for was not its support for the regime *per se*, but for the murders and unlawful arrests and other human rights violations that it had abetted.<sup>132</sup> It was these human rights violations

that were the objects of moral reprobation. The distinctions between interactionalism and institutionalism, positive and negative duties, therefore, seem abstract and academic in the light of the responsibilities that TNCs are really being attributed with.

Moreover, as Besson points out, corporations can only compensate for the breach of their (the corporations') institutional negative duties through the institutions' own compensation for the breach of their (the institutions') interactional positive duties. Hence, when legal or other action is taken against the violators, it is often taken jointly against both the unjust institution and the colluding corporation where this is possible. To pick up the above example again: when the Movement for the Survival of the Ogoni People (MOSOP) sought compensation for the human rights violations perpetrated against them, they sought compensation not just from Shell but also from the Nigerian government jointly (their campaign continues till this day). Claimability, it seems, makes no distinction between whether an agent is institutionally or interactionally responsible; at the very most, it is reducible to a matter of apportioning blame between agents, but not the blameworthiness of the agents itself.

Last but not least, on the point of distinction between negative and positive duties in particular, it might be asked: Do corporations sometimes not have a positive duty to actively support institutions that are just, or to actively interfere with unjust institutions? Without inferring any motivation for their actions, it seems that corporations themselves do not make the distinction between positive and negative duties when deciding how to engage in CSR. We have seen that, in the case of the Ogoni people, Shell was allegedly in violation of its negative duty

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<sup>132</sup> A little background: The Ogoni is an ethnic group of 500,000 people living in 82 communities covering 1,000 square kilometres in the Nigerian Delta region. In 1987, the Iko community staged their first demonstration against Shell. In response, Shell engaged the protection of the Nigerian Mobile Police Force – two people were killed, some 40 homes destroyed, and more than 350 were made homeless. Protests against Shell escalated – in 1990, Shell officials counted 63 protests against the company in that year alone. In one demonstration in Ogoniland, 80 villagers were killed by the Nigerian Mobile Police Force. When novelist, Ken Saro-Wiwa, rose to become President of the Movement for the Survival of the Ogoni People (MOSOP) in 1994, he was arrested, tried by a military tribunal, and hanged. It was this incident that brought the Ogoni campaign into the international media spotlight. For further information, see Murphy and Bendell (1999). Such human rights violations are significant because they perpetuate poverty, and it has been argued that one of the measures to eradicate poverty should, among other things, include conflict resolution and the establishment of democratic institutions (Caney, 2006).



not to support the oppressive Nigerian government. Yet, in response, Shell did not merely pull out of the Niger Delta. It seemed to assume, also, that it had a responsibility to spearhead a human rights agenda in the oil industry. So in March 1997, it took the initiative to release a major international review of its Statement of General Business Principles that included, for the first time, explicit support for human rights. What the examples show is that, at least from the point of view of the corporation, it would seem that institutional negative duties not to support unjust institutions that violate human rights sometimes also hide interactional positive duties.

At this point, Pogge might object by saying that all the foregoing argument has merely shown is that corporations do not make the same distinctions as philosophers do, but that in the Humean spirit, an 'ought' cannot be inferred from an 'is'. But this is to misunderstand my concern. My concern is not with the empirical disanalogies in Pogge's theory *per se*. Rather, my concern is with what these empirical disanalogies point to – that is, the failure of the theory to offer principles that are practicable and action-guiding. The critique of Pogge's theory is that it fails to provide an abstracted picture of society that is representative of its crucial aspects and how it actually works. Put in another way, the problem with Pogge's theory is that the sharp distinctions that are so central to his theory are not captured in the real world.

Pogge might follow this up by insisting that the distinctions that he makes are *ideal* distinctions. That is to say, it is not the case that violations of interactional and/or positive duties do not count as human rights violations in real life, only that they do not count in ideal theory – that is, a theory of global justice conceived independent of the non-ideal structures that obstruct the realisation of the ideal.<sup>133</sup> In this case, what Pogge might wish to say is that it is true that there are some empirical discrepancies between his theory of global justice (the ideal) and commonsense perceptions of what the scope of corporate responsibility is (the non-ideal), and that the distinctions that he makes between institutionalism and interactionalism are not as clear-cut in real life. Thus, they might not guide

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<sup>133</sup> See chapter 5 for a more detailed explanation of 'ideal theory' and 'non-ideal theory'.

corporate action as well as is desired. However, he might go on to argue that ideal theory is important nonetheless, because it serves an ideal purpose. What the institutional/interactional distinction achieves for a theory of global justice is a conceptual middle ground that avoids the over-archingness of a maximalist interactional conception of responsibility while capturing the concerns that a minimalist institutional position would omit, as explained previously. Hence, it is important to make these distinctions, even if they do not always pan out in reality.

However, this argument only serves to make my point, which is that, *outside* the ideal realm, it is questionable whether the institutional actions of corporations can be separated from their interactional actions. Even within a framework of purely negative duties (assuming that a strict line between negative and positive duties can be drawn in the first place), it is not always clear that the actions by which agents are supporting or not supporting an unjust institutional order can be distinguished from the interactional actions they pursue to distance themselves from that unjust institutional order. If a corporation does not want to be implicated in the harsh working conditions in a foreign plant, and avoids the issue by selling the plant and then buying its products from its new local owner who fails to improve the working conditions, for example, then *prima facie* it is in violation of its negative duty not to support an institutional order that perpetuates bad working conditions. This is the institutional view. But one could also argue that the corporation is in violation of another type of negative duty – that by selling the plant, it is itself perpetuating the exploitation of the workers for its own gain.<sup>134</sup> This is the interactional view. However, under Pogge's theory, the corporation would not be responsible on the interactional view, but only on the institutional view.

Relatedly, there is the concern that Pogge's institutional account fails to provide justice in the paradigmatic cases where, for example, the corporation is the one making its employees labour in poor working conditions. As one critic questions, "is it plausible to think that a human rights dimension enters into such a case only if [the corporation's exploitative behaviour] can be interpreted as the

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<sup>134</sup> Not to mention that, by selling the plant, it failed to provide better working conditions where it could have – a violation of a positive duty.

object of official disregard within a coercively imposed institutional scheme?” (Tasioulas, 2007: 97). Underlying this, of course, is the intuition that corporations *ought* to be held responsible on the interactional view. The concern, then, is that Pogge’s theory distances corporations too much from certain moral responsibilities, and relegates their role in global justice to cases where their actions can be related to the institutional structures that give rise to or create barriers to stop the so-called human rights violations. According to Pogge, this is sufficient scope for a theory of global justice. The question, of course, is whether it really is.

No one denies the advantages offered by Pogge’s theory, the most important of which is that it draws our attention to the complexity of causality in poverty. The idea that moral responsibility attaches itself to the institutional case as well as the interactional case incorporates an understanding of poverty as the outcome of the institutional and structural conditions of society, rather than just a regrettable phenomenon brought about by the interactional actions of certain individuals or entities. A better understanding of poverty, in turn, leads to a better understanding of how to fight poverty. In this case, it provides normative grounds for broadening the scope of the CSR agenda to include not merely interactional means of alleviating poverty like FDI, but also institutional solutions that aim to change the way society is structured. This means a broader role for corporations in global justice, which is captured by the CSR agenda. The problem is that, in Pogge’s theory, the institutional understanding of poverty driving this broader vision for CSR is arrived at through a series of abstract ideal distinctions between institutional and interactional understandings of moral responsibility, which turn out to be problematic outside an ideal context. Although, ideally-speaking, the abstract distinctions offer the promise of a conceptual middle ground, these ideal advantages are obtained at a cost – the distinctions are empirically unstable, and there is the worry that institutional responsibility does not cover the paradigmatic cases. An accurate conception of moral responsibility outside an ideal context is ultimately important for the CSR agenda, because what corporations are held to be responsible for (or not) ultimately determines what they should or should not do for the world’s poor. Non-ideally-speaking, then, it seems that the distinctions that

started out so promising turn out less so outside an ideal context. We will say more about ideal and non-ideal theory later on.

## 2. Moral equality between institutional responsibility and interactional responsibility as an ideal fallacy

Is one more morally compelling than the other? Pogge is of the view that both instances of moral wrongdoing are on par, and that it is not the case that one carries more moral weight than the other.<sup>135</sup> The difficulty for Pogge this time is maintaining this moral parity between institutional and interactional responsibilities, while at the same time maintaining the conceptual distinction between the two that is so crucial to his theory.

As far as I can tell, violations of interactional responsibilities always carry with it the greater threat of sanctions than institutional responsibilities. Oil spills are almost always accompanied by vast sums of compensation to the victims of the spill, whereas it has proven more difficult in comparison to hold corporations accountable for their complicity with corrupt governments over human rights violations. So when a major spillage of crude petroleum in the town of Ogbodo near Port Harcourt in the Niger Delta happened, for example, Shell was ordered by the Nigerian courts to pay the local community US\$40 million in compensation.<sup>136</sup> In comparison, the suits brought under the Alien Torts Claims Act (“ATCA”) by Ogoni victims and survivors against Shell for alleged complicity in violations of international human rights law and other federal and state laws<sup>137</sup> have proved to be less straightforward, or have otherwise been mired in procedural disputes for nine years after the filing of the initial complaint against Shell and have yet to

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<sup>135</sup> Discussion with Thomas Pogge on 21<sup>st</sup> November 2006, at: Conference on ‘Pogge And His Critics’, Newcastle University, 20<sup>th</sup>-21<sup>st</sup> November 2006.

<sup>136</sup> BBC news (26<sup>th</sup> June 2000) Shell fights compensation order. Shell has appealed.

<sup>137</sup> *Wiwa v. Royal Dutch Petroleum, Wiwa v. Anderson, Wiwa v. Shell Petroleum Development Company*. These suits were brought with assistance from the Centre for Constitutional Rights.

The Alien Tort Claims Act (ATCA) of 1789 grants jurisdiction to US Federal Courts over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”.

reach a hearing date.<sup>138</sup> The most that Shell has received in the meanwhile is but condemnation by civil society organisations that it “failed to use its considerable influence in Nigeria to bring about change in the Niger Delta” (Christian Aid, 2004). Assuming that moral weight in this case is represented by the consequences suffered by the perpetrators of violations of moral duty, or the threat of such consequences, then it would seem from the evidence that institutional responsibilities are *not* equal to interactional responsibilities at all. If anything, they are *less* morally compelling on the evidence.

Pogge might reply that this is precisely the point, that the purpose of focusing on the institutional case is precisely to build it up to a point where it is *as* morally compelling as interactional cases. In the context of the CSR agenda, he might argue that the idea behind institutionalism is not about imposing sanctions on corporations when they are in violation of their institutional responsibilities, but giving corporations a moral basis to push for change where they find themselves as “co-designers” of an unjust institutional order.<sup>139</sup> In this case, the normative argument would not be dispelled merely by its empirical disanalogies.

In itself, there is nothing wrong with this conclusion. However, when run together with the first argument (namely, that global justice is concerned exclusively with institutional responsibilities), a paradox arises. Pogge, I think, systematically exaggerates the institutional/interactional distinction when it comes to establishing responsibility in global justice, but downplays the distinction when it comes to assigning moral weight to the different responsibilities. This is the first paradox. A second paradox arises because the reverse is true on the evidence. Empirically-speaking, the distinction between institutional and interactional responsibilities is not always as clear as Pogge wants it to be when it comes to their moral significance, but the distinction becomes clearer when it comes to their moral weight, just as Pogge seems to downplay it.

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<sup>138</sup> Centre for Constitutional Rights docket on the suits:  
[http://www.ccr-ny.org/v2/legal/corporate\\_accountability/corporateArticle.asp?ObjID=sReYTC75tj&Content=46](http://www.ccr-ny.org/v2/legal/corporate_accountability/corporateArticle.asp?ObjID=sReYTC75tj&Content=46)

<sup>139</sup> Discussion with Thomas Pogge on 21<sup>st</sup> November 2006, at: Conference on ‘Pogge And His Critics’, Newcastle University, 20<sup>th</sup>-21<sup>st</sup> November 2006.

Pogge might object again that there is no paradox. He might accept that, while the *degree* of the institutional/interactional distinction varies from context to context, the *nature* of the distinction itself holds nonetheless within the realm of ideal theory. Firstly, as suggested earlier, staying within the ideal realm might allow Pogge to uphold the separation of the ‘is’/‘ought’ worlds, so that the empirical disanalogies pointed out here did not affect the normative soundness of the institutional/interactional distinction. Secondly, as Pogge himself argues, it would allow him to say that, within this ideal realm, insisting on the institutional case does not exclude the moral importance of interactional responsibilities, merely its importance *with regard to* constructing a theory of cosmopolitan global justice.

But why insist on the distinction then? Why take an exclusively institutional approach to cosmopolitan global justice? If the distinction (itself disputed) can only be maintained by making it conditional on other distinctions (that is, between ideal/non-ideal worlds), perhaps it is the case that there is no distinction to be made in the first place. Perhaps by intricately carving out his middle ground the way that he has done, Pogge has played into the hands of the libertarians.<sup>140</sup> The suspicion here is that Pogge’s argument arises primarily to meet an ideal need. It is driven by the need to find, for reasons given, a conceptual middle ground between minimalist interactional libertarianism and maximalist interactional utilitarianism. In order to plant his flag on this middle ground, Pogge necessarily privileges the institutional approach over the interactional approach as *the* way to view global justice. In other words, institutional theory is but a “dialectical ploy”<sup>141</sup> to find conceptual harmony between different philosophical outlooks. However, Pogge’s problem is this: the world is a messy place. As we have seen, it does not always fall into the clear-cut distinctions that we want it to. Institutional responsibilities sometimes involve interactional obligations, and *vice versa*. Outside an ideal context, the line between the two is sometimes blurred, and at other times, it is clearer. The fact is, in a non-ideal context, different arms of the

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<sup>140</sup> This claim was first made by John Tasioulas, at: Conference on ‘Pogge And His Critics’, Newcastle University, 20<sup>th</sup>-21<sup>st</sup> November 2006.

<sup>141</sup> Again, the description is John Tasioulas’s (2007).

CSR agenda matter differently in different situations. In some situations, for example, FDI may be more urgent; in other cases, the situation may call for more emphasis on one or more of the other arms of the CSR agenda. In this case, the fine distinctions between institutional responsibility and interactional responsibility seem artificial and unnecessary.

### **4.3 A non-ideal approach:**

#### **Theorizing the business case for CSR**

In the light of these problems, I wish to suggest that a perspective that avoids the need for the kind of distinctions Pogge has attempted is far more practical all round. From our discussion so far, it seems that the active distinction is not between institutionalism and interactionalism, but between ideal and non-ideal approaches to CSR. Ideally, the way Pogge has chosen to design a theory of global justice leads him to make certain conceptual distinctions. But in doing so, his procedural commitments present him with no choice but to perpetuate the distance between an imagined cosmopolitan world and the realities of an un-simple world, so much so that “it is doubtful that any dialectical advantage here offsets the costs incurred.” (Tasioulas, 2007: 97) Despite Pogge’s claims that his version of institutional global justice is “mediated by empirical regularities and correlations” (Pogge, 1992: 56-57), we have seen that this is not always true.<sup>142</sup>

What about non-ideal theory then? Can non-ideal theory address the empirical disanalogies that are problematic for ideal theory? Perhaps it is appropriate to start by saying that the importance of non-ideal theory is not that it bridges over the empirical disanalogies of ideal theory. The importance of non-ideal theory is that captures certain empirical facts that lead to injustice, but which are excluded from consideration in ideal theory, hence preventing the ideal theory from achieving ideality. In this case, I have argued that the overwhelming focus

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<sup>142</sup> Although Pogge does admit that his theory “does not, as such, entail crisp practical conclusions”, because cosmopolitan institutionalism deals not with the “established consequences” of an unjust institutional scheme, which can be straightforwardly read off from the terms of the scheme (for example, a constitutional provision that allows slavery), but with its “engendered consequences”, which are more complex to trace empirically (for example, how an existing institutional scheme tends to affect the incidence of poverty, social exclusion, child labour) (Pogge, 1992: 56-57).

paid to the abstract distinction between institutional and interactional understandings of moral responsibility in Pogge's theory obscures the fluidity of the distinction in real life. This leads to injustice because, firstly, an exclusively institutional approach excludes certain things that we want the CSR agenda to capture, and secondly, insisting on an absolute institutional/interactional distinction excludes flexibility in tailoring a CSR agenda that meets the particular needs of the developing society in question. On the other hand, as we have said, the concept of institutional moral responsibility broadens our conception of causality in poverty, and a broader conception of causality in poverty is crucial because it leads to a broader poverty agenda that covers the root causes of poverty and is not merely symptomatic. A non-ideal approach to CSR would want to capture this broader conception of causality in poverty, but without the need to appeal to an over-demanding institutional/interactional distinction.

Clearly, a more detailed explanation of what a non-ideal approach is exactly and why I think that it can do the normative work that (I argue) Pogge's theory fails to do here is required. For this, I ask the reader to bear with me until chapter 5. In this concluding section, however, I would like to briefly propose and outline one form such a non-ideal approach might take first, that is, to theorize the business case for CSR. There are several reasons for this.

Firstly, as much as Pogge's theory provides a normative argument for the CSR agenda, it obfuscates the extent to which the realisation of these best practices is constrained by business considerations. The critique of Pogge is that, by doggedly pursuing the institutional/interactional distinction, he has sacrificed practical theory for ideal theory. My argument here is that the scope of the CSR agenda is not in fact normatively determined by such fine distinctions between institutional and interactional understandings of moral responsibility (which are in themselves problematic), but by the limitations and constraints imposed by the corporations' fiduciary duties to their shareholders to maximise profits and shareholder value – in other words, the business case for CSR. Indeed, the very idea that TNCs have responsibilities in global justice is circumscribed by the need to consider the business case for CSR.



Why the fiduciary duties of corporations pose as non-ideal constraints is explained in more detail in chapter 5. The point I wish to highlight here, however, is why we need to theorize these constraints. To adopt the language of non-ideal theory temporarily here, we need to theorize “the existence and functioning of the actual non-ideal structures that obstruct the realization of the ideal” (Mills, 2005 :170), in order that our normative argument produces principles that are capable of guiding corporate action and informing public policy. To ignore the non-ideal circumstances in which corporations operate and treat them like any other individual agent, would be to systematically gloss over a very real and very compelling problem corporations face uniquely when they consider their role in global justice. Just as normative theory abstracts away social and historical contingencies like class struggles, racism, sexism and other conceptual biases, in this case, it abstracts away the business reality that corporations face. It assumes unhindered perfect compliance to the demands of their global responsibilities on the part of corporations. The theoretical poverty that results in turn leads to injustice, because it leads to the misguided conclusion that corporate engagement in global justice is practically unfeasible and/or undesirable.<sup>143</sup> It obfuscates the powerful role that corporations can (and already do) play in global justice – not as a part of the institutional order of which change is demanded, or as regulated minions of states and international institutions, but as primary agents of justice in their own right. This oversight, I think, represents a great loss for the poor.

Secondly, mapping the business case for the CSR agenda onto a normative argument broadens it without the need to appeal to the kind of problematic distinctions that Pogge’s theory proposes. The idea here is that profit maximisation can be a motivation for CSR as well as a constraint. If we turn back to the CSR agenda proposed by the UNDP in section 4.1, we see that there are compelling profit-motives for TNCs to engage in the range of initiatives proposed. The agenda of creating bottom of the pyramid markets that cater to the poor is, for example, in itself a hugely potential and profitable social enterprise. Growing domestic

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<sup>143</sup> Or, it leads us to misguidedly conclude that profits are bad, as some anti-capitalist activists would have it, and to lament that corporations have no role to play in global justice altogether. The point, as I will argue later on, is not that profits are good or bad, but what type of profit-outcomes we can accept and what we cannot.

enterprises and a vibrant domestic business network also benefits TNCs, because these support their operations in the particular developing country in question. In some cases, the regulation of industry standards can take away the burden of self-regulation.<sup>144</sup> As for broader cooperation with government and civil society initiatives, it has been argued that corporations often have an incentive to cooperate and form partnerships with NGOs lobbying against their behaviour, particularly where the cost of conflict is high.

At the same time, however, there are many anti-competitive incentives pulling TNCs in the opposite direction. In many developing countries, self-interested TNCs take advantage of the lack of market regulations and weak institutional environments to raise protectionist barriers to trade, in some cases lobbying corrupt governments to slow progress in improving the institutional infrastructure for markets. These anti-competitive measures in turn make it difficult for local entrepreneurs to get finance on competitive terms, leading to underdeveloped domestic economies, higher prices and lower quality products that hurt poor people (UNDP, 2004). Moreover, a stakeholder's recognition is more often than not "contingent upon the business case for that recognition" (Blowfield and Frynas, 2005: 508). Groups who are not considered "primary stakeholders" – that is, those who are not a priority, who do not present a threat to TNCs, or whom TNCs are not highly dependent on – often have their issues sidelined by TNCs and NGOs alike. The fact is, it is the business case that shapes the choice of issues and delineates the boundaries of CSR in practice. Hence, this dynamic needs to be incorporated into normative theory. The argument here is that non-ideal theory offers a way of doing this.

Thirdly, accepting that the business case for the CSR agenda acts as a constraint on the extent of TNC engagement in CSR avoids the problems involved in defining the "cut-off point" for the scope of moral responsibility. The main concern of those who oppose the implementation of any principle of distributive justice on an international scale is that there lacks such a "cut-off point" and therefore makes any responsibilities of global justice potentially burdensome

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<sup>144</sup> Although I argue later on in chapter 6 that the advantages of regulation are exaggerated.

(Tasioulas, 2005). There are some who argue for the conception of the moral responsibility of TNCs as a duty to assist burdened societies to achieve well-orderedness, beyond which cut-off point no further assistance is owed. Others see it as a duty of international distributive justice that it does not incorporate a target of cut-off point, but instead sets the continuous task of adjusting for any inequalities based on Rawls's maximin principle. Theorizing the business case for the CSR agenda takes away the need to make a choice between the two by offering a variant approach that does not only focus on the poverty of the potential benefactor that is (on Pogge's account) generated and sustained by a discriminatory economic order but, additionally, considers the factors that constrain the behaviour of the potential contributor. In other words, theorizing the business case for the CSR agenda means that, whether or not the duty of assistance or the duty of international distributive justice is at work, the targets of maximising profits and shareholder value are always present as an integral part of the normative argument to regulate the scope of the CSR agenda.<sup>145</sup> Moreover, in the case of a duty to assist, the same reasoning allows the business agenda to serve as a cut-off point where the duty to assist exceeds this parameter, whether or not that duty to assist consists of helping a society to achieve subsistence or the more exacting requirement of an adequate standard of living.<sup>146</sup>

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In this chapter, I presented the CSR agenda and critically tested out Pogge's theory on it in order to discover its usefulness in grounding the scope of CSR normatively. In doing so, I argued that Pogge's argument traded too heavily on the distinction between institutionalism and interactionalism. The problem was that, on the one hand, Pogge maintains that institutional responsibility and interactional

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<sup>145</sup> In a similar vein, Tasioulas (2005) suggests a scheme of social cooperation for mutual advantage, although he seems to view it as an alternative to, rather than as a variant of, the duties of assistance and of international distributive justice.

<sup>146</sup> Tasioulas (2005) characterizes the duty of assistance in terms of the more demanding standard of an adequately good life, but while he provides argumentation as to why we should have no reason to disagree with this expanded conception of moral responsibility, one is left wondering what the reasons to agree with it are? The business case, on the other hand, provides at least a positive argument for why the boundaries of the CSR agenda are drawn as they are.

responsibility are mutually exclusive arguments; on the other hand, he wishes to assign them equal weight. Individually taken, these were not necessarily conflicting lines of argument. However, when run together in practice, they revealed probable cause to rethink Pogge's middle ground. In the first case, the distinction between institutionalism and interactionalism was drawn too tightly; there were too many cases where the line was simply not clear. In the second case, the distinction between institutionalism and interactionalism was drawn too loosely; the apparently unequal sanctions that corporations incurred for violations in each instance revealed the empirical disanalogies. The juxtaposition of the two cases seemed paradoxical at first, but careful consideration of the relationship between ideal and non-ideal theory suggested that the fundamental problem lay with Pogge's distinction between institutionalism and interactionalism, which if true, revealed it to be an ideal fallacy. It was an ideal fallacy because, as I suggested, the active distinction was not between institutionalism and interactionalism – a distinction wholly struck within the realm of ideal theory – but between ideal and non-ideal approaches to CSR.

I then looked briefly at theorizing the business case for CSR as a potential form such a non-ideal approach might take. I argued that not only did this approach resist the appeal to a *false* Poggean “bifurcation”<sup>147</sup> of corporate responsibility, it went on to offer us a *real* method of conceptualizing the scope of corporate responsibility. On the one hand, it served as an acknowledgement of the very real constraints corporations face in realising the normative ideals of the CSR agenda – namely, the fiduciary duties to their shareholders to maximise profits and shareholder value. On the other hand, it also broadened the normative boundaries of CSR by identifying how these business considerations could be a motivation for engaging in the various arms of the CSR agenda as well. Indeed, in the first place, there was a need to take into account these business considerations when we say that TNCs have responsibilities in global justice. The question, of course, is: *how* can we theorize the business case for CSR? In this chapter, it was suggested briefly that this could be done by taking a non-ideal approach. But what is non-ideal

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<sup>147</sup> Again, the phrase is Tasioulas's (2007).

theory and why is it the best way of theorizing the business case for CSR? It is to these questions that we turn to next.

## 5

### **The problem of the CSR dilemma and non-ideal theory explained**

In the previous chapter, it was argued that the scope of corporate responsibility is not determined by ideal distinctions between institutionalism and interactionalism, but by the business considerations that constrain what companies can and cannot do outside their business mandate. These business considerations consist of companies' fiduciary duties to their shareholders to maximise profits and shareholder value. They are non-ideal, it was claimed, because they pose an obstruction to the full realisation of the ideal that we have constructed so far: the argument that TNCs have responsibilities in global justice as a matter of duty.

The notion that the demands of business and the demands of global justice pull companies in opposite directions is not an unfamiliar one. Many of us approach the subject of CSR as if the two were irreconcilable, taking up dogmatic positions on either side. Either we adopt the "moral" view that TNCs ought to be responsible for some of the global injustices in the world, and make an impassioned argument for them to do more to deliver on human rights. Or we staunchly maintain the "strictly business" view that the sole responsibility of a company is "to use its resources and engage in activities designed to increase its profits" (Friedman, 1970: 42); therefore CSR is a "misguided virtue" (Henderson, 2001).

TNCs, then, appear to face a dilemma. On the one hand, as we have argued in the previous chapters, TNCs bear some global responsibilities towards the very poor as a matter of duty. On the other hand, there is the seemingly conflicting argument that the sole responsibility of a corporation is to maximise profits and shareholder value. The two opposite views of where corporate priority should lie give rise to a perennial dilemma in any theory of CSR: that of balancing the demands of global justice on a corporation and the primacy of its fiduciary duties towards its shareholders. What we might thereby call the 'CSR dilemma' therefore

prompts us to ask the important question: If the business of business is business, why should it care about global justice?

Those who fall into the “strictly business” camp may concede that corporations should sometimes commit to certain human rights causes, but only if they serve a business purpose. Such instrumentally-led decisions form part of what has been called “strategic philanthropy” (Porter and Kramer, 2002). Those who take the “moral view”, on the other hand, tend to regard such self-interested moral action merely as a public relations exercise or “greenwash” (Murphy and Bendell, 1999). Whatever labels we put on the different viewpoints, the instrumental case is indicative of a third reality that we are increasingly being confronted by nowadays: that, in many global situations, TNCs who are thought to have “constitutive aims that prevent them from being agents of justice at all” and who, indeed, sometimes act as “rogue companies” who “throw their considerable weight in the direction... of greater injustice” for the sake of maximising profits – these are the same companies that sometimes also “insist on decent environmental standards although no law requires them to do so, or on decent standards of employment practice or of safety at work even where they could get away with less...” (O’Neill, 2001: 48, 49). In other words, there are cases where we find that the “moral” view and the “strictly business” view of TNCs both apply, as in the instrumental case.

In this chapter, I explain why I believe that there is a widespread failure in global justice to recognise the extent to which what I describe as the ‘business case for CSR’ shapes corporations’ choice of CSR issues and delineates the boundaries of CSR. I believe that this failure causes and/or perpetuates a historical and ideational exclusion of corporations in global justice which, in turn, represents a great loss for the poor. This is the problem in theorizing about the role of corporations in global justice. The normative challenge for political theory, therefore, is to find a way of theorizing about both the “moral” and “strictly business” views together, to reconcile the seemingly irreconcilable in a way that reflects the social reality of what TNCs are doing. I suggest that this lies in theorizing the business case for CSR, where both the “moral” and “strictly business” views overlap. To do so would be to seek and provide a solution to the CSR dilemma as well.

Solving the problem of the CSR dilemma involves not only identifying the problem but also locating the site of the problem. I think that the best methodological strategy for solving the CSR dilemma (that is, by theorizing the business case for CSR) is not to abandon political theory for political sociology, as has been suggested (Nielsen, 1983). Instead, I believe that the problem of the CSR dilemma should be located within the debate between ideal and non-ideal theory. The argument is predicated on the idea that theorizing about the role of corporations in global justice should produce principles or policies that are capable of being action-guiding for companies. The critique is that the structure of the current theoretical status quo is unable to rise up to the task because, in developing the conceptual tools for analysing the role of non-person, non-state actors like corporations in global justice, theorists of global justice have largely chosen to ignore the non-ideal circumstances (exemplified by the CSR dilemma) under which these actors operate. This structural bias in turn explains a historical and ideational exclusion of corporations in theories of global justice. The CSR dilemma, in this sense, falls into a “guidance gap” between ideal and non-ideal theory. Drawing from the ideal/non-ideal theory debate, I go on to offer some methodological principles for developing a theory of CSR, and suggest that there are lessons to be learned from some non-idealists, particularly those who emphasize the business case for CSR. Theorizing about the role of corporations in global justice, I conclude, involves theorizing the non-ideal.

The chapter is structured as follows: I begin by laying out the “moral” and the “strictly business” views that make up the CSR dilemma in section 5.1. I then go on in section 5.2 to suggest that the staunch positions taken in each view, and the failure in global justice to recognise the extent to which the business case for CSR shapes corporations’ moral engagement in CSR, has led to a historical and ideational exclusion of corporations in global justice. Therefore, I argue that the two traditionally opposing views need to be married within a single theory of CSR. How should a theory of global justice approach this? In section 5.3, I suggest that a political theory that sees CSR in terms of the role of TNCs in global justice should also theorize about the business case for CSR, by treating it as a case of theorizing the non-ideal. I explain what non-ideal theory is and why I think that it is the best



methodology for this purpose. I conclude by suggesting that there are lessons to be learned from some non-idealists.

### 5.1. The CSR dilemma

The CSR dilemma arises because there are two apparently competing views of what TNCs ought to do running parallel to each other. In this thesis so far, we have been concentrating on the “moral” view, that is, developing a normative argument for why TNCs ought to have some responsibilities for the global injustices in the world. However, there are those who staunchly maintain a “strictly business” view, that is, that the sole responsibility of a company is to maximise profits and shareholder value. Those who take this view are naturally sceptical about any theory that advocates that the company act, even *prima facie*, outside their core business ambit, such as engaging in CSR. Generally speaking, most people, including those who take no views either way, would be forgiven for having nagging doubts about CSR in the light of the predominant conception of TNCs as self-interested profit-maximisers. A theory of CSR would, therefore, be incomplete if it did not acknowledge and address the “business view” as well.

One of the main schools of scepticism about CSR is that ‘CSR is bad capitalism’. The dilemma between the “moral” view and the “strictly business” view is suggested by this quote from *The Economist*:

“... there is a dilemma. Profit-maximising CSR does not silence the critics, which was the initial aim; CSR that is not profit-maximising might silence the critics but is, in fact, unethical.” (22<sup>nd</sup> January 2004).

At first glance, it might seem that this is an untenable dilemma – one way or the other, CSR involves the failure by corporations to fulfil some obligation(s) towards either society or their shareholders. If corporations fulfil their obligations towards society, then it is good CSR but bad capitalism. If they fulfil their obligations towards their shareholders, then it is good capitalism but bad CSR. So either way, CSR is bad capitalism, or else it is simply socially irresponsible.

The most famous advocate of the “strictly business” view is Milton Friedman. In his seminal article ‘The Social Responsibility Of Business’ (1970), Friedman famously argued that, in a free society, “there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or defraud.” (42). He presents a few arguments for the “strictly business” view. Firstly, there is the classic ‘methodological individualism’ argument, that is, that a “business” entity cannot be said to have “responsibilities”. Secondly, there is the ‘principal-agent relationship’ argument, that is, that individual managers breach their fiduciary relationship with the company’s shareholders when they exercise social responsibility through the corporate mechanism.<sup>148</sup> However (and thirdly), the thrust of Friedman’s condemnation of CSR<sup>149</sup> is that it is “undemocratic” (40) and “harm[s] the foundations of a free society” (41). This, he argues, is because CSR amounts to corporate individuals using shareholders’ money to pursue social goals via the corporate mechanism that should rightly be pursued via democratic procedures. CSR, he says, “involves the acceptance of the socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses” (39). For these reasons, according to Friedman, the social responsibility of business a “fundamentally subversive doctrine” (42).

It has been suggested that the level of political rhetoric that is used in Friedman’s argument appears to reflect a deep fear of some perceived anti-capitalist ideology. For example, in the course of his argument, Friedman expresses the fear that CSR “helps to strengthen the already too prevalent view that the pursuit of profits is wicked and immoral and must be curbed and controlled by external forces” (41). We must remember that Friedman wrote the article in the climate of big business in the late 1960s, when large companies were dominated by

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<sup>148</sup> Hence, there are those who see CSR as creating a corporate governance problem, because CSR is akin to the corporate executive serving the interests of the public instead of the shareholders, while remaining an agent of the shareholders in name.

<sup>149</sup> He spends half the article on this point.

managerial elites, and there was a worry that “the real agenda [behind CSR] was to get the chief executive into the country club in the US or a knighthood in the UK”, and that shareholders’ interests were not being protected (Sparkes, 2003). Moreover, the Cold War was still going on at the time. Hence, one also sees the likes of prominent American economists like Theodore Levitt, who was the editor of the *Harvard Business Review*, comparing CSR to Soviet “ideological clack” (1958: 45), calling it “a new feudalism” (44) and saying that it marked the “end of capitalism” (46). Levitt sums up the prevalent view of CSR sceptics at the time as follows:

“There is a name for this kind of encircling business ministry, and it pains me to use it. The name is fascism. It may not be the insidious, amoral, surrealistic fascism over which we fought World War II, or the corrupt and aggrandizing Latin American version, but the consequence will be a monolithic society in which the essentially narrow ethos of the business corporation is malignantly extended over everyone and everything.” (46)

In other words, what these critics of CSR were really defending was a capitalist ideology: that capitalism is good, profits are good. This defence was in turn a counter-response to the prevailing anti-business climate then.

In the twenty-first century, I believe that the debate about CSR is no longer a question about whether capitalism is valid or not. I think that we need to accept that corporations exist and, at the same time, accept the norms, values and priorities of global capitalism – not fighting it, but working with it. As development experts argue, the starting point for identifying the problem of corporations in global justice is not to debate whether or not we accept the validity of global capitalism, but to accept global capitalism as the predominant ideology and to acknowledge instead its embedded social, moral and economic dimensions (Blowfield, 2004). Of course, this means accepting that the norms, values and priorities of global capitalism will to an extent define the boundaries of the negotiation over global justice. But it also means an advance in the research on poverty and development: rather than saying that big business is bad, we are able

to analyse the ways in which the dedicated pursuit of corporate interests causes poverty, and to see it rightly as a product of society's structural conditions rather than a phenomenon (Blowfield, 2004). The question, therefore, is no longer whether profit maximisation is valid or not, but what type of profit outcomes we are willing to accept. Only when we accept capitalism as the status quo can there be any meaningful discussion of whether CSR is good or bad capitalism, and how to think about that philosophically. Anti-capitalism is, in this case, a separate debate altogether.

Moreover, when critics of CSR accuse it of being an *anti-capitalist* ideology, what they really mean most of the time is that it is *bad* capitalism. In 'Misguided Virtue' (2001), for example, David Henderson argues like Friedman and Levitt that CSR is the equivalent of "global salvationism" (82) or "generalised alarmism" (83). But it has been noted that these are "overwrought" political labels quite out of place in academic works (Sparkes, 2003: 3). Henderson's real and extensive argument is that, from the point of view of the corporation, the adoption of CSR carries with it a high probability of cost increases and impaired enterprise performance which subvert the corporation's profit motive. Hence, CSR is "misguided virtue", because it

"involves the voluntary adoption by businesses of broader objectives, more complex procedures, and more exacting standards. To this extent it would tend to impair enterprise performance, with effects on both costs and revenues, short-run and long-run... Its adoption would reduce competition and economic freedom and undermine the market economy. The commitment to it marks an aberration on the part of the business concerned, and its growing hold on opinion generally is a matter for concern." (Henderson, 2001: 11, 15)

Henderson's argument characterises the real concern of the 'CSR is bad capitalism' camp. The argument is that CSR is bad capitalism because it is uneconomic. It is uneconomic because, according to Henderson, the adoption of

CSR by corporations interferes with the efficient allocation of scarce resources. Hence, CSR is “misguided virtue”.

A theory of CSR, then, faces two seemingly conflicting arguments. On the one hand, global theorists argue that TNCs should have some global responsibilities as a matter of duty (the “moral” view). On the other hand, some economists argue against it, claiming that CSR is bad capitalism, as if CSR and good capitalism were mutually exclusive (the “strictly business” view). The claim that the function of corporations is to maximise profits and shareholder value is in itself unremarkable. But, juxtaposed against the “moral” view, it gives rise to a perennial dilemma: that of balancing the demands of global justice on a corporation and the primacy of its fiduciary duties towards its shareholders. This is the ‘CSR dilemma’. In most cases, the debate begins and ends here. Philosophers and economists have differing perspectives about what the purpose of business is, and each perspective is legitimate within its own frame of reference. At this level, we are stuck with “a rather sterile debate” (Sparkes, 2003: 3).

I think that the claim that *all* forms of CSR are misguided virtue is over-generalised. Indeed, not all advocates of the “strictly business” view agree that CSR should be necessarily identified with bad capitalism. Business advocates of CSR like Russell Sparkes (2003) argue that CSR can be good capitalism as well. For example, CSR can improve product branding and enhance the reputation and goodwill that a company has with its customers. CSR as a form of voluntary self-regulation can also be a means of pre-empting government regulation, which places constraints on business. The growth of institutional investors like large insurance companies and pension funds, where the vast majority of clients are private investors who are increasingly keen on investing in environmentally or socially responsible companies, also means that there is a profitable market for CSR.<sup>150</sup> So whether CSR is good or bad capitalism really depends on our understanding of what ‘CSR’ means. According to Sparkes, CSR can be good capitalism as well, when seen and understood as a response to consumer and investor needs. In other words, it can be “justified in classical profit maximisation

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<sup>150</sup> The business case for CSR is explored in greater detail in the next chapter (chapter 6).

terms” (Sparkes, 2003: 4). Business is no longer just about making profits, but *how* these profits are being made. In order to move on in the debate about CSR, then, Sparkes argues that we should focus on the business case for CSR, that is, CSR as good capitalism.<sup>151</sup>

I agree with Sparkes’ pragmatic approach. However, while he thinks that the discussion about the business case for CSR is a purely economic one and should be kept separate from the discussion about corporations’ “moral” role: “economists should leave questions of ‘ought’ to philosophers, and concentrate on questions of ‘is’” (2003: 3) – I think that it is important for philosophers to address it as well. Rather than taking an ‘either/or’ approach as the supporters of the “moral” and the “strictly business” views are wont to do, I think that a theory of CSR must respond to the dilemma that arises from putting both views up. The way a theory of CSR can do this, I think, is by providing a philosophical analysis of where the two views overlap, that is, where a business case for CSR can be made. The failure to recognise the extent to which the business case for CSR shapes the choice of issues and delineates the boundaries of CSR, I suggest, perpetuates a historical and ideational exclusion of corporations in global justice. Given their capabilities and increasing role in alleviating poverty in the world, this in turn represents a great loss for the poor, and is therefore unjust.

## **5.2. The historical and ideational exclusion of corporations in global justice**

In mainstream political philosophy, the role of corporations in global justice has surprisingly remained largely in the margins until quite recently. I say “surprisingly” because corporations have been active in issues of human rights since the eighteenth century (at least), and are contemporaneous with and deeply implicated in Western practice of ‘justice’ and ‘fairness’ (Oliveiro and Simmons, 2002).<sup>152</sup> Indeed, it has been commented that the idea of ‘CSR’ – the notion that

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<sup>151</sup> I note that, even though Friedman was a vociferous critic of CSR, he too conceded that “doing business by doing good” was for him a grey area: “If our institutions, and the attitudes of the public make it in [corporations’] self-interest to cloak their actions in this way, I cannot summon much indignation to denounce them.” (1970: 41)

<sup>152</sup> The movement in Britain to end slavery throughout the British Empire by British companies and ship-owners, which started in 1787 and resulted in the ban on slave trade in the 1830s, is one of the oldest examples of CSR.

there is some rigid division between “social” and “economic” affairs and that, by doing good, one is somehow doing something “extraneous” or conflicting with good business practice – is a fundamentally Anglo-Saxon idea. In more corporatist (for example, Germany) or communitarian (for example, Japan) societies, CSR has always been simply an expression of a longstanding social contract, whereby business has social obligations to its employees and the wider society.<sup>153</sup> For example, Japan has often been seen as the greatest example of successful capitalism, but much of its success emerges from the special characteristics of the ‘Japanese ethos’ arising from its particular history of rule-based behaviour patterns exhibited by corporations, rather than treating them as automatons who mindlessly pursue their own self-interests without regard to others’ well-being (Sen, 1993).

In the USA, the general principle that has emerged from the courts since the 1950s and 1960s is that companies have the authority to make “contributions of reasonable amounts to selected charitable, scientific, religious or educational institutions, if they appear reasonably designed to assure a present or foreseeable future benefit to the corporation”, whereas deciding what is “reasonable” is left to the discretion of managers.<sup>154</sup> The regulation of CSR has also been an issue of public policy since the 1970s. In 1977, for example, the *Foreign Corrupt Practices Act*, which prohibited US corporations from paying bribes when conducting their business overseas, was passed. A number of multilateral agreements also emerged in the 1970s, including the OECD’s *Guidelines for Multinational Enterprises* (1976, revised in 2000), which laid out standards regarding, among other things, the disclosure of information, workers’ rights, environmental protection, combating bribery, consumer interests, respect for human rights and the elimination of child and forced labour; the ILO’s *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977), covering employment issues like non-discrimination, wages, benefits, working

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<sup>153</sup> For a comprehensive overview of CSR in various societies and corporate cultures, see Avi-Yonah (2005) and Bratton (1989). Both works give a especially detailed survey of the transformations undergone by the corporate form throughout history. Avi-Yonah covers the period from Roman law to the present, whereas Bratton covers the period from the mid-nineteenth century to mid-twentieth century.

<sup>154</sup> American Law Institute, 1993, *Principles of Corporate Governance*, Section 2.01: 71.

conditions, health and safety, the freedom of association, and respect for specific international human rights agreements. Of course, there is also the *UN Global Compact* (2000) and the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (2004) covered in chapter 2.<sup>155</sup> These examples show that, rather than being a recent phenomenon, CSR has been around for longer than we think.

However, despite this reality, political theory has been comparatively cautious about treating non-human, non-state actors like TNCs as basic political units capable of just agency in their own right. There has been both a historical and an ideational exclusion of corporations in the study of global justice. As was previously noted (in chapter 3), theories of global justice that feature TNCs have tended to take a methodologically individualistic approach. That is to say, conceptions of the role that TNCs play in global justice have extended merely to their functionally instrumental role of expanding the scope of the *individual's* responsibility, rather than viewing them as agents of justice capable of acting in their own right. Although recent publications have seen a shift in philosophical focus from individual charity (Singer, 1972; 1999) to institutional agency (Kuper, 2005c; Green, 2005) to corporate agency specifically (Lane, 2005; Kreide, 2007b), it was argued in chapter 3 that the literature stops at drawing the conclusion that large corporations *ought* to play a role in global justice, merely that they *can*. (Chapter 3 then sought to develop such a normative account of CSR.) This, however, is not how we view corporations in practice, nor is it how corporations perceive themselves in many cases. Hence, there is a gap between theory and practice.

It was also suggested previously (in chapter 1) that one of the reasons for this theoretical gap was because the idea of taking notions of morality that have been traditionally applied to human individuals and applying them to corporate entities leads to all sorts of conceptual problems about the corporate form – specifically, whether the corporate entity is made up of an aggregation or collective of individuals, or whether it is a separate legal entity with its own

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<sup>155</sup> For a useful account of the contemporary history of CSR, see Bendell (2004).



personality, and whether or not it can be a moral agent. Thus, political theory has been relatively reticent about discussing them as primary agents of justice, as if they were capable of moral agency. For this reason (among others), an alternative framework for CSR was advocated in chapter 1, namely, to talk about CSR in terms of justice rather than ethics. By doing so, it was argued that the discussion might bypass the ontological questions about the nature of the corporate form that remain indeterminate, and move on to the normative consideration of their responsibilities in global justice – particularly since, as it has been observed, “a corporation does not turn into a moral person simply because one recognises its obligations of justice” (Kreide, 2007b: 14).

In addition here, I think that another reason why the theoretical gap exists is because we have not developed the conceptual tools for dealing with the problem posed by the CSR dilemma. Global justice theorists have focused almost exclusively on the “moral” side of the question (of the role of corporations in global justice) and have given almost no attention to the “strictly business” side of the story. There are some political philosophers who offer rational choice theories in an attempt to solve the CSR dilemma, that is, by casting moral choices in neoclassical economic terms. This is done in two ways: either by arguing that individuals are not merely maximising automatons (*homo economicus*) but actors with valued ends that sometimes make them pursue altruistic choices (*homo sociologicus*) (Elster, 1983, especially chapter 1; Zamagni, 1995), or by arguing for ‘enlightened self-interest’, that is, the self-interested individual’s commitment to an institutional system of moral rules because it sustains and promotes economic activities (Brittan, 1993; Sen, 1993). These arguments – particularly the second one – actually approximate the solution to the CSR dilemma that is being proposed here, that is, to focus on how companies can “do well by doing good”. However, the problem with these rational choice theories is that they concern individuals and individual choices. Thus, applied to corporations, they encounter the same objection about the moral agency of corporate entities and taking theories that have been traditionally applied to individuals and applying them to corporate entities. We end up, again, questioning what sort of entity the corporation is (for example, whether it is an aggregation of individuals or a real separate legal entity with its

own personality), and whether or not it is capable of moral agency. These questions are important in their own right and need to be asked. But the concern here is that, where questions of global justice are concerned, they hinder rather than help the normative narrative. Therefore, I argue that a different way of theorizing about the business case for CSR has to be sought within the global justice framework itself.

### **5.3. Theorizing the business case for CSR: Ideal and non-ideal theory**

Solving a problem involves not only identifying the problem, but also locating the site of the problem. The question here is, how does the CSR dilemma translate into normative theory? How does it affect the way we theorize about the role of corporations in global justice? In other words, how can we think about it philosophically? In this section, the argument is made for locating the CSR dilemma within the debate between ideal and non-ideal theory. Drawing from the ideal/non-ideal theory debate, I offer some methodological principles for developing a coherent theory of CSR, and suggest that there are lessons to be learned from some non-idealists, particularly those who emphasize the business case for CSR.

#### **5.3.1 What is non-ideal theory, and is it the best way of theorizing the business case for CSR?**

The starting claim in respect of developing a coherent theory of CSR is that the best way to do normative theory is to produce principles of justice that guide action, that political theory ought to inform political practice. Most theorists presume that guiding action is, as Mills puts it, “the proper goal of theoretical ethics as an enterprise” (2005:170). They dismiss the type of “political intellectualism” touted by ‘divorce theorists’, that is, those who argue that philosophy is philosophy and politics is politics, as if they were divorced from each other, embracing instead some form of “political pragmatism”. Instead, they believe that the study of political philosophy empowers citizens and has great application to politics and life. Indeed, it continues to exist and evolve because it is constantly reacting to materials and issues given to it by happenings in the world

(de-Shalit, 2004; Graham, 1999). Non-ideal theory, then, is concerned about issuing recommendations that are both *desirable* (in the light of relevant principles) and *achievable* for us here and now.<sup>156</sup> The presumption, of course, is that ideal theory fails to do this, because it “forgets” that moral decision-making is done on the background of real-life political or business conditions – for example, the reality of capitalism and the need to balance the “moral” aspect of corporate life with the “strictly business” aspect. The problem with ideal theory, then, is that it underdetermines our moral decisions, and thus cannot offer us principles of justice that are action-guiding. There is a need, therefore, to theorize “the existence and functioning of the actual non-ideal structures that obstruct the realization of the ideal” (Mills, 170). This is what non-ideal theorizing is about. And, in the sense that non-ideal theory takes these non-ideal structures into account and ideal theory does not, non-ideal theory is a better way of doing normative theory. It consists, as it were, normative theory that can be applied to guide action.

Is it the *best* way of doing normative theory though, better than all other contenders? In order to argue this, non-ideal theory must consist of more than philosophy that can be applied, since even (some) divorce theorists offer algorithms of action (although whether these algorithms are actually actionable is controversial).<sup>157</sup> There are two challenges here: to argue firstly, that good normative theory consists of more than just applying algorithms of action, and secondly, that good normative theory consists of more than just applying principles

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<sup>156</sup> This definition is Stemplowska’s (2007), although in her paper, she defends ideal theory against non-ideal theory as defined. In her opinion, ideal theory is still important even if it does not offer the sorts of practical recommendations described. It is important not because it shows the way to utopia, but because it provides a “feasibility set” within which “the ideal of justice can be rendered compatible with constraints that limit the extent to which it can be realised, *before it is changed beyond recognition*”. In other words, ideal theory is important because it captures the values we set out to achieve and gives us an idea of whether and how far the ideal can be realised in practice. However, I think that this does not help us in cases where the values held out by ideal theory are unachievable to begin with, not because we are constrained in our ability to realise them, but because the ideal theory itself is deficient and cannot be realised (for example, in the case of the historical and ideational exclusion of corporations in global justice) unless the non-ideal is addressed first.

<sup>157</sup> Those who take a formal/analytical approach to political theory (for example, game theorists, rational choice theorists), who pursue consistency rather than applicability in philosophical concepts, would fall under this category. A useful taxonomy of divorce theories, from which the present examples are derived, can be found in de-Shalit (2004).

of morality. Both are addressed by Onora O’Neill in her 1987 paper *Abstraction, Idealization and Ideology in Ethics*, and later on in her 1996 book *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (especially chapter 2). In response to the first challenge, one needs to look no further than classical utilitarianism for a counter-example. Classical utilitarianism purports to offer a “life algorithm”<sup>158</sup>, one that can be applied universally in all cases, not just for some situations but for life, as it were. But, as O’Neill argues, even this most extremely algorithmic theory depends on strong idealising assumptions about utilitarian agents – for example, that they have complete information of all available options, that they are able to evaluate all expected consequences of all the options available, that they are able to make cardinal and interpersonal comparisons in order to arrive at the most optimal option that maximises their utility. In the absence of these “implausible” idealizations, the utilitarian agent needs to fall back on his/her deliberation and judgment about these things (O’Neill, 1987: 59).

The same goes for the second challenge. Inevitably, as O’Neill puts it, “principles underdetermine decisions” (1987: 58). No principle of morality can purport to be complete, universally applicable or utterly exceptionless for all situations. Principled moral decision-making must always be supplemented by procedures of deliberation and judgment, particularly in our descriptions of particular situations and when we apply abstract principles in particular situations, and is most sustainable when moral principles are internalised:

“Applied ethics is not a matter of deducing decisions from principles. It requires judgment and additional premises... The need for deliberation and casuistry – for procedures by which principles are applied to cases – is taken for granted by non-algorithmic utilitarians as well.” (O’Neill, 1987: 62)

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<sup>158</sup> The description is O’Neill’s (1987: 59).

The point here is that the best sort of non-ideal theory is not only non-ideal theory that is action-guiding, but action-guiding *in the right way*. On O’Neill’s account, it must abstract without idealizing.<sup>159</sup> Idealization, as illustrated above, consists of adding on characteristics to hypothetical agents that are false of actual human beings; abstraction, on the other hand, consists of taking away or bracketing certain “social and historical contingencies” that are true of human agents (O’Neill, 1987: 56). Both abstraction and idealization describe human agency inaccurately, but the former is acceptable while the latter is not – presumably because idealization invokes the charge of falsehood (possibly good for theoretical purposes like frictionless surfaces and perfect vacuums, but bad for guiding action) and is in any case unachievable, whereas abstraction merely involves the selective omission (but not denial) of certain predicates that are true and is, not to mention, “theoretically and practically unavoidable” (1996: 40). O’Neill argues that, too often, the distinction between abstraction and idealization is obfuscated, leading critics wrongly to reject abstraction. In short, abstraction is necessary for all theorizing – including non-ideal theorizing – whereas idealization is bad for action-guiding, period.

It is not clear, however, that O’Neill’s “strategy of mere abstraction”<sup>160</sup> plus a more robust account of deliberation and judgment is always enough to guide action. Exercising our cognitive judgment in particular cases is one thing, but what if the theory itself is too abstract to capture the salient facts of the case necessary to produce a just outcome? For example, as will be argued further below, a theory of CSR that brackets away the “strictly business” aspect of corporate life and does not address the CSR dilemma fails to provide principles of justice that can guide corporate action. It also leads, as has been argued, to a historical and ideational exclusion of corporations in global justice. So the question about abstraction is, what if the thing that is bracketed away is the very source of oppression and injustice? Note that the criticism here is not of abstraction *per se*, but the *degree* of abstraction – that is, the amount and type of information that is bracketed away

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<sup>159</sup> Note that O’Neill is referring to normative theorizing in general here, not just non-ideal theorizing.

<sup>160</sup> The description is Schwartzman’s (2006).

(Schwartzman, 2006). The problem that critics like communitarians, conservative critics of liberalism, feminists and critical race theorists have is not that abstraction in theorizing happens, but that certain types of institutionalised, non-ideal patterns of domination or discrimination based on class, gender, and race are abstracted away from our knowledge of the social structure when we theorize. As Mills puts it, “[t]he problem is that they are *deficient* abstractions... not that they are abstractions *tout court*.” (2005: 173) These institutional structures are often powerful and deeply embedded, and the oppression that they lead to for the categories of people in question hidden and invisible. Yet, they are often marginalised and left largely un-theorized. There is a failure, as in the case of the CSR dilemma, to develop the conceptual tools needed to analyse them in the oppressive context of genderised or racialised or class-driven or other exclusionary dimensions of contemporary politics (McCarthy, 2001).

Again, this is where non-ideal theory comes in. Given the presence of institutional oppression, the solution is not to do away with abstraction altogether (since I agree with O’Neill that good theorizing requires us to make some simplifying assumptions; to argue otherwise would lead to more problematic particularist positions), but to turn the spotlight on specific oppressive structures that we regard as important, to systematically analyse and understand the nature and sources of oppression, and to incorporate them into our conception of the basic structure of society. In a way, this seems as if we are backtracking to our starting point: “non-ideal theorizing of this sort turns normative political theory back in the direction of the empirical social reality it began by abstracting and idealizing away from.” (McCarthy, 2001: 14)<sup>161</sup> But this is to see it wrongly as an ‘either/or’ situation. At the end of the day, the question is not whether ideal or non-ideal theory is the best way of doing normative theory, but what is the best way of *achieving justice*. An approach that systematically mediates between ideal and non-ideal theory ensures that abstract principles, when applied, are always kept

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<sup>161</sup> Although McCarthy means this as a criticism of non-ideal theorizing, that it does not go far enough. His arguments is based on the claim that, so long as issues like race are marginalised in political theory, what mediation there is between the ideal and the real will be “only tacit and always drastically restricted” (2001: 14-15). Rather than consigning the treatment of race to non-ideal theory, he recommends a critical overhaul of ideal theory itself.

accountable for the factual contingencies of particular situations that are morally compelling, and therefore always kept in line with their action-guiding tenets.<sup>162</sup>

The value of non-ideal theory, then, is that it addresses the specificity of the special situation that the moral subject in question finds him/her/itself in – whether it is females, homosexuals, blacks, minorities or, in this case, corporations in their business contexts.<sup>163</sup>

To sum it up, good normative theory that has as its object justice must not only be action-guiding in the right way, it must also abstract *in the right way*. In this case, the specific argument is that, in order for justice to be achieved, a theory of CSR must necessarily contain some level of abstraction, but it must not abstract away the real business constraints that corporations face in practice. To do so would, as it has been said, to fail to address the problem of the CSR dilemma. We turn now, then to focus specifically on the CSR dilemma.

### **5.3.2 Why exactly is the CSR dilemma a problem?**

If the CSR dilemma merely presented a conflict of preferences or values or some such, then it would be no different from the kind of conflicts private individuals face in their decision-making. Corporations would be torn between their global responsibilities and their fiduciary duties towards their shareholders. Just as private individuals, too, sometimes have to make choices between their moral obligations to others and their special obligations to, say, family members or fellow citizens.

However, in the case of the private individual, the moral calculus can take into account these sorts of morally significant factors and provide a moral argument for their priority. Utilitarianism, for example, makes exception to special obligations like keeping a promise where doing so does not maximise average general welfare because, among other things, it is argued that encouraging promise-keeping is of greater utility. In that sense, we are able to compare the conflicting sets of obligations already incorporated into the moral calculus in some

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<sup>162</sup> Of course, it still begs the question which features of our messy political reality are morally significant and which of these we want to engage in non-ideal theorizing. In the absence of any procedural guidance why we should focus on certain empirical problems rather than others, this remains a background issue.

<sup>163</sup> How exactly non-ideal theorizing in the context of oppression translates to non-ideal theorizing in the context of the CSR dilemma is addressed in section 5.3.3.

way, and therefore guide individuals in making their moral choices. This is not to say that conclusive answers to our moral dilemmas can always be derived (Bernard Williams' example of Jim and the Indians, cited in his critique of utilitarianism, comes to mind here). But the point is that the *possibility* of a normative argument presents itself within the framework of the moral calculus.

In the case of the corporation, though, there is no parallel calculus for corporations to make a moral choice between the potentially conflicting sets of obligations that they face. Indeed, there is no reason to presume that the choice is a moral one. If it were, then the solution would be straightforward: it would simply be a matter of moral argument, that is, giving moral reasons why one obligation should have moral priority over the other, as in the case of the private individual. But the CSR dilemma is not a matter of moral ranking. There is no reason to think that the fiduciary duties that companies owe their shareholders to maximise profits and shareholder value are moral duties, the sort that can be incorporated into a corporation's moral calculus and weighed against the moral demands of global justice. Indeed, there is good reason to think why they are *not* moral duties. Firstly, the principal-agent relationship companies have with their shareholders is primarily a legal, contractual relationship. Even if there were some ethical undertones to the contractual relationship (as some business ethicists have tried to argue), any usable principal-agent relationship depends on the law to identify where a duty exists, to regulate the scope of that duty, and most importantly, to enforce it in the case of a breach. So the duties are primarily legal, not moral, duties. Secondly, equating corporate fiduciary duties to moral duties entails the argument that the corporation is in some way a moral agent, which argument we have set aside here for the purposes of developing a theory of CSR. Therefore, there is good reason to think that the fiduciary duties corporations owe their shareholders are not moral duties, and little reason to think that they are anything other than simply factual realities that are part of what doing business is about. If they are not moral duties, then they do not create a moral dilemma.<sup>164</sup>

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<sup>164</sup> Although the firm is not affected in the "moral" sense by their fiduciary duties, this does not mean that they do not play a "moral" role in society – in this case, in global justice. I have been careful in this regard to avoid saying that TNCs *owe* any duties *to* the very poor, in order to reflect better the framework envisioned for the discussion here – that is, not one based in ethics (that is,



Rather, the fiduciary duties that corporations owe their shareholders to maximise profits and shareholder value are problematic for global justice because, in the context of the foregoing discussion, they pose as real-life non-ideal structures that fall outside the global justice calculus. The critique here is that global justice as an ideal theory lacks the analytical tools to deal with these non-ideal factors that are necessarily part of any corporation's action-guiding calculus in practice. This is because, in developing the conceptual tools for analysing the role of corporations in global justice, global justice theorists have largely chosen to ignore the non-ideal circumstances (exemplified by the CSR dilemma) under which these actors operate. The CSR dilemma, in this sense, falls into a "guidance gap" between ideal and non-ideal theory. In order to fill in the gap then, we need to theorize about it. Hence, theorizing about the role of corporations in global justice must (I argue) involve theorizing the non-ideal.

### 5.3.3 Theorizing the business case for CSR

What does all this tell us about theorizing the role of corporations in global justice? First and foremost, that a theory of CSR should offer principles that are practicable and action-guiding. Secondly, that it should provide an abstracted picture of society that is representative of the "crucial aspects (its essential nature) and how it actually works (its basic dynamic)" (Mills, 2005: 166). But it should do so in a way that is also sensitive to dominant ideologies or structural biases in conventional theorizing that, in the cases considered so far, hide forms of institutionalised oppression in real-life and therefore prevent the ideal of justice which it set out to achieve from being realised. Thirdly, that the non-ideal principles so derived should be applied in conjunction with the exercise of our cognitive facilities of deliberation and judgment. These principles are non-ideal because (1) they "make theoretically central the existence and functioning of the actual *non-ideal* structures that obstruct the realization of the ideal" (Mills, 2005: 170), and (2) they are capable of guiding action. Non-ideal theory, then, amounts to the best way of theorizing the role of corporations in global justice, because it is

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how we should treat one another) but in justice (that is, how our social world should be structured ideally and why TNCs ought to play a role in it).

able to incorporate into political theorizing these different levels of practical reality, and in so doing realise justice both inside and outside academic thinking.

However, the astute reader would have already observed that non-ideal theorizing in the case of CSR is distinct from the foregoing cases on one crucial point: the non-ideality in this case arises not in the context of oppression, but specifically because of the CSR dilemma. To reiterate, the CSR dilemma is this: Firstly, while a morally responsible company may exercise judgment in choosing which causes to take up or deciding what it would take to institutionalise certain rights in various situations, in the case of a conflict between its global responsibilities and its fiduciary duties towards its shareholders, judgment can only go so far. Secondly, the CSR dilemma is a non-ideal problem because, entrenched in our normative thinking are “systems of domination [that] negatively affect the ideational”, and these prevent the realisation of justice (Mills, 2005: 174). But the unjust system of domination in question here is not about the dominant ideologies or structural biases in our theories of justice that sustain an institutional exclusion of race or gender or class theory. Rather, it concerns the dominant ideologies or structural biases in our theories of global justice that sustain a historical and ideational exclusion of corporations. More accurately, in the context of CSR, these dominant ideologies or structural biases exclude from our theories of justice consideration of the CSR dilemma, which includes the problem that corporations act under a system of non-ideal fiduciary constraints. It excludes the philosophical treatment of a practical reality – that is, the fact that corporations need to balance the normative demands of global justice and their mandate to maximise profits and shareholder value, and that the business case for CSR shapes the choice of issues and delineates the boundaries of CSR.

To summarize the comparison:

<b>Ideal theory</b>	Theories of justice: Distributive fairness	Theory of CSR: The role of corporations in global justice
<b>The problem</b>	Ideological domination and/or structural biases → Institutional exclusion of females, blacks etc. → Oppression	The CSR dilemma  → Historical and ideational exclusion of corporations  → Injustice
<b>Non-Ideal theory</b>	Feminist theory, critical race theory etc.	Theorizing the business case for CSR

Of course, the feminist or race theorist might balk at the way in which non-ideal theory is being deployed here. While their *raison d'être* is to urge us to reconsider the oppressive institutional backdrop that shapes our views about justice, what the non-ideal theorization of CSR does here is to urge us to accept the capitalist status quo of our institutions (that have in many cases produced the injustices that we wish to address). However, I think that this objection is short-sighted. Consider the alternatives: If we adopt an anti-capitalist stance, that would put TNCs on the defensive and would likely discourage them from engaging in CSR, thus depriving the poor of a potential agent with the capabilities of helping them most. In contrast, case studies show that cooperation rather than confrontation is a better strategy. The transformation of the relationship between TNCs and NGOs from anarchy to partnership since the early 1990s is an example of how “the emergence of formal sustainable development partnerships between these long-standing adversaries” has encouraged more CSR activity on the part of corporations and benefited the poor. (Murphy & Bendell, 1999: 1) If, alternatively, we accept the existence of capitalism, but otherwise ignore the dilemma that corporations face in CSR, that would lead to a historical and ideational exclusion of corporations in global justice, as suggested in this chapter. This outcome is

equally unhelpful. For these reasons, I think that non-ideal theorizing of CSR is more theoretically advantageous, in the balance, for realising the ideals of just business. We can change ourselves to see race and gender differently, but we cannot change what corporations are: just agents, but also business entities.

Theorizing the role of corporations in global justice, then, involves theorizing the non-ideal – that is, the business case for CSR. It involves accepting that the CSR dilemma poses a problem. Just as normative theory abstracts away social and historical contingencies like class struggles, racism, sexism and other conceptual biases, in this case, it abstracts away the business reality that the CSR dilemma represents. It assumes unhindered perfect compliance on the part of corporations. The theoretical poverty that results in turn leads to injustice, not because institutionalised structures of oppression are perpetuated, but because it leads to the misguided conclusion that corporate engagement in global justice is practically unfeasible and/or undesirable.<sup>165</sup> It obfuscates the powerful role that corporations can (and already do) play in global justice – not as a part of the institutional order of which change is demanded, or as regulated minions of states and international institutions, but as primary agents of justice in their own right. It constitutes bad practical reasoning insofar as it is conceptually inadequate for guiding corporate action in real and tangible ways. These oversights, I think, represent a great loss for the poor.

#### **5.3.4 Two ways of theorizing the non-ideal**

Non-ideal theory, then, offers a “broader mapping of [our][intellectual] space” (Mills, 2005: 174) that incorporates thinking about the CSR dilemma, which is in many crucial respects part of business reality and any corporation’s moral decision-making space. But how exactly is it done? How *should* it be done? Although the critics of abstraction agree that some non-ideal features of our social world ought to be made theoretically central, they seem to be divided on how to do this. The question is one of theoretical strategy. In this concluding sub-section, I

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<sup>165</sup> Or, it leads us to misguidedly conclude that profits are bad, as some anti-capitalist activists would have it, and to lament that corporations have no role to play in global justice altogether. The point, as I have argued, is not that profits are good or bad, but what type of profit-outcomes we can accept and what we cannot.

highlight what seem to be two approaches of doing non-ideal in the literature, what I call:

- The ‘scepticism and transformation’ (ST) approach – which advocates a radical reconstruction of the concepts, norms, values, assumptions and other predicates of ideal theory that perpetuate oppression from the standpoint of those who are subordinated, and
- The ‘application and mediation’ (AM) approach – which takes the more conservative approach of “mapping how systems of domination negatively affect the ideational” (Mills, 2005: 174), and then rethinking what, say, social justice will require in the context of female subordination.<sup>166</sup>

The ST approach is supported mainly by critical social theorists and some feminists who argue that, in its abstracted construction of the social world, conventional rational discourse about justice misses out certain persistent and morally compelling features of the real world that have “tectonic”<sup>167</sup> implications on the theory and practice of justice. The issue here is about where the boundaries of abstraction should fall, and how we can map crucial realities onto a bigger intellectual space. It can be summed up by the question: How fact-sensitive should a theory of justice be? The way we rethink our universally basic norms, therefore, is based on empirical analysis and critique of our current concepts of social power structures (deconstruction), and we seek political transformation of the current social order on this basis, in order to achieve a “genuinely inclusive theory of

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<sup>166</sup> I focus on these two approaches because they emerge from the literature as the dominant strategies for theorizing the non-ideal. Although they are not explicitly identified as distinct approaches, I think the two disparate strains are evident in the literature. Other strategies include interpretive approaches, which place more weight on historical modes of inquiry, and strategies of avoidance, which privilege theoretical stability in the face of social/historical/cultural pluralism – these alternative strategies are discussed in more detail by McCarthy (2001). The Rawlsian idea of a professional ‘division of labour’ between ideal and non-ideal theory, which privileges the “purity” of its social justice construct over its guidance function, is also bracketed here, since it hints of the divorce theories previously rejected, and has in any case been extensively discussed elsewhere.

<sup>167</sup> McCarthy (2001) uses this word to talk about a “tectonic shift in methodology” in his argument for a critical approach to race in moral and political philosophy.

justice” (reconstruction) (McCarthy, 2001: 13). Thus, their recommendation is a radical one, because it suggests that our social ideals can only be achieved through social change. These ideals are ever-evolving, as society itself goes through transformations, as new circumstances arise to question and challenge old ones: “the ongoing contestation of essentially contestable articulations of the universal demands of justice” (McCarthy, 2001: 13).

Those who advocate the AM approach, on the other hand, support more piece-meal changes. They advocate, firstly, mapping accurately crucial realities that differentiate the ideal from the ideal-as-applied (that is, applied in a non-ideal world), hence preventing the realisation of the ideal, then secondly, asking what special measures can be taken to mediate the two. The AM approach is distinct from the ST approach because it is not concerned with determining the size and extent of our intellectual space from the outset. Rather, it is more interested in systematically identifying and analysing the empirical realities that stand in between our abstracted descriptions of the world and our conceptions of the ideal world, and finding ways to compensate for them, thus bridging the two and bringing them closer. In other words, it takes our cognitive sphere *as given* by conventional theorizing, and asks the question: What are “the peculiar features that explain [the social phenomenon]’s dynamic and prevent it from attaining ideality” (Mills, 2005:167)? Nonetheless, it is more than just applied ethics, precisely because the empirical input is incorporated into theory and guides theory – although, in comparison to the ST approach, it is more a *reconfiguration* than a *reconstruction* of the ideal. It advocates remedial social reform *post hoc*, rather than demanding *ex ante* radical social change. It approaches the non-ideal conditions of the real world in the spirit of reform, asking how political ideals might be achieved or worked towards. Again, our awareness to what particular non-ideal structures need to be theorized stems from real-life knowledge of how power relationships actually work, and can only be awakened when we put theory into action: “It is only when we see situations *of that sort* as requiring action *of this type* that knowledge of some description becomes action guiding.” (O’Neill, 1987: 64).

To understand how the two approaches could produce different outcomes, consider what happens when the ST approach and the AM approach are applied to the case of the ‘Deferential Wife’.<sup>168</sup> The ‘Deferential Wife’ is a woman who is so subordinated in her role as a wife that her values, preferences, interests, ideals etc. are aligned with her husband’s and, even when she forms independent views about these things, she ranks them as less important than her husband’s. She represents a non-ideal anomaly for theories of justice, since these do not traditionally take into account a non-autonomous rational agent who consents to her own victimization, as it were. On the one hand, those who advocate the AM approach would argue that the ‘Deferential Wife’ is being coerced into colluding with her husband’s wishes, and propose discounting for the fact that she was not a truly willing agent.<sup>169</sup> They might also argue that a commitment to fairness, equal rights and justice in the family requires special measures to compensate for her coercion – for example, educational facilities to enhance her own capabilities and functionings, better exit options from the marriage. On the other hand, those who advocate the ST approach would argue that the problem is more complex and requires solutions that go deeper. For them, there is something troubling about the ‘Deferential Wife’’s very identity and sense of self. But because she has internalised her oppression and made it part of her rational agency, arguing that she has not “consented” to her subordination is unlikely to lead to solutions that address the root causes of the case. Rather, they argue that what is needed is a closer examination and deconstruction of the particular social institutions and practices that reinforce, perpetuate, or contribute to the ‘Deferential Wife’’s existence and its effects on the larger society, and to rethink these specific forms of institutional oppression rather than recommending ultimately symptomatic or superficial remedies: “Rather than simply concluding that she is being coerced or that she is

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<sup>168</sup> This example is Thomas Hill’s, and is cited by Schwartzman (2006) in the context of illustrating what seems to be the ST approach.

<sup>169</sup> Note that those who advocate a strategy of mere abstraction might also accept that cases of the ‘Deferential Wife’ happen, but they might find it acceptable on the grounds that it did not violate the wife’s agency, since she might be seen to have willingly consented to her subordination and was therefore not a victim. Even if they acknowledged that it was a problem, they might not theorize it at the same level and in the same detail as other major ordines of justice.

somehow mistaken about what she wants, one might instead argue... that it may be necessary for the Deferential Wife to undergo some sort of transformation before she will be able to form her own interests in a way that expresses a fuller sense of self” (Schwartzman, 2006: 576). The ST approach, therefore, provides an argument for more extensive reform in this case.

Non-ideal theorizing about the role of corporations in global justice, however, is not the same as non-ideal theorizing about the ‘Deferential Wife’. I have argued the ways in which the injustice that ultimately arises from the problem of the CSR dilemma differs from cases of institutional oppression. These differences, I argue here, also mean that there is no need to appeal to the ST approach; the AM approach is sufficient for the purposes of theorizing the non-ideal in the context of CSR.

A few observations. Firstly, the CSR dilemma, unlike forms of institutional oppression, is not an ideological problem. It is not, for example, “a distortional complex of ideals, values, norms, and beliefs that reflects the nonrepresentative interests and experiences of a small minority of the national population – middle-to-upper-class white males – who are hugely *over-represented* in the professional philosophical population” (Mills, 2005: 172). It is in many ways detachable from idealized notions, because we can see the two distinct claims that are pulling corporations in opposite directions (that is, the “moral” view versus the “strictly business” view).

Secondly, the CSR dilemma, unlike forms of institutional oppression, does not require radical solutions. It is not a problem of “deeply contested” norms requiring us to “alter our self- understandings” (McCarthy, 2001: 14), but is I think more a matter of exploring hitherto unexplored categories of agency. In this case, it requires an analysis of the nature and unique features of corporate just agency, as we work towards a non-ideal theory of just business. On the other hand, the kind of critical theory advocated by the ST approach would entail, for example, adopting an anti-capitalist stance, or changing the nature of corporate fiduciary duties – in essence doing away with everything we know about the very corporate agent whose agency we want to theorize about. This is not where I think the debate should or needs to be located.



Lastly, our ideal theories of global justice already offer a rich resource for theorizing about global corporate responsibility. In the case of CSR, there is also the added advantage of being able to identify and articulate clearly what the non-ideal obstruction that is preventing our theories of global justice from realising ideality is, namely, the CSR dilemma. We are also able to propose a counterpart solution, namely, the business case for CSR, and problematise it in the context of global justice. Given these strong starting points, there seems to be little reason for taking the ST approach, and good reason for taking the AM approach. Theorizing about the role of corporations in global justice, then, is about non-ideal theorizing that pushes at the boundaries of ideal theory.

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The gap between theory and practice is one that I think philosophers cannot afford to ignore if we are serious about developing a coherent theory of CSR that can guide corporate action. In this chapter, I explained what non-ideal theory was, what the CSR dilemma was, why it was a non-ideal problem, and why I thought that non-ideal theorizing of the business case for CSR could step in to close the abovesaid gap. However, I recognised that deploying non-ideal theory in this context might require a leap of faith on the part of those who had traditionally used it to challenge institutionalised oppression. Here, non-ideal theory was used as an argument not to challenge, but to keep, the capitalist status quo of our institutions – on the grounds that, if we did not accept it or if we did not normatively address the non-ideal fiduciary constraints on CSR that corporations face in the real world, the outcome was worse off for the poor. I then addressed in more detail how I thought such non-ideal theorizing should be done.

In the final analysis, these are the type of questions that make the CSR dilemma so compelling, I think, because it involves not merely a matter of resolving conflicting claims, but represents a wider indictment of how we should do normative theory. Ultimately, it amounts to a statement of belief that political philosophy can have great practical relevance, as Avner de-Shalit put it, an unequivocal acknowledgement that “the moral dilemma is political and should be solved within the realm of the political” (2004: 804). In this chapter, I have set out

the problem of the CSR dilemma, and also attempted to set the methodological direction for solving the problem. Theorizing about the role of corporations in global justice, I conclude, is about theorizing the non-ideal. Taking this up in the next chapter, I offer a comparative examination of how some economists and business practitioners have attempted to resolve the CSR dilemma by arguing the business case for CSR, and attempt to draw some insights for theorizing this non-ideal structure within the domain of political philosophy.

## 6

### **The business case for CSR: Lessons from some non-idealists**

“CSR is not a separate or parallel business... it is ultimately driven by the belief that CSR creates shareholder value.” (Stafford, 2006)

In the previous chapter, the need to acknowledge and address the existence of what was described as the ‘CSR dilemma’ was argued. It was suggested that the failure to do so – that is, the almost exclusive focus on the “moral” aspect of CSR by theorists of global justice, and their alleged failure to address the “strictly business” aspect of CSR – had led to a historical and ideational exclusion of corporations in global justice. This, it was argued, was an unnecessary (and ultimately unjust) outcome, as there were cases in which the two apparently opposite interests overlapped. In other words, there were conditions under which a company could do well (in the “business” sense) by doing good (in the “moral” sense). A non-ideal approach to theorizing what I called the ‘business case for CSR’ was then proposed.

In this chapter, I provide a descriptive account of the business case for CSR from the point of view of some non-idealists, that is, theorists (mostly economists and CSR and business practitioners) who have done extensive empirical research on how CSR and the economic performance of firms are linked. I believe that this account, although descriptive, is important for our normative theorizing, because it (1) provides empirical support for the need to theorize the business case for CSR in particular, and (2) offers empirical evidence for the need to theorize about the role of corporations in global justice in general. Hence, this concluding chapter is devoted to the task of laying an empirical foundation for the theory of CSR developed in this thesis.

The body of CSR literature is vast, diverse and unwieldy. In this chapter, what I have done is to draw together the available and pertinent information, and to structure it into an account of how the business case for CSR has evolved. I begin

in section 6.1 with the regulatory environment for CSR. I argue against the regulation of social responsibility, and explain why I think CSR has or should move beyond mere regulatory compliance. I go on to explain what has been called the ‘CSR value curve’, that is, the continuum beyond compliance where CSR is regarded as an opportunity for corporate growth instead.<sup>170</sup> There are two waves in this CSR value curve: Firstly, there is the wave of ‘strategic philanthropy’ described in section 6.2, which aligns CSR activities with issues that support companies’ business objectives. Secondly, there is the wave after that, where companies move on to what has been called ‘value-based self-regulation’. As explained in section 6.3, this is where companies start to “achieve cost-savings through win-win situations” and may eventually “gain access to new markets or partnerships due to revenue-generating innovation”.<sup>171</sup> The difference between the first and second waves is that, while CSR in the former is led by the social causes in question, CSR in the latter is led by the companies’ own initiatives to maximise profits through social action. This second wave is, in turn, attributable to the changing nature of markets and profits as well as companies’ recognition that they need to adapt their business models in the face of new challenges, while the first wave is more the result of pressure from civil society actors like NGOs and consumers that compel companies to respond to the social-environmental concerns of these lobby groups. Together, however, they provide a picture of how corporations have had to adapt their understanding and thinking about business, in particular, the ways in which business is increasingly aligned with social responsibility and *vice versa*. In other words, they provide an account of the business case for CSR.

### **6.1 Moving beyond regulatory compliance**

One of the most straightforward ways for government to promote CSR within the business community is to legislate for it. Noreena Hertz (2001; 2004) is a vocal

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<sup>170</sup> Survey by IBM regarding the business case for CSR, as reported in a newspaper article in the Business Times (Singapore) by Matthew Phan entitled *Firms See Growth Areas In CSR Efforts: Study* (25<sup>th</sup> February 2008).

<sup>171</sup> *Ibid.*

advocate for stronger regulatory measures that force greater disclosure by corporations and compliance with international standards. She gives several arguments. Firstly, regulation creates a level playing field because it catches all corporations – including those invisible brands, secondary goods producers, smaller multinationals and corporations that are not brand-dependent, and who tend to slip under the radar – not just the visible brands. Secondly, regulation ensures that unpopular social concerns and unattractive causes do not get pushed aside by market forces and trends, especially during an economic downturn when customers' priorities are inclined towards cost cutting rather than social justice. Thirdly, regulation will ensure more transparency and disclosure from corporations about their environmental and social record. Lastly, Hertz argues that corporations should welcome regulation, as it sets an objective standard for what constitutes acceptable practice, without which corporations will always be at the mercy of their critics. Elsewhere, she also points out that forward-looking companies are better off anticipating rules instead of fighting them since, without some form of standardization, firms will always be subject to criticism and bear the burden of how to respond (Hertz, 2003). For all these reasons, Hertz recommends that governments make international standards on the environment and human rights mandatory, that executive directors be held personally liable for corporate breaches of these laws, and that the corporate veil be lifted so that parent corporations can be held accountable for the actions of their overseas subsidiaries – in addition to tax and other incentives.

I think the advantages of regulation enumerated by Hertz are exaggerated. Firstly, the recommended strategy for encouraging CSR is, in contrast to Hertz's suggestion, not to level the playing field or "capture" every single corporation, large or small, but precisely to target visible corporations that are brand-dependent. The strategy is to reach out to these key agents, who are in turn able to set behavioural cues for the rest of their industry or their sub-contractors. Sociologically-speaking, norms and behaviours are more successfully spread by such targeted intentional strategies, rather than a "scattergun" approach. Hence, one of the criticisms of the UN Global Compact is that it commits the error of over-inclusion, that is, focusing on maximising the number of corporations signing

on, rather than “obtaining agreement from certain corporations in certain sectors on more specific norms” (Kuper, 2005d: 367). Andrew Kuper has compared the UN approach to the approach adopted by Global Witness, an international NGO campaigning to restrict trade in conflict diamonds. It did so, not by lobbying all diamond producers, but by convincing De Beers – the largest producer of diamonds in the world – that conflict diamonds were bad for business. De Beers in turn corralled its competitors, affiliates and states to agree to a system of limiting trade in conflict diamonds (Kuper, 2005d).

Secondly, many social concerns involve trade-offs. It is true that some unpopular social causes get pushed aside by the market, because they are not as reputation-enhancing as other causes from the business point of view, for example. Regulation may help to level the playing field in this regard. However, it is also true that some social causes are not supported by the market because they are either unsustainable or bad for other segments of society. For example, environmentalists have been critical of China for opening one coal-fired power plant every week. On the other hand, such coal-powered development helps developing countries like China to retain access to affordable electricity for development. This has lifted hundreds of millions of Chinese citizens out of entrenched poverty in the last few decades – this is the other side of the environmentalists’ story that “demonizes” China’s aggressive push for coal power.<sup>172</sup> So the question that blanket environmental regulation cannot answer is this: Why is climate change a greater injustice than entrenched poverty and inequality? Of course, it may be that we think that it is not. But the point here is that the free market is better positioned to adjust to public opinion on this matter. Obviously, this is not the case in every situation, but it does go to demonstrate the limitations of regulation.

Thirdly, regulation is not necessary for transparency. Nor is it necessary for industry standardization. In some cases, the profusion of rules and standards can create great confusion as well as the opportunity for deliberate obfuscation, given that there are multiple ways, not just one way, of measuring CSR (Oliveiro &

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<sup>172</sup> For details of the debate, see for example:  
[http://thebreakthrough.org/blog//2008/05/carbon\\_capture\\_solution\\_or\\_sca\\_1-print.html](http://thebreakthrough.org/blog//2008/05/carbon_capture_solution_or_sca_1-print.html)

Simmons, 2002). In other cases, regulation does not help because the situation is a “no-win” situation. For example, companies face a tough dilemma in Zimbabwe after its sham elections in 2008.<sup>173</sup> On the one hand, there is great pressure to impose economic sanctions on the incumbent regime, in order to end the escalating political crisis there. On the other hand, economic withdrawal can hurt ordinary people and deprive them of the means of feeding their families, while having little impact on the government. It may also delay recovery when democracy is eventually restored, especially if the withdrawal of Western companies is simply filled by other (for example, Chinese) businesses, which was what happened in Sudan. The dilemma about Zimbabwe is demonstrated by the different responses it has invoked from large corporations. Tesco, German bank note printer Giesecke & Devrient, and marketing services company WPP, have pulled out, while Waitrose, Unilever, mining companies like Anglo American, Barclays and Standard Chartered, whose Zimbabwean subsidiaries are among the largest banks in the country, have continued their operations there. Regulation, in this case, is almost impossible. Hence, it is notable that there have been no calls for an across-the-board trade boycott of Zimbabwe from the EU or the UN. The UK foreign office has also, in July 2008, said that it was not calling for commercial sanctions except where the trade supported Mr Mugabe’s regime or benefited its members.

Fourthly, it is not entirely true to suggest that corporations would welcome more government regulation because it sets up everyone’s expectations. The evidence shows, in fact, that corporations prefer voluntary programs to mandatory ones. One reason is that self-regulation can be a non-market strategy designed to influence public policy. The argument is that industry self-regulation can sometimes pre-empt or stave off the imposition of mandatory regulation. And even when legislation cannot be pre-empted, it can still be influenced through corporate actions (Lyon and Maxwell, 2004). Hence, it is not surprising that, in many cases, self-regulation remains paramount from the corporation’s point of view.

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<sup>173</sup> John Willman. 2008. Mangetout And Mugabe. *The Financial Times* (5<sup>th</sup> - 6<sup>th</sup> July 2008).

But if a counter-argument to regulation was needed, it is this: that using the law to hold corporations accountable should always be a last resort. Running fast and loose with the law pre-emptively excludes non-legal and often cheaper alternatives like voluntary negotiated agreements between government and industry – a government-sponsored program that companies can voluntarily choose to participate in – and other forms of self-regulation. Voluntary negotiated agreements have in fact worked very well in Europe and Japan. In an analytical study on corporate environmentalism conducted by Lyon and Maxwell (2005), it was shown that negotiated agreements between government and industry, which are increasingly common in Europe and Japan, can work well if their goals are clear, performance is monitored closely, and there is a credible regulatory threat in the background. Empirical studies have shown that regulatory pressures, as perceived by firms, are important in motivating unilateral corporate initiatives. There is a large gap between *threatening* to legislate regulation and *actually* legislating regulation. The argument for government regulation fails to recognise that certain corporate environments are conducive to voluntary cooperation while preserving the role of the state. Moreover, forcing corporations to be socially responsible presumes that they are not capable of being good global citizens on their own without even first giving them a chance to be one. More importantly, it poses an obstacle to learning and understanding how corporations really make decisions. For example, those who emphasize the importance of norms in governing behaviour argue that one does not become a good citizen because there are laws that mandate one's behaviour, but because, prior to the law, there is a culture that requires the assumption of civic responsibility and punishes those who violate shared social principles. This is not to say that regulation is not needed at all, simply that it should not be a frontline measure.

In recent years, governments around the world have shifted towards non-coercive means of pursuing social and environmental objectives. Programs to facilitate negotiated agreements between government and industry reflect a growing awareness that traditional regulatory measures can be costly, ineffective, or politically infeasible tools for certain types of environmental problems. Mandatory regulations are notoriously difficult to formulate, implement and



enforce when their benefits or costs are poorly understood, or when the sources of the social problems they are intended to address are numerous and diverse such that monitoring them is prohibitively costly. Conversely, voluntary initiatives benefit regulators, because they allow them regulatory flexibility to pursue the issues they consider to be of greatest importance and to target corporations that are the largest perpetrators of unsocial behaviour. Regulation, on the other hand, forces the hands of government once they are on the books, and makes them vulnerable to lawsuits from non-governmental organisations, since activists can always sue for the strict enforcement of the legislative language.

The point is, there is more than one way government can encourage CSR, and suggesting regulation as a public policy excludes other more viable approaches to corporate social responsibility. Although it is true that corporations belonging to highly regulated industries are more likely to adopt a socially responsible management system (Lyon and Maxwell, 2004), this is not proof of the opposite, that is, that the absence of CSR-specific regulation leads to a lower level of engagement in social responsibility by corporations.

Moving beyond regulatory compliance then, we turn to other motivations for CSR – specifically, the business case for CSR. The business case for CSR refers to CSR which is not mandated by law, and which is posited as part of companies' business strategy and wider corporate governance system, rather than something “extracurricular” that corporations do. It has been described in terms of a continuum beyond compliance known as the ‘CSR value curve’. There are two identifiable waves in this continuum: The first treats CSR as strategic philanthropy (section 6.2), and the second treats CSR as value-based self-regulation (section 6.3). Setting aside the argument for CSR as regulatory compliance then, we turn now to the business case for CSR.

## 6.2 CSR as ‘strategic philanthropy’<sup>174</sup>

CSR as strategic philanthropy refers to CSR that is primarily motivated by external public pressure rather than by opportunities for financial savings or competitive advantage. Empirical data shows that corporations that engage in CSR are responding to an increasing amount of external pressure from NGOs and consumers to do so. In a 1999 poll of 25,000 citizens in twenty-three countries, it was found that two-thirds of those surveyed expected companies to do more than simply make a profit and obey the law (Lyon and Maxwell, 2004). NGOs are the organizations who lobby and bring together this body of consumer support for their causes. For example, in 1991, UK retailers like B&Q, Texas Homecare and Homebase committed to stop selling environmentally damaging tropical rainforest timber directly as a result of considerable media and public attention roused by Friends of the Earth groups. In another example, the FoulBall Campaign was launched in the US by the International Labor Rights Fund to target soccer balls originating from countries like Pakistan, China and Indonesia, which it claimed used child labourers extensively. The campaign focused and succeeded in getting its message across to the so-called soccer mums who were accompanying their children to community soccer programmes, which led eventually to measures being taken by large multinational sports goods corporations like Nike and Reebok to alleviate the exploitation of child labour in Pakistan. Hence, CSR is nowadays less about legal compliance and more about ‘civil regulation’. Civil regulation occurs where organisations of civil society, such as NGOs and consumers, set the standards for business behaviour. For those companies that choose not to adopt these standards, NGOs have at their disposal the confrontational tools of consumer politics.

Murphy and Bendell (1999) argue that civil society organizations like these are playing increasingly significant roles in promoting environmental and social management, and that their focus is on corporate practice rather than governments.

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<sup>174</sup> The term ‘strategic philanthropy’ was popularized by Harvard business professor and guru, Michael Porter, and Mark Kramer. The sense in which they use the term, however, refers to the company-led business competitive strategy of investing in CSR initiatives in order to improve long-term business prospects. This is covered in section 6.3 below under the heading ‘CSR as value-based self-regulation’. Here, however, I have used it to describe cause-related marketing, which is intended primarily to increase a company’s visibility in response to NGO and consumer pressure.

This, they argue, has a lot to do with the emergence of the global economy and the perceived decline in the role of the nation state. They argue that, with a huge expansion of many economies during the twentieth century, governments pursuing neo-liberal policies are rolling back the state, both internally and externally, and promoting international free trade. As capital and industry become increasingly large and mobile, the power of many governments to set their own policy agenda has been weakened. In a global market, if a TNC does not favour the policies of a particular government, it may vote with its feet. If the international money markets anticipate a withdrawal by a number of TNCs, then confidence in a country's economic performance and therefore its currency may decline, leading to an economic downturn. Consequently, governments have been involved in a process of competitive deregulation. This, coupled with the growing iconic nature of major corporations and brand names, as well as the advancements in telecommunications and information, has led to the growing drive and capacity on the part of NGOs to lobby corporations instead of governments on environmental and social responsibility issues. Hence, NGOs have been described as civil society organisations "that have as their primary purpose the promotion of social and/or environmental goals rather than the achievement of economic power in the marketplace or political power through the electoral process". (Murphy & Bendell, 1999: 6) In his historical narrative of the rise of the CSR movement, Geoffrey Owen (2002) also concludes that a major causal factor for the rise of corporate social responsibility is the rise of campaigning bodies, both national and international, actively representing the interests of individuals, consumer associations, charities, single-interest groups and NGOs. These bodies, increasingly well-organised and with a growing international membership and greater media coverage, have become a very real force in trying to lobby or compel corporations to cooperate in advancing their particular causes.

The interaction between NGOs and corporations has changed over the years, from one of anarchy to partnership. The road to partnership began with deep conflict stretching from the 1960s to the 1990s, with the tools NGOs used to change corporate policy reflecting this, running from direct action protests to corporate boycotts. The 1995 confrontation between Shell and Greenpeace over

the disposal of the Brent Spar offshore oil installation into the North Atlantic only “confirmed the long-standing image of two tribes engaged in perpetual war over values, words and ideas” (Murphy & Bendell, 1999: 2). Some of these conflicts have resulted in horrific human rights abuses, even murder. But, since the early 1990s, we have seen a gradual transition from conflict to partnership. Increasingly, NGOs are using the tools of dialogue and collaboration to engage corporations instead. Observers have differed in their opinions as to whether this phenomenon of “ethical” cooperation on the part of corporations is genuine or not – some say that it is nothing but a public relations exercise; others say that it is a rational business response which leads to a “win-win” situation for all parties concerned. However, virtually everyone agrees that corporations have responded largely as a result of the commercial pressure applied by NGOs, and that NGOs have been key in setting the political agenda for change. Indeed, by the end of 1996, Shell UK’s chairman Chris Fay was quoted as saying that his company “had *no option but to pursue the goal of sustainable development*”. (Murphy & Bendell, 1999: 2, emphasis is my own)

The case of Nike in Pakistan illustrates the transition from anarchy to partnership. It revolves around the issue of child labour. In 1992, the ILO established its International Programme for the Elimination of Child Labour (IPEC), with the aim of working towards the progressive elimination of child labour by collaborating with corporations and other parties to prevent child labour, withdraw children from hazardous work, offer alternatives and, in the interim, to improve existing working conditions for children. However, cooperation at an intergovernmental level was largely lacklustre. As of 1999, the ILO estimated that some 250 million children are currently working worldwide. The specific focus on the soccer ball industry originated in the USA. In 1992, US Senator Tom Harkin introduced a bill that would place import restrictions on products manufactured by child workers, which garnered media coverage. In particular, attention focused on Iqbal Masih, a Pakistani who was sold into slavery in 1986 for a mere US\$16, when he was only four years old. After Masih escaped from the carpet factory he was working in 1992, he became a champion of child workers, speaking at international labour conferences and helping to close several Pakistani carpet

factories. In 1995, after numerous death threats, he was shot dead in his home village. Masih's murder drew worldwide attention to child labour in Pakistan. The story attracted massive attention from foreign journalists, especially in the Sialkot district, where the Pakistani soccer ball industry is based. The news reports from Pakistan led to growing consumer and political pressure upon the soccer ball industry and individual companies like Nike, particularly in the USA. In 1996, the FoulBall Campaign was launched by the International Labour Rights Fund (ILRF), targeting soccer balls manufactured in Pakistan, China and Indonesia, which countries they claimed used child labour extensively. Their tactics were at the grassroots, engaging consumers like the so-called "soccer mums" who were accompanying their children to community soccer programmes. In the UK, three trade unions launched a similar initiative with FIFA (the international football association) in 1996, to coincide with the European Cup hosted by the UK, targeting the soccer ball industry. The campaign was intended to raise spectator awareness of the child labour issue and to get FIFA to phase out the use of soccer balls produced by child labour.

By the end of 1996, the soccer ball industry began to feel the pressure of the various NGO campaigns. Trade associations such as World Federation of the Sporting Goods Industry (WFSGI) and the Soccer Industry Council of America (SICA) became increasingly concerned about the impact on the industry's image and the potential loss of markets. In November that year, the WFSGI organised a business-led conference in London, bringing together industry representatives, its critics and other interested parties. Following the London conference, Save the Children-UK (SCF), the UK's largest international NGO for children's rights and welfare, agreed to undertake a detailed situational analysis in Sialkot. In February 1997, after formal negotiations with various international organisations and local business associations, the WFSGI announced the launch of the Project to Eliminate Child Labour in the Pakistan Soccer Ball Industry, in cooperation with the Sialkot Chamber of Commerce and Industry and UNICEF, and with the ILO designated as an external monitor. This example of the evolution from conflict to partnership between NGOs and TNCs demonstrates that, while NGO pressure remains a key

reason for CSR engagement on the part of large corporations, the tools of civil society politics have changed.

A few further insights can also be drawn from the above case study. Firstly, it is important to note that none of the arguments privileging the role of NGOs in the rise of CSR, or tracking the development from conflict to partnership between NGOs and corporations, exclude the commercial “win-win” arguments for CSR. While it is true that NGO pressure has been key in getting corporations to pay attention to socio-environmental issues, corporations respond because it is in their self-interest to do so. The advantages of partnership for corporations include avoiding the costs of confrontation, which can be very high, cultivating and maintaining a good public image among their consumers, and in some cases, benefiting from the financial and natural resource savings (or eco-efficiencies) that come from engaging in CSR. For these reasons, many practitioners consider that there is a well-established and strong business case for CSR. In other words, the business motive is privileged here as a primary driver for corporations engaging in CSR. Specifically, it is an economic interest in avoiding conflict and preserving peace with NGOs – whether as a resolute or a pre-emptive measure – that drives corporations to engage in partnership with them.

Secondly, self-interest runs in the opposite direction as well. NGOs have vested interests in campaigning for particular socio-environmental concerns, and they choose to engage corporations in partnership over these concerns because it is in their interests to do so as well. There are several advantages of partnership for NGOs. Firstly, partnership often leads to ethical codes for business that are agreed by the various stakeholders and can be independently verified. Secondly, it opens a door for NGOs to play a role in restoring consumer confidence in (ethical) products and consumers’ sense of agency when they work with businesses to promote positive change, and this results in “a more sustainable form of consumerism” (Murphy & Bendell, 1999: 51). Thirdly, dialogue and partnership with business is also more effective in terms of educating the public, since many corporations have wider reach and influence. Fourthly, demonstrating that partnership solutions work may encourage governments to pursue innovative policy alternatives based on partnership as well. Finally, in an article

commissioned by management consultancy McKinsey & Co., Cogman & Oppenheim (2002) point out that both sides benefit from the free exchange of information – what they call a kind of “cross pollination”. For example, environmental NGOs are able to tap companies’ unrivalled expertise in the ecological impact of industrial operations. Conversely, companies are also able to receive advice and learn from their critics, as demonstrated by the existence nowadays of training courses for executives in business ethics which are conducted by activists.

On the other hand, the vested interest in partnership seems more compelling for corporations than it does for NGOs at the moment. Business-NGO partnerships as they stand now “present a number of strategic problems for NGOs” (Murphy & Bendell, 1999: 52). Firstly, the main quantitative analyses of NGO success remain based on membership levels and extent of media coverage. What is needed in order to truly know the full benefits of partnership, however, are systems to evaluate the partnership’s direct contribution to the achievement of specific social/environmental goals – suggested indicators include “the percentage reduction in waste per dollar spent” or “the acres of forest saved per dollar invested” – but there have been almost no attempts to develop these systems. Secondly, there is the question of NGO independence. Businesses seek NGO endorsement in order to lend legitimacy to their ethically certified product, which in turn boosts their public image. However, there is a concern that such single-issue partnerships may prevent an NGO from publicly criticizing their business partner on other social/environmental matters. Thirdly, there is a concern that NGOs may spend time and finance working with business at the expense of achieving their social/environmental goals through other means. These can add up to potentially a vicious cycle. So long as the concerns about business-NGO partnerships are not addressed, grassroots action will remain an important tool for lobbying businesses. Moreover, because the tools of conflict are crucial for empowerment and for catalysing change, NGOs will continue using direct action protests against corporations anyway, and it is unclear how this affects the will for and/or effectiveness of partnership. These points of concern must be addressed if a stronger NGO rationale for partnership is to be established.

Moreover, there are other concerns about civil society regulation. Firstly, there is the worry that political expediency rather than environmental or social necessity governs CSR, and that harnessing market mechanisms to promote social-environmental causes fails to address the underlying causes of these issues. Secondly, sustainable development based on self-interest is potentially unsustainable. Because it is ultimately profit-led, it involves among other things a “race to the bottom” where good governance is concerned. Thirdly, many of the issues are complex and do not have straightforward solutions. For example, in the case of child labour, many Pakistanis who depend on their children’s income actually challenge anti-child labour campaigns. In the words of the father of a child stitcher: “It is not good for children to work, but if they don’t, how shall we live?”. Banned child labourers often end up being forced to take on harmful, less well paid work, including prostitution. Moreover, the child labour issue is also tied up with other vested interests. Local manufacturers also complain that anti-child labour campaigns have the underlying agenda of promoting adult labour unions internationally. This adds to the problem of identifying who the parties to global justice are – should such parties with secondary interests in the issue at hand be included in a corporation’s just considerations? The issue is not always clear-cut. Finally, the enforcement of partnership measures is also a huge problem, since the hand-stitching of soccer balls forms an informal sector, with a lot of the work being home-based. Sustainable solutions, therefore, need to address these issues as well.

Regardless of the pros and cons of civil society regulation, it is clear that pressure from civil society members such as NGOs have and continue to play a large part in encouraging corporations to engage in CSR – whether this is achieved by using the tools of confrontation or partnership. In regard to partnership, as we have shown here, corporations have vested interests in pursuing partnership options with NGOs, even if there are residual issues to be sorted out. Hence, CSR is strategic philanthropy because there are cost-savings and profit-incentives involved in engaging with civil society regulation and pursuing partnership with NGOs.



### 6.3 CSR as ‘value-based self-regulation’

Some companies have moved on from strategic philanthropy to see CSR as value-based self-regulation. In other words, rather than responding to external pressures, they are keen to create or exploit opportunities for profit through engaging in CSR. Such innovation is in part the result of more sophisticated business strategies, and in part the result of changes in the nature of markets and profits which have created opportunities for businesses.

Michael Porter and Mark Kramer (2002) were among the first to popularize the idea of ‘value-based self-regulation’.<sup>175</sup> Value-based self-regulation is philanthropy that improves a corporation’s long-term business prospects, which in turn motivates corporations to be philanthropic. Such strategic giving addresses important social and economic goals simultaneously, targeting areas of competitive context where both the corporation and society benefit. The firm brings unique assets and expertise in support of a charitable cause, while doing so improves a corporation’s competitive context and the quality of the business environment in the location(s) where it operates. For example, Cisco System’s Networking Academy trains and certifies secondary and post-secondary school students from “empowerment zones” in the US and some developing countries, designated by the federal government as among the most economically challenged communities in the country or world, in network administration. The program has not only brought the possibility of technology careers, and the technology itself, to men and women in some of the most economically depressed regions in the US and around the world, it has also enlarged Cisco’s market share and improved the sophistication of its users by helping customers obtain well-trained network administrators. Cisco has also attracted international recognition for this program, generating increased employee morale, goodwill among its partners, and a reputation for leadership in philanthropy. “It is only where corporate expenditures produce simultaneous social and economic gains that corporate philanthropy and shareholder interests converge... It is here that philanthropy is truly strategic” (Porter and Kramer, 2002: 7).

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<sup>175</sup> See fn 174.

There are several advantages to treating CSR as value-based self-regulation. By taking the lead in social causes, corporations can intensify market competition and make it more difficult for their rivals to compete. Among the familiar market strategies that may be employed are product differentiation, attempts to raise rivals' costs, cost leadership and quality leadership. However, sceptics have argued that the business opportunities in CSR are rapidly being exhausted. Indeed, environmental consultants at McKinsey & Co. believe that, in the field of environmental economics at least, "win-win situations... are very rare and will likely be overshadowed by the total cost of a company's environmental program" (Walley and Whitehead, 1994). Furthermore, there is the puzzle why there should be any sudden surge in opportunities for doing well by doing good in the first place? Were corporations previously sloppy in ignoring these profit-making opportunities? Has technological change presented new opportunities for competition and profit? Have workers' attitudes shifted, so that employee morale now depends on corporate social performance?

For some answers, we need to analyse the paradigms of change in the corporation's business environment. Here, the dramatic changes that are underway in three areas that characterize the external environment of the public corporation are highlighted: (1) the nature of profits, (2) the capital market, and (3) the product market.

### **6.3.1 Changes in the nature of profits**

Engaging in CSR can help corporations maximise profits and shareholder value in straightforward ways. As a brief overview, I highlight eight main areas in which CSR can provide business benefits:<sup>176</sup>

(i) *Reputation management.* Reputation management concerns the relationship between a corporation vis-à-vis various stakeholders like its customers, investors, employees, the media and the community at large. It is significant because the corporation is dependent on the support of each stakeholder for the achievement of

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<sup>176</sup> These eight points were first enumerated in a paper published by management consultancy Arthur D. Little (World Economic Forum GCCI, 2002) and are expanded on here.

its strategic objectives, and this means taking into account the social issues that they may be concerned about. Thus, CSR is one way in which corporations can maintain their reputations with these stakeholders whom they are commercially dependent on in one way or another.

(ii) *Risk management.* Risk management is about identifying long-term risks and opportunities – in business parlance, to identify “torpedoes” – and to adjust business practices now in order to exploit these “torpedoes” in the future (UBS, 2003). Well-known examples include legislative trends with respect to pension fund liabilities and regulating obesity, and the proposed EU scheme for carbon trading which is likely to have a profound effect on the UK power market and the companies that operate within it. Identifying and anticipating these “torpedoes” puts corporations ahead of the game, as they are able to adjust their business models to manage the risks. For example, British Petroleum have long invested hundreds of millions of dollars in producing de-carbonised fuel, in anticipation of a potential future market for carbon-free fuel (Graham Baxter, in Stafford *et al*, 2006). By doing so, they have a market lead if and when such a future market does materialize.

(iii) *Employee relations.* Employee relations concerns the relationship between a corporation and its employees. In a paper published by management consultancy Arthur D. Little for Business in the Community (BITC) entitled *The Business Case For Corporate Responsibility* (BITC, 2003), employee relations was cited as one of the significant considerations in CSR. Because business is dependent on its employees, understanding the ethical values of its employees and aligning them with its business values produces engaged, motivated and inspired employees. This in turn feeds back on business success.

(iv) *Investor relations.* Investor relations concerns the relationship between a corporation and its investors. It is significant because it affects a business’ access to capital, and as the discussion on socially responsible investment below suggests,

today's investment community is more likely to regard CSR as a proxy of a company's quality of management. This is discussed further below.

(v) *Learning and innovation.* CSR is also beneficial because it stimulates creativity and learning in the marketplace, and opens up doors for companies to partner with external innovators in joint ventures that harness societal and technological change. For example, Nike has programmes with six of its material suppliers to collect 100% of their scrap and recycle it for the next round of products, hence reducing both waste and production costs (BITC, 2003). In another example, a major chemicals company teamed up with an agricultural and industrial products firm to produce fibres made entirely from renewable resources, which led to the creation of an award-winning new polymer made entirely from agricultural crops, with applications for packaging, fabrics and furniture (World Economic Forum GCCI, 2002).

(vi) *Competitiveness and market positioning.* Competitiveness and market positioning is concerned with delivering what customers want. In other words, it is concerned again with the relationship between a corporation and consumers. It is significant because almost all surveys show that CSR is an important factor in consumers' purchase practices. In the UK, for example, research undertaken by the World Business Council for Sustainable Development (WBCSD) showed that 41% of customers say that CSR influences their purchasing decisions (World Economic Forum GCCI, 2002). These attitudes are replicated across the world. In the most comprehensive survey of consumer attitudes towards CSR, involving 25,000 individuals in 26 countries, it was found that more consumers (almost 60%) form their impression of a company based on their CSR practices rather than brand reputation or financial factors (World Economic Forum GCCI, 2002).

(vii) *Operational efficiency.* Operational efficiency here concerns the direct improvement of the bottom-line that results from taking CSR seriously. This does not just relate to eco-efficient practices. In their book *Built To Last*, Collins and Porras (2000) show that the key characteristic which distinguishes "visionary"

companies from their peers is that visionary companies have a core purpose beyond making money, and that this is the key factor that enables them achieve far greater long term financial performance than their peers.

(viii) *Licence to operate*. The licence to operate concerns the perceptions that others have of a company's CSR performance, which can affect the smooth operation of a company's business, even its share price. When companies are perceived to take the particular social or environmental issues seriously, their critics are generally more willing to engage in dialogue. Moreover, the good reputation of a company means that it is more likely to be given a second chance in the event of problems. For example, when several people died after a best-selling product produced by a large pharmaceutical company was tampered with, the company responded immediately by removing every item of that product from the shelves. The company's long history of good corporate citizenship also helped the quick recovery of its share price, and ensured that there was no lasting damage to its reputation or financial performance. (World Economic Forum GCCI, 2002)

The brief introduction to the various arms of the business case for CSR suffice to demonstrate that CSR is no longer something extracurricular to business, but forms part of a corporation's wider corporate governance system – in the sense that, because a company's CSR engagement (or not) affects its bottom-line, CSR becomes an issue of maximising profits and shareholder value. As the following discussions about the changes in the capital market and product market also show, not only have the business stakes changed in terms of how profit is made, they have also changed in their scope and are increasingly global. Thus, not only is there a need to theorize about the business case for CSR in particular, there is also a need to theorize about the role of corporations in global justice in general.

### **6.3.2 Changes in the capital market**

According to Bradley *et al* (1999), three broad areas of change stand out when considering contemporary changes in the capital market: (1) the emergence of an international capital market, (2) the rise of the institutional investor, and (3) the

unprecedented proliferation of financial products. In the following discussion, I consider these areas of change in relation to the discussion about CSR.

#### 1. International capital markets

Market capitalisation (or “market cap”) refers to the value of a company as measured by the aggregate market values of its securities traded on the stock exchange, which may include stocks, bonds and options. It is calculated by multiplying its current share price by the number of shares in issue. Market cap is important because it is the way public companies raise large amounts of funds and capital, that is, through the sale of its securities. A company’s share price is an indicator of investors’ confidence in the company’s growth versus risk potential (although it may not reflect the company’s actual size). One of the primary focuses of corporate managers, therefore, is to maximise the share price in order to attract investors.

Nowadays, it is not unusual for a company’s securities to be listed and traded on several stock exchanges all over the world. Indeed, “[t]he most profound change in the capital market over the past two decades has been its transformation from a conglomeration of regionally and nationally segmented markets into one integrated, international market.” (Bradley *et al*, 1999: 18) So the first major change in the capital market is financial globalisation, that is, the globalisation of capital markets. Financial globalisation has accelerated noticeably since the early 1990s, with the decline in information costs, domestic financial liberalisation, growth in global trade (real globalisation), and the ascent of transnational corporations (IMF, 2005). International capital flows grew dramatically between 1990 and 1998, with assets managed by mature market institutional investors more than doubling to over US\$30 trillion, which is about equal to world GDP (IMF, 2001). A survey of the major capital markets in the world also tracks this trend. In the USA, record levels of net inflows exceeding US\$400 billion, particularly through gross foreign purchases of US equities, which on its own could nearly have financed the US current account deficit. In Europe, euro-area investors sharply increased their net purchases of foreign portfolio assets, particularly in equities, which rose by 85%. In Japan, both net capital outflows and inflows

picked up in 2000, with Japanese purchases of foreign bonds reaching their highest level in March 2001 (IMF, 2001).

This investment trend is accompanied by the rapid simultaneous increase in many countries' foreign assets and liabilities (IMF, 2005). Between 1980 and 2003, external assets of industrial countries grew from US\$2,287 billion to US\$36,039 billion, with external liabilities also growing from US\$2,485 billion to US\$39,039 billion (IMF, 2005). In the US, overseas portfolio investment grew as a percentage of domestic market capitalisation from 1.5% to 7.4% between 1970 to 2003; in the UK, from 9.5% to 48.1%; and in Japan, from 1.3% to 16.7% between 1975 and 2003 (IMF, 2005). The IMF summarizes the explanation for this trend as follows: "Overall, financial globalisation has created an environment where net external borrowing and lending are less restricted, and where maintaining larger net foreign liabilities appears to involve relatively lower costs" (IMF, 2005: 117).

Emerging market access to international capital markets is also a key characteristic of financial globalisation (IMF, 2001). Foreign direct investment (FDI) inflows and outflows are good indicators of the increasingly international nature of firms (IMF, 2005). Between 2003 and 2004, inflows of FDI to developing countries surged by 40% to US\$233 billion, surpassing other private capital flows as well as flows of official development assistance (ODA); in 2004, it accounted for more than half of all resource flows to developing countries (UNCTAD, 2005). Much of this phenomenon was driven by the internationalisation of research and development (R&D) by TNCs, particularly into developing countries. Firms have long since tried to capture the competitive advantage of dividing their production process into multiple steps in different locations to take advantage of location-specific advantages in each step (for example, low labour costs, skill specialisation). That R&D should follow eventually was only to be expected. The internationalisation of R&D into developing countries, in turn, highlights the cross-border nature of corporations' business operations. It also facilitates the development of international networks of innovation and the transfer of new technologies necessary for the economic growth and development of the emerging host countries. With respect to financial globalisation, it represents a strong driver for increased FDI capital flows.

The implication of financial globalisation is that corporations are increasingly operating on a global level. This has several aspects. Firstly, the fact that corporations operate across borders and that their shares are traded in different stock markets around the world means that their decision-making process is ultimately influenced not only by immediate and local conditions, but by, among other things, long-term growth prospects, inflation expectations, interest rates and monetary policy elsewhere. This, in turn, means that the decision to engage in CSR is more complex, because there are more factors to take into consideration now. It also means that TNCs are exposed on more fronts where their role as global agents is demanded. Indeed, the opportunities for CSR initiatives are multiplied simply because the structure of companies' operations, and their impacts, are more globalised. Secondly, the reality in the contemporary business world is that trends in one economy can affect the entire global economy, and spillover shocks from one region to other world regions are very common – take the 1997 Asian economic crisis for example. In 2005, disappointing retail sales, inflation and consumer sentiment numbers in the U.S and Europe, as well as rising political tensions between Japan and China, also caused world equity markets to stumble (BIS, 2005). In early 2003, sharply rising oil prices ahead of the Iraq war caused major equity indices in both the US and Europe to turn sharply negative (BIS, 2005). These are just a few examples. For this reason, TNCs have a more compelling reason to be pro-active in practising good corporate governance and managing any risks, because the consequences of not doing so could have very wide reverberations. Thirdly, global economic conditions are additionally affected by investment trends. Because investment portfolios are so large and so global, proportionally small portfolio adjustments by global investors can have a powerful impact not only on the volume, pricing and direction of international capital flows, but also on domestic and international markets (IMF, 2001). This, as we shall see next, can have a big impact on CSR and the business case for CSR.

## 2. Rise of the institutional investor

Institutional investors are distinguished from individual investors. They are not individuals, but consist principally of occupational pension funds and life



insurance companies, and to a smaller extent, pooled investment vehicles such as unit trusts (collective investment schemes constituted under the terms of a trust deed) and open-ended investment companies (collective investment schemes taking a corporate rather than trust form). Other institutional investors include registered charities and other endowments with significant funds to invest, educational institutions and banks. Institutional investment offers many advantages. For the individual investor, risk pooling (for example, under a unit trust portfolio) means one's investment is collectively invested with that of others under the direction of specialist managers. Institutional investment can also offer substantial tax savings – for example, pension fund investments are free of capital gains tax, and contributions to pensions are made out of pre-tax income. Financial globalisation, it so happens, is an important driver of the “institutionalisation” of equity markets. For example, in 1999, overseas investors provided over 70% of the UK private equity industry's funding, and investment by overseas pension funds in UK private equity has more than tripled since 1996 (Myners Report, 2001).

A major change in the capital market over the past twenty years has been the rise of the institutional investor. Between 1990 and 1998, assets managed by mature market institutional investors more than doubled to over US\$30 trillion, about equal to world GDP (IMF, 2001). In the UK, the equity market has become steadily dominated by institutional investors since the early 1960s. As of 31<sup>st</sup> December 2001, institutional investors in the UK – primarily insurance and pension funds – collectively own 50% of UK shares totalling £776.3 billion, in comparison to UK individuals, who only own 14.8% of UK shares totalling £229.9 billion directly (UKSIF). In the USA, the same trend is being witnessed. According to a 1997 census conducted by the US Department of Commerce, institutional investors hold slightly less than 50% of the outstanding equity of all American corporations, but even more impressively, account for more than 80% of all shares traded (Bradley *et al*, 1999).

The direct implication of “institutionalisation” is that, in the contemporary business world, corporations are faced not only with a global playing field, but also different types of players. In the global business arena, the players are less likely to be individuals, but are increasingly made up of non-persons like corporations and

institutional investors. Although at a micro-level, these entities are technically collectives of many individuals players, on a global level, they behave as a single organic entity separate from their constituent members.

The ascent of socially responsible investment (SRI) marks this institutionalisation. SRI is an investment process that considers the social and environmental consequences of investments, both positive and negative. In other words, it includes extra-financial criteria falling under the realm of CSR within the context of rigorous financial analysis, and is a process of identifying and investing in companies that meet these criteria.<sup>177</sup> The SRI market is split between retail investment, which covers individual savings and investments, and institutional investment, which dominates the SRI market. In Europe, institutional SRI amounted to approximately €336 billion in 2003, with the UK as the most developed institutional SRI market in Europe. (Eurosif, 2003) As of 2001, institutional investors collectively owned £776.3 billion in UK shares, compared to the £229.9 billion owned by individual investors. (UKSIF website) Moreover, the figure has been doubling every two years. (EIRIS, 2001) In the USA, a total of US\$2.16 trillion in assets – that is, more than one out of every nine dollars – was identified in professionally managed portfolios as using one or more SRI strategies in 2003, representing a growth of more than 240% from 1995 to 2003. (SIF, 2003) Investment by pension funds and trade unions are the biggest drivers of SRI market growth. (Eurosif, 2003)

Institutional investment has taken the lead in the SRI market for various reasons. On the demand-side, the first movers on the SRI market were historically institutions with strong identification with their values, such as religious groups

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<sup>177</sup> In the USA, SRI is defined by three strategies – screening (the practice of including/excluding publicly traded securities from investment portfolios based on social and/or environmental criteria), shareholder advocacy (including dialoguing with companies and filing/voting on proxy resolutions on social and corporate governance issues of concern), and community investing (where investors invest a percentage of their portfolios into community development financial institutions in order to provide access to credit, equity, capital and basic banking products to communities that they would otherwise not have). (SIF, 2003)

In Europe, there is no single definition of SRI. Instead, SRI is loosely differentiated into three layers: the core made up of screening practices, a second layer made up of simple exclusions (negative screening, typically for tobacco or activity in Myanmar), and a third layer consisting of engagement practices, that is, practices involving the exertion of one's power at the corporate governance level to push for CR issues. (Eurosif, 2003)

and trade unions; on the supply-side, the offer of SRI products by asset managers has grown rapidly in volume as well as in diversity (Eurosif, 2003). Legal and regulatory developments have also pushed institutional investors to be active on the SRI front. For example, investments by fund managers are now subject to more stringent disclosure policies, as in the case of the Statement of Investment Principles (SIP) in the UK, so institutional investors as a whole are more sensitive to SRI indices. In the Netherlands and France, more powers given to unions in pension investment policies has led to unions using this power to create dedicated investment policies reflecting their SRI interests (Eurosif, 2003). In the final analysis, the fact that SRI and sound corporate governance enhances a company's long-term performance fits in with the long-term view that institutional investors usually take in the way they manage their money. Hence, it is not surprising that the rise of the institutional investor should also be paralleled by corresponding growth in the market for SRI by institutions.

### 3. Proliferation of financial products

A third major change in the capital market is the proliferation of financial products. I wish to say something briefly about this, even though it has no direct impact on CSR, because I think that it reinforces the global and diverse nature of business today, and the imperative therefore for TNCs to take the lead in CSR initiatives.

Between 1973 and 1991 alone, sixty major innovations in securities offered by corporations were identified – for example, debt instruments including adjustable rate notes, bonds linked to commodity prices, collateralised mortgage obligations, commercial real estate-backed bonds, credit card receivable-backed bonds, global bonds, pay-in-kind debentures, puttable bonds, stripped mortgage-backed securities, and variable coupon renewable notes; equity innovations including callable common stock, supershares, and unbundled stock units – and many more have been added since then – for example, targeted stock and other forms of project-based financing (Bradley *et al*, 1999). As Merton H. Miller colourfully puts it:

“The wonderment of Rip Van Winkle, awakening after his sleep of 20 years to a changed world, would pale in comparison to that felt by one of his descendants in the banking or financial services industry falling asleep (presumably at his desk) in 1970 and waking two decades later. So rapid has been the pace of innovation in financial instruments and institutions over the last 20 years that nothing could have prepared him to understand such now common-place notions as swaps and swaptions, index futures, program trading, butterfly spreads, puttable bonds, Eurobonds, collateralized-mortgage bonds, zero-coupon bonds, portfolio insurance, or synthetic cash – to name just a few of the more exotic ones. No 20-year period has witnessed such a burst of innovative activity.” (Miller, 1992: 4)

Several explanations have been offered for the sudden burst of financial innovations since the 1970s. Some argue that when the tie of the dollar to gold was cut then, it led to wide fluctuations in exchange rates and the development of exchange-traded foreign-exchange futures contracts – an innovation that in turn spawned a host of subsequent products; others say that the revolution in computers and information technology drove innovation. Taking a historical approach, Miller (1992) finds most persuasive the link between innovation and world economic growth. He argues that the burst of innovation was merely a “delayed return to the long-run growth path of financial improvement” (6), stimulated by regulation and deregulation after World War II.

The implication of the proliferation of financial products is that, while the financial markets are becoming more institutionalised and homogeneous worldwide, financial instruments are being transformed from the generic and standardized to the specific and customised (Bradley *et al*, 1992). Moreover, the volume of transactions is immense. In the most significant area of financial innovation – derivatives securities – growth in global over-the-counter derivatives activity went up by 17% to US\$95 trillion in the 18 months to December 2000 (IMF, 2001). Needless to say, this represents a huge global market which companies must navigate.

### 6.3.3 Changes in the product market

Corporate product market globalisation is the process by which activity in markets for goods and services becomes worldwide in scope. This is measured by volume of global trade, which is defined as the sum of exports and imports of goods and services (IMF, 2005). Although corporate product-market globalisation is itself no longer news, what is surprising is the rate of change of the phenomenon (Bradley *et al*, 1992). From the early 1970s to 2003, global trade as a percentage of GDP increased from some 20% to about 55% (IMF, 2005). Historically, the current era of corporate product-market globalisation began earlier than financial globalisation, given that liberalisation of external trade regimes started in the 1950s (IMF, 2005). Its acceleration has been attributed to a combination of key factors, including declines in transport costs, costs of information gathering and sharing, and continued decreases in government-imposed trade barriers such as tariffs (IMF, 2005). Moreover, the geographical patterns of trade have also changed, with emerging market economies (for example, in Asia) growing in importance in world trade relative to industrial countries (IMF, 2005).

The implications of corporate product-market globalisation encapsulate the implications of globalisation in general. As we have seen before, in the contemporary business world, corporations are faced with a different playing field and different players that demand a shift in how they view business vis-à-vis CSR. Firstly, corporations are increasingly operating in different worldwide locations, and the way the production process has developed has implications on the nature of global trade itself. In order to take advantage of declining trading costs and location-specific advantages (for example, low labour costs, specialised skills), corporations are increasingly dividing their production process into multiple steps. Because this involves imports and exports of parts and intermediate goods leading up to the final assembly of a particular product, this means that cross-border manufacturing trade has increased dramatically. This means that, although TNCs tend to be more geographically diversified, they tend also to be more invested in any one location. Moreover, the bulk of international trade now takes place within, not across, industries, as countries tend to specialise in terms of level of production (for example, producing a variety of goods on the level of final or intermediate

goods) rather than in a particular industry (IMF, 2005). This means that the new global playing field corporations face tends to be confined within narrow industry categories rather than across different industries as before, at least in respect of global trade.

Secondly, spillover effects from market to market are likely to be large, since an adjustment in any stage of the production process will trigger an “domino effect” on trade flows all along the production chain. For example, a drop in demand for a particular final good will trigger a contraction in demand for all intermediate inputs. Since the production process is global, the contraction effect is likely to be magnified, because it will affect every subsequent stage of the production line on a worldwide scale. In other words, global trade flows will be “more elastic with respect to demand changes” in general (IMF, 2005: 131).<sup>178</sup>

Thirdly, operating on a more global scale means that corporations will also have to face new issues and new stakeholders in CSR, many of whom will be institutions, as discussed before. This includes institutional shareholders and other institutional stakeholders – for example, other companies, the industry as a whole, other state governments and regulatory bodies where parts of their production process are located, as well as individual consumers from all parts of the world.

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The above discussion has been extensive in its detail. To recap: I started out in section 6.1 by arguing that the analysis of CSR and its drivers should and has moved beyond mere regulatory compliance. With regard to the argument in chapter 5 for the need to theorize the business case for CSR, I went on to present an account of how companies could do well by doing good in support of that argument. I presented this in terms of a CSR value curve, and identified two waves in that curve: Firstly, in section 6.2, I explained how CSR could be regarded as strategic philanthropy, that is, how corporations could benefit by addressing the concerns of NGOs and consumers and, in particular, partnering with NGOs to tackle various issues of global justice. As an example, I highlighted the case of

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<sup>178</sup> For other effects of the globalisation of trade, in particular, how globalisation has affected external trade imbalances and adjustment, see IMF (2005).

Nike and child labour in Pakistan. I then went on in section 6.3 to explain the next stage of the CSR value curve, that is, CSR as value-based self-regulation. Here, I described how corporations could benefit by taking the lead in CSR initiatives (as opposed to responding to external pressures). However, I also explained how this was in part a result of changes in the nature of profits and the capital and product markets.

This last account demonstrates two things: One, that in today's contemporary business environment, companies are increasingly dealing with a global playing field; two, that they are also facing new (global) players like institutional and socially-responsible investors. The implications of this on CSR and the business case for CSR is that companies need to adjust their business models and understanding of the various factors that affect their bottom-lines in the light of these changes. On the other hand, changes are also accompanied by new opportunities. These winds of change bring about new ways which companies can do well by doing good, hence reinforcing the business case for CSR. As a CSR researcher once put it: "We must look, without prejudice, at the opportunities and risks that the new situation presents, and pose the question of sustainability in the face of new emerging economic and social paradigms." (Dal Mason and Bedini, 2004)

## **Conclusion**

This thesis began with abstract reflections about the normative reasoning behind the proposition that TNCs ought to play a role in global justice, and ended with an empirical account of the new challenges with regard to CSR that TNCs face in an increasingly globalised world. But “[a] single text is a small torch for illuminating this long path” (Kuper, 2004a: 191) – in this case, the path of constructing a theory of CSR that provides a normative account of both the basis for, and the constraints on, CSR. Both challenges must be addressed by any theory of CSR; despite its normative intentions, a theory of CSR cannot offer action-guiding principles unless it takes into account the realities of the business constraints that corporations work under.

Instead of laboriously recapitulating every step of the argument in conclusion, I shall highlight the key features of the theory of CSR developed in these pages and illustrate how they have responded to the two challenges to developing a theory of CSR raised in the Introduction, namely: breaking past the methodologically individualistic way of understanding agency in political theory, and reconciling the conception of corporations as just agents with the prevailing understanding of corporations as non-moral business entities. The key features are: the theory of CSR (1) as a constructed theory, (2) as a non-individualistic theory, and (3) analysed in terms of ideal/non-ideal theory. Under each heading, I shall provide a chapter-by-chapter summary of the argument for the feature in question.

### **1. The theory of CSR as a constructed theory**

With the advent of new actors like TNCs on the global world stage that have the visibility, capabilities and the will to address our global social ills and influence our politics, I believe that we must move beyond thinking about international relations and a just global order as the prevail of states and state action alone. Hence, this thesis took up the challenge of developing a theory of CSR that considers the role of TNCs in global justice.



As we saw in chapter 1, addressing the question of *corporate* just agency *prima facie* involved moving away from the traditional state-centric theories of global justice to a cosmopolitan brand of global justice more conducive to discussing the role of non-state actors like TNCs. Cosmopolitan global justice, in this case, was presented as a particular conception of global justice that advocates a pluralized understanding of just agency which is essentially non-state-centric. That is, what was envisioned was an ideal global just order that included actors other than states, like TNCs. In chapter 1, three cosmopolitan approaches were presented: the ‘extreme cosmopolitanism’ position, the ‘strong cosmopolitanism’ position and the ‘weak cosmopolitanism’ position. The first posited the claim that cosmopolitanism results in a non-state-based world order, the second that global justice is achieved through radical reforms to create a ‘plurarchic sovereignty’ composed of state and non-state actors, and the third that a cosmopolitan conception of global just agency entails a balance between our special responsibilities and global responsibilities.

Each of the three cosmopolitan approaches offered an ideal picture of how a just global order should be structured, what political actors it should consist of, so as to best further the claims of each and every human being as free and equal individuals – and why. The central issue was about *just agency* – specifically, the normative reasoning that motivates the identification of different basic political units, which in turn generates theories with different normative content. Each approach offered their own perfectionistic conception of an ideal just global order consisting of certain political institutions that achieve the political ideals that they upheld. The question, then, was how TNCs “fitted into” the respective ideal pictures. The extreme position, advocated by Kevin Jackson, argued for a non-state-based world governing body to oversee and adjudicate wrongdoing on the part of TNCs. It was “extreme” because it rejected any involvement of states in the picture. The strong position, advocated by Andrew Kuper, proposed radical reforms to the structure of the UN to include both states and certain non-state actors like TNCs. It was “strong” rather than “extreme” because it presented a model of ‘plurarchic sovereignty’ and ‘responsive democracy’ that goes beyond the traditional electoralist and statist models, but does not reject the involvement of

states *tout court*. Finally, the weak position, advocated by Samuel Scheffler, suggested that a balance must be struck between our global responsibilities and our special responsibilities. It was “weak” because, contrary to the radical revisionist propositions of the extreme and strong positions, it was more cautious about suggesting that cosmopolitanism has any ready answers about how a just global order should be structured, let alone the question of TNCs’ role in global justice.

I argued that the strategy of laying out “grand theories” of what an ideal global just order looks like, and then trying to posit the role of TNCs in the models presented, was questionable for several reasons. Firstly, the three cosmopolitan approaches presented were only ‘thinly cosmopolitan’ because (1) in the case of weak cosmopolitanism, it was not genuinely “cosmopolitan” because it did not move away enough from a formally statist position that allows no place for corporations as agents of global justice in their own right, or otherwise had no story to tell about TNCs, (2) in the case of strong cosmopolitanism, it was not sufficiently “cosmopolitan” because it could not move away from a formally statist position without placing a wider, empirically-contingent restriction on the domain of global just agency; hence it could not provide principles for the inclusion of TNCs that were also generalisable to all non-state actors, and (3) in the case of extreme cosmopolitanism, the model of a supra-state cosmopolitan court for transnational wrongdoing was simply unnecessary and impracticable, and denied any value to state sovereignty.

Given these problems with the cosmopolitan approaches, one had to ask: Why should cosmopolitan global justice be constructed in this way – that is, as an extension from the statist position – in the first place? Why not, instead of imposing a big-picture conception of an ideal cosmopolitan just global order on the question of CSR, construct a set of duty-prescribing principles from ground up, based on the particular agent in question themselves and the values reflected in political reality? That is to say, instead of staking our claim on various versions of cosmopolitan global justice, I argued that an alternative (constructivist) approach might lie in asking more basic general questions, for example, ‘What is responsibility?’ first, and then test the conception of responsibility out to see how it applied to TNCs in particular, if at all. The reasoning here being that, only when

we had a rigorous conception of *what* responsibility is, would we be able to construct an agent-centred account of *who* is responsible. Only then, would we be able to give an answer to the question ‘Why TNCs?’.

Taking up the suggestion for a fresh (constructivist) approach, I then went on in chapter 3 to develop such a conception of global responsibility – one based on the capabilities argument – after making an extended argument in chapter 2 for a conception of ‘global justice as duty’ (that is, rather than a matter of ‘human rights’). The capabilities argument supplemented the idea that TNCs ought to be responsible in a general sense for the consequences resulting directly from their actions, and additionally suggested that TNCs may also be attributed with a responsibility to act on cases of global injustice where they were more capable than individuals to do so. The argument was that TNCs *ought* to be responsible for global justice because they *could* – that is, they were more capable than individuals and, in many cases, states, to foresee and prevent the risks of global injustice as well as to address or remedy any unjust situations. The normative challenge here was to make an argument for the transition from *can* to *ought*. This challenge was taken up in chapter 3, where a theory of CSR based on capabilities was fleshed out.

## **2. The theory of CSR as a non-individualistic theory**

It became obvious in the course of the narrative that, in considering the moral agency of TNCs, the traditionally methodologically individualistic way of conceiving moral agency had to be addressed. Methodological individualism, to restate it here, is the doctrine that privileges individual action. Theorizing the role of TNCs in global justice involved not only moving away from thinking about states as the primary agents of justice, it also involved moving away from thinking about the pursuit of global justice and a just global order in terms of individuals and individual action.

There were two distinct issues: Firstly, whether or not the corporation could be considered as an entity in itself, separate from its individual members; and secondly, even if so, whether or not moral agency could attach, not just to individuals, but also to corporate entities. As the thesis unfolded, these two issues were addressed.

In chapter 1, it was explained that one of the reasons for situating the issue of CSR firmly in the context of global justice rather than business ethics was precisely to shift the normative focus away from questions about the ontology and metaphysics of the corporate form, in order to address what I thought was the more compelling question of what TNCs should, can and are already doing for the global poor. Moreover, I offered several reasons why a “commonsense” approach to corporate agency should be adopted. Hence, instead of asking the question what duties TNCs owe to the distant poor, ethically-speaking, the question posed by global justice asked why, on principle and given a particular ideal of a just global order, TNCs ought to be agents of justice. As one philosopher observed, “a corporation does not turn into a moral person simply because one recognises its obligations of justice” (Kreide, 2007b: 14).

Nonetheless, it appeared that even some of the theories of cosmopolitan global justice – cosmopolitan because they advocated a pluralized understanding of agency in global justice which included actors other than states and individuals, like TNCs – fell into an individualistic mindset. To recall the three cosmopolitan approaches presented in chapter 1: What was also distinctive about them was that, while the weak cosmopolitan position focused on the individual agent (who had to balance between his global and special responsibilities), the strong cosmopolitan position and the extreme cosmopolitan position assumed that it was quite natural to talk about institutional agents. So even between cosmopolitan theorists, we saw that there were already distinctively different conceptions of agency – that is, whether a conception of individual agency or institutional agency was adopted.

Some of the cosmopolitan (non-state-centric) theories of global justice that explicitly purported to talk about institutional agency and the role of TNCs in global justice specifically, also turned out themselves to be essentially individualistic. Three such cosmopolitan theories were critically analysed in this thesis. Firstly, in chapter 2, Henry Shue’s conception of the role of TNCs in global justice as mediators of the ethical relationship between individual right-holders and duty-bearers was explained as part of my extended argument against the rights-based approach to global justice. Secondly, in chapter 3, we saw a similar notion put forward by Iris Marion Young, where institutions like TNCs were mediators of

what she called a ‘social connection’ between individuals and the distant poor through the a complex global structure and process – for example, through the processes of production, investment and trade etc.<sup>179</sup> Finally, in chapter 4, as part of the argument for the scope of corporate agency, I also presented Thomas Pogge’s argument that TNCs were part of an unjust global institutional order that causes, perpetuates, and sustains poverty, and which individuals were complicit in (for example, by being shareholders or consumers of the “tainted” products that these companies produce).

Despite explicitly discussing the role of institutional actors like TNCs in global justice, closer scrutiny revealed these cosmopolitan theories to be essentially individualistic. Rather than making the argument for *corporate* just agency, we saw that the interposition of TNCs in the cosmopolitan picture was actually intended to expand the boundaries of the *individual’s* responsibility so that, although the individual himself did not directly cause the harm in question, he was seen to play a strategic role in a process of events that led to the harm. In other words, TNCs “globalised” the individual’s scope of responsibilities (in Shue, Young and Pogge’s theories at least) – either by extrapolating an ethical relationship between him and the victim (for example, if the individual buys from the company a product produced by a distant poor person under unjust circumstances), or by showing that he can be attributed with causing more harm than he thinks (for example, by buying the product, the individual is personally endorsing the company’s participation in a global trading system that causes and perpetuates such injustice, and the system itself). Hence, the role of TNCs here was secondary, in the sense that the sole moral agent that this sort of political theory was concerned about was the individual. In an individualistic scheme, TNCs merely played an instrumental function, that is, in expanding the scope of the individual’s responsibility as described. They were not, as it were, agents of justice in their own right.

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<sup>179</sup> Although it was noted that Young’s conception of the role of TNCs in global justice differed from Shue’s in one respect: In the social connection model, the ethical relationship is “prior to” the institution in the sense that it exists independently of any political institutions. Institutions like TNCs do not mediate or bring about these ethical relationships; they (merely) regulate the fairness of the social contract and provide the means through which the obligations under the social contract can be discharged.

So again, we find that the strategy of positing TNCs in “grand theories” of cosmopolitan global justice was problematic for a theory of CSR – in this case, because of its dogged methodological individualism. Among other things, I argued that such an individualistic understanding of just agency failed to capture the real-life needs of global justice and the reality of what TNCs are doing in the real-world international political order. In chapter 3, I demonstrated why an individualistic understanding of agency was inadequate for understanding corporate responsibility and regulating large-scale global problems. Using the case study of child slavery in the cocoa industry, I showed that it was the large chocolate companies, rather than individual agents or governments, that had the resources and knowledge needed to implement the changes needed. In many global situations, it was also large corporations, not individual agents, who *were* making a difference – as Onora O’Neill (2001) demonstrated. Given the increasing and potential role of TNCs in global justice as agents in their own right, I argued that a new normative argument for CSR was needed – one that talked about *corporate* agency rather than the *individual’s* expanded responsibility (through the conceptual intervention of TNCs). That is to say, instead of trying to position a cosmopolitan theory of global justice that presented TNCs as just agents in the spectrum, there was a need for a fresh conception of global agency – one that posited TNCs as one of the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science. As we saw earlier, the task fell on developing an alternative conception of corporate agency – in this case, one based on the concept of responsibility. This was taken up in chapter 3.

### **3. The theory of CSR analysed in terms of ideal/non-ideal theory**

The discussion of Pogge’s cosmopolitan theory of global justice in the context of trying to determine the scope of corporate responsibility also threw up another challenge. It was argued in chapter 4 that the scope of corporate responsibility was not determined by the ideal distinctions between institutionalism and interactionalism that Pogge’s theory made (which were problematic in themselves), but by the business considerations that constrain what companies can and cannot do outside their business mandate. These business considerations

consisted of companies' fiduciary duties to their shareholders to maximise profits and shareholder value. They were non-ideal, it was claimed, because they posed an obstruction to the full realisation of the ideal that we had constructed so far: the argument that TNCs had responsibilities in global justice as a matter of duty. I concluded, therefore, that the active distinction was in fact not between institutionalism and interactionalism, but between ideal and non-ideal conceptions of the CSR agenda.

The conclusion arrived at the end of this normative discussion actually captured a question that would have been nagging the reader throughout, that is: If the business of business is business, why should it care about global justice? The intuition here was that TNCs faced what was described in chapter 5 as the 'CSR dilemma', that is: On the one hand, we agree with the "moral" view that TNCs ought to be responsible for some of the global injustices in the world, and like in this thesis, make an impassioned argument for them to do more to deliver on human rights. On the other hand, we also recognise the "strictly business" view that the sole or primary responsibility of a company is, as Milton Friedman famously put it, "to use its resources and engage in activities designed to increase its profits" (Friedman, 1970: 42). Hence, we had two opposite views of where corporate priority should lie, and had to balance the demands of global justice on a corporation on the one hand, and the primacy of its fiduciary duties towards its shareholders on the other. The normative challenge for political theory, therefore, was to find a way of theorizing about both the "moral" and "strictly business" views together.

In chapter 5, then, I suggested that the solution to the dilemma lay in theorizing what I called the 'business case for CSR', that is, where both the "moral" and "strictly business" views overlapped. This had the advantage of reflecting what was happening in practice as well since, as we saw in many global situations nowadays, TNCs which were thought to have fiduciary duties that prevented them from being agents of justice at all were in fact engaging in various issues of global justice, because doing so served a business purpose. In other words, the empirical evidence – fleshed out in chapter 6 – was that TNCs were doing well (in the business sense) by doing good (in the moral sense). The question

then was how global justice should go about theorizing the business case for CSR in a way that reflected the social reality of what TNCs were doing. Privileging the need for a theory of CSR to produce principles or policies that were capable of being action-guiding for companies, I argued that the problem was best located at the site of the debate between ideal and non-ideal theory. Chapter 5 then explained what non-ideal theory is and why I thought it was the best methodology for theorizing the business case for CSR. Theorizing about the role of corporations in global justice, I concluded, involves theorizing the non-ideal.

Clearly, non-ideal theorization is not the only method for theorizing the business case for CSR. For example, economists and political philosophers alike have long argued that “doing well by doing good” is but a case of ‘enlightened self interest’ – that is, the self-interested individual’s commitment to an institutional system of moral rules because it sustains and promotes economic activities. However, I argued that applying ‘enlightened self-interest’ to explain corporations’ moral choices was problematic because, among other things, it was usually applied to individuals and individual choices. So applying it to corporations encountered the same objection about the moral agency of corporate entities and what sort of entity the corporation is (for example, whether it is a collective of individuals or a real separate legal entity with its own personality).

In the final analysis, I find it puzzling why we should find it necessary to “squeeze” what are essentially non-moral (business) considerations into our moral theory. Of course, the rational choice theorist would disagree with this characterization; for them, the business considerations are “moral” because they constitute one of corporate entity’s valued ends. In other words, the need to maximise profits and shareholder value goes to the content of the company’s preferences and therefore influences the choices – including the moral choices – that it makes. But I find this attempt to “moralize” the business practice of companies tenuous and unnecessary. I do not think that arguments based on enlightened self-interest or other rational choice explanations are sufficient to explain the phenomenal rise in the number of corporations engaged in socially responsible activities. Was it that these ethical concerns did not exist before? Unlikely. Could it be that the advancement of telecommunications and information



has made corporations more visible in society, so that more than ever they have to be seen to be doing good on top of doing well? Perhaps. But then this does not account for smaller companies that “fall under the radar”, so to speak – firms which do not possess so big a brand name as to make it worth their while to engage in such public relations exercises, but who nonetheless display socially responsible behaviour. For these reasons, I am uncomfortable with treating CSR as part of the utility function of an “enlightened” agent. I think that the dichotomy faced by corporations between their moral social responsibilities to the global poor and their non-moral fiduciary duties to their shareholders – as represented by the CSR dilemma - is better captured in terms of a mediation between ideal and non-ideal theory.

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Not all of the answers arrived at in this conclusion were expected, nor are they unequivocal. In this thesis, we took existing theories and perspectives of global justice and tested them out on a potential new actor, the TNC. The results compelled us to reconsider some of our current positions and find new or alternative approaches to the question of corporate just agency: from the attempt to analyse CSR through the lens of global justice, to positing a constructivist approach to the question ‘Why TNCs?’ and challenging the stranglehold of human rights over the way we conceive global justice, arguing instead for a duty-driven conception of corporate responsibility based on capabilities. Considering the corporate entity as a potential agent of global justice also raised some new issues, namely, the need to address the question of motivation and the real-life business constraints that TNCs face which individual agents do not, and more importantly, how to tackle these issues from a philosophical point of view. Together, the answers to these questions formed the foundations of a coherent theory of CSR which provided the normative reasoning that motivates the identification of new basic political units – in this case the TNC – and which in turn generated a theory with different normative content. More generally, it also refreshed the way we understand agency and the basic political units that legitimately make up a just global order and form the basis of modern political theory and political science.

The response to the challenges of thinking about corporations that have as their constitutive aim the maximisation of profits as agents of global justice should not be political ambivalence. We should not be under the illusion that world poverty, child labour or the other global injustices of our time will be eradicated by positing new agents of justice. But neither can we ignore the capabilities and indeed, as we have seen in many cases, the will of TNCs to address these issues. We are suspicious of their motives and, from a philosophical point of view, maybe cautious about the theoretical tools and strategies that are being deployed to put them up as moral agents. But, in the light of what TNCs can and are doing in specific cases to address global injustice in the world, we cannot allow our mental barriers to perpetuate the historical and ideational exclusion of corporations in our theories of global justice. Rather, justice compels us to yield theories that are real and action-guiding.

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