Corporations and Rawlsian Justice

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Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in Politics in the Department of Politics and International Relations at the University of Oxford

Submitted: Michaelmas 2014

Word Count: 73,580

Abstract

Corporations – their power and impact on society – are a neglected topic in political philosophy. In this thesis, I attempt to address this neglect by using the framework of Rawlsian justice to examine what corporations' relationship to social and international justice ought to be. The first part of the thesis is on domestic social justice. I urge that Rawlsians should not begin their inquiry by taking the corporate form as given because the corporation's existence requires a specific set of private-ordering and property rules to be in place. What we should ask, instead, is whether these rules are actually permitted by the two principles of justice as fairness. This question leads to an examination of different economic regimes that are compatible with Rawlsian justice. I focus on one particular regime – that of property-owning democracy. What I find is that while not all versions of property-owning democracy would permit the corporate form, some would actually welcome it due to the feature of 'the separation of ownership and control' that is typical of modern corporations. The second part of the thesis is on international justice. I argue that the best way to situate corporations in Rawls's theory of international justice – his Law of Peoples – is to connect them to the duty of assistance. This is not a straightforward task because a relatively strict reading of the duty of assistance would disallow treating corporations as primarily responsible for discharging it. However, a revisionist approach to the Law of Peoples shows that we can understand the duty of assistance as a part of transitional justice. The significance of this is that Rawls's prescribed ideal theory of international justice does not determine who the agents for transitional justice ought to be or the grounds for attributing responsibility to such agents. We are thus free to adopt David Miller's criteria for attribution of remedial responsibilities to assign to corporations responsibilities for the duty of assistance. What is more, in a particular area of international justice – that of fairness in trade – we can establish that corporations can be primary agents of transitional justice.

Acknowledgments

I would like to thank my supervisor, David Miller. He pushed the thesis through to completion even when my lack of confidence threatened this endeavour. His persistent, but always fair-minded, attacks on all poor reasoning and weak arguments also stirred me to sharpen my analytical skills. Most invaluable, however, is that David has taught me the best thing for a writer to do – to keep writing.

I would also like to thank my viva examiners, Dan Butt and Martin O'Neill. They read my thesis with careful consideration and gave many helpful critical suggestions. They made the viva – an otherwise stressful affair – productive and enjoyable.

I have a different intellectual debt to record: I wish to thank the staff and students at the Political Studies and History Departments at University of Auckland, New Zealand. It is they who first showed me, some 17 years ago when I first started studying and teaching there, what a pleasure it can be to pursue clarity of thought with intellectual and social purpose.

To my sister, I want to take this opportunity to apologise: Having been introduced to (or rather, infected with) a certain kind of political philosophy in my teenage years, I put you through many years of insufferable demands for "more clarity" in your arguments.

To Tim Bhanubandh: Thank you for your loud and frequent declarations that my thesis is worthy despite not fully understanding what it is about. They were surprisingly effective at drowning out doubts.

To Mohan Rao: Thank you for your firm belief that my thesis is worthy despite fully understanding what it is about. You are generous in your estimation and, more importantly, you are generous with your joy. Because you shared your love of humanity and all its silliness with me, I found new happiness in my work.

Finally, I want to dedicate this thesis to my parents, Tseung-Chan Siu Ling and Tseung Shiu King. Their encouragement has been indefatigable and their support unwavering, but it is their kindness and fairness to those around them that have been my constant guide and led me to thinking more carefully about social justice.

Contents

Chapter 1

Introduction

Business corporations have been appearing in ledes for well over a decade now and, more often than not, they are cast in the role of villain. Their public image as a malignant social force was arguably cemented at the mass demonstrations against globalization at the World Trade Organization's Ministerial Conference in Seattle in 1999. Judging by the more recent Occupy Wall Street Movement that took place in different cities around the world, many still think business corporations have not really redeemed themselves. This thesis is a reaction to these topical interests. In particular, it is an attempt to examine what is business corporations' relationship to social and global justice from a political philosophy perspective, and even more specifically, from a Rawlsian liberal egalitarian perspective.

I. Why Rawls?

Before I discuss corporations and justice, let me begin with a brief note of explanation for why I have adopted a Rawlsian framework. The first reason is

straightforward and personal: I find Rawls's political philosophy to be a much clearer and more systematic articulation of my own general and often befuddled views. However, writing at this point when some in political philosophy have questioned whether it is time to move beyond Rawls, more justification for adopting Rawlsian justice seems called for. So the other reason I offer is that Rawls's theory of justice is one of the most far-reaching. Rawls's theory provides, not just a theory for domestic justice, but also a vision for how international relations could be just. So using a theory such as Rawls's to study corporations, which operate both domestically and globally and have a large impact on justice at both levels, could hopefully help us draw cohesive and comprehensive conclusions about corporations' various roles. Furthermore, Rawls's theory of justice is one of the most well known. By contrast, my chosen topic of corporations and justice is not often discussed in political philosophy. Therefore, I hope that the familiar structure of justice as fairness can provide a solid framework within which we can study less familiar and under-explored issues.

II. Corporations and Justice

The charge sheet of criticisms of and demands on business corporations is long. Many of the charges are serious and the need for solutions is pressing. However, not all of them are philosophically challenging. For instance, the familiar charge against

corporations' employing child labour in clothing factories with sweatshop conditions is not a problem that poses particularly challenging philosophical dilemmas. The practice is obviously morally wrong. This is not to deny that the practice is real, or that it is a pressing matter for us to eradicate it. And this is not to claim that finding the right practical policy to eradicate these harmful practices is a straightforward matter. It is just that, in cases like these, the problem and solution are easy to identify philosophically. There are other problems to do with business corporations that are philosophically thornier and, sometimes, just as practically urgent. My thesis focuses on two such problems.

Corporations and Social Justice: 'Good' Capitalism and The Corporate Form

Novelists generally aim to reflect some truth about the human condition in their stories. John le Carré created the Cold War-era master spy George Smiley who appeared in many of le Carré's novels throughout the past four decades and, in Smiley's fictional career, we get a reflection of not just our changing geopolitical concerns, but also our changing attitudes towards political economy. In Smiley's last appearance in one of le Carré's later novels, the Cold Warrior's usefulness was challenged by one of his protégés. When the Cold War ended, Smiley's protégé asked him what he would do now, since communism is no longer a threat. Smiley replied with an aphorism 'about the right people losing the Cold War, and the wrong people winning it.' And his protégé later rejoined that perhaps now that they 'had defeated Communism, [they] were going to have to set about defeating capitalism.'[1]

[1] John le Carré, *The Secret Pilgrim* (Penguin, 2011), Kindle edition.

To Smiley, although the defeat of communism was a positive outcome, the victory against it is hollow because the kind of political-economic system that is left after the Cold War is no better for human welfare than communism was. Specifically, some of the 'wrong people', who won the Cold War that Smiley had in mind, were corporate capitalists. Smiley sees corporate capitalism as rife with corruption and injustice and wishes the end of the Cold War could have resulted in a different economic regime.

This fictional complaint not only reflects the oft-heard in real life ones that corporations have become 'too big' and 'too powerful'. There are good reasons for Rawlsians to follow up on Smiley's complaints too. My thesis' focus is on joint-stock companies that are either publicly traded or privately-held. That is, it is concerned with business entities that are owned by shareholders and these shares are either traded in a stock market or exchanged privately. The reason my thesis is not about other types of business enterprises – for instance, workers cooperatives – is simple. It is because of the fact of joint-stock corporations' size and thus the influence they wield. For instance, a team in Zurich recently pulled data of all 43,060 transnational corporations in the world from Orbis 2007 – a database that lists 37 million companies and investors worldwide.[2] They built a model of who owns what and what the revenues are, essentially mapping the edifice of economic power. One of the key conclusions of this study is that of the 43,060 TNCs, there appears to be a core group of 1,318 corporations that represent 20 per cent of global

[2] S. Vitali, J. B. Glattfelder, and S. Battiston, "The network of global corporate control," *Public Library of Science ONE* 6:10 (2011): e25995, accessed 12 September 2014, doi:10.1371/journal.pone.0025995.

operating revenues. What is more, this group of corporations also collectively own, through their shareholding, most of the world's blue-chip and manufacturing firms (the so-called 'real' economy). This represents a further 60 per cent of global revenues. In short, 80 per cent of the world's revenue is controlled by this group of corporations.

Unlike some in the "Occupy" movement, we need not conclude from these figures that there is anything conspiratorial or sinister happening. However, it is proof that there is a high concentration of economic power. Although the fact of concentrated economic power does not automatically point to any social injustice, its presence is something that Rawlsians ought to scrutinise. For one, we should be concerned whether this concentration of economic power means that wealth is concentrated in the hands of a very few. There seems to be evidence that this is the case.[3] If so, this seems antithetical to Rawlsians' aim of creating a society that is committed to the idea of respecting all individuals as free and equal. This is not only because concentration in wealth can lead to inequality in social status, but also because inequalities in wealth can lead to inequalities in political power. Even in a liberal democracy, a deep disparity in wealth may lead to the consequence that the very wealthy few will be able to have a corrupting influence on the machinery of state

[3] For instance, The One Percent - a 2006 documentary points out that the wealthiest one percent of individuals in the U.S. controlled the 42.2% of the country's total financial wealth. Globally, according to a recent "Global Wealth Databook" from Credit Suisse, 29.7 million people in the world (representing less than 1% of the world's population) control about $89 trillion of the world's wealth, which is 38.5% of the world's wealth. Credit Suisse, "Global Wealth Databook 2011," accessed 23 September 2013, https://www.credit-suisse.com/uk/en/news-and-expertise/research/credit-suisse-research-institute/publications.html

and thereby perpetuate a social structure that ensures their dominant position in society.

While many are wary of corporate economic and political power, Smiley's protégé's half-joking comment about 'defeating capitalism' is a sentiment less widely shared in real life. The end of the Cold War is generally regarded as marking the defeat of communism. No other ideology of political economy has emerged to replace it as a rival to capitalism. So instead of 'defeating capitalism', most intellectual and practical efforts in academia, in politics, and in the media are concentrated on how to curb the excesses of capitalism and to come up with a version of 'good' capitalism. However, most political philosophers have not shown much direct interest in this topic.[4] Recent political philosophy has been more preoccupied with principles of justice, than with the political and economic mechanisms for realising these principles.[5] Arguably, there is a good reason for this focus: the empirical nature of the research needed to find the right mechanism for realising principles of justice may simply be beyond the political philosopher's remit. Some consider our task is to work out a blueprint for justice and leave the implementation of it to our colleagues in the other social sciences who have the proper empirical research expertise.

[4] There are exceptions, notably those who have developed market socialism as a better alternative to capitalism for achieving some form of egalitarian social justice. See David Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1989); David Scheweickart, *Against Capitalism* (Cambridge: Cambridge University Press, 1993); and N. S. Arnold, *The Philosophy and Economics of Market Socialism* (New York: Oxford University Press, 1994). It should perhaps be noted that these works are more than a decade old and since then, no major body of work has emerged to either defend or criticise capitalist markets.

[5] Consider, for instance, the vast literature on the responsibility-sensitive variants of egalitarianism.

However, there is a reason for a political philosophy project to revisit the problem of political economy. Much ink has been spilt on questions about how the fruits of economic production should be distributed according to Rawls's justice as fairness. However, questions on how a society ought to organise its economic production to comply with Rawls's two principles of justice – such as, who should own and control the means of production? – are by comparison under-explored. When it comes to Rawls's preferred economic system, many have mistaken him as a champion of welfare-state capitalism. In his later works, Rawls made clear that he did not see the traditional capitalist welfare state as the best economic arrangement for realising his principles of justice. Instead, he advocated a different form of socioeconomic arrangement, which he called property-owning democracy (POD). Political philosophers are only just beginning to explore this aspect of Rawls's theory.[6]

The *sine qua non* of property-owning democracy is that there should be wide dispersal of the ownership of the means of production. This aspect of the regime should be of particular interest to a study on corporations and justice. This is because joint-stock corporations provide a ready-made mechanism to disperse ownership of productive capital, namely, shares. The advent of the idea of shares – the idea that ownership of a business can be broken into small units – suggests corporations may be compatible with a property-owning democracy; they may, in

[6] See for instance the articles in the "Symposium on Rawlsian Property-Owning Democracy," *Journal of Social Philosophy* 40:3 (2009) and Martin O'Neill and Thad Williamson, eds., *Property-Owning Democracy: Rawls and Beyond* (West Sussex: Wiley Blackwell, 2012).

fact, be useful for realising such an economic regime. This preliminary conclusion is perhaps surprising. In reality, shares in corporations are not equally and widely held. Furthermore, corporations, as they are, seem to threaten economic and political equality. So we would have expected Rawlsian justice to be more hostile to the corporate form of business. That an economic arrangement like property-owning democracy, which potentially could require more egalitarian redistributions than welfare-state capitalism, would seem to be compatible with corporations is, hence, a possibility that merits more investigation. There is therefore a happy marriage of purpose here: Through investigating whether justice as fairness would permit the corporate form, we might shed light on a neglected aspect of Rawls's theory, namely his political economy.

Corporations in Global Justice: A Responsibility Deficit?

Another popular charge laid at corporations' door is that they do not do enough to ameliorate world problems. Unlike the previous problem, where popular opinion judges corporations to have too much influence and power, the complaint here is that corporations should do more to use their influence and power to benefit global society. This is especially true when business corporations operate in developing economies, where governments are either weak or corrupt. Business corporations are asked to use their power and influence as leverage to encourage local governments to respect human rights and labour standards, to put in place more effective environmental protection regulations, and to combat political corruption. These demands have such currency that they have even been enshrined by the United

Nations in an initiative called the Global Compact.[7] Yet, notice that business corporations are not merely asked to avoid directly causing harm, as in, for example, not imposing sweatshop conditions or dumping hazardous waste. Instead, they are said to have obligations to relieve bad situations where they may not already be directly involved.

But what are these obligations? Are they obligations of justice, or something else? And what, if anything, grounds these obligations? We might think that Peter Singer's formulation of the Good Samaritan argument might be applicable here: an agent has a moral obligation to alleviate or remedy a bad situation if the agent has the ability to do so and, in doing so, she would not be giving up anything of comparable moral importance.[8] However, this Good Samaritan argument does not seem to fully capture the moral arguments at work here. We may have grounds for thinking that corporations are entitled to do what they normally do – for instance, devoting resources to research and develop new products, or to pay shareholders' dividends – and that in taking on some of these obligations – such as combating corrupt states – corporations may be giving up something of moral importance. Therefore, if we argue that corporations have a duty to redirect resources away from their normal activities in order to right wrongs they did not directly commit, we need

[7] The Global Compact contains ten principles that ask businesses to recognize that they have obligations to uphold regulations in precisely those four areas – human rights, labour standards, environmental protection, and anti-corruption. See United Nations Global Compact, "The Ten Principles of the UN Global Compact," accessed 23 September 2015, https://www.unglobalcompact.org/what-is-gc/mission/principles

[8] Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1:3 (1972): 229-43.

to give reasons why that duty takes precedence over other activities that corporations may be entitled to engage in.

One way to attribute corporations such a weighty duty within the Rawlsian framework of international justice is to argue that they have a duty of assistance. Rawls argues in his Law of Peoples that well-ordered peoples have a duty of assistance to help burdened societies establish well-orderedness. It appears then that if we can extend the duty of assistance to corporations; we have a reason to ask them 'to do more' in terms of ameliorating failures of international justice.

However, before such an extension can be successfully achieved, there are some ambiguities with regards the duty of assistance that we need to clear up. For one, it is unclear whether the duty of assistance is a duty of justice, or whether it is a humanitarian duty. The answer will determine how weighty the duty of assistance is. For another, it is also unclear on what grounds Rawls attributes to well-ordered peoples the duty of assistance. It may be possible that the reasons he offers for grounding the duty of assistance for well-ordered peoples are not applicable to corporations, in which case, our extension will fail. Finally, it is also not certain on what level of ideal-ness the duty of assistance is supposed to operate. On the surface of his argument, Rawls argues that the duty of assistance is part of non-ideal theory. Rawlsian non-ideal theory concerns circumstances where there is no full compliance amongst agents and where just institutions are lacking. Yet, the duty of assistance is also listed as the eighth and last principle of the Law of Peoples and these eight principles are supposed to govern well-ordered peoples in Rawls's ideal of the Society of Peoples. Under that ideal, well-ordered peoples willingly comply with the

eight principles of the Law of Peoples. It is important to sort out this ambiguity because if the duty of assistance can operate at different levels of ideal-ness, it may also be possible that different kinds of agents ought to be held responsible for the duty of assistance and these agents may include corporations.

Yet it appears that, taken strictly, Rawls's Law of Peoples is unable to account for non-state agents, such as corporations, having a role to play in international justice. This implies that Rawlsian international justice cannot track our intuition that there is more that corporations can do. We thus have a responsibility deficit in fact – where corporations seem to be not doing as much as they could, and a responsibility deficit in theory – where Rawls's restrictions on who can be the agents of the duty of assistance seem to make his theory of international justice fail in holding non-state agents, such as corporations, to task.

I believe a careful re-examination of Rawls's duty of assistance can remedy both deficits. If we properly understand that the duty of assistance is required as part of transitional justice, then we can both expand the grounds on which we attribute responsibility for the duty of assistance and extend our attribution to agents beyond state actors. In doing so, we can bolster Rawls's theory of international justice against some of his critics' claim that it is not demanding enough. We also find in the idea of transitional justice a potentially rich, underexplored seam of political philosophy issues, which Rawlsians and non-Rawlsians alike would do well to pay more attention to.

In brief, Part One of my thesis looks at what place, if any, corporations have in a Rawlsian political economy, given the two principles of justice for domestic society. Part Two looks at how, if at all, we might apply the duty of assistance to corporations and what implications this has for our understanding of Rawls's theory of international justice.

III. Thesis Outline

The next three chapters form Part One of the thesis on domestic social justice. In Chapter 2, I lay out the reasons why existing corporations' activities and impact on society ought to be of concern for those who care about Rawlsian justice. I then look at current attempts at tackling the problems of injustice related to corporations and argue that they are unsatisfactory from a Rawlsian perspective. They are so mainly because they assume that Rawlsian justice will take for granted the corporate form. I argue instead that the corporate form is artificial and, therefore, where we should start is by investigating whether Rawls's two principles of justice will permit rules of property ownership and private ordering in ways that permit the formation of corporations. This sort of investigation requires us to examine what economic system Rawlsian justice would permit. In Chapter 3, I look at whether Rawls is right to claim that his theory of justice is compatible with a range of economic systems, some of which only permit public, while others allow private, ownership of the

means of production. For, if he is wrong and only public ownership is permitted, then we have a quick answer to whether the extant corporate form, which requires private ownership of productive assets, is allowed by justice as fairness. I conclude that Rawls is right to remain agnostic between public and private ownership systems. However, not all private systems are compatible with Rawlsian justice. Welfare-state capitalism, which has developed concurrently with the modern form of corporations, would fail the requirements of justice as fairness. Therefore, I examine in Chapter 4 another economic system that permits private ownership of productive assets – a system which Rawls himself favours – namely, property-owning democracy (POD). I first examine more traditional models of POD and argue that they face certain problems to do with market failure. The solutions to such problems would mean that, in the long run, these models of POD would not be compatible with the corporate form. However, I argue that these solutions to market failure problems may not be consistent with the spirit of predistribution, which is what defines PODs. Because of this, there is reason to explore other models of POD and other ways to avoid market failures. One such way, I propose, is to attempt to shield control over a society's productive resources from individuals' private consumption preferences. I argue that we can do so if we first recognise that ownership is actually a bundle of rights, which includes rights to benefit and rights to control. To shield control over a society's productive assets from people's private consumption preferences, we need to separate these aspects of property ownership. I look at other models of POD that attempt such a separation and find one model that is successful. I conclude the chapter and this first part of the thesis by showing that since the "separation of ownership and control" is a core feature of the corporation, with

modifications to its governance structure, the extant corporate form may well be compatible with POD and hence, Rawlsian justice.

Chapters 5-7 form Part Two of the thesis on international justice. In Chapter 5, I lay out Rawls's Law of Peoples and examine what it requires of well-ordered peoples when it comes to the duty of assistance. I then look at two proposals put forward by Nien-he Hsieh to extend the duty of assistance to corporations. I argue that neither proposal is successful if one is to adhere to a relatively strict interpretation of Rawls's Law of Peoples. In Chapter 6, I explore the under-developed idea of transitional justice in Rawls's conception of non-ideal theory. I argue that when properly placed in the context of transitional justice, we can go beyond Rawls and expand the reasons that ground transitional justice as well as extend the duty of assistance to non-state agents. In Chapter 7, I look at what this extension means for corporations when it comes to their responsibilities for making changes to international trade.

Finally, I conclude my thesis by looking at the direction of future research for corporations in political philosophy. I examine democracy-focussed, rather than justice-focussed, theories to see if these offer a better framework for studying corporate power and responsibilities. I argue that although examining how corporate power can be brought to democratic control and account are important areas for future research, democracy-focussed theories do not supplant justice-focussed approaches to studying corporations.

Part I

Corporations and Social Justice

Chapter 2

Justice in Corporations, the Role of Corporations in Justice, and the Justness of the Corporate Form

‘Corporation’ has become a dirty word in some quarters. To some, it is firmly associated with environmental damage, sweatshop labour, tax evasion, and political corruption. However, the problems corporations pose are not just caused by simple malfeasance. The very presence of corporations in modern economies can lead to economic, and even political, inequalities. Therefore, the solution needed is not just better law enforcement. In this part of my thesis, I argue that changes to the corporate form as well as structural changes to the economy may be required. In this particular chapter, I argue that common solutions put forward today with regards corporations make assumptions about their form and nature, which Rawlsians motivated to study corporations from the point of view of justice as fairness should avoid. Instead, I argue we ought to start by questioning whether Rawlsian justice would permit the corporate form at all.

Here is the layout of the chapter: I begin by describing what the corporate form is and how it is special in Section I. In Section II, I sketch why, in their current incarnation, corporations pose problems for social justice. I argue that the problems corporations pose fall into two categories. The first has to do with justice problems within the firm – justice in corporations. The second is about questions to do with

corporate behaviour in our society's pursuit of justice – the role of corporations in social justice. In Section III, I then parse two possible types of reform that reflect two currently popular attitudes towards corporations. One argument says we do not necessarily need to make changes to the corporate form; instead, we ought to simply ask them to do more for social justice, in addition to their normal remit of the pursuit of profit. The second argument also says we do not necessarily need to make changes to the corporate form; instead, we ought to better manage the legal and economic regulatory environment in which corporations operate. Yet, I will argue that neither solution is the proper starting point for a Rawlsian investigation into corporations and social justice. In Section IV, I will give a brief sketch of how normative conceptions of the corporate form have evolved and argue that the proper place to begin is to look at whether Rawlsian justice would permit the corporate form of business at all. In other words, we should start by questioning if the corporate form itself is just.

I. The Corporate Form of Business

Business enterprises come in many different forms. There are sole traders and partnerships; there are worker cooperatives and franchises; and there are private and public limited companies. What marks off corporations, more specifically, private and public joint-stock corporations, from other types of business enterprises is their

ownership and control structure. The modern business corporation can be distinguished by four features: Corporate Personhood, Transferable Shares, Limited Liability, and Delegated Management. The first three features are legally defined characteristics of a corporation. Whilst the last feature is not a formal one, it is very common for corporations to have delegated its management to a board of directors. Since ownership of corporations tends to be dispersed and held by many shareholders, who often take no direct interest in the day-to-day running of the corporation, delegation to experts in business management has become almost a matter of course. So it is possible to consider Delegated Management as a feature that is typical of a modern business corporation.

Corporate Personhood – This is the legal concept that allows corporations to be recognised as a separate legal entity apart from their owners and managers. So unlike, say, a sole proprietorship, the corporation can survive the death of its owners. This does not mean that they are natural persons. It only means that they are accorded the rights and duties of natural persons for certain purposes that are delineated by law. For instance, corporations can own property and can contract as an independent legal entity. They can also be sued and prosecuted. On the other hand, they cannot marry, or vote, or run for office.

Transferable Shares – This is the feature that allows individuals to own parts of a corporation, represented by a share in the company's stocks. They can freely transfer their claim to ownership to others. This usually takes place in stock markets.

Limited Liability – This feature allows a shareholder's financial liability to be limited to the value of her investment in a company. So unlike in a partnership, individual shareholders are not personally responsible for the debts and obligations of the company in the event that these are not fulfilled.

Delegated Management – Typically, the day-to-day activities of a corporation are not controlled by those who own shares in the company. Instead, management is delegated to a small group of individuals. Usually, this group of individuals are known as the board of directors and they are appointed by shareholders. The board tends to be comprised of executive and non-executive directors, with the understanding that the latter ought to monitor the former's management of the company.

The combined effect of these four features of the modern corporation is a kind of business enterprise that has an unusual structure: There is a separation of ownership and control in corporations. Before the advent of corporations, ownership of a firm meant one had rights to company assets. However, this made it difficult to transfer ownership from one individual to another. Suppose that while A is part-owner (that is, shareholder) of a company, the company enters into contracts with another company, or incur debts to a bank. Previously, when A's shares are directly attached to company assets, if A transfers her shares to B, her obligations to fulfil that contract or repay the debt does not go away. The *in personam* nature of rights and obligations means that it was A, along with the other shareholders at the time of making that contract or incurring that debt, who had the obligations and those cannot be transferred. To overcome this, the courts had to sever the link between ownership

of shares and ownership of company assets. This was achieved in two ways. One was to grant separate legal personality to corporations and thereby give them, rather than shareholders, the ownership of a company's assets. The second was to allow shareholders to limit their financial liability to the value of their investment in exchange for giving up their ownership rights to a company's assets.[1] This made shares a fully transferable form of property. As a result, shares were easily tradable in stock markets and ownership of corporations constantly changed hands. And to minimise the interruptions this causes to a company's management, shareholder-owners began to delegate management to specialised managers.

The separation of ownership and control has helped the corporation become the dominant institutional form in market economies because it is a kind of business enterprise that is particularly good at exploiting a certain kind of productive opportunity. Many productive opportunities require amassing large resources, are of a risky nature, and may take a long time to come to fruition. Corporations are especially well suited to exploiting these opportunities for three reasons. First, it is especially good at attracting and amassing capital from lots of different sources. Individuals have different attitudes to risk, and they have different consumption plans that change over time. The creation of the concept of easily transferable shares means that we can pool our resources more effectively. No one individual has to risk a large amount of her own resources for these large-scale projects at any given time. And should her consumption preferences change, she can always buy or sell shares

[1] As a matter of historical interest, in the United States, the Joint Stock Companies Act of 1844 formalised the idea of the company as a separate legal entity. And the Limited Liability Act of 1855 introduced general limited liability for shareholders.

accordingly. Furthermore, limited liability caps investors' liability to up to the value of the stock they hold, rendering the risk that shareholders take on certain and measurable, and thus making the investment in corporate activities attractive.

The second reason that corporations are especially able to engage in large, risky, and long-term projects is that they are able to accumulate capital at a low cost. They achieve this because corporate personhood and limited liability "lock in" investments. Investors cannot directly pull out their contributions. They can recoup the value of their investment by selling their shares but any asset a corporation purchases with the original investment is separate and secured as corporate property. Therefore, lenders can lend to corporations with more confidence. They need not fear random expropriation of investment and thus devaluation of the firm by investors who withdraw. Nor do they need to worry that changes in the identities of a company's investors will disrupt its operations and management, and that any project that requires time for execution might be cut short and disrupted by the limited longevity of shareholder-owners' natural life-span. Furthermore, corporate personhood and limited liability shield corporate assets and credit status from its shareholders' financial fortunes. Dubbed 'entity shielding' by some, this form of insulation means that the value of a firm can be more steadily and accurately measured.[2] Without entity shielding, the real value of shares would fluctuate not only with the prospects of the firm, but also with each of its shareholder's financial condition, since the personal assets of the shareholders would be the foundation of the firm's credit. This not only makes shares impossible to trade, and thus will put

[2] David Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation," *American Political Science Review* 107:1 (2013): 143-44.

off potential investors, it also means that lenders have no reliable basis to assess a firm's credit-standing and thus, they too will be dissuaded from lending capital to a firm. Asset lock-in and entity shielding thus lowers the cost of capital accumulation for corporations by making accurate assessment of a firm's value easier.

The third reason why corporations are able to exploit large, risky, and long-term projects is that they can be highly productive. Asset lock-in and entity shielding allow corporations to specialise its assets, rather than keep them in liquid form due to fear that investor withdrawal of capital will force a sell-off. This in turn allows corporations to match its specialised assets with a specialised workforce. In other words, asset lock-in and entity-shielding advances both the specialisation of capital and labour – the classic means to increased productivity.[3] Therefore, with its specialised features, the modern corporate form contributes greatly to the realisation of projects that require vast amounts of resources, such as the building of large transport infrastructures, or projects that require a long period of time to come to fruition, such as the research and development of new pharmaceutical technologies. So assuming that such large-scale, highly specialised projects are desirable and beneficial to society, why has 'corporation' become a byword for wrongdoing and injustice when the modern corporate form makes such projects possible?

[3] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Originally 1776. Reprint, Chicago: University of Chicago Press, 1976): chapter 1.

II. Justice in Corporations and the Role of Corporations in Justice

As we delve into the specific threats that corporations pose to social justice, we should bear in mind that the main problem with corporations stems from the fact that their very form has made them big. As we just discussed, limited liability and transferable shares mean that many more people are willing to invest in corporate enterprises and, as a result, corporations have become very efficient at amassing capital. The top 500 companies in the world, of which a large proportion are publicly traded corporations, all have market capitalisation of over tens of billions of dollars; the top 50's market capitalisation are all over hundreds of billions.[4] Concentration of capital of this magnitude means that corporations dominate vast supply chains that involve hundreds of thousands of individual employees. This domination results in corporations having enormous clout both in terms of business practices – such as in determining pricing, wages, and labour practices – and influencing wider social and economic policies. The point to bear in mind as we discuss specific worries that corporations pose for social justice is that corporations' sheer size means that they distort the usual rules of the market and cannot be considered as normal market actors, whose behaviour is governed by the laws of supply and demand.

Let's start by looking at the problems of justice in corporations. Before I explain why we ought to consider these as matters of social justice, rather than matters of

[4] Financial Times, "Financial Times Global 500, 2012," accessed 21 September 2013, http://www.ft.com/cms/a81f853e-ca80-11e1-89f8-00144feabdc0.pdf

local justice within organisations, let's look at two specific issues first. The first issue concerns the growing disparity between executive pay and the wages of ordinary employees. In the past three decades, executive pay has risen dramatically in the United States and in some European countries. This rise in corporate managers' earnings is in ever greater multiples relative to that of their employees. In 1965, U.S. CEOs in major companies earned 24 times more than an average worker; 40 years later, in 2005, they earn 262 times the pay of an average worker.[5] There are arguments advanced for why this divergence in pay is necessary for corporations' productivity to be maximised. However, the evidence does not seem to bear this point out. The most comprehensive survey examining the link between CEO pay and corporate performance found that changes in firm performance account for only 4 percent of the variance in CEO pay.[6] Drawing from research summarised in Lucian Bebchuk and Jesse Fried's book *Pay without Performance*, Deborah Eisenberg concludes that the institutional arrangements of corporations influence chief executive compensation much more than the laws of supply and demand.[7] For one, the features of the current form of corporations mean that ownership of corporations has been broken down into easily transferable shares, and ownership of corporations has become widely dispersed. Although managers are generally understood to be fiduciaries of shareholders' interest, sometimes, because of the

[5] Sylvia A. Allegretto, "The State of Working America's Wealth," *Economic Policy Institute Briefing Paper #292*, March 23, 2011.

[6] H.L. Tosi, S. Werner, J.P. Katz, and L.R. Gomez-Mejia, "How Much Does Performance Matter? A Meta-Analysis of CEO Pay Studies," *Journal of Management* 26:2 (2000): 301-339.

[7] Lucian Bebchuk and Jesse Fried, *Pay without Performance: The Unfulfilled Promise of Executive Compensation* (Cambridge, MA: Harvard University Press, 2004). Deborah Thompson Eisenberg, "Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination," *Arizona State Law Journal* 43 (2011): 951-1020.

wide dispersal of ownership, owners are less able to make concerted efforts to keep managers accountable.[8] Compounding this is the lack of transparency in information regarding pay. In most countries, information about wages is proprietary and typically a secret, so market wage is hard to assess. Furthermore, corporate boards, whose members have a duty to represent the interests of shareholders, are often reluctant to challenge the pay demands of chief executives, who exercise considerable influence over board membership and remuneration. As one commentator summarises, "The invisible handshake pre-empts the invisible hand of market competition."[9] If market failure, rather than market competition, is the cause of rising executive pay, then the phenomenon may constitute an injustice.

The second concern about justice in corporations is corporations' relationship with their workers. The concern stems from the fact that corporations have become the main employer in market economies. For instance, one survey of the European Economic Area countries estimates that, on average, around 30 per cent of the workforce in manufacturing and around 20 per cent of the workforce in the overall private sector are employed by corporations.[10] In terms of Rawls's conception of justice, we should be alert to certain dangers this dominance may cause. One is if there is any abuse of corporate power, the basic liberties of workers may be

[8] I say 'generally understood' because shareholder primacy is currently the dominant answer to the question: for whom the corporation should be managed? However, as I will discuss in the next section, this view has not gone unchallenged.

[9] Nancy Folbre, "Paycheck Fairness and Market Failure," *New York Times Economix Blog*, 25 June 2012, accessed 21 September 2013, http://economix.blogs.nytimes.com/2012/06/25/paycheck-fairness-and-market-failure/?_r=0

[10] "Employment profile of MNCs," *EIRO Online*, accessed 29 August, 2012, http://www.eurofound.europa.eu/eiro/studies/tn0904049s/tn0904049s_2.htm

jeopardised. For instance, the single corporate employer in town might informally make jobs conditional on potential employees attending a particular church.[11] Another worry is the dominance of corporations as employers may not advance the difference principle because the most vulnerable workers would find it difficult to organise or join unions in order to advance their bargaining power. It has been shown that there is a link between falling wages and standards of working condition in places where unions are weak.[12] Statistics show that unionised workers not only enjoy higher wages, they are also more likely to be covered by employer-provided benefits, such as health insurance and pensions, and more likely to enjoy non-wage dimensions of compensation, such as paid time off. It also appears that the worst-off groups in a society's workforce, such as new migrant workers and women, fare better when they are union members. If the dominance of corporations does in fact hinder the formation of unions, which would address the substantial inequality in bargaining power between businesses and their employees, then this ought to be a concern for those who care about realising justice as fairness.[13]

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[11] There is anecdotal evidence that some Walmarts, in parts of the U.S., practised this. In addition, the plaintiffs in Dukes v. Walmart Stores Inc., a class-action discrimination suit filed in 2000, complained that the firm offered women fewer promotions and lower pay than men because this is consistent with the company's Christian views that men have superior ability to serve and women were useful because they only provided (formally considered to be unskilled) labour. Bethany Moreton, *To Serve God and Walmart: The Making of Christian Free Enterprise* (Cambridge, MA: Harvard University Press, 2010).

[12] Lawrence Mishel, "Unions, inequality, and faltering middle-class wages," *Economic Policy Institute Report* 29 August 2012, accessed 21 September 2013, http://www.epi.org/publication/ib342-unions-inequality-faltering-middle-class/

[13] This conclusion rests on the truth of the conditional because there is evidence that corporations in 'co-determination' systems, such as in Germany, do not hinder, but may in fact support, unionisation.

Now, one might wonder why either of these issues of justice in corporations are social justice concerns. From one perspective, these problems can be isolated as problems to do with the fair division of labour and the fair distribution of the fruits of labour between members of a corporation. That is, these are matters of local distributive justice; they are not social justice issues. So are these matters of concern for Rawlsians given that Rawls's theory is one of social, not local, justice? One reply is to argue that Rawls's theory ought to have been applicable to local justice too. That is, the same conception of justice ought to be at work between members of the same organisations as it is between members of the same political society. This, of course, is not Rawls's own position and I will say more in the next section about why this argument is not the right approach for Rawlsians wishing to tackle the problem of corporations and social justice.[14] For now, if we affirm Rawls's position that different conceptions of justice apply to different contexts, I maintain that the issues of justice in corporations we have been discussing are also matters of social justice, for two reasons: First, it is possible that these problems are symptomatic of flaws in the rules that govern background social conditions. To see how they might be so, consider an analogy: If Boss A pays Worker B more than Worker C simply on the grounds of Worker B's race, seen in one particular perspective, it is only an issue of distributive injustice within a firm. However, another way to see it is that this is a manifestation of a wider social injustice – that of race discrimination. Thus, the solution lies in changing background rules to prohibit wage discrimination against

[14] For Rawls, justice as fairness only applies to the basic structure. He explicitly stated that "[o]ne should not assume in advance that principles that are reasonable and just for the basic structure are also reasonable and just for institutions, associations, and social practices generally." John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001): 11.

persons of colour. A second complementary reason why these are social, and not just distributive, justice concerns is that what background rules we will put in place in order to address these problems will depend on our views on social justice. For instance, our views about making sure social and economic inequalities are to the benefit of the worst off may inform our decision on whether to put legal caps on executive pay. Or, our views about freedom of association may inform the way we set up legal rules that enable or hinder labour unions. Therefore, I invite Rawlsians to consider these topical issues, such as executive pay and labour practices, to be more than matters of distributive justice internal to corporations, and suggest that they have to be understood and solved by appeal to the conception of justice that applies to the entire basic structure of a society.

Let's turn now to the next type of problem – the role of corporations in justice, that is, how corporate behaviour affects a society's pursuit of social justice. Obviously, since Rawls's justice as fairness is a conception of social justice, it is easier to see why problems of this type should be of concern to Rawlsians. We can start with the Rawlsian commitment to a set of equal basic liberties for all as captured by the basic liberties principle, and consider the role corporations might play in corroding them. A subset of the basic liberties is the political liberties; these include the rights to hold public office, the right to influence the outcome of political decisions and elections, and so on. An important feature of the basic liberties principle is that individuals should enjoy fair value of those political liberties protected by the principle. This 'fair value' proviso means that individuals who are similarly motivated and endowed should have the same opportunities to hold office and to influence political outcomes regardless of their social and economic status. However,

even in countries where the political liberties are formally equal, the ways corporations operate often erode the fair value of individuals' liberties.

For instance, in the United States, corporate personhood is legally interpreted to entail that corporations have the same freedom of speech rights as individuals.[15] This means that they are allowed to make financial contributions to political candidates' campaigns and to spend their money on election-advocacy advertisements, just as individual voters are allowed to do. The worry this causes stems from the fact that corporate wealth dwarfs individual wealth. So potentially, corporations' ability to sway political results will be vastly disproportionate to what individuals are able to do, thus eroding the fair value of individuals' basic political liberties.

Furthermore, in many developed countries, a handful of corporations own and control the news media.[16] This is very likely to be a result of transferable shares and corporate personhood leading to the phenomenon of holding companies. Holding companies do not produce goods and services themselves; their purpose is to own shares in other companies. One of the advantages of holding companies for their

[15] *Citizens United v. Federal Election Commission* (2010) ruled that political spending is protected by the U.S. Constitution's First Amendment right to free speech. Although *Citizens United* does not directly rely on the idea of corporate personhood, it does implicate corporate personhood because it relies on the idea that the First Amendment protects the rights of anything that speaks.

[16] For instance, in the U.S., six corporations – CBS, Disney, GE, Newcorp, Time Warner, and Viacom – control 90% of media. For an informative graphical representation of this concentration of media ownership, see, "Media Consolidation: The Illusion of Choice," accessed 2 June 2013, http://frugaldad.com/media-consolidation-infographic. See also, BBC News, "Leveson Inquiry," 12 June 2012, accessed 21 September 2013, http://www.bbc.co.uk/news/uk-18412172.

shareholders is that they allow the latter to control a number of different companies with smaller financial stakes than if the shareholders had to invest separately in each of these different companies. This phenomenon has had an especially big impact on the media industry. It has resulted in a handful of large holding companies owning most media outlets. The effect of this is that control over both the distribution, as well as the creation, of content is highly concentrated. Plus, it exists across media types – in print, radio, television, film, and the internet. Individuals or groups who champion views that oppose the views of these media conglomerates will find they have far fewer outlets for expressing their views. So corporations are not only able to sway political decisions by direct financial contributions, they can also manipulate the political agenda via their oligopolistic control of the media.

Beyond their disproportionate ability to lobby politicians and to manipulate the political agenda, corporations' sheer size means that they can have a much more insidious effect on political equality in society. No other group in society has as much decision-making power over jobs, wages, prices and production as corporations. In short, they have much power to determine the standard of living and economic security of society. And, as Charles Lindblom argues, since the performance of the economy affects any government's ability to stay in power, this gives corporate leaders a privileged political position.[17] In most economies, governments cannot command corporate enterprises to produce, expand, or provide jobs. So governments spend an inordinate amount of time and money inducing enterprises to do so through, for instance, tax concessions, subsidised research, cash

[17] Charles Lindblom, *Politics and Markets: The World's Political Economic Systems* (New York: Basic Books, 1977).

grants, or even military intervention in other countries to open up their markets.[18] But corporations' privileged position in politics goes further than this. While certain groups of workers, such as subway workers or garbage collectors, can sometimes influence political results through threatening to strike, corporate leaders wield a much more potent weapon in the form of 'investment strikes'. They can threaten to reduce the workforce, cut production, or move abroad. As a result, in many instances, businesses do not even need to lobby via special interest representation; governments would simply anticipate corporate interests' reactions by setting the political agenda and making decisions in their favour.[19] These special political privileges that corporations enjoy severely strain the fair value of individuals' basic political liberties. That is, although individuals in societies where corporations operate may enjoy equal political liberties, this equality is merely formal.

Beside the corrosion of the fair value of equal political liberties, corporations also seem to have a detrimental effect on individuals' ability to attain the social bases of self-respect (hereafter: SBSR). Rawls argues that SBSR are a primary good because individuals need them to form, pursue, and revise their plans of life.[20] However, due to their strong encouragement of a consumerist culture, corporations can hinder individuals' attainment of the SBSR. Many corporations are involved with the production and distribution of consumer goods. As a result, corporations have contributed to the creation of a culture of consumption. There has been a growing anti-corporate movement that laments the fact that corporations have cemented the

[18] Ibid., 175.

[19] Ibid., 179.

[20] Rawls, *Justice as Fairness*, 58-61.

dominance of consumer culture in many societies.[21] If the anti-consumerists are right then corporate behaviour has the effect of diminishing the status of those who are unwilling to participate in the consumer culture. In a society in which ability to acquire and possess material goods is an all-important marker of social standing, those who prefer to conserve and not subscribe to the culture of disposable goods (which are designed to be disposable because one's ability to acquire each new model is associated with an increase in social status), or those who have ascetic worldviews, or those whose conception of the good is based on other religious or moral doctrines may be discriminated against. Following T. M. Scanlon, we might argue that they can be unjustly denied 'associational goods', that is, those unwilling to be consumerists might be 'seen as less eligible, or ineligible, as potential friends, possible marriage partners, possible sons and daughters-in-law, and even neighbours.'[22] And it is possible that those who suffer such discrimination will lack the SBSR. Furthermore, this inequality in status is worse for those who are not (only) unwilling but (also) unable to participate in the consumer society. The worst-off not only suffer inequality in wealth, which is bad because they may be unable to satisfy physical needs, but separate from and in addition to this, the worst-off's lack of wealth means that they suffer also from status inequality.[23]

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[21] For example, Naomi Klein, *No Logo: Taking Aim at the Brand Bullies* (Toronto: Knopf, 1999) is a well-known and representative anti-consumerist and anti-corporation work.

[22] T. M. Scanlon, "When Does Equality Matter?" Oxford Uehiro Lectures, University of Oxford, Oxford, 9 December, 2013. Audio recording available at: http://www.practicalethics.ox.ac.uk/lectures/2013_resources , accessed 12 September 2014,

[23] For a related discussion on how subsistence poverty is different from status poverty, see Jiwei Ci, "Agency and Other Stakes of Poverty," *The Journal of Political Philosophy* 21:2 (2013): 125-50, 125-7.

Another area of concern is that limited liability and transferable shares may have created the phenomenon of transient ownership. It has been argued that this transience breeds a culture of short-termism and carelessness in business decision-making. The fact that shareholders' losses are limited by the amount they have invested in the company sometimes shields shareholder-owners from carefully considering the impact of business decisions on society. If a company pursues business policies that are detrimental to, say, the environment, but are profitable to the company and hence its shareholders, there are no effective incentives to dissuade shareholders from endorsing such business strategies. Since their losses are limited, shareholders are not personally liable for any punitive costs a company may have to pay as compensation for the environmental destruction. To be sure, the stocks that shareholders own may go down in price if a company does incur compensatory costs, but shareholders are likely to find that the risk of stock prices going down in such an eventuality is outweighed by the potential for increases in stock prices should the company manage to avoid incurring any punitive costs. In effect, corporations' ownership structure encourages them to make business decisions that have negative externalities. Besides decisions that lead to environmental damages, which have already been much criticised, corporate business decisions have led to other negative externalities. More recently and topically, we have seen that corporations, especially banking corporations, are prone to make decisions that cause systemic risk, that is, the risk of collapse of an entire financial system or entire market. This type of risk can be considered a negative externality because it involves a corporation making business decisions that impose risk on the entire system as opposed to risk incurred by the corporation itself.

I am not entirely certain that the phenomenon of transient ownership is real. It seems that decision-making in corporations is very infrequently swayed by the risk of capital flight posed by transient shareholders. Instead, as we saw in the case of executive pay above, managerialism – that is, when managers systematically dominate over shareholders and employees in corporate governance – is a more likely phenomenon than transient ownership. However, it is a phenomenon worth mentioning because managers often use the possibilities of transient owners and capital flight as excuses for the need to make business decisions that only aim at profit maximisation. This creates a profit-driven culture that ought to be of concern to Rawlsians because business decisions in such a profit-driven environment are less likely to embody the Rawlsian ideal of equality-based reciprocity. It is less likely that corporations would make business decisions that contribute to making the least advantage better off if those decisions could result in lower profits for the company. Of course, one might object here that Rawls himself does not require associations, such as corporations, to base their decisions directly on the two principles of justice – the principles only apply directly to the basic structure. This can and has been challenged, and I will say more about this objection in the next section.[24] For now, it should be enough to motivate Rawlsians to be concerned about this sort of corporate behaviour because corporations' vast size means that the profit-driven culture is all

[24] As G. A. Cohen has argued, if Rawls is to be consistent, informal structures of a society should also be subjected to the two principles of justice. The culture of business decision-making could be considered one such informal structure. G. A. Cohen, *If You're an Egalitarian, How come You're So Rich?* (Oxford: Oxford University Press, 2000), chs. 8-9; *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008): ch. 3.

pervasive in business.[25] Therefore, even following Rawls's original intentions of limiting justice as fairness to the basic structure and not applying it to associations, we can still argue that corporations' profit culture is a significant impediment to the creation of just societies because corporations' vast size and influence help produce an environment that is hostile to conditions that are essential for establishing social justice.

III. Two Common Solutions: Corporate Social Responsibility or Better Regulatory Environment

How, then, should Rawlsians handle these problems of justice in corporations and of the role corporations have in social justice? Many proposals have been put forward, especially in the field of business ethics. Business ethicists have borrowed significantly from political philosophy, especially from Rawlsian political philosophy. The attention has been somewhat one-sided.[26] So it might be fruitful for

[25] For a polemical attack on why features of the corporations make them "psychopathically" profit-driven, see Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Constable, 2005). The book is based on an eponymous documentary film.

[26] For a few useful discussions of the use of political philosophy in business ethics, see Robert A. Phillips and Joshua D. Margolis, "Toward An Ethics of Organizations," *Business Ethics Quarterly* 9:4 (1999): 619-638. Jeffrey Moriarty, "On the Relevance of Political Philosophy to Business Ethics," *Business Ethics Quarterly* 15:3 (2005): 455-73. Alexis M. Marcoux, "Retrieving Business Ethics and Political Philosophy," *The Journal of Private Enterprise* 24:2 (2009): 21-33, and Joseph Heath,

political philosophers to examine whether there are opportunities for interdisciplinary cross-fertilisation. The proposals put forward tend to fall into two camps: The first kind of proposal says that the road to reform lies without – that the environment in which corporations operate should be more conducive towards social justice. The other kind of proposal argues that the solution lies within – that corporations themselves should do more to advance social justice.

Let's start with the first sort of proposals; the sort that argues for better external regulations. Some argue that there is nothing wrong with corporations being solely driven by profits so long as the legal and social environment in which they operate is well designed and geared towards achieving social justice. This argument holds that the reason why corporations are presently bad news for social justice is that we are not doing a good enough job at regulating their activities. The solution, therefore, is to design our laws and social policies so that these would correct any harm corporate activities cause to social justice. We should focus our energy on legislating and enforcing rules that can properly regulate corporations. Proponents of better regulation of corporations are not necessarily hostile to those who argue that it is corporations themselves who should do more to advance social justice. However, there are exceptions. A notable one is Milton Friedman because his article defending vehemently the position that "The Social Responsibility of Business is to Increase its Profits" is so well known and oft-cited in corporate legal theory and business ethics

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Jeffrey Moriarty, and Wayne Norman, "Business Ethics and (or as) Political Philosophy," *Business Ethics Quarterly* 20:3 (2010): 427-52.

circles.[27] Friedman's point is that, so long as corporations operate within the rules of the market, any responsibility for social justice rests with the state; businesses need not worry about social justice as a factor in their decision-making process. Yet, most who favour external regulations do not go this far. They simply argue that corporations themselves taking responsibility for social justice would be a nice, but not necessary, part of the solution.

In terms of concrete proposals, when it comes to justice in corporations, those who argue for better external regulations argue that we can, for instance, enact laws that cap corporate pay. Or, if it is true that labour unions are good for ensuring fairness in workers' pay and working conditions, then governments should make sure their policies do not block unions, for instance, by making strikes illegal. As for corporations' role in social justice, we do not need corporations to take any direct action. But we ought to design better tax and transfer mechanisms that can counteract any distributive imbalance caused by corporations. For instance, we can impose a carbon tax to internalise the cost of pollution. Or we can levy heavier corporation tax in order to better fund a variety of public welfare schemes. And when it comes to limiting the influence of corporate wealth on politics, we can restrict, or even outlaw, the use of for-profit corporate money in election campaigns.[28]

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[27] Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," *New York Times Magazine* 13 September 1970.

[28] A Democratic Representative, Ted Deutch, proposed a constitutional amendment in the U.S. that has a rather inspired name: "Outlawing Corporate Cash Undermining the Public Interest in our Elections and Democracy" (OCCUPIED). The acronym takes inspiration from the Occupied Wall Street movement.

Different from this approach is the school of thought that promotes the idea that it is corporations themselves who should do more towards achieving social justice; that it is not enough simply to rely on reforms to the external regulatory environment. We can crudely put arguments of this kind under the umbrella of corporate social responsibility (CSR). CSR has become a phenomenon that encompasses many movements and strands of thought. It has found expression within academia – for instance, business ethics is an ever-growing academic field and its founding concern is CSR. CSR is also enshrined in international initiatives, such as the United Nations Global Compact, as well as private initiatives such as the ISO 26000, also known as the ISO SR – for social responsibility.[29] The CSR movement provides a large tent, which covers many different proposals. However, it would be fair to characterise the CSR movement as agreeing on a few essential points: First, they recognise that there are strong links between corporations and various social injustices. Second, they believe the solution to this lies primarily in urging corporations to self-regulate. Third, they believe that corporations should take on more social obligations in addition to their normal remit of pursuing profit. And although there is no complete consensus on the exact content of corporations' social responsibilities, CSR proponents generally agree that corporations should pay attention to a few key social issues, which are upholding human rights and labour standards, protecting the environment, and working against corruption.

[29] "ISO 26000 – Social Responsibility", *International Organization for Standards*, accessed 21 September 2013, http://www.iso.org/iso/home/standards/iso26000.htm

In this short space, I cannot do justice to all CSR theories and the specific reforms they recommend. Instead, I will focus on two different arguments in CSR. The reason for this focus is that these theories borrow from political philosophy. Like political philosophy theories that deal with the grounds for state or individual citizens' obligations, these theories explore different normative grounds for why corporations have obligations to be more socially responsible. These theories also claim to be following Rawls's work. Thus, if they are valid, they can provide a useful starting point for Rawlsians who want to study corporations.

The first and most prominent attempt at using Rawlsian arguments to ground CSR can be found in the works of R. Edward Freeman and William Evan.[30] Their stakeholder theory is founded on the belief that corporations stand in much the same relationship with the rest of society as governments do. As a result, they adapted Rawls's concept of the original position so as to apply to the level of business organisations. In order to establish 'fairness' we should imagine the groups affected by corporate business decisions – which include shareholders, employees, governmental bodies, trade unions, communities, financiers, suppliers, and customers – to be behind a (supposedly) Rawlsian veil of ignorance. Behind this veil, each stakeholder has no idea 'which particular stakes he or she actually holds in the corporation.'[31] From this position, it would be irrational for stakeholders 'to give up the ability to participate in monitoring the actual effects of the firm on them.'[32]

[30] R. Edward Freeman and William M. Evan, "Corporate Governance: A Stakeholder Interpretation," *Journal of Behavioral Economics* 19:4 (1990): 337-59. R. Edward Freeman, "The Politics of Stakeholder Theory: Some Future Directions," *Business Ethics Quarterly* 4:4 (1994): 409-21.

[31] Freeman and Evan, "Corporate Governance," 353.

[32] Ibid., 353.

Hence, Freeman and Evan argue that the rational outcome of this hypothetical contract situation is that stakeholders would reject managers acting exclusively in the interests of shareholders. Instead, stakeholders would choose to have representatives on the boards of corporations.

The second CSR approach is espoused by Edwin Hartman.[33] He argues that corporations share enough similarities to states so it would be appropriate to apply a conception of justice, such as justice as fairness, to relationships within corporations. The idea is that relationships within corporations – for instance, between managers and workers – resemble closely the relationships between those within states –for instance, between political leaders and citizens. Therefore, we ought to apply the two principles of justice directly to how the corporation is governed. Unlike Freeman and Evan's proposals, which primarily focus on how to apply justice as fairness to corporations' relationship with various stakeholder groups in society, the kind of reforms that Hartman's theory would recommend would first apply justice as fairness to corporate relationships within firms. For instance, it would recommend applying the difference principle directly within firms so that any inequalities in pay should be to the advantage of the lowest paid worker in that organisation. Yet, although this type of CSR applies most naturally to justice within corporations, it does not necessarily neglect the role of corporations in wider social justice issues. Whether it does would depend on how inclusive our understanding of corporate membership is. To the extent that we include groups that are traditionally not considered to be part of corporations to be corporate members – for instance,

[33] Edward Hartman, "Moral Philosophy, Political Philosophy, and Organizational Ethics: A Response to Phillips and Margolis," *Business Ethics Quarterly* 11:4 (2001): 643-87.

communities whose well-being can be affected by corporate decisions – then this kind of CSR can be extended to encompass a wider range of social justice issues, and would apply not only to those that arise within relationships between workers and management.

There are large question marks over how successful these writers are in their use of Rawls to morally legitimate claims that they wish to make on behalf of non-shareholding stakeholders. For instance, it is doubtful that Freeman and Evan's appropriation of the veil of ignorance is valid. For Rawls, the veil is a mechanism to help provide a normative foundation for a structure of sovereign power, for the ownership of property and the rules of contract, and for the right degree of liberty and equality in society. The information that parties in Rawls's original position have is minimal. By contrast, stakeholders in Freeman and Evan's choice situation already know they are stakeholders of a firm. Freeman and Evan understand firms to be multi-lateral contracts. On this understanding, stakeholders behind the veil of ignorance must already have some understanding of the contract principle, including what contract fairness entails. That is, they must understand that good faith is required and misrepresentation is not allowed, and so on. Stakeholders know about fair contracting in general. What they need to decide is only what fairness requires of them for contracting in the particular firm they are in. In other words, to answer the rather narrow question posed behind Freeman and Evan's veil of ignorance, stakeholders must already know the answers to the questions posed to participants behind Rawls's veil of ignorance. In Rawls's original position, the veil of ignorance is able to deliver fair decisions because bias and strategic bargaining are eliminated from the deliberations that lead to the decisions' adoption. By comparison, it is

uncertain whether Freeman and Evan's veil of ignorance could deliver fairness, given the high degree of knowledge that the parties behind their veil have.[34]

As for a CSR approach such as Hartman's, there are questions about how similar societies and corporations really are. Questions have been raised about the differences in the extent to which they are voluntary organisations and the extent to which they enjoy a stable or a precarious existence. There are also questions about whether they may both justifiably have ends and purposes and whether they may both justifiably distribute benefits based on individuals' contribution to those ends.[35]

Despite the fact that these matters are unresolved, I would argue that we should side-step the debate of how successful these writers' appropriations of Rawls are. This is because, even if their appropriations are successful, I would argue that they represent a type of argument that Rawlsians should still avoid as a starting place for looking into matters concerning corporations and social justice.

At first glance, this debate between those who favour better external regulation and those who favour CSR seems to provide a fertile starting ground for Rawlsians. The debate seems to echo the debate on different interpretations regarding the division of moral labour in Rawls's work. The division of moral labour is Rawls's idea that the

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[34] For a persuasive critique of why Freeman and Evan's adoption of Rawls is unsuccessful, see James W. Child and Alexei M. Marcoux, "Freeman and Evan: Stakeholder Theory in the Original Position," *Business Ethics Quarterly* 9:2 (1999): 207-23.

[35] On this issue, see Phillips and Margolis, "Toward An Ethics of Organizations," 619-38 and Moriarty, "On the Relevance of Political Philosophy to Business Ethics," 455-73. I also discuss the extent to which business organisations and societies are similar in the next chapter.

task of realising the values of justice will be assigned primarily to what Rawls calls the basic structure of society.[36] The basic structure is comprised of society's major social, political, and economic institutions – the public institutions. This structure is to be regulated by a distinctive set of normative principles – the two principles of justice. On the other side of the divide are individuals and private associations. Although individuals and private associations will be assigned a duty to support just institutions, within the framework established by those institutions, they will be able to lead their lives in such a way as to honour the values appropriate to small-scale interpersonal relationships.

As mentioned briefly in the last section, some have challenged this division of moral labour. A prominent critic in this camp is G. A. Cohen.[37] He has argued that there may be an internal inconsistency in Rawls if he restricts the application of the two principles of justice only to the public institutions of the basic structure. The charge is that a society may not be just if only its basic structure (comprising formal institutions) is just. The upshot for Rawls is he can either give up the basic structure restriction for the two principles of justice and accept that the two principles apply also to informal institutions, as well as to individual conduct; or he can keep the basic structure restriction, but if he does so, he gains only a hollow victory because such a restriction means the two principles cannot deliver a truly just society.

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[36] Samuel Scheffler, "Egalitarian Liberalism as Moral Pluralism," *Proceedings of the Aristotelian Society Supplementary* 79 (2005): 229-253. Thomas Nagel also makes note of the same argument in Rawls, but he terms it the 'moral division of labour'. Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991).

[37] See note 24 above.

We can map the debate between those who favour external regulation and those who favour CSR onto this debate about Rawls's division of labour. Those who favour the former might point to this passage in Rawls:

> [W]e start with the basic structure and try to see how this structure itself should make the adjustments necessary to preserve background justice. What we look for, in effect, is an institutional division of labor between the basic structure and the rules applying directly to individuals and associations and to be followed by them in particular transactions. If this division of labor can be established, individuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.[38]

When applied to corporations, they can say that corporations are private associations which ought to be left free to advance their purpose of the pursuit of profit, so long as our background legal and economic rules adjust for any social injustice corporate activities effect. On the other hand, those who favour CSR might cite a Cohen-type argument and contend that this would not be enough. The two principles of justice should apply directly to corporations. Corporations themselves would need to self-regulate; they are directly responsible for making sure their business decisions are in line with the two principles of justice.

Unfortunately, although it would be quite neat to map the CSR and external regulation debate onto the Rawlsian one regarding the proper division of moral

[38] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996): 268-9.

labour, and it would make an interesting line of enquiry, I believe Rawlsians should not start their investigation into corporations and social justice by positioning themselves on one or the other side of the debate. This is because both sides of the debate would be making an illegitimate move in argument. In order to pursue this line of enquiry, both sides would be assuming that corporations enter into our analysis in their current form and already judged as a kind of private association. This begs the important question of why background rules of justice allowed the corporate form in the first place. Notice that most of the features of existing corporations – corporate personhood, transferable shares, and limited liability – are legal features. We have set up legal rules in the first place to permit individuals who want to incorporate a business to limit their personal financial liability, split the ownership into shares and trade these shares, and separate the legal identity of the company from those of its owners. These are all legal rules concerned with the distribution, ownership, and control of property rights, which are background justice rules. So if corporations pose a threat to social justice, what we ought to ask first is why we have configured background justice in a way that permits the corporate form.

Let's make clear what I mean by looking at background justice rules concerning corporations and analysing whether these are in accordance with justice as fairness. I do not mean to argue that corporations are 'a part of the basic structure' and, therefore, we should examine existing laws so that we can, for instance, reconfigure the corporate tax base to disincentivise certain kinds of corporate behaviour, or so that we can eliminate corporate tax avoidance. This strategy has been put forward by Martin O'Neill, who is a rare example of a political philosopher studying the issue

of corporations and justice.[39] The strategy would make existing legal rules more consistent with justice as fairness but it is not what I mean because it does not go far enough. By saying that corporations are 'a part of the basic structure', we can mean two different things: One, we can be arguing that corporations' relationship to the rest of society is akin to the relationship governments have with the rest of society. Thus, principles of justice apply directly to corporations, as they do to governments. That is, corporations have to make decisions with an eye on how they affect social justice. As I noted above, this is the kind of interpretation CSR theorists, if they were to adopt Cohen's criticism of Rawls's division of moral labour, could put forward. Another way to look at the idea that corporations are 'a part of the basic structure' is to mean simply that the principles of justice apply to corporations *in some way*. Such vagueness regarding what this application actually entails is what I would like to remove. O'Neill argues that existing corporations are 'a part of the basic structure' because of the impact they currently have on social justice. I agree with this, as I have shown in Section II above. Where he and I differ is that O'Neill then takes the corporate form as intractable. The principles of justice apply to corporations in that background rules of justice should constrain their behaviour. But why stop there?

[39] Martin O'Neill, "Entreprises et Conventionnalisme: Régulation, Impôt et Justice Sociale," *Raison Publique* 10 (2009): 171-200. An English translation is available as "Corporations and Conventionalism: Regulation, Taxation and Social Justice," *MANCEPT Working Papers Series*, September 2009, accessed 21 September 2013, http://www.socialsciences.manchester.ac.uk/disciplines/politics/about/themes/mancept/workingpapers/documents/MartinOCorporationsandConventionalismMANCEPTWorkingPaper.pdf

My contention is that, if corporations are 'a part of the basic structure', what this ought to mean is that the legal rules that lead to the formation of corporations, such as private ordering rules with regards contracts and so on, are a part of the basic structure.[40] So what we should do first is to first examine whether such rules in their present form are consistent with justice as fairness. What we should not do is to take the corporate form as given and prejudge corporations' status as private associations. This is because background rules that are consistent with justice as fairness, and external to the corporate form (or indeed any form of business), may limit the way individuals contract and transact with each other, and they may forbid the formation of corporations. Or, if individuals are allowed to form business enterprises that take on certain characteristics of extant corporations – such as having transferable shares, they may do so only on the condition that this type of corporations serves some sort of public function and would not only be profit-driven and serve only the interests of shareholders. To assume that corporations enter into our investigation in their full existing guise – inclusive of transferable shares, separate corporate personhood, and limited liability for shareholders – and predetermined as private associations, are significant missteps in argument. Therefore, before we can solve the problems of justice in corporations and the role of corporations in justice, we first need to question the justness of the corporate form.

[40] O'Neill agrees that the form of corporations is only conventional and therefore subject to critical analysis and change so it is perhaps surprising that he does not follow the logic of his argument further to include examining whether the corporate form is just.

IV. The Justness of the Corporate Form

To further appreciate the validity of inquiring into the justness of the corporate form, it may help to point out that such questions are not novel. Ever since their advent, there has been vigorous debate about why we should permit the corporate form. The reason we are accustomed to starting our consideration of corporations' relationship to social justice with the existing corporate form fully intact may be because they are now so entrenched in modern economies. A brief look at how the normative conceptions of the corporation have evolved might help rid us of this habit. It would also help us identify the questions we need to consider when we think about the extent to which Rawlsian justice permits the corporate form.

The Corporation as an Artificial Entity and Public Welfare

The modern corporation came into being roughly around the mid-1800s. Then, corporations were popularly considered artificial entities in Europe and North America, whose existence depended entirely on the positive law of the state, rather than on the private initiatives of individuals. The dependence of corporate status on state concession was the precise instrument for governments to pursue important public policy objectives. Governments only granted the right to incorporate to companies that were considered able to serve the public good in some way. The earliest form of the incorporated company is arguably exemplified by the Dutch and British East India Companies, which served their respective citizenry's interest in

exploiting the resources of their new-found colonies as well as expanding their colonial power. Up until the mid-19th century, incorporation for purely private business objectives was very rare. Usually, states granted special charters only to those companies that had narrow, well-defined, and most importantly, public functions. Typical corporations were those that served a charitable or municipal function, such as banking and insurance companies, and public utility enterprises. Of the last, the most prominent were the railroad companies in America, as well as the national and trans-Atlantic telecommunications (telegraph, telephones, and later radio) companies in America and Britain.[41]

In addition to requiring a special charter of state for their existence, governments also heavily regulated corporate behaviour. Charters were granted with special provisions peculiar to each industry in order to protect their differently vulnerable constituencies. For example, and perhaps particularly salient now given the causes of the financial crisis of 2008, the rate structures of banks and insurance companies were heavily regulated and they were legally required to have adequate capital reserves.[42] Governments also tried to address concerns about corporate consolidation and concentration of wealth by prohibiting parent-subsidiary acquisitions and the existence of holding companies. In many circumstances, shareholders were also not offered the full protection of limited liability. Thus, corporations were conceived of as artificial creatures of the state, corporate law was not only designed to protect the

[41] Mira Wilkins, 'Mulitnational Enterprise to 1930: Discontinuities and Continuities', in *Leviathans: Multinational Corporations and The Global History*, eds. Alfred D. Chandler, Jr. and Bruce Mazlish (Cambridge: Cambridge University Press, 2005): 45-79.

[42] David Millon, "Theories of the Corporation," *Duke Law Journal* 2 (1990): 210.

public from corporate activities but, more importantly, to ensure that the very purpose of corporations was to serve public welfare.

The Corporation as a Natural Entity and the Depression

By the late 19th century, corporations had become a prevalent form of business. This was because general incorporation laws had become commonplace. Gone was the need for states to grant special charters. A large part of this development was due to widespread concern about equal opportunity to set up incorporated businesses: by dispensing with the need for a special legislative act, general incorporation laws eliminated legislative discretion and thus the danger of monopolistic privilege gained through legislative favouritism. General incorporation laws were a simple set of procedures that anyone wishing to incorporate a business could follow. They made the act of incorporation more like a procedural formality. They made the state's role merely facilitative and, consequently, significantly eroded the idea that corporations are creatures of the state. European and American governments also imposed fewer and fewer substantive regulations on corporate activity. The sea change came in 1888, when the states of New Jersey and Delaware in America jettisoned the proscriptions on stock ownership by corporations.[43] Not wanting to lose out in the competition to attract business, many other states quickly followed suit. This new permissibility of holding companies in effect made possible the creation of enormous corporations. Perhaps as a result of this new phenomenal growth in the size of corporations, new ideas about the inevitability of economic

[43] Bakan, *The Corporation*, 13-14.

concentration surfaced. Crucially, the idea that corporations owed their existence to states became obsolete. Now it seemed successful corporations owed their existence more to the natural and impersonal forces of market competition. The concept that corporations were artificial and dependent entities, therefore, gave way to the concept that corporations were a natural product of economic markets.

For a brief period, this new idea – that corporations are natural entities – did not cause any changes to the public's understanding of corporations' normative role. It was still popularly considered that corporations ought to serve public interests. This was because corporate theory borrowed from the language of good citizenship. When applied to natural persons, the idea of good citizenship encouraged individuals to have other-regarding commitments – commitments that are not grounded in self-interest or personal financial gain. By extension, corporate citizens ought to disregard purely economic self-interest and do more for the common good.[44] However, divorcing the corporation from its original conception as a state-created entity led to significant changes in its normative conception later on.

[44] The legal scholar E. Merrick Dodd Jr. wrote a famous article arguing that corporations ought to be good corporate citizens. This is the forerunner to the corporate social responsibility movement that took off much later in the century in the 1970s. E. Merrick Dodd Jr., 'For Whom Are Corporate Managers Trustees?' *Harvard Law Review* 45:7 (1932): 1145-1163. Owen D. Young, an officer of General Electric Co. expressed similar views. A speech of Young was quoted at length in Dodd, 1154-1155.

The Corporation as an Aggregate and Shareholder Primacy

The idea that corporations ought to act as citizens did not continue to occupy the public's imagination. Soon, the ideas that corporations are a private association and that shareholders' private interests ought to be their primary concern took hold.

This conception of the corporation is best embodied in the seminal work of Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property*.[45] Written in 1932, Berle and Means's book has become one of the foundational texts in corporate law and institutional economics. Berle and Means's main motivation was to defend the very institution of private property against what they saw as its main threat at the time: the corporate form of business. Their thesis was that the separation of ownership and control, which has become a defining characteristic of large, powerful corporations, is bad news for the institution of private property. Broad dispersion of share ownership meant that control of the business corporation was delegated to a small group of professional managers. This separation brought with it a divergence of interest: shareholders were seeking profit maximisation whilst managers were seeking to entrench themselves in order to use their powers to further their own interests. To Berle and Means, the shareholders were the owners of the corporation; they have legitimately acquired parts of the company with their private property. Therefore, their financial interests ought to be the primary concern of management.

[45] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Harcourt, Brace and World, 1932).

Berle and Means' work did much to cement the idea of shareholder primacy, especially in corporate legal theory. Corporate law became more about how private shareholders' interests can be protected and less concerned with the circumstances under which it would be desirable for society to grant the benefits of incorporation to a business enterprise. As a result, the idea that corporations are associations serving shareholders' private interests has taken a firm hold in public discourse. Yet, this brief foray into the history of the normative conceptions of the corporation should help us see that shareholder primacy is not the only understanding of a corporation's purpose, nor do we need to take the permissibility of the existing corporate form as inevitable. This history reveals that the idea that corporations exist to serve primarily private investors' interests is only a recent development. Seeing that corporations could, and in fact did, take different guises should enable us to challenge more easily the justness of the existing corporate form.

But if we are to question the justness of the corporate form, how should we start our enquiry? In order to determine whether Rawls's principles of justice would permit the corporate form we need to answer two broad questions. The first area of investigation concerns business enterprises' standing in Rawlsian justice. One might argue that business enterprises in general ought to be considered a form of association akin to political parties or religious groups. If so, then individuals' rights to form business enterprises might be protected by the principle of freedom of association because these organisations facilitate individuals' ability to express their conception of the good life in some way. Whether such a case can be made successfully, and if so, whether the application of this argument extends to cover all

forms of business enterprises, including corporations, are thus critical for our verdict on whether Rawlsian justice would permit the corporate form.

The second has to do with how Rawlsians ought to distribute property rights, particularly rights in productive capital. As we have seen, the formation of modern corporations involves some specific rules about the distribution, ownership, and control of property rights. It requires that there is private ownership of productive capital; that ownership of a company's assets can be split into shares; that these shares can be traded; that ownership can be separated from control of the assets; and that ownership comes with limited liability. Whether or not these rules are compatible with Rawlsian justice is contingent on what kind of economic regime can best realise the two principles of justice. Rawls himself has proposed a property-owning democracy. Others have championed socialism.[46] Still others have argued that a welfare-state capitalist system is not so incompatible with Rawlsian justice.[47] Since some of these regimes may be more hospitable towards the existing corporate form of business than others, we need to decide which regimes are fit for realising Rawlsian justice before we can rule on the permissibility of the corporate form.

[46] Rawls, *Justice as Fairness*, 138-40, 158-62. For an argument for why Rawls should have been a socialist, see, David Schweickart, "Should Rawls be a socialist? A comparison of his ideal capitalism with worker-controlled socialism," *Social Theory and Practice* 5:1 (1978): 1-27.

[47] For instance, see Martin O'Neill, "Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition.

Conclusion

Corporations have features that make them a distinctive form of business enterprise. These features – transferable shares, limited liability for shareholders, separate corporate personhood, and delegated management – have enabled them to be uniquely successful at amassing vast amounts of capital and, as a result, they have made corporations the dominant form of business enterprise in modern economies. Yet, in their existing form, they can pose significant problems for Rawlsian social justice. Two commonly proposed solutions to these problems – better external regulation and corporate social responsibility – both attempt to address the problems of justice in corporations and the role corporations play in social justice. However, neither types of proposal goes far enough. I argued that we should understand corporations to be 'a part of the basic structure'. But unlike some who would use the same turn of phrase, I argue that the proper interpretation of this is that the legal rules that lead to the formation of corporations is what are really a part of the basic structure. And it is these we ought to put under pressure and examine to see whether they are consistent with justice as fairness. Furthermore, I have shown that the normative understandings of corporations and their purpose have shifted quite radically over the last two centuries; the idea that they must serve primarily shareholders' private interests is only a recent development. Therefore, if corporations are a worry for social justice, then we should be open to the idea of challenging whether background rules of justice ought to permit the corporate form at all.

Chapter 3

Justice as Fairness, Economic Regimes, and the Corporate Form

In the last chapter we saw that extant corporations present various challenges to Rawlsian social justice. We have also looked at some common solutions, which share the assumption that the right starting place is to leave the existing form of corporations alone. I questioned whether this assumption is sound and argued that the right place to start is to examine whether justice as fairness would permit the corporate form. In this chapter, I will examine how Rawlsians might go about answering this question.

The chapter will proceed as follows: Section I investigates and rejects one argument from freedom of association that defends the idea that Rawlsians ought to leave the existing corporate form alone and instead try fine-tuning other areas of background justice. Instead, I argue that the right place to start is to find out whether Rawls's theory of justice would endorse public or private ownership of productive capital. In Section II, I examine whether Rawls was right to remain agnostic between certain private and public economic systems. I start by examining whether Rawls ought to have been a socialist, for if he ought to have been, then justice as fairness should not permit the corporate form. I look at two arguments, both stemming from Rawls's

concern for guaranteeing the social bases of self-respect, and conclude that Rawls's agnosticism is justified. Section III examines and rejects the argument that if justice as fairness is compatible with private ownership of productive capital, then it must necessarily permit the corporate form. I conclude that whether a private ownership regime, which is compatible with justice as fairness, would permit the corporate form, would depend on further specifications about what kind of regime it is. I finish this chapter in Section IV by examining the private property ownership regime that gave rise to corporations, that is, welfare state capitalism (WSC). Rawls himself rejected WSC as compatible with his two principles of justice. While I believe his criticism of WSC is unduly harsh at places, I conclude he was on the whole right in his assessment. This leaves it the task of the next chapter to find a private property ownership regime that is more compatible with justice as fairness.

I. Does Freedom of Association Guarantee the Corporate Form?

Before I start explaining how Rawlsians would investigate the permissibility of the corporate form, let us first examine a counter claim. There might be some who argue against my claim that Rawlsians cannot simply start by assuming that corporations are private associations. One might argue that Rawlsians would permit the corporate form because corporations are voluntary associations and, under justice as fairness, individuals' freedom to form voluntary associations is protected by their freedom of

association. This is a basic liberty protected by the first principle of justice. Therefore, so the argument goes, justice as fairness should permit the corporate form; in fact, it would guarantee individuals the freedom to create corporations under the basic liberties principle.

Whether this argument is valid depends on what justification is offered for understanding corporations as private associations. One might argue that the formation of different types of business enterprise, including corporations, would be protected by freedom of association because they can provide a vehicle for individuals to pursue their conception of the good. For instance, someone who holds certain views about animal welfare might start a shop selling cosmetics that are free from animal-testing; or someone who holds certain religious views might start a restaurant that ensures food is prepared according to that religion's edict; or someone who feels people who share her identity are often discriminated against in public spaces in other parts of society, might start a pub that explicitly welcomes others who bear that identity. Seen in this light, all types of business enterprises, including corporations, are akin to forms of association that are traditionally protected by the first principle of justice, such as political parties and religious groups. These associations help individuals express and pursue their conceptions of the good life. It seems that different types of business enterprises can also serve these functions. If that is the case, then we can make the argument that freedom of association guarantees people's rights to form business corporations.

However, this argument is too hasty. The formation of corporations differs from the formation of churches, political parties, and other groupings traditionally considered

as voluntary associations, in one important respect. The formation of a corporation is ultimately dependent on legal rules and not just on the free association of individuals. Corporations cannot be formed by mutual agreement between individuals – whether formally, such as via contracts, or informally, such as via promises. The core features of corporations we discussed in the previous chapter – such as, corporate personhood, limited liability, and so on – require recognition and enforcement by legal rules and institutions. By contrast, individuals can form orchestras, religious groups, and political organisations simply by agreeing with other like-minded people that this is what they desire to do. To cement the argument that corporations are unlike other voluntary associations, we can also note that once formed, the corporation will persist even if the individuals who formed the corporation in the first place all resigned.

However, recognising that corporations are different from other voluntary associations that are traditionally thought of as protected by the freedom of association does not do away with the argument that they ought to be. This is especially true if the argument regarding the use of business enterprise to pursue conceptions of the good is valid. Yet recognising that corporations require special property rules to exist does move the debate on from one merely premised on the freedom of association to one that includes rights of property. How then to proceed from the perspective of Rawlsian justice? First, we should note that although the freedom of association is a basic liberty, the ownership of non-personal property is not guaranteed by the first principle of justice. Beyond individuals' having basic rights to personal property – for instance, personal belongings, a home, and so on – the first principle of justice offers no guarantees of rights to hold non-personal

property – such as wealth and productive capital. Neither does the first principle guarantee rights to specific uses of non-personal property, such as to make transactions or contracts.[1] Therefore, at this stage, we might conclude that Rawlsian principles of justice offer no basic liberty guarantee for individuals to form corporations.

However, we might want to question whether Rawls was right to exclude the ownership of non-personal property from the basic liberties principle. The main motivation for Rawls to have done so was his wanting to remain agnostic between a range of different economic regimes. He believes justice as fairness is compatible with different economic regimes, some of which involve public ownership of productive capital, whilst others rest upon private ownership. Rawls believes how a society ought to pick among this acceptable range of economic systems will depend on its social and historical circumstances; there is no cause to further stipulate and restrict the range of acceptable economic regimes by making private ownership of productive capital a basic liberty matter.[2] Yet, some writers have argued that Rawls was wrong to remain indifferent between private and public ownership of productive capital. Arguments have been launched from both the economic left and the economic right. Some have advanced the claim that it would have been more consistent for Rawls to have included rights to economic democracy as a basic liberty and hence he should have championed market socialist economic regimes.[3]

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[1] John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001): 114-5.

[2] Ibid., 114 and 138.

[3] David Schweickart, "Should Rawls be a socialist? A comparison of his ideal capitalism with worker-controlled socialism," *Social Theory and Practice* 5:1 (1978): 1-27.

Others have argued that Rawls should have advocated basic rights to private ownership of productive capital and thus should have championed capitalist regimes.[4] Finding out whether either set of arguments is valid has implications for Rawlsian justice and the corporate form. Therefore, I turn next to examine whether Rawls was right to remain agnostic between private and public ownership of capital.

II. Rawls's Agnosticism: The Case for Public Ownership of Productive Capital

If Rawls ought to have been a socialist, then our quest to find out whether justice as fairness should permit the corporate form would come to an earlier end. If Rawls ought to have mandated socialism in the forms that require public ownership of productive capital,[5] justice as fairness would rule out allowing the corporate form. For this reason, let's start by investigating whether Rawlsians have any firm reasons to be against private ownership in the means of production.

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[4] Daniel Shapiro, "Why Rawlsian Liberals Should Support Free Market Capitalism," *The Journal of Political Philosophy*, 3:1 (1995): 58-85.

[5] 'Socialism' in this section excludes the version of socialism that writers such as John Roemer advocates. Roemer's Coupon Socialism would allow something like the corporate form. However, Coupon Socialism has features that are atypical of market socialist systems; it resembles more a property-owning democracy. I will discuss Coupon Socialism in more detail in the next chapter.

To be clear, those who argue that Rawlsian justice ought to mandate public ownership of productive capital and Rawls himself all agree that not all kinds of public ownership system are compatible with justice as fairness. That is, when writers argue that justice as fairness ought to champion socialism, they do not mean to include all forms of socialism. Specifically, socialist Rawlsians and Rawls agree that state socialism would be incompatible with justice as fairness. There are some obvious reasons why a command economy would violate justice as fairness. The lack of a market for labour and for goods usually requires a large amount of coercion: In a command economy, the state owns the factors of production and, thus, all decisions about labour and capital are made by the state. The state does not just decide what and how many goods and services are available, it can also determine many facets of individuals' lives, including where to live and which job to work. This would violate Rawls's first principle of justice regarding individuals' basic liberties. And since state socialism could put major restrictions on job choice, it may also violate the second principle of fair equality of opportunity, which requires freedom of occupational choice.[6] So the narrower question that occupies us now is: Should Rawls have been a market socialist?

There are two strong arguments for Rawlsians to be in favour of market socialism. Both stem from the idea that a market socialist economic system can better guarantee individuals having the social bases of self-respect (hereafter SBSR) than they would in other economic regimes. Rawls makes two claims about the SBSR:

[6] John Rawls, *A Theory of Justice. Revised Edition* (Oxford: Oxford University Press, 1999): 240-1; *Justice as Fairness*, 138. Shapiro, "Why Rawlsian Liberals Should Support Free Market Capitalism," 64.

The first is that they are a primary good because individuals need them to form, pursue, and revise their plans of life. The second claim is that justice as fairness requires individuals to be provided with social bases of self-respect.[7] Therefore, if a market socialist regime can secure citizens the SBSR, whilst regimes that involve private ownership of productive capital cannot, then Rawlsians have strong reasons not to be agnostic between different economic systems. However, there is a problem with using the SBSR to support market socialism. Rawls is ambiguous about what he takes self-respect to be. In the literature on self-respect, writers have identified at least two understandings: One is self-respect as appraisal. The other is self-respect as recognition.[8] There is textual support in Rawls's work to show that he was considering both kinds of self-respect. And, for this reason, we can consider two parallel arguments, each based on a different kind of self-respect, about why justice as fairness ought to mandate some form of market socialism.

Appraisal self-respect is the attitude that consists in believing one's conception of the good to have value.[9] Most writers believe Rawls's is an account of appraisal self-respect and indeed the textual evidence of this is strong in Rawls's work.[10] Rawls said that self-respect has two dimensions:

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[7] Rawls, *A Theory of Justice*, 386; *Justice as Fairness*, 58-61.

[8] For a survey, see Robert S. Dillon, "Respect" in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, (Fall 2010), http://plato.stanford.edu/archives/fall2010/entries/respect/. Stephen L. Darwall, "Two Kinds of Respect," *Ethics* 88 (1977): 36–49.

[9] Appraisal self-respect is referred to as self-esteem in the literature occasionally, although strictly speaking, these are two different attitudes. Cynthia Stark, "Self-Respect," in *Routledge Encyclopedia of Philosophy*, ed. E. Craig (1998), http://www.rep.routledge.com/article/L092

[10] For instance: Nir Eyal, "'Perhaps the Most Important Primary Good': self-respect and Rawls's principles of justice," *Politics, Philosophy, and Economics* 4:2 (2005): 201-6. Richard Arneson, "Is

> First of all…it includes a person's sense of his own value, his secure conviction that his conception of the good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions.[11]

Thus, Rawls's understanding of self-respect matches that of psychologists when they talk about appraisal self-respect. Alicia Cast and Peter Burke say that self-respect 'is composed of two distinct dimensions, competence and worth.'[12] Having self-respect in the appraisal sense, then, is a matter of thinking positively of one's ability and value. It is easy to see why appraisal self-respect is regarded as a Rawlsian primary good. Primary goods are essential for developing and exercising the two moral powers, one of which is the capacity for a conception of the good. If a person is unable to have a sense of her own value, then it would be very difficult, perhaps impossible, for her to develop her capacity for a conception of the good.

Based on this understanding of self-respect, we can now link self-respect to an argument for why Rawlsians ought to advocate socialism. The link can be established via the idea of meaningful work and how it is a SBSR. Rawls himself briefly, and only in passing, links meaningful work with self-respect. He says that the lack 'of long-term security and opportunity of meaningful work and occupation is…destructive of citizens' self-respect'.[13] This claim is consistent with the findings of many psychologists. Empirically, study after study has shown that there is a

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Work Special? Justice and the Distribution of Employment," *American Political Science Review* 84 (1990): 1146 n. 8.

[11] Rawls, *A Theory of Justice*, 386

[12] Alicia D. Cast and Peter J. Burke, "A Theory of Self-Esteem," *Social Forces* 80 (2002): 1042.

[13] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996): lix.

positive correlation between individuals' appraisal self-respect and their having work that is complex, varied, and allows for autonomous action.[14] We should note that the strength of Rawls's commitment to meaningful work is uncertain. In *A Theory of Justice,* Rawls believes that implementing the principles of justice would be enough to do away with the 'worst aspects' of the division of labour.[15] In a well-ordered society, Rawls believes that 'no one need be servilely dependent on others and made to choose between monotonous and routine occupations which are deadening to human thought and sensibility.'[16] The thought is that the principle of fair equality of opportunity should be able to improve the employment prospects of those who lack education and training and are thus forced into meaningless jobs. However, by *Political Liberalism*, he seems to have accepted that, even in a well-ordered society, something more needs to be done to ensure opportunity for meaningful work; more, that is, beyond the provision for fair equality of opportunity. That additional requirement is that 'society [should be] an employer of last resort' with the express purpose of providing citizens with meaningful work.[17]

If meaningful work is to be taken seriously as a SBSR – a primary good – then one can argue that more, beyond what Rawls has mentioned, ought to be done to ensure that citizens in a just society have access to it. This is where some have linked

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[14] For a list of such studies see Jeffrey Moriarty, "Rawls, Self-Respect, and the Opportunity for Meaningful Work," *Social Theory and Practice* 35:3 (2009): 457 n. 30. Note though that Moriarty calls self-esteem what I have termed here as appraisal self-respect.

[15] Rawls, *A Theory of Justice*, 463.

[16] Ibid., 464.

[17] Rawls, *Political Liberalism*, lix. This evolution of Rawls's commitment towards meaningful work is traced in Moriarty, "Rawls, Self-Respect," 446-7.

Rawlsian justice with socialism.[18] The link is perhaps not surprising because the idea that workplaces in an economy where productive capital is privately owned tend to deprive workers of dignity, skill, and intelligence, is not new. Karl Marx is a well-known proponent.[19] The argument is that capitalism's drive for profit leads it to divide radically the labour process in order to cut down on labour cost and, as a result, skilled workers are replaced by the unskilled. Public ownership of productive capital is thought to ameliorate this condition. Defenders of this position often envision a socialist society whose economy is comprised of worker cooperatives. In such an economy, where workers have an equal chance at participating in the control of their firms, it is likely they will enjoy meaningful work.[20] There are three reasons to think so: First, if workers have control over business decisions, it is likely that they will prize work satisfaction above driving down labour cost (and with it, the attendant need for unskilled labour). Second, workers are likely to have an interest in raising the average skill, and hence job complexity, of the work force. This is not only because it would lead to more satisfying work. It is also because average workers have an interest in preventing any class of specialists from becoming so indispensable that they can demand substantially higher than average income shares.

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[18] Schweickart, "Should Rawls be a Socialist?", 1-27.

[19] For Marx's views on division of labour, see Karl Marx, *Capital*, vol. 1, trans. Samuel Moore and Edward Aveling (New York: Random House, Modern Library ed., 1906),:chapter 14. See also Jon Elster "Self-Realization in Work and Politics: The Marxist Conception of the Good Life," *Social Philosophy and Policy* 3:2 (1986): 97-126.

[20] Except Richard J. Arneson, "Meaningful Work and Market Socialism," *Ethics* 97:3 (1987): 517-45. Arneson argued that if a market socialist economy of a syndicalist sort is established, if the distribution of resources is continuously adjusted to be fair, and if the market operates efficiently, further intervention in the market to bring it about that people gain more of the benefits of meaningful work would be unjust and unfair.

Raising average skill levels would take away the force of the demand of skilled specialists for better pay and preferential treatment.[21] Lastly, the fact of participation in decision-making itself is thought to add to the meaningfulness of work. Although the satisfaction one gets from participating in workplace decision-making is separate from the satisfaction one gets from how meaningful the content of one's work is, workplace democracy can at least contribute to the sense that workers are valued at work and hence contribute to their sense of appraisal self-respect.[22] Therefore, it seems that Rawlsians have good reasons to abandon agnosticism and become socialists. If they are to take SBSR as a primary good seriously, and meaningful work is a SBSR, then market socialist economic systems can secure individuals' access to meaningful work better than economic systems that are based on private ownership of productive capital.

However, the fit for Rawlsian justice and public ownership of productive capital may not be as tight as some socialists would like. For a start, it is empirically uncertain whether a market socialist system comprised of worker cooperatives would deliver meaningful work. In an oft-cited study of the world's arguably most famous group of worker cooperatives – Mondragon – it is found that workers often lack effective control over the condition and nature of their work, and this calls into question how meaningful the nature of work in a worker cooperative actually is.[23]

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[21] Schweickart, "Should Rawls be a socialist?" 12.

[22] This is different from the believe that workplace democracy can contribute to workers seeing each other as equal autonomous agents. If workplace democracy does so, it is contributing to recognition self-respect. I will discuss this aspect of workplace democracy below.

[23] Sharryn Kasmir, *The Myth of Mondragon: Cooperatives, Politics, and Working-Class Life in a Basque Town* (New York: State University of New York Press, 1996).

Of course, this is not an unproblematic illustration. Mondragon exists in a corporate capitalist system, therefore, the pressures it faces with regards to efficiency and cost are different than those it would have to face in a market socialist system. So how meaningful work is for workers of Mondragon now does not necessarily reflect how meaningful work could be in a market socialist society.

Yet, even if we grant that market socialism can secure meaningful work, there is a more important argument for why Rawls need not mandate socialism on the grounds of appraisal self-respect. That argument is that, although the SBSR are a kind of primary good, they are not regulated by the first principle of justice. Many commentators on Rawls seem to think that he deems the SBSR must be equally distributed.[24] But this is not Rawls's position. He clearly states that one of the 'permissible differences' amongst citizens is their share of the SBSR.[25] If it is compatible with justice that citizens can have different shares of the SBSR, then it is not the case that meaningful work, as a SBSR, must be guaranteed to all. Of course, as a SBSR, Rawlsians must ensure that individuals have the opportunity for meaningful work. And since Rawls's original works lacks sustained discussion on such provisions for meaningful work, socialists are right to point out that Rawlsians should work on how to fill this gap. But this is not the same as saying justice as fairness ought to mandate market socialism. Between an economic system that has private ownership of productive property and a market socialist one, all things being

[24] See for instance, Eyal, "Perhaps the most", 197. Gerald Doppelt, "Rawls's System of Justice: A Critique from the Left," *Noûs* 15 (1981): 261 and "The Place of Self-Respect in a Theory of Justice," *Inquiry* 52:2 (2009): 135-8.

[25] John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass: Harvard University Press, 1999): 363.

equal, if only the latter can secure meaningful work for all, then there is a good case for Rawlsians to mandate market socialism. However, it is unlikely that meaningful work will be the only deciding factor between private and public ownership systems. It is more likely that each will be superior in different ways when it comes to the extent they can realise the two principles of justice. Furthermore, it is unlikely that economic regimes that have private ownership of productive capital will completely fail to make provisions for meaningful work. Amongst other measures, private economic systems can accommodate worker cooperatives, as well as private firms with workplace democracy.[26] Therefore, given that justice as fairness does not

[26] Admittedly, in practice, accommodation of worker cooperatives in a capitalist economy may not be straightforward. As David Miller argues, if there is a case for having worker cooperatives in a capitalist economy, then there are good reasons to put in place institutional guarantees for worker cooperatives. Miller argues worker cooperatives in a capitalist economy face what are, in effect, negative externalities created by capitalist firms. One disadvantage that cooperatives face has to do with hiring new members. A capitalist firm is willing to hire an additional worker so long as her *marginal revenue product* is at least what she is willing to be paid; while a worker cooperative is willing to hire her so long as her *average revenue product* is at least what she is willing to be paid. So unless the marginal product of hiring an additional worker never decreases, which seems unlikely, there are workers, if hired, whose marginal revenue product is at least what they are willing to be paid, but whose average revenue product is not. These workers will be hired by capitalist firms, but not by cooperatives. The second, and more significant, disadvantage for cooperative firms in a capitalist economy, concerns the availability of capital. In a cooperative, given that capital is owned collectively once the loan is repaid, cooperative workers find it individually to their advantage to delay payment of the loan. In turn, the lending agency faces the prospect of loaning ever-increasing amounts to the cooperative and in the case of its bankruptcy, the difficulty of collecting from a firm owned collectively by a number of individuals. All things being equal, lending agencies will find it in their interest to loan capital to capitalist firms over cooperatives. Given these disadvantages, particularly the latter, unless the state supports institutions to provide capital to cooperatives, it is unlikely that there would be opportunities for workers to participate in worker cooperatives in a capitalist system. However, given that none of this shows that regimes with private ownership of productive capital must preclude worker cooperatives, or workplace democracy in other forms of enterprises, my point that appraisal self-respect does not challenge Rawls's original agnosticism with

demand that the SBSR be equalised, any superiority market socialism has in securing meaningful work does not give Rawlsians decisive reason to abandon Rawls's original agnosticism between a limited range of public and private ownership regimes of productive capital.

Let's turn now to the second understanding of self-respect: Recognition respect is the attitude that recognizes one's equal status as citizen. On the face of Rawls's texts, many commentators argue that Rawls was not talking about recognition respect. However, when viewed across the whole body of his works, some feel we ought to interpret Rawls to have *meant* recognition self-respect whenever he discusses the issue.[27] This is plausible because justice as fairness is ultimately a vision of a just society where free and equal individuals accord each other a basic kind of respect. So the understanding of self-respect as one about people having equal moral status, rather than about their thinking positively of themselves, fits better with Rawls's overall project.

If we interpret self-respect in this way, then the link between Rawlsian justice and socialism can be established via two routes. One is that a socialist economy is better able to prevent the domination of some over others. This argument originates from comments Rawls made about why we should care about equality. One of the reasons he discussed was that political and economic inequalities might lead to 'one part of society dominating the rest' and this often engenders a loss in social status by those

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regards economic systems stands. For Miller's arguments see David Miller, *Market, State, Community: Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1989): 83-90.

[27] Moriarty, "Rawls, Self-Respect," 455-6. Doppelt, "The Place of Self-Respect," 133-5.

being dominated.[28] The result of this social inequality is that 'those of lower status [will] be viewed both by themselves and by others as inferior.'[29] One way socialism can overcome this loss of status, and hence loss of recognition self-respect, is by implementing widespread workplace democracy. If an individual lives in a social and economic environment which she plays a part in fashioning, then there is less likelihood that society will regard her as inferior in social status. The problem with such an argument is that, as discussed above, workplace democracy need not be exclusive to economic systems that have public, rather than private, ownership of productive property. Furthermore, it is questionable whether individuals' participation in fashioning their social and economic environment is either necessary or sufficient for their securing recognition self-respect. It is not sufficient because it is possible for a socialist system to have other markers of social status, inequalities in which can still lead to a loss in recognition respect. And socialist systems with workplace democracy may not be necessary to secure non-domination. In a society where participation in political decisions is highly valued, and equal political rights to such participation is robustly secure, it does not seem necessary for citizens also to have rights to workplace democracy in order for them to enjoy equal social status and thus have recognition self-respect. And this sort of society, where the value of political participation is regarded highly, is compatible not only with public ownership of productive capital; it is also possible under a private ownership regime.

Yet, this latter claim is disputed. Some writers argue that even where citizens enjoy equal political liberties, it is necessary for them to also enjoy participation rights in

[28] Rawls, *Justice as Fairness*, 130-1.

[29] Ibid., 130-1.

the workplace before they have recognition self-respect. Their arguments make up the second link between recognition self-respect and socialism. Writers such as Robert Dahl and Iris Marion Young have made the case that if the state ought to be governed democratically, then democratic governance ought to be expanded and implemented within economic enterprises too.[30] Following Joshua Cohen, let's call these parallel case arguments.[31] Young, in particular, has advanced parallel case arguments from the perspective of Rawlsian justice. She argues that since Rawls believes the principle of equal participation in politics transfers the condition of equality and fair representation from the original position to a society's constitution, then equal participation should be extended as widely as possible. Furthermore, it is in the interests of the worst-off persons in a society that they organise society such that they have a claim to participate equally in basic decisions within organisations they are a part of. And lastly, Rawls's concept of the state as 'a social union of unions' cannot be truly achieved unless there is equal participation in decision-making in every level of society. Rawls argued that within a state, members cooperate in a type of joint activity in order to achieve valuable ends which they cannot bring about without such cooperation. Social union is realised when, through their cooperation, members come to

[30] Robert Dahl, *A Preface to Economic Democracy* (Berkeley: University of Californian Press, 1985). Iris Marion Young, "Self-determination as a principle of justice," *The Philosophical Forum* 11 (1979): 172-82.

[31] Joshua Cohen, "The Economic Basis of Deliberative Democracy," *Social Philosophy and Policy* 6:2 (1989): 27.

> enjoy one another's excellences and individuality elicited by free institutions, and they recognise the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all.[32]

Young's point is that if members' consent to the whole scheme is needed for a scheme of cooperation to become a social union, then we have strong reasons to extend equal participation to every level of society.[33]

The problem with arguments that try to establish parallels between equal political rights at the level of society and that at the more limited level within economic organisations is that there is a big onus on proponents to prove the cases are really analogous. Unfortunately, there are at least three reasons for thinking they are not. The first difference between societies and economic associations is that the former usually do not have specific ends.[34] As Rawls points out, 'society as a whole has no ends or ordering of ends in the way that associations…do'.[35] While an economic association generally directs its members' collective economic productive activities toward a limited set of ends, a state generally does not define the nature of its members' activities by any specific aims. The open-endedness and expansiveness of a society's ends therefore requires giving individuals equal political rights so that there can be democratic deliberation with regards how to channel a society's resources towards different and competing ends. By contrast, the instrumentalist nature of governance within an economic organisation lessens the force of the case

[32] Rawls, *A Theory of Justice*, 459.

[33] Young, "Self-determination," 39-40.

[34] Robert Phillips and Joshua Margolis, "Toward an Ethics of Organizations," *Business Ethics Quarterly* 9:4 (1999): 623-4.

[35] Rawls, *Political Liberalism*, 276

for equal participation in the workplace; there is less need for democratic deliberation when there are fewer alternative ends at stake. A second difference concerns the freedom of exit. It is possible to exit organisational memberships. States, by contrast, are involuntary associations.

Some writers disagree; they argue that the cases are not dissimilar. They reason that state memberships are not so involuntary: individuals can emigrate. And membership in economic organisations is not so voluntary; freedom of exit from firms is often restricted.[36] Members of business organisations often find it hard to leave their work and the reasons for this go beyond the difficulty and costs associated with finding and transitioning to a new job. Often, workers develop skills that are highly firm-specific, so outside of the firm, they cannot command as high a return for their work.[37] Be that as it may, the objection is not decisive. The voluntariness of membership in economic associations is still much higher than that of state membership. For one thing, the cost of finding a new job is still significantly lower than that of moving to a new country and attempting to establish new citizenship. For another, we are not only free to leave our jobs; we are also free to form new business firms. As Jan Narveson points out, if we were to 'try…this with new countries, [we] will only get …guns pointed at [us]'.[38]

[36] Jeffrey Moriarty, "On the Relevance of Political Philosophy to Business Ethics," *Business Ethics Quarterly* 15:3 (2005): 456-6.

[37] Nien-He Hsieh, "Survey Article: Justice in Production," *The Journal of Political Philosophy* 16:1 (2008): 89.

[38] Jan Narveson, "Democracy and Economic Rights," *Social Philosophy and Policy* 9:1 (1992): 53-4.

This brings us to the third weakness of parallel case arguments. This concerns the difference in legitimate exercises of power between a state and an economic organisation. Once again, Narveson has a vivid way of illustrating the difference: 'If a firm doesn't like the way you do your job, can it send men with guns who will put you in prison if you don't do it the way the boss says?'[39] Of course, many despots do in fact send citizens to prison if they do not like the way they behave. Rather, Narveson's point is that governments cannot *legitimately* exercise their power over citizens unless citizens have been given equal political rights. State power is legitimised, in part, by its members' right to equal political participation. By contrast, economic organisations do not have such power and, thus, the case for equal political participation in the workplace as necessary to legitimise business leaders' power seems less compelling. Therefore, parallel case arguments so far give Rawlsians no reason to question Rawls's agnosticism.

Thus far, I have argued that claims regarding self-respect provide some of the strongest reasons for Rawls to abandon his agnosticism and to affirm market socialism. I have also argued that, regardless of whether we interpret Rawls to have understood self-respect as involving self-appraisal or recognition, we do not have any decisive reasons to question his original agnosticism. To be clear, all I want to defend here is that Rawls's openness between certain economic regimes that are based on private ownership of productive capital and those that involve public ownership is not misguided. We should note that this is still compatible with concluding that, given the right social and historical circumstances, justice as

[39] Ibid., 53.

fairness could be better realised under a market socialist regime. A further note of clarification: Although I am aware that whether Rawls understood self-respect as self-appraisal or as recognition is a contested issue, I have not attempted to settle the debate here.[40] Instead, I have tried to take an ecumenical approach to show that no matter which understanding of self-respect is at work in Rawls, neither provides firm support for Rawlsians to abandon agnosticism with regards to economic systems. That is, neither understanding of self-respect provides firm reasons for Rawlsians to mandate socialism. And for the project at hand, this approach is enough. If Rawls does not have to be a socialist, Rawlsians' choice of economic regimes is not limited to those that mandate public ownership of productive property. In turn, this means there may still be room in justice as fairness to allow privately owned business enterprises such as corporations.

III. Rawls's Agnosticism: The Case for Private Ownership of Productive Capital and for Corporations

Of course, if Rawls does not have to be a socialist, it may still be the case that he ought not to be agnostic. Should he have been a proponent of private ownership of

[40] I am aware that the stakes for settling this debate are high for Rawlsians: If Rawls was arguing for appraisal self-respect, the cost for him is that it seems his theory is not as supportive of the social bases of self-respect as he claims; if he was arguing for recognition self-respect, then he may have been wrong to include self-respect as a primary good.

productive capital instead? If so, does this mean that the corporate form is permitted by justice as fairness? Here is how positive answers to both questions might run:

1. A capacity for a conception of the good is one of the two moral powers which every citizen has a fundamental interest in.
2. Primary goods are essential for developing and exercising these two moral powers.
3. There are certain conceptions of the good life that require the existence of privately owned businesses.[41]
4. Therefore, private ownership of productive capital is a primary good and justice as fairness should support some form of economic system that supports private ownership of productive capital.
5. If private ownership of the means of production is a primary good, then justice as fairness should permit corporate forms of privately owned businesses.

Yet this string of argument is not well reasoned. There are two main weaknesses. The first is that 3 does not necessarily yield 4: It may be empirically true that certain conceptions of the good life require the existence of privately owned businesses. However, this does not necessarily entail that justice as fairness must guarantee that these conceptions of the good can be pursued. Rawls was clear that although the point of just institutions is that a wide range of conceptions of the good can be sustained, this does not mean that just institutions should aim to sustain *all* conceptions of the good. Rawls says that it 'normally suffices that for each person there is some association (one or more) to which he belongs and within which the activities that are rational for him are publicly affirmed by others.'[42] For instance, if

[41] Shapiro, "Why Rawlsian Liberals Should Support Free Markets," 76-8.

[42] Rawls, *A Theory of Justice*, 387.

a person is a trombone player, a Catholic, and potentially an entrepreneur, it may suffice if a society provides her with the resources and opportunities to form and participate in orchestras and churches. A just society may not need to provide her also with resources and opportunities to form her own business for her to exercise her capacity for a conception of the good. Whether or not justice as fairness will do so is not determined by the fact that some people's conception of the good involves setting up privately owned business. Instead in justice as fairness, the

> 'concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible. A just basic structure and its background institutions establish a framework within which permissible conceptions can be advanced.'[43]

For our subject, this means that whether individuals are allowed to set up privately owned businesses will depend on whether the pursuit of conceptions of the good life that requires private ownership of productive capital is compatible with the two principles of justice. And we may deem they are compatible because a certain society's 'historical circumstances…its tradition of political thought and practice' make the choice of economic regimes that allow private ownership of the means of production practical.[44] In other words, although 3 does not *necessarily* yield 4, there can be circumstances that 3 would yield 4. This means that, like the case for socialism, the case for justice as fairness supporting some form of private ownership of productive capital is circumstantial and not always mandatory. We have no reason to challenge Rawls's original agnosticism.

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[43] John Rawls, *Collected Papers*, quote at 413, see also ch. 21; and Rawls, *Justice as Fairness*, 141.

[44] Rawls, *Justice as Fairness*, 139.

Now suppose we grant that the reasoning from 1-4 is contingently plausible. That is, suppose we have decided that a society's historical and social circumstances warrant trying to implement justice as fairness via economic regimes that allow private ownership of productive property. Does this mean 5 ought to follow? That is, does this mean we should also permit the corporate form? I believe the answer is no; or at least not yet. The reason is that the formation of corporations involves the establishment of some very specific private property rules. As you may recall from the previous chapter, the features of corporations include transferable shares, limited liability for shareholders, and corporate personhood. This implies that there are legal rules in place that permit the ownership of business enterprises to be broken down into shares, that these shares can be publicly traded, that shareholders can limit the financial risk they take when investing in this particular form of business enterprise, and that the corporation can be considered an entity legally distinct from its owners. To realise this set of legal rules, a society must enact a fairly complex set of private ordering laws (including laws of contract, tort, and so on). Not all economic systems that permit private ownership of productive capital must enact these laws. It may be that private ownership systems that are most compatible with justice as fairness would only permit certain forms of business enterprises and this range of forms need not include corporations. For example, these systems may only permit sole-ownership enterprises and partnerships but reject rules that lead to transferable shares and limited liability as incompatible with a just society. The point is, knowing that Rawls would endorse private ownership of productive capital does not determine that justice as fairness would permit the corporate form. We need further specifications as to what kind of private ownership regime is most compatible with

Rawlsian justice. For this reason, I turn my attention to examining two such candidate private ownership regimes in the next sections.

IV. Was Rawls right to reject Welfare State Capitalism?

As for socialism, not all forms of private ownership of productive capital regimes are compatible with justice as fairness. For instance, Rawls rejects laissez-faire capitalism because it only secures formal equality and does not guarantee fair value of the equal political liberties and fair equality of opportunity.[45] Rawls also considers two other economic regimes that involve private ownership of productive capital. The two candidates are: welfare state capitalism (WSC) and property-owning democracy (POD). Although Rawls is commonly thought to be a proponent of WSC, he, in fact, explicitly denies that justice as fairness is compatible with it and instead argues for POD.[46] The reason why I am exploring WSC here is that there is

[45] Rawls, *Justice as Fairness*, 137.

[46] Rawls rejects WSC in *Justice as Fairness*, 138-9. Even Rawls's frequent interlocutors can find the strength of his anti-WSC sentiment 'striking'. Phillipe Van Parijs expressly asked Rawls's permission so that he could quote what was to Parijs a 'most striking passage' in one of Rawls's letters to him, in which Rawls denounces WSC. The context of the letter is Rawls worries that a European Union unified by a large free and open market would lose something of value. He says:

> The large open market including all of Europe is the aim of the large banks and the capitalist business class whose main goal is simply larger profit. The idea of economic growth, onwards and upwards, with no specific end in sight, fits this class perfectly. If they speak about distribution, it is [al]most always in terms of trickle down. The long-term result of this –

some dissent about whether Rawls's rejection of WSC is valid.[47] Since the extant corporate form of business seems to thrive under many WSC societies, it is worth exploring whether Rawls was right because, if he was not, the answer to whether justice as fairness would permit the corporate form might be a more straightforwardly positive one.

Here are some salient features of WSC:

1. It allocates resources between different alternative ends primarily through markets.

2. It allows productive resources to be privately owned.

3. It allows investment decisions to be in private hands.

What we want to focus on is how WSC deal with economic inequalities:

4. Excessive inequalities in income and wealth are rectified through post-tax redistributive policies (ex post redistribution). The amount of capital that individuals bring to markets is not regulated by the state. Instead, the inequalities in wealth that result after individuals' market interactions are mitigated by tax and transfer schemes. Therefore, although income inequalities are minimised, substantial inequality in the ownership of productive capital is allowed to remain.

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which we already have in the United States – is a civil society awash in a meaningless consumerism of some kind.

This letter is reprinted in Phillipe Van Parijs, "Three letters on The Law of Peoples and the European Union," *Revue de Philosophie Economique* 7 (2003): 7-20.

[47] See for instance Martin O'Neill, "Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition.

So why is WSC objectionable from a justice as fairness point of view? In Rawls's own words,

> Welfare-state capitalism…rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands. And although, as the name "welfare-state capitalism" suggests, welfare provisions may be quite generous and guarantee a decent social minimum covering basic needs, a principle of reciprocity to regulate economic and social inequalities is not recognized.[48]

In short, this formidable charge sheet argues that WSC fails all three key elements of justice as fairness. It fails the basic liberties principle because, although there are equal basic political liberties under WSC, large inequalities in ownership of productive capital mean there is no 'fair value' of the political liberties. WSC also violates the fair equality of opportunity principle because it does not do enough to combat intergenerational transmission of wealth, which means that unequal family circumstances will lead some individuals to enjoy substantially better opportunities than others.[49]

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[48] Rawls, *Justice as Fairness*, 137-8.

[49] Richard Krouse & Michael McPherson, "Capitalism, 'Property-Owning Democracy,' and the Welfare-State, in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 1988): 88-9.

Finally, WSC fails the difference principle. This is because the difference principle is supposed to express a form of reciprocity. In Rawlsian terms, reciprocity is

> a relation between citizens expressed by principles of justice that regulate a social world in which all who are engaged in cooperation and do their part as the rules and procedures require are to benefit in an appropriate way as assessed by a suitable benchmark for comparison.[50]

In justice as fairness, the difference principle is the 'suitable benchmark for comparison'. Rawls makes a special point to note that reciprocity is owed to the least well-off. He argues that the least advantaged are not to be regarded as 'objects of our charity and compassion, much less our pity', but that reciprocity 'is owed as a matter of political justice among those who are free and equal citizens'.[51] A WSC society is unable to extend reciprocity to the least advantaged because, although it is able to meet their basic needs, wealth transfer that is achieved via ex post redistribution can lead to the least well-off seeing themselves, as well as others viewing the least well-off, merely as passive beneficiaries of welfare and not as free and equal citizens. This then violates the difference principle as an expression of reciprocity because the least well-off in WSC societies, being perceived by themselves and by others as passive participants, will be 'prevented from being drawn into the public world and seeing themselves as full members of it'.[52]

The problem with this charge sheet is that Rawls may have overshot the mark in his complaints against WSC. When Rawls criticises WSC, he may have in mind WSC

[50] Rawls, *Justice as Fairness*, 49, note 14.

[51] Ibid., 139.

[52] Ibid., 130.

societies as they exist, rather than WSC societies as they could be. So it is possible that his criticisms will be dulled in societies where WSC is properly implemented according to Rawlsian principles of justice. Some of the policies he is in favour of under POD are in fact also compatible with WSC as a model system, even if existing WSC societies do not implement them.[53] For instance, Rawls considers strategies such as campaign finance restrictions and regulating the freedom of corporate political speech under POD in order to better insulate politics from economics. There is no reason to think that these policies are incompatible with a model WSC. If they are implemented, the extent to which a model WSC society violates the fair value of political equality will be less than that of existing WSC societies. Rawls also overlooks the possibility that inheritance tax schemes are compatible with model WSC. If implemented, such tax schemes can mitigate the intergenerational transfer and wealth and better ensure fair equality of opportunity. Furthermore, Rawls underestimates the extent of some WSC policies. If Rawls is willing to concede that WSC can have quite generous welfare provisions, there is no reason to think that WSC needs to limit itself to providing basic needs. If model WSC enacts basic income schemes, then most individuals will have wealth to afford training and education, which would mitigate the effects of initial unequal skill endowments. Combined with inheritance tax, which mitigates the effects of unequal family background, this means there is little reason to think that model WSC will fail the fair equality of opportunity principle in a substantial way.

[53] Rawls, *Justice as Fairness*, 148-50. See also Martin O'Neill, "Liberty, Equality and Property-Owning Democracy," *Journal of Social Philosophy* 40:3 (2009): 387-8.

However, although model WSC can meet the requirements of the principles of justice better than Rawls deems it able, there may still be reasons why it is inadequate. For one, even under model WSC, although income would be more equally distributed, concentrated ownership of the means of production is still permitted. This means that the risk of elite control of investment decisions is still possible. And, as we saw in the last chapter, Charles Lindblom pointed out that the problem with a business elite controlling investment is that it can easily lead to the same elite dominating politics.[54] And reforms, such as campaign finance restrictions or restrictions on corporate free speech, simply will not be effective enough to curb this business elite's power. Furthermore, model WSC will still rely on ex post redistribution mechanisms to regulate inequalities in wealth; this means that the problem of reciprocity will remain. It seems then that there are valid reasons for Rawls to reject WSC, even if it is implemented correctly. So how does a POD fare by contrast? Is POD really superior to WSC? I turn to examine this economic system in the next chapter.

Conclusion

Let me sum up my arguments thus far. I have argued that we cannot use freedom of association to truncate the investigation of whether justice as fairness will permit the corporate form because corporations are not like other private associations. To allow

[54] Charles Lindblom, *Politics and Markets: The world's political–economic systems* (New York: Basic Books, 1977): 171.

corporations to form, the state needs to put in place certain rules regarding private property. To determine whether states ought to enact and enforce such property rights, we must first ascertain what kind of economic system Rawlsians should endorse – whether there ought to be private or public rights to the means of production. Some have argued that Rawls should mandate socialism, whilst others have argued he should mandate private ownership of productive capital. Were the socialists right, then we must conclude that justice as fairness does not permit the corporate form. However, I have found no reason to conclude that Rawls's original agnosticism between a permissible range of private and public ownership regimes was misguided. Furthermore, even if Rawlsian social justice is compatible with some forms of private ownership of productive capital, this does not mean that it would automatically permit the corporate form. This is because the formation of corporations requires a set of complex private ordering rules to be in place and there is no reason to assume that a private economic regime that is compatible with Rawlsian justice would establish such a set of rules. To find out whether it would, we need to know more about the kind of private regimes that justice as fairness would favour. Here, I rejected WSC because, although Rawls was overly critical of it in his original assessment, he is ultimately correct in arguing that it is not an economic system that would be compatible with the two principles of justice. To find out how corporations would fare in a theory of justice, we need to look at other private ownership regimes. I turn my attention next to PODs to see whether they are truly compatible with justice as fairness and, if so, whether they would permit the corporate form.

Chapter 4

Property-Owning Democracy and Corporations

In the last chapter, we saw that there are no compelling reasons to reject Rawls's agnosticism between economic systems that favour private or public ownership of productive assets. We did conclude, however, that this is not completely unproblematic for the corporate form because the economic system in which they commonly operate – namely, a welfare state capitalist (WSC) one – may not be compatible with the two principles of justice. Furthermore, this incompatibility holds even if we based our evaluation on a model WSC system. It seems that Rawls's rejection of WSC is justified. But what about the economic system he prefers, that is, property-owning democracy (POD)? Does it really realise the two principles of justice better than other economic systems? And if so, what implications does this have for the corporate form?

In this chapter, I examine four models of POD. In Sections I and II, I look at two more conventional models of POD: first, at Thad Williamson's, then at John Roemer's. These are conventional models in the sense that their focus is mainly on the wide dispersal of ownership of productive assets. Specifically, their main concern is one aspect of ownership, namely, the economic benefit derived from ownership of productive assets and how this can be more equally spread across

individuals in a society. Due to this focus, these PODs are likely to overlook the fact that individuals are incentivised to give priority to their private consumption preferences when they exercise their control over productive assets. This kind of behaviour will often result in economic decisions that are not in the interests of the wider public. In Section III, I will argue that we can look at this problem of conventional PODs as one to do with difficulty in addressing market failures and I suggest some ways to overcome them. I conclude that the solutions may require changes to the corporate form, in particular, to the limited liability privileges it currently enjoys and so at this stage in the argument it appears that the corporate form may not be compatible with a Rawlsian version of POD.

This, however, does not spell the end of our inquiry into whether or not the corporate form is compatible with POD. I believe that there are better ways to alter POD schemes so as to mitigate the influence of individuals' private consumption preferences on decisions about the use of a society's productive assets. In Section IV, I will argue that this ought to be done by distributing different aspects of property ownership in different ways. To understand how this could be achieved, we first need to come to a better understanding of the different aspects of property ownership, specifically, we need to examine ways in which the rights to benefit from ownership of productive assets can be separated from the rights to control these assets. Once we grasp that different aspects of ownership can be unbundled, we can design POD schemes that distribute rights to benefit from and rights to control productive assets to different agents in ways that limit the influence of private consumption preferences on control of productive assets. Such a solution is pertinent to our interest in corporations because, as we saw in Chapter 2, the separation of ownership

(or, more specifically, the rights-to-benefit aspect of ownership) and control is a defining characteristic of corporations. Therefore, instead of being incompatible with the corporate form, POD schemes may actually be able to take advantage of it.

In Sections V and VI, I detail two other POD schemes, each with a different approach to separating control rights from benefit rights. Gar Alperovitz's Pluralist Commonwealth resolves the issue largely by centralising control over a society's productive assets, whilst maintaining a wide dispersal of the benefits flowing from these assets. Citizens in Alperovitz's POD have equal rights to benefit from the means of production but control over how these resources are used resides in democratically-elected bodies at the community and at the national level. The other POD scheme – Corporatist POD – takes a more decentralised approach when attempting to shield a society's economic decisions from private consumption preferences. As in other POD schemes, in a corporatist POD, ownership rights to benefit from productive assets remain private and are widely dispersed. Yet instead of giving control rights to each individual or to central democratically-elected bodies, a corporatist POD favours the formation of secondary associations, each representing a major segment of a society's economy. Economic decisions are then made by public deliberation and reasoned agreements through various rule-making forums among the relevant associations. I believe Rawlsians have more reasons to favour a corporatist POD than a Pluralist Commonwealth. This is good news for the corporate form. In Section VII, I argue that if the governance structure of corporations is modified so that they become stakeholder democracies, then this would help to achieve the aims of a corporatist POD, thus showing that corporations can have a place in a just society. Finally, in Section VIII, I check whether our final

conclusion – that the corporate form can be compatible with justice as fairness – is sound by returning to the objections raised against extant corporations in Chapter 2 and examining if the corporate form, operating in a suitably modified POD, will still face the same objections.

I. Thad Williamson's Property-Owning Democracy

Let's begin by examining what exactly a POD might entail. For a start, PODs share many of the salient features of WSC. They both:

1. allocate resources between different alternative ends primarily through markets,
2. allow productive resources to be privately owned, and
3. allow investment decisions to be in private hands.

But unlike WSC, which relies mainly on ex post mechanisms to regulate economic social and economic inequalities, PODs

4. rectify excessive inequalities through policies that redistribute the amount of capital that individuals bring to the market (ex ante redistribution). These policies may include wealth, estate, inheritance, and gift taxes to minimise

> intergenerational transmission of advantage. But the '*sine qua non'* of POD is that it aims to ensure wide dispersal in the ownership of productive capital.[1]

What though are the specifics of this economic system? Rawls's vision for POD is that government would be engaged in macroeconomic planning, regulation of economic institutions, establishing market rules, and implementing resource transfers. And although Rawls assumes that the economy in a POD needs to be successful in terms of more conventional measures (such as providing full employment, lifting the standards of living of the least well off over time, and so on), the primary aim of governmental economic activities is not to maximise economic growth or to maximise utility. Rather, governments of PODs should aim to ensure that capital is widely distributed and that no group is allowed to dominate economic life. A stiff inheritance tax is envisioned by Rawls to be the principal mechanism by which large accumulations of capital are to be diluted over time.[2]

Yet, beyond this sketch, Rawls was not more forthcoming in details. There is no prospectus specifying the detailed architecture of a fully functioning POD. In order to assess whether POD is better than WSC, we need some idea of what a fully realised POD is like. And if POD is better than WSC, we need these details to answer the question of whether POD would permit the corporate form. Fortunately, some recent commentators have attempted to fill in this gap. These recent versions

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[1] Martin O'Neill, "Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition.

[2] John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass: Harvard University Press, 2001), 139-40 and 158-62.

of POD tend to argue for not just 'wide' but universal distribution of capital. One of the earlier versions of a Rawlsian POD was put forward by Bruce Ackerman and Anne Alstott.[3] Writing in 1999, they advocated that all young adults should receive a one-off capital grant of $80,000, which would be funded by strong inheritance taxation. However, this scheme and others similar to it that gives all adults a basic capital grant have been criticised. The main worry is about 'stakeblowing'. That is, individuals will squander their capital grant through imprudent spending or unlucky investments very quickly.[4] Stakeblowing is a particularly real risk because the grant is given to young adults, who would be more prone to 'youthful short-termism'.[5]

As a remedy Thad Williamson has recently put forward a more sophisticated POD model. His is perhaps the most detailed and most explicitly Rawlsian POD model to date. Williamson's vision is to implement a full-blown POD, in the context of contemporary United States, over the course of the next 20 years.[6] His main contention is that all households (defined as two adults) can be provided with access

[3] Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, CT: Yale University Press, 1999). James Meade put forward an even earlier version of POD, which is non-Rawlsian since it preceded the publication of *A Theory of Justice*. In fact, Rawls borrowed the phrase 'property-owning democracry' from Meade. James Meade, *Efficiency, Equality, and the Ownership of Property*. (London: George Allen and Unwin, 1964).

[4] Stuart White, "Basic income versus basic capital: can we resolve the disagreement?" *Policy and Politics* 39:1 (2011): 75-6.

[5] Philippe Van Parjis, *Real Freedom for All: What (if anything) can justify capitalism?* (Oxford: Oxford University Press, 1997): 46-7.

[6] This and subsequent quotes in the paragraph are from Thad Williamson, "Realizing Property-Owning Democracy: A 20-Year strategy to Create an Egalitarian Distribution of Assets in the United States," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition.

to real assets of US$100,000 by a relatively modest redistribution of existing wealth held by the top 1 per cent wealthiest Americans without requiring 'draconian levels of taxation even of that group.' The $100,000 in net assets that each household should have will consist of three types of capital: housing (real estate), cash (savings), and productive capital (stocks). Williamson divides the assets thus: each adult in the household should have US$50,000 of assets. US$10,000 of this is for housing acquisition; US$20,000 is in cash assets (US$15,000 in an unrestricted fund, US$5,000 in restricted emergency fund); and US$20,000 in ownership of productive capital (US$10,000 in unrestricted investment capital, another US$10,000 will consist of non-tradable stock coupons).

Since the details of productive capital ownership have a direct bearing on our question of whether PODs would permit the corporate form, it is worth looking at this aspect of Williamson's scheme more closely. The details of the US$20,000 he assigns to each adult for stock-holding are as follows: Individuals would be allowed to use half of that sum to invest in much the same ways as private investors do now. This half of the fund is intended for investment in productive business enterprise of some kind. It is intended to underwrite either the individual's own entrepreneurial activities or relatively high-risk investment decisions. Conversely, the other half of the fund's aim is conservative. It is there to guarantee each individual a non-losable stake in productive capital. Individuals will be issued coupons with which they can buy shares in a number of publicly owned mutual funds. Individuals can shift these coupons from one public fund, thereby preserving the incentive for each fund to perform, but they will not be able to cash out these coupons. This fund would also not serve as a vehicle for speculating on stock prices.

Since individuals under Williamson's scheme hold a diverse portfolio of assets, the scheme is able to avoid the full force of the "stakeblowing" critique. Not only are individuals less vulnerable to losing all property should the value of one kind of their assets go down, the restricted access to part of their cash and productive capital also means that they are less able to squander their endowment. But how does POD fare when compared to WSC? As we saw in the previous chapter, Rawls perhaps overestimated the extent to which WSC would be incompatible with justice as fairness because his criticisms against WSC are mostly targeted at existing WSC societies. However, WSC can be modelled more closely on justice as fairness and, if so, it need not be as unjust as Rawls surmises. However, as we saw in the previous chapter, while model WSC is mostly compatible with the two principles of justice, there were two remainder concerns. One was it permits productive capital to be concentrated in the hands of a few. The risk of this is we may end up with a business elite which dominates politics. By ensuring wide dispersal of productive capital, it seems that POD is better able to insulate the political sphere from business elites. However, this superiority of POD over WSC should be qualified because although productive capital would be more equally distributed in POD, it is still possible that some will be relatively wealthier than others. Hence, it is still possible that this relative wealth will translate into greater political influence for some. Yet, I think it is still possible to defend POD's superiority over WSC for two reasons. The first, reason is, since the *sine qua non* of POD is to ensure widespread dispersal of productive assets, one could therefore assume that POD societies would be more conscious of and alert to any unequal political influence due to unequal holdings of

productive capital. However, there is no reason to assume that this vigilance will always be present in POD societies.

The second and stronger reason has to do with individuals' access to credit. Banks and other creditors are more likely to lend money to individuals who own productive assets. This access to credit is important because owners of productive assets can then borrow money to purchase additional productive assets, the returns on which can be used to pay off their loans, thus starting a virtuous cycle of wealth creation. In a WSC society, since ownership of productive capital will not be evenly spread, over time, those who own productive capital will be able to accumulate more wealth and at a faster rate than those who own less or no productive capital because of their greater access to credit. By contrast, in a POD, since ownership of productive capital would be widely dispersed, this uneven access to credit would be less pronounced. As a result, over time, wealth inequality in a WSC society would grow faster between those with less or none and those with more productive capital than it would in a POD. This supports the claim made before that difference in relative wealth will be less prone to undermine equality in political liberties in PODs than in WSC societies.

The other remainder complaint against WSC was that the least well-off are only passive beneficiaries of welfare and their standing as free and equal citizens is not respected in WSC; this violates reciprocity. To fully answer whether POD can do better than WSC in this regard, this complaint needs some unpacking because reciprocity can be interpreted in at least two ways, each with a different

interpretation of why the existence of passive beneficiaries is bad. The first way understands the relationship between reciprocity and justice in this way:

> Each person who benefits from the contributions of others in a cooperative enterprise in which that person participates owes something to those other contributors, and they, for the same reason, owe some-thing to the individual, but only insofar as that individual is a contributor.[7]

If this is how we understand reciprocity, then since the least well-off are not contributors to economic production and are only passive beneficiaries, they thus violate the demands of justice. However, if we understand reciprocity in this way, then we are faced with the problem that a POD scheme like Williamson's also violates reciprocity in this sense. Since the distribution of cash and capital assets in his scheme is not conditional on any individual adult's ability to contribute, it allows people to benefit from the fruits of social co-operation without contributing to that co-operation themselves. Therefore, Williamson's POD, like WSC, also violates reciprocity.[8]

I bring this reciprocity interpretation of the passive beneficiaries critique up because prominent critics have attributed to Rawls such an understanding of reciprocity.[9] If

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[7] This corresponds to justice as fair reciprocity in Allen Buchanan, "Justice as Reciprocity versus Subject-Centered Justice," *Philosophy and Public Affairs* 19:3 (1990): 227-252, at 229-30.

[8] Similar objections have been raised against other unconditional distributive schemes, such as unconditional basic income schemes. For such an objection, see Colin Farrelly, "Justice and Citizens' Basic Income," *Journal of Applied Philosophy* 16:3 (1999): 283-96. For replies, see Van Parijs, *Real Freedom for All*, chapter 4; and Catriona McKinnon, "Basic Income, Self-Respect and Reciprocity," *Journal of Applied Philosophy* 20:2 (2003): 152-5.

[9] See for instance Buchanan, "Justice as Reciprocity versus Subject-Centered Justice," 227-52; and Brian Barry, "John Rawls and the Search for Stability," *Ethics* 105:4 (1995): 874-915.

they are right, then POD advocates should be concerned that their proposals may not be in keeping with Rawlsian justice. Yet, I think this interpretation need not be too troubling to Rawlsian POD advocates. For one, it is disputable whether this is the best characterisation of Rawls's works.[10] For another, despite the fact that Rawls himself casts the problem as one to do with reciprocity,[11] I believe that there is a way to recast the criticism against WSC without first resolving the more controversial issue of what reciprocity implies in justice as fairness. Instead, we can argue that the reason why the existence of passive beneficiaries is problematic in WSC is because illustrates that WSC cannot provide individuals with the social bases of self-respect. We saw in the previous chapter that self-respect can be taken in two ways: appraisal self-respect and recognition self-respect. To briefly recap: The former is a matter of thinking positively about one's ability and value; the latter is an attitude of having self-worth, which is derived from a recognition that one has equal status as citizen. We concluded in the previous chapter that Rawlsians need not mandate an economic system that involves public ownership of productive

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[10] It is perhaps an uncharitable view. It is an uncharitable interpretation because a well-known weakness of such a view of reciprocity – sometimes called justice as mutual advantage – is that it fails to track our intuitions with regards what we owe to people who cannot contribute and benefit others, in particular, people who are severely disabled. There is some textual evidence to plausibly support the argument that Rawls does not intend to exclude the disabled from the purview of justice as fairness. See for instance, John Rawls, *Political Liberalism* (New York: Columbia University Press), 272, note 10; and his *Justice as Fairness: A Restatement*, 139. In any case, in light of the criticism from reciprocity as mutual advantage, defenders of Rawls have tended to downplay the importance of reciprocity as mutual advantage in Rawls and have instead emphasised Rawls's commitment to equal respect for moral persons. This latter corresponds with what Buchanan calls 'subject-centred justice'. See for instance Harry Brighouse, "Can Justice as Fairness Accommodate the Disabled?" *Social Theory and Practice* 27:4 (2001): 537-60.

[11] See Section IV in Chapter 3.

capital, such as a market socialist economy, in order to ensure individuals have the SBSR in either sense of self-respect. Yet, this does not mean that all private ownership systems can also deliver SBSR. WSC is the case in point: Its emphasis on ex post redistribution is likely to lead to recipients of welfare being unable to value their abilities or to recognise their equal status as citizens. By contrast, POD seems to fare better than WSC in this respect because POD seems more celebratory of entrepreneurialism and more welcoming of individuals using their own assets to make whatever they wish of themselves. In contrast to WSC, where it is likely that the worst off will be perceived as passive recipients of post tax benefits, the worst off in a POD society are more likely to have a chance to use capital to participate in and shape the market economy and, thus, are more likely to be treated as active agents in a social scheme of cooperation. As a result, they are more likely to have the SBSR in a POD.

Yet, despite this seeming advantage of POD over WSC, we might question the degree of control individuals actually have over productive assets, and hence the extent to which they are active participants in shaping the economy. Recall that Williamson assigns to each individual US$20,000 in ownership of productive capital, half of which is in unrestricted investment capital, and the other half in non-tradable stock coupons. Although individuals are afforded a degree of freedom in entrepreneurial activities with the US$10,000 in unrestricted capital, it may only be true that individuals are participating actively in the market economy if they are actually investing this sum in a business enterprise of their own. It is more likely that most individuals, because of demands on their time from other activities and endeavours, or their attitudes towards risk, or their skill set, and so on, will not set

up their own business enterprise. Instead, they will combine that US$10,000 of unrestricted funds with the other US$10,000 and invest them all in stocks in corporations. The problem with such a result is that, as we have seen with existing corporations in capitalist societies, stockholders seldom exercise any significant control over a company's decision-making processes. Instead, decision-making control rests with a corporation's managers. If this is also what would transpire in Williamson's POD, then the claim that individuals in PODs are more active participants, and hence have more SBSR, is overblown.

However, in defence of PODs, we must consider whether this sort of managerialism – when managers systematically dominate over shareholders and employees in corporate governance – is likely to take hold in a model POD. Just as Rawls's criticism of WSC are unfair because they were based on what extant WSC societies are like and not on model WSC, we should consider whether model PODs are able to overcome the kind of managerialism that plagues extant corporations. And fortunately for PODs, it seems that managerial dominance over stockholders is not a necessary feature even in existing WSC societies. Peter Gourevitch and James Shinn recently did an extensive study of corporations operating in 39 countries.[12] Their study provides strong empirical data that the structure of corporate governance is highly determined by the political structure in which corporations find themselves. In other words, whether managers, shareholders, or other groups, such as worker unions, have control of corporations is largely dependent on a society's legal policies regarding regulation of businesses and unions, and political policies

[12] Peter A. Gourevitch and James Shinn, *Political Power and Corporate Control: The New Global Politics of Corporate Governance* (Princeton and Oxford: Princeton University Press, 2005).

regarding income distribution.[13] Most pertinently for our defence of model PODs, Gourevitch and Shinn note that when workers in capitalist economies accrue productive assets in the form of stocks in pension funds, they tend to demand more control of businesses in which their pension funds have stakes. They will even put more pressure on the political apparatus to ensure that managers respond to shareholder demands. This illustrates that where productive capital is more evenly held by a larger group of people, and a large part of their wealth is tied up in corporate shares, there will be greater political pressure for companies to put in place measures that ensure management transparency and accountability. Therefore, if this is possible in existing WSC societies, then there is reason to believe that in a model POD, where there would be even greater dispersal of productive assets, individuals would be more likely to demand and gain control over managers. Thus, the claim that individuals would have more SBSR because they would be more active participants in a POD economy can be sustained.

[13] Although this does not seem a radical conclusion, Gourevitch and Shinn's thesis does stand in contrast to traditional theories in corporate governance. There is a large body of work in corporate theory that maintains that there are class fault lines that are not usually crossed. For instance, taking their cue from the classic work on corporations of Berle and Means [discussed in Chapter 2; see Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Harcout, Brace and World, 1932)], the agency problem in the relationship between shareholders and managers is often treated as intractable by many theorists. Instead, Gourevitch and Shinn discover that, given the right political environment, different alliances form – sometimes managers work together with shareholders, at other times, shareholders ally with workers, and still other times, workers unite with managers. The significant finding of Gourevitch and Shinn is that the corporate structure does not necessarily give rise to conflicts of interest across fixed groups. What does give rise to conflicts of interest, instead, is the political environment in which corporate structures find themselves.

So far, we have shown that a POD, like Williamson's, does indeed fare better than model WSC when it comes to the two principles of justice. How does this preliminary conclusion affect our main concern – corporations? It seems this verdict is good news for corporations. If all POD schemes are similar to Williamson's, then it seems POD would permit the corporate form of business. Recall the four features of corporations discussed in Chapter 2: corporate personhood, limited liability, transferable shares, and delegated management. Nothing in particular in Willamson's POD scheme forbids these features. For instance, given that a scheme like Williamson's makes provision for individuals to hold stocks in companies, it is clearly not envisioned that features such as transferable shares and limited liability are impermissible. After all, these features make it possible that stocks can be publicly traded. And, since all individuals have rights to productive capital, it is likely that ownership of public companies will be even more dispersed under POD than under extant WSC. To be sure, like under model WSC, one would expect POD schemes to put in place policies that would insulate politics from economic influence. So although corporate personhood is permissible, the rights of corporate speech may be more limited than they are now in existing WSC societies, for instance, in the United States. Yet, by and large, it seems the corporate form as we know it will be permitted by this version of POD.

II. John Roemer's Coupon Socialism

So have we got an answer to the question we set out to answer? That is, if POD is the best economic scheme for realising justice as fairness, and it permits the corporate form, does it mean that justice as fairness permits the corporate form? Unfortunately, I believe Rawlsians should be wary of this compatibility between POD and corporations. Although a POD like Williamson's is better able to mitigate the effects of wealth on politics and is more able to provide the individuals with the SBSR than a model WSC, we also saw in Chapter 2 that corporations tends to lead to business decisions that are bad for society. Managers can use transient shareholder ownership and the risk of capital flight as excuses to only make business decisions that aim at profit maximisation. This means that, when they make business decisions, managers can tend to ignore any possibilities of creating negative externalities. Potentially, this could mean that business decisions are more likely to not be to the greatest benefit of the least-advantaged members of society. Therefore, even if POD schemes, such as Williamson's, fare better than WSC, the fact that they require little change to the corporate form beyond perhaps restricting corporate free speech should make us consider whether we need to further examine PODs. Perhaps we need further specifications before we can claim that POD is the best economic system for realising Rawlsian justice.

I believe, as they stand, POD schemes are under-specified because their primary focus on wide dispersal of ownership of productive capital is not enough. To see why this is so, we should look to a regime that has even stricter guarantees than

Williamson's POD that productive capital will be widely dispersed. I have in mind John Roemer's Coupon Socialism. Although Roemer himself did not see his scheme as a model of POD, others did.[14] Also, even though it is called a version of socialism, unlike most socialist arrangements, Roemer's scheme does not favour direct control of firms by the state. He also sees the traditional link between socialism and public ownership of the means of production as tenuous.[15] Roemer also rejects labour-managed firms and, like a Rawlsian POD, his scheme is pro-market.[16] Here are seven key features of Roemer's Coupon Socialism:

1. Labour and consumer product markets are free to set prices, subject to similar regulatory devices that have prevailed in capitalist societies.

2. Each adult citizen are issued an equal number of coupons which can be used to purchase stocks in enterprises directly, or to purchase mutual funds or related indirect investment products. Owning a share of the firm entitles the citizen to a share of the firm's profits.

3. Citizens cannot use money to buy or sell these coupons. However, they can trade shares in some firms for shares of other firms at coupon prices. Thus prices on the coupon stock market will oscillate as they do on a regular stock market

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[14] David Schweickart classified Coupon Socialism as a form of POD and Thad Williamson explicitly says he modeled the distribution of stock holdings part his POD scheme on Roemer's Coupon Socialism. David Schweickart, "Property-Owning Democracy or Economic Democracy?" in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition. Thad Williamson, "Realizing Property-Owning Demcracy," Kindle Edition.

[15] John Roemer, *A Future for Socialism* (Cambridge, MA: Harvard University Press, 1994): 20.

[16] Roemer, *A Future for Socialism*, 122-3 and John Roemer, *Equal Shares: Making Market Socialism Work* (London: Verso, 1996).

4. These coupons are not inheritable. Coupons are forfeited upon death and new coupons will be issued to each new generation of adults.

5. Enterprises cannot raise capital through issuing new stock. Instead, they will obtain capital from banks.

6. These capital-providing banks are predominantly owned by states but will be insulated from political currents so that they can operate in an economically rational manner. These banks will monitor firms' management to ensure that they do not engage in poor investments or in self-dealing.

7. The state will not intervene in the price of individual capital goods but it will seek to direct capital away from certain sectors by altering interest rates charged to lending in various sectors. For instance, lending to industries that cause pollution will be charged a higher interest rate than lending to those that do not.[17]

Like Williamson's version of POD, Roemer's Coupon Socialism is not hostile to the corporate form. In fact, all major firms under Roemer's Coupon Socialism are joint-stock corporations. The only difference is, unlike joint-stock corporations under WSC or Williamson's version of POD, shares in these firms cannot be purchased or sold for money. As in a capitalist economy, the value of shares in Coupon Socialism will vary over time, depending on how each firm performs, and thus the value of each individual's portfolio will also vary over time. However, there are at least four reasons why Coupon Socialism is better able to ensure that productive capital will not be concentrated in the hands of a few. First, because shares in companies cannot

[17] Ibid., 49-50.

be liquidated, unless every company that an individual has stocks in goes bankrupt, everyone will always have some income from dividends. Second, since individuals cannot dispose of their coupons as freely in Coupon Socialism because coupons are not fungible for other goods, this prevents the disadvantaged from selling their shares in productive capital prematurely to the rich in order to obtain cash. Third, since it is forbidden for some to buy additional shares even from others tempted to sell theirs, ownership of productive assets will remain widely dispersed and relatively equal. And lastly, because everyone's stock portfolio is returned to the public treasury at their death, it is very unlikely that ownership of productive assets will become concentrated across generations.

Does this guarantee of wide dispersal of ownership of productive capital mean that corporations under Coupon Socialism can avoid the charge that they are attracted only to short-term profits, are 'externalization machines', and often make decisions that would be in violation of the difference principle? Roemer believes it does. He thinks that since all adult citizens share ownership of firms, business decisions should be more responsive to the public good and will produce less 'public bads'.[18] In fact, Roemer believes business decisions are likely to be made to the greatest benefit of the least advantaged. He reasons that, whereas in capitalism only a few own the firms, in Coupon Socialism, the many 'poor will be the controlling group in most firms, as they own the majority of coupons in society. Thus, the firms will choose their levels of investment in the interests of the poor.'[19]

[18] Roemer, *A Future for Socialism*, 65-6.

[19] Ibid., 68.

Unfortunately, things may not be quite as rosy. The reason is that corporations under Coupon Socialism have little incentive to be responsive to their shareholders. Feature number 5 of Coupon Socialism – that firms cannot raise capital by issuing new stock – means that capital is only supplied by predominantly state-owned banks. Thus, firms do not have to worry that if they are indifferent to current shareholders' interest, they will find it difficult in the future to find buyers and raise capital. This effectively eliminates any incentive firms have to be attentive to the interests of their coupon-shareholders. So although all adult citizens have an equal share in productive capital in Coupon Socialism, they have no effective way to exercise control.

What if there are mechanisms to circumvent this problem? Perhaps we can tie corporate managers' pay to the firm's share price. Or we can tie bank managers' pay to the share price of the debtor firms to which they are in charge of lending. Yet, if these are successful, then we expose a more fundamental flaw in Coupon Socialism. If firms can be made to be responsive to the interests of their coupon-shareholders, then firms will not be, as Roemer claims, prone to make business decisions based on the public good, nor will they be to the greatest advantage of the worst off. Instead, firms in Coupon Socialism will be incentivised to pursue strategies that will maximise profit in the short-term. In fact, if they are made responsive to coupon-shareholders, they would be more likely to do so than firms in existing capitalist economies would. The reason stems from features number 3 and 4 of Coupon Socialism – that shares are not fungible for cash or other commodities and that they are forfeited at death and cannot be bequeathed. In both a WSC and a Coupon Socialist economy, shareholders' consumption preferences vary and they will

change over time. At some point in time, some shareholders will require immediate liquidity, for instance, paying for a holiday, or buying a car. In a WSC society, those shareholders who require liquidity can simply sell their shares to others whose need for cash is less immediate. In a Coupon Socialist society, shareholders cannot do so. They cannot sell their shares for cash; their liquidity comes from the income they get from the dividends derived from their coupon-shares in firms. Thus, those WSC shareholders who require immediate liquidity have less incentive to pressure companies' managements to operate in ways that maximise short-term profit, unlike their counterparts in Coupon Socialism. Shareholders in Coupon Socialism are more likely to do so because if their firm generates more short-term profits, they will have more immediate liquidity. This tendency is compounded by the fact that shares are forfeited at death. Since they cannot bequeath their shares, nor can they sell them for cash, the only way for older shareholders to benefit personally from their shares is to secure short-term cash dividend payments. The same argument also applies to the poor. The poor are the social group that has the highest demand for immediate liquidity. Under Coupon Socialism, they would be the group most likely to exert pressure on management to make business decisions that milk short-term profit.

Roemer's claim that there will be fewer 'public bads' in Coupon Socialism now begins to look questionable. The incentive structure of Coupon Socialism is geared towards encouraging shareholders to milk the maximum liquidity in the shortest amount of time possible from firms. If the search for short-term profit is responsible for business practices that are detrimental to the public good in WSC, such as environmentally unsustainable activities or exploitation of labour, then they are likely to be more prevalent in Coupon Socialism because every adult is a

shareholder and none of them have access to liquidity unless they pressure for more short-term dividend payouts. Thus, managers are less likely to worry about the long-term maintenance of company assets. They will be even less likely to champion projects that would be in the public's interest but would not generate much immediate profit.

So what do Roemer's Coupon Socialism and Williamson's POD have in common? And why do I think they illustrate a fundamental problem underlying POD models currently put forward? They resemble one another in simply concentrating on wide dispersal of ownership of productive capital while overlooking an equally important issue - control over productive capital. My contention is that, in an economic regime that is compatible with justice as fairness, control over a society's investment decisions regarding its productive capital must be not be tied completely to individuals' consumption preferences. Yet both Williamson and Roemer's schemes do so. The reason why there must be some separation is that the logic of an individual consumer's decision is different from that of a collective one. Here is an example from David Schweickart to illustrate the problem:

> When confronted as an individual consumer with the option of buying an eight-pack beer in disposable bottles, I might well decide that the convenience is worth the bad consequences – the effect on the environment of eight more bottles. Confronted with the same decision in a political context, however, I might decide without any inconsistency, that the convenience of disposable

> bottles is not worth the consequences, for the option now is a society without any such bottles.[20]

The conflict that gives rise to this problem is a well-known one long ago identified by Rousseau. It is the conflict between the general will of each citizen and her particular will as a private individual.[21]

The trouble for those designing POD schemes is that this conflict between the two wills does not go away even if we widely disperse ownership of productive capital. To see this, we can borrow an example from Stuart White, which is similar in form to Schweickart's example above, although it is on a larger scale and has to do specifically with investment of productive capital, rather than consumption, decisions. White asks us to

> …imagine a world in which...[there is] a sustainable and strict equality in private wealth holdings across the citizen body…Imagine now that the government introduces a policy which advances an important common good objective, e.g. some environmental objective, but the policy is reasonably expected to cause a fall in the economy-wide rate of profit. Property-owners respond by reducing investment, precipitating a recession. Government responds by withdrawing the policy. Or imagine that this scenario of recession

[20] David Schweickart, "Should Rawls be a Socialist? A comparison of his ideal capitalism with worker-controlled socialism," *Social Theory and Practice* 5:1 (1978): 14-5.

[21] Jean Jacques Rousseau, *The Social Contract*, trans. C. Betts (Oxford: Oxford University Press, 1994): 58.

> and policy retreat is anticipated in advance so that the policy never gets adopted or even suggested.[22]

So even in a society with a Williamson-type POD or a Roemer-type Coupon Socialism, if control over the investment of productive resources is still tightly tied to the particular will of private individuals, even if control is tied to *all* individuals' particular wills, that society may be flawed. Thus, POD schemes currently under consideration, such as Williamson's and Roemer's, may be only partial solutions. We can understand this better if we recall that, as a response to the concentrated ownership of productive capital in existing capitalist societies, these schemes originally recommended wide dispersal of ownership. Concentrated ownership is problematic from a justice as fairness point of view because it means that control over capitalist societies' investment decisions is vested in the hands of the few and these investment decisions reflect only this group's consumption preferences. Yet, as we have seen, spreading that ownership out in POD would not be enough. It simply means that control over investment of productive capital is tied to a bigger group of people's particular will and their consumption interests. Potentially, economic decisions in such a regime may not track the common good. Therefore, we need to revise POD systems in order to address this link between control over investment of productive resources and individuals' consumption preferences. How then can Williamson- and Roemer-type POD schemes be improved so that PODs avoid being prone to produce 'public bads' and why might this be of concern to Rawlsians? I turn to these two questions in the next two sections.

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[22] Stuart White, "The Republican critique of capitalism," *Critical Review of International Social and Political Philosophy* 14:5 (2011): 569.

III. Markets and Market Failures

One way of construing this critique about the link between private consumption preferences and investment decisions over productive assets is to see it as a critique of the use of the market mechanism in any economic system. It might be construed that way because it is commonly understood that markets are mainly instrumental for the translation of the myriad of individual preferences into information about which things are valued. So if we want to limit the influence of individuals' preferences on decisions regarding investment of productive capital then we should, so the argument goes, limit the use of markets. Yet, this is not where the solution lies. For this would be inconsistent with what Rawls had in mind. Whatever economic system – whether it involves private or public ownership of productive assets – we use to implement justice as fairness, Rawls was clear that the market mechanism should be involved.[23] Consistency with Rawls's ideas aside, construing this critique concerning control of productive capital as a critique of markets is also off the mark because we do not have to deny that the ability of markets to provide prices as a mechanism for supplying information and incentives to people in ways that coordinate their activities is a virtue. We can affirm that the market is an invaluable mechanism for efficient allocation of resources. The point of the critique regarding control is that we need to find ways to ensure that what the market reflects

[23] John Rawls, *A Theory of Justice: Revised Edition* (Oxford: Oxford University Press: 1999): 239-42.

is individuals' preferences based on their general will, rather than on their particular will. To use the example of beer bottles above, the preference for limiting the use of disposable bottles is still the preference of an individual; it is just one that reflects her commitment to the common good rather than an inclination that is entirely linked to her consumption preferences. When it comes to revisions to POD schemes, what we need is to find ways for markets to reflect more often individuals' preferences concerning the common good, rather than their narrow consumer preferences, when it comes to decisions regarding investment of productive capital.

A different way of approaching the problem, without sidelining the use of markets, is to view it as a case of market failure. We might view the problem produced by linking control over productive resources with individuals' private preferences as a problem of markets creating negative externalities. That is, as individuals go about deciding how to invest their productive assets with a view only on maximising their private benefit, this often results in economic decisions whose social costs exceed the private costs borne by the individual investment makers. Therefore, we might think that to correct this, we simply have to put in place appropriate regulations so that individuals are incentivised to take into account these social costs when they make their investment decisions. For instance, we can tax polluting behaviour, or subsidise projects that invest in clean energy, and so on. Furthermore, when it comes to corporate behaviour specifically, we can consider acting in ways sometimes described as 'piercing the corporate veil'. That is, we can suspend the limited liability rule and make the liabilities of the corporation the personal liabilities of its shareholders. With limited liability in place, if a corporation makes business decisions that impose a social cost, it may be taxed or penalised and the value of the

company's share may suffer as a result. In this case, shareholders may lose up to the value of their original investment in the company but otherwise do not suffer further losses. If we pierce the corporate veil, and a company is found liable for its activities that impose a social cost, shareholders may be held personally liable for this cost and this cost to them is in addition to any losses they face as a result of a drop in share prices. If so, piercing the corporate veil may incentivise shareholders to make sure corporate activities avoid imposing social harms.[24]

What implications do these amendments to the POD schemes of Williamson and Roemer have for corporations? I believe in the long run they will put the existence of the corporate form at risk. The reason why legal systems in existing economies pierce the corporate veil so infrequently is because, if done often, we simply nullify the corporate form. As we saw in Chapter 2, limited liability makes the corporate form possible by making investments in corporations more attractive by lowering investor risk. To briefly recapitulate: The first, more direct, way is that limited liability lowers investor risk by preventing shareholders from being personally liable for a corporation's losses. In the second, more fundamental, way, limited liability makes shares tradable. The *in personam* nature of rights and duties normally entail that, since shareholders are the owners of a company's assets, they take on the rights and duties of ownership. Limited liability allows shareholders to give up their rights to a company's assets and, in exchange, they get to limit their financial liability to the value of their shares. Therefore, if piercing the veil is used too often, or even used as a general policy to combat negative externalities, it is highly likely that

[24] Paddy Ireland, "Limited Liability, Shareholder Rights and the problem of corporate irresponsibility" *Cambridge Journal of Economics* 34 (2010): 837-856; esp 848-9.

investors will no longer find the corporate form to be a sufficiently attractive investment opportunity. And if there are other less risky investment opportunities, they will avoid putting their money into corporations.

So what is to lament if piercing the veil turns out to be bad for the survival of the corporations? Perhaps this is so much the worse for the corporate form. After all, the worry over POD schemes like Williamson and Roemer's was that we thought they are too tolerant of the extant corporate form. Existing corporations encourage control over a society's productive resources to be tied closely with private consumption preferences and, as a result, this often leads to business decisions that are bad for society. If it transpires that denying limited liability as a privilege is a key part of the solution to insulating control over a society's productive assets from individuals' private consumption preferences, then it seems a POD that is compatible with justice as fairness is unlikely to tolerate the corporate form over time. In a justice as fairness-compatible POD, piercing the corporate veil – along with other legal regulations, taxation, and subsidies – would form part of the arsenal to combat market failure caused by the close link between private consumption preferences and control over productive assets and so, in time, the corporate form will fade.

Does this mean that we can draw an end to our inquiry because we have established that the corporate form is, in the long run, incompatible with Rawls's theory of justice? I believe not. I believe there are better ways to shield control of a society's productive assets from private consumption preferences so that less 'public bads' are produced. The reason why I think measures such as piercing the corporate veil,

taxation, and so on, are unsatisfactory is that they seem to fail to capture the spirit of PODs. Recall that the key difference between PODs and WSC is the former's focus on ex ante redistributive measures. (Or we might call it 'predistribution' – a term coined by political scientist Jacob Hacker, and subsequently introduced into the popular political parlance by Labour Party leader Ed Miliband.)[25] What drives this focus is a desire for individuals to enjoy more economic agency so that they are less in thrall to the vagaries of market competition. Predistributive measures are thus designed to 'encourage a more equal distribution of economic power and rewards even before government collects taxes or pays out benefits.'[26] In other words, most of the work to be done is in equalising the economic power individuals have before they come to transact in the market. Thus, predistribution requires governments to do more than just 'mopping up after markets',[27] or 'tinkering at the edges of current market outcomes'.[28] In this spirit, the measures we discussed do not seem to be satisfactory: Piercing the corporate veil is a rule that comes into effect only after corporations have already committed a wrong and we think shareholders ought to be held liable; this seems to involve governments 'mopping up after markets'. As for taxations or subsidies that discourage or encourage certain kinds of behaviour, while

[25] Jacob S. Hacker, "The institutional foundation of middle-class democracy," in *Priorities for a new political economy: Memos to the left.* (London: Policy Network, 2011): 33-7.

[26] Ibid., 35.

[27] Jacob Hacker, "How to reinvigorate the centre-left? Predistribution," *The Guardian*,12 June 2013, accessed 11 January 2015, http://www.theguardian.com/commentisfree/2013/jun/12/reinvigorate-centre-left-predistribution

[28] Martin O'Neill, "Predistribution: an unsnappy name for an inspiring idea," *The Guardian*, 12 September 2012, accessed 11 January 2015, http://www.theguardian.com/commentisfree/2012/sep/12/ed-miliband-predistribution

they are not inconsistent with PODs, these seem to be mere 'tinkering at the edges of market outcomes.'

In the next section, I will discuss a way that shields control over productive resources from individuals' private consumption preferences that embodies more fully the spirit of predistribution that characterises PODs. To be clear, I am not arguing that all versions of PODs must shield control of productive assets from private consumption preferences in the way that I will propose before they will qualify as proper versions of PODs. Nor am I arguing that a *Rawlsian* POD must have the features that I propose. Instead, I am making the more modest claim that the proposals I will put forward are consistent with a Rawlsian POD. What is more, and crucially for my thesis's primary concern, such proposals can make use of the features of the corporate form thus rendering corporations compatible with Rawlsian justice.

IV. Two Aspects of Ownership

So what further measures can we use to amend POD schemes? The first step we need to take is to recognise that that ownership is really a bundle of rights, liberties and powers. One can break down the bundle of rights of property ownership thus: There is the *right to possess*, which is the right to exclusive physical control of the

object that one owns, coupled with a right to non-interference with that control; *the right to use*, which implies a general duty on the part of others not to use the object without the owner's permission; *the right to manage*, which implies a cluster of powers for the owner to contract with others concerning the control of and use of the object; *the right to security*, which guards the object against expropriation; *the right to capital*, which gives the owner the power to dispose, as well as transfer the title, of ownership of the object; and *the right to income*, which gives the owner the right to receive benefits derived from ownership of the object.[29]

Those concerned with distributive justice tend to be careless in their delineation of the different aspects of the rights of ownership when they discuss how private property ought to be distributed to individuals, even when they recognise that the concept of ownership of private property implies more than a monolithic set of rights. For instance, Robert Nozick wrote that memorably pithy sentence: 'My property rights in my knife allow me to leave it where I will, but not in your chest.'[30] We can construe this as an understanding on the part of Nozick that while he has the rights to use, manage, and have security in his knife, his right to possess is circumscribed because there are limits to his physical control of the knife. Nevertheless, whilst he expends much energy in defending the inference from personal rights – such as the right to one's labour – to ownership rights that are strong enough to trump claims for redistribution of wealth, he does not spend much time defending whether this trump extends across the full package of ownership

[29] A. M. A. Honore, "Ownership," in *Oxford Essays on Jurisprudence*, A. Guest ed. (Oxford: Clarendon Press, 1961): 107-47.

[30] Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974): 171.

rights. This is typical of distributive justice writers, and those who are more in favour of redistribution are no exceptions.[31]

The problem with such a monolithic view of ownership is that, sometimes, we have different distributive goals which cannot be met simultaneously if we vest the full set of rights of ownership in the same individuals. This is the problem in the POD schemes we discussed earlier: We wanted a wide dispersal of productive assets so

[31] There are exceptions: Some argue that the bundle of rights, liberties, powers, and so on, that property owners have over their goods varies to such a large degree that it makes little sense to refer to this as a single legal relation of ownership. So on conceptual coherence grounds, they advocate the disaggregation of the bundle of rights of ownership. Others argue that the more flexible a property rights package is, the greater the ability for expanding the scope of property rights to include any previously unowned factor, which will help to reduce externalities. So on economic efficiency grounds, they also argue for the disaggregation view of ownership. For the former, see, Thomas Grey, "The Disintegration of Property," in *NOMOS XXII: Property*, eds., J. Roland Pennock and John W. Chapman (New York: New York University Press, 1980): 69-86. For the latter, see, Harold Demsetz, "Toward a Theory of Property Rights," *American Economic Review* 57 (1967): 347-59.

Between these views supporting complete disaggregation, and those that models theories of distributive justice on a monolithic concept of ownership, John Christman advocates a view of ownership that separates the bundle of rights of ownership into two packages – that of rights to control the asset and rights to trade and gain an income from it. Christman argues that this bifurcated model should be adopted for all discussions of distributive justice. This is because an unbundling of the rights of ownership makes it more responsive to the different goals of distributive principles than the monolithic concept of ownership, and this two-facet model makes it a simpler and more conceptually accurate analysis of ownership than the complete disaggregation model. I agree with Christman that the rights to income and control are the two most salient aspects of ownership for distributive justice theories. However, unlike Christman, I do not go as far as to defend the more ambitious claim that all distributive justice theories ought to adopt the two-facet model of ownership. John Christman, "Distributive Justice and the Complex Structure of Ownership," *Philosophy and Public Affairs* 23:3 (1994): 225-250. The argument in that article is later expanded in John Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership* (New York: Oxford University Press, 1994).

that we achieve not only wealth equality, but also the insulation of politics from the corrupting effects of unequal wealth. We also wanted individuals to have the social bases of self-respect which can be fulfilled if they have access to productive capital because they would have the opportunity to control their economic life and would not be mere passive beneficiaries of welfare. Schemes like Williamson's and Roemer's bundled together different aspects of property ownership in order to achieve these goals. However, the side effect of these bundled schemes is that economic decisions are mostly responsive just to private consumption preferences of individuals, which can be bad for society as a whole.

I believe that were we to disaggregate the concept of ownership, we would be more likely to realise an economic system that meets the criteria of wide dispersal of productive assets; relative wealth equality to mitigate the effects of wealth on politics; and individuals having the SBSR because they have control over their economic life. In particular, I believe we need to unbundle the cluster of rights concerning benefit from ownership of the object (the rights to capital and income) from the cluster of rights concerning control over the object (the rights to possess, use, and manage). I propose that the kind of economic arrangement we should be looking for would fit this profile:

1. The right to an income and to transfer the title of ownership of productive assets will be widely and equally dispersed amongst all individuals.
2. All individuals have a claim to be democratically represented when it comes to the control over a society's productive assets.
3. However, the right to *directly* control these assets – that is, the decision-making power over where and what to invest in, what sort of contractual

relationship to form using these assets, and so on – need not be vested in the same individuals who hold the right to benefit from these assets. Direct control rights will be granted to bodies whose leaders will be democratically elected by all individuals to represent them in economic decision-making.

The method of setting up (1) and its advantages are perhaps the most straightforward. Whether we give individuals cash (as in Williamson's scheme) or coupons (as in Roemer's) to convert to productive assets, (1) should be able to ensure wealth equality and thus insulate politics from the effects of unequal wealth. The main advantage of (2) and (3) is that investment decisions can be more effectively divorced from individuals' private consumption preferences and thus more likely to avoid externalising cost. Previously, since benefit rights of ownership were tied to control rights of ownership, those who made investment decisions were those who stand to benefit financially from these decisions. Now, a wider range of economic agents' views may need to be taken into account whenever an economic decision regarding productive assets is made. Hence, (2) and (3) should help us make economic decisions that tend to be socially beneficial in the long term, rather than only profitable for individuals in the shorter term. Furthermore, because individuals' control over economic decisions is mediated through democratic bodies, their sense of justice is more likely to be engaged than in a system where they only make decisions based on how to maximise the benefit they alone get from their ownership of their productive asset.

If I am right about the profile of the economic arrangement we should aim for, then, perhaps surprisingly, the corporation may have a key role to play in our reforms. As

we have seen in Chapter 2, the corporate form is the epitome of the separation of the different aspects of ownership: Features such as limited liability and transferable shares limit shareholders' ownership rights to the right to benefit from their shares, while corporate personhood and delegated management mean that it is the firm that holds on to the corporate assets and it is managers who have direct control over how these are to be used. However, as we have seen in Chapter 2 and earlier in this chapter, the corporate form has certain bugbears. On the one hand, we need to avoid those who have benefit rights – shareholders – having primacy of control in the sense that only their private consumption preferences hold sway over business decisions. On the other hand, we also need to avoid managerialism – when the agents – managers – delegated to have control rights over decisions regarding productive assets end up exercising that control in ways that advance only the agents' interests and the principals' – the shareholders' – collective good is neglected.

Therefore, the rub is: how can we implement (2) and (3) in such ways that decisions about a society's productive assets are sufficiently shielded from individuals' private consumption preferences so that the decisions tend to be for the common good, and yet, at the same time, individuals can retain active and meaningful control over these decisions? We ruled that WSC is deficient from the point of view of justice as fairness because it can only attain wealth equality by creating passive beneficiaries. It cannot deliver the SBSR by according individuals control as active economic agents. If we modify existing POD schemes by taking away direct control over productive assets from individuals, does this not make any such modified scheme vulnerable to the same SBSR deficiency suffered by WSC? In the next two sections, we look at two different proposals. Both are compatible with the main features of a

POD and both aim to democratise control over a society's productive capital through collective bodies. However, each has a different attitude towards the corporate form. Given this difference, determining whether one or both of these proposals are successful will also give us our final answer to the question of whether a Rawlsian POD would permit the corporate form.

V. Gar Alperovitz's Pluralist Commonwealth

The first proposal we look at is Gar Alperovitz's Pluralist Commonwealth.[32] The Pluralist Commonwealth shares with the other PODs we have discussed an overriding concern to democratise wealth in the form of productive assets.[33] Like Williamson and Roemer, Alperovitz is keen to disperse the wealth from the economic returns of productive assets. However, unlike those schemes, he does not disperse control in productive assets in the same way. Instead, Alperovitz argues that direct control over productive assets should be primarily vested in agents who are most likely to return the benefits derived from those assets back into

[32] Gar Alperovitz, *America Beyond Capitalism: Reclaiming Our Wealth, Our Liberty, and Our Democracy* (Hoboken: John Wiley and Sons, 2005).

[33] Alperovitz sees his Pluralist Commonwealth as akin to POD: he has written a chapter about his Pluralist Commonwealth in a book about POD, and in a part of the book that is concerned with how to realise POD. Gar Alperovitz, "The Pluralist Commonwealth and Property-Owning Democracy," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012).

neighbourhoods, towns, cities, and then the nation as a whole. The main reason he does so is that he sees corporations as 'the very heart of the system problem' and establishing democratic bodies in whose authority rests the power to control productive assets is Alperovitz's solution to the system problem.[34] Therefore, if the Pluralist Commonwealth is able to separate successfully the right to control from the right to benefit from productive assets in a way that is compatible with Rawlsian justice, we can establish that corporations as we understand them has no place in justice as fairness.

So how does a Pluralist Commonwealth work? To realise it, Alperovitz argues that ownership – both in the sense of benefit and of control – of productive assets ought to be changed in a variety of ways and at different levels. At the national level, we ought to establish a Public Trust. Its role is precisely to deal with the challenge of large corporations. The Public Trust would place significant amounts of corporate shares under its ownership, thus making large-scale corporations accountable to the public as a whole. There should also be national trusts that own natural resource deposits, as well as state-owned banks, venture capital funds, pension funds, and insurance companies. At a more local level, Alperovitz encourages the establishment of community development corporations (CDCs), which are backed by community land trusts (CLTs) and community development financial institutions that invest in utilities and public transportations. CDCs are supposed to combine 'the community-serving mission of a non-profit organization with the wealth-building and ownership capacities of an economic enterprise.'[35] Their aim is to strengthen local civil

[34] Alperovitz, *America Beyond Capitalism*, 57.

[35] Alperovitz, "The Pluralist Commonwealth," Kindle Edition.

associations thereby maintaining both citizens' sense of having a stake in their community and local governments' capacity for decision-making. In the long run, CDCs and their support institutions are supposed to reduce the community's reliance on large economic enterprises and national level institutions. At the individual level, the Pluralist Commonwealth calls for more worker-owned and worker–controlled firms.

As we can see, the Pluralist Commonwealth's emphasis is on dispersing the returns from productive assets more evenly across society, rather than on dispersing direct control over these assets. Citizens can reap the benefits of productive assets more evenly because returns from these assets will be evenly allocated by national and community organisations. When it comes to democratising control, the Pluralist Commonwealth takes a more representative and participatory route, rather than a direct route. Unlike in previous PODs we looked at, where individuals has direct control through their choices regarding what to do with their cash and stocks (Williamson) or coupons (Roemer), individuals in the Pluralist Commonwealth rarely exercise direct control in decisions regarding productive assets. Apart from workers in worker cooperatives, most individuals only exercise indirect control through electing their representatives for the Public Trust, CDCs, and other democratic economic institutions.

How then are we to evaluate the Pluralist Commonwealth from a Rawlsian perspective? To start, we might consider whether the Pluralist Commonwealth is really a form of POD. Although it does call for wide dispersal of *private* ownership of productive assets, the Pluralist Commonwealth vests significant control of a

society's productive resources in public bodies to the extent that it might be more proper to categorise the Pluralist Commonwealth as a form of socialist system, in spite of how Alperovitz and others perceive it. To the extent that this is an accurate characterisation, the key then is for Pluralist Commonwealth supporters to show that such an arrangement is sufficiently decentralised when it comes to decision-making regarding productive asset investment, so that it will be able to avoid the information problems that plague more centrally planned economies. This is not a knock-down criticism of the Pluralist Commonwealth. If, on further inspection, it transpires that justice as fairness is better realised by a socialist or socialist-like economic arrangement, then we need to overturn the judgment made in the previous chapter about whether Rawls can afford to be agnostic between private and public ownership regimes. If so, then we can give the verdict that corporations will only have a place in a Rawlsian society insofar as their shares are controlled by public bodies. In that case, they will bear little resemblance to the corporate form as we know it today.

Before we settle on this verdict, however, it is necessary to note some weaknesses of the Pluralist Commonwealth. Recall that any separation of control and benefit rights would not be considered successful by Rawlsian criteria unless individuals can retain meaningful control. I believe there is reason to doubt that a Pluralist Commonwealth can deliver this. For one, the Pluralist Commonwealth will face the same agency problems we wanted to avoid when we discussed the possibility of managerialism in other PODs. There is a possibility of managers of the Public Trust, of the state-owned pension funds, of CDCs and so on, pursuing their own interests instead of those they ought to be representing, and thus rendering actual and

meaningful control by individuals difficult. We might ask, at this point, but what of it? We have established that we need to shield direct control of productive assets investments from private consumption preferences. This requires some form of delegated management; this means that agency problems will be inevitable. The burden for proving that such an economic arrangement is viable rests on showing that such agency problems can be largely avoided, or on showing that negative effects can be minimised, when the arrangement is implemented. We do not need to show that in theory such agency problems will never occur, to support Pluralist Commonwealth proposals. Unfortunately, there are reasons to worry that the Pluralist Commonwealth will be especially prone to agency problems and we will be hard-pressed to find a way to implement it successfully. Consider how individuals will choose managers of the Public Trust. The Public Trust is a large enterprise operating on a national level; it will be involved in many industries. Few individuals will have the time, or perhaps the ability, to assess properly which candidate manager will have the necessary expertise to do the job well. Furthermore, because it operates on such a large scale, there is a danger that individuals will simply feel that the Public Trust's impact is too remote for them to care too deeply about who manages the Trust. Asymmetrical information and voter apathy are a recipe for creating managers that manage in their own interests, or in the interest of small groups, rather than what they were tasked to do – manage for the commonwealth. One might think that such problems are less likely on the smaller community scale, which is where Alperovitz's primary focus lies. CDCs' impact on individuals' lives will have more immediacy, and individuals are more likely to have the time and knowledge to analyse properly matters on a smaller and local scale. Thus, one might think that voter apathy and lack of expertise may be less of a problem. However, if

we consider local election turnouts in the UK as a proximate indicator for what turnouts might be for CDCs, then the data is not inspiring.[36]

One might object that these are not insurmountable problems; we might implement compulsory voting to counter voter apathy, for instance. Or we might object that local elections data in the UK is an unnecessarily pessimistic guide: in a Pluralist Commonwealth, where there is wealth equality and individuals can more clearly see that society is arranged so that economic decisions are made for the benefit of all, there is more likely to be an ethos of caring about local CDCs and national Public Trust elections.

However, there are problems at the more fundamental level of theory with the Pluralist Commonwealth. The worries regarding voter apathy and lack of expertise in the Pluralist Commonwealth will be more pronounced than in other delegated management systems because the concept of community is under-developed in its theory. This is somewhat surprising given that Alperovitz envisions democratic control of productive assets to be exercised primarily at the level of communities, rather than at state level. Alperovitz understands the idea of community as 'where people live, work, and raise families.'[37] Yet, what about people who live and work, and maybe even have families, across different locales? Where are they entitled to participate in democratic elections of CDCs' officials? On the one hand, if we are

[36] Sarah Marsh, "Local elections in numbers," *The Guardian*, 19 May 2014, accessed 16 August 2014, http://www.theguardian.com/local-government-network/2014/may/19/local-elections-in-numbers-nine-facts

[37] Alperovitz, *Amercia Beyond Capitalism*, 43.

flexible about where people are allowed to participate, we risk a dilution of interest: people may not have enough of a stake in any given locale to care about participation. Furthermore, we risk misrepresentation in the democratic system because people with perhaps only a tenuous link in the community will be given an equal say with those who have more at stake. On the other hand, if we demarcate communities too rigidly, we risk creating tension between individual freedom and the value of community. People will be forced either to work and live in the same locale so their preferences regarding both these constituencies are properly represented, or they will choose to work and live in different places and give up on being represented in some places where they may have a valid claim to be represented.

We might argue that individuals are less likely to need to live and work in separate communities than they do today because there will be equal opportunities in the Pluralist Commonwealth.[38] However, while it is true that many are forced to live, work, and raise families in different locations because of a lack of economic opportunities, even in a fairer society, some people will still choose to live and work in separate places. This is simply down to individuals often having different preferences regarding what environment would make for a good home and what would for a good job. And this is not something that having fairer economic opportunities can do away with; people will always have complex tastes and habits. Plus, with advances in information and travel technology, satisfying these complex preference structures will be easier than before. Thus, the phenomenon of choosing

[38] Nien-he Hsieh, "The Values of the Pluralist Commonwealth," *The Good Society* 15: 3 (2006): 49.

to lead their work, social, and family lives in different places is not likely to abate. Given that a Pluralist Commonwealth democratises control over a society's productive assets primarily via community-based elected bodies, the fact that there may be no easy way to demarcate in a non-arbitrary way boundaries of communities in which individuals are entitled to participate is a serious problem. Until this can be resolved, I do not believe Alperovitz's vision makes a satisfactory model for a Rawlsian POD.

VI. Corporatist Property-Owning Democracy

If the Pluralist Commonwealth fails, are there further alternatives? To keep our focus, let's briefly recapitulate our aims: We want individuals to be able to share evenly the fruits that a society's productive assets generates and we want them to have democratic control over how these assets are managed and used. However, at the same time, we want to shield decisions regarding productive asset investments from the dominant influence of private consumption preferences. Put differently, we are trying to devise a way so that individuals can exercise democratic control over decisions regarding productive assets in an active and meaningful way but this exercise is filtered appropriately so that the influence of individuals' private consumption preferences are kept in check in the decision-making process. The Pluralist Commonwealth's Public Trust, CDCs, and other state economic enterprises

did not provide satisfactory filters. I will argue that a mixture of state-level corporatist democracy and company-level stakeholder democracy will fare better. My focus in this section will be mainly on the former; the latter, I will discuss in more detail in the next.

Corporatist democracy has its roots in the associational democratic theories championed, perhaps most prominently, by Joshua Cohen, Joel Rogers, and Paul Hirst.[39] The core ideas of associationalism is that voluntary, self-governing associations that are beneath state-level should be encouraged and, as much as possible, social activities ought to be organised through such associations rather than by the state. Through doing so, the state apparatus will be less complex and the mechanisms of democratic government will be more representative. Waheed Hussain has adopted these core ideas specifically in the context of POD.[40] He argues that to truly realise Rawlsian justice, a democratic corporatist POD is superior to a liberal market POD. Both kinds of POD share the key features of private ownership of the means of production, a fair education system that minimises the effects of family and class, a taxation system that breaks up large concentrations of intergenerational wealth, and so on. Where they differ, is in their use of the economic market. In a liberal market POD, individual workers and individual firms

[39] Joshua Cohen and Joel Rogers, "Associations and Democracy," *Social Philosophy and Policy* 10:2 (1993): 282-312; Joshua Cohen and Joel Rogers, *Associations and Democracy* (London: Verso, 1995); Paul Hirst, *Associative Democracy* (Amherst: University of Massachusetts Press, 1994).

[40] Waheed Hussain, "The Most Stable Just Regime," *Journal of Social Philosophy* 40:3 (2009): 412-33; Waheed Hussain, "Nurturing the Sense of Justice: The Rawlsian Argument for Democratic Corporatism," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012): Kindle Edition.

compete and contract with each other in an open market. The democratic corporatist POD, on the other hand, prefers economic relationships to be set more by secondary associations than by individuals, and more via consensual deliberations and less by competitive bargaining. To accomplish these goals, Hussain argues that a democratic corporatist POD would:

> i. [Foster] the formation of a limited number of secondary associations to represent the perspective of major segments of the [economic] population in various rule-making forums;
>
> ii. [Take] steps to ensure that changes to the rules of economic competition come about through a process of deliberation and reasoned agreement among the relevant associations.[41]

Incidentally, to avoid confusion in the following discussion about why we need to discuss whether *corporations* are compatible with a *corporatist* POD, we can see, and should bear in mind from now on, that the 'corporatist' in democratic corporatist POD denotes this economic system's use of corporatist deliberations – deliberations by relevant interest groups – and not the use of business corporations. So the question of the compatibility between business corporations and democratic corporatist POD remains.

So what would take place in practice in a democratic corporatist economy? The idea is that associations will form to represent the interests of different segments of the economy. There may be associations to represent workers and there may be

[41] Hussain, "The Most Stable Just Regime," 414.

associations to represent owners. These associations can be further distinguished by specific sectors of each segment. For instance, for workers, there can be different associations for creative talent and technical staff; or for owners, there can be associations for small business owners and large manufacturers. None of these are ideas are alien to us now. We are familiar with unions and guilds. What distinguishes a corporatist economy from what we have now is the strength of these associations and the extent to which we accord control of the overall economy to them. Instead of individuals or individual firms contracting and competing with each other in an open market, associations are expected to meet regularly in order to establish the parameters of competition between sectors and between firms. Furthermore, representatives are to establish these parameters by deliberation rather than by bargaining. That is, they are to cooperate and find standards and policies that all could accept as a reasonable framework for competition; they are not to negotiate strategically only to further their constituents' interests and position.[42] Moreover, apart from rule making, associations will also shoulder the responsibility of rule applying and compliance monitoring.

A corporatist economy should be able to shield effectively control over decisions regarding productive assets from private consumption interests. This happens at more than one level. Individuals' private interests are represented but they are filtered through associations that represent a segment of the population's interests. For instance, an owner of a small business may be represented by a guild of other small business owners. Her private interests has some influence on what that guild

[42] Hussain, "Nurturing the Sense of Justice," Kindle Edition.

chooses to negotiate on her behalf, but it is tempered because the guild also has to represent what other small business owners would also want. At a higher and broader level, private interests are further filtered: different guilds and unions have to deliberate in a consensual manner with each other to arrive at rules they can all reasonably accept. Therefore, there is strong reason to believe that we can successfully shield public decisions about a society's productive assets from private consumption preferences in a corporatist economy. Individuals in a corporatist economy will participate in layers of democratic association in ways that engage their public reasoning. As a result, in the deliberating processes within and amongst associations, people would be encouraged to alter their attitudes and limit their ends in accordance with the two principles of justice; they are more likely to curb their 'weaker impulses and temptations to act unjustly' and make economic decisions that are for the common good.[43]

Yet, we still need to show that a corporatist POD is able to ensure individuals can exercise democratic control in a suitably active and meaningful form. I believe a democratic corporatist economy would be able to achieve this in three ways. The first way has to do with the increase in the number of people involved in democratic political activities. In a WSC society, or even in a Pluralist Commonwealth, only a small fraction of society is likely to spend a significant amount of time in public life. By contrast, since it is likely there will be more secondary associations in a democratic corporatist economy than there are political parties in a WSC society or community-based enterprises in a Pluralist Commonwealth, more people will be

[43] Rawls, *A Theory of Justice*, 398.

involved in political life. Not only will there be more leadership positions available, there will also be more opportunities for individuals to be rank-and-file members of numerous secondary associations. This brings us to the second reason, which is related to the first. Since the establishment of secondary associations greatly expands the sphere of public life, there are numerous occasions for all to engage to public reasoning, plus, because secondary associations are supposed to meet and deliberate regularly, these occasions will be frequent. Finally, a corporatist POD is able to minimise political apathy. This is due to the fact that political activities in a corporatist POD revolve around work and work occupies such a central position in modern lives. Most people spend most of their waking hours at work; some even form some of their most important relationships there. Furthermore, people often structure their daily living around work and also orientate their life goals towards work in the form of careers. Thus, individuals care and have an intimate knowledge of their work environment. This means that when it comes to voting for their representatives in secondary associations, individuals will be more knowledgeable about the issues involved and thus understand better what qualities are necessary in a candidate than when they vote for national political candidates in a WSC or for managerial candidates for the Public Trust or CDCs in a Pluralist Commonwealth. And because individuals are likely to perceive that their work is more bound up with their lives than are community or nation-wide investment projects, they are less likely to be apathetic in a corporatist democracy than in other economic systems. It seems likely that in a democratic corporatist economy, the sphere of public activity will be expanded so that more people will have more numerous and frequent occasion to control economic decisions regarding a society's means of production. Furthermore, because secondary associations are organised around work, individuals

are more likely to care about participation. Hence, a corporatist POD will likely meet the challenges of both filtering the influence of private consumption preferences on decisions regarding a society's productive assets and of allowing individuals to retain active and meaningful control over these decisions. Therefore, I believe Rawlsians ought to champion a corporatist POD.

VII. Corporations and Stakeholder Democracy

So what does this mean for corporations? If the best economic system that permits private ownership of the means of production for Rawlsian justice is a corporatist POD, then I think there is room for the corporate form. While the background social and economic arrangements of a corporatist POD will differ in significant ways from extant WSC societies, the corporate form – with its typical features of transferable shares, limited liability, corporate personhood, and delegated management – may not need to be altered significantly. In fact, it transpires that the corporate form itself can be a useful vehicle for realising a corporatist POD. This is true in two respects. First, the ownership structure of corporations can be helpful in achieving the key aim of PODs, namely the wide dispersal of productive assets. Corporate ownership can be divided into many shares, which is conducive to spreading out the ownership of large business enterprises amongst individuals in a society. The main reason why stocks of corporations in existing WSC societies are

not widely dispersed has to do with the way wealth is distributed. In WSC societies, post-tax redistributive mechanisms are relied on to regulate inequality in wealth, so concentrated ownership of stocks is permitted. By contrast, PODs rely on ex ante mechanisms to regulate inequalities with the aim of ensuring that individuals enter the market with equal capital. This prevents concentrated ownership of stocks. Therefore, if the background distributive mechanisms are altered appropriately, there is no reason why the corporate form itself cannot be compatible with a democratic corporatist POD.

The second reason why the corporate form can be a useful implementation method for corporatist POD has to do with both a corporation's ownership structure, as well as the adaptability of its governance structure. With corporate personhood and delegated management, existing corporations separate shareholder owners from direct control of companies. As mentioned before, this ought to lend itself as a natural solution to the problem of insulating the direct influence of private consumption preferences on decisions regarding the means of production. However, most legal environments in which corporations currently operate, endorse shareholder primacy. This makes the shareholders' private preferences the focus of the manager's fiduciary duty and the main objective of the firm. Yet this governance directive can be changed to meet the requirements of the corporatist POD and it can be done without altering the corporate form.

Although Hussain does not mention the idea, his democratic corporatism has similar roots with a more established tradition in the corporate governance literature – that of stakeholder democracy. In Chapter 2, we briefly discussed how some in business

ethics and in corporate legal theory have argued that it is unfair that only shareholders are accorded the right to elect the board of directors of a firm. Instead, stakeholders ought also to be given control of a firm. This position should be differentiated from a weaker one in stakeholder theory that argues that managers ought to take stakeholder interests into account when they make business decisions.[44] This latter position is perhaps better called stakeholder management. Stakeholder management theory sees the manager's role as one of coordinator of different stakeholder groups' interests. And often, this is advocated on the grounds that it will ultimately be to the benefit of shareholders if managers do so, because it will be good for the profitability of the firm. By contrast, stakeholder democracy theory argues on fairness, rather than instrumental, grounds that stakeholders ought to have more direct representation in the governance of a firm.

It is important to note, however, that the grounds which I use to justify stakeholder democracy here differ from the ones we discussed in Chapter 2. There we came across some Rawlsian corporate social responsibility theorists who justify stakeholder democracy by arguing that corporations have the same relationship with society as governments do, and thus individuals belonging to different stakeholder groups should all have an equal say, just as all citizens in a state would. Here, I am arguing that if the motivation for associationalism is that more secondary associations should be fostered to ensure that individuals' interests are better

[44] John R. Boatright, "What's Wrong – and What's Right – with Stakeholder Management," *Journal of Private Enterprise* XXI:2 (2006): 106-120. For an illuminating discussion on why many stakeholder theorists are not also stakeholder democracy theorists (and why they are wrong not to be), see Jeffrey Moriarty, "The Connection Between Stakeholder Theory and Stakeholder Democracy: An Excavation and Defense," *Business and Society* XX:X (2012): 1-33.

represented, then having access to representation on more than one level seems to me to be in keeping with the aims of associationalism. Therefore, stakeholder democracy ought to work in conjunction with Hussain's democratic corporatism. Hussain's corporatist associations will work on a larger, nation-wide level, whereas stakeholder democracy will operate at the level of individual firms. These two different justificatory grounds for stakeholder democracy have different practical implications. Because the former likens all stakeholders to citizens, it has no grounds for arguing for different forms or different degrees of representation for different stakeholder groups. Employees, suppliers, consumers, and so on, are all accorded equal status, just as citizens of a state are. This makes this kind of stakeholder democracy susceptible to the common objection that it cannot give clear guidance as to which stakeholder group's interest should be given priority.[45] As a result, if followed strictly, corporations will be run inefficiently. Since my version of stakeholder democracy is not premised on such a claim about stakeholders' equal status, it is compatible with corporations giving priority to different stakeholder concerns on different issues. In fact, the very point of stakeholder democracy is precisely for stakeholder groups to come together and deliberate and to determine in whose interests the firm ought to be run in different situations. Given that there is usually an array of different business decisions and different stakeholder groups will be involved in any particular one, the directive given as a result of stakeholder deliberations will vary depending on the nature of the issue and the stakeholder group or groups involved.

[45] Robert Phillips, R. Edward Freeman, and Andrew C. Wicks, "What Stakeholder Theory is Not," *Business Ethics Quarterly* 13: 4 (2003): 485-7; Joseph Heath, "Business Ethics without Stakeholders," *Business Ethics Quarterly* 16: 4 (2006): 543-4.

This still leaves unresolved the matter of how we might decide which stakeholder group ought to have residual control of corporations. Here, I offer a brief sketch of how we might go about deciding. Interestingly, the arguments which shareholder primacy advocates put forward can be of use to stakeholder democracy proponents. Shareholder primacy advocates often put forward two related arguments for why shareholders ought to have residual control of corporations. The first is because they are the risk bearers.[46] Shareholders buy shares in return for a claim on the residual revenues of a company, which are the revenues that remain after all debts and other legal obligations are discharged. Shareholders, thus, only get a return if the company is profitable. Therefore, the argument for shareholder primacy is that since it is uncertain whether a company will be profitable, it is only fair to shareholders if the company is run primarily with their interest – that is, profit maximisation – in mind.

The second argument in support of shareholder primacy has to do with the fact that shareholders' relationship with a firm is not very 'contractible'.[47] Low contractibility occurs when the contribution one of the parties to a contract is hard to specify before it is supplied and difficult to measure after it has been supplied. This makes it difficult to be specific when a contract is being drawn up when it comes to setting terms for and defining when the relevant party has fulfilled his or her part. Because of the uncertain nature of how, if at all, managers are able to deliver profitability, it is difficult to clearly define in advance in a contract what

[46] Boatright, "What's Wrong," 114-5.

[47] Alessandro Zattoni, "Who Should Control a Corporation? Toward a Contingency Stakeholder Model for Allocating Ownership Rights," *Journal of Business Ethics* 103 (2011): 257-9.

shareholders can expect when they buy shares. Due to the uncertain nature of market transactions, if managers fail to make the company profitable, it does not necessarily mean they have performed badly. And even when the firm is profitable, this does not signify that managers have done their job well – perhaps the firm could have been even more profitable or that profitability was not due to managerial performance but rather just a strong economy. Therefore, shareholders cannot rely on legally enforceable contracts to protect their relationship with a firm. In fact, shareholder primacy theorists argue that shareholders' reliance on management's fiduciary duty towards them is their settling on a weaker, non-legal form of protection.

Yet, if granting residual control is the fairest compensation for risk-bearing and low contractibility, then shareholders are not the only group who qualify. Stakeholder groups who supply resources to the corporation that are firm specific also bear the risks of a corporation and their relationship with the firm also suffers from low contractibility. A resource that is firm specific is one that loses a large part of its value when the relationship between the supplier of the resource and the firm ceases to exist. This could be because what is supplied is tied to a specific company; or it could be because the relationship takes a long time to establish; or it could be because what is supplied is scarce and once it is supplied to a particular company, it can no longer put in the open market again. These are not mutually exclusive reasons; many relationships are firm specific because they fall into multiple categories. Here are some examples: A farmer who grows a specific crop for a particular food manufacturer; or a pharmacologist who spends years researching a drug patented to a particular pharmaceutical company; or a manufacturing plant that makes a specific car part for a specific brand of cars.

If shareholders are risk bearers because they can lose a large part or all of their investment if the corporation does not thrive, other stakeholder groups who form firm-specific relationships with the corporation are also risk bearers. Furthermore, the contractibility of their relationship with the corporation is similarly low. Consider suppliers of services and wares that are more generic. Their relationship with a corporation is generally very contractible. Each side can specify before they enter into a relationship their expectations in a clear manner: For instance, we expect delivery of goods that are of a certain quality at a particular point in time, and in return, we will pay a specified amount. And after the transaction, all parties can assess each other's performance: Were the goods delivered on time and of good quality? Was the remuneration adequate? And so on. Furthermore, should either party fail to fulfil the contract, it is a simple matter of ending repeat transactions and, since the service or goods are generic, there should be no problem finding a substitute relationship in the market. Now consider suppliers of firm-specific goods and services. There will be certain dimensions of the relationship that will seem contractible: specifiable remuneration, timely delivery, verifiable quality, and so on. However, because of firm specificity, there is a problem if a firm fails to fulfil a contract. Suppliers of firm-specific goods and services cannot so easily walk away and find a substitute in the market. There is a significant dimension in their relationship with a corporation that hinges on the corporation's continued flourishing and that dimension is not easily contractible. Therefore, the very reasons that make it fair to give shareholders residual control of a corporation also apply to some stakeholder groups and these groups ought to be given control of a corporation.

Much more work needs to be done beyond the brief sketch I have provided here on which stakeholder groups ought to have residual control. It may also turn out that, due to the varied nature of firms, it is unlikely that we can define in detail one or even a few stakeholder democratic governance models that would suit all corporations in advance. However, I hope I have done enough to show what could be done in the future and that giving systematic reasons for why certain stakeholder groups should have control is not impossible. Stakeholder democracy is not just, as one critic has charged, asking managers to play King Solomon.[48] Furthermore, I believe that not being able to give a precise answer in advance to the question of which stakeholder group should have control is not necessarily an urgent concern. This is because we must bear in mind that stakeholder democracy will be embedded in a corporatist POD economy. If we cannot form a clear template for stakeholder democracy a priori, we should trust that models will emerge through the open deliberations between secondary associations, which represent different segments of the economy in a corporatist POD. And in the meantime, individuals will not be deprived of meaningful and active control because they will be adequately represented in their memberships of secondary associations.

[48] Heath, "Business Ethics," 543.

VIII. The Corporate Form of Business Revisited

That the much-maligned corporation can be compatible with justice might seem odd to some. That it could even be instrumentally helpful in achieving a just economic regime might seem even more surprising. So that we can be sure we have not lost our way somewhere along the argument, it might be a good idea to return to the original criticisms raised against corporations in Section II of Chapter 2 to see if the corporate form, now ensconced not in an existing WSC society but in a theoretically realised corporatist POD, can overcome our initial skepticism about their compatibility with social justice.

In Section II of Chapter 2 I raised five criticisms of existing corporations that illustrate their detrimental effect on social justice. The first was the disparity between the pay corporate CEOs receive and the pay the general workforce receive. The second was the unequal bargaining power corporations enjoy over workers because corporations tend to be the dominant employers in many countries. In a corporatist property-owning democracy, with stakeholder democracy enacted within firms, both these phenomena are unlikely to eventuate. Labour should be well represented by secondary associations that take part in society-wide deliberations regarding the rules of economic competition, and workers would be an obvious stakeholder group that would be properly represented in intra-firm decision-making. The result is that workers are more likely to have equal bargaining power vis-à-vis corporate firms, and they should be able effectively to veto unfairly high compensation for executives.

The third criticism I raised in Chapter 2 is about the pernicious effect existing corporations have on the fair value of individuals' political liberties. As mentioned earlier in this chapter,[49] PODs in general, by virtue of their emphasis on wide dispersal of productive capital, should be able to counter this effect. If ownership of productive capital is not concentrated in the hands of a few, then the risk that the political sphere will be corrupted by business elites is greatly lessened.

The fourth criticism against corporations was that their form creates transient owners who only care about making profit. As a result, existing corporations tend only to make decisions that produce profits in the short-term to satisfy their transient owners but they fail to take into account the long-term negative impact their business policies might have on the wider society in general. The problem with this type of ownership structure, whereby control over business decisions are tied to the interest of those who also enjoy the benefit rights of ownership, has been explored extensively in this chapter. As we saw, a corporatist POD, together with stakeholder democracy within firms, should be able to separate the two facets of ownership rights and effectively shield business decisions from private consumption preferences. Thus, corporations in corporatist PODs should be far less likely to be geared solely towards short-term profit-making, especially if this is at the expense of long-term benefit for the public good.

[49] See Section I above.

A fifth criticism I made in Chapter 2 against corporations was that they create status inequalities by their promotion of a consumer culture. Those who are unwilling or unable to participate in the consumer society may suffer discrimination and, from a Rawlsian perspective, this is unjust because they will have unequal access to the social bases of self-respect. Unfortunately, it is difficult to say with confidence whether corporations reformed under a corporatist POD would fare better against this charge than existing corporations. If the reason consumer culture is dominant is because many existing corporations are involved in the production and distribution of consumer goods and it is in their interest to promote such a culture, then there is no immediate reason to think that under a corporatist POD this incentive will evaporate. If we are feeling pessimistic about human behaviour, we might even argue that the more civic-minded culture, which a corporatist POD should encourage, may not be strong enough to mend our acquisitive nature. However, some literature in economics does offer reason to hope. Some economists have discovered that the rise in conspicuous consumption – the kind of consumer behaviour that is most likely to lead to status inequality – is correlated to a rise in income inequality.[50] One conjecture for why there is such a correlation is that although the motivation to "keep up with the Joneses" has remained constant, most people, especially the worst off, have been losing wage share. In order to hold on to their consumption aspirations, people borrow more. As a result, they take on more debt, which in turn exacerbates the wealth inequality between the so-called haves and have-nots.[51] By

[50] Aldo Barba and Massimo Pivetti, "Rising household debt: Its causes and macroeconomic implications – a long-period analysis," *Cambridge Journal of Economics* 33: 1 (2009): 113-37.

[51] Jacob Kapeller and Bernhard Schütz, "Conspicuous consumption, inequality and debt: The nature of consumption-driven profit-led regimes," *Metroeconomica* (forthcoming).

contrast, in a corporatist POD, there is more wealth equality between individuals to start. This does not mean that humans will stop having the desire to differentiate ourselves in terms of status from our neighbours by means of consumption goods. Centuries of artefact show that humans in different cultures at different points in time all had the same idea to "elevate" themselves by having different materials for their clothing, different gems and metal for their jewellery, and different kinds of vehicle should be sufficient to disprove that view.[52] What it does mean is that should that desire for status goods remain constant, inequality of wealth need not be exacerbated in a corporatist POD because fewer people would need to go into debt to fuel that desire. So although the initial charge regarding status inequality in a consumer culture still stand against a corporatist POD that has a similar consumerist culture to ours now, at least that charge is tempered by the fact that such a corporatist POD will not also exacerbate wealth inequality.

These five charges do not constitute an exhaustive list of how existing corporations pose a risk to social justice. So the fact that corporations acting in a corporatist POD can meet these charges is not the end of the matter. There may be other charges against corporations I have not considered, which cannot be met even when they are embedded in a more just economic regime than they are now. However, these five charges do represent some of the major objections laid against corporations from the

[52] Mary Douglas and Baron Isherwood – an anthropologist and an economist – collaborated to study why people want consumption goods. Their thesis is that there is a connection between consumption goods and information. Goods can embody messages, and consumers can use them to both give and receive information. Amongst different types of information consumption goods can give out is information about a consumer's status. Mary Douglas and Baron Isherwood, *The World of Goods* (New York: Basic Books, 1979).

point of view of justice. Showing that we can meet these objections goes some way to illustrate that there is nothing inherently incorrigible from the point of view of justice about the corporate form. In fact, if situated within a proper economic regime, such as a corporatist POD, and against the right kinds of background institutions, the corporate form can be put to work to advance the realisation of social justice.

Conclusion

We set out to investigate whether corporations have any legitimate place in justice as fairness. In the last three chapters, we have looked at attempts that approach this question by taking the existing corporate form as given. Some argue that the corporation is part of the basic structure, and we ought to apply the two principles of justice to its internal governance, or to how it behaves when it conducts business. Others argue that we need not question the corporate form as long as background institutions properly regulate it. I, instead, have argued that the corporate form is artificial. Therefore, we ought to look at whether the social and legal policies that constitute it are compatible with Rawlsian justice. And in order to do so, we need to examine Rawls's political economy. Having established that there is no strong reason for Rawlsians to favour either public or private ownership of the means of production, we set out to find the best economic system with private ownership. We discovered that a property-owning democracy is the most plausible candidate. However, in this early stage, there are certain refinements to this economic system that the literature on property-owning democracy needs to make. In particular, I

have argued that it would be beneficial for all who discuss the politics of distribution to pay closer attention to the different facets of ownership. For, sometimes, separating the benefit aspect from the control aspect is more likely to help achieve our distributive goals. Among the different POD models, we settled on a corporatist POD as the best able to realise the two principles of justice. It transpires that the corporate form is actually a conveniently useful invention for implementing this type of POD. Among its virtues are: the fact that the tradability of shares facilitates the widespread dispersal of productive assets, which is the sine qua non of POD; and that the separation of the corporate entity from its shareholders helps unbundle the benefit and control aspects of ownership rights so that we prevent private consumption preferences from having too much influence on economic decisions. That corporations could be a useful instrument for realising justice might be a surprising verdict. However, what should be less of a surprise is that the corporate form is a practically useful invention. Apart from a few who have a particularly Luddite or isolationist temperament, it is hard to argue that advancements in transportation and information technology in the last two centuries have not been good for mankind. Railways, airplanes, the internet – the wide dispersal of these inventions would have been impossible without corporations. As we have seen in the first section in Chapter 2, they certainly needed the unique capital accumulation capability of corporations to make them at a scale that is affordable and available to most individuals. Even harder to deny is the fact that as our scientific knowledge increases – in particular in the fields of medicine, astronomy, and the environment, where research and development are especially costly – corporate ability to pool resources for long-term and risky projects will become especially significant if we want to exploit this knowledge for the betterment of all. It is perhaps just as well

then that we do not have to reject the corporate form because it is inherently socially unjust.

Part II

Corporations and International Justice

Chapter 5

Corporations in Rawls's Law of Peoples

In this second part of the thesis, we explore what global duties of justice corporations may have. In keeping with the Rawlsian framework of the first part of the thesis we start in this chapter by looking at Rawls's own theory of justice for the world – the Law of Peoples – and we explore what prescriptions it might have for corporations. Unlike his theory of justice for domestic societies, Rawls's Law of Peoples has not been widely well received. Many have expressed disappointment because they believe the Law of Peoples does not capture all that is wrong with global inequalities today. Such critics focus on what they perceive as Rawls's insufficiently demanding prescription for economic justice between wealthier and poorer states. They would have preferred it if Rawls had globalised his difference principle and put constraints on inequalities between states. I do not share this view of Rawls's work on international justice. However, space constraints mean that I will not be defending Rawls's idea of international economic justice; there already exists a significant body of work that does so.[1] Instead, I will look at a different shortcoming in Rawls's Law of Peoples. I shall argue that Rawls's Law of Peoples suffers from a responsibility deficit. Rawls focuses exclusively on peoples' (or

[1] A volume of such works can be found in Rex Martin and David Reidy, eds., *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell, 2006).

states')[2] as agents who are responsible for realising the Law of Peoples. In the course of this and the next chapter, I will argue that the case of corporations reveals that this exclusive focus is unjustifiable. If we were serious about realising the Law of Peoples, we should look more carefully about how we can task non-state agents, such as corporations, to effect the transition from where we are now to Rawls's ideal for international relations.

In order to show that there is a responsibility deficit in the Law of Peoples, specifically with regards to corporations, we must first understand how the Law of Peoples accounts for corporate global responsibilities. This is the task of this chapter. We begin with a brief overview of the Law of Peoples in Section I. I argue that the eighth and last principle – that of the duty of assistance – is likely to provide us with the most fruitful line of inquiry when it comes to linking corporations with any global duties within the framework of the Law of Peoples. In the following two sections, I explore two ways by which the duty of assistance has been misapplied to corporations. Section II looks at an argument that attempts to link corporations with the duty of justice based on the harm their business activities may do to burdened societies. I argue that this argument is unavailable to Rawls once we properly understand how he attributes responsibility. This involves a discussion about the difference between two kinds of attributions of responsibility – identification and

[2] Rawls was clear that he understood 'peoples' to be distinct from 'states'. Peoples have just or decent regimes (more on what this means in Section I below) and are willing to abide by the Law of Peoples in their dealings with each other. In other words, 'peoples' are an idealized kind of states. Yet, since 'states' is a more familiar term, I shall use 'peoples' as well as 'states' interchangeably, except where the distinction matters. John Rawls, *The Law of Peoples, with the Idea of Public Reason Revisited* (Cambridge, MA: Harvard University Press, 1999): 26.

assignation – as well as a discussion regarding different conditions for the identification of responsibility. Section III looks at an argument that attempts to link corporations with the duty of assistance by asserting that they ought to stand in for states if and when states shirk their duty. I argue that this argument is also unavailable to Rawls once we properly understand that the duty of assistance is a duty of justice and not a duty of humanity as some have mistakenly interpreted it. Finally, in Section IV, I look at how we might properly extend the Law of Peoples to include corporations and I canvass a few policies that might be implemented towards this end.

I. The Law of Peoples

To facilitate our understanding of how the Law of Peoples might apply to corporations, we need to understand what it is. So let's begin with the eight principles of the Law of Peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.

5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.[3]

In addition to these eight principles, Rawls also envisions that peoples will set up international cooperative organisations. There will be a United Nations-like organisation, which Rawls prefers to call the Confederation of Peoples; a cooperative bank; and an organisation that will set up and enforce fair trade standards amongst peoples.[4]

To understand the Law of Peoples, we also need to know the kinds of societies to which these principles are meant to apply. These eight principles bind all societies that Rawls classifies as 'well-ordered peoples'. Well-ordered peoples can be divided into two sorts: liberal democratic peoples (liberal peoples) and decent hierarchical peoples (decent peoples). What makes Rawls accept decent peoples as worthy of tolerance and recognition in the Society of Peoples is that although they are nonliberal, domestically, they operate a 'consultation hierarchy', that is, there is a genuine effort by leaders to consult various constituencies as to their interests and to keep individuals informed, even though leaders are not elected and decisions are not

[3] Ibid., 37.

[4] Ibid., 42-3.

made democratically. Internationally, decent peoples are nonaggressive; they also accept the same short list of fundamental human rights as liberal peoples. Hence, decent peoples are able to agree to the eight articles of the Law of Peoples.

Beyond well-ordered peoples, the Law of Peoples also extends to cover what Rawls calls 'burdened societies'. Though not expansive or aggressive, burdened societies are not well-ordered because they are hampered by 'unfavorable conditions', that is, they 'lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered.'[5] Thus, burdened societies are the main object of the eighth article of the Law of Peoples – well-ordered peoples, both liberal and decent, have a duty to assist burdened societies. What distinguishes this duty of assistance from other international distributive principles is Rawls's insistence that there is a 'cutoff point' for this duty.[6] This is because once well-ordered peoples have helped burdened societies become self-supporting, the duty of assistance demands no further and continual transfer of wealth from well-ordered peoples to once-burdened societies.[7]

Finally, Rawls also discusses outlaw states. These are regimes that refuse to comply with the Law of Peoples. Outlaw states are 'aggressive and dangerous'; they may see advancement of their regimes' interests as sufficient reason to wage war.[8] For this reason, well-ordered peoples need not tolerate outlaw states. The fourth

[5] Ibid., 106.

[6] Ibid., 106, 119. The exact content of this duty of assistance and the target of the cutoff point are matters of considerable debate and I will return to this matter in chapter 7.

[7] Ibid., 113-20.

[8] Ibid., 81, 90.

principle of non-intervention in the Law of Peoples need not apply when it comes to well-ordered peoples dealings with outlaw states, especially when human rights violations are endemic in those regimes.[9]

Given that Rawls was primarily concerned with what peoples owe one another and not with the global obligations of non-state entities, the overview above seems to suggest that the Law of Peoples hardly applies to corporations. We can pick out a few ways by which the Law of Peoples will constrain corporations, operating from well-ordered states, in their operations in other well-ordered states. First, following the second and sixth articles, they will have to respect any international treaties and a basic list of human rights in their operations. Second, following Rawls's provisions for international cooperative organisations, corporations will have to abide by whatever standards and rules for fair trade that well-ordered peoples have agreed to set up and enforce through these international organisations. What is apparent is that, in the Society of Peoples, the terms of interaction between peoples – whether it is international treaties that constrain state foreign policies or trade standards that constrain states' economic policies – are determined by governments. Non-governmental actors', such as corporations', global duties involves complying with the terms set by states.

So it appears that the Law of Peoples does not accord a key role to corporations in international relations. Perhaps this is unsurprising, given Rawls's focus is on providing a theory to govern relations between peoples. However, if we were to

[9] Ibid., 37-8; 89-105.

contrast this with current popular demands on corporations to do more for the woes of the world – for instance, to help alleviate world poverty, or encourage states to respect human rights and labour standards, or to fight environmental pollution – then the rather insubstantial demands the Law of Peoples places on corporations may seem disappointing. Is it possible to extend the Law of Peoples so that it might ask more of corporations? Thus far, we have only looked at what the Law of Peoples might demand of corporations in their behaviour towards and activities in well-ordered states. If we were to attempt extending the Law of Peoples in order to demand more substantial global duties of corporations, the next step would be to see if the duty of assistance, which governs well-ordered peoples' duties towards burdened societies, applies to corporations as well.

In the next two sections, I look at two ways that we might extend the duty of assistance to cover corporations' global duties. Both have been put forward by Nien-he Hsieh who has, as far as I know, done the most work in applying Rawls's theory of international justice to corporations. I will argue that they are not valid extensions based on Rawls's texts, but exploring where they go wrong is worthwhile because finding out why Rawls could be misinterpreted in these ways gives us a better understanding of his work and sheds light on where his arguments are vague or weak. What should be borne in mind, however, is that this is not a judgment about the moral validity of these extensions. The aim of this chapter is to find out what, if anything, Rawls's Law of Peoples has to say about corporate global duties. So I am setting out to see how far we can extend the Law of Peoples to apply to corporations based on a close reading of Rawls's text. The two interpretations that I reject as lacking fidelity to Rawls's texts here may well be morally desirable independent of

the texts; they may even be possible interpretations of the spirit of Rawls's work on international justice. These are possibilities I will return to in the next chapter, where I offer a more critical reading, as well as a more expansive interpretation, of the Law of Peoples' application to corporations.

II. Identifying and Assigning Corporate Global Responsibilities

The first method of extending the duty of assistance to corporations involves an argument about harm. Hsieh argues that in the course of doing business, corporations may cause harm to certain individuals that cannot be fully compensated.[10] The relevant cases he has in mind are those in which corporate business activities result in negative externalities. He cites the case of Texaco's operation in Ecuador as an example. Between 1964 and 1990, Texaco extracted oil from the Oriente region in Ecuador. As part of the oil company's drilling operations, untreated, oil-laced water was pumped out of the ground and dumped into open pits rather than re-injected into the ground. In addition, through broken pipelines, seventeen million gallons of crude oil was released into the Amazon forests.[11] Such business activities cause harm because such contamination and pollution could lead

[10] Nien-he Hsieh, "Does Global Business Have a Responsibility to Promote Just Institutions?" *Business Ethics Quarterly* 19:2 (2009):251-73.

[11] Ibid., 256-7.

to individuals having increased cancer risk, create sanitation and nutritional problems, and contribute to avoidable sickness and death.

The point Hsieh is trying to make is not that corporations are evil wrongdoers, knowingly causing harm by intentionally polluting the environment. Rather, the point is that many corporate activities pose the risk of causing harm, intentional or otherwise. However, we do not normally proscribe such activities, even if harm can be foreseen. What we normally do is set parameters and regulations. Thus, in societies with well-ordered institutions, we generally can rely on individuals' rights to be protected even when faced with the possibility of harmful business activities. Not only can individuals rely on laws that regulate corporate activities, they can also rely on institutions that will give them an opportunity to seek redress should corporations actually cause harm. However, when corporations operate in societies that lack such institutions, when they cause harm, the individuals that are harmed do not have such recourse. Therefore, Hsieh argues, the duty of assistance applies to corporations when they operate in burdened societies and that requires them to link their trading activities with the promotion of human rights, labour, and environmental standards as well as the establishment of just institutions.

Now, Rawls may very well endorse this trade linkage conclusion. However, if he does so, it would not be via the argument Hsieh presents. The main problem with Hsieh's line of reasoning is that it presupposes that Rawls's Law of Peoples would permit trade between well-ordered peoples and burdened societies in the first place. This presupposition is premature. Rawls does permit trade between well-ordered peoples. We know this because, as we have seen, he concedes that international

standards and organisations need to be set up to ensure fair trade across borders. However, it is less certain he will make the same allowances for trade between well-ordered peoples and burdened societies. While trade between well-ordered peoples is relatively unproblematic under the Law of Peoples, the same might not be true of trade between well-ordered peoples and burdened societies. The problem is not that a burdened society might be poorer than well-ordered societies and thus may have an unequal bargaining position in trade. Rawls does not conceive of well-ordered peoples as necessarily wealthy. Furthermore, as is well known, he permits inequalities in wealth between well-ordered peoples. So if he permits trade between well-ordered peoples of unequal wealth levels, the worry about unequal bargaining power between well-ordered peoples and burdened societies does not stem from inequalities in wealth. Instead, it stems from the fact that burdened societies lack well-ordered institutions. The lack of a secure domestic order, clear assignation of property rights, and the rule of law means that we cannot be sure that when corporations trade with burdened societies, the transactions are entered into voluntarily and free from duress; or that if the transactions are voluntarily entered into, the terms agreed upon are not in some way unfair – for instance, by not giving burdened societies a fair share of the profit due to their weak intial bargaining position.

The subject of what constitutes free and fair trade is significant and I will return to this in the Chapter 7. For now, the point I want to focus on is not what fair trade involves. Instead, I want to focus on the basis on which we can argue that corporations' trade activities in burdened societies must be linked with promotion of just institutions. Hsieh's argument is based on the reason that corporations could be

harming burdened societies when they trade with them. I question whether Rawls could accept this argument. In my view, if trade with burdened societies involves avoidable harm, then Rawls would prescribe that trade is permitted only insofar as harm is avoidable. However, if harm is unavoidable – for instance, because even when voluntarily entered into by parties from burdened societies, we cannot be entirely sure that the terms agreed to are fair when compared with what the terms could have been if there had been well-ordered institutions – then Rawls would proscribe trade altogether until well-ordered institutions are established. Thus, contrary to Hsieh, Rawls would not link trade at all with the duty of assistance, which, we should recall, has the specific aim of bringing burdened societies to well-orderedness.

This does not show that Rawls rules out linking trade with the duty of assistance. What it does show is that if he makes such a link, it would not be based on a concern about harm. Rawls might allow trade with burdened societies only if trade poses no obstacles to burdened societies becoming well-ordered; or if there are agents who can, through trade, help bring burdened societies into the Society of Peoples by establishing well-ordered institutions. Therefore, if corporations are tied to the duty of assistance, it would not be based on whether they have harmed burdened societies. Instead, it would be based on whether they are the kinds of agents who have the capacity to help or stand in the right community relationship with burdened societies. In the rest of this section, I will show why this is so and how Hsieh has mistakenly interpreted Rawls, and I will return to how we might properly link trade with a corporate duty of assistance in the last section. Understanding why Rawls has been misinterpreted can be an instructive exercise because although in practice Rawls's

specifications of corporate global duties might share some of the trade linkage ideas that Hsieh advocates, the difference in the reasons that ground such duties means that the scope and weight of corporate global duties could be smaller and lighter than Hsieh claims.

To arrive at an understanding of how Rawls was misinterpreted, we need to make a detour into a discussion about responsibility. This is because what Hsieh is essentially doing is arguing that Rawls would attribute to corporations the responsibility for the duty of justice and this attribution is grounded in a claim about the possibility of corporations causing harm in their business activities. To see why this is not what Rawls is doing, we need a better grasp of what it is we are doing when we attribute responsibilities and the grounds we might have for making such attributions. Once we come to grips with these, we will see that Rawls is not attributing responsibility for the duty of assistance in the way Hsieh argues, nor is he attributing responsibility for the duty of assistance on the grounds that Hsieh offers.

My discussion on responsibility follows closely what David Miller says on the subject.[12] To begin, we need to put in place two sets of cross-cutting distinctions about responsibility. The first distinction concerns two conceptions of responsibility. The first conception is outcome responsibility. When we try to attribute outcome responsibility, we are looking for the agents responsible for producing a particular outcome. The second conception is remedial responsibility. When we try to attribute remedial responsibility, we are looking for those agents who are responsible for

[12] David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007): chapter 4.

putting a bad situation right. When applied to the Law of Peoples, we might say that if we are trying to attribute outcome responsibility for burdened societies, we are trying to work out who made burdened societies burdened, in other words, the agents responsible for burdened societies lacking well-orderedness. On the other hand, if we are attributing remedial responsibility for burdened societies, we are looking for agents who ought to help burdened societies become unburdened, in other words, the agents responsible for promoting and establishing well-ordered institutions.

Next, cutting across these two conceptions, our second distinction concerns two different ways to attribute responsibility. The first way concerns our identifying responsibility holders. Miller explains that identifying responsibility 'is a matter of looking to see who, if anybody, meets the relevant conditions for being responsible. What these conditions are will depend on the form of responsibility at issue.'[13] By contrast, assigning responsibility is a matter of making 'a decision to attach certain costs or benefits to an agent, whether or not the relevant conditions are fulfilled.'[14] Often the agent identified as being responsible is also the agent who ought to be assigned the cost of bearing the responsibility. However, sometimes these two notions can come apart. We can illustrate this with the classic swimmers-to-the-rescue cases: Suppose Ahab deliberately pushes Blackbeard into the sea. Blackbeard cannot swim and is drowning. Ahab is the only able swimmer around. In this case, we could easily identify Ahab as responsible – he is the cause of the outcome of Blackbeard drowning, and he is morally at fault for doing so. Being the only one

[13] Ibid., 84.

[14] Ibid., 84.

capable of effecting a rescue, we could assign Ahab the responsibility of doing so too. Suppose now we change the specifics of the case a little. This time, Ahab still pushes Blackbeard into the sea yet Ahab cannot swim. Fortunately, Crusoe also happens to be around and he is able to swim. It would be more sensible, then, to assign Crusoe the responsibility of rescuing Blackbeard.[15]

Miller's particular interest is in the identification of remedial responsibility. As we saw in the crude cases of swimmers and drowners above, when an agent meets certain conditions, we can identify her as responsible. Miller sets out to catalogue what these conditions would be for identification of remedial responsibility. He argues that there can be six forms of morally relevant connections that tie an agent to victims of a bad situation, and should an agent find herself connected in the morally relevant way, then a case for identifying her as remedial responsibility holder can be made.[16] This he calls the connection theory of responsibility. Let's take a look at these six conditions:

> 1. Moral Responsibility – If an agent is identified as the remedial responsibility holder in a bad situation because she is morally responsible, she must have acted in a way that displays moral fault. That is, she must have acted deliberately, or recklessly, or have failed to fulfil a pre-existing obligation that leads to the bad situation in question.

[15] As always with these hypothetical cases, we have to put in place a few stipulations about conditions. Assume, therefore, that there are no typhoons, or hidden jagged rocks under the sea, or any other dangerous elements around to make Crusoe's rescue attempt pose a significant moral cost to him.

[16] Miller, *National Responsibility*, 100-104.

2. Outcome Responsibility – An agent can be identified as remedially responsible even if she has brought about a bad situation through no moral fault. Outcome responsibility may come into effect in the case of a bad situation being the outcome of an agent's actions even though she may have acted without malice or even intent. For instance, to labour the example above, Ahab may have unintentionally knocked Blackbeard into the water, whilst he is not morally responsible for Blackbeard drowning, he is outcome responsible.

3. Causal Responsibility – We may think of causal responsibility as a weaker form of outcome responsibility. Both share the feature that if we identify an agent as (outcome or causal) responsible, the agent has acted in a way that led to the bad situation that now requires remedy. However, in the case of causal responsibility, the causal link between the agent's action and the result 'is so bizarre and unpredictable that it would be unreasonable to hold [the agent] (outcome) responsible'.[17] Even though it may seem a weaker form of responsibility, we should mark causal responsibility out because there may be cases in which this type of connection is enough to identify agents as remedially responsible.

4. Benefit – An agent can be identified as a remedial responsibility holder if she has benefited from the bad situation, even though she has not acted in any of the three ways mentioned above that led to the bad situation. This can be

[17] Ibid., 101.

the case even if the agent is an innocent beneficiary. What matters is that the agent would not have been the recipient of the benefit had some other agent not been deprived. An example of such an identification of responsibility can be found in arguments for why certain social groups, especially white men, have obligations to put right sexual and racial discrimination. The basis for holding them responsible is that they have benefited from the privilege of belonging to a social group whose advantaged economic and social status is a result of historically contingent factors that no current individuals in the social group could be said to have caused.

5. Capacity – This is perhaps the most straightforward of the six relevant connections. Since the point of identifying remedial responsibility holders is so we can get bad situations put right, if an agent has the capacity to remedy a bad situation, then we have reason to identify her as being responsible.

6. Community – We can also identify remedial responsibility based on an agent's communal ties to the people who are in need of remedy. The idea of communal ties here can be interpreted loosely – it may be due to familial ties, friendship, nationality, sharing a religion, and so on.

For the moment, whether we agree with Miller's connection theory of responsibility is not at issue. Even if we disagree about the procedure of his connection theory,[18]

[18] Miller argues that the six connections are not ranked in priority when it comes to identification of responsibilities. Moreover, it is not the amount of connections an agent has but the strength of any connections. (Miller, *National Responsibility*, 105-7.) Some have disputed whether this procedure, in

his taxonomy of the conditions for identifying remedial responsibility is useful for helping us make sense of Rawls's attribution of responsibility in the Law of Peoples, and Hsieh's interpretation of it.

With these distinctions and categorisation in place, we are now able to see that Hsieh is arguing that we can use Rawls's Law of Peoples to *identify* corporations as *morally responsible* due to the harm they cause to burdened societies. However, whether or not this is an independently valid argument, it is not one that can be made from Rawls's work. Let me show why.

To start, while it is clear that the duty of assistance is a kind of remedial responsibility and it is clear that Rawls attributes this responsibility to well-ordered peoples, it is not clear whether this attribution involves Rawls identifying or assigning responsibility. This ambiguity stems from the reasons Rawls offers for why burdened societies come to be burdened. Rawls attributes the cause of burdened societies' status largely to domestic factors. He writes that the '[c]rucial elements that make the difference [in well-ordered or burdened status] are the political culture, the political virtues and civic society of the country, its members' probity and industriousness, their capacity for innovation, and much else.'[19] Rawls has been much criticised for such an analysis of differences in wealth and orderedness of peoples. Many have argued that "explanatory pluralism" – the view that it is a plurality of factors, including global as well as domestic ones, that explain

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particular the lack of ranking of the connections, is sound. See for instance, Thom Brooks, "Rethinking remedial responsibilities," *Ethics and Global Politics* 4:3 (2011): 195-202.

[19] Rawls, *Law of Peoples*, 108.

such differences in wealth and conditions of societies – is a more empirically accurate account and Rawls was wrong to ignore non-domestic factors as the causes of burdened societies' condition.[20] Yet, whatever the merits of Rawls's "explanatory nationalist" stance, what is significant for us here is to note that Rawls holds that the duty of assistance of well-ordered peoples still applies regardless of how burdened societies came to be so. After stating what he believes to be the crucial factors in the cause of burdened societies' status, he argues that 'one way or the other, the duty of assistance is in no way diminished.'[21] That is, although on Rawls's account, well-ordered peoples may have no moral, outcome, or causal responsibility for the fact that burdened societies lack just institutions, they still have to fulfil the duty of assistance.

What this shows is one of two possibilities: The first possibility is that Rawls is *identifying* remedial responsibility for well-ordered societies. If this is what he is doing, then because he does not subscribe to explanatory pluralism, we can rule out Rawls making such an identification of responsibility based on well-ordered societies' being linked to the cause of burdened societies' condition in some way. In other words, we can rule out his making such an identification based on conditions 1-3 listed in Miller's taxonomy above. Condition 4 – responsibility due to benefit –

[20] Charles Beitz is one of the first to argue that Rawls's explanation for inequalities of wealth between different countries does not tally with the fact of global interdependence. Charles Beitz, *Political Theory and International Relations, with a new afterword* (Princeton: Princeton University Press, 1999): 143-53. See also Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press: 2002): chapter 4. Thomas Pogge appears to have coined the term "explanatory nationalism". See Pogge, *World Poverty*, 15.

[21] Rawls, *Law of Peoples*, 108.

can also be ruled out under Rawls's account.[22] As we saw above, it is unclear that Rawls would permit well-ordered peoples to trade with burdened societies in the first place. If they are allowed, this would be strictly because the duty of assistance is already fulfilled so that there is no question of unfair advantage held by well-ordered peoples over burdened societies. Thus, the duty of assistance cannot be grounded in an argument about benefit. Instead, he could be making such identification on the basis of well-ordered peoples' capacity to offer remedy or their communal ties with burdened societies. We cannot know for certain what Rawls makes of the condition of capacity, however, given the way he conceives of burdened societies – as societies incapacitated by unfavourable conditions – it is not implausible to assume that well-ordered peoples' capacity to help forms the basis for their duty of assistance. As for communal ties, Rawls explicitly countenanced the possibility that well-ordered peoples may lack the requisite strength of feeling of 'affinity' towards burdened societies to make them sufficiently motivated to carry out the duty of assistance.[23] However, Rawls argues feelings of affinity is not fixed

[22] To clarify: This is true if we want to tie Condition 4 to corporations, but it may be more ambiguous when we are talking about the remedial responsibilities of well-ordered states. We might try to tie the criterion of benefit to corporations by arguing that, through their trading activities, corporations may be innocent beneficiaries of past violations of rights to burdened societies. However, as I point out here, trade may not necessarily be permitted. However, a case can be made that well-ordered peoples, even if they do not, or are not permitted to trade with burdened societies, have a duty of assistance grounded in being innocent beneficiaries. This case would involve arguing that historical injustices committed by our forebears against currently burdened societies have benefitted us. So although we are innocent of these past injustices, we are thus connected to the duty of assistance through the argument of benefit. To what extent such an argument is consistent with Rawls depends on what level of ideal-ness we think the duty of assistance is supposed to apply. I will return to discuss this in the next chapter.

[23] Rawls, *Law of Peoples*, 112-3.

and that the 'relatively narrow circle of mutually caring peoples in the world today may expand over time'.[24] It is thus 'the task of the statesman to struggle against the potential lack of affinity among different peoples'.[25] From this we can infer with more confidence that, if Rawls was identifying remedial responsibility, then he saw communal ties as one such basis for identification – that even though the ties may not be felt strongly now, they do exist and we ought to strengthen them.

A second possibility is that Rawls is *assigning* responsibility to well-ordered peoples. He might do so because he believes that while it is more proper to identify burdened societies as themselves remedially responsible for their plight due to his explanatory nationalism, since burdened societies are in no shape to help themselves and build well-ordered institutions on their own, the assignation of responsibility thus falls on well-ordered peoples.

In either case, it shows that Rawls's explanatory nationalism prevents us from drawing the kind of conclusion that Hsieh is considering. Hsieh wants to extend the duty of assistance from well-ordered states to corporations by grounding it in the harm they do to burdened societies. As we can see, whether Rawls is attributing (be it identifying or assigning) the responsibility for the duty of assistance to states, he is doing so based on what we might call forward-looking reasons. Largely due to his explanatory nationalism, he eschews backward-looking ones – whether referring to past wrongs, or past benefit, or causal link to the outcome. Therefore, if we are to be faithful to Rawls's work, we need to restrict ourselves to this forward-looking

[24] Ibid., 113.

[25] Ibid., 112.

approach to determine how, if at all, the duty of assistance might be extended to apply to corporations.

III. Primary Agents of Justice and the Duty of Assistance as a Duty of Justice

Now we might think that, even if we are restricted to considering the forward-looking conditions of remedial responsibility, it is still possible for the Law of Peoples to put quite stringent obligations on corporations. The condition of capacity alone ought to yield dividends in terms of our conception of corporate duties of assistance in global justice. However, I would argue that if we were interpreting Rawls by sticking closely to his works, the argument from corporate capacity may not go quite as far as one might initially think, due to the fact that the duty of assistance ought to be properly understood as a duty of justice, and not as a duty of humanity. Looking at the second method of extending the duty of assistance to corporations and understanding where it fails would help us appreciate why the argument from corporate capacity within the framework of the Law of Peoples is not as strong as it may appear.

Besides the argument from harm, Nien-he Hsieh also argues that corporations ought to step in and fulfil the duty of assistance when states fail to do so. Hsieh argues that

if well-ordered societies live up to their responsibilities under the duty of assistance, corporate global duties that are associated with the duty of assistance would not go beyond the negative ones, that is, they would refrain from violating international treaties and human rights. However, when well-ordered societies do not do their fair share, then we can hold corporations responsible.[26] Hsieh draws upon Onora O'Neill's taxonomy of agents of justice to elaborate: O'Neill argued that we can classify agents of justice into two types – primary and secondary agents. Primary agents of justice have 'capacities to determine how principles of justice are to be institutionalised within a certain domain', they can also 'assign powers to and build capacities in individual agents, or they may build institutions – agencies –with certain powers and capacities to act.' By contrast, secondary agents of justice contribute to the realisation of justice 'mainly by meeting the demands of primary agents'.[27] Hsieh argues that in ideal circumstances, that is, when there is no non-compliance by states, then corporations are simply secondary agents of justice when it comes to fulfilling the duty of assistance. However, when there is non-compliance, then the Law of Peoples would require that corporations step in and fill the role of primary agents of justice, which is now shirked by states.

This is an interesting line of inquiry: we can explore, for instance, on what grounds we can argue that it is up to corporations, and not some other agent, to step in to the role deserted by states. However, the problem with this argument is that it is not a

[26] Nien-he Hsieh, "The Obligations of Transnational Corporations," *Business Ethics Quarterly* 14: 4 (2004): 649-50.

[27] Onora O'Neill, "Agents of Justice," in *Global Justice*, ed. Thomas Pogge (Oxford: Blackwell, 2001): 189.

good reading of Rawls. For Rawls, the idea of a Society of (well-ordered) Peoples is what we are working towards as an ideal and, in this ideal condition, well-ordered states are, by definition, those that are willing to live up to the articles of the Law of Peoples. Therefore, if we are facing states who are shirking their responsibilities towards burdened states as primary agents, then the Law of Peoples would prescribe that our first response should be to get these states to fulfil their duty. Should this first-best response be unavailable because states simply fail to conform, it is unclear whether the Law of Peoples has the resources to recommend what to do in a second-best scenario. Now, we might draw from this a possible criticism of Rawls. We might argue that the Law of Peoples is too removed from reality because it fails to acknowledge that most existing states in fact fail to shoulder their fair share of responsibilities toward burdened societies and, from this, we might conclude that the Law of Peoples cannot adequately address existing problems. However, this is a criticism of Rawls's works and not a reading of them, which is our task at hand.

So returning to our task, it may be instructive to try and understand why we can mistakenly read Rawls in this way. I believe it is due to a common misunderstanding of the duty of assistance as a humanitarian duty, rather than as a duty of justice. Duties of humanity and duties of justice differ in the aim they contribute towards. As Brian Barry observes in his influential account of the distinction between duties of humanity and duties of justice, while the former merely aim to redistribute wealth to those in need, the latter aim to identify what is a just distribution in the first place.[28] When it comes to global duties, if a state has a duty of justice, then the duty

[28] Brian Barry, "Humanity and Justice in a Global Perspective," in *NOMOS XXIV, Ethics, Economics and the Law*, eds. J. Pennock and J. Chapman (New York: Harvester Wheatsheaf, 1982).

establishes a condition of what 'justly belongs to (that) country'.[29] In other words, a duty of justice aims to establish what states' just entitlements are in the first place. By contrast, a duty of humanity presumes that what states' just entitlements are have already been established. The duty is thus a prescription to do more within this established framework and aims to get states to share wealth that is properly theirs. This is why duties of justice for states should be understood as conceptually prior to their duties of humanity. As Barry says: 'We cannot sensibly talk about humanity unless we have a baseline set by justice. To talk about what I ought, as a matter of humanity, to do with what is mine makes no sense until we have established what is mine in the first place.'[30]

Moreover, besides being of lesser priority to duties of justice, duties of humanity are typically understood to be less stringent than duties of justice. Since duties of humanity are not understood to be correlative to rights held, they are generally understood to be unenforceable. In addition, holders of duties of humanity are allowed to factor in the costs that fulfilling the duty would impose on them in ways that holders of duties of justice would not be. If the cost of fulfilling a duty of humanity would be too burdensome to the duty-bearer, then it would be permissible to argue that this negates the duty for the bearer; this is not the case if the matter involves a duty of justice.

Some writers commenting on Rawls's conception of global distributive justice have understood the duty of assistance as a humanitarian duty with both the attributes of

[29] Ibid., 248.

[30] Ibid., 249.

being a duty that can be satisfied after just entitlements have already been established and of being morally less weighty than a duty of justice. For instance Kok Chor Tan interprets the duty of assistance as part of a theory of global ethics rather than as part of a global theory of justice. Tan argues that, with the duty of assistance understood as a humanitarian duty, Rawls is asking us to accept the existing baseline of wealth and resource distribution.[31] By contrast, if Rawls had intended the duty of assistance to be a matter of justice, then he ought to have called into question what counts as a just distribution between societies, well-ordered or otherwise, in the first place. Instead, his duty of assistance assumes that well-ordered societies are rightful owners of their wealth and thus seems to view wealth transfers negatively. Rawls seems to favour well-ordered peoples fulfilling their duty of assistance by helping burdened societies build institutions. The duty of assistance is not based on an argument about (re)distributive justice which assumes that well-ordered societies possess wealth that does not legitimately belong to them and thus owe burdened societies a reallocative duty of justice to reallocate their wealth. Laura Valentini also interprets Rawls in a similar way. As she understands it, 'in Rawls's ideal of a just world, no principles of egalitarian distributive justice apply, but only duties of humanity aimed at assisting needy societies.'[32]

If these critics are right and Rawls's duty of assistance is merely a duty of humanity, then it becomes easy to understand why some might understand it as a duty

[31] Kok Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004): 66-7.

[32] Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2011): 74.

attributable to corporations, should states fail to fulfil their part. If the duty of assistance is a duty of humanity then it would take as given the current global distribution of property rights and come into effect only after property rights within each state have been fully assigned. Fulfilling the duty of assistance then becomes a matter of ethical, compassionate behaviour by well-ordered states towards their less fortunate counterparts. Should well-ordered states then fail in this duty, then an understanding that sees the duty of assistance as a duty of humanity would argue that the world would generally be a better, more compassionate place, if non-state actors, such as corporations, were to step in.

However, this is arguably not how Rawls understands the duty of assistance. Although he does not elaborate upon this, Rawls has stated that he views the duty of assistance as similar to his just savings principle.[33] Crucially, both have to be satisfied before we determine domestic distributive shares. Samuel Freeman has pointed out that this is a fact oft-overlooked by Rawls's critics and, more recently, Caleb Yong has elaborated on what the parallels are between the duty of assistance and the just savings principle.[34] The just savings principle is Rawls's way of ensuring that the demands of justice of future generations are adequately met. If we understand the difference principle as a requirement for maximising current consumption for the existing least advantaged, then this can potentially conflict with a duty of maintaining a just basic structure over time to future generations. This is

[33] Rawls, *Law of Peoples*, 106-7, 118.

[34] Caleb Yong, "Rawls's Duty of Assistance: Transitional not Humantarian or Sufficientarian," *Nuffield Working Papers Series in Politics* (2012), accessed 2 September 2014, http://www.nuffield.ox.ac.uk/Research/Politics%20Group/Working%20papers/Pages/Working-papers.aspx

why Rawls assigns priority to the just savings principle and argues that the principle ought to constrain the difference principle. The duty of assistance should also be understood to put a similar constraint on domestic distributions. Well-ordered societies have a duty of justice to ensure that they have put enough aside to discharge their duty of assistance to burdened societies, even as they try to satisfy their domestic principles of justice.

Properly understood this way, it should be clear why it is not a good reading of Rawls if we were to understand corporations as possible primary agents of the duty of assistance. As a duty of justice, agents who are tasked with discharging the duty of assistance will also have to keep in mind how discharging this duty may impact upon other principles of justice that a well-ordered society is bound by, for instance, the difference principle. Such an agent would need the powers to assign property rights and distribute resources in order to fulfil their role. Corporations do not have such powers; neither would giving them such powers be a palatable solution to most. Therefore, even in non-ideal circumstances when states fail to be well-ordered and fulfil their duty of assistance, a more consistently Rawlsian argument would be to insist we find ways to enforce the obligation – perhaps other well-ordered peoples can impose sanctions on any wayward state after having established an agreement to do so at the UN-like Confederation of Peoples. In any case, the first response would not be to recommend that non-state actors, such as corporations, should come forward and fill a role that properly belong to states.

IV. Assigning Corporate Global Responsibilities in the Law of Peoples

Having looked at two seemingly Rawlsian arguments for extending the duty of assistance to corporations and how they are in fact not faithful to the Law of Peoples, we are now in a better position to see that if we were to extend the duty of assistance to corporations it would have to be done in the following way:

1. The duty of assistance is a duty of justice that is fulfilled primarily by states.
2. States must assign property rights domestically in such ways that they ensure both that any domestic principles of justice (such as the difference principle) and any international principles of justice (such as the duty of assistance) are fulfilled.
3. States may decide to regulate corporate property rights so that they fulfil (2).
4. Because of (3), corporations may be assigned a part of the duty of assistance by states.

In this light, we can envisage schemes that states might adopt towards corporations in order for states to fulfil the duty of assistance. One of the most obvious involves regulating corporate property rights in the form of taxation. There are two ways a state can go about doing this. The first does not single out corporate activities or features that would tie corporations especially to assisting burdened societies. So a state might tax corporations in much the same way as a state would tax individuals' income. That is, the state will work out the total revenue it needs to collect in order to meet the demands of international, and subsequently domestic justice. (The

demands of the duty of assistance would have priority over the demands of domestic principles of justice, say, those of the difference principle.) The state would then set the appropriate level of taxation for all individuals and business enterprises. The state's focus is simply on efficiently collecting sufficient revenue to meet its duty of assistance and other justice obligations. It is not looking to assign duty of assistance-related responsibilities based on features of agents that make it fairer to assign such agents these specific responsibilities.[35]

A second way to tax corporations is to impose a specific Duty of Assistance Tax – a DAT, if you will – on corporations. This is a possibility if states decide that allowing corporations to trade with burdened societies is an efficient way to fulfil the state's duty of assistance. Recall in Section II we discussed whether Rawls would endorse trade with burdened societies. There we saw that Hsieh was mistaken when he argued that we can tie corporations to the duty of assistance because their trading activities in burdened societies could do the latter harm. Instead, we established that it would be more true to Rawls to argue that he would only endorse corporate trade with burdened societies if corporate trade poses no obstacle to well-burdened societies becoming well-ordered, or corporate trade could actually help burdened societies establish the necessary institutions they need to become well-ordered. Thus, if ways could be found so that trade with burdened societies does not hinder their progress towards well-orderedness (for instance, if equitable trade terms can

[35] By this I do not mean that there cannot be differential treatment towards different agents' contributions based on other considerations of fairness. For instance, corporate income may be taxed at a different rate than individuals' because we may deem that the incorporation privileges that corporations enjoy entitle states to levy heavier taxes on them. This is an argument from fairness but it is not based on a feature of corporations that links it specifically to the duty of assistance.

somehow be established), then well-ordered states may decide to permit corporate trading. Well-ordered states may decide that a condition of allowing corporations to do so is that they are now assigned a special role in helping the state fulfil its duty of assistance. Corporations are likely to benefit from trade with burdened societies, however, states may demand that receiving such benefits be contingent upon corporations paying a DAT. The idea behind the DAT here is that in addition to any potential benefits corporations can bring to burdened societies through trading, by virtue of their new trading ties with burdened societies, well-ordered states are right to assign a special role to corporations when it comes to the states' own fulfilment of their duty of assistance. Of course, a well-ordered state may decide against levying such a tax. For instance, if it is foreseeable that such a DAT would deter corporations from trading with burdened societies so that the potential benefits of trade to burdened society would be lost, then a well-ordered state would have reason to refrain from imposing such a tax.

A third way to tie corporations to the duty of assistance is based on any "unique competencies" they have when it comes to helping burdened societies become well ordered.[36] Burdened societies are so not just because they lack material resources, they also lack the relevant 'human capital and know-how' and 'technological resources'.[37] Therefore, corporations with the relevant know-how could be assigned special responsibilities by well-ordered states to help states fulfil their duty of

[36] I borrow this phrase from Thomas Dunfee, "Do Firms with Unique Competencies for Rescuing Victims of Human Catastrophes have Special Obligations? Corporate Responsibility and the AIDS Catastrophe in Sub-Saharan Africa," *Business Ethics Quarterly* 16:2 (2006): 185-210.

[37] Rawls, *Law of Peoples*, 106.

assistance. The strength of the argument for assigning such responsibilities will depend on two factors: The first is whether or not the competence is really unique to specific corporations, in other words, can the assistance be provided by other means. The second is how basic the know-how is to burdened societies' achievement of well-orderedness. For instance, consider three companies: first, a pharmaceutical that can produce basic life-saving medicines; second, a large food-production company, like, say, Unilever; and last, a company that produces electronic voting machines. We would arguably have the strongest case for assigning the pharmaceutical company a part in helping well-ordered states to fulfil the duty of assistance. While medical, food, and electoral technologies are all basic means for burdened societies to achieve well-orderedness, of the three companies, only the pharmaceutical company has the unique competence to produce the goods – that is, life-saving medicines – required. The case for assigning responsibilities to the food company is less strong: well-ordered states can help improve burdened societies' access to food by other means, for instance, by giving aid money to local agriculture development programmes. Their first recourse is not necessarily to enlist help from food producing corporations, such as Unilever. However, the case becomes stronger if the know-how required is unique to a food production corporation, for instance, if they have the technology for certain disease-resistance crops. The case for assigning responsibilities to the e-voting technology company is the weakest because other readily available means, such as paper ballots, will also help burdened societies establish well-ordered institutions.[38] When it comes to methods, a well-ordered state

[38] The case of suppliers of e-voting machines came to mind here because a recent report by the Secretary General of the United Nations warned that unscrupulous vendors of such machines are saddling developing or post-conflict countries with electoral technologies that are 'so complex and

may attach conditions on the patents which firms with unique competencies may apply for in order to protect their unique technologies. For instance, the granting of a patent could be made contingent on a corporation's willingness to share their know-how with burdened societies.

I will not go into further details of a Rawlsian scheme for assigning duty of assistance-related responsibilities to corporations here. The three types of policies I have discussed above are not meant to be exhaustive of what such a Rawlsian scheme might recommend. Instead, they are meant to offer an impression of the kind of policies such a scheme might implement. What they are supposed to illustrate is that Rawls would consider it well-ordered states' firm duty to meet the demands of the duty of assistance. States can regulate and tax corporations in ways that would help them fulfil this duty. However, this does not make the duty of assistance the direct responsibility of corporations under the Law of Peoples. To further illustrate this point, we might also consider that while the three types of policies we discussed involve the state imposing taxes on and regulating corporations in some way, it is just as legitimate, under the Law of Peoples, to argue that states ought to offer incentives to corporations as a way of fulfilling the duty of assistance. For instance, if a programme such as the Health Impact Fund proposed by Andrew Hollis and

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expensive that they have the potential to leave [such] countries dependent on vendors.' United Nations General Assembly, *Report of the Secretary General on Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization*, 19 August 2011, accessed 4 December 2014, http://www.un.org/wcm/content/site/undpa/main/issues/elections/resolutions

Thomas Pogge,[39] would be more effective in delivering the necessary medicinal technology to burdened societies than regulating corporate property rights in other ways involving patents, then the duty of assistance would require states to implement such a programme.

Conclusion

In this chapter, I have debunked two ways in which we might mistakenly think Rawls would attribute global duties of justice to corporations. Given corporate wealth and capabilities, it is easy to want to tie them to the duty of assistance specified in Rawls's Law of Peoples because many think corporations could do more to help tackle world problems, such as poverty, or human rights and labour standard violations, or environmental damage. However, my caution is that what some want to derive in terms of corporate responsibilities from this vague notion of 'doing more to help' cannot be grounded in Rawls's Law of Peoples. This is

[39] Aidan Hollis and Thomas Pogge, *The Health Impact Fund: Making New Medicines Available for All* (Incentives for Global Health, 2008). The HIF is implemented when governments (and potentially other private donors) establish a pot of funds, which can be used to pay pharmaceutical companies every year for their patented pharmaceutical products. These products pharmaceutical companies will agree to sell at an administratively determined low price. The amount from the Fund that the patentee is paid is based on the health impact the product achieves when compared to what technology was available before. The HIF thus provides an incentive mechanism to encourage pharmaceuticals to develop drugs and medical technologies that treat diseases that plague poor populations especially. Treatment for these diseases are usually neglected by pharmaceuticals because the market for them is not lucrative enough to be attractive due to the indigent status of their potential consumers.

primarily for two reasons: First, Rawls does not take an explanatory pluralist view of how burdened societies come to be burdened; second, the duty of assistance should be understood as a duty of justice, and not as a mere duty of humanity. Together, both arguments restrict the kind of reasons we can put forward for imposing the duty of assistance on corporations: We cannot base corporate global justice duties on backward-looking responsibilities. That is, corporate global duties of justice in the Law of Peoples cannot be based on arguments about corporations being at moral fault for harming burdened societies; or on their having caused the burdened status of such societies in any way. Furthermore, we have to restrict the kind of role we can assign corporations: since the duty of justice ought to be understood as a duty of justice and not a duty of humanity, only states can be the primary agent of justice for the duty of assistance. I believe we have justifiable reasons to be dissatisfied with this Rawlsian account of corporate responsibilities. The task of the next chapter is to see how, if at all, we can extend Rawls's work in order to yield a more satisfactory account of corporate global duties of justice.

Chapter 6

Corporations and Transitional Justice

As we saw in the last chapter, a relatively close reading of Rawls's Law of Peoples would have us focus exclusively on well-ordered peoples as the primary agents for fulfilling the duty of assistance. Corporations' role is restricted to when well-ordered states deem it efficient to involve corporations in their efforts to fulfil the duty of assistance. Furthermore, the range of reasons that ground why well-ordered states have the duty of assistance is limited to forward-looking ones based on their capacity to help or their communal ties with burdened societies. Yet, this conclusion does not seem to track the intuition that there are a wider range of reasons that ground duty of assistance responsibilities and that there is scope for non-state agents, such as corporations, 'to do more' in that they could have more direct responsibilities that are unmediated by states to assist burdened societies. Judging from attempts at establishing schemes such as a New International Economic Order or, more recently, The Global Compact, it seems that such an intuition is widely shared.[1] It appears, then, that there is a responsibility deficiency in the Law of Peoples in that it is unable to accommodate a larger range of reasons to ground duty

[1] The New International Economic Order (NIEO) is a set of proposals put forward by developing states to promote more favourable terms in trade rules, development assistance, debt restructuring, as well as urging multinational companies to effect more technology transfers from rich to poor countries. For details of the Global Compact, see note 7 in Chapter 1 and its accompanying text.

of assistance responsibilities and that it is unable to involve non-state agents in a more direct way. Is it possible to offer a better account of responsibilities under the duty of assistance?

I believe it is possible to offer an improved account of corporate responsibility within the terms of the Law of Peoples. To do so, we need to achieve two things: first, expand the grounds for attribution of responsibility; and second, be able to establish that non-state agents can be primary agents of justice too. Sections I-III deals with the first task. In Section I, we revisit what was touched upon in the last chapter – that Rawls's unduly restricted grounds for allocating duties of assistance is due to his commitment to an autarkic understanding of states' economies. I argue that this commitment can be defended but only in ideal theory. In non-ideal conditions, there are reasons to be found even in Rawls's texts for jettisoning a commitment to autarky. If we do so, the grounds for attributing responsibilities under the duty of assistance can be expanded beyond those forward-looking ones we discussed in the last chapter. In Section II, I distinguish two branches of Rawlsian non-ideal theory – partial compliance theory and transitional justice. This distinction matters because the two branches actually have different relationships to ideal Rawlsian theory. Unlike, partial compliance theory, transitional justice theory is not restricted by ideal theory in its grounds for attribution of responsibility, nor in its identification of agents who ought to effect transitional justice. Thus, we need not, even under the terms of the Law of Peoples, restrict ourselves to regarding states as the only agents of justice; non-state agents, such as corporations ought to be considered too. In Section III, we revisit David Miller's six conditions for identifying remedial responsibilities-bearers and I argue that on almost all grounds,

we can establish that corporations have remedial responsibilities. In Section IV, I look at what this entails in terms of the content of these remedial responsibilities. I argue that there are three main types of remedial responsibilities – humanitarian duties, reparative justice duties, and natural duties of justice – for corporations. I further argue that the last – a natural duty of justice – is a duty of transitional justice and depending on how we ground corporate responsibility for this duty, we can make a case that corporations can be primary agents of transitional justice.

I. Rawls and Autarky

As we saw in the last chapter, Rawls subscribes to explanatory nationalism – the idea that we can explain why societies perform differently and have different levels of wealth largely by looking at domestic factors. Rawls has been much criticised for this autarkic view. Many have argued that it is empirically false given the level of economic interdependence amongst countries today. Furthermore, explanatory nationalism has morally unsavoury moral implications: an autarkic view of burdened societies' economies is unfair because the reality is that they have little choice but to participate in world trade, the terms of which are often dictated by more powerful and wealthy states and unfavourable towards burdened societies. Thus, not only does explanatory nationalism wrongly identify the cause of burdened societies'

conditions, it also unjustifiably absolves the more powerful and wealthy from any causal and potentially moral responsibility for remedying burdened societies' status.

Against this popular criticism, David Reidy has launched a vigorous defence of Rawls's Law of Peoples.[2] Reidy believes there is nothing unjustifiable about Rawls's view regarding autarky; he rejects any criticism of Rawls that argues Rawls's position on international justice is based on empirical falsehoods regarding how societies come to have their conditions and wealth. Reidy argues that such objection 'misses the mark' because

> Rawls has always insisted on approaching fundamental issues in normative political philosophy from a point of view that takes persons not as they are under existing conditions, but as they might be, given the empirical limits of human psychology, biology, and the like, under conditions that might reasonably be hoped for. The question is whether the idea(l) of peoples as self-sufficient, independent, and autonomous…belongs to the moral self-understanding of well-ordered peoples and is within the realm of empirical possibility under institutional conditions that might be reasonably hoped for.[3]

It may appear that we can apply this argument back to the question regarding the grounds for attributing a duty of assistance for burdened societies. We can construe Reidy's argument as saying that it does not matter whether Rawls accurately tracks

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[2] See, for instance, David Reidy, "Rawls on International Justice," *Political Theory* 32:3 (2004): 291-319. David Reidy, "A Just Global Economy: In Defense of Rawls," *The Journal of Ethics* 11 (2007): 193-236.

[3] Reidy "Rawls on International Justice," 300.

facts about how burdened societies come to be burdened. Even if Rawls is wrong about actual conditions now and the world is, as Rawls's critics would have it, enmeshed in a network of global interdependencies, this does not matter. What matters is whether we accept Rawls's vision of a Society of Peoples – with each people relatively self-sufficient, independent, and autonomous – as desirable and feasibly attainable. If we do accept this ideal, then we would also accept Rawls's autarkic view. Thus, we would also have no problems accepting Rawls's attribution of responsibility for the duty of assistance based only on forward-looking criteria, such as capability and communal ties.

Unfortunately, Reidy's defence of Rawls's assumption of autarky cannot be successfully applied here. Reidy is right to argue that we cannot put the ideal of the Society of Peoples under pressure by questioning Rawls's commitment to autarky. All Rawls needs to show is that a Society of Peoples that are relatively independent and self-sufficient is desirable and feasible. However, we are not putting the ideal of the Society of Peoples under pressure. What we are questioning is Rawls's prescription for how to achieve this Society of Peoples and whether this ought to be based on an autarkic view of states' economies. In other words, while we can accept that once we achieve the ideal Society of Peoples, in which all peoples are well-ordered, explanatory nationalism would best describe how each people come to be at their respective level of economic development and wealth, this does not mean we ought to accept explanatory nationalism as the best basis for attributing responsibilities for the duty of assistance at the point of transition from now to the attainment of the Society of Peoples. Instead, we may want to take into account the

facts regarding global interdependencies as setting relevant conditions for our attribution of responsibility.

To understand this, it may be helpful to think of the duty of assistance as operating in two modes. In the first, ideal mode, it operates in a world that is populated only by non-aggressive and well-ordered peoples, that is, in a world where the Society of Peoples is attained. The duty of assistance is still needed here because natural or other kinds of unforeseen disasters can render what were once well-ordered states temporarily burdened. Other peoples, thus, have an obligation – a duty of assistance – to support the affected peoples and help them establish well-orderedness again. In a second, non-ideal mode, the duty of assistance operates in something like our current world, populated by well-ordered and burdened societies alike. The duty of assistance is needed here to help burdened societies that have never achieved well-orderedness and have never established just institutions. Burdened societies here are in such an unfavourable state because of a plurality of factors that include domestic causes, which may include human fault in managing resources; international interdependencies, which may include unfair bargaining positions in international trade; and natural disadvantages, which may include a lack of natural resources or unfortunate geographic location.

Reidy's defence of Rawls works in mode one: Once we have established a Society of (Well-ordered) Peoples, where well-orderedness is partly defined as having the ability to be self-sufficient and independent, the need to carry out the duty of assistance only arises when states become burdened through no fault of or cause by other states. Hence, it is justifiable only to attribute the duty of assistance in these

cases using forward-looking criteria, such as capability to help and communal ties. In these cases, Rawls's autarky is defensible and it is immune from criticism that it leads to a responsibility deficit.

However, Rawls himself was clear that he is not mainly interested in the duty of assistance in ideal mode one. Instead, his express interest in the duty of assistance is in non-ideal mode two, that is, in understanding how it can help us transition from our current state to his ideal of the Society of Peoples. He says

> Though the specifics of our world at any time – the status quo – do not determine the ideal conception of the Society of Peoples, these conditions do affect the specific answers to questions of nonideal theory. For these are *questions of transition*, of how to work from a world containing outlaw states and societies suffering from unfavorable conditions to a world in which all societies come to accept and follow the Law of Peoples.[4]

If the duty of assistance operates in the space where 'questions of transition' arise, then clearly, even to Rawls, empirical facts matter. A society of relatively autarkic states may be defensible as an ideal to achieve but it is not what we are faced with now and disentangling how we are enmeshed in the global network matters for attribution of responsibility for moving towards the ideal Society of Peoples. Ignoring certain connections – for instance, how well-ordered peoples may have moral or outcome responsibility for burdened societies' current state – and only focussing on a restricted set of grounds for responsibility – such as the capability to help – is morally arbitrary.

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[4] John Rawls, *The Law of Peoples, with the Idea of Public Reason Revisited*. (Cambridge, MA: Harvard University Press, 1999): 90. My emphases.

II. The Duty of Assistance as Transitional Justice, not Partial Compliance Theory

So far we have established that in non-ideal transition justice, we ought to deploy additional grounds for attributing duty of assistance responsibilities to well-ordered peoples beyond the forward-looking grounds (such as capability and communal ties) that we are limited to by Rawls's commitment to autarky. This goes some way towards mending the responsibility deficit in the Law of Peoples. However, recall that what we are trying to achieve is not only to extend the grounds for attribution of responsibility, we also want to attribute to non-state agents, such as corporations, direct responsibilities for the duty of assistance. All we have achieved thus far is to expand the reasons to attribute responsibility to well-ordered states. What we have not done is show that the Law of Peoples is capable of according non-state agents a primary role in the fulfilment of the requirements of the duty of assistance. This is because, as we saw in the last chapter, the duty of assistance is a duty of justice. Recall that, as such, those agents tasked with discharging the duty of assistance have to keep in mind how discharging this duty may impact upon other principles of justice that a well-ordered society is also bound by, for instance, the difference principle. To be able to do so, we expect such agents would need the powers to assign property rights and distribute resources. Since corporations do not have such

powers, nor would their having such powers be desirable, we ruled out corporations as possible candidates for primary agents of the duty of assistance in the Law of Peoples. Hence, we arrive at the charge that the Law of Peoples suffers from a responsibility deficit.

However, much like the grounds for attribution of responsibility we discussed above, I believe this restriction on primary agents can be relaxed even within the framework of the Law of Peoples. To understand why this is so, we first need to look more carefully into how Rawls understands ideal and non-ideal theory. On Rawls's account of justice, ideal theory describes a perfect institutional arrangement, one where institutions are well ordered and individuals and other agents fully comply with the requirements that these institutions impose upon them.[5] This suggests that there are two different ways in which circumstances may fail to be ideally just. The first is when individuals and other agents do not fully comply with the requirements of justice; the second is when we lack background institutions that are just. For each of these scenarios, there is a corresponding branch of non-ideal theory.[6]

When agents do not fully comply with the requirements of justice, we have partial compliance theory. Partial compliance theory deals with matters such as: how, if at all, should we reallocate obligations if some agents fail to do their fair share in a just

[5] John Rawls, *A Theory of Justice: Revised Edition* (Oxford: Oxford University Press: 1999): section 69. In the case of domestic societies, institutions should be just rather than merely well ordered.

[6] My discussion on two kinds of non-ideal theory follows closely Gopal Sreenivasan's in his "What is Non-Ideal Theory," in *NOMOS LI, Transitional Justice*, eds. Melissa S. Nagy, Rosemary Nagy, and Jon Elster (New York: New York University Press, 2012). I disagree with him, however, that only individuals are agents of justice.

distributive scheme?[7] Or what kind of punishment and restitution system should we have in place when some fail to comply?

For cases when we do not have just background institutions, we have transitional justice. There are two ways which background institutions may fail to be well-ordered: they could exist but may be not well-ordered; or they may not exist at all. The questions that transitional justice deals with is: what obligations do agents have to effect the transition from non-ideal to ideal? Do they have obligations to reform existing institutions or to create new ones from scratch? Or do they merely have obligations to comply with rules of transition laid out by other agents?

For Rawls, both partial compliance theory and transitional theory presupposes ideal theory. According to Rawls, 'until the ideal is identified…non-ideal theory lacks an objective, an aim, by reference to which its queries can be answered.'[8] Furthermore, existing arrangements are to be judged in light of our understanding of what is ideally just and 'held to be unjust to the extent that they depart from [the ideal conception] without sufficient reason.'[9] Thus, ideal theory specifies the end point or long-term goal that non-ideal theory should aim for.

Despite this appearance of similarity, I believe what is not fully appreciated is that the two branches of Rawlsian non-ideal theory do not actually share the same

[7] One of the most well-known works on this subject is Liam Murphy, *Moral Demands and Nonideal Theory* (Oxford: Oxford University Press, 2000).

[8] Rawls, *Law of Peoples*, 90.

[9] Rawls, *A Theory of Justice*, 216.

presuppositions about ideal theory. Partial compliance theory is about what we should do when agents shirk or violate their prescribed duties of justice. To be able to identify instances of abnegation or violation, partial compliance theory must know who ought to be doing what for whom in the first place. In other words, partial compliance theory presupposes an identifiable set of agents who have a specifiable set of duties. On the other hand, transitional justice is about how we get from existing non-ideal arrangements to having just background institutions. To be able to trace the route towards just institutions, transitional justice theory must know what constitutes just institutional arrangements. In contrast to partial compliance theory, transitional justice theory does not presuppose knowing which agents should bring about just institutions, or what duties they have in order to do so. Or to put it in another way: ideal theory gives transitional justice theory no direct guidance for identifying which agents should do what to bring about just institutions, it just gives guidance to what just institutions are.

The caveat of 'direct' guidance is important here because the two branches of non-ideal theory are not mutually exclusive. It is possible that the reason just institutions are lacking is because some agents are failing to do their part – that is, there is partial compliance. In such cases, then, partial compliance theory gives some guidance as to how we ought to make the transition from an unjust arrangement to a just one – hold those agents identified as responsible in ideal theory to account. Yet, transitional justice does not thus simply collapse into partial compliance theory. This is because there are circumstances when all agents identified by ideal theory are doing their fair share, and yet just institutions are still lacking and it is unclear who ought to do what to bring them into existence.

With this distinction in place, we can now deploy it to see how we might find a way to relax the restriction on primary agents within the framework of the Law of Peoples and assign non-state agents, such as corporations, a leading role under the duty of assistance. In the last chapter, I criticised Hsieh's approach as lacking fidelity to Rawls when he argues that corporations could be primary agents for the duty of assistance when states shirk. I claimed then that it would be truer to Rawls to argue instead that, should states abnegate their responsibilities, then we ought to enforce their duties in a stricter way. We are now in a position to develop a better alternative to Hsieh's argument for extending the duty of assistance to corporations.

We begin by pointing out that it is possible to present the duty of assistance in two different ways. On the one hand, Rawls lists the duty of assistance as the eighth principle in his Law of Peoples. This makes the duty of assistance part of ideal theory. We can call this DA_{LP}; it is a more refined version of what I have been calling 'mode one' of the duty of assistance in the previous section. DA_{LP} operates after we have achieved a Society of Peoples, in which we assume well-ordered people are willing to abide by the principles of the Law of Peoples. It is needed in cases of natural disasters, or where unforeseen emergencies render previously well-ordered societies temporarily burdened. Crucially, as part of ideal theory, this understanding of the duty of assistance assumes that ideal theory has specified who ought to have responsibility for DA_{LP} and the grounds of their responsibility are also similarly fixed.

This understanding of the duty of assistance is the one that is latent in Hsieh's interpretation of Rawls. More specifically, it is the corresponding partial compliance branch of non-ideal theory that Hsieh is discussing. His argument is, to recapitulate again, that corporations should step into states' role as primary agent of the duty of assistance when states fail to comply. My contention is that if Hsieh is trying to fit corporations into *Rawlsian* partial compliance theory, then there is not much room for him to do so.[10] This is because Rawlsian partial compliance theory is determined by Rawlsian ideal theory. In international justice's case, this ideal is the Society of Peoples and it has already specified well-ordered states as the primary agents responsible for the duty of assistance. In addition, since DA_{LP} only takes effect after a Society of Peoples has been realised, and part of this ideal is that peoples should be relatively autonomous and self-sufficient, the grounds for states' responsibility for DA_{LP} is restricted to forward-looking ones – such as their capability to help and their communal ties with burdened societies. Backward-looking grounds – such as, moral fault or outcome responsibility – have no place.

By contrast, if we were to emphasise a different understanding of the duty of assistance, I believe we can successfully put corporations within the framework of the Law of Peoples. In addition to the above understanding, the duty of assistance can be understood as part of transitional justice theory. In fact, there is clearer

[10] It is possible of course for us to construct an argument from a *general* understanding of partial compliance theory – one that is free from the constraints set by a Rawlsian ideal of domestic and international justice – but that is not the task Hsieh has set, nor is it our task here. For more on what a general understanding of partial compliance theory might be like, see for instance, Sreenivasan, "What is Non-Ideal Theory?" 245-50, and Pablo Gilabert, "Global Justice and Poverty Relief in Nonideal Circumstances," *Social Theory and Practice* 34: 3 (2008): 431-34.

evidence that Rawls himself took this view. As noted above, transitional justice is that branch of non-ideal theory where we lack well-ordered institutions. For Rawls, the duty of assistance is about well-ordered societies helping burdened societies establish such institutions. Thus, it is natural to understand the duty of assistance as part of transitional theory. We can call this DA_{Trans}; it is a more refined version to what I have been calling 'mode two' of the duty of assistance in the previous section. DA_{Trans} operates in a world much like ours – there are burdened and outlaw states, as well as well-ordered ones; a Society of Peoples has not been achieved yet. And since transitional justice is not similarly constrained, as partial compliance theory is, by ideal theory with regards to which agents should do what to effect the necessary transitions, DA_{Trans} is free to include agents other than just states as responsible for reforming or establishing well-ordered institutions. DA_{Trans} can potentially include corporations as such agents. It is also free to include grounds that were ruled out by Rawlsian ideal theory, such as those backward-looking ones of moral fault and outcome responsibility. Therefore, since ideal theory does not fix for DA_{Trans} specific agents or the grounds for attributing responsibility, we must look for independent reasons elsewhere if we were to try and hold corporations responsible for DA_{Trans}. This is the task we turn to in the next section.

III. Grounding Corporate Responsibilities

If we are to ground corporate transitional justice, the natural place to turn to once again is David Miller's discussion of remedial responsibility. Remedial responsibility is a needed as a response whenever 'we encounter a situation in need of remedy.' What Miller is interested in specifically is cases where 'a person or a group of people who are unjustifiably deprived in some way', and we find it morally unacceptable for them to remain so. Remedial responsibility is called for because we have a situation that 'demands to be put right'.[11] Transitional justice is about just such situations: we are faced with a lack of just or well-ordered institutions. This is an unjustifiable deprivation and ought to be put right. Therefore, if we want to find grounds to attribute transitional justice obligations to corporations, then the conditions that Miller lists as connecting agents to remedial responsibility can help us get started. Here is a reminder of the six conditions which Miller categorised for attributing remedial responsibilities: moral responsibility, outcome responsibility, causal responsibility, responsibility due to benefit, responsibility due to community ties, and responsibility due to capacity. I believe we can ground corporate remedial responsibility in almost all of these criteria.[12] Before we examine each criterion, let me note that although I do canvass some examples of corporate remedial responsibilities in this section, they are only given in broad strokes and are meant to

[11] David Miller, *National Responsibility and Global Justice*. (Oxford: Oxford University Press, 2007): 98.

[12] That is, all except for causal responsibility: by its nature, there is an element of unpredictability with causal responsibility. More often, we can only identify causal responsibility after the causal link has happened; its flukish nature prevents any meaningful attribution of responsibility in a priori and systematic ways.

give a quick impression of what might follow if we were able to attribute to corporations remedial responsibilities under each of the six different headings. The task of the current section is to see how we can ground corporate responsibilities in the broader category of remedial responsibilities. I leave the task of refining just what it is that corporations are meant to do in order to fulfil the narrower category of transitional justice responsibilities for the next section.

Let's begin by examining moral responsibility. The kinds of moral responsibility that lead to corporations having responsibility for transitional justice fall across a spectrum from causing direct harm to being complicit in indirect harms. Cases where corporations directly contribute to rights violations fall towards the direct harm end of the spectrum, whereas cases where corporations provide support to rights violators can be categorised as indirect complicity. In practice, a finely calibrated account of where along the spectrum each incident falls may not be easily had. For example, an instance of corporations directly employing sweatshop labour in a country where sweatshop labour is illegal is clearly a case of direct harm. So is deliberately damaging the environment in irresponsible mining operations. Towards the other end of the spectrum, we may have corporations paying taxes to oppressive regimes. However, the following cases may be harder to categorise. Consider for instance a corporation that employs, through other companies in its supply chain, labourers who have to work long hours and in conditions that violate internationally recognised labour standards, but not the laws of the country in which those companies are based; or a corporation that bribes officials because it is recognised that this is the normal way of conducting business in certain burdened societies; or a corporation that supplies confidential information of political dissidents when

requested to do so legally by an oppressive regime. It is difficult, in each of these cases, to argue whether the harm caused is direct or indirect. However, I would argue that the attribution of transitional justice responsibilities does not require a finely tuned account of harm. What matters is that we ultimately establish well-ordered institutions. In each of the above cases, corporations are standing in the way of this goal – they make it difficult to establish labour standards, or an incorrupt public sector, or equal political liberties by violating the right of dissent.[13] Therefore, we can identify corporations as having responsibilities for transitional justice on grounds of their moral responsibility without too much difficulty.

We can also identify corporate responsibility on grounds of their being innocent beneficiaries of wrongs committed by others. However, this type of identification is easier to do in theory than in practice. In practice, my suspicion is that many of the cases that could potentially come under this heading of 'benefit' would be better re-categorised under moral or outcome responsibility. Consider for instance, a case we discussed above, that of a corporation benefitting from the sweatshop labour employed by a company in its supply chain. Even if we grant that the corporation in question has no prior knowledge of such sweatshop labour being used, it is difficult here to argue that they are innocent beneficiaries. Corporations surely must be required to exercise due diligence before they enter into a contract with any supply chain company and effectively monitor its activities afterwards. In a case like this, it

[13] It should be noted here that, within the framework of the Law of Peoples, although decent societies may have a narrower range of political liberties than just societies would (decent societies may not respect the liberty of conscience, for instance), the right of political dissent is respected by all well-ordered societies.

would be better to characterise the corporate responsibility here as one due to indirect complicity. On the other hand, we might think that if we affirm the developed world's having outcome responsibility for world poverty in general, then corporate global business activities that benefit from the extant economic structure makes corporations innocent beneficiaries. However, the 'developed world' here encompasses corporations. Thus, although they do benefit from the global economic structure, they also are outcome responsible for it. This argument supplants the one from benefit as corporations can no longer be said to be 'innocent' beneficiaries in the sense that they have no causal link to the outcome that benefits them. However, there is reason to keep 'benefit' as a discrete category. Given its global reach, the number of actors that are involved in corporate trade is vast. Therefore, it is likely that at one point or another, some of these actors will commit a wrong from which a corporation will benefit.

Corporations can also have transitional justice responsibilities grounded in outcome responsibility. Thomas Pogge offers perhaps the most well-known variant of such an argument. He argues that developed countries maintain global institutions – such as the IMF, and the WTO. They also maintain policies related to trade – such as tariffs, intellectual property rights on developing countries' imports. Pogge argues that these institutions and policies are significant causes of world poverty. Furthermore, developed countries also maintain dictatorial and corrupt regimes by allowing them to sell and borrow against their countries' natural resources. Therefore, Pogge argues all agents in the developed world – including states, individuals, and other private actors, such as corporations – have obligations to end world poverty.

Now Pogge couches his argument in much stronger terms: he argues that by not reforming the current global economic structure, those in developed countries are harming the poor. Many have challenged whether Pogge is entitled to this strong conclusion given that the empirical story he tells may be one-sided – some have questioned whether we ought to take into account that the global economic framework has also helped poor countries elevate their standard of living,[14] others have argued that it is not as easy to measure the impact of the global framework on world poverty as Pogge claims,[15] still others have argued that Pogge unjustifiably ignores national factors that contribute to poor countries' condition.[16] What these challenges have in common is that they all argue that the causal links between what citizens of rich countries do to support the global economic order and the poor condition of some states are complex. Therefore, it is not a straightforward matter to prove that citizens of rich countries have harmed the world's poor and, in consequence, have moral responsibility.[17] However, note that none of Pogge's critics challenge the claim that there are causal links between to the global economic order and the state of poor countries. Therefore, even if we cannot say that the developed world has harmed the world's poor by acquiescing in the global economic structure (or put another way, the developed world is morally responsible), we can still argue that the developed world is outcome responsible. Recall that outcome

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[14] Mathias Risse, "Do We Owe the Global Poor Assistance or Rectification?" *Ethics and International Affairs* 19:1 (2005): 9-18.

[15] Debra Satz, "What Do We Owe the Global Poor?" *Ethics and International Affairs* 19: 1 (2005): 47-54.

[16] Miller, *National Responsibility*, 238-47.

[17] The further substantive conclusion that Pogge draws about what rich countries have to do in order to fulfil their duties towards the world's poor has also come under fire. I will discuss this in the next section on substantive duties.

responsibility arises when Y is deprived because of some morally neutral or even morally justifiable action of X's. So insofar as the global economic structure has some predictable causal impact on poor countries' condition – a fact that no objector to Pogge denies – then, although the developed world's participation in world trade within this structure is morally unobjectionable, a side effect of their doing so is that they contribute to world poverty. This means that the developed world has outcome responsibility and therefore a remedial responsibility to ameliorate the situation. Since corporations are part of the developed world, by extension, they too bear this outcome responsibility.

There are also instances where we can identify communal ties between corporations and burdened societies such that remedial responsibilities arise. I am not thinking here of the commonplace practice of corporations invoking the language of 'family' to describe the supposed bond that exist between workers and the company that employs them. I think that a degree of skepticism is rightly exercised in cases where such language is invoked to disguise the loose and often transactional tie between workers and company as one that is more binding and morally weighty. However, there are cases where a corporation has location-specific activities, and over time, it can be said to have established community ties. In practice, such community ties also give corporations special access or expert knowledge of a place so that, in addition to reasons to do with community ties, we also have capacity to reasons to ground corporate remedial responsibilities.

An example I have in mind here that illustrates remedial responsibility on grounds of community is that of De Beers and their provision of anti-retro viral therapy and

drugs for their HIV-positive employees and their relatives in Botswana. Debswana – De Beers branch in Botswana – is the largest private sector employer in that country. Furthermore, diamond mining and trading is a key part of the national economy. Debswana, being the only diamond mining and trading company in Botswana, is thus responsible for in excess of 70% of Botswana's export earnings, 30% of GDP, and 50% of government revenue.[18] In fact, the diamond trade is often credited for making Botswana one of the few success stories in post-colonial Africa, with the trade helping pull the country from poverty when it became independent in 1966 to being a 'middle income' nation by 2004.[19] Another salient fact about Botswana is that it is a country classified as hyper-endemic for HIV. Such countries have HIV prevalence rates in excess of 15% in the general population – the rate of infection amongst adults in Botswana is estimated at 23%.[20] This set of facts illustrate how a corporation can come to have communal ties with a society in such ways that remedial responsibilities arise. It is obvious that De Beers does not uniquely possess the capacity to provide ART for its staff – a public health service or even other pharmaceutical companies are amongst other agents that could do so too. However, De Beers' being the largest private employer in Botswana gives it special insight into what its workforce needs especially in terms of dealing with HIV when compared to other private companies. Moreover, its long history in Botswana, together with the significance of the diamond trade in the development of that

[18] Debswana Corporation, "Introduction ," accessed 23 December 2014, http://www.debswana.com/About%20Debswana/Pages/Introduction.aspx

[19] The World Bank, "Botswana Overview," accessed 23 December 2014, http://www.worldbank.org/en/country/botswana/overview

[20] As of 2012. See Unicef, "Botswana Statistics," accessed 23 December 2014, http://www.unicef.org/infobycountry/botswana_statistics.html

country, means that De Beers may be better placed to help provide remedies than a fledgling public health service that may initially struggle to find the resources for the treatment of a chronic disease such as HIV, which requires a complex set of drugs and long-term therapy. Therefore, the case that De Beers' special ties in Botswana make it a part of the community is plausible and it thus has remedial responsibilities to help the country set up well-ordered institutions, such as health care services.[21]

Finally, we have capacity as the last criterion for connecting agents to remedial responsibilities. When it comes to corporations, I think the criterion can be applied in two ways. The first way we have canvassed in the previous chapter. It has to do with corporations' "unique competence" in remedying a situation. Most of the time, these "unique competences" will be due to the fact that a corporation has researched and developed some technology that other agents are not able to, and remedial responsibilities arise because that technology is necessary for meeting some fundamental human need. The most obvious candidate here is pharmaceutical corporations that can deliver live-saving medicines. I think a case can also be made

[21] To be clear, I am not saying that De Beers actually intends to help Botswana set up public healthcare services. Elsewhere, the company's rhetoric certainly seems to suggest that this is what it intends to do especially in the face of governments' indifference or inability to provide public access to ART for HIV patients. For instance, Gary Ralfe, the managing director of De Beers, criticised the South African government's stance on HIV/AIDS as "pusillanimous" and seems to present De Beers' decision to provide ART to its South African staff and their relatives as a remedy to the lack of public healthcare in that country. (The press conference in which Ralfe made the comment is reported in *Mining Weekly*, "Gem leader slams SA's AIDS policies," 13 August 2002, accessed 23 December 2014, http://www.miningweekly.com/article/gem-leader-slams-sax2019s-aids-policies-2002-08-13) Whatever De Beers' intentions, my point that corporations can have communal ties and hence attendant remedial responsibilities stands independently and I am only using the case of Debswana to illustrate such a possibility.

for corporations that can deliver food and agricultural technology. We can also consider here private defence contractors. The idea of Security Sector Reform (SSR) is a normative concept popular in international relations literature. SSR's focus is on the importance of a functioning security sector to the promotion of sustainable development and peace. In a weak state – whether this is because it is post-conflict, or because it is still developing economically – disciplined, incorruptible, and professional police and military forces are crucial if other well-ordered institutions are to be established. Therefore, we might argue that private defence corporations who can provide professional training for nascent police or military forces have remedial responsibilities.[22]

A second way in which the criterion of capacity applies to corporations has nothing to do with what a corporation can do uniquely or what it can do by itself. Instead it has to do with corporations' general ability to influence state practices and their collective ability to alter the global economic structure. Corporations by dint of their economic power are able to influence states to change their behaviour with regards to the protection of human rights, of labour standards, and of the environment, and to the fight against corruption. The argument here is that corporations can do more than merely respect human rights, labour standards, and so on, in their own business activities. Instead, they ought to take more positive actions. They ought to use their economic might to push wayward or weak states to do more in terms of protection of human rights, setting up labour standards, and so on.

[22] Currently, this type of police and military training in post-conflict or developing states is usually provided by UN Peacekeeping personnel, members of which are supplied by UN member states.

Beyond influencing individual states, corporate clout can also potentially alter global trade rules and the global economic structure in which trade takes place. The basis for arguing that corporations have such capacity is to note that state sovereign power, which was once deemed to be supreme in international relations, is under challenge from non-state actors. Corporate power is one such source of threat. For now, the common perception is that such corporate power exerts a negative influence on state sovereignty. For instance, corporations are said to reduce states' power over their fiscal policy because states have to enter into tax competition with each other in order to attract or retain corporate business. Or, corporations are said to corrode state power in setting trade policy by making states set up favourable protectionist policies for local industries. The argument about remedial responsibility here is that, if corporate power can be used to alter trade rules and policies for the worse, then such power can also be harnessed to change the global economic structure for the better. Instead of pressuring states for trade rules and policies that only favour their own individual corporation, a case can be made that collectively, corporations should pressure states to reform inter-state trade rules as well as the policies of international organisations that handle global trade (such as the WTO, the IMF, and the World Bank) so that these rules and policies are more equitable and fair.

We shall return to the complex idea of fair trade in a short while. For now, after having looked at the different grounds for identifying corporations as remedially responsible, let me recapitulate my argument thus far: I have argued that if Rawls's duty of assistance is properly understood as an obligation of transitional justice, then the agents who have to discharge such an obligation are not determined by the ideal

of the Society of Peoples. Because of this, in our search for appropriate agents of transitional justice, we need to find reasons independent of the ideal of the Society of Peoples to identify obligation holders. In this section, I have argued that we can deploy the six conditions that Miller has set for connecting agents to remedial responsibilities in our search for independent grounds. Since corporations typically fulfil up to five out of the six conditions, we can justifiably identify corporations as having remedial responsibilities. However, this does not yet show that corporations are agents of transitional justice. We turn to examine whether this can be shown in the next section.

IV. Corporations' Substantive Responsibilities for Transitional Justice

From our discussion of grounds of remedial responsibilities in the above section, I believe we can hold corporations responsible for three broad types of obligations – humanitarian duties, reparative justice duties, and natural duties of justice. However, of the three, only the last shows that corporations are agents of transitional justice. And it is this last that is of especial interest to us. This is because our particular interest here is filling in the responsibility deficit of Rawls's Law of Peoples. By interpreting the duty of assistance as a case of transitional justice, we have freed ourselves from the conception of the world as made up of mostly autarkic states and

we are allowed to consider reasons for attributing remedial responsibility beyond forward-looking grounds, such as capacity or community. This expanded set of grounds for attributing remedial responsibilities allows us to involve corporations; yet, we have not shown that their involvement goes beyond being secondary agents of justice. Recall that the difference between primary and secondary agents of justice is that the former have 'capacities to determine how principles of justice are to be institutionalised within a certain domain', they can also 'assign powers to and build capacities in individual agents, or they may build institutions – agencies –with certain powers and capacities to act.' By contrast, secondary agents of justice contribute to the realisation of justice 'mainly by meeting the demands of primary agents'.[23] I will argue that if we want the Law of Peoples to better track the intuition that corporations ought 'to do more', then we need to show that corporations can have natural duties of justice, because only thus can we argue that they can be more than secondary agents of justice and assume primary duties for transitional justice. Let's go through the three kinds of substantive duties to see why this is so.

When corporations have unique competencies or are in a communal relationship with those who are unjustifiably deprived, we have grounds for arguing that they have humanitarian duties. However, this does not necessarily ground any duties of transitional justice. Consider again those corporations that have unique competencies, such as pharmaceutical companies, and those that have community ties with a deprived populace, such as De Beers. If we consider the two grounds of unique competencies and community ties alone, then we can show that corporate

[23] Onora O'Neill, "Agents of Justice," in *Global Justice*, ed. Thomas Pogge (Oxford: Blackwell, 2001): 189.

remedial responsibilities are merely humanitarian duties if we liken a corporation that has unique competence and communal ties to the most talented cook in a neighbourhood. If there is a homeless person on the same block, we might argue that the talented cook should, out of humanitarian concern, prepare food for the homeless person. However, our talented cook is allowed to consider the costs to herself when deciding whether she has to carry out this humanitarian duty. Relatively trivial costs, such as she will be inconvenienced because tonight she is going out to have dinner with friends, can outweigh the duty of humanity. This would not be true if the duty under consideration was one of justice; the calculation of cost could not so easily have mitigated a duty of justice.

The second kind of substantive duties corporations have involve making reparations. Reparative justice duties are required most obviously when harm had been caused or, in other words, when there had been corporate moral responsibility. If we revisit our discussion of corporate moral responsibility above, then reparations are due when corporations intentionally neglect to enforce labour standards, or cause damage to the environment. They may also be due when corporations unintentionally provide succour to oppressive regimes by sustaining them through bribery. The same can be true where there is remedial responsibility due to benefit received. If a corporation has innocently benefited from others' deprivation, then it is plausible to argue that it ought to make reparations to the victims.

Yet while duties of reparation are duties of justice, showing that corporations ought to undertake reparations does not necessarily fill in the responsibility deficit in the Law of Peoples. This is because in carrying out the substance of reparative justice

duties, corporations do not necessarily take on a primary role. Ordinarily, if harm has been caused or if there are innocent beneficiaries of deprivation, there are three courses of reparative action. The first is to cease and desist. For instance, if a corporation is deliberately violating labour standards by making workers labour in sweatshop conditions, then the obvious first course of action for them is to stop. Or if a corporation is deliberately causing environmental damage, again, it ought to refrain from doing so. The second course of reparative action is to offer compensation – for instance, by giving money back to the victims of harm or to those victims from whose deprivation that one has innocently benefited. Finally, there are restorative actions – for instance, cleaning up any environmental damage caused. Notice, however, that these three types of actions are not ones that are distinctive of primary agents of justice. They are not about determining how principles of justice are to be institutionalised within a certain domain, nor are they to do with assigning powers to and build capacities in, individual agents, and nor are they about building institutions so that they have certain powers and capacities to act.

It is worth mentioning here that Thomas Pogge would object to the conclusion just drawn. As was touched upon briefly in the last section, Pogge wants to derive positive duties on the part of the rich to the global poor from the need to refrain from harm. He wants to argue that agents in rich countries have obligations to end poverty. This implies that corporations, as agents in rich countries, may have obligations to reform or build institutions to end poverty – that is, take on the role of primary agents of justice. However, Pogge has been criticised, not only on whether agents in rich countries really are harming the poor— as we saw in the last section, his argument is better couched as one of outcome, rather than moral responsibility. He

has also been criticised for trying to derive all our obligations to the world's poor from harm.[24] Even if there is harm, we may only be able to derive negative obligations to refrain from causing further harm; positive obligations to reform or build institutions do not necessarily follow. Therefore, if we are looking to establish corporations as primary agents of justice that have attendant positive obligations, we have to find other reasons to ground this role.

I believe if we turn our attention once again to the better interpretation of Pogge's arguments – that outcome, rather than moral responsibility is involved – as well as to corporate capabilities to alter global economic structures, we can find grounds to establish corporations as primary agents of justice. We saw in the last section that corporations have outcome responsibility because although their participation in the global economic order is not of itself morally objectionable, a side effect of their doing so is that they contribute to world poverty. Thus, they incur outcome responsibility. The question now is why does having this responsibility translate to corporations having positive obligations as primary agents of justice? Why are the corporate obligations derivable from outcome responsibility not merely those of secondary agents – such as obeying the rules and refrain from causing further harm, or paying compensation as a consequence of their rule-violation?

The reply is rooted in two facts about the global economic order. The first fact has to do with the lack of reasonable agreement amongst international participants in trade over what a just global economic order would look like. Although there are

[24] Satz, "What Do We Owe," 51-3.

international organisations, such as the WTO, the IMF, and the World Bank, that are internationally recognised as regulators of different parts of the global economic order, not everyone under their authority accepts that they are fair and legitimate. Developing countries often complain that the trade rules and the general international economic order imposed upon them by international organisations are favourable only to the more powerful countries that hold heavy sway over these international organisations.[25] Therefore, one can make the case that if we recognise that the current global economic order can be structured so that it is fairer to all participants, then we ought to redesign it. And until we arrive at a better design, we are in transitional justice territory.

In such a situation, Rawls's natural duty of justice comes into play. Rawls argues that 'a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also

[25] Developing countries have been campaigning hard to reform these so-called Bretton Woods institutions. They have put forward proposals for a New International Economic Order (see note 1 above). To combat the developed world's hold on the global economic order, developing countries have also established the Group of 77 (G77) to better promote their own economic interests on the global stage. More recently, Brazil, Russia, India, China, and South Africa (BRICS countries) have set up the New Development Bank (formerly known as the BRICS Development Bank) as an alternative to the World Bank and the IMF, which are perceived to be dominated by US and European interests.

Incidentally, part of this perception is fuelled by the fact that, historically, the IMF's managing director has been European and the president of the World Bank has been from the United States. Calls to change this convention have mounted over the years but, as yet, there have been no reforms. Robin Harding, "Brics say European IMF claim obsolete," *The Financial Times*, 25 May 2011, accessed 23 December 2014, http://www.ft.com/cms/s/0/0ef16b54-862d-11e0-9e2c-00144feabdc0.html#axzz3NWqKjIt8

constrains us *to further just arrangements not yet established*'.[26] If we lack just background institutions to govern global economic relations, then we all, including corporations, have a natural duty of justice to further just arrangements. However, one might object that even if, due to their outcome responsibility, corporations have a natural duty of justice, this does not necessarily entail any positive duties. It may be that the best way for corporations to fulfil their natural duty of justice is to refrain from acting in certain ways so that other agents, such as states, play the role of primary agents and establish just institutions.

The reason that corporations may have positive responsibilities when it comes to fulfilling their natural duty of justice is that, when there is a lack of just background institutions, inaction in certain contexts is not sufficient to discharge their natural duty. In some contexts, refraining from action might be enough. Sometimes, by making sure that they respect labour or human rights standards, or that they do not pollute, corporations are fulfilling responsibilities under their natural duty of justice. However, in most other contexts, in order to fulfil this duty, the choice that corporations face is not one between omission – not contributing to rights violations – and action. The choice that any corporation that is serious about living up to its natural duty of justice faces is between two courses of action: either take as the company's own goal the fulfilment of standards of human rights, labour, environment, and so on, or accept the task of reforming and establishing just institutions and regulations that govern their activities.[27] Corporations may have to

[26] Rawls, *A Theory of Justice*, 99. My emphases.

[27] Here I borrow a line of argument that Cristina Lafont makes. While mine concerns corporations and the natural duty of justice, Lafont's concerns international financial organisations and human

act by investigating business partners so that no sweatshop labour is employed in their supply chain, for instance; or they have to make respect for human rights a part of the contracts they sign with governmental partners. Alternatively, given that corporations are enmeshed in intense global competition and a lone company that decides not to employ cheap sweatshop labour, or take advantage of tax havens, and the like, may risk losing out to those who are less inclined to fulfil their natural duty of justice, dutiful corporations can work to change the rules and structure of international economic relations so that there is a better and more formal mechanism to hold those who do not comply accountable. While this shows that corporations cannot merely rely on respecting negative responsibilities to fulfil the natural duty of justice, showing that there are positive corporate responsibilities does not prove that corporations also ought to be primary agents of justice. Can such a link be made?

Establishing such a link depends on the second fact about the global economic order, which has to do with the openness of motivation and capabilities of global actors. To endow corporations with a role as primary agent of transitional justice, recall Onora O'Neill's original argument when she first differentiated between primary and secondary agents. O'Neill's argument is that since traditional primary agents of justice – that is, states – are often weak or corrupt, we need secondary agents to step up and fill in the roles abnegated by states. However, O'Neill's argument in transitional justice cuts deeper than she originally intends. Recall that in ideal theory, where agents' roles are clearly assigned, we may well ask secondary agents to shoulder more primary roles should any primary agents fail to comply. However, in

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rights fulfillment. Cristina Lafont, "Accountability and global governance: challenging the state-centric conception of human rights," *Ethics and Global Politics* 3:3 (2010): 203.

transitional justice, primary and secondary roles are not pre-determined by ideal theory. If a multitude of international agents are outcome responsible and have a natural duty of justice to further or establish just institutions, then I would argue that the relative capabilities and motivations of different agents must play a significant part in determining who should have primary or secondary roles. Corporations can outspend, outflank, and even corral states. Furthermore, their capacity to do good or ill can outstrip the regulatory capacities of states and international organisations. Plus, on some occasions, corporations are better motivated, even sometimes better morally motivated, than states to do good. Therefore, we cannot 'decide by fiat' that states or international organisations take on the role of primary agents of transitional justice.[28] It is possible that there are cases where corporations have better capacity and are more motivated to further just arrangements. If so, then corporations ought to have 'capacities to determine how principles of justice are to be institutionalised within a certain domain', and they ought to 'assign powers to and build capacities in individual agents' or 'build institutions – agencies –with certain powers and capacities to act.'[29] In other words, corporations ought to be primary agents of transitional justice.

In what cases, then, do corporations' outcome responsibilities and capabilities to effect structural change come together so that they ought to be primary agents of transitional justice? Given that we have already hinted at the lack of just institutions

[28] Andrew Kuper, "Redistributing Responsibilities – The UN Global Compact with Corporations," in *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, edited by Andreas Follesdal and Thomas Pogge (Dordrecht: Springer, 2005): 373.

[29] O'Neill, "Agents of Justice," 189.

in international economic relations, the rules and structure of international trade is an obvious candidate case. For this reason, we turn our attention to corporations' role for transitional justice in international trade in the next chapter.

Conclusion

We began the chapter by noting that the relatively strict reading of the Law of Peoples from the previous chapter yielded results that failed to track our moral intuitions that there is more corporations can do to mend the unfairness in world economic rules and to help eradicate world poverty. The strict reading constrained us in terms of the reasons we can deploy to ground remedial responsibilities, as well as in terms of the agents we can consider. From a narrow Rawlsian perspective, only states could qualify as agents of remedial responsibility. In this chapter, I argue that a revised reading of Rawls will reveal that his duty of assistance can be understood in two ways, one corresponding to ideal theory, the other to non-ideal theory. Furthermore, properly understood, the duty of assistance in non-ideal theory is part of transitional justice. This understanding is crucial because what has often escaped notice is that transitional justice theory does not have the same relationship with ideal theory as its non-ideal cousin – partial compliance theory. Ideal theory does not predetermine the grounds for attributing who has responsibilities to effect the required transitions, and the agents to whom such grounds are relevant. Thus, this revised reading of Rawls frees us to consider non-state agents, such as corporations, as having a role to play in transitional justice. I argued that David Miller's taxonomy

of grounds for attributing remedial responsibility can help us connect corporations to transitional justice. However, while many of the grounds for attributing remedial responsibilities apply to corporations, not all such grounds yield substantive duties that are duties of transitional justice. Only outcome responsibility and corporations' capacity to effect structural change lead us to the conclusion that corporations ought to be agents of transitional justice. In the next chapter, I consider what this entails for corporations when it comes to their responsibility for effecting transitional change in international trade.

Chapter 7

Corporations and Transitional Justice in Trade

In the last chapter, we established that it is possible to interpret Rawls's Law of Peoples in such a way as to remedy the apparent responsibility deficit. In fact, it is possible to assign non-state agents, such as corporations, a primary role in fulfilling the duty of assistance. In this chapter, we turn to look at one specific area in which corporations may be particularly suited to be primary agents of transitional justice. We turn to look at how corporations can improve the structure of international trade.

If we are to show that corporations ought to be primary agents of transitional justice for international trade, the first hurdle to overcome is to show that we can actually conceive of trade as a structured practice, rather than a mere aggregation of different transactions. For if there is no structure to speak of, then it is meaningless to talk of reforms and arranging alternative institutions. I argue that we can and should think of trade as a structured practice, amenable to improvements by responsible agents, in Section I. In Section II, we look at two different ways in which we may care about organising trade in a fair way. The first has to do with the practices internal to trade, the second has to do with the consequences that trade has. I will argue that while both are valid aims, focussing on one rather than another affects who we consider primary agents of transitional justice. I believe corporations are more suited to be

primary agents of transitional justice if we focus on the consequences of trade and, in Section III, I look at what this means corporations have to do in practice to improve international trade. Finally, in Section IV, I look at the problems of desirability and feasibility raised by according corporations a primary agent's role in transitional justice for trade. In particular, I focus on the problem of enforcement for duties of transitional justice. Given that transitional justice is a response to a lack of just arrangements, this also means that there usually is a lack of formal mechanism to hold agents of transitional justice to account. I discuss why this does not show that duties of transitional justice are not duties of justice and propose alternative ways to address this problem of enforceability.

I. Trade as a Structured Practice

To establish that corporations have a primary role in transitional justice in international trade, we first need to determine that we can talk of transitional justice in international trade. If international trade has no structure and it is beyond any individual or collective effort to organise it, then justice may not apply here and there is no need to speak of transitioning towards more just arrangements. One conception of trade is sceptical about the possibility of understanding it as a structured practice. On this conception, trade is just a set of transactions conducted by a number of different individual or collective actors. We might speak of the

market coordinating these actors' activities, or say that these actors are guided by the invisible hand of the market; however, there is no common purpose shared amongst market participants. Individual actors trade because the result of trading is beneficial to them in some sense. If this is the proper conception of trade, then crucially for those of us who are trying to apply moral principles to trade, this conception leaves little room to speak of fairness or justice in trade. Individual actors will trade when it is beneficial to them: if they do engage voluntarily in a market transaction, then that by definition is fair for them.

Contrary to this conception, Aaron James has recently put forward an alternative.[1] Instead of emphasising the role of individual participants, James urges us to consider the importance of states in maintaining international trade. He puts forward a theory based on common market reliance by states that shows that international trade is indeed a structured practice in which moral claims about fairness and justice can arise.[2] James's argument is that, contrary to the first conception above, trade does have a common purpose: The key actors in trade in this account, that is, states, share the same purpose of augmenting national income. To achieve this purpose, states need to provide all market participants assurances about the future if they are to engage in trade-related activities. States do so by creating domestic and international institutions that render trade reliable and predictable. They set up international organisations, such as the WTO, and they enter into trade treaties with one another. Therefore, states are in control of non-market structures which the market, if it is to

[1] Aaron James, *Fairness in Practice: A Social Contract for a Global Economy* (New York: Oxford University Press, 2012).

[2] Ibid., 37-41.

exist at all, is completely dependent upon. These non-market structures do not just contribute to trade, they are in fact constitutive of it.[3] And once we see that there is such a structure, and it is within the control of agents, moral claims about justice do arise. We can ask: how are these structures to be arranged so that they would be just to all participants?

Now, while James's conception of trade provides a convincing and welcome argument for why claims of justice arise in trade, its focus on states as agents who control the international economic structure that regulates trade may not seem particularly helpful for our task of establishing corporations as agents in transitional justice in trade. Instead, it seems to point us back towards the more conventional and limiting view that states are the primary agents of justice. However, I will argue that James's account is still helpful for our purpose if we recognise that James is describing the current practice of international trade. James's moral claim that international trade can be subject to claims of justice is dependent on the truth of the empirical claim that states are the primary agents in control of organising the various domestic and international institutions that regulate trade. However, my moral claim is that justice in international trade is as yet imperfect and in the transition from where we are now to a better international economic regime, corporations have a primary role to play. This claim would be rebutted if it can be shown that only states ought to play such a primary role in transitional justice. It is not rebutted, however, by factual claims, like James's, that states are in fact the only primary agents in international trade. To motivate my claim, I need to establish that there is an

[3] Ibid., 41.

understanding of justice in trade in which corporations' particular ties to the problem – because of their outcome responsibility and their capabilities in altering structures – mark corporations out as primary agents in transitional justice.

II. Justice in Trade: Internal Fairness or Fair Consequences

I believe such an understanding can be established if we distinguish between two conceptions of justice in international trade. Once this distinction is in place, my argument is that we will see that while states are better suited to be primary agents of justice on one understanding, corporations ought to be primary agents of *transitional* justice on both conceptions of fair trade.

To see why, let's begin with the first understanding of justice in trade. On this conception, we look at the internal fairness of trade. That is, we look at the rules that govern transactions and ask whether these are fair to all participants involved. Crucially, on this understanding, we do not look at the consequences trade have on trading parties; we focus on the terms of trade. Because its concern is trade rules, this conception of trade lends itself easily to the view that trade is primarily about relationship between states. What is needed for internal fairness in trade is a set of fair procedures. For instance, there ought to be reciprocity in trade: if state A does not impose a tariff on the imports of state B, state B should offer a reciprocal

arrangement to state A. Or, there should be non-discrimination: all trading partners of a state should be given the same terms; for instance, state A should not impose a tariff on some of the imports of state C, if state A imposes no tariff on any of the imports of state B. Since these trade rules are often agreed between states, and enforced by state-created international institutions, such as the WTO, states are seen as the primary agents in procedural justice in trade.

Aaron James's account of trade employs this conception. James distinguishes fairness issues that are part of the global order but are external to the issue of trade, and fairness issues that are internal to trade. And James chooses to focus on the latter. He says that

> …in order to focus on internal issues, we adopt the working stipulations that there are no external issues. We assume there are no underlying issues of human rights, poverty relief, environmental protection, or of any other external kind, until explicitly indicated.[4]

Now James is not arguing that the 'external' issues are not relevant, indeed, he sees them as weighty and devotes his concluding chapter to exploring them.[5] However, James is arguing that if we recognise that there are different fairness considerations in trade, a theorist has a choice to make: either one can approach fairness in trade by considering fairness on all grounds, or one can approach it by choosing a particular ground and bracket off the others. James chooses the latter approach and his resultant conception of internal fairness in trade is thus accordingly focussed on states being the primary unit of concern as well as the primary agent in charge of

[4] Ibid., 145.

[5] Ibid., chapter 10.

realising trade justice. James argues that the appropriate conception for fairness in trade is 'structural equity'. This comprises three principles:

1. Collective Due Care Principle requires that no individual is left worse off through international trade than he or she would be in a closed society.
2. International Relative Gains Principle requires that the gains of trade be distributed equally between all trading states.
3. Domestic Relative Gains Principle requires that the gains of trade should be distributed equally between individuals within each trading nation.[6]

James's structural equity thesis is groundbreaking in that he provides one of the first systematic attempts at theorising about trade justice. It has not, however, escaped criticism. Much of the criticism is focussed on the first two principles and the baseline of autarky on which they are based.[7] James's structural equity relies on seeing states as 'partially integrated countries that would remain productive in the absence of trade'.[8] Because of this, when it comes to division amongst states of the gains of trade, for each state, we ought to add all the gains that state can obtain from its economic activities (inclusive of trade with other states), then we subtract from this what that state could generate in autarky. The rest (the surplus) should then be

[6] Ibid., 14-18.

[7] Kristi A. Olson, "Autarky as a moral baseline," *Canadian Journal of Philosophy* 44:2 (2014): 1-21. Mathias Risse and Gabriel Wollner, "Critical Notice of Aaron James, *Fairness in Practice: A Social Contract for a Global Economy*," *Canadian Journal of Philosophy* 43: 3 (2013): 382-401. Mathias Risse and Gabriel Wollner, "Three Images of Trade," *Harvard Kennedy School Faculty Research Working Paper Series* (February, 2014), accessed 23 December 2014, https://research.hks.harvard.edu/publications/workingpapers/Faculty_Name.aspx?PersonId=170

[8] Aaron James, "Reply to Critics," *Canadian Journal of Philosophy* 44:2 (2014): 298.

put in a separate pot comprised of the other trading states' surplus and divided up equally amongst the trade partners. The objection against this is that, given the tangled trade history of our world, there is no plausible way to identify a baseline of autarky that would determine what a state could consider as legitimately theirs and thus not subject to equal distribution amongst trade partners. Our world has had an extensive history of expansionism, colonisation, and cross-border trade, all of which has led to a deep cross-fertilisation of natural and human resources.[9] As a result, it is impossible to disentangle what a people could have produced in isolation.

This objection against James's autarkic baseline is significant for our inquiry into whether corporations can be primary agents of transitional justice. I will return to it shortly. For now, I want to turn our attention to a second criticism of James's structural equity view of international trade. In addition to objecting to James's autarkic baseline for division of gains of trade, Mathias Risse and Gabriel Wollner argue that a second weakness of James's account is that it is unable to accommodate 'the insight…that not all obligations that arise *in the context of trade* arise *from trading*.'[10] Risse and Wollner explain that this 'insight' stems from the fact that

> Many people think those who produce their clothes should not work in buildings that could readily collapse, or that those who produce their coffee should earn enough to get by and not be subject to abuse. We are linked to

[9] William Bernstein, *A Splendid Exchange: How Trade Shaped the World* (New York: Atlantic Monthly, 2008).

[10] Risse and Wollner, "Three Images of Trade," 15.

them through trade, and many people think this connection generates special obligations.[11]

It seems to me that James is not unaware of the insight: he shows he is by differentiating between 'internal' and 'external' fairness issues related to trade. So what Risse and Wollner are really arguing is that James cannot choose, as he does, to isolate the internal issues of trade from the external ones. If we are considering fairness in trade, we cannot bracket off 'underlying issues of human rights, poverty relief, environmental protection, or of any other external kind'.[12] In other words, instead of looking at whether trade is internally fair when it comes to the terms of trade and how trade gains are to be divided in isolation from other considerations of fairness, we need to look at the outcomes of trade and whether trade has the right kind of impact on its participants. On this conception of fairness in trade, what would be considered the right kind of impact will depend on how one understands global justice. For instance, if one takes a prioritarian view of justice, then we might want trade to raise the weakest trading partner's position to the greatest extent possible; or, if one takes a sufficientarian view of justice, then we might want trade to raise all participants in trade to a suitable threshold above poverty.

Arguing in this vein for a consequence-based view of fair trade, Risse and Wollner says that their conception of fairness in trade is 'embedded' in a 'full-blown theory of global justice' and that theory is about taking an ecumenical approach to the concept of exploitation.[13] By this they mean that they consider five different

[11] Ibid., 15.

[12] See accompanying text to note 4 above.

[13] Risse and Wollner, "Three Images of Trade," 16.

conceptions of exploitation – which were put forward by five different moral philosophers – are all relevant when it comes to considering fairness in trade. The five different conceptions are: Hillel Steiner's idea that a transaction can be exploitative if it depends on a previous rights violation;[14] Robert Goodin's idea that one is being exploitative if one uses another's vulnerability to press for an advantage;[15] Alan Wertheimer's idea that there is exploitation if the price trading partners settles for is not the one that a perfectly competitive market would generate;[16] Ruth Sample's idea that one exploits another if one fails to respect the value of others;[17] and Nicholas Vrousalis's idea that transactions can be exploitative if one party extracts a benefit from another in a way that leads to the former party's domination over the latter.[18]

Risse and Wollner argues that there are 'three paradigmatic ways' in which we think exploitation occurs in trade, and the five different conceptions canvassed above are needed to account for why we have such intuitions. The first way is 'exploitation as taking advantage of a wrong'.[19] An example given here by Risse and Wollner is the recent interaction between Ukraine and Russia. Given Ukraine's dependence on Russian oil and gas, Ukraine has had to accede to less favourable trade terms than

[14] Hillel Steiner, "A Liberal Theory of Exploitation," *Ethics* 94:2 (1984): 225-41.

[15] Robert Goodin, *Protecting the Vulnerable: Reanalyzing our Social Responsibilities* (Chicago: University of Chicago Press, 1985).

[16] Alan Wertheimer, *Exploitation* (Princeton: Princeton University Press, 1999).

[17] Ruth Sample, *Exploitation: What It Is and Why It Is Wrong* (Lanham, M.D.: Rowman and Littlefield, 2003).

[18] Nicholas Vrousalis, "Exploitation, Vulnerability, and Social Domination," *Philosophy and Public Affairs* 41: 2 (2013): 131-57.

[19] Risse and Wollner, "Three Images of Trade," 26.

they would have done had they access to adequate natural resources. If insufficient access to natural resources is a rights violation – for instance, because we believe there should be common ownership rights to the world's natural resources – than Ukraine is being exploited. Risse and Wollner argues that Steiner's conception of exploitation – that a transaction can be exploitative if it depends on a previous rights violation, as well as Sample's – that one exploits another if one fails to respect the value of others, both come into play here.

A second paradigmatic case of exploitation in trade concerns 'exploitation as taking advantage of the vulnerable'.[20] A case in point could be companies who use individual farmers' poverty, lack of education and access to information to press for trading advantage. Another case in point is when representatives of developing countries lack the relevant expertise and skill to represent their country's interests adequately in WTO negotiations and more powerful nations can use this to press for advantage. In both of these cases, Goodin's conception of exploitation as taking advantage of the vulnerable applies.

The third type of exploitative case concerns 'exploitation as domination'.[21] Here Risse and Wollner argues that when powerful companies employ workers at low wages and under adverse labour conditions, powerful companies are using the power differentials between them and the workers in a way that disrespects the equal status of workers. A similar case can be made when a powerful state like the US presses weaker states to adopt trade liberalisation policies Here, Vrousalis's conception of

[20] Ibid., 28.

[21] Ibid., 30.

exploitation based on the idea of domination obviously provides a close fit, but Risse and Wollner argues Wertheimer's account of exploitation applies here too. This is because when one trading party dominates another, the resulting exchange would be different than it would have been in a perfectly competitive market – the outcome for the dominated party is less beneficial than it would have been.

I do not offer a critical reading of Risse and Wollner's categorisation of the different ways international trade can be exploitative here. I have given some of the examples they provided to better illustrate their ecumenical approach because their overall conception of fairness in trade provides a counter to James's account which is useful for our purpose of trying to pin down corporations' role in international trade. As we can see from the examples Risse and Wollner provide, there are many instances of exploitation beyond unfair procedures that set the terms of international trade. For this reason, many different kinds of actors – individuals, companies, and states – can all be exploiters. An ecumenical approach to exploitation thus involves corporations in a way that James's more state-centric and procedural account of fairness in trade cannot. Does this therefore mean we have found a definitive way to involve corporations as primary agents of transitional justice if we adopt Risse and Wollner's approach to fair trade?

III. Corporations as Primary Agents in Transitional Justice for International Trade

The answer is: not yet. Although Risse and Wollner's account of fair trade takes into account the activities of more actors than states, what their account does not show is what exactly needs to be done and by whom in order to improve the current situation. Knowing that exploitation can happen in many places and be committed by different actors only yields the normative conclusion that we ought to avoid exploitation in trade. If we were to attempt to tie corporations more closely to the problem of exploitation, we would essentially be trying to do what we did in Section III of the last chapter, namely, we would be trying to see how corporations are remedially responsible. For instance, the case of the company taking advantage of farmer's poverty and lack of education can be re-cast in terms of companies having remedial responsibility based on their gaining benefit from other's deprivation. Or the case of the company under-paying workers and employing them in sweatshop conditions can be re-cast in terms of companies having remedial responsibilities based on having caused harm. If we do so, we are no closer to tying corporations to having the role of primary agents in transitional justice because, as we have seen from Section IV in the last chapter, showing that corporations have remedial responsibilities sometimes just means that corporations should refrain from acting in certain ways (for instance, causing harm). Showing that corporations have positive responsibilities and that these are of the kind borne by a primary agent of justice requires us to do more.

To achieve this, we need to begin by putting the idea of transitional justice together with the two conceptions of fair trade we distinguished in the last section. This is because the idea of transitional justice gives us a way to interpret the dispute Risse and Wollner have with James such that it would yield a course of action and tell us what needs to be done in terms of achieving fairness in international trade. Through knowing what our aim is, we can then better determine what corporations' role is in achieving this aim. Recall that transitional justice comes into play when we lack just institutions. Risse and Wollner's objection to James can be re-cast as a complaint that James's structural equity conception of fair trade can only be a just conception in a world where transitional justice is no longer required. We can argue that in our current situation, given that we lack just background institutions that regulate exploitation by a multitude of actors in international trade, James's idea that fair trade is achieved if states share equally the relative gains of trade inadequately addresses this transitional justice issue. This is not to deny the relevance of James's account of structural equity in trade. Instead, the claim is that James's account is an ideal of fairness in trade and it should only come into effect as a goal we aim for after we have fixed the extant instances of exploitation by establishing just background institutions that regulate trade actors. Risse and Wollner's outcome-orientated account of fair trade draws our attention to the negative impact trade has on people – negative impact that states receiving an equal share of the gains of trade cannot remedy. Aiming to share equally the gains of trade between states is a hollow gesture towards justice if we do not remedy the different ways in which trade can lead to exploitative relationships.

Understood this way, what we have with James's account of fairness in trade is a long-term ideal which sets the goal we should transition towards. The goal then is to have a society of states that are relatively self-sufficient and autonomous and could, should they so choose, abstain from world trade. The thing to note here is that this is *the goal*. Unlike under James's account, where he starts with assuming that we already have relatively self-sufficient and autonomous states, we are arguing that establishing such states should be the target we set for transitional justice. This then mirrors our discussion of Rawls's autarky in Section I of the last chapter. There we argued that if a Society of (relatively self-sufficient and autonomous) Peoples, all abiding by the Law of Peoples, is the ideal, it would be reasoning backwards to assume that autarkic peoples are what we have now and they are the only agents who can take us from our current non-ideal circumstances towards a more ideal situation. In Rawlsian fair trade, as in Rawlsian international justice, we are free to look beyond states as agents of transitional justice.

We are thus some way closer to establishing a role for corporations in transitional justice in trade. We now have a goal set for transitional justice in trade to target. So the question now is: If we set James's account of fair trade as a long term goal for Rawlsians, then how, if at all, are corporations primary agents in transitional justice?[22] If James's account of fair trade sets the long-term ideal, then Risse and

[22] I think a plausible case can be made for setting James's account of fair trade as a long term goal for Rawlsians. Besides the fact that James is explicit in borrowing Rawlsian constructivist methodology, the actual content of James's work – in that he accepts the moral status of states as a defensible idea and that states can and should be relatively autonomous – should provide sufficient evidence of his theory's Rawlsian provenance. However, if we accept that this is a Rawlsian account, then we need to revisit what having a 'cut-off' point means for the idea of the duty of assistance. Rawls argued that

Wollner's account sets out the short-term course of action to effect transition to that ideal: we need to eliminate, or at least minimise, opportunities for exploitative behaviour in international trade. There are two ways in which corporations can achieve this: First, they can act individually and on a case-by-case basis. For instance, corporations can avoid using sweatshop labour, make sure they are scrupulous in not using their economic might by threatening to relocate to pressure states into giving them more favourable tax breaks, and so on. This sort of behaviour is not what I have in mind, however, when I say that corporations can be charged

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the duty of assistance, in our transitional justice sense, has the end goal of getting burdened societies to a well-ordered state. If part of being well-ordered implies being economically self-sufficient to the extent that peoples can opt out of international trade should they choose to do so, then there may be no 'cut-off point' in terms of time when the duty of assistance is met. This is because geographical luck of the draw means that some peoples will inhabit territories that are rich in natural resources, where others will not be so lucky. Having access to natural resources does determine the extent to which a state can be self-sufficient and abstain from participation in the global economy. Therefore, to ensure that all peoples remain well-ordered, which now includes the sense in which they can be relatively self-sufficient, peoples who have access to natural resources may have to make continual transfers to resource-poor peoples. This may take the form of something like the Global Resources Dividend, which Thomas Pogge champions. [See Thomas Pogge, "A Global Resources Dividend," in *Ethics of Consumption: The Good Life, Justice and Global Stewardship*, eds. David A. Crocker and Toby Linden (Lanham, MD: Rowman and Littlefield, 1998); and Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002): chapter 8.] Therefore, Rawlsians should be aware that although one of the virtues that Rawls extols about the duty of assistance is that it appears to be a duty that has a finite target – unlike its cosmopolitan and more globally egalitarian counterpart, in practice, there is a sense that the duty of assistance also requires continual transfer. The difference between Rawlsian and cosmopolitan global justice then lies in the level of continual transfer each would recommend. Arguably, since they want to make sure the world's worst off is as well off as possible, cosmopolitans would favour a higher level of transfer, whereas Rawlsians' would 'cut-off' when well-ordered autarky is maintainable by all peoples in case any choose to opt out of international trade. [The ambiguity in the idea of a 'cut-off' point for the duty of assistance has been discussed by Chris Armstrong, "Defending the Duty of Assitance," *Social Theory and Practice* 35:3 (2009): 470-1.]

with a primary role in transitional justice. This is because, for one, it is not the kind of behaviour that defines a primary agent of justice. To reiterate: primary agents of justice have the responsibility of determining how principles of justice are to be institutionalised within a certain domain; of assigning powers to and build capacities in, individual agents; and of building institutions so that they have certain powers and capacities to act. For another, such behaviour is likely to be ineffective and does not make the most of what corporate capacity can achieve. It is likely to be ineffective because many exploitative situations in international trade are arguably not due to discretionary exploitation; rather, they are due to structural exploitation. The difference between the two is set out by Robert Mayer:[23] Discretionary exploitation happens if A could have avoided exploiting B at little cost to herself; if not, then exploitation is non-discretionary. One type of non-discretionary exploitation is structural exploitation. Of particular relevance to our interest in international trade here is that structural exploitation can occur when several actors are locked in competition and if any party unilaterally stops exploiting, they will suffer a loss. Therefore, what we want corporations to do is not just to stop discretionary acts of exploitation but also work out how to stop structural exploitation.

It is here where I think corporations' role as primary agents of transitional justice finally comes into effect. To stop structural exploitation, there are two broad types of things that corporations can do. The first involves collective action, usually by

[23] Robert Mayer, "Guestworkers and Exploitation," *Review of Politics* 67 (2005): 311-34; and Robert Mayer "Sweatshops, Exploitation, and Moral Responsibility," *Journal of Social Philosophy* 38 (2007): 605-19.

corporations within a particular industry, in setting up standards of behaviour that prevent exploitation and in providing disincentives against defection by individual participants. Some work along these lines has already been attempted in the mining and the garment industries. The EITI – Extractive Industries Transparency Initiative – and the GITI – Garment Industries Transparency Initiative – are set up by businesses, in collaboration with governments and non-governmental organisations, with the aim of setting up industry-wide labour standards by which all companies within the sector should abide.

The second type of action corporations can take to stop exploitation involves disrupting the state-centric nature of international organisations that regulate trade. In all the significant international organisations that regulate global trade – the IMF, the World Bank, the WTO – only member states have any legal standing. To see why this may have a detrimental impact, we can consider the case of another international organisation – the International Court of Justice (ICJ).[24] The ICJ only decides about four cases a year, compared to the 60 cases per annum work rate of the European Court of Human Rights. As one study shows, a leading explanation of the difference between the ICJ and the European Court could be that only states are allowed to bring cases in front of the ICJ and states and state bureaucrats want 'neither to lose political or administrative control of disputes nor to embarrass other

[24] I borrow this example from Andrew Kuper, "Redistributing Responsibilities – The UN Global Compact with Corporations," in *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, eds. Andreas Follesdal and Thomas Pogge (Dordrecht: Springer, 2005): 378.

states'.[25] By contrast, nearly all cases brought before the European Court were by individuals, with support from non-governmental organisations. Something similar could be impeding the work of international organisations that regulate global trade. For instance, states' jealous guarding of their sovereignty can lead them to overlook complaints made by other actors about some states' human rights abuses or violations of labour standards. They do so because they fear that their sovereign control may also be similarly challenged. Impelled by this very logic, we have seen states unable to agree on a plan of action and make improvements even in the face of serious human rights violations in the conflicts in Syria and Gaza, for instance. In the face of less serious human rights violations in labour conditions, states may be even less moved to act.

The inclusion of other kinds of non-state actors, such as corporations, in the international trade system may help break the pernicious logic of statism. Corporations already have some standing in international organisations governing trade. The International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank Group, takes cases from companies that are based in one of its member states. ICSID provides an arbitration forum between governments and foreign investors to settle investment disputes. Use of ICSID has expanded rapidly as bilateral investment treaties (BITs) have increased from 385 in 1989 to over 3,000 today.[26] BITs usually have clauses that offer compensation to

[25] M. W. Janis, "Individuals and the International Court, " in *The International Court of Justice: Its Future Role After Fifty Years,* eds. A. S. Muller, D. Raic, and J. Thuranszky (The Hague: Martinus Nijhoff, 1997): 208-12.

[26] "UNCTAD, "Quantitative data on bilateral investment treaties and double taxation treaties," accessed 4 January 2015.

foreign investors if the host government expropriates the investment or disrupts it. Furthermore, most treaties contain an investor-state dispute resolution mechanism. This mechanism allows companies to by-pass domestic courts and to go directly to international arbitration when they believe their contracted rights have been violated. What this illustrates is that states and corporations can have equal footing in matters to do with international trade. The growth of BITs and the use of the ICSID show that there is growing recognition that when it comes to procedural fairness in trade terms, state sovereignty is not inviolate: if a state violates its contractual terms with a company, states too can be bound by trade rules. From this, we could make a case that, when it comes to matters concerning the outcomes of trade, and not just its procedures, the same international mechanism can be reformed so that corporations can bring states to account in matters such as human rights violations, environmental damages, and labour standards abuse.

Now, one might ask if these two broad types of corporate action against structural exploitation accord corporations a primary role in transitional justice. The first type of collective action – for instance, of building industry-wide standards – does involve corporations determining how principles of trade justice are to be institutionalised in their sector. And if standards such as EITI and GITI are taken seriously, industries may want to build institutions and assign powers to them so that they can effectively enforce such standards. These are certainly roles of a primary agent of justice.

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http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/Quantitative-data-on-bilateral-investment-treaties-and-double-taxation-treaties.aspx

The second type of action – of reforming international trade organisations so actors besides states have standing – does not seem to involve corporations as primary agents of justice. International organisations, like the WTO or the World Bank, and so on, are created by states; they are maintained through their member states' financial contributions; and states accord them powers to regulate international trade. States seem to be the only primary agents of justice involved. However, we must bear in mind that we are speaking of transitional justice here. This makes a difference, since primary agents of change do not necessarily need to be the same primary agents who we ultimately settle on as suitable for ideal theory. If, as discussed, we take Aaron James's conception of fair trade as ideal, which involves relatively self-sufficient and autonomous states equally sharing the gains of trade, then states ought to be the primary agents of justice when it comes to the creation and maintenance of international organisations that regulate trade. In our current circumstances, the statist bent of international organisations is precisely what gives rise to some of its imperfections. Consider, for instance, their inability to criticise certain states' human rights violations because fellow states jealously guard the concept of state sovereignty; or their bias towards more powerful states in certain matters. Therefore, states cannot be trusted to be the only primary agents of transitional justice, even if, at the same time, we affirm the ideal of ultimately achieving a world of relatively autarkic states that are ideally the primary agents of justice. In our transitory state, non-state actors who have the capacity to combat structural exploitation are responsible for shouldering the burdens of primary agents of transitional justice. Corporations have such capacity. Unlike smaller businesses or individuals, they have some standing in international trade organisations such as the ICSID. If they use this burgeoning standing to push reforms in international

organisations in the direction of these organisations holding states more accountable, then corporations are reassigning and readjusting tasks and building different capacities in existing agents – actions that are part of the remit of a primary agent of justice.

IV. Corporate Duties of Transitional Justice: desirable and feasible?

I want to turn my attention to the question of whether it is desirable or feasible to ask this much of corporations in this last section. Let's begin with desirability. We began our quest to expand the grounds and role corporations have to shoulder transitional justice responsibilities because there was a perception that there is a responsibility deficit in Rawls's Law of Peoples; we wanted it to better track our intuitions that corporations ought to do more for the betterment of the world. At the same time, there is a competing intuition that commercial and financial enterprises are too powerful. Writing at a time when scandal after scandal is revealed about the practices of corporations' cousins in the banking industry, it may seem *more* state control of corporations is called for, rather than what I have been advocating – more corporate involvement in reforms. The fear is that such call for heavier corporate involvement is going to make them even more powerful and thus even less controllable by countervailing state power.

Whether or not such fears about the undesirability of according more responsibilities (and hence, potentially more power) to corporations is warranted depends heavily on how one tends to regard the power and motivations of other agents of transitional justice. If we think that there are more effective agents who are better motivated to take on transitional justice responsibilities, then we have reason not to give corporations such a central role in trade reforms. We can consider here two types of agents – governments and non-governmental organisations. When it comes to capacity, governments are in many ways more powerful than corporations in effecting change but, as we have seen, there is no reason to think that governments are better motivated than corporations in making changes. Governments can be weak, corrupt, and oppressive. When it comes to non-governmental organisations, since they are often founded with the express motivation to effect change, we have less reason to doubt their intention to make things better. However, in particular affairs, they may be less effective agents than corporations. This may be especially true of an issue like international trade where corporations' heavy involvement and high stakes in the matter can make them more knowledgeable and potentially a more persuasive voice for change. The point is that while we may doubt corporations' motivations and intentions, I believe no other agent comes across as obviously better suited to be agents of transitional justice. This is especially true in the case of reforming international trade. Thus, any fear that more corporate responsibilities for change can lead to greater corporate power can be outweighed by the fact that their involvement is necessary.

Let me now turn to the question of feasibility. There are no formal rules or mechanisms to dictate and assign responsibilities to agents of transitional justice, nor are there any formal rules or mechanisms to sanction instances of non-compliance. We might ask, therefore, whether it is feasible to talk about transitional *justice*. Recall, from Chapter 5, that one of the features that distinguishes duties of justice from duties of humanity is that the former is enforceable. If we currently lack formal mechanisms to enforce transitional justice duties, does this mean that all our previous talk of corporations being primary agents of transitional justice is just inaccurate aspirational chatter and instead, what we are really discussing is what we would rather like corporations to do in terms of humanitarian assistance?

I believe this is not so. To see why, we first need to come to a better understanding of the enforceability condition of duties of justice. One way of understanding this is to think that the existence of formal mechanisms for allocation and enforcement of duties – certain kinds of legal or political institutions – is a necessary condition for such duties of transitional justice to exist. In other words, the presence of such institutions is an existence condition for such duties of justice. A strict reading of this existence condition would yield the conclusion that were there no already existing institutions that are already allocating and enforcing duties of transitional justice, then no such duties exist. But this reading seems misguided to me. In failed states that lack a functioning legislature and judiciary, we do not thus think that the duty to prevent genocide becomes a humanitarian consideration. A better reading of the existence condition is perhaps that formal mechanisms *ought to* exist to enforce certain duties of justice. In other words, rather than arguing that we have a duty of justice because we have existing formal enforcement mechanisms, we should argue

that if we can make a principled case that a duty is significant enough to establish formal mechanisms for its allocation and enforcement then we have a duty of justice.[27]

Even if we can show that duties of transitional justice are duties of justice even when formal mechanisms for their allocation and enforcement are lacking, our job is only half done. Some effort must be spent on discussing exactly how we can move forward from lack of enforcement to better enforcement. Such transitional justice matters are largely undeveloped in political philosophy but some, like Pablo Gilabert, have made preliminary attempts at theorising about the problem.[28] Gilabert argues that there are at least three trajectories that transitional justice can take.[29] These trajectories are: institutional reforms, public deliberation, and protests. What is relevant for our discussion on enforcing corporate duties of transitional justice here is that the latter two – public deliberation and protests – can affect the former – institutional reform – and thus can arguably be considered as a tool for enforcement. Archon Fung has argued that while the past decades' grassroots protests against corporations' labour and environmental practices are often met with corporations

[27] I believe something like this argument is the one put forward, persuasively in my view, by Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account," *Philosophy and Public Affairs* 37: 3 (2009): 229-56.

[28] By contrast, transitional justice is a well-established topic in international relations, specifically in theories about international organisations. Administering transitional justice in post-conflict states is a large part of the United Nations' activities. For a cross-disciplinary look at how transitional justice might be better theorised, see Melissa S. Nagy, Rosemary Nagy, and Jon Elster eds., *NOMOS LI, Transitional Justice* (New York: New York University Press, 2012).

[29] Pablo Gilabert, "Global Justice and Poverty Relief in Nonideal Circumstances," *Social Theory and Practice* 34: 3 (2008): 434-8.

denying culpability or placing the blame on local governments, it has created an environment where corporations have to respond, and where their claims will be checked. Protests then can be understood as a form of public deliberation, which in turn constitutes a mechanism, albeit an informal one, for enforcing corporate responsibilities.[30] Furthermore, over time, this informal mechanism has also yielded some positive results: some corporations have incorporated human rights protection, respect of labour standards, and so on into their codes of conduct, and some have hired independent social auditors to monitor their practices. With more time, one might hope that the 'cacophonous dynamic of protest, consumer demand, and corporate response' might yield more substantial changes. It could possibly lead to corporations creating more formal mechanisms that enforce their collective role in transitional justice, for instance, initiatives like EITI and GITI but with more beefed up powers of enforcement. Or it could possibly lead to corporations taking a more active and primary role in changing the background structure that governs international trade.

Conclusion

Over the last three chapters, we have been trying to fill in a responsibility deficit in Rawls's Law of Peoples by establishing that there is a way to interpret Rawls so that corporations can be accorded a primary role in transitional justice. In this chapter,

[30] Archon Fung, "Deliberative Democracy and International Labor Standards," *Governance: An International Journal of Policy, Administration, and Institutions* 16:1 (2003): 51-71.

we looked at how one specific area – international trade – where corporations might have responsibilities to take on such a role. To motivate such an argument, we first needed to establish that international trade is in fact a structure that could be better organised through collective control. After this, we needed to establish what exactly is the goal of reform when it comes to international trade – do we want to make the procedures of trade fairer or do we also care about the impact trade has on the less fortunate in the world. I argued that we can understand Aaron James's more procedural account of fair trade as setting an ideal for longer term reforms; whilst Mathias Risse and Gabriel Wollner's critique of James can be construed as setting shorter-term changes we need to make in order to get closer to attaining James's ideal. If the demands of fair trade are understood in this way, then we can make an argument that corporations have a role to play as primary agents of transitional justice. They ought to end structural exploitation by creating new institutions that are capable of maintaining sector-wide standards, and they ought to take advantage of their burgeoning standing in international organisations to rebuild these organisations such that they do not only respond to statist logic. The road to making lasting institutional reform is long. We are not even on our way to finding formal and effective mechanisms for holding agents of change, such as corporations, responsible. However, the facts that the task is difficult and complex, and that our duties towards transitional justice may be imprecise, do not mean that these duties do not exist. It just means that we will all be grumpily arguing about our respective jobs along a bumpy ride ahead.

Chapter 8

Conclusion

Corporations are of topical interest because we perceive them as posing a threat to domestic social justice and we want their wealth and power to be better regulated. However, at the same time, we view corporations as a possible means to help achieve international justice, believing that corporate wealth and power can help end human rights abuses, maintain labour standards, prevent environmental damage, and so on. Although there is significant popular interest in exploring how corporations might promote justice in different contexts, in political philosophy, where questions of justice are a dominant concern, very little is said about what we ought to do with, or how we ought to think of, corporations. So in this thesis, I have been trying to explore how an established theorist of justice, such as Rawls, might respond to these twin topical desires – to both rein in and harness corporate wealth and power.

In Part One on domestic social justice, I argued corporations should be of concern to Rawlsians. Amongst a range of other concerns, existing corporations can exercise their power in a way that corrodes the equal value of political liberties, and their profit-driven culture can create an environment that is hostile to establishing social justice. In response, I argued that Rawlsians should not start with popular ideas about corporate social responsibility. This is because an examination of the emergence of corporations reveals that, historically, the corporate form is made

possible by a range of rules governing private-ordering and property ownership. These rules are part of the basic structure, which is the proper subject of justice for Rawls. Therefore, if Rawlsians were to examine how justice as fairness should respond to modern corporations, the place to start would be to look at whether the two principles of justice would sanction background institutions of the basic structure to organise private-ordering and property rules in ways that would permit the corporate form.

The best way to find out how background institutions should organise rules to do with private-ordering and property rights is to look at which economic regime Rawlsians ought to favour. Rawls himself was agnostic between regimes based on private ownership of productive assets and those based on public ownership. He believed that a suitable form of either kind of regime could be compatible with justice as fairness. Proponents of both private and public ownership of productive assets have tried to argue that Rawls should not have remained agnostic. If Rawls's critics – particularly those who argue that justice as fairness ought to mandate public ownership of productive assets – are right, then we have a straightforwardly negative answer to the question of whether justice as fairness would permit the corporate form. However, I argued that Rawls's agnosticism is justifiable. Therefore, if there is a case to be made for the compatibility of the corporate form with Rawls's justice as fairness, the place to begin would be to look at private property regimes that are compatible with Rawls's theory and ask whether these would permit the corporate form.

I have chosen to focus on two kinds of private property regimes: welfare-state capitalism (WSC) and property-owning democracies (POD). I argued that while Rawls overstates his case about the incompatibility of WSC and justice as fairness, he is right to argue that PODs would be better at implementing justice as fairness than WSC. For this reason, we should look at how corporations would fare under PODs.

I looked at some conventional proposals for PODs – Thad Williamson's POD and John Roemer's Coupon Socialism – and argued that they face certain problems to do with market failures and the measures needed to correct these would, in the long run, rule out the corporate form. However, I argued that if PODs want to be true to the spirit of predistribution, which favours more than just tinkering around the edges of market outcomes, then we can attempt more radical measures to correct market failures. These measures would require that we first recognise that property ownership is in fact made up of a bundle of different rights. What we ought to do is unbundle the rights of ownership and, in particular, treat the rights to benefit and the rights to control property separately. By doing so, we can shield control of a society's productive resources from individuals' private consumptions preferences. This would free up corporations to make economic and business decisions that are for the common good, rather than just for the good of particular interested parties, such as shareholders.

I looked at two other versions of PODs that aim to separate benefit rights from control rights – Gar Alperovitz's Pluralist Commonwealth and Waheed Hussain's Democratic Corporatist POD – and settled on the latter as more compatible with

Rawlsian justice. Most pertinently, I argued that a Democratic Corporatist POD is, in fact, compatible with the corporate form. This is because with the advent of public corporations came tradable shares. This not only facilitates widespread dispersal of productive assets, which is a defining characteristic of PODs, it also helps separate the corporate entity from individual owners. This, in turn, helps unbundle the rights of control and benefit of ownership of productive assets. Therefore, when suitably modified so that it includes stakeholder democracy, we can conclude that the corporate form is compatible with Rawlsian justice.

In Part Two on international justice, I argued that the best way to relate corporations to the Law of Peoples is to start by linking them to the duty of assistance. To establish such a link properly, I argued that we need to look at the underexplored topic of how Rawls attributes responsibility for the duty of assistance. I argued that because Rawls does not take an explanatory pluralist view of how burdened societies come to be burdened and because the duty of assistance should be understood as a duty of justice, and not as a mere duty of humanity, this restricts the kind of reasons we can put forward when we try to tie corporations to the duty of assistance. If we are adhering to a relatively strict reading of Rawls, then we cannot base corporate international justice duties on backward-looking responsibilities. That is, corporate global duties of justice in the Law of Peoples cannot be based on arguments about corporations being at moral fault for harming burdened societies; or on their having caused the burdened status of such societies in any way. Furthermore, a relatively strict reading of Rawls would also constrain the kind of role we can extend to corporations in international justice. For Rawls, only well-ordered peoples are primary agents of the duty of assistance and corporations could

at best be assigned only a secondary role. Insofar as the duty of assistance can be extended to corporations within a strict reading of Rawls, corporations only have to follow the instructions and conform to any requirements set by the governments of well-ordered peoples.

I believe this strict reading of Rawls does not quite capture the popular intuition that there is room for corporations to do more and to take on a more direct and active role than as mere followers of rules set by states in matters of international justice. My question, therefore, was whether a revisionist reading of the duty of assistance could make the Law of Peoples track more closely this popular intuition. To this end, I proposed that we should focus on reinterpreting the duty of justice as a duty of transitional justice. Transitional justice has a different relationship with ideal theory than its other counterpart in non-ideal theory – partial compliance theory. Ideal theory does not fix who the agents are that ought to effect transitional justice, nor does it set what grounds we have for attributing transitional justice responsibilities. Therefore, understanding the duty of assistance as part of transitional justice frees us to consider new grounds for attributing responsibility and new non-state agents to carry it.

To take advantage of these new possibilities, I proposed we adopt David Miller's six criteria for assigning remedial responsibilities to agents and see if any of the six can ground corporate responsibilities under the duty of assistance. I argued that whilst most of the six connections apply to corporations, only two – outcome responsibility and capacity (specifically, capacity for effecting structural change) – can give corporations responsibility, as primary agents, for carrying out the duty of assistance.

I looked at what this means in terms of corporate duties in one specific area – international trade. First, I established that we can indeed think of trade as a structure that could be better organised through collective control so that considerations of justice do apply to international trade. Then, I looked at two competing accounts of fair trade – that of Aaron James and that of Mathias Risse and Gabriel Wollner. The former is a more procedural conception of fair trade with a particular focus on states' roles in implementing fair trade. The latter account focuses more on the avoidance of exploitation as a conception of fair trade and since exploitation in international trade can be committed by a range of actors, it is less states-focussed than the former account. I argued that, instead of viewing these two accounts as irreconcilable rival conceptions of fairness in trade, we can understand James's account of fair trade as setting an ideal for longer term reforms; whilst Risse and Wollner's account can be understood as setting shorter-term changes that we need to make in order to orientate ourselves more closely to James's ideal. If the demands of fair trade should be understood in this way, then I argued that corporations ought to end structural exploitation by creating new institutions that are capable of maintaining sector-wide standards, and they ought to take advantage of their growing status in international organisations to rebuild these organisations such that they do not only respond to statist logic.

Undertaking these reforms requires corporations to work out how principles of justice are to be institutionalised in a particular setting, to create new agents, and reform existing ones and these are roles of primary agents of justice. Therefore, by focussing on the transitional justice aspect of the duty of assistance, not only have

we expanded the grounds for attribution of responsibilities for the duty of assistance so that we can include corporations, we have also identified them as primary agents of justice for discharging it.

In closing, I want to consider whether Rawlsian domestic and international justice provides the best framework for future research in corporations and justice. This question is worth pondering because corporations' impact on our public lives is real and their capability to help solve pressing global problems is considerable. These facts make it imperative that political philosophers pay more attention to corporations than they do now. So for the sake of fruitful research in the future, it is worth asking whether Rawlsian justice overall is up to the task of checking corporate power and accounting for corporate responsibility.

One question that comes to mind is: while I have shown that Rawls's Law of Peoples is capable of involving corporations in a substantial way in the duty of assistance, is this measure of success somewhat akin to patting oneself on the back? That is, if Rawlsian international justice requires the duty of assistance to be carried out and we have shown that non-state agents, such as corporations, also have such a duty, then this exercise seems to have defined success in very narrow terms. Instead, should we have demanded, contra Rawls, that international justice requires more than the duty of assistance? Such a question is likely to be pursued by those who believe that justice on the world stage requires some form of global egalitarianism and that Rawls's Law of Peoples is insufficiently demanding. So some might, for future research, direct their attention to studying how corporations might fare under some form of cosmopolitan justice.

However, this is not the kind of problem I wish to raise. It is rather a problem that some cosmopolitans would also struggle with. Rawlsian justice imposes a certain framework on how we see the world and how we envision better alternatives for it. One such framework it imposes has to do with how we demarcate polities, that is, where we draw boundaries of power and, related to this, how we delineate to whom such power should be democratically accountable. For Rawls, power structures are demarcated spatially – domestic power structures are governments, which have power within a given territory, and international power structures are made up of states, which are defined territorially. Despite their differences regarding the content of international or global justice, many cosmopolitans actually share with Rawls a very similar framework for viewing the world. Although they may not share with Rawlsians the belief that states have particular moral standing, cosmopolitans still demarcate polities in a spatial way. For instance, cosmopolitans such as Thomas Pogge argues for sovereignty to 'be widely dispersed in the vertical dimension',[1] so that power would be spread from states down to local and regional authorities below as well as up to international organisations. David Held argues for a 'cosmopolitan democratic law', which regulates a multi-level decision-making structure that expands beyond the state.[2] While both proposals embrace the idea that polities may go beyond state borders, what they have in common with the Rawlsian framework is the assumption that polities are spatially defined. The difference is just that cosmopolitan polities are demarcated across bigger geographical or cultural space.

[1] Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press: 2002): 181-89.

[2] David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford: Stanford University Press, 1995): 270.

Increasingly, there are objections against this kind of spatial demarcation of polities. Opponents argue that globalisation has given rise to a plurality of global actors that hold power over individuals' lives and we should correspondingly be more imaginative when it comes to how we demarcate political boundaries. We should also be more open to new possibilities for institutionalising democracy. If we do not do so, then we would end up with a global order the power structures of which would not be democratically responsive. For instance, as an alternative to spatially defined polities, Andrew Kuper argues for demarcating democratic boundaries in a functional way so that they meet the requirements of what he calls a Responsive Democracy.[3] In this system of 'functionally plural sovereignty', states and inter-state organisations are not seen as omnipotent agents of global problem-solving.[4] Instead, different institutions would be given the power to address particular concerns at the level of organisation where that concern is best dealt with. Kuper argues that this functional governance structure would be more responsive to the interests of individuals.

Responding to similar worries that a spatial demarcation of polities will result in power structures that are insufficiently democratically responsive, Terry MacDonald also argues that we ought to develop a new conception of democracy, which she calls Global Stakeholder Democracy.[5] MacDonald believes that given that we face

[3] Andrew Kuper, *Democracy Beyond Borders: Justice and Representation in Global Institutions* (Oxford: Oxford University Press, 2004).

[4] Ibid., 34, 38.

[5] Terry Macdonald, *Global Stakeholder Democracy: Power and Representation Beyond Liberal States* (Oxford: Oxford University Press, 2008).

the reality of a plurality of powerful global actors, we need to develop new kinds of democratic institutions and new ways of understanding democratic representation if we are to hold powerful non-state, as well as state, actors to democratic account.

When applied to corporations, democratic approaches, such as Kuper's and MacDonald's, would not just look at democratic issues within the organisation of the corporation. They would look beyond proposals such as worker democracy (discussed in Chapter 3 above) that liberal socialists might favour. Instead, they would view corporate power as potentially in need of justification to all constituencies whose lives may be impacted upon by such power. So some of the questions that such democratic theories would look are: does corporate power constitute public power such that it ought to be subject to democratic control? If so, who are the relevant constituencies that ought to have the right to such control? And how might the relevant constituencies be fairly represented? Would this involve electoral or non-electoral forms of representation?

This is in contrast to a Rawlsian approach. Rawlsian justice presupposes political communities – justice as fairness presupposes a closed society, the Law of Peoples presupposes already given 'peoples'. Accordingly, problems of demarcating democratic boundaries simply do not arise. Or, put more precisely, the only conception of democracy of concern to Rawlsian justice is the one that applies between citizens within just societies. This can be seen in the equal political liberties the first principle of social justice accords to all citizens. Other conceptions of democracy which apply to non-state structures are only relevant insofar as they might further justice as fairness. As we saw in our discussion of stakeholder

democracy in Chapter 4, stakeholder democracy is justified in the Rawlsian framework because it is consistent with democratic corporatism. In turn, democratic corporatism is a version of POD that can, if implemented, help realise Rawls's two principles of justice.

Approaches such as Kuper's and MacDonald's might argue that the problem with the Rawlsian way of understanding democracy is that we end up arbitrarily excluding certain constituencies from democratic consideration: If corporate stakeholder democracy is a procedure legitimised by its ability to further domestic social justice, then this presupposes that the relevant stakeholders will be domestically-based. It automatically excludes from consideration actors such as overseas suppliers or customers in export countries. By contrast, Kuper's Responsive Democracy and MacDonald's Global Stakeholder Democracy would approach the question of stakeholder democracy within a corporation in a different manner. Instead of asking whether stakeholder democracy can further social justice, they would start by asking whether corporate power is a kind of public power and thus should be subject to democratic control and then decide how the relevant democratic boundary ought to be drawn.

Does this show that the direction of future research on corporations in political philosophy should be on corporations and democracy instead? I believe not. For one, I do not think democracy-focussed approaches necessarily show that some constituencies' interests are arbitrarily excluded in a justice-focussed approach. One might initially think that there is such arbitrary exclusion within a Rawlsian framework and my thesis is illustrative of this: I have developed a structure of

control within domestic societies to direct corporations to act in socially beneficial ways in Part I of the thesis, and I have assigned corporations duties to promote international justice in Part II. However, one might think that, since democracy is a norm secondary to justice within the Rawlsian framework, there really is no way to motivate corporations to do what I have prescribed them to do for international justice. This is because foreign suppliers or international customers are not required by Rawlsian domestic justice to be considered as stakeholders. The objection then is: how can such an approach explain what could motivate corporations to fulfil their duties of international justice when, say, factory workers in Bangladesh are not treated as stakeholders and therefore cannot hold, say, British garment manufacturers to account? What is there to stop domestic corporate stakeholder democracy, which is recommended by Rawlsian domestic social justice, from favouring actions that are entirely in the interests of domestic stakeholders?

There are two replies that Rawlsians can make here. The first is that the framework of Rawlsian justice is not incompatible with some form of international corporate stakeholder democracy. It may transpire that an effective way for corporations to fulfil their responsibilities towards the duty of assistance is to institute some form of cross-border, intra-firm stakeholder democracy. This may not satisfy critics, who might counter at this point that this does not guarantee that international constituencies' interests will be considered, since cross-border stakeholder democracy is still not a requirement of Rawlsian justice. So consider a second, stronger reply. Rawls's natural duty of justice – the duty that requires us to further just arrangements not yet established – applies not just to corporations but to individuals too. This is important to bear in mind because even if cross-border

stakeholder democracy is not required by Rawlsian justice, that individuals fulfil their part of the natural duty of justice is so required. This means that individuals have a duty to support public policies that will ensure that their society sets aside enough resources to fulfil the duty of assistance. We can think about what this entails in a corporatist democracy, which we have established is one of the preferred economic regimes to implement justice as fairness. In a corporatist democracy, individuals have opportunities to participate in a multitude of deliberative associations. We have reason to think, therefore, that individuals' sense of justice is actively engaged and a culture of public reason is entrenched. As a result, when individuals participate in public deliberations in those secondary associations that direct the activities of corporations, they are likely to support those measures that would ensure corporations fulfil their duty of assistance. This means that, contrary to critics' worries, a justice-focussed approach can explain how corporations can be properly motivated to do their prescribed part in international justice.

Now, at this point, those who favour a democracy-focussed approach over a justice-focussed approach might counter that even if we can show that corporations would be suitably motivated to fulfil their duty, we are still not taking some constituencies' interests into account in the right way. The right way is to make sure that we demarcate democratic boundaries so that these constituencies would be included and properly represented and, in the case of corporations, this means that cross-border, intra-firm stakeholder democracy should be a requirement. The reply Rawlsians can make here is that this is begging the question of why the right way to take into account the interests of all who are affected by corporations is to implement some form of international corporate stakeholder democracy. The onus is on democracy-

focussed approaches to corporations to supply such an argument. And if they do, this would compete with, but not necessarily supplant, arguments made by justice-focussed approaches.

Finally, I think one further reason why democracy-focussed approaches are not necessarily superior to justice-focussed approaches when it comes corporations is that some of the main concerns of the former are actually addressed by the latter. Theories such as Kuper's Responsive Democracy and MacDonald's Global Stakeholder Democracy are primarily driven by the search for new international governance structures. These theories share the concern that we are living at a time when there is a plurality of state and non-state agents that have public power and these powerful agents 'tend to emerge in ad hoc, varied, and unstructured ways'.[6] What the authors of these theories want is to find ways to ensure that global institutional reforms are directed towards holding this plurality of agents to democratic account. These strike me as concerns that Rawlsian justice can and does take on board – Rawlsian transitional justice is precisely about the need to set up well-ordered institutions where there previously are none and democratic accountability can be understood as a requirement of well-ordered institutions. Of course, a key difference between the two approaches would still remain: a Rawlsian justice approach understands well-ordered institutions as state-based, whereas the democratic approaches we have been discussing would reject understanding democratic accountability as only arising within the contexts of states. Democratic theorists would therefore argue that the Rawlsian approach cannot respond

[6] Ibid., 30.

adequately in situations where there is democratic deficit in non-state institutions. However, if democracy-focussed approaches are to supplant Rawlsian approaches, they would have to provide an independent argument for why dealing with democratic deficits in non-state institutions by making these institutions more functionally democratic is a better measure for individuals' welfare than the Rawlsian approach of establishing well-ordered states that can hold non-state institutions accountable. What this shows, again, is that while democracy-focussed approaches can offer a competing alternative account of how to understand corporate power and responsibilities, they do not reveal that justice-focussed approaches are fundamentally deficient.

Overall, this is welcome news for both Rawlsians specifically and for political philosophers in general. The application of Rawlsian justice to the topic of corporations reveals that there are still plenty of under-explored territories in the universe of Rawlsian justice – such as PODs and transitional justice – that promise to yield further fruitful research. Furthermore, at a time when Rawlsian justice often comes under fire for lacking critical resources to deal with a variety of contemporary problems, by applying the Rawlsian framework to the topical issue of corporations, it has been shown that it is both stronger and more flexible than previously thought. One of the main reasons for the enduring appeal of Rawls has to be because his theories provide a wide perspective on problems of justice and this gives us a way to tackle specific questions systematically against the background of a wider theory, rather than having to proceed piecemeal. Given that we are living in a time when international power and governance structures are in a state of flux, political philosophers should welcome the fact that, when it comes to attacking the ever-

evolving political problems that we face, the Rawlsian intellectual weapon remains tough in our arsenal.

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