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Global Health, Social Justice, and Corporate Accountability

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Global Health, Social Justice, and Corporate Accountability

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Dissertation

Presented to the Faculty of the Graduate School of

The University of Texas Medical Branch

in Partial Fulfillment

of the Requirements

for the Degree of

Doctor of Philosophy

The University of Texas Medical Branch

August 2013

Dedication

Dedicated to Sarah McConnell, who makes life possible each day.

Acknowledgements

I would like, first, to express my gratitude to all the talented individuals who served on my dissertation committee: Howard Brody, Cynthia Freeland, Laura Hermer, Rebecca Hester, and Rebeca Wong. Howard Brody, in particular, provided essential guidance and feedback that enabled me to stay on course and complete this project with minimum frustration and discouragement.

I could not have completed my graduate school education without the encouragement and love of my almost unrealistically supportive wife, Sarah McConnell. Through moments of doubt, desperation, and panic, she remained steadfast and ever-present even as she quit a successful career, completed her master's degree, and launched a new and equally successful career. With Sarah, everything seems possible.

Global Health, Social Justice, and Corporate Responsibility

Publication No. _____

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The University of Texas Medical Branch, 2013

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Chapter one of the dissertation contrasts libertarian theories to the theories of John Rawls and the human development approach favored by Martha Nussbaum and Amartya Sen. Libertarian theorists such as Robert Nozick, Murray Rothbard, and Jan Narveson claim that justice is achieved when and only when individuals are left alone to determine their own fate. Chapter two demonstrates that positive obligations arise from negative rights posited from a libertarian perspective. This approach is not to endorse libertarian theories but to illustrate that even the most restrictive accounts of negative rights will ultimately entail positive obligations to protect and maintain the autonomy of individuals. Chapter three provides empirical examples of human rights violations committed by corporations. Chapter three details numerous examples of such abuses that violate any concern for rights arising from liberty. Chapter four offers public policy suggestions related to global trade, drawing on the work of economists, legal scholars, and policy experts. Chapter five draws on the work of activists and sociologists to evaluate the feasibility and effectiveness of direct resistance. Social movements around the world have succeeded in gaining attention and concern from the public. Many victims of human rights abuses carry evidence of the abuse through disease and injury. These victims confront the well off with both powerful narratives and full embodiment of suffering. Finally, chapter six demonstrates that medical humanists have the broad view of ethics and justice necessary to respond to global health inequities and special obligations to tackle these problems. From the works of ancient Greeks to contemporary art and literature, moral progress is enriched and advanced by social immersion in the arts and humanities. Public discourse includes collective voices, such as those highlighted in chapter five, but also the individual voices of playwrights, novelists, photographers, filmmakers, and artists. A humanist perspective in education enables students to hear the voices of the oppressed and recognized a common humanity with even those most distant from them culturally and geographically.

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List of Abbreviations

UTMB	University of Texas Medical Branch
GSBS	Graduate School of Biomedical Science
TDC	Thesis and Dissertation Coordinator
WTO	World Trade Organization

Preface

Like many other people, I was originally attracted to medical ethics because I wanted to grapple with nuanced and complex ethical quandaries with no clear answers that sometimes offered only hard choices between equally undesirable solutions. Such problems offer great fodder for analysis and elucidation, of course, but I soon became more troubled by what I saw to be the extremely easy cases in medical ethics: the death of millions from preventable causes such as starvation, poverty, lack of access to medical care, environmental degradation, and violence. While some feel medical ethics should concern itself only with relationships of patients to healthcare providers, I feel strongly that anyone associated with medicine should have concern for improving health outcomes for everyone, whether the person can afford to be a patient or not. Certainly many concerned and compassionate individuals with a commitment to justice are trying to alleviate suffering wherever it occurs, and most ethicists deplore any instance of avoidable health crises, but it seemed to me that a disproportionate amount of attention was paid to the doctor-patient relationship when millions never had the opportunity to become patients. Despite monumental advances in medical technology, pharmaceutical solutions, and healthcare delivery, millions battle disease and starvation unaided because of a global economic system that benefits the affluent while leaving the poor with few resources for survival and little chance for flourishing. I initially believed the injustice of such a system would be obvious, but I soon learned that many libertarian and neoliberal thinkers see inequality as a product of market forces and human choices, not a violation of human rights or an unjust social order.

Neoliberal trade policies and libertarian ethics have contributed to broad public support for a system that systematically robs people of their ability to pursue their own ends by means of their own labor, which is contrary to the stated goals of the said theories. Immanuel Wallerstein sees 1968 as the beginning of neoliberalism, which, he says is motivated “primarily to remove constraints on the market and thereby to regress on welfare state reallocations.”¹ The argument of neoliberalism is that entry into markets is the best way to help the world’s poor and bring civilization to “undeveloped” countries. While current conditions and attitudes to globalization might be attributed to neoliberalism, the assumptions that have brought neoliberalism to prominence have preceded it by more than a century. In Britain in 1885, Joseph Chamberlain declared that the British race was “the greatest of governing races that the world has ever seen” and should obviously expand the British empire for the improvement of the world.² And in 1900, United States Senator A. J. Beveridge said the “civilization of the world” is the “mission of our nation.”³ This view is further expressed in the poem, *The White Man’s Burden*, by Rudyard Kipling, who felt Anglo-Saxon nations should “civilize” the rest of the world.⁴ Regardless of the justification used, corporations have consistently behaved in much the same way, seeking always to expand their control of resources—natural, human, and economic.

¹ “Immanuel Wallerstein - The Collapse of Liberalism,” *Scribd*, 103, accessed January 9, 2013, <http://www.scribd.com/doc/38342623/Immanuel-Wallerstein-The-Collapse-of-Liberalism>.

² Lawrence James, “‘The White Man’s Burden’? Imperial Wars in the 1890s,” *History Today* 42, no. 8 (August 1992): 46.

³ Ibid.

⁴ Ibid.

In discussions of this topic, I sometimes feel as Euthyphro must have felt when discussing his case against his father with Socrates. On Euthyphro's view, his desire to correct an injustice was an obvious and unalloyed good, and he was surprised to be questioned so intently by Socrates rather than receiving commendation for his egalitarian approach to legal and moral matters.

Euthyphro charged his father with murder in the death of a slave who was restrained and left to die. While drunk, the slave had killed another, and is also presented as a murderer. Socrates asks whether Euthyphro is sure that he has taken the right action, and Euthyphro attempts to explain that his actions are consistent with piety. In the course of the discussion Euthyphro has with Socrates, he struggles to articulate a logically rigorous definition of piety, but he feels sure that all the Gods would agree with his defense of justice. He says, "I imagine, Socrates, that none of the gods disagree with one another on this point, at any rate: that whoever kills without justification should be brought to justice."⁵ The correctness of his position seems self-evident to Euthyphro, so he is probably a little careless in his defense to Socrates.

And for his part, Socrates presents himself merely as an interested observer seeking information from a priest who believes himself to be an expert on justice and piety, but Socrates is biased from the outset, and the bias of Socrates is not so easily obscured even if it is commonly overlooked. Near the end of the dialogue, Socrates says, "If you didn't know all about piety and impiety, you would never have attempted to prosecute your aged father for manslaughter on behalf of a mere labourer; you would have been too much afraid of the gods, and too much ashamed of what men might think,

⁵ Plato, *The Last Days of Socrates*, trans. Hugh Tredennick (Baltimore, MD: Penguin Classics, 1975), 28.

to run such a risk, in case you should be wrong in doing so.”⁶ Socrates attempts to shame Euthyphro with this compliment, citing the public disapproval he would face for defending a slave while indicting his own father, but we can sincerely admire Euthyphro for the strength and courage of his convictions. Through his actions, Euthyphro has declared that justice knows no class and that if anything is wrong, it is wrong for everyone, not just the poor and disadvantaged. For his part, Socrates appears to be less concerned with equality in ethics and law and more concerned with consistent answers, regardless of their consequences for people affected by them.

When Euthyphro declares that the gods would all agree that it is correct to bring someone to justice whenever they kill without good cause, he is claiming that anyone who seeks what is good will seek to redress unjust killing. In his eyes, this is a minimum requirement for a just state of affairs to exist. Unfortunately, Socrates reminds him that his contemporaries may not feel so concerned with an injustice committed against a slave, and Socrates’s assessment is regrettably accurate. The question is not whether the unnecessary slaughter of a person should be prosecuted; rather, the question depends on what constitutes a person.

For much of history, especially European history, to have rights has been to have property. While individuals such as Euthyphro have always argued that individuals without property should be shown the same respect as those with, legal and economic systems have emerged with a clear bias against the poor and disenfranchised. But even this description is misleading, as many people in the world never imagined the need to acquire land in the manner that Europeans and others conceived. As a result, many

⁶ Ibid., 41.

simply accept that resources are to be used and shared. As such, they do not prepare to defend the land and resources as parcels of property. Unfortunately, as European explorers ventured to other continents, they did not recognize the property rights of those they encountered, and often did not even recognize the rights of many individuals to the ownership of their own bodies, making slavery, a condition that bothered Euthyphro more than it bothered Socrates, seem palatable and efficient. As a result, land, resources, and slaves were acquired from Africa, Asia, and the Americas with no thought to the possibility that the people living on those continents had any rights to the property or resources there, and European descendents still control most of the world's valuable resources.

In the twenty-first century, many persons in the world have been reduced to the status of object, unrecognized as moral agents worthy of moral consideration. Facing starvation, many are unable to work or even engage in productive conversations with others. Poor health has forced them to become objects of care, in the best circumstance, and lost causes in others. In this sense, some of the least advantaged in the world have fewer options than slaves of the past. In its most extreme forms, poverty renders people incapable of achieving even the dignity a slave attains from work and production. The slave also has the power to resist, even if the resistance is passive resentment, but starvation renders the poorest in the world incapable of anything beyond mere suffering.

If Euthyphro could not gain consensus that prosecuting the unnecessary killing of a slave is just and proper, we can only hope that surely the gods would agree that the unnecessary deaths of millions of allegedly free persons is unjust and demands rectification. We have already seen that such consensus is not forthcoming. Some people

have better luck than others, and the bad luck of one person makes no moral demands on those who are more fortunate. Euthyphro suggested that even if the gods do not agree on everything, they must surely agree on some things. John Rawls also holds out hope that even in the face of disagreement limited consensus is possible in what he terms “overlapping consensus.”⁷

Jennifer Prah Ruger claims there is no overlapping consensus between libertarian theories of justice and competing theories when it comes to assertions of rights to health and health care. She says, “Libertarian theories of justice, as advocated by Robert Nozick (1974) and others, would deny altogether any political obligation to provide medical care or health insurance to all. Libertarianism takes the principle of liberty as absolute and does not give health or health care special standing.”⁸ It may be correct to say that that principle of liberty does not entail or even support a right to health care, but it is too restrictive to say it may not be consistent with a right to health at least to the extent that anyone has a right to health that is as good as it would be without negative interference from the actions of others. Again, Ruger notes, correctly, “The libertarian approach in rights scholarship pertaining to health generally endorses the fulfillment of negative rights (civil and political rights), but fails to endorse the fulfillment of positive rights. This perspective rejects social, economic, and cultural rights.”⁹ My claim is that the social, economic, and cultural rights non-libertarians seek to establish are justified by past violations of negative rights. Only by ignoring historical injustice can libertarians claim

⁷ John Rawls, *A Theory of Justice: Original Edition* (Belknap Press of Harvard University Press, 2005), 340.

⁸ Jennifer Prah Ruger, *Health and Social Justice* (New York, NY: Oxford University Press, 2010), 125-126.

⁹ *Ibid.*, 126.

that the world's affluent citizens have no obligations to those living without land, clean resources, and health in general.

Exhortations to promote and defend liberty at all costs, including the loss of life, permeate the history of the United States. These exhortations have come to mean, increasingly, that an unregulated market economy has reached near sacred status among many. Libertarian advocates equate liberty with property and view liberty as the only human right worthy of protection. Based on this conception, libertarians promulgate the view that an unregulated global market should be the only goal of policies concerned with social justice, but I argue that the promotion of individual liberty is actually inconsistent with a global market designed only to generate profit while excluding all other concerns. I examine the philosophical, legal, and humanistic elements of human rights abuses resulting from globalization of trade, extraction, and manufacturing and demonstrate the need for immediate action to remediate economic practices that deprive individuals of even the most basic liberties.

Laissez-faire libertarians, who believe those who suffer from the world's problems should solve them for themselves, deny the existence of human rights that entitle individuals to health, education, or housing. In contrast, I contend that those who benefit from human rights abuses have a special obligation to address them. Individuals who lack health, education, or housing because they have deliberately chosen to reject these basic goods create no obligation on individuals or society. However, if one lacks basic goods because of harm caused by the actions of others, the principles of liberty demand immediate action.

The first two chapters of the dissertation are theoretical and draw largely from philosophical sources. In chapter one, I contrast libertarian theories to the theories of John Rawls and the human development approach favored by Martha Nussbaum and Amartya Sen. The influence of John Rawls's *A Theory of Justice* has been so great that most theories of justice of the last fifty years in the United States have been framed as a response to or expansion of his ideas.¹⁰ During Rawls's lifetime, his primary opposition came from Robert Nozick, who claimed government actions should be limited to protecting the negative rights of citizens and that any use of the government to aid the less advantaged is a form of undue coercion of those who are well off.¹¹ Some writers choose to ignore the libertarian argument altogether, but the value placed on liberty in the United States and other western democracies is so great that any fully robust theory of social justice in the west must address it. One finds that libertarian demands for protection of negative rights entail actions similar to the entitlements dictated by liberal theories such as those of John Rawls. My aim is to show that corrective action is required as a consequence of violations of liberty, not as a requirement demanded by respect for so-called "positive rights" or entitlements.

In opposition to libertarian ideals, social justice theorists such as Nussbaum and Sen advocate view of social justice based on maximizing human capabilities. They view intervention on behalf of the least advantaged as justified when it aims at creating a just state for all. Libertarian theorists such as Robert Nozick, Murray Rothbard, and Jan Narveson claim that justice is achieved when and only when individuals are left alone to determine their own fate. The problems faced by people in other parts of the world, they

¹⁰ Rawls, *A Theory of Justice*.

¹¹ Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, 1974).

contend, create no moral imperative on individuals living at great distances and in relative comfort. Libertarians and their opponents often both fail to see that the world's best off create vastly unequal conditions in the world and must take responsibility for rectifying the injustice. Slavery, conquest, and other violations of basic liberty have left many in the world in a severely disadvantaged state to engage in any market schemes. Restoring the ability of such victims to participate in trade and contractual arrangements requires a rehabilitation of human capabilities. This demand for creating capabilities stems from violations of liberty that are abhorred by libertarians rather than from theoretical justifications that are independent of harms created by others.

Because libertarian theories of justice are the most lenient theories and make the fewest demands on those who are well off, I respond to libertarian claims and show that even a libertarian focus on negative rights entails positive obligations to relieve suffering resulting from exploitation and abuse. Libertarians reject redistribution of social benefits or burdens based simply on unequal distribution. Rather, they hold that distributions are unjust only when they result from clear violations of personal liberty, which they equate with property holdings; however, they tend to ignore the effects of global conquest, theft, and coercion from both the recent and distant past. After isolating the causes and effects of harmful actions, both minimalist and maximalist accounts of justice demand similar actions to correct extreme injustice in the world.

In chapter two, I demonstrate that positive obligations arise from negative rights posited from a libertarian perspective. This approach is not to endorse libertarian theories but to illustrate that even the most restrictive accounts of negative rights will ultimately entail positive obligations to protect and maintain the autonomy of individuals. This

assertion follows from libertarian claims that demand such positive obligations as security forces and a legal system to process violations of personal security. Much of the conflict between libertarians and others rests on empirical grounds with libertarians such as Murray Rothbard claiming that both hunger and disease have limited impact on global populations and actions of affluent nations have not contributed to the hunger and disease that exist. I challenge this empirical claim by providing data reflecting the historical and contemporary violations of individual liberty. Further, I show that such violations of liberty create a moral demand, by libertarian reasoning, for positive action to alleviate suffering and global inequality.

In chapter three, I move from the theoretical to the empirical and provide examples of human rights violations committed by corporations. If coercive trading practices have denied farmers the ability to raise and sell crops locally, the liberty interests of the farmers are violated. Chapter three details numerous examples of such abuses that violate any concern for rights arising from liberty. Thus, it is imperative to change economic structures to protect human rights and remediate past injustices. The impact of regulating transnational corporations only to improve profits without placing checks on abusive behavior accounts for a disproportionate share of the world's suffering. Justice cannot thrive without global regulation not only to stop injustice but also to improve conditions caused by past injustice. Regulation can come in the form of state policing, of course, but it can also come from social regulation imposed by ordinary citizens at all levels of society. Inasmuch as corporations consist of people, self-regulation, motivated by conscience, is at least possible.

In chapter four, I turn to a discussion of public policy related to global trade, drawing on the work of economists, legal scholars, and policy experts. In this chapter I show that global trade laws are inadequate to protect the liberty of individuals who rely on resources sought by corporations. By providing empirical evidence of practices that violate the liberty of the least advantaged, I will show that libertarian demands for liberty and security require adjustments to current global trade practices. I will suggest specific policy recommendations for the regulation and accountability of transnational corporations based in part on past successes and in part on suggested remedies derived from existing law and structures.

Chapter five draws on the work of activists and sociologists to evaluate the feasibility and effectiveness of direct resistance. I also hope to provide some inspiration to aspiring activists by invoking the words of past reformers such as Martin Luther King, Jr., and Albert Camus. I argue that resistance from abuse victims is necessary and effective in changing public attitudes and policy. Social movements around the world have succeeded in gaining attention and concern from the public. Many victims of human rights abuses carry evidence of the abuse through disease and injury. These victims confront the well off with both powerful narratives and full embodiment of suffering. I examine how victims of injustice find empowerment and a narrative voice, looking at specific cases of both successful and unsuccessful ground-level resistance to rights abuses.

Finally, in chapter six, I rely on ancient texts and the work of humanist scholars to demonstrate that medical humanists have the broad view of ethics and justice necessary to respond to global health inequities and special obligations to tackle these problems.

From the works of ancient Greeks to contemporary art and literature, I show that moral progress is enriched and advanced by social immersion in the arts and humanities. Public discourse includes collective voices, such as those highlighted in chapter five, but also the individual voices of playwrights, novelists, photographers, filmmakers, and artists. A humanist perspective in education enables students to hear the voices of the oppressed and recognized a common humanity with even those most distant from them culturally and geographically.

Human rights abuses are not abstractions; they degrade public health and perpetuate systems causing injury, illness, and death. Medical humanists are trained to think globally, generally, and abstractly while also focusing attention on individual narratives. A global view of health requires attention to physical suffering that may happen outside the reach of formal health care. A global perspective will help address widespread inequality while also highlighting the disparate voices of the oppressed. While one goal may be to make health care more widely available, reducing the need for health care is an even stronger imperative.

Many works I examine address ideal conditions of justice, specific cases of human rights abuses, and policy recommendations, but no remediation can be effective without fundamental changes in society, which can only result from a gradual and significant cultural shift. Medical humanists have an enhanced ability to address global health disparities and an expanded obligation to seek solutions to injustice and misery, and therefore they must become advocates and promulgate a humanistic public discourse on moral progress. While it is unlikely that anyone can reach universal consensus on social justice, it is plausible that careful analysis will show that the most popular theories

will yield common moral obligations. Whether one bases justice on libertarian theories of negative rights, a Rawlsian focus on fairness, or the promotion of capabilities, it is imperative to correct social arrangements that deny the right to be left alone to pursue one's own ends. A concern for this liberty is common to Locke, Rawls, Nozick, Nussbaum, and others. An application of theory to specific cases is needed for further discussion of what demands are made on those who live in comfort. Many have also made policy suggestions for preventing abuses, but these analyses generally lack a broader analysis of social justice theory and human rights.

Many corporate executives express a desire to create opportunity and investment without exploitation and oppression, but they feel they cannot without jeopardizing the survival of their companies. With globalization, corporations engage in a race to the bottom, maximizing profits by obtaining the cheapest labor and methods of production possible. This leads to dangerous working conditions, environmental degradation, and underdeveloped infrastructure. Practical policy changes and incentives must be developed to make ethical business practices profitable not only for the businesses but for their stakeholders, especially those who live and work where the businesses operate.

A broader approach aimed at changing public awareness of and sensitivity to the injustice created by current corporate practices is necessary to ensure that policy does not race too far ahead of public consensus and to enable consensus to drive policy toward greater justice. Through the combined efforts of humanists, activists, legislators, and philosophers, moral progress and a sustainable future are possible.

SECTION I: JUSTICE AND RIGHTS IN THEORY

Chapter 1: Health and Social Justice

INTRODUCTION

In this chapter, I will examine various approaches to social justice as they relate to health and argue that the conclusions of ideal theories are equally well supported by the tenets of libertarian theory when applied historically and consistently. For the purposes of this dissertation, I define libertarianism as a philosophy that rejects the legitimacy of government coercion and the existence of positive rights or entitlements, and a promotion of individual liberty and autonomy. I do not reject more expansive or ideal theories of social justice on theoretical grounds but suggest that a narrower approach that engages empirical data drawn from current conditions provides an efficient analysis of injustice as resulting from either contemporary or historical violations of liberty. Such an approach helps to formulate and justify moral behavior that is an obligation that applies especially to anyone committed to bioethics or medical humanism. Ideal and expansive theories are justified and necessary, but more limited approaches also serve a useful function.

Furthermore, I argue that minimalist theories, applied consistently, produce conclusions quite similar to those of maximalist theories in that focusing only on existing violations of basic rights has a cascading effect creating greater obligations to ensure the possibility of individuals living in basic freedom. In the United States, policy and political rhetoric are driven by concern for the protection of free markets with little oversight or regulation. The fervor for deregulation draws on the belief that liberty is an essential feature of a just society and, further, that liberty is primarily the freedom to pursue and retain profit without interference from the government or others. Libertarians assert that all

governmental coercion through taxation or regulation is unjust unless it is necessary to ensure the security of individuals to act in their own interests. The basic tenets of these theories hold that free markets in an absence of governmental regulation provide the most just conditions possible. Libertarian theories also hold that individuals are not obligated to help those who are less fortunate, and it is unjust for any government or agency to coerce them to aid others. For example, Jan Narveson writes, “If the fact that others are starving is not our fault, then we do not need to provide for them as a duty of justice. To suppose otherwise is to suppose that we are, in effect, slaves to the badly off.”¹² While some libertarians acknowledge that helping others may be a good thing in some circumstances, it is never an obligation. These beliefs are extremely popular among policy makers and legislators and have influenced policy, law, and trade negotiations in the United States and other developed countries. Given the influence and power of these theories, I will examine libertarian principles and show that they are neither internally consistent nor consistent with empirical data drawn from conditions in the world.

For the libertarian, social justice is achieved in any setting where all citizens are free of coercion and assault and are able to pursue their own ends without interference from their fellow citizens or their government. While this statement may not serve as a definition or complete description of libertarian theory, the belief in individual autonomy and security is common to all the libertarian theorists discussed in this dissertation. The only legitimate role of government is to protect the liberty of its citizens. This view has led modern libertarians to fight mercilessly for the freedom of corporations to pursue their own economic ends with no regulation or oversight from any government entity. As

¹² Jan Narveson, *Moral Matters*, Second. (Peterborough, Ontario, Canada: Broadview Press, 1999), 156.

libertarians see rights of liberty emerging from property rights, corporations, as property owners, are “persons”¹³ entitled to rather expansive liberty. Thus, libertarians see the protection of unregulated trade to be the only legitimate role of agencies setting trade policies. In this chapter I will present a brief history of libertarianism and a few of its more popular competing theories along with an analysis of the implications of libertarian theories if they are accepted as presented. I will further draw a distinction between ideal theories and non-ideal theories of justice and examine how empirical data should drive discussions of policy and social action. Finally, I will show that libertarian theories, when applied consistently and with concern for historical injustice, yield results similar to competing theories such as the Human Development Approach.

LIBERTARIAN OVERVIEW

Libertarians express both human rights and obligations negatively. One is entitled only to pursue one’s own ends and others are obligated only to the extent that they do not interfere with individual autonomy. For libertarians, pursuing one’s own ends is largely a matter of pursuing property as all other rights arise from the acquisition of property. As such, liberty is exercised through competitive trading. Those who lack the ability, will, or good luck to compete successfully in commercial markets create no obligations on others to bring them aid. Contemporary libertarians in the United States can trace their philosophical roots to John Locke for conceptions of personal liberty and property and to Adam Smith for their ideas of free markets. Contemporary libertarians have misinterpreted or deliberately misapplied the claims of the foundational works. Classical

¹³ In subsequent chapters, I will discuss the distinction between “natural persons” and “artificial persons.” This distinction has become blurred since the nineteenth century.

liberalism holds that the government should not interfere with an individual's choices or actions in any event other than to protect the security of others. John Locke holds that men (it would be a mistake to claim he meant to include women) are free by nature and roughly equal in a natural state. That being the case, men must enter into agreements with one another that limit their freedom to the extent that they are not free to harm one another. Although not in a literal state of nature, a so-called "state of nature" exists any time men exist with few constraints on their behavior and must create artificial restrictions in order to live cooperatively with others. It is not essential to his theory that men actually once lived in a natural state of freedom and then agreed to form governments; it is only essential that men do form agreements for a greater benefit they will share. He notes that certain monarchs, though not living in the wild, are in such a state of nature as they have relatively equal power and must reach agreements as to how to moderate their own behavior. He says, "All princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. I have named all governors of independent communities, whether they are, or are not, in league with others: for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic."¹⁴ In this state, men must agree to negotiate for mutual benefit. This so-called state of nature is similar to the condition transnational corporations find themselves in from time to time. Absent international regulations to guide or restrict their behavior, they make trade agreements amongst themselves to protect their interests. Their state of nature, of course,

¹⁴ John Locke, *Locke: Two Treatises of Government*, ed. Peter Laslett (New York, NY: Cambridge University Press, 1988), 276-277.

does not include all the people, just as the scenario of the princes proposed by Locke did not include all men. This oversight is not insignificant. If the social contract can exclude peasants, women, and others, then it cannot legitimately be claimed to emerge from a state of rough equality in nature. This ability to exclude a wide range of humans from the class of “men” may help to explain how enlightenment traders, influenced by the theories of Locke, could ignore the interests of women, slaves, and foreign nationals, but these traders were ignoring Locke’s full description. Locke specified that even indigenous peoples have a right to what they have legitimately appropriated. He says, “Thus, the Law of reason makes the Deer, that *Indian*’s who hath killed it.”¹⁵

A crucial element of Locke’s theory relates to property. Locke claims that property rights emerge when a man mixes his labor with a resource. Locke acknowledges that God has given to all in common (this need not be taken literally, though it may be), but one must appropriate resources (such as a piece of fruit) to oneself alone in order to eat it. This being the case, Locke argues that surely resources belong to those who took the effort to extract them from the world’s commons. Locke saw the world in need of cultivation in order to improve the lot of humans, but he adds a provision that states, “For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common with others.”¹⁶ Locke noted that some may claim injury resulting from the property acquisition of others but declared that the world has more than enough resources for everyone. Still, he specified that it is just to take resources so long as “enough and as good” remain for others. Man has by nature, then, the right to acquire property through

¹⁵ Ibid., 289.

¹⁶ Ibid., 288.

labor and ensure his own survival and further development. No one has the authority to take away this right, and Locke opposed absolute monarchs and other forms of tyranny for this reason. It is impossible to speculate as to how Locke would respond to current resource shortages, the enormity of transnational corporations, or the effects of extreme and pervasive environmental degradation, but Locke assumed that the acquisition of resources left enough for others to acquire resources as well without harming anyone. Furthermore, polluting a stream shared by many in order to extract minerals from nearby soil violates any vision that Locke described or advocated. However, often the problem does not seem to be that developers and corporations feel it is morally acceptable to pollute property held by others. Rather, they do not recognize those sharing the commons to be the rightful property holders. The ability to disregard living and functioning humans as “non-persons” (people without respect for their full autonomy) enables many to proceed without considering their actions to be a source of violation of anyone’s rights.

Property as the source of “rights” is so essential to libertarian thought that libertarian Murray Rothbard says, “Human rights, when not put in terms of property rights, turn out to be vague and contradictory, causing liberals to weaken those rights on behalf of ‘public policy’ or the ‘public good.’”¹⁷ Rothbard has taken a narrower view of rights than John Locke, but, indeed, basing rights on property makes determining who has any given right a somewhat simpler procedure than attempting to define rights as awarded by nature or the divine, even if the results are disappointing. It is the acquisition of property that grants one the right to speak freely, engage in private activities, or engage with acquaintances of one’s choosing. The person who owns no property is

¹⁷ Murray N. Rothbard, *The Ethics of Liberty* (New York, NY: New York University Press, 2002), 113.

dispossessed of any rights whatsoever other than the right to sell one's own body in the form of labor or otherwise. On the surface, this appears to be a clear demarcation of who is entitled to what rights, but it ignores even basic realities of the world. When an oil company makes a bargain with a government to drill for oil on a country's soil, the company assumes the government, not the people who live on the land, has the right to sell the country's resources. The land was obtained through conquest, not mixing labor with resources, and such acquisitions should be recognized as unjust. Unfortunately, libertarian writers ignore the plight of those whose land, resources, and freedom were stolen from them.

A second source of inspiration for libertarians (especially politicians and conservative activists) is Adam Smith, who is considered both the father of economics and the father of capitalism itself.¹⁸ Libertarians focus on Smith's claim that the market moves society towards greater utility (I will add more on Smith and utility in the next section) through the action of an "invisible hand." This invisible hand, libertarians assume, replaces the need for any form of governmental oversight or regulation, which is not a claim put forth by Smith himself.

Among more modern libertarians, philosopher Robert Nozick is notable as a colleague and near constant interlocutor for John Rawls, whose theories of social justice remain a formidable force among philosophers and anyone else interested in social justice. Nozick presented his fullest description of his libertarian theory in *Anarchy*,

¹⁸ For example, see the libertarian think tank, The Adam Smith Institute, "Introducing the Adam Smith Institute," accessed July 15, 2011, <http://www.adamsmith.org/introducing-the-adam-smith-institute/>.

State, and Utopia.¹⁹ However, his final book, *Invariances*, includes some revisions and additions to his original theory.²⁰ Nozick's theories are powerful and provocative. He challenges those who disagree with him to justify any demand to conflate justice with fairness. For example, he claims it may not be fair that one person is more appealing to potential romantic partners than another person, but this fact alone does not establish injustice. This would only be unjust if the attractive person robbed the unattractive person of the ability to compete for prospective mates. This issue has particular relevance for me as the claim that affluent citizens have no obligations to the disadvantaged rests on the assumption that the wealthy have done nothing to cause the disadvantages of the poor. I will explore this claim that the poor have not been harmed in more detail below and provide a detailed description of harms against the least advantaged in chapter 3.

A central feature of libertarian claims is the idea that bad luck, tragic as it may be, creates no injustice and no obligations on those with better luck. Nozick, in particular, does assert that unjust acquisitions create a obligation for rectification. If property has been stolen from someone, that person is entitled to reparation or corrective action to ameliorate the person's degraded position in life. Libertarian writers are quite generous in ascribing the wealth of property owners to hard work and free choices while assigning the blame for poverty to bad luck or lack of initiative. It is largely the failure of libertarians to acknowledge the benefits of privileges enjoyed by the affluent that frustrates meaningful dialogue between libertarians and liberal thinkers.

¹⁹ Nozick, *Anarchy, State, and Utopia*.

²⁰ Robert Nozick, *Invariances: The Structure of the Objective World* (Belknap Press of Harvard University Press, 2001).

HUMAN DEVELOPMENT APPROACH

Amartya Sen and Martha Nussbaum are the most prominent proponents of the Human Development Approach, which is based on the development of human capabilities. From this perspective, justice is realized when individuals have the minimum resources necessary to realize their capabilities to the fullest extent possible, whatever those capabilities may be. The full functioning of individuals is not required; it is only necessary that individuals have the freedom to function as they so desire. Nussbaum says capabilities “are not just the abilities residing inside a person but also the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment.”²¹ Adults may or may not choose to use their capabilities to fully function, but Nussbaum feels we have an obligation to ensure functioning in children as failure to do so can limit their capabilities later in life. Amartya Sen summarizes the Human Development Approach this way, “The idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose.”²² While emphasizing capabilities, this approach rejects measuring social justice in terms of resource allocation, utility, or the negative sense of freedom proffered by libertarians. However, maximizing capabilities is in effect an effort to maximize autonomy of individuals. A libertarian would only be able to accept this theory if an individual is robbed of his or her autonomy (and capabilities) through the actions of others.

Nussbaum acknowledges Aristotle as the first person to base a theory of social

²¹ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Belknap Press of Harvard University Press, 2011).

²² Amartya Sen, *The Idea of Justice*, 1st ed. (Belknap Press of Harvard University Press, 2009), 232.

justice on capabilities, noting that Aristotle sought to create a society that maximized human flourishing even if he did not share her egalitarian views. She says, “Aristotle believed that political planners need to understand what human beings require for a flourishing life.”²³ Aristotle wrote his ethics as a guide to help community leaders design an effective society. He strongly opposed the idea that the pursuit of wealth was consistent with virtue or a highly functioning society. In Nussbaum’s words, Aristotle felt “political planning would be utterly debased and deformed were wealth to be understood as an end in itself.”²⁴ Thus, the capabilities approach, in line with Aristotle, rejects wealth both as a measure of justice and as a motivator to achieve justice.

For justice to occur, according to the capabilities approach, it may be that some resources must be redirected to the least advantaged, but income distribution alone is not an adequate measure of justice, as it is possible to have income but still lack the conditions that develop the essential capabilities. Nussbaum sees 10 capabilities that are essential to justice: First, is the ability to live until one’s life comes to a natural end. Second is the ability to have good health, nourishment, and shelter. Third is the ability to move freely from place to place secure from bodily assault. Fourth is the ability to use the senses, imagination, and thought. Fifth is the ability to experience a full range of emotions. Sixth is the ability to use practical reason. Seventh is the ability to live in social relationship with others free from discrimination and oppression. Eighth is to live in relation to nature and other species. Ninth is the ability to play and enjoy recreation.

²³ Nussbaum, *Creating Capabilities: The Human Development Approach*.

²⁴ Ibid., 126.

Finally, the tenth is the ability to control one's own environment.²⁵

JOHN RAWLS AND THE SOCIAL CONTRACT

Nussbaum, Sen, and Nozick all spend considerable time discussing the theories of Rawls. Fairness and the notion of an ideal social contract are central features of Rawls's theory. He tries to imagine the conditions necessary for a society that all rational members would agree to join. He rejects Utilitarianism as it fails in this first test of justice, potentially sacrificing the happiness of a few for the benefits of the majority. Violations of individuals for the greater good violate their dignity on Kantian grounds, which Rawls finds unacceptable. Rawls claims justice is achieved when a given society emphasizes fairness, liberty, and opportunity.

Rawls does agree with Mill and the libertarians that liberty must be maximized in a just society, but he, apparently, rejects the close association libertarians make between liberty and property. In order to achieve a fair distribution of resources, Rawls suggests ensuring equal opportunity for all but with special protection for the least advantaged. On Rawls's view, income disparities are just only to the extent that they benefit the least advantaged. He says, "Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society."²⁶ By creating an educated and talented pool of citizens, unacceptable economic disparities between the most and least well off will be impossible. While he does not demand equality, Rawls seeks a distribution of resources such that,

²⁵ Martha Craven Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass: The Belknap Press, 2006), 76-78.

²⁶ Rawls, *A Theory of Justice*.

“Society is not so divided that one fairly small sector controls the preponderance of productive resources.”²⁷ Rawls advocates a redistribution of resources through taxation to create a safety net for the least advantaged. Libertarians consider this redistribution unjust and coercive as they closely correlate property and liberty.

Ironically, those who advocate the Human Development Approach also find Rawls’s connection of property and justice to be objectionable. Nussbaum and Sen point out that raw data regarding income or property cannot give a full picture of justice in society. If individuals do not have the liberty to pursue their own goals because of discrimination, poor health, or lack of education, justice is not possible, even if income increases. Further Nussbaum notes that Rawls does not adequately address justice for the disabled, members of foreign societies, or non-human animals. Further, Nussbaum and Sen both insist that resource allocation alone cannot adequately address the needs of individuals; true human flourishing requires a diversity of abilities that cannot be reduced to a single measure. Despite these criticisms, Rawls, Nussbaum, and Sen share concern for the least advantaged. The Human Development Approach is more of an expansion of Rawls’s goals than a repudiation of his overall theory.

VARIETIES OF LIBERTY

In one way or another, all the competing theories I have discussed so far place a high value on liberty. Libertarians hold that a lack of coercion is the only condition necessary for just conditions to prevail. Rawls wants the greatest liberty compatible with equal liberty for all but places some restraints on liberty to the extent that the well off must sacrifice some of their liberty (to the extent that liberty really equals property) in

²⁷ Ibid., 247.

order to preserve the greater good for everyone concerned. Finally, the capabilities approach holds that liberty is a sufficient measure of justice only when individuals have the necessary abilities to make free choices not limited by poor education, health, or lack of opportunity.

Isaiah Berlin noticed that discussions of liberty often become confused, as liberty seems to imply at least two distinct meanings. In what Berlin identifies as the “negative” concept of liberty, an individual is free so long as no one interferes with him or her. Berlin denies that this amounts to any kind of justice, saying, “To offer political rights, or safeguards against intervention by the State, to men who are half-naked, illiterate, underfed and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom.”²⁸ He notes that it offends liberals that some should enjoy greater liberty because they have exploited others. The positive concept of liberty, in contrast, is the freedom for an individual to choose what to become and to be self-directed. He cautions that liberty cannot be the sole value of society as simply maximizing liberty is not possible. He says, “The extent of a man’s, or a people’s, liberty to choose to live as he or they desire must be weighted against the claims of many other values, of which equality, or justice, or happiness, or security, or public order are perhaps the most obvious examples.”²⁹

Berlin helps us to understand how the libertarians’ focus on negative liberty fails to engage those who are more concerned with positive liberties such as advocates for the

²⁸ Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (Oxford, UK: Oxford University Press, 1958), http://www.wiso.uni-hamburg.de/fileadmin/wiso_vwl/johannes/Ankuendigungen/Berlin_twoconceptsofliberty.pdf, 4.

²⁹ Ibid., 30.

capabilities approach. One way of resolving the disagreement would be to challenge the distinction between positive and negative liberty, essentially undoing the work of Berlin. I prefer a more modest approach; my claim is that when positive liberty is lacking, in many, cases, it is the result of suppression of individual autonomy in the past. For example, global conquests for natural resources, slavery, war, economic embargoes, and environmental degradation have deprived people of their ability to act in any positive manner. Violations of their negative rights in the past, not their poor choices, have denied individuals of the ability to make positive choices in the present. However, some people have limited liberty as a result of neither violations of their negative rights nor bad choices; rather, their liberty is limited by disability that results only from bad luck. Nussbaum does well to address some of the cases where inadequate positive liberties result from pure bad luck, such as in the case of natural disability or accidents at birth. Shlomi Segall has explored the relationship of luck to justice even further.³⁰ The case of bad luck presents a particular challenge to both libertarian and social contract theories, and this is one area where the human development approach fills a gap left by both libertarian theory and Rawlsian contract theory. Nonetheless, libertarians, even if they reject concerns of bad luck and disability, cannot ignore the historical causes of inadequate positive freedom such as those resulting from conquests and slavery; in other words, direct violations of negative freedom and rights result in injustice, regardless of which theory is applied. Ultimately, promoting human capabilities is a matter of rectifying historical injustice, not a matter of providing charity to the least advantaged.

As mentioned briefly above, Nozick's "Marriage Lottery" (not his term) provides

³⁰ Shlomi Segall, *Health, Luck, and Justice* (Princeton, NY: Princeton University Press, 2010).

a test case. Nozick imagines 26 men and 26 women who want to get married to a partner of the opposite sex.³¹ Each of the men and each of the women can be ranked from A to Z based on desirability. As a matter of free choice, the most desirable man and the most desirable woman have the greatest number of choices of potential, willing partners. The less desirable one is, the fewer choices one has. Further, as choices diminish they also become less desirable so that the least desirable man and the least desirable woman have no other choice than to choose each other or forgo marriage altogether. Nozick claims that the less desirable men and women have fewer choices (decreased liberty) but that no injustice occurs, as the more desirable partners did nothing to rob them of their liberties. Nozick's example ignores the causes of desirability or the lack of it in marriage partners.

I will suggest that partners are most desirable when they are in good health, fairly affluent, and, of course, physically attractive. Some of these conditions may be a result of pure luck through genetics, and others may be a result of poor choices that lead to poor health or poverty, but Nozick ignores the impact of willful acts of harm that result in poor health and poverty for others. If Mr. X and Ms. X rank at the bottom of potential marriage partners because their family wealth was stolen from their ancestors by the ancestors of Mr. B and Ms. B or their health was destroyed by pollution from Mr. A's family factory, then the X's have a claim against the A's and the B's in the list. Sorting out the complexities of this injustice would be impossible on a case-by-case basis, but libertarians must concede, in order to be consistent, that efforts should be made to prevent such injustices from occurring. In order to ensure that individual autonomy and economic liberty, regulation, whether social or legal, must protect individual opportunities to pursue

³¹ Nozick, *Anarchy, State, and Utopia*, 263.

health, economic engagement, and well-being. Further, recognizing the effect past injustice has had on the economic standing and capabilities of oppressed groups, corrective action is required to restore individuals to full standing and autonomy.

IDEAL AND NON-IDEAL THEORIES

Utopian visions, no matter how unrealistic, serve a purpose. By imagining an ideal state we can better distinguish which features of our world are consistent with an ideal state, which are inconsistent but unavoidable, and which are inconsistent and alterable. Descriptions vary, but the ideal state generally exists with an absence of suffering, although some theodiscists note the need for suffering in order to appreciate the good. Arguments in defense of suffering aside, heavenly descriptions of perfect bliss do not include pain and suffering. In this ideal state, problems of social justice do not arise. David Hume notes that if nature had managed to meet every imaginable human need, “every other social virtue would flourish, and receive tenfold increase; but the cautious, jealous virtue of justice would never once have been dreamed of.”³²

An ideal theory of social justice does not attempt to respond to conditions on the ground, but begins with a focus on what can be accomplished from scratch. Beginning with an empty theory, one might assume what can be achieved under what Rawls refers to as “favorable circumstances.”³³ Under these circumstances, the ideal theory is a conception of justice in a well-ordered society with strict compliance to moral demands of the theory. Once an ideal theory is established, Rawls claims we can begin to work on the details of a non-ideal theory to address what principles should be adopted under “less

³² David Hume, *Hume's Ethical Writings: Selections from David Hume*, ed. Alasdair MacIntyre (Notre Dame, IN: University of Notre Dame Press, 1965), 35.

³³ Rawls, *A Theory of Justice*, 216.

happy” conditions of the world we now inhabit. We must judge how just any society is by how it compares to the ideal theory of justice, but non-ideal theory must be invoked when “natural limitations” make the ideal unattainable. Deriving the principles of an ideal theory is challenging, but sorting through all the natural limitations on ideal justice is unending as new conditions constantly arise as in times of natural disasters and civil unrest.

Working from an ideal state of affairs down to a non-ideal theory is certainly constructive, but it is also possible to approach the problem from the bottom up. One can imagine, in a sense, “perfect” or “ideal” injustice and begin to derive the most expedient methods to relieve the agony of such conditions, imagining the elimination of the most egregious forms of injustice until a more just state is achieved. This is something of a negative project, beginning with a negative state and working to its elimination. The advantage of this approach is that it enables us to focus on the greatest abuses of justice and begin to develop a non-ideal theory to improve the lives of the most desperate people in the world. Societies can be measured not by how they fall short of the idea but by how they rise above the negative ideal. This is similar to Arthur Schopenhauer’s approach to the problem of good and evil. Against the conception that evil is the absence of pain (such as suggested by Augustine, although Schopenhauer takes aim at Leibniz rather than Augustine), Schopenhauer says,

I know of no greater absurdity than that of most metaphysical systems that declare evil to be something negative; whereas it is precisely that which is positive and makes itself felt. On the other hand, that which is good, in other words, all happiness and satisfaction, is negative, that is, the mere elimination of a desire and the ending of pain.³⁴

³⁴ Arthur Schopenhauer, *Philosophical Writings*, ed. Wolfgang Schirmacher, trans. Virginia Cutrufelli (New York, NY: Continuum, 2002), 28.

By conceiving of justice as the absence of injustice, we are able to focus more narrowly on the most egregious forms of injustice and work toward an ideal state through the systematic elimination of positive harm. This negative approach to justice cannot do all the work required to achieve a just state; it only addresses the most immediate demands of current circumstances. It is important to replace a leaky roof on the house you are occupying, but it may be essential to extinguish the fire in the main living area of the house first.

The other advantage of the negative approach to justice is that it confronts perpetrators of injustice on their own terms. For example, Ruth Faden and Madison Powers attempt to develop a theory of social justice that combines theory with empirical data regarding the interplay between social and economic relationships with health and other aspects of well-being. They argue that considerations of justice must be viewed holistically rather than in discrete spheres. They assert that philosophical reflection alone can never provide a robust account of justice. Only through empirical research, they insist, can actions promoting justice be fully informed. They summarize their conclusion saying,

Our hope is that progress in social justice, public health, and health policy can be made by integrating a number of strands of philosophical reflection, political theory, social science theory, and social and biomedical research in ways that piggy-back on the accomplishments of a variety of contributors from multiple disciplines and intellectual traditions.³⁵

Surely they are correct that data and interdisciplinary efforts are needed to develop sound policy to promote justice in health and health care.

While some may agree that a truly just society looks different from what now

³⁵ Powers and Faden, 195.

exists and that making the effort to bring about better conditions is good, they may also argue that efforts to improve global human functioning are supererogatory and may be left to those heroic individuals who wish to undertake more effort than can ever be required. This is not to agree that such efforts are supererogatory but only to focus on conditions that result from actions that cause direct and identifiable harm.

A negative approach answers the arguments of libertarians on their own terms with the aim of hoisting them on their own petard. Libertarian theorists in the United States and Europe argue that attempts to regulate trade and global markets amount to violations of liberty for those engaged in global business. Attempts to alleviate poverty, they say, violate the liberty of some individuals in order to grant entitlements to others who have not earned them. Their arguments stand only if they have gained their wealth and relative power without benefitting from the human rights violations of others. Regulating or modifying global trade is not a matter of shifting resources from the deserving to the undeserving; instead, it is a matter of restoring the ability of victims of human rights abuses to act autonomously. For example, Jan Narveson claims we only need to help others if their condition is our fault.³⁶ Narveson assumes that starvation is a product of bad luck and corrupt foreign governments and not the result of interaction with western institutions and corporations. Even if it were true that starvation is the product of bad luck, many justice theorists would reject Narveson's claim that starvation makes no moral demands on the affluent. Shlomi Segall encapsulates the view of so-called "luck egalitarians" by saying, "It is unjust for individuals to be worse off than others due to

³⁶ Narveson, *Moral Matters*, 156.

outcomes that it would have been unreasonable to expect them to avoid.”³⁷ Segall advocates giving priority to those who are worse off but bear no responsibility for their condition. My approach here is more lenient than Segall’s. On my view, priority will go to those who are not only not responsible for their situation but for those who would be in a much better situation without deliberate outside interference. I suggest this only in order to stay close to a libertarian ideal and follow it to its natural conclusions.

Implicit in Narveson’s argument is the assumption that if “we,” citizens of western democracies, were to be responsible for suffering from starvation and disease, we would be required to take action to rectify the situation. Rather than recognizing the role affluent nations have played in creating health disparities, however, he denies that they even exist, saying, “They [contemporary philosophers] write as though people by the millions are starving daily. It is of interest to realize that they are, generally speaking, wrong.”³⁸ Responding to maximalist theories of justice, such as those of Martha Nussbaum and Amartya Sen, Narveson and other libertarians claim that injustice may well exist in developing countries but that such a state creates no obligation on citizens of affluent nations. For purposes of argument, I will accept the libertarian claim that no one is responsible for creating justice in foreign states, so long as affluent nations have no effect on such states. There may be a few isolated and unjust states in the world whose citizens must solve their own problems or hope that someone more powerful will be moved by compassion or otherwise to help them; however, most people in the world will find that their condition is directly affected by the actions of affluent nations.

In chapter three I will explore specific instances of the violation of individual and

³⁷ Segall, *Health, Luck, and Justice*, 13.

³⁸ Narveson, 153.

collective liberty in developing countries. Trade globalization, beginning with the actions of the British East India Corporation, has proceeded from conquest rather than consensual agreements with individuals in foreign lands. I will suggest in chapter four that just acquisitions of land and resources can occur only when free, prior, and informed consent is obtained from all who depend on the resources for their livelihood. This requirement does not apply only in foreign lands, of course, but foreign conquest is an obvious example of violations of individual liberty. The wealth of the United States depends on land and resources once owned by aboriginal people. Further development occurred at the expense of slaves, who were denied control even over their own bodies. Once we have established that affluent nations create the conditions of injustice in developing countries, we are faced with a question of who, precisely, is responsible for correcting the injustice. We may take a position that international organizations are responsible for behaving justly but that individual citizens are exempted from responsibility so long as we do not intentionally inflict harm on others. Peter Unger acknowledges that governments could do much to save the lives of their citizens and that not doing so reflects poorly on them as moral agents, but he asks, “What is the relevance of assessing your own behavior and mine? There isn’t any. For we know full well that, for all the governments will do, each year millions of Third World kids will die from easily preventable causes.”³⁹ Institutions may create harmful schemes through trade agreements, laws, or practices, but individuals, even if not part of those institutions must not, as Thomas Pogge states, “cooperate in the imposition of a coercive institutional order

³⁹ Peter Unger, from *Living High and Letting Die* excerpted in Thomas Pogge and Keith Horton, *Global Ethics: Seminal Essays: Global Responsibilities*, Reprint. (Paragon House Publishers, 2008) 350.

that avoidably leaves human rights unfulfilled without making reasonable efforts to protect its victims and promote institutional reform.”⁴⁰

Depending on how we interpret “cooperation” with unjust institutional order, the moral demand Pogge suggests could be extreme. If this requires individuals to refrain from purchasing products that result from unjust institutional arrangements, then moral individuals may themselves become impoverished and diseased. Utilitarians such as Peter Unger and Peter Singer specify that individuals are responsible to help only to the extent that they do not reduce themselves to the same level as those they are helping. For Singer, the stronger version of his theory would require citizens to give until they reach a level of what he calls “marginal utility,” which is “the level at which, by giving more, I would cause as much suffering to myself or my dependents as I would relieve by my gift.”⁴¹ Singer notes that whether we should follow a stronger or weaker version of his theory is purely academic as most affluent nations consider one percent of GNP an acceptable level of foreign aid.⁴² The Utilitarian view holds that our obligations are the same to all individuals without regard to country of origin or residence or their level of interaction with us. The responsibility to aid others arises from their suffering and their need rather than from our relation to them.

Libertarians can see no obligations in cases where we live in isolation from others, but recognize obligations in cases where we make others worse off. While there may be some in the world who are not affected by our actions and policies, Iris Marion

⁴⁰ Thomas Winfried Menko Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd ed. (Cambridge, UK: Polity, 2008), 176.

⁴¹ Peter Singer, “Famine, Affluence, and Morality,” in Pogge and Horton, *Global Ethics*, 12.

⁴² *Ibid.*, 13.

Young suggests, “Far better to begin from a more objective stance: there is much injustice in the world and we contribute to its production, and it may seem more than any of us can rectify, even together with others.”⁴³ The fact that a task is daunting, however, does not relieve us of any moral obligation. Young also rejects the idea that workers suffering from harsh working conditions are responsible for their own condition if they voluntarily accepted their work. She says, “If many workers endure these violations without complaint because they desperately need those earnings, this is a measure of the coercive pressures of their circumstances rather than of their consent.”⁴⁴ Young’s claim is not that we are obligated to help others merely because they are human and suffering; her claim is that we are obligated to help them because they are harmed by an unjust system. We cannot escape our responsibility to others at a distance, she says, because, “Affluent people in affluent countries, in particular, participate in the imposition of injustice to the extent that we are the supporters and benefit from a global institutional order that helps cause and perpetuate world poverty and inequality.”⁴⁵ Our responsibility, then, is not merely to offer aid but to restructure the institutional order. By my account, a minimal and non-ideal theory demands a radical revision of current institutional policies, agreements, and practices.

BIOETHICS AND SOCIAL JUSTICE

The term bioethics, as conceived by Van Rensselaer Potter, originally comprised concerns for global health, the environment, and sustainability.⁴⁶ Rather quickly,

⁴³ Iris Marion Young, *Responsibility for Justice* (New York, NY: Oxford University Press, 2011), 124.

⁴⁴ *Ibid.*, 128.

⁴⁵ *Ibid.*, 140.

⁴⁶ Van Rensselaer Potter, *Bioethics: Bridge to the Future* (Prentice Hall, 1971).

however, conversations in bioethics turned primarily to questions of autonomy and focused almost entirely on doctor-patient relationships. Gradually, bioethicists have begun to focus on broader issues in part, surely, because the narrow topics of early bioethics discussions became uninteresting to those participating but also because the reemergence of infectious disease and pandemics, threats from environmental degradation, and global hunger are affecting health in ways that cannot be ignored. Bioethicists now include concerns for both patients and those who are not fortunate enough to have access to healthcare and, therefore, are never able to become patients. Understandably, much debate centers on access to health care. Indeed, those without access to health care have limited freedom and limited capabilities, but I would like to expand the focus on health care to a general concern for a right to health not harmed by the actions of others. I will examine recent commentary from Nussbaum, Sen, and Madison Powers and Ruth Faden.

MARTHA NUSSBAUM⁴⁷

Nussbaum has written many works related to capabilities, of course, but it is her *Frontiers of Justice* that relates most closely to discussions in bioethics.⁴⁸ In this work, Nussbaum attempts to expand on the social contract theories of John Rawls by focusing on capabilities as a foundation of justice, addressing concerns for the disabled, members of other nations, and non-human animals. John Rawls addressed the issues related to

⁴⁷ One of Martha Nussbaum's achievements is to offer a theory that includes concern for people with disabilities, which is absent from libertarian theories as well as from Rawlsian contract theory. Her theory is both robust and nuanced but lies outside the scope of this dissertation.

⁴⁸ Nussbaum, *Frontiers of Justice*.

nationality somewhat in *The Law of Peoples*,⁴⁹ and he at least mentioned the problem of the disabled in his *Theory of Justice*.⁵⁰ For the most part, Nussbaum is respectful of the theories of Rawls, including his rejection of Utilitarianism to achieve concern for the least advantaged, but she also recognizes the important contributions of Utilitarian writers. In particular, she values the Utilitarian assertion that each life counts for equal consideration. The satisfaction of peasants is of equal concern to the satisfaction of kings. She says, “People who denigrate utilitarianism as cold-hearted or in league with big business often wrongly forget its radical origins.”⁵¹ Perhaps her strongest objection to Utilitarianism is that it does not recognize the effect of “adaptive preferences.”⁵² In other words, some people may stop wanting what they know is out of reach, so they learn to be content within their current social conditions. Nussbaum says, “By defining the social goal in terms of satisfaction of actual preferences, utilitarian approaches thus often reinforce the status quo, which may be very unjust.”⁵³ Libertarian theories, seeking only to protect individual autonomy and liberty, fail to confront problems of disability that impair autonomous functioning, though Nozick acknowledges that they may be addressed as morality progresses. For example, he says, “Principles might get formulated about behavior toward helpless beings with whom no mutually cooperative interaction is possible (fetuses, animals) or to currently nonexistent beings (future generations).”⁵⁴ It is striking that he does not include mental impairment in this example. If we fail to address

⁴⁹ John Rawls, *The Law of Peoples*; with, *The Idea of Public Reason Revisited* (Cambridge, Mass: Harvard University Press, 1999).

⁵⁰ Rawls, *A Theory of Justice*.

⁵¹ Nussbaum, *Creating Capabilities: The Human Development Approach*.

⁵² *Ibid.*, 54.

⁵³ *Ibid.*

⁵⁴ Nozick, *Invariances*, 278.

the needs of those who cannot make independent and mutually beneficial choices, we have failed to secure even minimal justice.

Nussbaum begins her section on global inequality by saying, “Any theory of justice that proposes political principles defining basic human entitlements ought to be able to confront these inequalities and the challenge they pose, in a world in which the power of the global market and of multinational corporations has considerably eroded the power and autonomy of nations.”⁵⁵ In this section, she criticizes social contract theories, but she says she chooses them for their advantages over competing theories such as Utilitarianism. Contract theories rely on cooperation to mutual advantage, but she rejects this as a basis for a theory of global justice.⁵⁶ Another obstacle for the theory of social contract is the changing nature of sovereignty. Nussbaum notes, “National sovereignty is under threat from a variety of directions, above all from the influence of multinational corporations and the global economic structure.”⁵⁷ Nussbaum instead favors the theory of Grotius, which claims that all entitlements derive from the sociability of the human being.⁵⁸ She considers several theories from Rawls, Thomas Pogge, and Onora O’Neill. She finds that it is easy to determine the needs of humans in other countries. Indeed, she has provided a list of them in the beginning of her book. The problem, she says, comes from assessing what duties are borne by what actors. If the answer is that we all have a duty to provide all the people of the world with their minimum needs, then we meet a problem. We cannot have a duty to do what it is impossible for us to do. For example, she says we cannot cure the HIV epidemic in Africa or feed all the poor in India. Rather, she

⁵⁵ Nussbaum, 225.

⁵⁶ Ibid., 226.

⁵⁷ Ibid., 258.

⁵⁸ Ibid., 230.

says, we should do what we can to secure the 10 capabilities to all the people of the world. Otherwise, we do not live in a “decent and minimally just world.”⁵⁹

The capabilities approach seeks to secure access to the 10 capabilities she lists throughout the world. Her approach will work in tandem with efforts to secure rights. The advantage of capabilities for measuring justice in a society is that material needs may vary from country to country, so that wealth or even wealth distribution may not give an actual picture of life for the citizens of the country. More important than what people have is what they can do, if they choose to do it. The capabilities approach will emphasize creating access to education, health care, housing, and suitable labor conditions. She notes that these items are not discussed in Rawls’s conception of international justice.⁶⁰

Nonetheless, she notes that she does privilege capabilities over functioning, while others feel that success in creating a just society should be measured by actual functioning. Still, she says, “My own view is that people should be given ample opportunities to lead a healthy lifestyle, but the choice should be left up to them; they should not be penalized for unhealthy choices.”⁶¹ Nussbaum consistently argues throughout the book that children should be nurtured to fully develop their capabilities. Care and education of children are a necessary component of any theory of justice. She says, “For children . . . functioning may be made the goal in many areas. Thus I have defended compulsory education, compulsory health care, and other aspects of

⁵⁹ Ibid., 273-281.

⁶⁰ Ibid., 284-306.

⁶¹ Ibid., 80.

compulsory functioning.”⁶² For adults, justice demands only that capabilities are ensured, but Nussbaum sees children as an exception. Without maximizing a child’s functioning, the resulting adult cannot be guaranteed as full a set of capabilities as possible. Consistent with libertarian concerns, Nussbaum is concerned with ensuring autonomy of both individuals and nations, but her aim is to maximize autonomy rather than simply protecting individuals from assaults on their liberty.

She next turns to her approach for implementing a system of global justice. Knowing that many people have unmet needs forces us to ask who has an obligation to meet their needs. The short answer is that everyone shares the responsibility, but it is unreasonable for any one person to shoulder the burden, which is not to claim that the efforts of individuals do not have a cumulative effect. Nonetheless, Nussbaum turns to the possibility of an institutional approach.⁶³ It is immediately obvious that a world state could implement the changes necessary to guarantee access to human capabilities, but she immediately rejects this idea as dangerous. Governments serve to keep one another in check in certain ways. A global state would have no such restraints. As a result, she suggests that global institutional structure should be thin and decentralized. She sees a world where governments, non-governmental organizations, and corporations all have an obligation to promote human capabilities.⁶⁴ One of her principles for global structure has a particular resonance for this project. Often the actions of states are dictated by transnational corporations who make exploitive business deals with countries that often experience desperate poverty. Nussbaum says, “Multinational corporations have

⁶² Ibid. 172.

⁶³ Ibid. 307-312.

⁶⁴ 315 - 324

responsibilities for promoting human capabilities in the regions in which they operate.”⁶⁵

While Nussbaum is claiming that corporations are obligated to improve capabilities rather than exploiting a lack of capabilities, she could make a stronger case for the moral demand based on a history of corporate actions that diminish the capabilities of people living in such regions. For example, if a corporation takes the land people live on to grow or fish for food and then offers only the opportunity to work in unhealthy and dangerous conditions, then individuals have lost their freedom, health, and security. For trade to be mutually beneficial, corporations are not obligated to promote the greatest capabilities and autonomy possible, but they certainly must not rob individuals of their autonomy, including economic freedom. Martha Nussbaum’s assertion that corporations have an obligation to promote capabilities will probably not resonate with libertarians, but the history of corporate conquest and theft obligates them to repair the capabilities of their victims, not to promote capabilities out of a commitment to creating a more ideal world.

AMARTYA SEN

Amartya Sen’s *Development as Freedom* is also based on capabilities, but he argues that the poorest people will benefit most from development, which requires not only interaction with the market but education, democracy, and individual agency.⁶⁶ Like Nussbaum, Sen has expanded the areas of concern explored by John Rawls. *Development as Freedom*, of course, focuses on global concerns.⁶⁷ Some might assume that by development he means only economic development, but for him development means promoting economic development, education, democracy, women’s agency, and human

⁶⁵ Ibid., 317.

⁶⁶ Amartya Kumar Sen, *Development as Freedom*, 1st Anchor Books ed (New York: Anchor Books, 2000).

⁶⁷ Sen, *Development*.

rights. The book is based on lectures Sen gave to the World Bank, which is not a reason for optimism that his goals can be achieved. He states in the preface that the World Bank has not “invariably” been his “favorite organization.”⁶⁸ He goes on to say that he offers the book to the general public for discussion that will perhaps motivate people to pursue social change. The book has been so influential that its contribution to social discourse cannot be denied. We can only hope that members of the World Bank will work toward a more just global order.

Sen’s argument is so full of information and complexity that it is difficult to discuss it without repeating it point by point. Anyway, the evidence for promoting capabilities is compelling but complicated. For example, Sen points out again and again that famines do not happen under democracies. As examples, he mentions famines in pre-democratic Ireland and China, and claims that no famine has occurred in a country ruled democratically. Sen therefore claims that democracy is essential to preventing famine.⁶⁹ At the same time, education reduces fertility and promotes economic development and human freedom. China has provided education, forcefully reduced fertility, and generated impressive economic development all in the absence of democracy. India has a putative democratic government, but education, economic development, and equality of women lag behind China. The comparison of India and China indicates that simply holding elections is not enough to promote a full range of capabilities. Some parts of India, especially Kerala, have been successful in ameliorating the situation, improving education and economic prospects.⁷⁰ Other parts of India have had less success, but,

⁶⁸ Ibid., xiii.

⁶⁹ Ibid., 166-167.

⁷⁰ Ibid., 21-24.

despite widespread poverty, he says there have been no Indian famines.

Amartya Sen did not specifically address people with disabilities in *Development as Freedom*, but he does address it in *The Idea of Justice*.⁷¹ He notes that people with disabilities face two related problems: they often have reduced earning potential and simultaneously require more income to maintain an acceptable standard of living. Sen notes that social justice theorists who focus too much attention on income distribution underestimate the level of inequality faced by people with disabilities. In responding to disability, we must consider ways to diminish the incidence of disability and also to diminish the effects of disabilities that exist.⁷² Sen accuses Rawls of failing to recognize that people with different circumstances and abilities have different opportunities to convert resources into actual capabilities. Sen also notes that it is essential to make a “focus on functionings and capabilities” a necessary part of thinking of how to set up an institutional structure, rather than leaving it for the legislative stage as Rawls suggests.⁷³

Sen makes a point of distinguishing between theoretical capabilities and what someone is actually able to do. He suggests three possible cases for disabled person A. In case one she is not helped and cannot leave her house. In case two, she is helped by a social security system and people with goodwill and is therefore able to move about freely. In case three, she is assisted by well-paid servants who take care of her needs and enable her to move about freely.⁷⁴ He notes that under his capabilities approach, she is free in cases two and three. He emphasizes that it matters what she “is actually capable of

⁷¹ Sen, *The Idea of Justice*.

⁷² Ibid.

⁷³ Ibid., 261.

⁷⁴ Ibid., 306.

doing.”⁷⁵ He says that she is also unfree in case two under the “republican” or “neo-Roman” theory that holds that one is free only when no one can eliminate a person’s abilities even when they want to. In case two, her freedom is what he calls “context dependent,” as it depends on the goodwill of others.⁷⁶

For Sen, economic development is essential for the development of human capabilities, but economic development must come with the cultivation of education, freedom, and democracy. Focus on economic gains alone can actually stunt development of human capabilities. When we talk of human capital, we must see humans more broadly. He says, “It is important to take note . . . of the instrumental role of capabilities expansion in bringing about *social* change (going well beyond *economic* change).”⁷⁷ As an example, he says that female education reduces fertility rates and improves family relations, public discourse, and child mortality.⁷⁸ Sen provides a compelling argument that economic development is necessary to the development of human capabilities, but it must be accompanied by education and expansion of personal freedoms. In turn, improvements in education and personal freedom enhance the prospects for economic growth and development.

POWERS AND FADEN

In *Social Justice: The Moral Foundation of Public Health and Health Policy*, bioethicists Madison Powers and Ruth Faden hope to develop a theory for promoting public health and health policy that gives guidance on how to prioritize the need to

⁷⁵ Ibid., 306-307.

⁷⁶ Sen, *The Idea of Justice*, 305-307.

⁷⁷ Sen, *Development*, 296.

⁷⁸ Ibid.

redress inequalities.⁷⁹ In contrast to Rawls, they hope to develop a nonideal theory that addresses empirical judgments of inequality. They hope, also, to develop a theory that considers justice in terms that go beyond mere distribution of basic goods. They attempt to assess the justice of social systems by how well they address six dimensions of well-being.⁸⁰ The six dimensions of well-being they propose include health, personal security, reasoning, respect, and attachment. Powers and Faden aim to create a theory that will enable us to set priorities for health care in actual practice. To do so, they look at actual cases of injustice and offer an analysis of how promoting the six dimensions of well-being can help guide policy makers and others in setting priorities for health and health care.⁸¹ Powers and Faden have many points of agreement with Martha Nussbaum and Amartya Sen, but they seek to establish a theory based on actual functioning rather than a capability to function, which is endorsed by Nussbaum and Sen.⁸² Nussbaum, of course, acknowledges some circumstances where actual functioning is more important than mere capabilities, especially in the case of children.

Faden and Powers aim to provide justice for many of the world's underserved populations. On the question of global justice, Powers and Faden are not entirely silent, but they tend to address justice within national borders rather than across them. They note that health disparities exist between rich and poor countries and demand collective action to rectify the situation.⁸³ They mention that the life expectancy of a 15-year old boy in

⁷⁹ Madison Powers and Ruth R Faden, *Social Justice: The Moral Foundations of Public Health and Health Policy*, Issues in Biomedical Ethics (New York: Oxford University Press, 2006).

⁸⁰ Ibid., 5.

⁸¹ Ibid.

⁸² Ibid., 192.

⁸³ Powers and Faden, 85.

Uganda is 20 years shorter than the life expectancy of a 15-year old boy in the United States. They attribute this difference to the poverty of nations or to corrupt governments.⁸⁴ They go on to say, “While the severity of poverty in the developing world is of staggering dimensions, poverty is also present in unfortunate abundance in the world’s wealthy nations.”⁸⁵ They mention that the World Bank and the International Monetary Fund have forced some countries to dismantle public welfare programs.⁸⁶ The model Powers and Faden propose could guide policy considerations on a global scale. It is more difficult for individuals not involved in international trade and global finance to imagine ways to improve global functioning, but the guidelines Powers and Faden present would help to determine how we measure success in eliminating global disparities. Unlike Nussbaum and Sen, however, their theory comes into conflict with libertarian theory as they seek to ensure functioning and not just the ability to function. Nussbaum in particular accepts the libertarian tenet that adult individuals have the right to decide what they will do with their own bodies even if it means choosing to not function at all.

CONCLUSION

While I attempt to accept the minimalist claims of the libertarians, I also argue for an approach that is more expansive in its reach than either libertarians or Rawlsian theorists would endorse. My argument is that many, though not all, of the goals of the Human Development Approach and Utilitarianism can be justified through concerns for liberty. The impact of human choices on liberty is much greater than libertarians assume.

⁸⁴ Ibid., 90.

⁸⁵ Ibid., 91.

⁸⁶ Ibid., 100.

For libertarians, individual freedom arises from what one owns, and everyone is entitled to a degree of liberty arising from one's ownership of one's own body. Even without tangible property, each individual is entitled to make decisions regarding his or her own body and to enter into agreements to sell one's labor. The libertarian approach assumes that individuals suffering from poverty or disease are responsible for improving their own situation so long as no one has interfered with their exercise of free choice. Based on the assumption that human misery is primarily the result of the victims' own poor choices and occasional bad luck, libertarians dismiss obligations of the wealthy to the disadvantaged as supererogatory duties at most. More often, libertarians reject the idea that anything needs to be done for the least advantaged. Libertarians do concede, however, that poverty resulting from theft or slavery demands remedy.

Given their own logic, the state of affairs in the world is made through a series of free exchanges leading to mutual benefit for those involved in the exchange. To assume that the current global distribution of wealth in the world results from free choices and just acquisition ignores the history of the development of Europe and the United States. In *The Wealth of Nations*, Adam Smith enumerates enterprises that might require special protection from the government. He says, "An ordinary store or counting-house could give little security to the goods of the merchants who trade to the western coast of Africa. To defend them from the barbarous natives, it is necessary that the place where they are deposited, should be, in some measure, fortified."⁸⁷ It does not occur to Smith that the "barbarous natives" are the rightful owners of the resources contained within Africa. Unfortunately, many contemporary traders and neoliberal theorists seem equally blind to

⁸⁷ Adam Smith, *The Wealth of Nations*, ed. C. J. Bullock (New York, NY: Barnes & Noble, 2004), 412.

the entitlements of indigenous peoples. In examining the meaning of the term “neoliberalism,” Stanley Fish concluded, “Neoliberalism is a pejorative way of referring to a set of economic/political policies based on a strong faith in the beneficent effects of free markets.”⁸⁸ Whether neoliberalism is pejorative or not, I take it to be an economic philosophy that sees regulation of markets as a problem and not a solution to global poverty or inequality. I once had sympathetic students express remorse that Africans do not have enough resources to lift their citizens out of poverty. I pointed out that extractive industries make a great deal of profit from resources residing in Africa but that Africans frequently do not control the resources where they live.

Furthermore, the free choice of empowered traders often have consequences (sometimes referred to as externalities) for those not at the bargaining table. For example, an infinitesimally small number of individuals may deliberately choose a disability or illness, and more have disabilities as a matter of bad luck, but more suffer from the actions of outside parties. Disabilities and illnesses may result from environmental degradation, poorly designed medications, or other forms of mistreatment out of the control of the individual. To be consistent, libertarians must passionately protect the ability of these individuals to make their own choices about their lives.

Nozick proffers four levels of ethics: respect, responsibility, caring, and light.⁸⁹ On his view, only the ethics of respect should be mandatory. The ethics of respect will mandate, “respecting another (adult) person’s life and autonomy, forbidding murder and enslavement, restricting interference with a person’s domain of choice, and issuing in a

⁸⁸ “Neoliberalism and Higher Education,” *Opinionator*, n.d., <http://opinionator.blogs.nytimes.com/2009/03/08/neoliberalism-and-higher-education/>, accessed November 14, 2012.

⁸⁹ Nozick, *Invariances*, 280.

more general set of (what have been termed) negative rights.”⁹⁰ Higher levels of ethics comprise concern for the value of others, compassion and understanding, love for others (*ahimsa*), and, finally, devotion to truth, beauty, and holiness. Nozick states, “I do not say that the ethics of each higher layer is more obligatory. It is just lovelier, and more elevating.”⁹¹ He fails to consider how devotion to the first level might entail concern for the higher levels. Showing concern for the life and autonomy of the individual requires also a commitment to understanding others and, of course, demands a commitment to truth. Be that as it may, the level of respect requires us to protect the autonomy of individuals by ensuring no one is robbed of the opportunity to live or develop their capabilities by the actions of others. We must also ensure that our free choices do not impair the choices available to others, regardless of whether they are rational adults, children, or adults who may have impaired rationality. Given that some are unable to make free and informed choices, we are obligated to assume they would never choose a life of misery or early death. Failure to protect their basic interests by preventing actions that rob them of a life free from disease and disability violates the first principle of respect.

The problem, of course, is that some individuals have no ability to enter into agreements to promote mutual benefit, and such agreements are the basis for ethics and morality for Nozick. Further, Nussbaum points out that all humans lack this ability at various stages during their lives. Nozick does note that moral progress can occur when “conditions change so that an extension of cooperative coordination to include this group becomes feasible and desirable, in that the previous group of cooperators, or a power

⁹⁰ Ibid.

⁹¹ Ibid., 281.

subgroup of it, realizes (or believes) that this extension is in its own interests.”⁹² In this area, he sees the possibility of concern for animals and fetuses; notably, he does not mention persons with disabilities.

Although he describes this as moral progress, he does not feel that anyone is obligated to widen the circle of cooperation; it is just nice when someone does. Narveson also has this peculiar view of morality that is not obligatory. Narveson says, “The tendency and desire to do good for others is a virtue. Moreover, it is a *moral* virtue, for we all have an interest in the general acquisition of this quality.”⁹³ Like Nozick, Narveson denies that we are obligated to be moral or seek moral progress. Nozick describes the progression to higher levels of ethics by saying, “We then respond to these capacities in others as we respond to valuable things in general, appreciating them, preserving them, nurturing them, protecting them.”⁹⁴ While some may not be able to offer anything beneficial in a trading agreement, they are capable of suffering the consequences of the free choices of others. It is not always possible to pinpoint the cause of disabilities, but certainly environmental conditions are often associated with birth defects and disease. Failure to protect individuals from the consequences of irresponsible actions is to rob them of the ability to enter into mutually beneficial agreements. Also, individuals who choose to become parents or even choose actions that result in unintended parenthood must assume responsibility for the wellbeing of their children. However, disease and disability arising from the actions of others entitle both the parents and children to rectification. Because of the lack of specificity in cases of disease and disability,

⁹² Ibid., 265.

⁹³ Narveson, *Moral Matters*, 152.

⁹⁴ Nozick, *Invariances*, 281.

prevention of harm and rectification for past abuses of autonomy will have much in common with the promotion of capabilities that Sen and Nussbaum support.

This exchange of benefit also applies to persons living in distant parts of the globe, regardless of their capabilities as they are forced to share the earth's air, water, and minerals with us, regardless of choice. As the quality of the environment affects the ability of individuals to pursue their own choices for a life free from disease and disability, libertarians should strive to protect the air, water, and food quality of the global population. When such goods are privately held, the owners are entitled only to actions that do not affect others who have not chosen the consequences. If I own a bottle of water, I am entitled to contaminate it only to the degree that I do no harm to the water or health of others who have not chosen to participate. This is consistent with the libertarian emphasis on providing security for citizens. It also recognizes the contribution others have made to our own accumulation of capital and comfort. Choices of consumers and business people in affluent nations, especially through the actions of transnational corporations, force exchanges on individuals without any deliberate choice on their part, which violates the core tenets of libertarianism. Narveson seems to concede this point by saying, "If you live downstream from me, and I decide to dam up the river and divert the water elsewhere, then I have deprived you of your water and must compensate you, by supplying you with the equivalent, or else desist."⁹⁵ Narveson does not go far enough, however. Diverting the water is a one-way exchange where many people give up something of benefit without making a free choice to do so. Addressing the injustice requires more than simply providing something of equal value. If I break into someone's

⁹⁵ Narveson, *Moral Matters*, 148.

house and steal all his or her possessions, simply providing something of equal value does not provide redress for the injustice.

At times, we may feel it is hopeless to try to promote education that engenders greater compassion or concern for justice in our society. We hear pernicious and destructive beliefs every day. But Nussbaum provides us with some hope:

Some pernicious sentiments have been undermined over time, by criticism and replacement of the conceptions and beliefs that inform them. Thus, racial hatred and disgust, and even misogynistic hatred and disgust, have certainly diminished in our public culture, through attention to the upbringing of children and their early education. The careful attention to language and imagery that some pejoratively call “political correctness” has an important public purpose, enabling children to see one another as individuals and not as members of stigmatized groups.⁹⁶

Society will never be free of injustice, but Nussbaum reminds us that our efforts are not in vain. Already, social attitudes toward the disabled have changed dramatically, and globalization and improved dissemination of information is forcing residents of affluent countries to consider how we impact people in remote parts of the world. Empirical data refute many of the claims of libertarians; disease and starvation exist in great numbers and are exacerbated by current policies and practices (I will offer a more detailed analysis of current practices in chapter 3). Action to promote justice and liberty is both required and possible.

⁹⁶ Nussbaum, 413.

Chapter 2: Health as a Human Right

INTRODUCTION

In this chapter, I explore the foundations of human rights and assert that not only health care but also the conditions that enable good health to flourish are fundamental human rights, demanding social organization and legal frameworks that protect positive conditions for healthy living in most circumstances. The exceptions to this requirement exist when individuals choose to live in a manner that is not conducive to health and life when other options are available. In too many cases, poverty and disease are the products of choices made when one group of people creates unhealthy conditions for others through irresponsible business practices or outright violence. I will assume, along with libertarians and Rawls, that each individual should be given maximum freedom so long as it does not infringe on the freedom of others. When overconsumption by one group of people leads to starvation and environmental degradation for another, the consumption is an infringement of liberty.

I will make the theoretical claim that corporations are guilty of human rights violations (in the next chapter, I will examine the empirical claim). Libertarians claim that everyone has a right to self-determination (in short, the right to be left alone), and no one has a right to be given anything positive whether it be health care, welfare payments, or other social services. This right to self-determination is expressed in terms of so-called “negative rights.” I will show that either the right to self-determination implies positive entitlements or that the libertarian claim is incoherent. My conclusion will show that even if we accept libertarian claims that the right of self-determination is the only human right, we must acknowledge that the actions of transnational corporations and the economic

arrangements that enable them to flourish are untenable. Further, we must respond to the current health disparities and environmental degradation with actions aimed at remediation, rectification, and reparation.

NEGATIVE AND POSITIVE RIGHTS

Negative rights are essentially the right to non-interference in one's endeavors to secure one's needs and wants while positive rights are the right to have at least some of one's needs and wants provided by a social group, government, or other agency. Negative rights are rights to liberty, and libertarians claim that only negative rights can be defended or protected, and entitlements are gained only through the just acquisition of goods. In this framework, a clean environment and humane means for earning a living are goods that must be acquired through an individual's free exercise of will or initiative. Libertarians claim that no one has an obligation to provide these goods, although it might be nice if some sympathetic and well-meaning individuals desire to do so of their own initiative (i.e., they claim it is supererogatory, morally good but not morally required).

It is difficult to establish the ontological status of human rights, especially without an appeal to some right-granting divinity who has endowed humans with special rights or else simply by claiming that humans are entitled to natural rights derived from nature. Ronald Dworkin, for example, proposes the following: "Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them."⁹⁷ While his definition offers no specific rights, he notes an advantage of his formulation is that "it does not suppose that rights have some

⁹⁷ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), xi.

metaphysical character, and the theory defended . . . departs from older theories that do rely on that supposition.”⁹⁸ Rights are, then, a matter of agreement of what people should be granted or permitted the freedom to do. These rights, subsequently, create obligations on others. Arguments for negative rights are secular but also difficult to defend ontologically. It would be nice if rights, like planets or viruses could be empirically verified, but it is hard to imagine someone “discovering” a human right.

In the absence of empirical discovery, we may rely on consensus. If we achieve a level of agreement on a moral law, we may then work together to establish legal codes to enforce such moral laws. In giving examples of moral laws, many find it hard to imagine that any rational person would object to a normative code prohibiting wanton murder. While there may be bizarre outliers, we assume that everyone would want some protection from being murdered. This shared impulse motivates a disgust with and opposition to socially sanctioned murder. In the same vein, we may proffer a theory of rights that claims all individuals in full possession of their faculties will desire the ability to make choices for themselves while recognizing that their choices may be limited by preventing them from limiting the choices of others. As a result, murder is prohibited by law with severe penalties, and virtually no one objects to legal prohibitions against murder.

Even without empirical verification, though, most people in the West recognize the existence of negative rights. While popularity of a moral theory is certainly not a way to determine the legitimacy of any moral claim, negative rights have achieved a level of respect in my culture that positive rights do not enjoy. Because rights imply attendant

⁹⁸ Ibid., xi-xii.

obligations, individuals are less likely to agree to the existence of positive rights, especially if they feel they will be called upon to grant entitlements to others. If I can defend a right to a healthful environment and health care in the language of libertarians as negative rights, I increase my chance of achieving greater consensus in the United States. I do not claim, however, that the right to autonomy or even to be left alone is held universally across all cultures. Some cultures may feel that individual rights should be set aside for the collective good. Western political theory, economics, policy, and law is built on the assumption that liberty should be maximized, and any productive examination of rights in the United States should proceed with this assumption in mind. In fact, even John Rawls, a frequent target of libertarians, insisted that a just society would promote the greatest liberty compatible with equal liberty for all. Therefore, I will proceed by examining the implications of assuming that negative rights exist and must be honored and defended. It is possible that many positive rights, or entitlements, rejected by libertarians may be justified on grounds accepted by libertarians, especially if they flow from violations of liberty.

LIBERTARIAN DEFENSE OF NEGATIVE RIGHTS AND REJECTION OF POSITIVE RIGHTS

Libertarians claim that negative rights entail only negative obligations, requiring nothing of individuals but to leave others to their own devices; however, they claim that negative rights often entail positive duties such as the duties to provide security and legal remedies. It is useful to identify such instances where libertarians would likely agree that even negative rights require positive duties. Given that some positive duties such as providing a police force and national defense are entailed in libertarian claims, it seems reasonable to suggest that further positive obligations should be considered. To put it

more strongly, if the libertarian conception of human rights is applied consistently, victims of human rights abuses have acquired a staggering list of entitlements required merely to redress the harm they have endured (see chapter 3 for examples).

In arguing against the claim that one would be doing something bad by not saving a child drowning in a shallow pond by simply getting on one's knees and pulling the child out of the water, Joshua Katz responds by saying, "If the force of the argument rests entirely on intuition, my competing intuition that I am entitled to do as I wish with my property, including my body, is just as valid."⁹⁹ Most non-libertarians will find the statement that one is not obligated to save a drowning child at no real cost to oneself rather shocking, but the libertarian claim really is this extreme.

Robert Nozick, who offers a more nuanced argument than that of Joshua Katz, is one of the most often cited philosophers defending the libertarian view. Nozick describes the required level of ethical obligations to include "rules and principles mandating respecting another (adult) person's life and autonomy, forbidding murder and enslavement, restricting interference with a person's domain of choice, and issuing in a more general set of (what have been termed negative) rights."¹⁰⁰ As discussed in Chapter One, Nozick goes on to describe three higher levels of ethics: ethics of responsibility, ethics of caring, and the ethics of light.¹⁰¹ Nozick believes the higher levels of ethics must never be enforced by a state or even by social disapproval of individuals.¹⁰² Within Nozick's framework, any well-off individual is free to provide any benefit whatsoever to

⁹⁹ Joshua Katz, "Why Libertarians Should Reject Positive Rights," *Libertarian Papers* 1, no. Article 6 (2009), <http://mises.org/document/3938/Why-Libertarians-Should-Reject-Positive-Rights>, accessed September 26, 2012, 3.

¹⁰⁰ Nozick, *Invariances*, 280.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, 282 – 283.

anyone at any time so long as its provision is based on a free choice. He sees most instances of unequal distribution of income as the result of free choice.

One problem with this conception of liberty is that some people lack basic resources as a result of factors unrelated to their own free choices. Some are hampered in their pursuit of essential goods by bad luck such as natural disasters or impaired health while others are hampered by acts of injustice such as theft, assault, and so on. For a libertarian such as Nozick, someone's bad luck may be tragic, but it imposes no obligation on others to change the situation. If someone (Nozick suggests a famous basketball player) has more assets as a result of superior talent, physical fitness, and drive, there can be no defensible reason to require this person to give away assets gained as a result of superior talent or hard work.¹⁰³ In this example, gaps in income result from free choices made by some people paying their income for the privilege of seeing another individual perform, placing no obligation on the performer to correct or mitigate the resulting income gap. Of course, in reality, people who pay to see basketball games tend to have the resources to meet their basic needs for survival. Others lack resources because their property was stolen from them. In such cases, Nozick would claim the property should be returned as the victim's liberty has been violated. Ensuring that people are protected from assault or theft imposes a duty on us to provide law enforcement, courts, and jails or other means of deterring or limiting criminal behavior. Nozick acknowledges that it is the role of government to ensure basic security.¹⁰⁴ Libertarians focus on security in terms of police forces and national defense to protect against theft and invasion while

¹⁰³ Nozick, *Anarchy, State, and Utopia*.

¹⁰⁴ Nozick, *Invariances*, 281-282.

remaining obstinately indifferent to security from loss of resources due to environmental destruction and abusive trade practices.

Even with his limited conception of security, Nozick appears to run into trouble, when considering the case of historical injustice. If someone is descended from a well-off family whose fortunes were plundered by thieves in a previous generation, it seems clear that this person deserves repayment of the family fortune (e.g., descendants of Jews trying to recover from European museums artwork stolen by Nazis). Even when there is no theft of property, an injustice occurs when poverty is the result of the denial of basic liberties as in the case of slavery. Slaves are denied the ability to participate in trade for mutual benefit, and their resulting poverty is passed from generation to generation. In his earlier work, *Anarchy, State, and Utopia*, Nozick asks, “If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices?”¹⁰⁵ He does not answer the question, says there is no theory to address this problem, and declines to provide one. In a footnote, he says, “If the principle of rectification of violations of the first two principles yields more than one description of holdings, then some sort of choice must be made as to which of these is to be realized. Perhaps the sort of considerations about distributive justice and equality that I argue against play a legitimate role in *this* subsidiary choice.”¹⁰⁶ Although this would appear to be a substantial problem for his theory, Nozick declines to provide a theoretical response to the question he has raised, at least in *Anarchy, State, and Utopia*.

In *Invariances*, he gives a slightly more robust description of historical distributions of wealth, although nagging problems remain. In this book, Nozick

¹⁰⁵ Nozick, *Anarchy*, 152.

¹⁰⁶ *Ibid.*, 153.

conceives of cooperation to mutual benefit as the core of ethical demands for society, saying his view “makes mandatory the widest voluntary cooperation to mutual benefit; it makes only that mandatory; and it (in general) prohibits interactions that are not to mutual benefit, unless these are entered into voluntarily by all parties.”¹⁰⁷ The preceding quotation makes the use of “voluntary” and “mandatory” seem nearly incoherent, but, being charitable, we can assume that each person is obligated to expand the circle of cooperation without dictating specific choices one must make. In Nozick’s conception, it is possible to imagine two groups who have not interacted in the past; one group may be newly arrived immigrants with fewer resources than members of a socially prominent native group. Nozick notes that initial exchanges will leave wide disparities between the incomes of the two groups as a result of the unequal starting positions for the people in each group. Over time, though, each group has the possibility of gaining more resources and engaging in more equal exchanges. Each exchange is just so long as no group is involuntarily left worse off. He says, “The new distribution need only surpass what each got under the old distributions for cooperation to be mutually beneficial.”¹⁰⁸ In this description, Nozick adds a troubling note parenthetically. He notes, “Because African Americans were brought to the United States in slavery and subject to strong caste restrictions afterward, their subsequent history, unfortunately, has been different.”¹⁰⁹ His comments in both books seem to leave open the possibility that reparation payments for slavery or some other form of compensation is demanded by his theory. If he believes such reparation is demanded, he does not explicitly state it.

¹⁰⁷ Nozick, *Invariances*, 259.

¹⁰⁸ *Ibid.*, 261.

¹⁰⁹ *Ibid.*, 262.

Besides the problem of rectifying the injustice of slavery, Nozick's view raises other problems. If one group of people has no resources at all and faces starvation, any goods given to them would make them better off. Such people are ripe for extreme forms of exploitation. For example, one might promise to provide a small supply of food for a person in exchange for 16 hours per day of labor in dangerous conditions. While this condition is arguably an improvement over starving to death (some may even disagree with this), I argue that such exploitation is unethical and deserving of social disapproval and prohibition. Before an individual can enter into voluntary cooperation for mutual benefit, that individual must have his or her basic needs met for true negotiation to be possible.

Nozick's discussions of historical injustice are of particular importance. In his earlier work, he fails to provide an account of how historical injustices should be addressed, and his later accounts provide such a gradual resolution that many victims will never see any benefit from their new participation in an economic system that has benefitted others for generations. Nozick rejects any state-imposed redistribution of wealth, but implies that past injustices must be redressed. If much of the poverty we see in contemporary society is the result of past discrimination, then it would seem that Nozick is obligated to support exactly the kind of redistribution of wealth that he is arguing against in the example of the basketball player. If it is no longer possible to identify each past injustice with certainty, this should motivate us to make general allowances for all of the worst off in society, and this would, indeed, require a patterned distribution such as that favored by John Rawls. At a minimum, the least advantaged members of society must be lifted to a position where it is possible for them to reject

offers that are harmful to their health or well-being (this would prevent, for example, people selling their own organs under dangerous conditions because they see it as their only hope for survival).

THEFT AS A NEGATIVE RIGHT OF THE POOR

A number of theorists have attempted to take libertarian assumptions and use them to show that economic inequality is unjust even based on libertarian principles. Some attempt to view the existence of inequality itself as a violation of the negative rights of the poor, but this approach fails to address libertarians on the assumptions they accept. Libertarians will not accept responsibility to address any inequality or suffering they did not themselves cause. For this reason, the best approach is to show that inequality stems from basic violations of rights that are the responsibility of both producers and consumers operating in an unjust system. In the next section, I will work through a few of the most common arguments for rectification, ending with the strongest argument, which is put forth by Thomas Pogge.

For some, the existence of economic inequality in itself is evidence of injustice that legitimately gives the poor the right to extract wealth from the affluent. For example, James Sterba challenges libertarian notions of rights in his book, *Justice for Here and Now* by claiming the poor have a right to steal from the rich.¹¹⁰ Sterba begins this discussion by recognizing that libertarians feel it is the privilege of the rich to do with their resources as they please, without interference from the poor or anyone else. However, he notes that we could claim that the poor have a negative right to take the basic resources they need from the rich without interference. In so doing, he blurs the

¹¹⁰ James P Sterba, *Justice for Here and Now* (Cambridge, U.K: Cambridge University Press, 1998).

distinction between negative and positive rights, but he acknowledges that libertarians would reject the claim that these statements of negative rights are equal.¹¹¹ His claim, then, is that there must be some way to distinguish between competing liberties (in this case the liberty of the rich to keep what they have acquired and the liberty of the poor to take what they need). He first notes that it is not reasonable to require someone to do something the person is incapable of doing (for example, he says that being in a coma prevents one from having any other obligations, as those obligations are impossible to fulfill.)¹¹² In addition to actions that are impossible, he makes a more controversial claim that it is unreasonable to make certain demands of certain people.

With this in mind, he notes that the rich are capable of sacrificing some of their wealth to ensure the survival of the poor, but it is impossible for the poor to live without the basic necessities for survival. As a result, the poor have a legitimate claim against the rich, but the rich have no legitimate reason for refusing to aid the poor. Rather than simply giving away money, the rich may provide assistance to the poor, by offering them employment, and he claims the poor are obligated to take advantage of any opportunity to work. Thus, the obligation of the rich to sacrifice their wealth is reduced as the opportunities for fruitful work are increased.¹¹³ Sterba attempts to confound the common arguments of libertarians, who often claim that altruism is good but not obligatory. He claims that when the poor are prevented from taking surplus wealth from the rich, they are being forced to be altruistic in the sense that they are sacrificing their well being for the benefit of the rich. Since any social arrangement requires either the rich or the poor to

¹¹¹ Ibid., 45.

¹¹² Ibid. 46.

¹¹³ Ibid. 51.

be altruistic and to sacrifice a degree of liberty, the libertarian ideal cannot be achieved. As such, Sterba claims society should be arranged so that the poor either have opportunities to work to provide for themselves or the rich should sacrifice some of their liberty to hoard excess wealth in order to provide for the basic needs of the poor. Of course, libertarians do not view it as an act of altruism when the poor do not take wealth from them as the poor have only a right to keep what they have earned for themselves.

If the poor do indeed have a right to the wealth of the rich and can be empowered to claim it, it is unlikely they will feel altruistic to the privileged classes. In his conclusion, he puts quotation marks around the words “negative” and “positive,” and suggests that the rich and poor can work out what is morally right in a libertarian framework.¹¹⁴ He concludes:

In such societies where basic human rights have been denied, certain criminally disobedient acts thereby become morally permissible, and existing legal authorities have no right to punish them. Rather than punishment, the appropriate corrective in such cases is to make the changes required to guarantee just those basic human rights, which have been denied.¹¹⁵

Here Sterba’s argument changes from a demand for altruism to a response to violations of basic rights. The claim that human rights have been denied in the past and demands rectification is empirical (see chapter 3) and needs no argument from altruism. The simpler argument is simply that poverty results from human rights violations and demands rectification. The poor have no negative right to take resources from the rich that resulted from hard work and free choices, but the poor do have the right to demand redistributions when inequality in wealth is the result of unequal treatment under laws of the past or from simple abuses of their own liberty in the past. In contrast to Sterba, my

¹¹⁴ Ibid., 181.

¹¹⁵ Ibid.

claim is that economic inequality grows out of human rights violations, giving the poor the right to demand resources from the affluent.

For the millions in the world who are starving to death, the liberty to take what they need from the affluent for basic survival can never be more than a thought experiment. Only more powerful citizens of the world have the ability to guarantee their basic needs are met. Meeting their needs, then, requires recognition of a past injustice that must be redressed, creating a positive obligation to help them. Of course, for those who cannot fight for their own survival, those of us who can are obligated to do what we can to ensure their basic needs are met. Further, those who cause harm that results in starvation and disease are specifically obligated to provide remedies; simply ceasing to do further harm will hardly achieve a just state of affairs. The poor have the right to reclaim the resources they require for survival when their condition arises from unjust circumstances, which arise from violations of autonomy. Those who are robbed of their ability to participate in beneficial cooperation by disease, disability, or bad luck have no option to cooperate and make particular demands on those who are well off. For those robbed of any autonomy, negative liberty is of no value. Restoring a minimum level of autonomy in the form of positive liberty is a basic requirement for even a minimally just society.

POSITIVE DUTIES OF NEGATIVE RIGHTS

In his essay titled “Enforcing Economic and Social Rights,” Osvaldo Guariglia points out that although negative and positive rights and duties are assumed to have corresponding negative and positive obligations, all rights, whether negative or positive, entail positive duties. He quotes Henry Shue to argue that negative and positive rights are

grounded in parallel arguments and that without guarantees of subsistence, no other rights at all can be exercised. Those who are unable to subsist are unable to exercise any sort of autonomy and are reduced to the status of things or resources for the well off. Any interest in liberty requires lifting to a level of subsistence at the least. Therefore, guaranteeing positive rights is essential to providing protection for negative rights.¹¹⁶ In addition, rights and duties are not neatly corresponding by kind (negative and positive). Often, negative rights entail positive duties. While citizens have a negative right to be left alone and secure in their freedom from assault, he says, “public agents and judges have a special *positive* duty to protect and ensure people’s security and integrity.”¹¹⁷ Similarly, state actors and individual citizens have a negative duty to refrain from any actions that will harm the worst off. He notes that everyone must share the duty to ensure the security of the state and refrain from actions that harm the worst off, such as degrading water or soil or engaging in corruption.¹¹⁸ Of course, participation in a social system that privileges some individuals over others would harm the worst off. Rather than arguing that social and economic rights are negative rights, Guariglia claims there is an interdependence between positive and negative rights that prevents one from being privileged over the other. This claim is problematic as not everyone living below a level of subsistence is a victim of a rights violation, or at least it is possible to imagine someone who has chosen to reduce himself or herself to the status of object. Having the ability to exercise autonomy is not a requirement to do so. Of course, individuals who truly reduce themselves to the status of objects are either extremely rare or nonexistent.

¹¹⁶ Osvaldo Guariglia, “Enforcing Economic and Social Rights” in Thomas (EDT) Pogge, *Freedom from Poverty As a Human Right* (Oxford Univ Pr, 2007).

¹¹⁷ Ibid., 348.

¹¹⁸ Ibid., 351.

People in such a position generally do not participate in economic cooperation because they are denied the opportunity. Guaranteeing this opportunity is demanded by a respect only for their negative rights to exercise their own autonomy to live according to their own choices. Rather than interdependence between positive and negative rights, negative rights themselves carry positive obligations.

While the poorest members of society share in an obligation to protect overall security by refraining from actions that harm others and taking positive actions to ensure that others are free to exercise their liberty to the greatest extent possible, the poorest must also be protected from harm and limits on their exercise of freedom. Economic and social rights are essential to the overall security of society. Even if we accept a libertarian framework, the full exercise of negative rights demands positive duties we must all share.

Similarly, Onora O'Neill's essay, "Lifeboat," examines the distinction between killing someone (violating their negative right to be left alone) and letting someone die (not fulfilling a positive duty, if one exists, to provide assistance).¹¹⁹ She begins by assuming that persons have a right not to be killed and a corresponding duty not to kill, and she makes no assumptions beyond this. She also notes that there are exceptions to the prohibition of killing and the right to be left alive. Killing is justified in cases of self-defense and unavoidable killing. An unavoidable killing might occur when someone steps in front of a train after it is too late for the operator to stop the train.¹²⁰ Given these assumptions, she argues that if several people are on a lifeboat that has sufficient supplies to enable everyone onboard to survive until rescued, anyone who denies supplies to any

¹¹⁹ Onora O'Neill, "Lifeboat" in Darrel Moellendorf and Thomas Pogge, *Global Justice: Seminal Essays : Global Responsibilities* (Paragon House Publishers, 2008).

¹²⁰ Ibid., 2.

passenger of the lifeboat is killing that person. In other words, failure to provide the basic needs for survival is tantamount to murder. In this way, a negative right to not be harmed entails a positive duty to provide essential supplies. She recognizes various situations where it might be justified to kill one passenger. If the lifeboat is well equipped, it is justified to kill someone who is threatening to jettison supplies and cause the deaths of other passengers. On an underequipped lifeboat, decisions must be made about which passengers might be allowed to die, but her primary concerns are with a lifeboat with just enough supplies to sustain the lives of all the passengers on board.¹²¹

The lifeboat may not be a perfect metaphor for the earth, as O'Neill acknowledges, but her metaphor raises questions for the situation we now face on earth. Writing in the 1990s, libertarian Jan Narveson rejected the comparison of the earth to a lifeboat by declaring that the earth has plenty of resources to support many more people than live on it. He did not feel the situation would change in the foreseeable future, and he claimed that the writers of the 1970s and 1980s were filled with unjustified visions of gloom and doom.¹²² Indeed, it has been proven that the earth had greater resources than anticipated and food yields have exceeded some predictions. However, with one-fifth of the world's population living in extreme poverty, the world is indeed living in a crisis that Narveson did not predict. O'Neill's prescient vision, on the other hand, speaks to us in the 21st century as extraction of resources and production of food require increasingly dangerous and extreme measures (extreme subsea drilling and factory farming, for example). O'Neill imagines that each individual on the lifeboat has an equal right to the supplies, but people on earth claim property rights that they feel entitle them to consume

¹²¹ Ibid., 5-6.

¹²² Narveson, *Moral Matters*.

resources even when others are denied. Further, some people on earth are enabled to consume more only by denying resources to others. The wealthy consume, but the burden of their consumption rests on the backs of the poor. Denying individuals the resources necessary for basic survival is killing, and this claim echoes Locke's proviso that acquisition of property is only acceptable when one leaves enough and as good of any given resource. Claims on property by some over others would have to be justified, and this is sometimes difficult, especially when people use the resources of distant countries without sharing the benefits with those who live in those countries. Unequal distribution can result, as previously noted, from bad luck or from injustice. If people are unable to access health care because their resources have been stolen, they are victims of injustice even according to the most ardent libertarian arguments. However, even if they are victims of bad luck, O'Neill provides a way of conceptualizing their suffering as harm done to them by those who have the resources to save them. She avoids distinguishing between negative and positive acts, saying, "Such attempts seem unpromising since any act has multiple descriptions of which some will be negative and others positive."¹²³ Nonetheless, withholding resources is a familiar example of a "negative" act in the literature on rights and duties. By labeling denial of resources as a positive act of killing, O'Neill reframes one of the central tenets of the libertarian argument. She shows that it is not only possible to view entitlements as the products of negative rights, but she also shows that refusal to aid the poor can be seen as a positive act of violence. Rather than completely rejecting a theory based in liberty, however, she could recall Locke's claim that it is unjust to take resources without leaving plenty for others. While her example is

¹²³ Ibid., 19.

designed to compete with libertarian descriptions, it is not necessary to demonstrate the injustice of taking so many resources that others are harmed.

Thomas Pogge has attempted to provide a robust and thorough defense of social and economic rights while not denying the minimalist claims of libertarians. In fact, he says he agrees with libertarians that the distinction between causing poverty and failing to prevent it is morally significant. He says, “Thus, I invoke and explicate both human rights and justice for the limited purpose of supporting negative duties, that is, duties not to harm that impose specific minimal constraints . . . on conduct that worsens the situation of others.”¹²⁴ He argues that poverty and inequality in the world have not resulted from benign neglect but from harmful actions of the world’s affluent populations. In order to fulfill our negative duty not to harm, then, we must actively work to change social institutions that unjustly harm the poor. Similar to arguments discussed above, he claims that negative rights entail positive duties to prevent harm.¹²⁵

Pogge claims that it is essential to separate human rights from claims to legal rights. His arguments are pragmatic, in the common sense of the term. He points out that sometimes a right is fulfilled even in the absence of legal codification. As an example, he says that if everyone in a given society has access to enough food, a legal guarantee of access to food is not needed. On the other hand, legal guarantee of methods to redress abuses of employers is of little value to those who lack the means to hire lawyers or otherwise pursue redress for abusive treatment.¹²⁶

¹²⁴ Pogge, *World Poverty and Human Rights*.

¹²⁵ Ibid.

¹²⁶ Ibid., 51.

Pogge sees human rights as a progression from natural law to natural rights to human rights. Each progression entails a narrowing of content, but it is the content of human rights and their attendant obligations that are of interest here. First, human rights are secular and, therefore, can be shared by humans of different faiths. Second, human rights are political rather than metaphysical. Third, human rights apply to humans and only humans. Finally, human rights are claims only against certain actors.¹²⁷ The final point is the least clear. In his view, to promote human rights is to create an institutional order that protects human rights. He says his conception of human rights derives from the fact that humans have basic human needs that give rise to “weighty moral demands” and that each need is the “object of a human right.”¹²⁸ Given the staggering number of people who die as a result of extreme poverty, “weighty” seems an understatement.

Given his stated agreement with libertarian arguments for negative duties, Pogge is obliged to respond to libertarian critiques of social and economic rights. He begins his response with a claim that a right to some good means that society should be organized so that each person has access to that good. For most libertarians, it would be enough for each individual to refrain from doing anything to block access to any available good; it would not require that individuals make an active effort to guarantee access. For Pogge, this does not mean that any particular individual is responsible for providing the good as in the form of an entitlement, but that all individuals, collectively, are responsible for creating social arrangements that ensure secure access to the good for everyone.

Pogge claims that his conception of human rights does not violate libertarianism’s tenet that human rights entail only negative duties. Rather, he claims that the human

¹²⁷ Ibid. 63-64.

¹²⁸ Ibid., 64.

rights of others require us to refrain from helping to sustain any social order that denies rights to others; for example, we are prohibited from supporting institutions in which “blacks are enslaved, women disenfranchised, or servants mistreated.”¹²⁹ Those who participate in the current arrangement by benefiting from injustice as traders, workers, or even consumers without actively working to eliminate injustice are sustaining the social order. Those whose rights are denied have a claim not against everyone but only against those who actively participate in an unjust social order. If individuals cooperate in such a social order, they are obligated to compensate by protecting victims or working for reform.

Responding to the claim that social and economic rights are mere “manifesto rights,” Pogge says they are rights that are not realized, leave unclear who should guarantee them, and cannot reasonably be met. He gives the example of the “right” to a happy love life. As no one can guarantee a happy love life, this is a manifesto right, but he thinks it can be reformulated as a legitimate rights claim. If we see that cultural biases and taboos prevent people from securing a happy love life that would otherwise be possible, then we have an obligation to remove those barriers, and the right to a happy love life is reconceived as a right to live in a society with no obvious obstacles to achieving a happy love life.¹³⁰

Pogge argues that his conception of rights can help to give a common language to western countries that emphasize political liberties over economic and social rights and socialist and developing countries that view human rights primarily as economic and

¹²⁹ Ibid., 72.

¹³⁰ Ibid., 73-74.

social rights.¹³¹ Arguments will persist, of course, over what goods we are obligated to provide based on this idea of human rights, but an argument over what goods must be provided is a step forward from arguments between two competing conceptions of rights.

HEALTH AS A NEGATIVE RIGHT

Under any theoretical framework, everyone has a human right to living conditions that are not harmful to health. A Rawlsian conception of justice demands care for the worst off; Utilitarians such as Peter Singer posit that we must all sacrifice to save the poorest people in the world; and the capabilities approach of Martha Nussbaum and Amartya Sen also demand that we do what we can to promote human flourishing. It is libertarians and ethical egoists who are most likely to insist that the affluent have no obligations to the poorest members of society. The attempt to formulate a right to health in libertarian terms is an attempt to respond to libertarians on their own terms.

In addition, though, the argument from negative rights stresses that for many of the least advantaged people in the world, ill health is the result of injustice. Even Robert Nozick does not deny the obligation to redress harms caused by past injustice. While some of the world's poor have surely made choices that led to their poverty, many have become poor as the result of victimization by colonization, corrupt governments, or greedy corporations. These harms must be redressed. Just as libertarians readily insist that individuals have a right to protection from petty thieves and bullies, a just social order, rooted in libertarian theory, requires protection from institutional abuses of human rights.

Others have become poor because of bad luck. They may be limited by disability or illness, or they may have had their fortunes destroyed by natural disaster. Libertarians

¹³¹ Ibid., 76.

argue that everyone has a right to do with their own body as they please, but disease and disability rob many of the choice to do with their bodies as they please, and their right to act on their will requires a greater commitment from those who are well off. Libertarians are unlikely to agree that they are obligated to restore autonomy to those who have lost it through bad luck, but I would claim that protecting autonomy for victims of bad luck is similar to guaranteeing physical security from crime or assault. We are all at risk of being robbed of our autonomy by disease or bad luck, so we should cooperate to ensure the security of all (in the same way we work together to protect ourselves from invasion). Of course, much of the inequality in the world is the result of simple violations of negative rights as typically conceived by libertarians. At a minimum, we are required to guarantee conditions in which all individuals have the ability to act on their own autonomy, even if their choice is to neglect to exercise their will. In cases of clear violations of rights, libertarians may be forced to give up “their” property to help others as the victims of violations have a rightful claim on the property. In cases of bad luck, libertarians should agree to give up some of their property to ensure security in the same way they give up property to ensure national and personal security.

RECTIFICATION

In 1976, Lawrence Davis published an analysis of Nozick’s entitlement theory focusing on Nozick’s rectification principle.¹³² Nozick’s rectification principle states, “The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred . . . if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions

¹³² Lawrence Davis, “Comments on Nozick’s Entitlement Theory,” *The Journal of Philosophy* 73, no. 21 (December 2, 1976): 836–844.

yielded by the principle, then one of the descriptions yielded must be realized.”¹³³ Nozick suggests that we try to determine what would have happened to a victim of a rights violation if the violation had not occurred. In the same way that we might write alternate endings of a movie, we must predict what state someone should be in in the absence of any violations. If they are not so well off, we must restore them to the state they would have otherwise achieved on their own. For example, if someone steals money, they must pay back the money with the interest it would have earned rather than the actual amount stolen. The difficulty of determining how slaves would have fared in the absence of slavery or how indigenous people would have fared in the absence of invasion and conquest prohibits this theory from being realized. This is why other theorists, such as John Rawls, advocate a patterned distribution to compensate for prior harms. The Human Development Approach, of course, rejects a simple distribution of resources and attempts to restore a full range of capabilities for all citizens.

Even if I benefit from harm to someone, I may not be responsible for rectifying the harm. If I own one of ten rare antique automobiles and some malicious person decides to destroy one of the ten, the value of my automobile may rise dramatically, increasing my net worth significantly. Assuming that I do not participate in an auto-trading syndicate that takes out the competition through destruction or theft and I have no dealings with the responsible person, I am not obligated to redress the wrong done to the owner. In a sense of unity, my fellow car owners and I may decide to provide increased security from auto destruction. We may set up a system of insurance to protect ourselves from any future events, and we may even decide to help this unfortunate victim of this

¹³³ Nozick, *Anarchy, State, and Utopia*.

crime recoup some of the loss. Providing relief to the victim, in this case, is supererogatory. If the same situation holds with corporations that do damage to people in other countries, then perhaps we are not responsible for rectifying the injustice.

But this is rarely the case. War in an oil-producing country may cause a spike in the price of oil, which benefits companies in other countries who depend on high oil prices to generate healthy profits. Through no action of their own, these companies benefit from great harm caused to citizens of a war-torn country. It would seem bad form for them to exploit the situation by gouging consumers with burdensome prices, but no one would expect them to intervene to stop the war.

The more common scenario, however, deals with the externalities of doing business from day to day. Externalities are the costs of business that are not borne by the business itself; rather, they are borne by outside citizens, non-human animals, and the environment. Mining ore from a mountain does damage to the mountain, the runoff may pollute surrounding streams and lakes, and the land may become hazardous even for walkers in the area. If a mining corporation is forced to maintain the mountain in a safe and sustainable manner, the corporation may not be able to compete with other companies who are not forced to do the same. In order to maximize profits and remain competitive, then, companies must try to shift the burden of externalities to others. Frequently, local residents are left to clean up the mess for themselves, which is often impossible. Thus, residents suffer from the loss of land, the loss of clean air and water, and the loss of a safe living environment.

Any principle of rectification demands that these citizens, who have not chosen their condition, receive reparation to restore their living environment to healthful

conditions. While it is impossible to “stop the film” as Nozick suggests, we at least know that if their land had not been damaged, these citizens would live in an area that is not in and of itself a cause of disease and injury. A clean and safe environment becomes a right, then, when citizens suffer from unsafe conditions caused by the actions of others rather than the free choices of the citizens themselves.

Most corporations will argue, of course, that they had prior agreements to conduct their work of extraction or other harmful activities. They will insist that they acquired the right to conduct their business in such a manner through a just acquisition, according to the principles put forward by libertarians. In such cases, the corporation will argue that they have a legitimate agreement with the property owners, typically the government of a country, to do the harmful work. In such a case, the question is not whether an injustice has occurred, but only who is responsible for rectification. Unfortunately, collusion between governments and corporations happens in most countries, including wealthy countries such as the United States. In such cases, it is against the interests of the corporation, and often of government officials, to protect the rights of individuals who will be affected by externalities.

Rectification requires a collective will and a collective effort. Nozick says victims of injustice should be restored to where they would be if the injustice had not occurred. It is impossible to know where people might be, for example, if slavery had never existed. However, it is possible to look at individuals suffering from disease caused by environmental pollution and know that clean environment would have a better outcome. These individuals have a right to a clean environment and adequate healthcare to treat their illnesses. Rather than looking from the point of injustice forward as Nozick

suggests, we can look from current conditions to the past to evaluate whether people have caused their own burdens through free choices. If they have not, Nozick's libertarian principle of justice demands that all who made free choices to harm others be responsible for reparations and rectification. This would include all businesses and governmental entities that colluded to cause these harms. Further, policies must be put in place to prevent further harms from occurring. In chapter 4, I discuss specific policy proposals aimed at protection of human rights. These include reparation payments; guarantees of free, prior, and informed consent; protection of farmer autonomy; and rules against exploitation in pharmaceutical research.

CONCLUSION

Ultimately, the libertarian concept of justice based on the inviolability of negative rights or negative liberty do not eliminate positive obligations to create just conditions on the ground. Only if all current conditions resulted from free choices of everyone affected could libertarian arguments free anyone from obligations to help those suffering from disease, poverty, and brutal living conditions. If the world's least advantaged either chose to live in squalor and disease or had absolutely no contact with the most advantaged, they would make no demands on us (for example, we would not feel obligated to fix problems of poverty and starvation on a newly discovered planet with human-like creatures on it). However, no such planet and no society of self-destructive individuals has been found. The empirical claim that those who suffer are responsible for their own conditions is not supported by historical facts. Rectification will require modifications to the legal system to both repair damage done and prevent further injustice from occurring. These modifications are likely to look similar to suggestions from John Rawls or the Human

Development Approach. It is not that all theories of justice say the same things; it is simply that some conditions are so inhumane that no serious theory could hold them to be just.

One argument against intervention is that a free market imposes more restrictive conditions on businesses than government regulation because consumers will not participate in a system that harms them. This rosy view ignores the fact that many who are affected by externalities or even direct harm are not participants in the trading scheme in the first place. Many people in the world are not involved in the race to consume the products transnational corporations are producing. While some may be dispossessed and desiring to enter into trading and economic advancement, others would prefer to simply be left alone on the land that has supported them and their ancestors for centuries. This situation frequently arises when corporations and governments collaborate to exploit the land inhabited by indigenous people. According to the principles of John Locke, of course, those who mix their labor with the land to support themselves thereby own the land. Indigenous people do take the view that they own the land they and their ancestors have lived on and worked to support themselves. The libertarian call for unregulated markets ignores the property rights already held by many indigenous people of the world as defined by libertarians. Their acquisition of the land is based on libertarian principles of just acquisition; denying them their liberty and property rights requires a contradiction of libertarian principles. Addressing this problem would require all parties to receive “free, prior, and informed consent” from all people affected by business agreements. This would help to ensure that all agreements did actually flow from free choices. Agreements

and practices that do not arise from conditions where all parties affected have given such consent violate libertarian principles of liberty and autonomy.

While many of the victims of injustice do not participate in the legal agreements that affect them, many others do participate in the global trading scheme as consumers and voters without knowledge or awareness of the impact their actions have. Everyone who participates in and benefits from a global economic structure is responsible for ensuring that trading policies and practices are just. The ethical demands do not fall simply on transnational corporations but also on consumers, voters, producers, economists, media, and elected officials. Only coordinated effort can bring about just and humane conditions for all citizens. This does not require great altruism or self-sacrifice; it only requires a recognition that all humans are born with equal moral standing. For libertarians to ignore the moral standing of anyone is to enter into a contradiction.

SECTION II: CORPORATE PRACTICES AND POLICY CONSIDERATIONS

Chapter 3: Transnational Corporations and

Violations of Human Rights

INTRODUCTION

When discussing human rights abuses of corporations, many people seem to feel that such abuses either do not exist or are extremely rare. Numerous theorists deal with abuses in the abstract but do not give details. Similarly, activists often give great detail regarding particular types of abuses but do not generalize. In this chapter, I offer a brief catalog of abuses in various industries drawing on the work of activists, journalists, legal analysts, and policy experts. Globalization, in the broad sense of trading internationally, is not new, but contemporary trade agreements present opportunities and challenges that demand innovative responses at the policy level. The rise of the World Trade Organization, the World Bank, the International Monetary Fund and other international organizations has blurred traditional jurisdictions monitoring and regulating both trade and non-trade issues related to international business. International trade is plagued by unequal power in agreements and by conflicts of law among nations. International agreements on “free” trade were intended to open markets to developing countries and provide economic development opportunities to the poorer nations. Unfortunately, without agreements in place to provide minimum standards for working conditions, environmental protection, transparency, and fairness, modern globalization has led to what many call the “race to the bottom.” In hindsight, it seems clear that international trade agreements should have included non-trade issues such as protection of labor and the environment, but this failure need not be the end of the story. Responsible trade

restrictions can be put in place, but creativity is required. This chapter examines current trading conditions and suggests the most appropriate methods for responsible trade negotiation, regulation, and oversight.

Wealth is unevenly distributed in the world. Wealthy nations in the west are often described as “western democracies,” which credits their political systems, rather than their historic exploitation of other societies, for their unequal share of wealth. Similarly, “developing” nations are criticized for undemocratic systems that do not protect their citizens and, by extension, lead to widespread poverty. To emphasize free trade as a means of promoting democracy and affluence ignores the fact that the wealthy have essentially plundered resources from around the world and failed to fairly distribute the resulting wealth. The wealthy have also distributed the burdens of development unequally and unfairly. The victims, of course, are not only in so-called developing countries; they are distributed around the globe. In the past few decades, globalization, particularly the expansion of global trade and economy, has been proffered as a way of bringing development to the poorer parts of the world and lifting more people out of poverty. Unfortunately, what started as a noble goal has led to increased disparities in wealth and health, with extreme poverty now affecting more than a billion people. Global trade agreements have opened markets and sources of cheap labor but have failed to protect workers and other stakeholders whose lives are severely affected by damage to the environment and local economies.

This chapter will discuss a few specific instances of human rights abuses related to agriculture, oil extraction, and mineral mining, and show how these abuses impede positive health outcomes. These illustrative examples will frame the problem in terms of

human rights and social justice. I often have people tell me that corporations offer society many benefits and do not deserve to be punished simply because they are generating a profit for their shareholders. I agree that society depends on prosperous businesses to survive; however, when I give some examples of what I feel are indefensible actions, most people will tell me that they agree those individual cases are wrong but corporations are still valuable overall. As awareness of corporate abuses increases, tolerance for them decreases. Once we uncover objectionable activities, the search for just and humane solutions can become a joint venture for all moral agents capable of making moral decisions.

A NOTE ON THE ENVIRONMENT

Kant and others have argued that duties to non-human animals are actually indirect duties to humans. If I kick a dog, I harm the owner of the dog in various ways. If I torture cats routinely, I may develop habits and urges that lead me to torture humans. In much the same way, duties to the environment are indirect duties to humans. It is possible that there are duties to the environment that are exclusively duties to the environment, but that fact will not erase indirect duties to humans. Harming the environment violates the right to just acquisition of property by denying the rightful owners of property of the value of what they have obtained. Just acquisition of property is central to libertarian theories. People are entitled to any property they have earned themselves, but are not entitled to assistance from others. Libertarians hold that the existence of the state is justified only in order to protect the security and property of citizens. If we accept Locke's assertion that mixing labor with natural resources establishes ownership of those resources, then indigenous peoples certainly own the land that has supported them and

their ancestors for centuries. While indigenous people may or may not view land and resources in terms of property, libertarians must respect it is property in order to be consistent. Taking, diverting, or spoiling their natural resources violates the most central tenets of libertarian theory and violates Locke's proviso that one must leave enough and as good of any resources appropriated for personal use. If the state and individuals are obligated to action to protect liberty and property, then we are obligated to intervene on behalf of individual property owners against those who take or degrade their property, including corporations. Of course, this issue is not limited to indigenous people. Everyone on earth requires air, water, and safe food. The right to safe resources is violated across the globe, and the effect is not limited to the poor.

BRIEF HISTORICAL NOTE

I once attended a conference on business ethics, and one of the presenters asked what human rights corporations had. When some scoffed at the notions that a corporation could have any human rights at all, the presenter asked whether corporations did not have the right to buy and hold property. Indeed, the earliest laws regarding corporations dealt with just such problems. Christopher Stone uses the example of land belonging to the church.¹³⁴ The land was considered in some sense to belong to the abbot, but no one expected the abbot to be able to sell the land or pass it on to his heirs. Rather, the land belonged to the abbot in his "corporate" role, and the church itself was a corporation. The church, as a corporation, had a need and right to hold property, and this need was uncontroversial among citizens, especially, one would presume, the congregation.

¹³⁴ Christopher D Stone, *Where the Law Ends: The Social Control of Corporate Behavior*, 1st Harper Colophon ed (New York: Harper & Row, 1976).

The primary function of corporations was to hold property, and, as I stated in Chapter One, some writers such as Murray Rothbard reduce all human rights to property rights. The early intent, of course, was not to ensure human rights for corporations. The earliest commercial corporations, merchant and trade guilds, functioned “to hold in perpetuity a guild charter as individual merchants and craftsmen entered the calling and died.”¹³⁵ Stone points out that when these earliest corporations committed some wrong, it was invariably ascribed to some individual within the charter who was held responsible by law. Holding people personally responsible for their mistakes or crimes makes perfect sense, it seems, but Stone points out that the approach has weaknesses as well. He imagines a case where a guild, as an organization, may promote dangerous or unethical practices. It would be beneficial, Stone argues, for the government to exercise influence over the entire guild “to stave off wrongdoing preventively, rather than just lend its court system to repair the harm afterward.”¹³⁶ So, governments dealing with these early corporations had to make ongoing decisions about when to regard actions as the responsibility of individual people or the responsibility of corporate bodies. As corporations became more prominent, the notion of limited liability also became more pervasive.

The East India Company, chartered in 1600, was the first corporation in the modern sense.¹³⁷ The company declared that “trading should be only by the corporation”

¹³⁵ Ibid., 12.

¹³⁶ Ibid., 13.

¹³⁷ Shelley K. White, “Corporations, Public Health, and the Historical Landscape That Defines Our Challenge,” in *The Bottom Line or Public Health: Tactics Corporations Use to Influence Health and Health Policy, and What We Can Do to Counter Them*, ed. William H. Wiist (New York, NY: Oxford University Press, 2010).

rather than being conducted by individuals within the corporation.¹³⁸ Under this arrangement, members would invest capital, management would conduct the operations of the business, and, in the event of profit, the investors would receive repayment in proportion to their investments. For the first time, investors and managers were separate persons. At this time, it was unclear who would be responsible for wrongs committed by the corporation.¹³⁹ If investors could be held responsible for the actions of the managers or workers, they would likely hesitate to invest for fear of paying penalties far greater than the amount they originally put into the corporation.

In the early eighteenth century, unchartered joint-stock companies became popular, resulting in losses due to speculative ventures and, eventually, to the collapse of the South Sea Company. People described this event by saying the South Sea bubble burst, so it led the British parliament to pass the South Sea Bubble Act in 1720 to prevent the growth of joint-stock companies. Unfortunately, businesses and lawyers exploited weaknesses in the language of the act, and the law actually resulted in the emergence of even more joint-stock companies in order to avoid applying to Parliament or the Crown for review. This resulted in so much distrust that people applying for charters through the proper channels were frequently denied.¹⁴⁰ As these ventures developed, investors were increasingly separated from the actions of the corporations, and limited liability (investors could only lose the amount they invested in the corporation) became the norm

¹³⁸ Stone, *Where the Law Ends*.

¹³⁹ *Ibid.*, 16.

¹⁴⁰ *Ibid.*, 17.

by the end of the nineteenth century.¹⁴¹ In addition to limited liability, this development made corporate immortality possible as corporations could outlive their owners.¹⁴²

By this time, the British East India Company (BEIC) had gained economic power and exerted global influence. It formed the largest standing army in the world at the time, gained control of India and the surrounding islands, controlled the opium trade in China, and managed slave trading out of Madagascar.¹⁴³ One-third of British parliament members held stock in BEIC, 10 percent of British tax revenues came from tax on BEIC tea, and the King depended on loans from the company.¹⁴⁴ In exchange for these benefits to the British government, BEIC was granted many favors, including monopoly rights. The company conscripted thousands of British men for forced labor in Jamestown, a colony set up in America by BEIC. Eighty percent of these laborers died before completing their seven-year tenure. Because of its rapid expansion and competition from small colonial business, though, BEIC was almost bankrupt. It was able to overcome this setback with more favors from the British government, which expanded its monopoly and this led to the 1773 Tea Act, the catalyst for the Boston Tea Party.¹⁴⁵ The Tea Act was a favor to BEIC, lifting tariffs on tea and thereby enabling BEIC to flood the market with its product and drive the competition out of business. During the Boston Tea Party, protestors dumped more than 90,000 pounds of tea into the harbor, which was then closed for more than a year and a half. This led to the battles of Lexington and Concord. Subsequently, America's founders vowed to protect the United States from corporate

¹⁴¹ Ibid., 23-24.

¹⁴² White, "Corporations, Public Health, and the Historical Landscape That Defines Our Challenge." 75.

¹⁴³ Ibid., 75-76.

¹⁴⁴ Ibid., 76.

¹⁴⁵ Ibid.

power and corruption.¹⁴⁶ Thus, BEIC, the first modern corporation, used its power to invade countries, abscond with their resources, and even manage a slave trade. While not all corporations abuse their power in this way, BEIC set a precedent for the abuses that have occurred continually since the seventeenth century.

WATER

Water is, of course, essential to life. Denial of water not only robs people of liberty, it ensures their early death. Corporations interfere with healthful water consumption in three important ways: privatization, contamination, and redirection. When John Locke wrote that one takes ownership of natural resources when one mixes labor with them, he did not imagine a state where taking water might cause someone else to die of thirst. For years, environmentalists have warned of a state known as “peak oil.” They warned that the quantity of oil on earth is finite and the amount of oil left would be in decline. Now, we are warned of “peak water.”¹⁴⁷ Obtaining enough clean water for the world’s more than seven billion people is becoming increasingly difficult.

In order to meet the world’s need for water, many have suggested we need large organizations capable of managing water resources effectively to distribute them efficiently and fairly. Corporations were ready to take responsibility for managing the world’s water while generating profits for shareholders. In theory, the market would create the proper incentives for conservation and distribution of water to the proper places. According to this theory, as water becomes scarce, the price will rise, of course,

¹⁴⁶ Ibid.

¹⁴⁷ Peter H. Gleick and Meena Palaniappan, “Peak Water Limits to Freshwater Withdrawal and Use,” *Proceedings of the National Academy of Sciences of the United States of America* 107, no. 25 (June 22, 2010): 11155–11162, doi:10.1073/pnas.1004812107.

and this should help to encourage conservation. Unfortunately, those who use the least water to begin with are the same people who are least able to afford high prices for water. Maude Barlow describes the actions of these corporations that now control the water assets of many countries as a new form of “colonial conquest,” showing no concern for either the environment or citizens.¹⁴⁸

Pollution alone accounts for great damage to the health of the world’s population. The 2010 *Report on the Environment of the Czech Republic* found that although water quality has been improving in the Czech Republic over the last 30 years, environmental quality standards are currently exceeded in 47 percent of profiles for absorbable organohalogens (AOX).¹⁴⁹ Further, a World Commission on Water report from 1999 said that the Congo and Amazon are the only river systems in the world that remain healthy, and more than half the world’s rivers pose serious health risks.¹⁵⁰ In the Brazilian interior, rivers are polluted with tons of mercury from the gold mining industry; a 1994 study found epidemic levels of birth disorders and chemical poisoning among adults in the region.¹⁵¹ In China, 80 percent of the major rivers are polluted enough that they cannot support fish.¹⁵² Pollution affects water in all parts of the world, of course, including wealthy nations, but people in developing countries are disproportionately affected. Marq De Villiers writes:

¹⁴⁸ Maude Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water* (New York, NY: The New Press, 2007).

¹⁴⁹ MŽP ČR, “Report on the Environment of the Czech Republic 2010,” [Http://, n.d., http://www.mzp.cz/en/report_environment_2010](http://www.mzp.cz/en/report_environment_2010), accessed September 22, 2012.

¹⁵⁰ Marq De Villiers, *Water: The Fate of Our Most Precious Resource* (New York, NY: Houghton Mifflin, 2001), 88.

¹⁵¹ *Ibid.*, 89.

¹⁵² *Ibid.*

In developing countries things are generally worse, and as development accelerates, the amount of water contaminated with industrial pollutants such as petroleum and toxic metals rises sharply. Perhaps the overall national water supply is no dirtier, but there's very little clean water, and the meticulous scrubbing that water gets in the cities of the developed world simply doesn't exist.¹⁵³

Some pollution is a necessary byproduct of development, but the heavy cost of pollution is frequently borne by citizens rather than by the foreign corporations who profit from the extraction and production of their enterprises. Even in cases of corporations based locally, the burden of environmental degradation too often falls on those who profit least from production. For example, refineries in the United States are typically located in less affluent areas while corporate executive suites are often miles away from the sites of production and extraction.

Production of beef also has a significant impact on the world's water. It consumes more than 70 percent of the world's developed freshwater supplies.¹⁵⁴ This type of farming is not sustainable. It depletes groundwater that cannot be restored. Most other foods, including non-vegetarian foods, are produced using much less water than what is required to produce beef. Peter Singer notes, "Producing a pound of hamburger beef will take 12 times as much water as a pound of bread, 64 times as much as a pound of potatoes, and 86 times as much as a pound of tomatoes." This argument is frequently used to promote vegetarianism, but even foods including animal products use much less water than beef.

Privatization of water is happening across the globe in both wealthy and poor countries. Water companies employ fewer workers and can save the public sector money

¹⁵³ Ibid., 97.

¹⁵⁴ Peter Singer and Jim Mason, *The Way We Eat: Why Our Food Choices Matter* (Emmaus, PA: Rodale Books, 2006).

by eliminating jobs and the need for infrastructure development. Privatization does not save money for water users, however; the price of water generally rises when corporations take over water delivery. Vandana Shiva describes the effect of water privatization in England:

Water rates increased by 450 percent and company profits soared by 692 percent—CEO salaries increased by an astounding 708 percent. Service disconnection increased by 50 percent. Meanwhile, dysentery increased sixfold and the British Medical Association condemned water privatization for its health effects.¹⁵⁵

In France, privatization led to fee increases of 150 percent.¹⁵⁶

The problem is worse, however, in poor countries. In some countries, drinking water is scarce due to pollution or natural scarcity. In the Maquiladoras of Mexico, for example, drinking water is so scarce children must drink soft drinks such as Coca-Cola and Pepsi.¹⁵⁷ Developed countries constructed water sanitation and delivery services in the 19th and 20th centuries, but this infrastructure development did not occur in poorer countries, so many people in developing countries have had to deal with poor sanitation, outbreaks of disease, and shortages of drinking water.¹⁵⁸ Recognizing that clean water is what consumers in such countries seek, large corporations, especially Coca-Cola and PepsiCo, now market bottled water under brands such as Bon Aqua, Dasani, Aquafina, and Kinley.¹⁵⁹

¹⁵⁵ Vandana Shiva, *Water Wars: Privatization, Pollution, and Profit* (Cambridge, MA: South End Press, 2002).

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., 99.

¹⁵⁸ Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*.

¹⁵⁹ Shiva, *Water Wars: Privatization, Pollution, and Profit*, 100.

World Bank, WTO, and public-private partnerships also create markets for water. The World Bank uses loan conditions to privatize water and create favorable market conditions for transnational corporations.¹⁶⁰ The World Bank agreed to renegotiate loans with developing countries in exchange for their agreement to undergo a Structural Adjustment Program that required them to sell off utilities and public services such as healthcare, electricity, education and transportation.¹⁶¹ In fifteen years, Public Services International reports there was an 800 percent increase in African, Asian, and Latin American citizens purchasing water from transnational water companies.¹⁶²

On the surface, public-private partnerships seem to benefit both corporations and government entities, but these agreements usually mean public funds are used to privatize public goods such as water.¹⁶³ When governments in developing countries agree to these partnerships, because they really have no choice given their high levels of debt and poverty, they forfeit control of their own natural resources. Vandana Shiva describes the situation:

World Bank-driven privatization programs have emerged in Argentina, Chile, Mexico, Malaysia, and Nigeria. The Bank has also introduced privatization of water systems in India. In Chile, it has imposed a loan condition to guarantee a 33 percent profit margin to the French company Suez Lyonnaise Des Eaux.¹⁶⁴

While some may claim that these countries had the ability to simply turn down the offer from the World Bank and the transnational corporations, the situation in these countries shows how assistance can be coercive and opportunistic. When corporations gain control

¹⁶⁰ Ibid., 88.

¹⁶¹ Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*.

¹⁶² Ibid.

¹⁶³ Shiva, *Water Wars: Privatization, Pollution, and Profit*, 89.

¹⁶⁴ Ibid., 91.

of the water and delivery systems, they are able to reduce employment and increase prices at will.

Water resources are further affected by large dam projects. Dams can, of course, be beneficial. They can provide electricity, flood control, irrigation, drinking water, and recreation. Dams also cause displacement of people living upstream, insect breeding grounds, and erosion of riverbanks and flood plains in addition to often collecting runoff of industrial wastes and agricultural pollution such as fertilizers and pesticides.¹⁶⁵

The Hoover Dam on the Colorado River in the United States marked the beginning of the era of large dams; it was completed in 1935. Six corporations were responsible for completing the project: Henry Kaiser, Bechtel, Morrison-Knudson, Utah Construction, MacDonald Kahn, J.F. Shea, and Pacific Bridge. All negotiations excluded local governments and communities from participation, and indigenous peoples who had lived in the Colorado basin for centuries were not permitted any voice in the discussions. Arizona would not ratify the compact as officials there saw the project as a theft of natural resources from their state. The dam primarily benefits California as a 242-mile aqueduct transfers water from the dam to California, and almost a third of the dam's hydropower is used to pump water to the state.¹⁶⁶

Currently, the United States is attempting to resolve conflict over the removal of four dams on the Klamath River. In 2009, PacifiCorp agreed to remove the dams, which have long been at the center of disputes among farmers, fishers, and indigenous peoples. Decommissioning the dams would be the country's largest and most complex dam

¹⁶⁵ Jeff Conant and Pam Fadem, *A Community Guide to Environmental Health* (Berkeley, CA: Hesperian, 2008).

¹⁶⁶ Shiva, *Water Wars: Privatization, Pollution, and Profit*.

removal project to date. Backers of the project hope removal of the dams will restore the rivers and the populations of fish that once thrived in them.¹⁶⁷ The Klamath Hydroelectric Settlement Agreement will lead to a cost-benefit review prior to a decision by the Secretary of the Interior in 2012, and the removal will not begin before 2020.¹⁶⁸ The Yurok, Karuk, and Hoopa tribes have fisheries downstream of the dams, and commercial fishers have suffered from low numbers of salmon off the coast. Despite an 1864 treaty guaranteeing fishing rights, the Klamath tribes upstream have not been able to fish for salmon since the dams were constructed in the early 1900s.¹⁶⁹ While the agreement to remove the dams is complete, many negotiations and plans remain as the involved parties resolve how the removal will be carried out and, more contentiously, who will pay for it.

Controversy over dams is global, but South America currently plays host to widespread conflicts over dam construction. The Ashaninka of Peru, a tribal people decimated by civil war in the late 20th century, say their survival is threatened by a project of Odebrecht, a Brazilian construction company. They face displacement of 10,000 people. Brazil is a world leader in hydroelectric power already, but 30 more projects are planned by Brazilian companies by 2020.¹⁷⁰ According to the *Financial Times*, “Violent protests have already forced the suspension of Inambari, the first of six

¹⁶⁷ Bettina Boxall, “Utility Agrees to Removal of 4 Klamath River Dams,” *Los Angeles Times Articles*, accessed January 30, 2012, <http://articles.latimes.com/2009/sep/30/local/me-klamath30>.

¹⁶⁸ Laurel Peña, “Klamath Dams Scheduled to Come Down,” *News from Native California* 23, no. 4 (Summer 2010): 4–5.

¹⁶⁹ *Ibid.*

¹⁷⁰ Naomi Mapstone, “Hydroelectric Power: Spate of Dam Building Meets Resistance,” *Financial Times*, November 28, 2011, <http://www.ft.com/intl/cms/s/0/0f9ea6e8-1110-11e1-a95c-00144feabdc0.html#ixzz1f2JjBsyu>.

Peruvian dams, and Pakitzapango, where the concession lapsed before Odbrecht could complete an environmental study.” Indigenous people who live on the land that will be affected say they were not consulted and certainly gave no consent before planned construction was approved.

The largest dam project in Brazil is the Belo Monte Dam on the Xingu River; if completed the dam will be the third largest in the world, behind only China’s Three Gorges and the Brazilian Paraguayan Itaipu.¹⁷¹ The Belo Monte will divert more than 80 percent of the Xingu River’s water flow and flood 193 square miles of forest and part of the city, Altamira.¹⁷² The dam threatens to displace between 20,000 and 40,000 people with no compensation. People from the Juruna, Xikrin, Arara, Xipaia, Kuruaya, and Kayapo communities would lose access to the river for their survival. Only four public hearings were held, and the information given to the public was incomplete. Also, “Security forces impeded the entrance of civil society representatives to the hearings, and the few public queries that were voiced were dismissed, ridiculed, and evasively answered.”¹⁷³

Patricia Galindo da Fonseca and Antoine Bourgoignie, write that construction of the dam was approved “despite the fact that the project did not comply with the legal, environmental and social conditions required by Brazil’s environmental legislation, and only after the resignation of the agency’s director, Abelardo Bayma Azevedo.”¹⁷⁴ They further note that Azevedo was the latest of several officials dismissed in the 30-year legal

¹⁷¹ Ibid.

¹⁷² Sara Diamond and Christian Poirier, *Brazil’s Native Peoples and the Belo Monte Dam: A Case Study*, NACLA Report on the Americas, October 2010.

¹⁷³ Ibid.

¹⁷⁴ Patricia Galindo da Fonseca and Antoine Bourgoignie, “The Belo Monte Dam Case,” *Environmental Policy and Law* 41, no. 2 (2011): 104.

battle against the project. A 2010 analysis of the costs associated with the dam project that the dam will be twice as expensive as initially estimated with most of the money coming from public funds.¹⁷⁵ In addition to diverting water and flooding land, a study by the National Institute of Amazonian Research found that deforestation and decomposition will cause twice as much air pollution as a coal-fired power station for the first 20 years.¹⁷⁶

In April 2010, the Federal Chamber of Prosecutors filed two lawsuits addressing irregularities with the dam's licensing process. The first lawsuit claims that the license for the dam violates the Brazilian constitution, which states that public bids can take place only after a license is granted.¹⁷⁷ The second lawsuit claims construction of the dam violates environmental legislation and indentified the National Agency of Electrical Energy (ANEEL), Brazilian Institute of Environmental and Renewable Resources (IBAMA), National Agency of Water (ANA), Eletrobas and the Union as defendants.¹⁷⁸ As a result of the lawsuits, the courts issued three injunctions to halt construction of the dam in April 2010, and in November 2010 the state of Para's Federal Chamber of Prosecutors (PFCP) "sent a recommendation to IBAMA not to issue a new environmental license for the Belo Monte dam until the outstanding conditions established in the previous license had been met."¹⁷⁹ Nonetheless, in January 2011 the consortium received a partial environmental license authorizing it to "clear all the vegetation present in a surrounding area of 238.1 hectares, even though 64.5 of these are located in 'preservation

¹⁷⁵ Ibid., 105.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid., 105-106.

¹⁷⁹ Ibid., 106.

sites.”¹⁸⁰ A total of 10 lawsuits have now failed to stop construction of the dam. Galindo da Fonseca and Bourgoignie conclude,

Beyond the question of the pertinence of the project in terms of environmental protection, social development, or economic profitability, the Belo Monte project raises a more fundamental issue about the independence of the Brazilian judicial system and the national institutions protecting the public interest.¹⁸¹

Despite such discouragement, efforts to stop construction of the dam continue.

The construction of such dams violates the most basic rights of those who live near the rivers and support themselves from the resources provided by the rivers. In essence, these dams constitute theft of property and liberty. The only way to acquire the land and build the dams ethically would be to get the consent of the residents affected by the construction. The right to self-determination, which is the fundamental right defended by libertarians, is ensured only when people give their full consent to actions affecting their property and their liberty. Advocates for full human rights for all people developed the concept of Free Prior Informed Consent (FPIC) to protect indigenous people from exploitation and coercion in the name of development.

Cathal Doyle writes in *The International Journal of Human Rights*, “FPIC requires that the consultation processes with indigenous peoples must be free from any external manipulation, coercion or intimidation, that the affected indigenous people must be notified that their consent will be sought adequately in advance of any approval or commencement of activities.”¹⁸² Before projects can begin, indigenous peoples must receive accurate and complete information on what benefits and burdens they may

¹⁸⁰ Ibid.

¹⁸¹ Ibid., 107

¹⁸² Cathal Doyle, “Indigenous Peoples and the Millennium Development Goals - ‘Sacrificial Lambs’ or Equal Beneficiaries?” 13, no. 1 (February 2009): 44–71, doi:10.1080/13642980802532341.

experience if they give consent. Negotiations are a challenge for those who think only in terms of market forces driving development. Indigenous people may have everything they want or need. Their only desire is to be left with what they have. This lack of interest in the broader market can make offers to compensate them with money unappealing at best. In such cases, the only way to obtain the resources of indigenous people is to steal it, and many are prepared to do just that. In reality, a little imagination might go a long way to finding mutually agreeable solutions.

PHARMACEUTICALS

The success of medicines in the 20th century created a vast appreciation and respect for the power of pharmaceuticals to save and improve lives. The public is so convinced of medicinal efficacy that when new diseases arise, we wonder when, not whether, a cure will be found. Developing such cures requires research, of course, and pharmaceutical companies rely on profit to fund research and development of new treatments. Maximizing profits requires them to reduce the cost of research while simultaneously charging prices as high as the market can bear. Unfortunately, this means treatments are marketed to the most affluent societies while research is often exported to the poorest countries. Libertarian principles would hold that even risky experimental trials are acceptable so long as all participants give their consent to participate. Whether those living in extreme poverty, lacking any medical care, or who are extremely ill are capable of any kind of meaningful consent is a point of contention for ethicists. Nonetheless, a few examples of research in developing countries illustrate the coercive nature of some pharmaceutical practices.

In 1994, researchers discovered that zidovudine (AZT) could prevent transmission of HIV from mother to baby. For the study, pregnant women would begin taking AZT in the second trimester and take it for a minimum of 12 weeks at a cost of about \$10,000. Most of the HIV-infected pregnant women lived in developing countries, and approximate spending on health care in those countries was about \$10 per person annually. In Uganda, annual spending was less than \$3 per person. In the hope of reducing costs, researchers proposed doing research in developing countries such as Tanzania, Ethiopia, Kenya, Uganda, and Zimbabwe to test whether a short-term AZT-treatment might be effective in preventing maternal-fetal HIV transmission. All but one of the trials used placebo controls and nine of 16 were funded by the National Institutes of Health and the Centers for Disease Control.¹⁸³

In a 1997 letter to the U.S. secretary of health and human services and following commentary in the *New England Journal of Medicine*, Peter Lurie and Sidney Wolfe condemned the trials as unethical because the use of placebos was not justified given that another treatment was known to be more effective (longer-term AZT). Defenders of the trials argued that the research subjects would not receive any treatment in the absence of the trial anyway, and were therefore no worse off. Critics noted that the trials would be unethical if conducted in the United States as regulations would prohibit the use of placebo when effective treatments were available. Defenders claimed that the poor economic conditions of the countries where the trials were taking place made the research more necessary. If shorter-term treatments were shown to be effective, treating women in

¹⁸³ Jennifer S. Hawkins and Ezekiel J. Emanuel, *Exploitation and Developing Countries: The Ethics of Clinical Research* (Princeton, NJ: Princeton University Press, 2008).

developing countries could prove to be more affordable. Nonetheless, sponsors of the AZT trial made no guarantees to offer the treatment (or any other treatment) at an affordable cost post-trial.¹⁸⁴

The *International Ethical Guidelines for Biomedical Research Involving Human Subjects*, published by the Council for International Organizations of Medical Science (CIOMS), states that any research carried out in underdeveloped countries be “responsive to the health needs and the priorities of the community in which it is to be carried out.”¹⁸⁵ Furthermore, in commentary to guideline 15, the document says, “As a general rule, the sponsoring agency should agree in advance of the research that any product developed through such research will be made reasonably available to the inhabitants of the host community at the completion of the successful testing.”¹⁸⁶ It may be argued that the therapy was complete upon the birth of the baby, so that continued treatment was not necessary for any individual participating in the trial. The question then is whether the research is responsive to the health needs of the host community. If the goal of the research is to find affordable alternative treatments for developing countries, then there can be little defense of the research if the host countries cannot afford even short-term therapy, which would cost approximately \$50 per person.

It is possible to argue that participants in the research did benefit from the research in that some babies were protected from HIV infection. Babies in the control group who became infected were not harmed by participation, as they would have become infected in the absence of the trials. Some argue that communities should benefit

¹⁸⁴ Ibid., 2 – 9.

¹⁸⁵ Harold Y Vanderpool, *The Ethics of Research Involving Human Subjects: Facing the 21st Century* (Frederick, MD: University Publishing Group, 1996).

¹⁸⁶ Hawkins and Emanuel, 9.

from participation in research, but that it is not necessary for access to treatment post-trial be one of the benefits. According to Hawkins and Emanuel, such critics argue, “What *is* a requirement is that the host community actually benefit fairly from the conduct and/or results of research. But providing medication post-trial is *not* the only way the community might benefit.”¹⁸⁷

I would argue that if the sponsors of the research cannot reasonably provide treatment post-trial (in some cases, the treatments are not proven effective after one trial and in other cases the sponsors have no reasonable method for distributing the treatments), then it may be reasonable to offer other benefits in exchange for participation. Regarding payment for participation in research, the CIOMS guidelines say,

Subjects may be paid for inconvenience and time spent, and should be reimbursed for expenses incurred, in connection with their participation in research; they may also receive free medical services. However, the payments should not be so large or the medical services so extensive as to induce prospective subjects to consent to participate against their better judgment.¹⁸⁸

This requirement is intended to prevent unscrupulous researchers from using incentives as a form of coercion to compel subjects to expose themselves to risks that more empowered individuals would not consider. Alternatively, the guidelines could say that no research should be conducted that entails risk so great that no affluent person would give consent. In other words, the research should not be conducted on the poor simply because it is too risky for the wealthy.

Ironically, negative effects on the community were the result of the success of the treatment. Demonstrating the effectiveness of a treatment that will not be available to the

¹⁸⁷ Ibid, 10.

¹⁸⁸ Vanderpool, 504.

community can only have a demoralizing effect. Beginning a clinical trial knowing that this is the best outcome possible violates the principle of equipoise at the community level. Although some babies were spared HIV infection, the overall effect on the community was negative.

In many cases drugs are tested on the poor with little chance of ever benefiting the poor. For example, Havrix was tested as a vaccine for hepatitis A in Thailand on poor school children.¹⁸⁹ The primary goal of the researchers was not to find a way to eliminate or even reduce hepatitis A among school children in Thailand. Rather, although the researchers made a verbal commitment to pursue registration of Havrix in Thailand, the researchers' primary intent was to market the vaccine to travelers as protection from hepatitis A when visiting Thailand.¹⁹⁰ Too often, pharmaceutical companies view the developing world as a source of inexpensive research subjects while offering little or nothing in exchange for the risks assumed by the participants. These participants may agree to participate, but their agreement comes from desperation, not from genuine will and informed choice.

To provide for the needs of affluent nations, corporations often turn their eyes to the resources of the poor people and indigenous people. This practice is offensive to any reasonable sense of humanity or basic morality, but when the resources in question are the actual, living bodies of humans who lack the power to resist, the offense is even more sinister than others. The added insult of suggesting that the victims benefitted from their own abuse and should be grateful is outrageous.

¹⁸⁹ Jennifer S. Hawkins and Ezekiel J. Emanuel, *Exploitation and Developing Countries* (Princeton: Princeton University Press, 2008), 55.

¹⁹⁰ *Ibid.*, 56.

AGRIBUSINESS

The past century in agribusiness reveals concerted efforts to achieve full vertical integration in which corporations control every level of production from seeds to delivery of processed food products in retail outlets. During the 1920s, the US Congress passed a series of laws to control food monopolies, but the business sector was able to begin a rollback of these regulations in the late 1970s during the presidency of Jimmy Carter.¹⁹¹ The first result was the industrialization of the Florida citrus industry, resulting in national orange juice processors such as Sunkist who were able to control prices paid to farmers, and the second project was the industrialization of wheat and soybean.¹⁹²

One consequence of vertical integration is that the industry controls how much workers receive in compensation. Farm workers perform some of the most brutal tasks in the United States, yet a Department of Labor survey in 2000 found that 61 percent of farm workers lived in poverty.¹⁹³ Living in poverty is bad enough, of course, but seven court cases from 1997 to 2008 resulted in convictions for slavery in Florida.¹⁹⁴ While not all farm workers experience conditions that fit a legal definition of slavery, brutal working conditions and low wages take workers to a condition perilously close to slavery.

Graf-Peter Calliess and Jens Mertens note that vertical integration is contrary to consumer welfare but claim that vertical integration can be reduced only when

¹⁹¹ F. William Engdahl, *Seeds of Destruction: The Hidden Agenda of Genetic Manipulation* (Monreal, Quebec: Global Research, 2007).

¹⁹² Ibid., 134-135.

¹⁹³ Christopher D. Cook, *Diet for a Dead Planet: Big Business and the Coming Food Crisis* (New York, NY: The New Press, 2006).

¹⁹⁴ "Anti-Slavery Campaign | CIW," accessed November 15, 2011, <http://www.ciw-online.org/slavery.html>.

international private law policy can establish greater certainty in enforcement of cross-border contracts.¹⁹⁵ In their analysis, they do not acknowledge the possibility of forcing wages down through vertical integration as opposed to merely taking advantage of local economic conditions. When a company owns each step in the course of production and distribution, it becomes possible to manipulate wages and even the prices of raw materials in ways that would be impossible in more competitive markets. Rather, they express it from the perspective of the transnational corporation, saying, “Specific investments increase the dependency on the goodwill of the business partner, who can take advantage of the situation by breaching the contract or by using blackballing techniques in renegotiations.”¹⁹⁶ To avoid being at the mercy of business partners, corporations rationally decide to integrate as many of their operations as possible. Calliess and Martens argue, though, that with sufficient protections for contracts and agreements, corporations would actually benefit from a move away from vertical integration. This is advisable, they say, because vertical integration carries with it high bureaucratic costs. As such, they say that corporations need sufficient protections to be freed from the need to rely on vertical integration to protect their operations.¹⁹⁷ Calliess and Mertens are concerned primarily about the costs of vertical integration to consumers; however, their suggestions for reducing reliance on vertical integration could provide greater autonomy for trading partners, consumers, and producers. Whether corporations would welcome greater involvement of private law over transactions when it is seen to

¹⁹⁵ Graft-Peter Calliess and Jens Mertens, “Transnational Corporations, Global Competition Policy, and the Shortcomings of Private International Law,” *Indiana Journal of Global Legal Studies* 18, no. 2 (Summer 2011): 843–872.

¹⁹⁶ *Ibid.*, 852.

¹⁹⁷ *Ibid.*, 868.

protect corporations is an open question. Further, such guarantees, intended to protect corporations, could be seen as another tool to manipulate and threaten smaller partners.

GENETIC ENGINEERING

The food industry has promised to help meet the food needs of a burgeoning population by increasing production, largely through genetic engineering. Proponents of genetic engineering hail it as a means to provide global food security by producing plants with high yields, resistance to drought and other extreme weather conditions, and immunity to a variety of pests, including herbicides used to kill weeds competing with crops. Much media attention on genetically-modified food has focused on the safety of the end products, but genetic engineering has been used to create virtual seed monopolies throughout the world.

Thanks to a 1980 Supreme Court decision, companies are now able to obtain patents for seeds, which were previously seen as living organisms.¹⁹⁸ As a result, Monsanto was able to patent seeds that would resist its own herbicide, Roundup, encouraging the use of both Monsanto seeds and herbicides. It might just be a case of aggressive but brilliant marketing if Monsanto stopped there, but the company developed “terminator” or “suicide” genes that meant the seeds would not produce more seeds that farmers could collect and use. Farmers, who have always saved seeds to produce their crops for the next year were now forced to purchase seeds each season. Monsanto aggressively pursued legal action against farmers it claimed used the patented seeds without purchasing them. Monsanto and other giant seed companies actually claimed this

¹⁹⁸ Donald L. Barlett and James B. Steele, “Monsanto’s Harvest of Fear,” *Vanity Fair*, May 1, 2008, <http://www.vanityfair.com/politics/features/2008/05/monsanto200805>, accessed November 30, 2011.

technology was necessary for them to protect themselves from “unscrupulous” farmers despite the obvious and extreme power imbalance in favor of the corporations.¹⁹⁹ In many cases, farmers claimed that they had not wanted to use the seeds but that their crops had been contaminated by nearby crops.²⁰⁰ Being charged for the seeds they did not want and prosecuted for having what they considered to be contaminants, many farmers are driven to despair. Many activists reported that more than 16,000 farmers in India committed suicide in 2008 alone as a result of Monsanto’s prohibitions against seed sharing and pursuit of patent infringers.²⁰¹ However, a report by the International Food Policy Research Institute claims that the suicide rate for farmers actually fell after the introduction of genetically modified cotton.²⁰² Regardless, the plight of farmers is causing distress worldwide; in 2011, a collection of farmers sued Monsanto over its trade practices.²⁰³ At root, farmers argue that they can no longer farm in the way they have farmed for centuries (sowing and saving seeds with each planting and harvest) as a result of genetic patents and seeds that will not reproduce (so-called “suicide seeds”).

Writing for the *California Law Review*, Michella Ma argues that importing copyright law into the seed patent context can help prevent legal abuses by Monsanto.²⁰⁴

¹⁹⁹ Engdahl, *Seeds of Destruction: The Hidden Agenda of Genetic Manipulation*, 257-258.

²⁰⁰ Steele, “Monsanto’s Harvest of Fear.”

²⁰¹ Taarini Chopra, “Anger of Injustice. Passion of Vision,” *Alternatives Journal* 37, no. 6 (December 2011): 30-32.

²⁰² Andy Coghlan, “GM Cotton Absolved of Farmer Suicides,” *New Scientist* 199, no. 2681 (November 8, 2008): 14.

²⁰³ Carey Gillam, “UPDATE 1-Organic Farmers Sue, Seek Protection from Monsanto | Reuters” News, *Reuters*, March 29, 2011, <http://www.reuters.com/article/2011/03/29/monsanto-lawsuit-idUSN2929919920110329>.

²⁰⁴ Michelle Ma, “Anticipating and Reducing the Unfairness of Monsanto’s Infringement Lawsuits: A Proposal to Import Copyright Law’s Notice-and-Takedown

Ma highlights the Monsanto's market domination in seed sales by noting that 95 percent of soybeans and 80 percent of all corn grown in the United States contain Monsanto traits; further, she cites Monsanto's ban on seed saving as an example of its intense efforts to stipulate and monitor its customers' use of Monsanto products.²⁰⁵ Farmers face two kinds of suits from Monsanto: those based on purposeful infringement and those based on inadvertent infringement. It is inadvertent infringement that invites the greatest opportunity for abuse. In such cases, farmers "plant and use Monsanto technology unintentionally as a result of environmental factors that cause the genetic contamination of crops."²⁰⁶ Ma suggests that legal frameworks adopted from the Digital Millennium Copyright Act would be less punitive and would give farmers the opportunity to remove infringing material before further punitive action could be taken. This framework, she says, will alleviate farmer's fears of unexpected patent infringements suits.²⁰⁷ However, it would not remove farmers' fears of losing their crops due to factors they cannot control.

Patents for sexually reproducing plants fall under the purview of the Plant Variety Protection Act of 1970 and the Patent Act, which is embodied in Title 35 of the United States Code ("Patent Act").²⁰⁸ Because the PVPA does not address seed saving and research efforts, agricultural biotechnology companies tend to rely on the Patent Act to protect their seed patents by preventing infringement and seed saving.²⁰⁹ While activists

Regime into the Seed Patent Context," *California Law Review* 100, no. 69 (2012): 691-720.

²⁰⁵ Ibid., 694.

²⁰⁶ Ibid., 695.

²⁰⁷ Ibid., 695-696.

²⁰⁸ Ibid., 696.

²⁰⁹ Ibid., 699.

and farmers find the actions of Monsanto deplorable, protection of its patents against both intentional infringements, seed saving, and accidental infringement is guaranteed by the Patent Act and its patent grant. Ma claims that reliance on genetically engineered seeds reduces farmer autonomy, biodiversity, and the integrity of wild and organic vegetation. These problems were reduced in the past, she says, through farmers' own cross-breeding of saved seeds based on lessons learned from the previous season's growth.²¹⁰ Ma laments, "Though biodiversity and farmer autonomy are important components of a successful and healthy domestic agriculture, the modern patent regime values innovation over such issues, and consequently protects inventors' success even at the expense of biodiversity and farmer autonomy."²¹¹

Though no inadvertent infringement lawsuits have occurred so far, farmers understandably fear them. In such suits, Monsanto could claim that farmers have violated patents held by Monsanto by growing and selling products without purchasing the right to use the genetically-engineered seeds. Such suits have the potential to do the greatest harm to farmers, considering farmers have no way to prevent accidental contamination. Further, such contamination actually harms farmers and hinders their ability to reproduce their own crops. In fact, the contamination of Monsanto seeds reduces the value of the organic crops grown by farmers seeking to avoid contamination by Monsanto seeds. Rather than being accused of infringement, these farmers claim they are victims of contamination. To provide greater security and confidence to farmers fearing such lawsuits, Ma proposes a system that would require Monsanto to notify farmers and grant them an opportunity to curb infringement before filing an infringement lawsuit. While

²¹⁰ Ibid., 712.

²¹¹ Ibid., 713.

this would certainly not address all complaints of farmers against Monsanto, it might prevent some distress for organic farmers and maintain Monsanto's legal right to bring suits against intentional infringers.

It would be easy to focus entirely on Monsanto, but no single player is responsible for the devastating plight of farmers. While seed developers were increasing the price of growing food, firms such as Cargill and ConAgra worked to push the prices of crops down at the other end, creating an "hourglass" economic arrangement squeezing farmers in the middle.²¹² As the cost of farming increases due to seed prices driven up by genetic patents and other variables, the profit farmers can generate is further diminished by falling prices that are kept low by giants in the food industry.

Just as vertical integration drives farmers to the point of despair, it also enables corporations to exert influence on public policy and public opinion regarding food and food safety. The food industry attempts to control public beliefs regarding healthful food by influencing scientific research and publication and exerting pressure on public health professionals. The 2011 conference of the American Dietetic Association was funded primarily by big food producers.²¹³ Industry sponsors of the conference included Coca-Cola, Hershey's, Aramark, PepsiCo, Mars, and General Mills. Many educational sessions at the conference were hosted by industry organizations, effectively teaching professional dietitians what is healthful and what is not. For example, the Corn Refiners Association gave a talk titled, "Are Sugars Toxic: What's Wrong with the Current Research?"²¹⁴ A

²¹² Cook, *Diet for a Dead Planet: Big Business and the Coming Food Crisis*.

²¹³ Michele Simon, "Pesticides Are Good for You," October 17, 2011, <http://www.foodsafetynews.com/2011/10/pesticides-are-good-for-you/>.

²¹⁴ Ibid.

session by the International Food and Information Council, a coalition of industry insiders, presented a session on how processed foods meet nutritional needs.

Also in late 2011, the United States Congress took action to block proposed changes to school lunches proposed by the Agriculture Department that would require schools to provide more fruits and vegetables in school lunches.²¹⁵ Under pressure from companies such as ConAgra, Del Monte, and Schwan, Congress declared that the tomato sauce on a slice of pizza was adequate to count as a vegetable serving. The rules that were blocked aimed at reducing obesity, salt intake, and other nutritional deficits. The food industry, however, continues to exert its influence to maintain laws and practices detrimental to public health.

EXTRACTIVE INDUSTRIES

Generally when countries find that they have vast reserves of natural resources, it seems reasonable to expect that such resources could lift the population out of poverty. Norway, for example, has used its oil reserves to help fund programs to alleviate poverty and support public education. Unfortunately, this is not always the case. In fact, countries that depend on mineral extraction for income typically have high levels of poverty, corruption, authoritarian rule, and civil war.²¹⁶ Though this may seem counterintuitive, the reasons are clear. As Peter Singer describes it, “Control of such vast wealth is a

²¹⁵ Ron Nixon, “Congress Blocks New Rules on School Lunches,” *The New York Times*, November 15, 2011, sec. U.S. / Politics, http://www.nytimes.com/2011/11/16/us/politics/congress-blocks-new-rules-on-school-lunches.html?_r=1&scp=1&sq=congress%20pizza&st=cse.

²¹⁶ Peter Singer, *One World* (New Haven, CT: Yale University Press, 2002).

constant temptation for generals and others who have the means to overthrow civilian governments and then divert some of the wealth into their own pockets.”²¹⁷

EarthRights International is an organization committed to the legal defense of human rights and the environment. Along with other advocacy organizations and attorneys, ERI brought suit against Royal Dutch/Shell (Royal Dutch Petroleum Company and Shell Transport and Trading Company) for complicity in abuses against the Ogoni people in Nigeria.²¹⁸ ERI’s website says, “Shell financed, armed, and otherwise colluded with the Nigerian military forces that used deadly force and conducted massive, brutal raids against the Ogoni, with a motive of restarting oil operations on Ogoni territory. Shell was also involved in a strategy that resulted in the executions of nine Ogoni leaders who were working for environmental justice and human rights, including internationally acclaimed writer and activist Ken Saro-Wiwa.”²¹⁹

According to the original complaint in the case, human rights activist Ken Saro-Wiwa and youth leader John Kpuinen were hanged in Nigeria for murders they did not commit, and these executions were carried out with the knowledge and support of Royal Dutch/Shell.²²⁰ The Shell Petroleum Development Company and the military regime are accused of using force and intimidation to silence opposition to their exploitation of natural resources in Nigeria. The complaint states that the conduct of the company

²¹⁷ Ibid., 105.

²¹⁸ Counsel for the plaintiffs included Judith Brown Chomsky, Center for Constitutional Rights, Anthony DiCaprio, Paul Hoffman, and Cohen Milstein Sellers & Toll PLLC.

²¹⁹ “Wiwa V. Royal Dutch/Shell | EarthRights International,” accessed November 11, 2011, <http://www.earthrights.org/legal/wiwa-v-royal-dutchshell>.

²²⁰ *Wiwa v Royal Dutch Shell* (n.d.).

violates laws against “torture, summary execution, and crimes against humanity.”²²¹ Oil exploration and extraction in Nigeria have been devastating. A recent report estimates it will take at least 30 years to complete a cleanup operation, and Shell has now accepted some responsibility for the extensive damage to the Ogoniland region.²²²

Some estimate the oil spilled in Nigeria equals one spill the size of the Exxon Valdez spill each year for 50 years.²²³ An article by Adam Nossiter describes conditions in Nigeria:

Small children swim in the polluted estuary here, fishermen take their skiffs out ever farther — ‘There’s nothing we can catch here,’ said Pius Doron, perched anxiously over his boat — and market women trudge through oily streams. ‘There is Shell oil on my body,’ said Hannah Baage, emerging from Gio Creek with a machete to cut the cassava stalks balanced on her head.²²⁴

The execution of Wiwa and Kpuinen surely managed to discourage some from speaking out, but Ogoni people still protest. When they do, they meet violence from police guarding the interests of the oil companies.²²⁵

Nigeria is prominent in press reports of human rights abuses related to extraction, but the pattern is distressingly common. Cathal Doyle notes that the extractive industry leaves an enormous environmental footprint that is both destructive and intrusive. When governments use military and paramilitary groups to protect mining and other operations,

²²¹ Ibid.

²²² “‘Decades’ to Clean up Nigeria Oil,” *BBC*, August 4, 2011, sec. Africa, <http://www.bbc.co.uk/news/world-africa-14398659>.

²²³ Adam Nossiter, “In Nigeria, Oil Spills Are a Longtime Scourge,” *The New York Times*, June 16, 2010, sec. World / Africa, <http://www.nytimes.com/2010/06/17/world/africa/17nigeria.html?ref=nigeria>.

²²⁴ Ibid.

²²⁵ Ibid.

human rights violations that sometimes include crimes against humanity often result.²²⁶

Often, people in the industry will argue that governments, not corporations, are responsible for protecting the human rights of citizens, but Doyle asserts that this does not obviate the need for FPIC, which would provide some protection against abuses. More strongly, Doyle says of FPIC, “It is arguable that there are few other issues that strike so directly at the heart of their cultural survival as people.”²²⁷ When corporations and governments collude to take or destroy through environmental degradation the resources of people, they are violating the most basic of human rights—the right to be left alone to sustain oneself through one’s own labor. Libertarian arguments that the right to “free trade” is of greater importance than the right to be left secure in one’s person are incoherent and self-defeating.

CONCLUSION

Trade globalization has the potential to bring economic opportunities to many people who previously had few chances to improve their living conditions. In the best imaginable world, a rising tide of economic opportunity would lift all boats, but the waters must be kept free of pirates. The argument that trade liberalization will lead to better conditions for all can only be true if libertarian respect for individual autonomy is respected. It is impossible for libertarians to promote unrestricted and unregulated trading policies that condone the theft and destruction of both life and property without leading into contradiction and vile hypocrisy. All trading agreements, to be minimally just, must meet the libertarian demand that all individuals give full consent in any transaction that

²²⁶ Doyle, “Indigenous Peoples and the Millennium Development Goals - ‘Sacrificial Lambs’ or Equal Beneficiaries?”.

²²⁷ Ibid., 54.

affects their property. Their property includes their own bodies, first and foremost, but also land they have worked to provide food, water they have collected for drink and irrigation, and the air they breathe. Anyone who damages these essentials for life has violated the most basic libertarian rights of individuals. Libertarians allow for exceptions only when they are necessary to ensure the security of citizens and no alternatives are available. In such cases where the exercise of eminent domain may seem necessary in order to provide security, agreements must include the interest of all who face loss or destruction of their land and resources. I do not claim that we create a just world by guaranteeing the autonomy of all stakeholders in the world; I only claim that we cannot create a just world without doing so.

Chapter 4: Globalization and Policy Considerations

INTRODUCTION

In this chapter I examine policy proposals for ending corporate abuses of human rights and argue that all discussions of trade agreements and regulation must include concern for human rights. In one sense, the answer seems too simple; many laws are in place to protect the physical security of individuals and their property. Unfortunately, it is not always clear who is culpable for human rights violations, and it is even less clear who is responsible for protecting human rights. Furthermore, historical injustices have produced an economic system that deprives individuals of autonomy and agency in ways that reduce them to the status of objects who must accept whatever agreements are reached among the wealthy in their own countries and abroad. As participants in a global economic order, we are all responsible for creating a system that respects human rights, so we must work to exert influence where we have it. Corporations themselves must ensure that their policies protect human rights, but it is less clear that they are responsible for forcing their state partners and subsidiaries to guarantee human rights. Regulation might be left up to state actors, but too many governments are themselves guilty of human rights suppression. Entities such as the World Trade Organization and the World Bank wield great influence, but many claim their mission of promoting development and trade would be hindered if they took responsibility for promoting human rights.

International trade presents a sort of global “Prisoners Dilemma.” In such a dilemma, everyone will be better off if everyone in the group acts in a particular way, but it is in each individual’s worst interest to act in that way. In the classic example, two prisoners can go free if neither confesses, but each prisoner will confess to avoid the

harsher sentence that will result from not confessing while the other prisoner confesses. With global development, everyone will be better off and business will be profitable if everyone works to ensure protection of basic human rights. On the other hand, if any agent works to protect human rights while others do not, the agent respecting human rights will lose in the marketplace and may even be forced out of business. Indeed, business leaders frequently make the claim that it is better for them to be in business and promoting development, even imperfectly, than to go out of business entirely, taking jobs and economic development with them.

In order to stay in business and generate healthy profits for shareholders, corporations must strive constantly to cut costs and maximize profits. This leads to what is commonly described as a “race to the bottom.” While business leaders may claim that self-regulation is the best way to manage trade and production, some of the events described in chapter three show otherwise. The alternative, then, is to raise the floor for everyone so that respecting human rights puts no business or government at a disadvantage. This requires overcoming both corporate non-compliance and government corruption.

Furthermore, historical injustices have left many people with little economic opportunity and virtually no political power. Rectifying the injustices of stolen property and wealth will require a redistribution of current wealth. This redistribution is not a sharing of wealth generated through current trade agreements but payment for past abuses. As stakeholders have a legitimate claim on property granting dividends to manufacturers and producers, current trade practices must also be amended to include wealth sharing for and recognition of all stakeholders. In addition, current practices must

recognize the autonomous decisions of all stakeholders. Before taking resources or land that are being used by others, all stakeholders must give free, prior, and informed consent. Given that many people may be interested in being left alone to live as their families have lived for centuries rather than in sharing wealth, their consent may not come easily. However, being forced to participate in a trading scheme (by opening their land for extraction, for example) is unjust regardless of whether unwilling participants receive a share of the profits.

Trade agreements and regulations will not eliminate human rights abuses any more than laws against thefts have eliminated home burglaries. However, I suspect many business leaders would welcome such agreements. In the movie, *The Yes Men*, a member of the Yes Men group poses as a representative of the WTO and announces new trading regulations designed to guarantee human rights. When several of the executives in the audience were interviewed about their reaction to the fake regulations, they indicated that they were relieved to know they could be competitive on a level playing field without violating human rights.²²⁸ I feel certain that many, if not most, people in business would welcome the opportunity to promote development and trade in a just and humane manner, and would be horrified to find that their business practices had created human rights abuses.

POGGE'S MODEST PROPOSAL

In this section, I examine Thomas Pogge's proposal for a Global Resource Dividend, or GRD. The GRD, it would seem, is morally justified based on past injustices that created great inequality of wealth and living conditions, especially in countries that

²²⁸ Chris Smith, Dan Ollman, and Sarah Price, *The Yes Men* (MGM (Video & DVD), 2005).

are resource rich but with poor living conditions. The principle objection to the GRD is that it may not do enough to correct the environmental degradation and horrible working conditions it is designed to alleviate because it is a dividend on the trade of resources that the people living in those countries have not agreed to trade. As such, the GRD still violates their autonomy. Further, the GRD encourages further industrial development and depletion of resources without the express consent of those affected. I suggest reparation payments to those whose environments and working conditions have been devastated are a more ethically sound approach to the problem. This approach is unlikely to be adopted by major players in global trade, but the GRD is not much more popular, so I can see no reason to not demand the most ethical alternative.

Thomas Pogge argues that the wealthy participants in the global economic order have a negative duty to alleviate poverty and disease among poorer citizens. This is not a matter of giving aid or promoting human rights, he claims, but an effort to eliminate harms inflicted on the poor. Because the poor have been denied access to both the resources they require for health and trade and also participation in the economic system, Pogge asserts that “governments shall not have full libertarian property rights with respect to natural resources in their territory, but can be required to share a small part of the value of any resources they decide to use or sell.”²²⁹ His claim is that “the global poor have an inalienable stake in all limited natural resources.”²³⁰ Pogge’s assessment is consistent with Locke’s requirement that resources be taken only when such acquisition causes no harm to others. Past conquest of resources and current trading by the wealthy who ignore the needs of those who live on land and use other resources being traded or

²²⁹ Pogge, *World Poverty and Human Rights*.

²³⁰ Ibid.

degraded by the trading practices is a violation of the negative rights of such individuals. Taking some of the value of the resources and distributing it to the poor is not to take from the wealthy to aid the poor but to take payment from the wealthy to compensate the poor for the theft or degradation of their resources. Pogge calls the value to be taken from resources and distributed to the global poor a Global Resource Dividend (GRD). One advantage of this approach, he says, is that it preserves national control over resources or eminent domain. Further, he says the idea could be applied to resources that are not destroyed but merely degraded as in the case of pollution of air and water. What his proposal fails to do, though, is restore natural resources to their former state so that victims of theft and degradation can return to their former way of life, whether it be farming, fishing, or other activities that rely on clean and secure resources.

Pogge notes that Robert Nozick vigorously argued against any arrangement where any person or group would control resources and distribute them among the community.²³¹ Pogge says his view “is prior to both production and distribution occurring under such schemes and therefore involves neither the idea of an already existing pool of stuff to be doled out nor the idea of already owned resources to be *re*-distributed.”²³² While Pogge’s scheme avoids the redistribution of resources, it is unlikely that Nozick and others would agree that the prior distribution is just unless they also agree that the current arrangement is inherently unjust. Pogge claims that the poor and starving suffer under “an institutional order coercively imposed upon them.”²³³ If the institutional order is coercive, then libertarian principles demand rectification. Disagreements arise over

²³¹ Ibid., 181-182.

²³² Ibid., 182.

²³³ Ibid.

empirical data to be interpreted and included in deliberations of what conditions are just. Acknowledging this problem, Pogge says that possible disagreements “do not mean that no conclusions can be drawn about the burning issues—only that what we can conclude is less precise and less definite than one might have hoped.”²³⁴ If it can be established that the practices are unjust, then modifying the practices to include all stakeholders is a minimum step toward justice. If current inequality is a result of unjust practices, then any redistribution of current wealth or resources is simply repayment for theft or destruction of good that belong, at least in part, to the victims of injustice. This redistribution would not violate libertarian principles any more than the return of money stolen from a bank violates libertarian principles.

Pogge calls for a global levy on natural resources to support economic development for those in the poorest areas of the world. The current economic arrangements arise from trade negotiations between state actors that exclude many people who are affected by the resulting agreements. Given this case, Pogge asserts that any political decision must come from democratic processes that include “as equals all persons significantly and legitimately affected by this decision.”²³⁵ Thus, any agreement reached by state actors that is opposed by those affected by the decision is an act of coercion and is unjust. Pogge recognizes the possibility that some may not oppose agreements only because they have been misinformed of the burdens of the agreement or suffer some form of “false consciousness” that impairs their judgment. Nonetheless, individuals must be given authority over decisions that affect their lives.

²³⁴ Ibid., 183.

²³⁵ Ibid., 193.

Often, state actors and business partners make agreements that disregard externalities, actions that create costs which must be borne by those not involved in the negotiations and who do not benefit from the trade agreements that result. Pogge notes that the complacency of trading partners is unwarranted as no one is safe from the effects of externalities. In conditions that are nearly Hobbesian, he says, “The transnational imposition of externalities and risks is becoming a two-way street, as no state or group of states, however rich and well armed, can effectively insulate itself from external influences—from military and terrorist attacks, illegal immigrants, epidemics and drug trade, pollution and climate change, price fluctuations as well as scientific, technological, and cultural innovations.”²³⁶

Pogge says that “adherents of the Western normative political thought” may form a “coalition focused on eradicating world poverty” that may accept his proposal if he can show that current inequality violates not only positive duties for social justice but also negative duties of justice.²³⁷ He claims that the worst off in the world are victims of a shared institutional order not of their making. Further, this social order creates radical inequality that is not explained by other factors such as genetic handicaps and natural disasters. This social order is unjust as it denies the worst off any compensation for the use and sale of shared natural resources. While some may claim that the rightful owners of natural resources have shared and profited from their possessions, Pogge claims that the owners gained access to those resources through a common and violent history.²³⁸ For example, ownership of natural resources in Africa did not transfer to European states and

²³⁶ Ibid., 201.

²³⁷ Ibid., 204-205.

²³⁸ Ibid., 205.

corporations through negotiated trade decisions; rather, such transfers were the result of raids on the natural resources of African people.

Pogge goes on to state that there would be no moral obligation to take action to alleviate current radical inequality if no alternative systems existed or could be imagined to create a more just order. If nothing can possibly be done, then there is clearly no moral requirement to take action; however, Pogge says that he has imagined an alternative system, so action is required as inaction is a violation of the negative duty of justice. If his proposal is not feasible, then other proposals must be considered. Pogge's proposal, then, is that those who make extensive use of the planet's resources should compensate those who involuntarily use very little.²³⁹ Some people use very little voluntarily, but environmental degradation and flooding from projects such as enormous dams have taken even the few resources those individuals want and need. I would argue that they must also be compensated even if they never desired any greater use of natural resources. Further, compensation through a dividend will never replace the homes and livelihoods lost through destruction of property and sustainable markets of many communities. The dividend must include the return of usable land to those who have lost their homes, their businesses, and their sustenance. Calling the payments a dividend implies that the poor have become participants in these economic agreements, but they are really only being paid for their involuntary participation. As such, the dividend seems more like a reparation payment than a sharing of profit in a joint venture.

Asaf Bar-Tura argues that proposals such as Pogge's are inadequate as they rely on trade to alleviate poverty, forcing millions to be at the mercy of markets for their well-

²³⁹ Ibid., 210.

being. He argues, further, that trade is not guided by an invisible hand but by moneyed interests that will make devastating decisions at the expense of the poor.²⁴⁰ He points out that such schemes rely on production in developing countries to support the consumer needs in affluent countries. For example, he says, “Land used in Mexico to grow food is being used to grow commodities for an affluent country, while displacing people from their land and source of employment.”²⁴¹ As an alternative, Bar-Tura supports “socialist protectionism” such as the scheme supported by David Schweickart in which tariffs are placed on imports to ensure that they are no cheaper than locally produced goods, and the money collected from the tariffs is sent back to the exporting country to alleviate poverty. Such a system would prevent consumers in affluent countries from exploiting poverty in other countries in order to procure cheaper goods through the suffering of others.²⁴²

Bar-Tura anticipates objections that his proposal would violate sovereignty by forcing states into protectionism and “fair trade” policies. In response, he argues that forcing “fair trade” policies on countries is no more coercive than forcing “free trade” policies on them, which is the effect of current world trade agreements. He also notes that such a “fair trade” proposal promotes a form of distributive justice that many will reject out of hand, but he argues that “free trade” proposals are so unjust that they cannot be tolerated.²⁴³ Of course, Pogge’s attempt was to frame a solution in terms that libertarians would accept, not to suggest which type of system would promote the best outcome. Nonetheless, Pogge’s proposal leaves the solution in the hands of affluent countries and

²⁴⁰ Asaf Bar-Tura, “Economic Policy and World Organization,” *Perspectives on Global Development & Technology* 10, no. 1 (January 2011): 204.

²⁴¹ Ibid.

²⁴² Bar-Tura, “Economic Policy and World Organization,” 205.

²⁴³ Ibid., 206.

wealthy individuals rather than the involvement of poorer countries. Pogge may be suggesting what can be done rather than what should be done, but his solution leaves conditions intact that violate his own standards of justice. It would be unwise, however, to reject a proposal that may alleviate some suffering even in an imperfect manner. Further, Pogge's proposal is likely to find more acceptance than any form of socialism, at least in the United States, but this is far from saying that his proposal is likely to find allies among the world's most powerful traders.

Another of Pogge's critics, Thomas Hayward, accepts Pogge's moral argument but rejects the Global Resource Dividend as the most productive response to global inequality and environmental degradation. Hayward claims that Pogge's proposal may be counterproductive to the relief of poverty and is based on an inadequate conception of natural resources, so Hayward proposes a tax related to use of "ecological space" rather than GRD.²⁴⁴ One criticism of the GRD is that some of the poorest nations are the most dependent on extraction of natural resources for their income; therefore, the dividend would disproportionately be extracted from some of the poorest nations, causing greater hardship on the poor than on affluent nations that rely on more "capital-intensive production" techniques.²⁴⁵ A second objection is that the GRD does not adequately identify at what point in the production processes the tax should be applied nor does it identify what kinds of costs against the tax or at what rate.²⁴⁶ Hayward notes that Pogge specifies the tax on resources and pollutants whose extraction and effect are easy to

²⁴⁴ Tim Hayward, "Thomas Pogge's Global Resources Dividend: A Critique and an Alternative," *Journal of Moral Philosophy* 2, no. 3 (November 2005): 317–332, doi:10.1177/1740468105058157.

²⁴⁵ Ibid., 320.

²⁴⁶ Ibid., 321

monitor, but Hayward challenges the notion that other resources should be ignored only because they are more difficult to monitor. Hayward notes, “If a tax on natural resources is to have progressive redistributive effects, there is a case for suggesting it should be levied on those who ultimately derive more economic benefit from the exploitation of raw resources rather than on those who, engaged in primary extraction, will generally yield the least added value from the resource.”²⁴⁷ Hayward’s third objection to Pogge’s proposal is that the proposal works against itself. The GRD is supposed to generate revenue for those who were excluded from the resources being taxed while simultaneously encouraging conservation of the same resources. To the extent that the GRD succeeds at one aim, it will become less effective at the other.²⁴⁸

While Pogge’s proposal tries to compensate for resource depletion by economic distribution, Hayward notes that this means alleviating poverty will require increased depletion of the resources being lost to extraction. He notes, “The depletion of available resources can wipe out the gains of the worst off—those who have traded away their resources—before it seriously affects the richer who are still working with the gains accruing as a result of the compound advantages they enjoy over the poor.”²⁴⁹ Hayward suggests that Locke’s proviso that acquisition of natural resources is just only when leaving “as much and as good” for others should be retained. Hayward goes on to suggest that the “vast and systematic inequalities globally” could not be justified under the Lockean proviso, so a “global tax proportional to a nation’s per capita utilization of ecological space would answer to the demands of Pogge’s more thoroughly and less

²⁴⁷ Ibid.

²⁴⁸ Ibid., 322.

²⁴⁹ Ibid., 325.

arbitrarily than the GRD.”²⁵⁰ Pogge’s proposal attempts to alter the means of profit distribution to include those who have been involuntarily excluded and harmed in the past while Hayward’s proposal attempts to rectify the injustice done by taking resources and violating Locke’s proviso and not leaving as much and as good for others.

It may be that Pogge’s proposal would offend libertarians less than Hayward’s, but movement toward such sharing of wealth will require significant changes to law, policy, and trade agreements, so attempts to appease libertarians are probably ill fated. Hayward’s proposal recognizes that past injustices create moral demands from everyone who benefits from the uncompensated extraction or destruction of resources, but I would argue that it still does not fully capture the nature and extent of the injustice. In many cases, the resources taken or polluted through extraction and other processes were already in use by the farmers, fishers, and others. Rather than simply failing to leave enough and as good for others, resources were violently seized from those who were using them, so it is really theft that must be addressed by such proposals, and reparation payments would be suitable as a means of redress. However, any proposal that shifts at least some wealth back to those harmed by the extraction and destruction of their natural resources is welcome. Speaking in terms of reparation, however, avoids some objections that critics may have to either a tax or dividend. Dividend seems to imply a joint venture of all stakeholders, while a tax seems to imply taking wealth from one to give to another for development or to make up for systematic inequality, but reparation payments clearly are made to return wealth to victims of theft or resource destruction. The moral force of reparation payments is clear and unambiguous.

²⁵⁰ Ibid., 326.

ENHANCING TRANSPARENCY

Humans tend to regulate their behavior much more carefully when they know they are being observed, and monitoring the activities of corporations can prevent a great deal of misconduct. Of course, businesses have legitimate reasons for protecting some of their activities and information. Without some level of secrecy, even the idea of competition in the markets would become untenable. Businesses must protect proprietary information in order to devise marketing strategies, develop new products, and negotiate contracts with suppliers, distributors, and governmental agencies. With such concerns, it is not surprising that business leaders resist efforts to expose their activities to greater scrutiny.

On the other hand, corporations strive to maintain a positive public image and will make decisions based on how the public will view their actions. Without mechanisms to reveal their actions to the public, it is impossible to evaluate whether they are behaving ethically, given that no one can be sure how they are behaving. Without a certain level of transparency, corporations are free to bury embarrassing information and exaggerate laudable activities. Some corporations realize this and are developing policies to ensure they meet their responsibilities to protect human rights. According to a 2005 *McKinsey Quarterly* survey, 84 percent of business executives agreed that corporations had a responsibility to generate both profit and public good.²⁵¹ Further, at least 213 corporations have expressed human rights policy statements, and the UN's Global

²⁵¹ David Kinley, *Civilising Globalisation: Human Rights and the Global Economy* (New York, NY: Cambridge University Press, 2010), 167.

Compact (with ten principles to protect the environment, fight corruption, and protect labor and human rights) had more than 4,000 signatories.²⁵²

Given this desire to support human rights and maintain good standing with the public, we would expect corporations to embrace transparency initiatives with fervor, but corporate reaction to such regulation is disappointing at best. On January 23, 2012, Ben Geman of *The Hill*, reported that the American Petroleum Institute was demanding that the Securities and Exchange Commission withdraw rules that require the disclosure of oil and mining companies' payments to governments.²⁵³ The companies say they support disclosure but say the rules should include aggregate payment information by country. Companies also feel the definition of "project" should include only those activities investors would consider material. Human rights groups assert that such changes would gut the rules.²⁵⁴ In response Bill Gates spoke out in favor of the rules, saying that the natural resources in Africa represent the best chance for Africans to escape poverty. But, he adds, "Little of this value remained in Africa. Transparency of financial flows is critical to ensuring these valuable resources are transformed into public benefits."²⁵⁵

Demands for more transparency in corporate sponsorship intensified somewhat in February 2012 when leaked documents revealed that several companies were funding the Heartland Institute, a think-tank devoted to undermining public confidence in climate

²⁵² Kinley, *Civilising Globalisation: Human Rights and the Global Economy*, 168.

²⁵³ Ben Geman, "Oil Industry Group Says SEC Must Pull Back Transparency Rule - The Hill's E2-Wire," Blog, *E2 Wire*, January 23, 2012, <http://thehill.com/blogs/e2-wire/e2-wire/205861-oil-industry-group-says-sec-must-pull-back-transparency-rule>, accessed February 17, 2012.

²⁵⁴ Ibid.

²⁵⁵ Ben Geman, "Bill Gates Jumps into Fray over SEC Oil Transparency Rule - The Hill's E2-Wire," Blog, *E2 Wire*, February 15, 2012, <http://thehill.com/blogs/e2-wire/e2-wire/210923-bill-gates-jumps-into-fray-over-sec-oil-transparency-rule>, accessed February 17, 2012.

science.²⁵⁶ This discovery is especially appalling to critics as some of the companies making donations promote themselves as having a strong commitment to improving the environment. Such companies include Microsoft, Diageo, and GlaxoSmithKline.²⁵⁷ A spokesperson for GSK said, “GSK absolutely does not endorse or support the Heartland Institute’s views on the environment and climate change. We have in the past provided a small amount of funding to support the Institute’s healthcare newsletter and a meeting.”²⁵⁸ This conflict demonstrates both the power of and need for disclosure of financial relationships within and among corporations.

While disclosure of such donations may be embarrassing, fuller disclosure would also prevent more serious forms of corruption, and that is the aim of advocates for transparency such as Transparency International. Transparency International is a coalition of more than 90 chapters that promote transparency in elections, public administration, and procurement in business. As part of this effort, the organization publishes global corruption reports, a corruption perceptions index, a bribe payers index, and a corruption barometer.²⁵⁹

The United States made a positive move in fighting corruption in 1997 with the Foreign Corrupt Practices Act.²⁶⁰ Expansion of such laws globally or as a part of global

²⁵⁶ “Updated: Will Heartland Institute Scandal Force Transparency on Corporate Donors?”, n.d., <http://www.businessgreen.com/bg/analysis/2152749/heartland-institute-scandal-force-transparency-corporate-donors>, accessed February 17, 2012.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ “Transparency International,” *Transparency International: The Global Coalition Against Corruption*, n.d., <http://transparency.org/>, accessed February 17, 2012.

²⁶⁰ Joseph E Stiglitz, *Making Globalization Work*, 1st ed. (New York: W.W. Norton & Co, 2006), 208.

trade agreements could help prevent corruption, but much more is required. After the East Asian financial crisis, the IMF and U.S. Treasury condemned Asian bank secrecy until developing countries pointed out that secrecy in offshore western banks was also contributing to the problem. Joseph Stiglitz points out that money goes into the secret accounts precisely because it enables businesses to avoid regulation and taxes.²⁶¹

Complete transparency is not possible in a competitive market, but businesses will only be truly accountable when outside groups can monitor their financial arrangements and donations to governments, think tanks, or others.

BENEFIT CORPORATIONS

Many critics of corporations complain about corporate greed and the single-minded focus on making ever-increasing profits, but generating profit is the singular function of a corporation, and failure to do so may result in shareholder lawsuits.²⁶² On the other hand, non-profit organizations are legally forbidden from generating profit. Until recently, it was not possible to start a corporation that both generated profit and focused on providing social benefits, unless businesses could prove that the social benefits did not reduce profits. Recently, however, a new type of charter has emerged that enables corporations to generate profit while being exempt from investor lawsuits for failing to maximize profit while working to generate social benefits.²⁶³

Such corporations follow a hybrid model with dual missions and include the low-profit limited liability company available in nine U.S. states and the community interest

²⁶¹ Ibid., 209.

²⁶² Angus Loten, "With New Law, Profits Take a Back Seat," *Wall Street Journal*, January 19, 2012, sec. Enterprise, <http://online.wsj.com/article/SB10001424052970203735304577168591470161630.html?KEYWORDS=Greyston>, accessed February 14, 2013.

²⁶³ Ibid.

company available in the United Kingdom.²⁶⁴ Businesses in the United States can also be certified as a “B Corp,” which enables them to formally market themselves to consumers and investors as following a model based on both profit and social good. A final form of new business model is the “benefit corporation,” currently only available in a few U.S. states, which uses external agencies to vet the social good bona fides of incorporators.²⁶⁵

In her analysis of the legal form of benefit corporations, Dana Brakman Reiser finds that benefit corporations may be susceptible to greenwashing (deceptively portraying companies as being beneficial to the environment) and poor enforcement. She says that without effective enforcement for the dual mission, effective branding and sustainability may continue to be problems.²⁶⁶ However, the concept of a benefit corporation opens the possibility of corporations having a dual mission, and this creates a promising development for businesses in the future. If the concept of generating profit while showing concern for social good, even when it decreases profit, is embraced by enough investors, capitalism could synthesize profit and humanity and point to sustainable model of global development.

An alternative method of encouraging corporations to promote social benefit is to make social good profitable. Noting that pharmaceutical companies generate the most revenue when they develop and market drugs aimed at affluent nations, Thomas Pogge devised a scheme to encourage the development of medicines that would have the greatest impact on global health. In their book introducing the Health Impact Fund, Thomas Pogge and Aidan Hollis note that the diseases that affect the world’s poorest

²⁶⁴ Dana Brakman Reiser, “Benefit Corporations-a Sustainable Form of Organization?,” *Wake Forest Law Review* 46, no. 3 (Fall 2011): 591-593.

²⁶⁵ *Ibid.*, 593.

²⁶⁶ *Ibid.*, 624-625.

people are usually communicable and threaten all of humanity while also being treatable and preventable. The fund would provide incentive payments for innovative companies that would agree to develop drugs and sell them at prices just near the price of production and distribution. In return, the firms would receive payments based on improvements to global health, which the authors describe as a voluntary pay-for-performance scheme.²⁶⁷ Funding for the program would come from contributions from countries that decide to support the plan.²⁶⁸ The authors claim the fund would benefit wealthier countries “not only directly from lower drug prices and a greater industry focus on achieving actual health impact, but also indirectly from improved health in developing countries which has global benefits in terms of economic growth and reduction in the development and spread of harmful pathogens.”²⁶⁹ Supporters of the fund hope these benefits will motivate wealthier countries to contribute funds to support pharmaceutical research and development. Such a plan recognizes the need for corporations to generate profit and provides incentives for promoting social good. Although the fund does not require new regulations on businesses, libertarians may object that it is a state-sponsored plan that will require new taxes for funding. A plan to use public funds to produce products for foreign markets at reduced rates is bound to meet with opposition from at least some free-market libertarians. However, the approach is innovative and provides a new framework for encouraging corporations to think of social good while developing business plans and marketing strategies.

²⁶⁷ Aidan Hollis and Thomas Pogge, *The Health Impact Fund: Making New Medicines Accessible for All* (Incentives for Global Health, 2008), 1.

²⁶⁸ *Ibid.*, 3.

²⁶⁹ *Ibid.*, 5.

JUDICIAL REMEDIES AND THE ALIEN TORT STATUTE

The Alien Tort Claims Act in the United States is another possible tool against corporations operating globally. Joseph Stiglitz says some corporations have been sued in the United States under the Alien Tort Claims Act with limited success, but he claims it could be a useful tool when suing corporations that may have few resources in the countries where the offenses occurred.²⁷⁰ He says that firms sued in their home countries cannot complain that complainants had a home-court advantage. Of course, it is just as likely that the offending corporations will have a home-court advantage when sued in their home countries. The greatest advantage of suing the corporations in their home countries is that the corporations are less likely to contest judgments against them on the basis that the court is itself illegitimate. When foreign countries impose large fines, corporations may complain that the judgments are intended only to enrich foreign politicians and may themselves be the product of corruption.

Stiglitz also suggests a reform that would make it possible for judgments made in foreign courts to be enforced in the home country of the offending corporation. Chevron has been fighting a lawsuit in Ecuador for years. Chevron was ordered to pay 27 billion dollars in damages to Ecuador for environmental destruction, but Chevron has resisted, and was awarded \$700 million by an arbitration panel in 2010. Chevron had originally requested that the trial be held in Ecuador, but is now fighting the judgment against it.²⁷¹ Stiglitz' suggestion would help prevent corporations from court shopping for the most favorable outcome. He says,

²⁷⁰ Stiglitz, *Making Globalization Work*, 205.

²⁷¹ Braden Reddall, "Chevron Wins an Ecuador Claim, Awaits Major Ruling," *Reuters*, March 30, 2010, <http://in.reuters.com/article/2010/03/31/idiNindia-47345020100331>, accessed February 21, 2012.

In the lore of America's west, bandits would cross state line to seek a safe haven. For international environmental bandits, there should be no safe haven. Any country in which the corporation (or the substantial owners of the corporation) has assets should provide a venue in which suits can be brought or in which enforcement actions to ensure payment of liabilities can be undertaken. The corporation may incorporate where it wants, but this should not make it any less accountable for its actions in other jurisdictions.²⁷²

In February 2012 an arbitration panel in The Hague backed Chevron's appeal for protection from the Ecuadorean court judgment. In 2009, Chevron posted videos that it said implicated the judge presiding over the suit in bribery.²⁷³ If the case had been heard in an American or international court, it may have reduced charges of corruption and illegitimacy of the ruling.

Early in 2012 two news reports gave details of legal action against Monsanto on two continents. First, the Associated Press reported on January 17 that Argentina's tax agency raided a Monsanto contractor and found "slave-like" conditions for cornfield workers.²⁷⁴ The agency accused the contractor of preventing workers from leaving the fields, withholding salaries, and forcing workers to buy expensive food from the company store. The agency says workers spend 14 hours each day in the fields. On February 14, 2012, the BBC reported that a French court found Monsanto guilty of

²⁷² Stiglitz, *Making Globalization Work*, 206.

²⁷³ "Panel Protects Chevron in Ecuador Case," *Google News*, n.d., <http://www.google.com/hostednews/afp/article/ALeqM5gM6Pw44ORxdKQw0BqwQsKZZY3b9Q?docId=CNG.d5f209544de84dd35f534593182a4bf3.601>, accessed February 20, 2012.

²⁷⁴ "Argentina Says Monsanto Contractor Abuses Workers," *The Boston Globe* (Boston, MA, January 17, 2012), http://articles.boston.com/2012-01-17/business/30636164_1_monsanto-tax-agency-contractor, accessed February 14, 2012.

poisoning a farmer who inhaled its weedkiller.²⁷⁵ The French decision is historic as it is the first time a court has ruled that a company is guilty of poisoning. Legal advocates hope this decision will have an impact on cases pending around the globe. Monsanto declared that it will appeal the ruling, but high profile cases such as these bring greater scrutiny to the activities of corporations.

HUMANE GLOBALIZATION

In his 2007 book, *The Bottom Billion*, Paul Collier suggests methods to encourage reforms within developing countries rather than pushing reforms onto the countries from wealthier countries.²⁷⁶ He says, “The struggle for the bottom billion is not a contest between an evil rich world and a noble poor world. It is within the societies of the bottom billion, and to date we have largely been bystanders.”²⁷⁷ Given the exploitation of the developing world in terms of resources and labor, his claim that wealthy countries are bystanders seems indefensible; nevertheless, his suggestions for improvement are worth considering.

While wealthy countries are not bystanders, they are also not in a position to manage the affairs of the entire developing world. It is better to help facilitate a system of trade that can be profitable and humane for developing countries. Many countries have few resources, are plagued by conflict, or have no access to ports. Regional agreements are necessary to foster cooperation, but Collier warns against regional integration modeled after the European Union. Collier’s book was published in 2007, which was

²⁷⁵ “Monsanto Court Blow on Poisoning,” *BBC*, February 14, 2012, sec. Europe, <http://www.bbc.co.uk/news/world-europe-17024494>, accessed February 14, 2012.

²⁷⁶ Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It* (New York, NY: Oxford University Press, 2007).

²⁷⁷ *Ibid.*, 192.

before instability and uncertainty hit the European Union and threatened the continued existence of the Euro. This fact may matter less than it seems as Collier warns that regional integration can increase inequality and conflict among countries, especially when they are too similar (the similarity here being that they are equally poor and lacking in resources). The success of the European Union, he claims, rested on the diversity of the countries in the union.²⁷⁸

If nothing else, it is true that trading partners need some diversity in order to form mutually beneficial agreements. This is the problem that many hoped globalization could ameliorate. Under the best circumstances, globalization can help the situation greatly. Peter Singer and Jim Mason give an example of how investors from wealthy nations can benefit workers and farmers in developing areas.²⁷⁹ Singer and Mason describe the experience of organic farmers from America who travel to Mexico and talk to farmers about organic farming. After some discussion, they are able to agree on a plan to begin growing organic produce in Mexico for sale in the United States. The cooperative now brings in about \$7 million each year.²⁸⁰ Singer and Mason point out that without this agreement, the farmers in Mexico would still be in poverty and be using dangerous chemical pesticides and fertilizers in their work. They agree with Collier that globalization is still part of the solution, and not the problem itself as anti-globalization activists insist.

Of course, while globalization opens opportunities for development and the amelioration of poverty, it also provides opportunities for exploitation. In response to this

²⁷⁸ Ibid., 164–165.

²⁷⁹ Ibid.

²⁸⁰ Singer and Mason, *The Way We Eat: Why Our Food Choices Matter.*, 151.

problem, the fair trade movement was born. All trade should be fair, and advocates hope for rules to ensure equitable and humane trading for all players, but the movement to label products as “fair trade” is a way to encourage incremental progress in the absence of sweeping global reform. The system establishes a list of criteria for fair trade that is intended to guarantee that farmers are paid a fair wage and reasonable working conditions.

One major certifier of fair trade products is Fair Trade USA, which this year announced it would break with the international group Fair Trade International, and change its criteria for the fair trade label.²⁸¹ The changes include giving the designation to large plantations while it previously only included small farms. They also will give the designation to products with as little as 10 percent fair trade ingredients rather than the 20 percent required in other countries. Critics were predictably upset, but Fair Trade USA argues the new rules will help expand the fair trade market and give more exposure to fair trade products. It would also produce more revenue to support the fair trade industry. One other result of this change will be that products may now carry different labels with different meanings; some would carry the Fair Trade USA seal while others carry the Fair Trade International seal. Fair trade supporters will be forced to educate consumers and conscientious consumers must expend greater effort to inform themselves. As consumers become more knowledgeable about the effects of abusive production and trade, they will demand more information regarding how their products were manufactured, harvested, and distributed. Public demands for fair trade could change the way corporations and other trading partners view trade agreements that are exploitive or otherwise harmful.

²⁸¹ Ibid.

WORLD TRADE ORGANIZATION

The World Trade Organization has enormous power and could effect change in the way global trade agreements are reached and enforced. With such great influence over global trade, many look to the WTO to enforce human rights in trade. Unfortunately, the failure of global trading agreements to lift the poorest from their dire predicaments (or to even put some in a worse position) has created an air of suspicion around the WTO with many activists even demonizing the WTO as the source of problems and human rights abuses. Andrew Guzman says, “No other organization has the ability to manage the trading system, and the WTO lacks the expertise and the will to study and properly evaluate non-trade issues.”²⁸² He says the WTO is hampered by the fact that environmental groups suspect the WTO is biased in favor of trade values over non-trade values.²⁸³ Given that Guzman himself says the WTO lacks the expertise and will to study non-trade issues, it would seem the suspicions of environmental groups are well founded. Guzman offers two possible solutions. One would be for a contraction of the scope of the WTO so that other laws governing non-trade issues would take precedence over WTO regulations and agreements. The alternative strategy would be to expand the WTO to add separate organizations to handle non-trade issues such as human rights or the environment.²⁸⁴ This seems to confuse the issue, however, as so-called “non-trade” issues are actually human rights abuses that are an inherent part of the trading process, and cannot really be separated from the trade agreements that make such abuses possible. If a local merchant is selling stolen goods, the fact that the goods are stolen is not a separate

²⁸² Andrew T. Guzman, “Global Governance and the WTO,” *Harvard International Law Journal* 303 (Summer 2004): 23.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*, 23-24.

concern from the sale of the goods. When making a transaction, all parties want to be assured that the acquisition of products and their transportation and sale are all made within the scope of the law and morality. On a global scale, too, all participants in trade agreements have a reasonable expectation that the agreements do not rely on theft, destruction of property, or violence to be carried out. At the very least, agreements found to require such abuses should immediately be deemed illegal and voided.

In many cases, concerns for the environment are described as concerns for the general wellbeing of the planet rather than concerns for specific harms against people. In cases where environmental damage is harm to public goods rather than harm to individuals, it may make sense to argue against such issues being part of trade agreements. Nonetheless, from Guzman's perspective, one possible advantage to expanding the WTO to handle environmental issues is that the WTO already exists, so it would not require the creation of another large international organization. If the appropriate experts were brought in, they might win the trust of environmental groups and be able to lead negotiations for agreements on the environment in conjunction with trade negotiations. Negotiations would take place on isolated issues and then undergo a kind of reconciliation with trade negotiations in "Mega-Rounds." Guzman sees the possibility of such reorganization as modest at best, but he suggests that it could work.²⁸⁵ On this point, Peter Singer seems to agree with Guzman, saying,

The WTO has up to now been dominated by neoliberal economic thinking. With some signs that the WTO is willing to rethink this approach, it is possible to imagine a reformed WTO in which the overwhelming commitment to free trade is replaced by a commitment to more fundamental goals. The WTO could then become a tool for pursuing these objectives. There are even clauses in the GATT

²⁸⁵ Ibid., 24.

agreement that could become the basis for affirmative action in trade, designed to help the least developed nations.²⁸⁶

It might be that Guzman's proposal could be effective, but those who are concerned about protecting workers, human rights, and the environment will still hold the WTO in suspicion. Guzman underestimates the problem. Criticisms of the WTO are not only that it fails to protect the environment, but that it has blocked others from attempting to do so, accusing them of creating trade barriers. In *One World*, Peter Singer discusses some of the controversies surrounding the WTO.²⁸⁷ In 1999, the WTO published *10 Common Misunderstandings about the WTO*. One of the misunderstandings said, "In the WTO, commercial interests take precedence over environmental protection."²⁸⁸ As an explanation of the misunderstanding the publication adds, "What's important in the WTO's rules is that measures taken to protect the environment must not be unfair. For example, they must not discriminate. You cannot be lenient with your own producers and at the same time be strict with foreign goods and services."²⁸⁹

Singer also quotes from a Ministerial Declaration from the 2001 meeting in Doha, which says:

We recognize that under the WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO agreements.²⁹⁰

²⁸⁶ Singer, *One World*.

²⁸⁷ Ibid.

²⁸⁸ Ibid., 57.

²⁸⁹ Ibid.

²⁹⁰ Ibid., 58.

Singer cites the dispute over the U.S. Marine Mammal Protection Act that sought to prevent dolphins from drowning when caught in tuna nets. The act applied to both foreign and domestic companies. When Mexico complained to GATT (General Agreement on Tariffs and Trades), the GATT panel concluded that the U.S. could not ban tuna imports from Mexico unless it was based on the quality of the product, not the process of producing it.²⁹¹ The WTO claims that if the U.S. were allowed to embargo products based on cruel or environmentally damaging production, it would give an easy way to create protectionist policies toward countries that may not be able to afford to implement such protections.²⁹²

Without the WTO rules, it would be possible for other countries to refuse to import products that were processed in a way damaging to the environment. If the major importers of copper and gold, for example, all agreed to do this, then all mining companies would have to have the same controls. This would level the playing field and prevent a race to the bottom. If all companies were required to protect the environment, it should be possible to generate profit in a manner that is humane and sustainable.

The same would be true for establishing minimum standards for workers, but critics of the WTO from poorer countries often protest that rich countries will demand high standards that poor countries cannot meet.²⁹³ Singer quotes Vandana Shiva as saying, “Social clauses make bed-fellows of Northern trade unions and their corporations to jointly police and undermine social movements in the South.”²⁹⁴ If these types of policies are put in place, it is the transnational corporations doing business who should

²⁹¹ Ibid., 59.

²⁹² Ibid., 60-62.

²⁹³ Ibid., 93-94.

²⁹⁴ Ibid., 94.

bear the cost of the improvements. If small manufacturers or producers in developing countries cannot afford to make improvements to the workplace or surrounding conditions, trading partners should share the costs until everyone reaches a minimum standard. A sharing of costs among all trading partners in the WTO should be able to establish a global minimum standard for protection of workers and the environment. This could be covered as an expense of doing business rather than as a tax, dividend, or reparation just as the cost of meeting minimum working standards is borne by businesses within national boundaries.

Singer believes it is sometimes justifiable for countries to attempt to exert control to prevent human rights abuses in other countries. He notes that countries sometimes intervene militarily to prevent violations of human rights, so it is reasonable to expect that trade restrictions are at least as justified as military intervention.²⁹⁵ Singer also suggests that it could help the situation if we could establish transnational bodies to decide such issues but only if those bodies could become more democratic and “responsive to public opinion.”²⁹⁶ Guzman also suggests making the WTO more democratic, and he notes that individuals have no direct input to the WTO and that those who negotiate at the WTO are not elected but are representatives of their governments. However, he claims the participants in WTO negotiations are accountable to elected representatives who appoint them (at least those who came from democratic countries).²⁹⁷

It is tempting to say that more powerful states such as the U.S. should intervene to protect the interest of small and vulnerable countries with citizens who are desperate for

²⁹⁵ Ibid., 64.

²⁹⁶ Ibid., 65

²⁹⁷ Guzman, 19.

jobs and economic development, but this would be condescending and incorrect. Wealthy nations are also vulnerable to corporations promising high-paying jobs, even if the corporations are known polluters. In fact, corporations are often lured by tax incentives and other enticements to stay in a community or country. For example, ExxonMobil paid no U.S. income tax in 2009.²⁹⁸ I am sure that many living along the Gulf Coast are concerned about losing oil industry jobs if offshore drilling is not continued. After the BP oil spill in 2010, many were concerned about the effect on the environment, but many people living on the coast were primarily concerned over whether they may lose their jobs. Many workers along the coast were opposed to moratoria or stricter controls on drilling.

The claim that the WTO should not be concerned with protecting human rights because they are “non-trade” issues is specious at best. International law recognizes basic human rights, and no one should be permitted by any legal agreement to harm others. Trade agreements brokered with the knowledge that human rights may be violated are illegal and unconscionable. Arguments that the WTO should not be concerned with so-called “non-trade” issues promulgates the notion that activists are demanding the WTO create some kind of utopia, not recognize basic human rights.

INTERNATIONAL CRIMINAL COURT

An article from the BBC on May 31, 2010 reported on the progress of the International Criminal Court. According to UN Chief Ban Ki-moon, the ICC has

²⁹⁸ Annalyn Censky, “Tax Bills for 5 Corporate Giants,” *Cnnmoney.com*, April 16, 2010, http://money.cnn.com/galleries/2010/news/1004/gallery.top_5_tax_bills/index.html.

curtailed impunity and had a positive effect on government behavior.²⁹⁹ All its current investigations are in Africa. This information was delivered at a summit and may be overly optimistic. Regardless, it is remarkable that the court has been able to have an effect at all in only eight years. This brings two possibilities to mind. One is that when the court is fully functional, well funded, and better able to handle more than the most urgent situations, it should be able to investigate human rights abuses by corporations. The actions of many transnational corporations constitute major human rights violations. Even if the court issued statements of censure, it might help to curtail impunity among corporate executives.

The other possibility would be to create an international court specifically to handle cases of corporate malfeasance. Jose Alvarez and Robert Howse would consider this the ultimate “outsider” organization. They believe modifying the WTO to make it more open to outside voices, more democratic, and more responsive to public concerns is preferable to establishing another international court, but they do not express optimism that it will happen. They say, “Despite this . . . veto power, the constituencies in question will still not be permitted into the negotiating room as members or delegations, or even as observer/advisers with whom draft proposals are shared for reaction, and so forth.”³⁰⁰ This suggests two possibilities: 1. An external agency such as an international court could be created to either negotiate the non-trade issues for global businesses and remediate violations, or 2. The WTO could be democratized to the point that environmental and

²⁹⁹ “World Court ‘Altered Behaviour’,” *BBC*, May 31, 2010, sec. Africa, <http://news.bbc.co.uk/2/hi/africa/10196907.stm>.

³⁰⁰ Jose E. Alvarez and Robert Howse, “From Politics to Technocracy--And Back Again: The Fate of the Multilateral Trading Regime,” *American Journal of International Law* 94 (January 2002): 18.

human rights protections could be put in place for all trade agreements. Again, even if there is a “race to the bottom,” the bottom could be lifted to some minimal standard.

In *Global Obligations for the Right to Food*, Mike Brady examines ways to hold corporations accountable for the right to food.³⁰¹ He calls for collective action from the global community and says that an international court could have the power to imprison executives of companies that are guilty of serious violations.³⁰² He does note that in the United Kingdom, the Corporate Responsibility Coalition (CORE) successfully lobbied for a change in laws that require businesses to report on their social and environmental impacts.³⁰³ Groups such as CORE can have an impact, and activists should be heartened by the success of CORE.

Brady’s specific recommendations call for UN bodies to develop proposals for regulation in consultation with health experts, nongovernmental organizations, and business interests. Based on these proposals a global regulatory agency should be created. This global authority would then specify what information corporations must provide to create transparency and then the global authority would accept complaints of human rights violations from state and non-state actors. In addition, national governments working collectively and individually should develop necessary regulations to compel corporations to respect the right to food. Nongovernmental organizations should continue to monitor the activities and impact of corporations, and the United Nations Standing Committee on Nutrition should endorse all these recommendations.

³⁰¹ Mike Brady, “Holding Corporations Accountable for the Right to Food,” in *Global Obligations for the Right to Food*, ed. George Kent (Lanham, Md: Rowman & Littlefield Publishers, 2008), 89-120.

³⁰² Ibid. 109-110.

³⁰³ Ibid. 113.

CONCLUSION

Joseph Stiglitz makes the argument that globalization will ultimately be good for poorer countries and wealthy countries alike if the right procedures and regulations can be put in place.³⁰⁴ To illustrate how desperately local governments want foreign investment and the jobs it would bring, he says, “At one point, Papua New Guinea passed a law making it illegal to sue international mining companies outside the country even for the enforcement of health, environmental, or legal rights, fearing that such suits would discourage investment in the country.”³⁰⁵ When countries are desperate for foreign investment, they will make almost any concession to foreign companies promising high-paying jobs and even improvements to infrastructure. Unfortunately, the mistake only becomes obvious when it is too late to correct it. In a fair trade, the citizens would receive both high-paying jobs and a share of the profit from the sale of their natural resources. Greater transparency, accountability, and mechanisms for legal recourse can help ensure that globalization benefits the least powerful persons affected by trade.

In *Frontiers of Justice*, Martha Nussbaum provides ten principles for the global structure.³⁰⁶ Her fourth principle states, “Multinational corporations have responsibilities for promoting human capabilities in the regions in which they operate.”³⁰⁷ She says that although corporations are driven by the profit motive, that does not stop them from donating fairly large sums of money to charities domestically, so they obviously are able to consider social good in their business decisions. Even so, there is no “generally

³⁰⁴ Stiglitz, *Making Globalization Work*.

³⁰⁵ Ibid., 195.

³⁰⁶ Andrew C. Mertha, *China's Water Warriors: Citizen Action and Policy Change* (Ithaca, NY: Cornell University Press, 2008).

³⁰⁷ Ibid. 317.

accepted standard of moral responsibility.”³⁰⁸ In order to have a minimally just society, she says we must have a “clear public understanding that part of doing business decently is to devote a substantial amount of one’s profits to the promotion of education and good environmental conditions in the regions where the corporation does business.”³⁰⁹ She declares that corporations should go beyond what the law requires, especially in the case of poor countries that may want to relax regulations in order to attract investment. As poor countries are not in a position to make demands on corporations, she says the responsibility rests with members of the corporations themselves, their lawyers, and their consumers. In addition to the moral demand that corporations promote education and the environment, she says it is in their best interest to have educated and healthy workers.³¹⁰ Providing protection from investor lawsuits will help make Nussbaum’s dream of a just society achievable.

An economic system that benefits the wealthy at the expense of the most vulnerable is indefensible and unsustainable. While libertarians and others may argue that it is not the responsibility of trade organizations or legislatures to guarantee improvements in the lives of the weak, it is certainly the responsibility of all trading partners, trade organizations, and legislators to ensure that trading arrangements do not make anyone worse off. Recognizing that corporations must make a profit to compete in the global market does not entail acceptance of exploitation and abuse. It is essential that all laws, regulations, and guidelines related to trade recognize basic human rights and the full autonomy of those affected by a global economic scheme. Affluent nations and

³⁰⁸ Ibid. 318.

³⁰⁹ Ibid.

³¹⁰ Ibid.

corporations must use their power to extend human rights protections to the most vulnerable; otherwise, they will appear to be exploiting those abuses for the sake of profit. With a consistent moral vision and collective will, a more just and humane economic system is attainable. The examples given in this chapter come from a variety of industries and involve divergent practices, but they all have one thing in common: an unequal respect for the autonomy and dignity of individuals based on their status in society. Simone de Beauvoir said, “Capitalism sets itself up as the regime which is most favorable to production; the colonist is the only one capable of exploiting the wealth which the native would leave fallow. Oppression tries to defend itself by its utility.”³¹¹ The poor and indigenous people, who likely would not consider themselves poor, are not treated as fully autonomous and rational persons. Rather, they are regarded as resources to be exploited, whether it be for inexpensive farm labor or research subjects. Worse, some individuals are seen as obstacles to production, as in the case of those unfortunate to live on and utilize land rich with oil or in the path of hydroelectric dam construction. When the rights of all people are considered equal to the rights of corporate executives and planners, just and humane trade practices will follow.

³¹¹ Simone de Beauvoir, *The Ethics of Ambiguity* (Secaucus, NJ: Citadel Press, 1948), <http://www2.webster.edu/~corbetre/philosophy/existentialism/debeauvoir/ambiguity.html>.

SECTION III: RESISTANCE AND HUMANISTIC RESPONSE

Chapter 5: Activism and Justice

INTRODUCTION

In this section of the dissertation, I move from the discussion of philosophy and policy to an interdisciplinary examination of the role of the individual's voice and resistance in establishing a more humane world. This chapter will explore the actions individuals can take to counter the power and influence of corporations. I will examine the effectiveness of social movements that include drives for aid through charitable donations and protest movements. Just as corporations provide both benefits and harms to society, social movements, intended as counterweights to the harms of corruption and human rights abuses, are fraught with risks of unintentional harm, corruption, and unreliable partners. Just as globalization of trade can bring many benefits to poor countries through economic development along with harms from abusive business practices, aid organizations and other non-governmental organizations can bring both benefit and harm. Protest movements can also be counterproductive. My argument will not be that social movements are good in response to the evil of corporations. Rather, I argue that social movements are necessary to give voice not only to victims of human rights abuses but also to those who see the possibility of a better and more productive world. Without resistance from social movements, the libertarian narrative is left unchecked and transnational corporations are left to act with impunity.

Arguing that those in affluent countries are responsible for the harms created through an unjust social order, Thomas Pogge argues that those in poverty have a claim against all who participate in a global structure that deprives some of access to basic

necessities. He says the affluent have an obligation “not to cooperate in upholding it [institutional order] unless they compensate for their cooperation by protecting victims or by working for its reform.”³¹² Individuals could work for reform by drafting legislation, directing trade negotiations, donating money, writing letters, or participating in physical protests. Not everyone has the same level of influence or expertise, of course, but when one willingly and knowingly benefits from the harms of an unjust social order that violates the autonomy of individuals, efforts to remedy human rights abuses is obligatory. Inasmuch as many people are unaware of the harm caused by current policy and practice, raising awareness may be the most critical task for those who take this obligation seriously. While some may feel that current practices are the best way to improve global conditions, many are uninformed about global conditions. More people are likely to work to change systems that cause suffering when they are aware of the suffering and ways to alleviate it.

AID: BENEFITS AND RISKS

When people become aware of widespread hunger, disease, and poverty, it may seem the obvious solution is to provide financial aid to impoverished countries and their people. Indeed, if someone has become so hungry that he or she cannot even walk, providing economic opportunity to the person seems pointless at best. By the same token, if someone is suffering from a life-threatening disease, providing healthcare is the only kind of assistance that may help that person in that moment. In addition, many of us feel it is our duty to rescue those who are dying from preventable causes, though libertarians would disagree entirely unless they became convinced that they were responsible for

³¹² Pogge, *World Poverty and Human Rights*.

causing the premature deaths. Nonetheless, rescue aid is the only way to keep people who are ill or starving alive. This type of aid does nothing to create a just social or economic order, but it prevents death from robbing many of *all* their human capabilities.

Peter Singer and Peter Unger have both presented persuasive arguments that we do have obligations to prevent deaths when possible. Singer famously argues that someone who walks past a shallow pond and notices a child drowning is obligated to save the child even if it means being late for a meeting or ruining some expensive clothing in the process. Singer feels it is uncontroversial to say, “If it is in our power to prevent something very bad from happening, without thereby sacrificing anything of comparable moral significance, we ought to do it.”³¹³ He states that even libertarians should accept this claim because it does not require any violation of individual rights. Singer’s argument, ultimately, is that giving up quite a bit of money is not all that significant for most people living in affluent countries, so people who are well off are morally obligated to give away much of their money. He suggests giving money to groups such as Oxfam and Care, who he says do a good job of getting the money to the people who need it. For people who are wealthy, giving money is likely the easiest way for them to help alleviate poverty. Other alternatives such as traveling to other countries to teach or help construct infrastructure would require much greater sacrifice. In Singer’s eyes, donating money is expedient and relatively painless.

Unger also challenges justifications for not giving to people in need. Unger compares our reaction to a person who refuses to save someone’s leg in order to avoid ruining the upholstery in an expensive sedan to throwing away an appeal for donations to

³¹³ Peter Singer, *Practical Ethics* (New York, NY: Cambridge University Press, 1999), 229.

prevent the deaths of children.³¹⁴ Unger expects our intuition to say that the case of the sedan is far worse than the case of the envelope, but he holds that letting 30 children die is worse than allowing one person to lose a leg, so, again, we are obligated to give away substantial sums of money to save the lives of vulnerable children. While many may not agree with all the conclusions of Singer and Unger, the argument that we ought to prevent death when it is relatively painless to do so is compelling for many readers. The remaining question concerns how best to prevent death through donations. Unger recommends donating money primarily to UNICEF in order to preserve the lives of children.

One reason (or excuse, some would say) for not giving money to the charities named by Singer and Unger is that the money is likely to go to thieves, corrupt politicians, or dishonest charities. Certainly, some money donated has ended up in the wrong hands, but this is not justification enough for not donating money. Before giving money, potential donors can make their own efforts to verify that the organizations in question can show empirical improvement in the lives of their beneficiaries. When people are near death, especially children, rescue aid is the only hope they will have for survival. Development aid, which is aimed at improving economic and political systems, is more difficult to evaluate. Rescue aid is successful when it keeps people alive; development aid is successful when it improves living conditions in a society, which is more difficult to measure and track. Singer and Unger both make arguments that are compelling for rescue

³¹⁴ Peter Unger, "Living High and Letting Die (excerpt)," in *Global Ethics: Seminal Essays*, ed. Thomas Pogge and Keith Horton (St. Paul, MN: Paragon House Publishers, 2008), 334-335.

aid, but they do not provide an adequate approach to create permanent solutions to global inequality.

In his philosophical arguments, Peter Singer created an ethical standard that most people find impossible to meet as it requires us to give away most of our disposable income to alleviate global poverty. Recognizing that many people want to help without severely reducing their own standards of living, Singer wrote *The Life You Can Save* to offer concrete solutions to global poverty without causing people to give up in despair. In the preface, he says:

I'll consider the reasons, some relatively convincing, others less so, that we offer for not giving, as well as the psychological factors that get in our way. I'll acknowledge the bounds of human nature and yet provide examples of people who seem to have found a way to push those bounds further than most.³¹⁵

In the book, he provides what he sees as a realistic approach to increase aid to the desperately poor. He offers evidence that aid actually works and gives examples of programs that create a culture of giving. He also gives advice on evaluating the effectiveness of charities and improving aid. Acknowledging fundamental problems with aid, he says we should not abandon the practice of providing aid; rather, we should make structural changes that will help aid be more effective.

As an example of aid that can be harmful, Singer says that some countries give aid that is tied to agreements to market goods from affluent countries in poorer countries. For example, he says that \$2 billion worth of food aid requires that the food be grown in the United States, which helps American farmers but is more expensive than food grown in developing countries. It also is damaging to local markets in countries desperately

³¹⁵ Peter Singer, *The Life You Can Save: Acting Now to End World Poverty* (New York, NY: Random House, 2009), xiv.

needing economic opportunities. William Easterly and Claudia R. Williamson, in their discussion of best practices for aid agencies, also note the problems with food aid, saying, “Food aid for the US is still tied to purchases from US farmers, which causes long delays and harms local food producers during food emergencies. It would be much better to use cash to buy food from local or nearby producers to avoid these problems.”³¹⁶ Donating food from foreign sources, even on an emergency basis, can put local producers out of business. Even when the emergency is over, the local producers are unable to resume production and benefit the local economy. Acknowledging these problems, Singer still insists it is wrong to reject all aid as ineffective.³¹⁷ However, it is difficult for the average individual donor to evaluate the effectiveness of aid. In their study, Williamson and Easterly note, “There is no disaggregated data available on the impact of aid on the beneficiaries, which would be the most desirable measure for the quality of aid.”³¹⁸ While they are writing primarily about government and United Nations aid agencies, the problems they encounter are difficulties faced by anyone attempting to evaluate the effectiveness of aid. They say in their conclusions, “The aid data is of extremely poor quality, and what data is available shows very poor practices. Both are signs of a fundamental lack of accountability of the official aid system to any kind of independent monitoring.”³¹⁹ Independent aid agencies have even less oversight, so monitoring the effectiveness of their aid is a greater challenge still. When individuals express a fear that their donations may not actually help people, their fears are not entirely irrational.

³¹⁶ William Easterly and Claudia R. Williamson, “Rhetoric Versus Reality: The Best and Worst of Aid Agency Practices,” *World Development* 39, no. 11 (November 2011): 1940.

³¹⁷ Singer, *The Life You Can Save: Acting Now to End World Poverty*, 108-109.

³¹⁸ Easterly and Williamson, 1930.

³¹⁹ *Ibid.*, 1946.

Acknowledging the problems with evaluating the effectiveness of aid and how it actually affects the quality of life for recipients, Stephen Kosack attempts to determine what conditions enable aid to promote human flourishing.³²⁰ Inspired by the thinking of Amartya Sen, he defines improvements to quality of life according to human development, which focuses on improvements in health and education with less emphasis on improvements to a country's overall wealth.³²¹ As Sen and others have noted, simply increasing the wealth of a country does not automatically improve the ability of its citizens to enjoy life; otherwise, all aid would be effective so long as it increased the coffers of various states.

Kosack finds that aid has a positive effect in democratic states and a negative effect in non-democratic states. This does not mean that aid itself makes people worse off in non-democratic states; it is possible that people's lives would improve with or without aid, but aid reduced the speed or strength of the improvements. Further, Kosack finds that without aid, democracies experience slower improvements than autocratic governments.³²² Autocratic governments have the freedom to make decisions without concern for the opinions of voters and may be more efficient as a result. Kosack further makes the point that poor democratic governments are at risk without aid: "If . . . the government's resources are meager, its investments in education, health care, and other social services may make no appreciable impact on quality of life . . . In this case, a poor

³²⁰ Kosack Stephen, "Effective Aid: How Democracy Allows Development Aid to Improve the Quality of Life," *World Development* 31, no. 1 (January 2003): 1-22, doi:10.1016/S0305-750X(02)00177-8.

³²¹ Ibid., 2.

³²² Ibid., 11.

democracy might not be able to develop as quickly as a poor autocracy.”³²³ For poor democracies, only aid can enable them to meet the demands for social services and maintain enough stability to grow. Unfortunately, some of the poorest people in the world live in non-democratic countries where aid is less effective. As noted in previous chapters, autocratic countries are also where globalized trade is most likely to lead to human rights abuses. For this reason, both economic development and financial assistance must be accompanied by efforts to promote democracy and autonomy. Aid will only be effective, Kosack claims, if efforts to promote democratization are also effective.³²⁴

Economist Dambisa Moyo finds the argument that we are morally obligated to help compelling but does not find the argument for aid so compelling. She disagrees that aid is the way to improve the lives of the world’s poorest people. She says,

Is there a moral obligation for Western societies to help poor countries? Clearly morality claims hold sway, but surely one would expect Western moralizers to adopt policies which help those in need rather than hinder them in the long run and keep them in a perilous state of economic despair.³²⁵

She rejects most forms of aid as being counterproductive. While acknowledging claims that aid has saved people from starving, she says that merely sustaining life should not be the goal of any aid program and that we have no way of knowing how many would have died if alternative strategies had been implemented. She does see room for certain kinds of aid, however; she specifies, “Although exceptions would be made for isolated emergency relief such as famine and natural disasters, aid would no longer attempt to

³²³ Ibid. 12,

³²⁴ Ibid., 14.

³²⁵ Dambisa Moyo, *Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa* (New York, NY: Farrar, Straus, and Giroux, 2009), 150.

address Africa's generic economic plight."³²⁶ While Singer pointed out some problems with government restrictions on aid, Moyo highlights problems that can arise from even those with the purest desire to alleviate suffering. Moyo offers the response to malaria in Africa as an example. In order to reduce the incidence of malaria, people in the west correctly believed that more mosquito nets were needed in the region. Once well-meaning philanthropists raised money for 100,000 mosquito nets and sent them to Africa, however, they failed to realize that they had put African mosquito net makers, who also employed a number of workers, out of business. Further, in a few years the donated nets will be damaged and no one will be available to replace them, making the situation worse.³²⁷

Moyo's warnings are enough to make any potential donor hesitate before sending off a check. Singer provided some tools for evaluating the effectiveness of aid, but relief or rescue aid is surely not the answer for a long-term solution. Average citizens who lack knowledge of economics or global legal systems might feel paralyzed by the seemingly contradictory information. This may be why donations to relief organizations are extremely generous during crises such as wars and natural disasters and lower when organizations ask for ongoing and prolonged aid.

PROTEST MOVEMENTS

In this section, I examine whether and how public resistance may be effective in changing a global corporate culture that harms individuals through unfair labor practices, environmental degradation, and abusive working conditions. Many argue that protests, civil disobedience, and direct action are either unjustified or ineffective and should

³²⁶ Ibid., 144.

³²⁷ Ibid., 44.

therefore be avoided. I argue, on the contrary, that such movements are often the only way forward and look at factors that help determine efficacy of resistance.

When I first conceived this chapter, I intended to suggest that altering corporate culture would require a global movement of resistance to hold corporations accountable for their violations of human rights. On September 17, 2011, the Occupy Wall Street movement started and quickly spread across the globe. For a moment, I thought this might be such a movement that could set the world on a course toward greater civility in how we conduct our business, but it was soon apparent that the Occupy Wall Street movement did not represent a beginning of resistance but only a step in an ongoing process. The protesters in New York did not start a global movement—they joined one.

What was new, however, was the participation of so many different groups of people in the United States. Activists in the United States suffer from extreme forms of factionalism, and environmentalists, labor, and students rarely show solidarity and participate together in political action. The Occupy Wall Street movement provided a forum for these disparate groups to coordinate and collaborate. By refusing to declare a specific list of demands, they created a forum that enabled much greater cooperation. Interestingly, the Tea Party was scornful of the Occupy Wall Street protesters even as many of their goals were similar. While the Tea Party may not have recognized the shared goals they had with the Occupy movement, people in government and financial services realized that more favors to the financial services industry would provoke the ire of both the Tea Party and the Occupy movement. An unwilling but strategic alliance may be more powerful than amicable joint efforts. The confluence of resistance from the left and right is far more powerful than an outcry from any single segment of society.

John Rawls said that civil disobedience is called for when there is a degree of consensus regarding injustice. He noted that in an extremely fragmented society, the optimal conditions for civil disobedience do not exist, but neither is a complete consensus necessary for civil disobedience to be effective. A degree of what Rawls labels “overlapping consensus” can fulfill the conditions for justified civil disobedience. While many in the United States may be loathe to admit it, such a consensus may be emerging. A significant change in perception enabled the growth of solidarity among various movements; in the past, many anti-globalization and human rights activists in affluent countries perceived themselves to be protesting on behalf of victims in other countries. Unchecked income inequality, lack of access to education and healthcare, and degraded environmental and social conditions in the United States have prompted many young people to resist on their own behalf.

Whether protesting on their own behalf or in defense of others, social movements often grow out of a feeling that individuals should do what they can to create systems of justice, even when their ability to effect change is limited. Echoing and paraphrasing Thomas Pogge, Iris Marion Young argues, “Affluent people in affluent countries, in particular, participate in the imposition of injustice to the extent that we are supporters of an benefit from a global institutional order that helps cause and perpetuate world poverty and inequality.”³²⁸ She follows by saying, “We who share responsibility ought to take action, but it is up to us to decide what is reasonable for us to do, given our abilities and our particular circumstances.”³²⁹ She also says, “We should not be blamed or found at fault for what we try to do to rectify injustice, even if we do not succeed . . . however, we

³²⁸ Young, *Responsibility for Justice*.

³²⁹ Ibid, 143.

can and should be criticized for not taking action, not taking enough action, taking ineffective action, or taking action that is counterproductive.”³³⁰ Unfortunately, many activists with the best intentions might be ineffective and counterproductive, but criticism enables progress and improvement.

Young cites the movement against sweatshop labor as an example of progress, even if work remains to be done. She notes that when the anti-sweatshop movement began, retailers such as Nike, Reebok, Benetton, the Gap, Walmart, and others denied responsibility for working conditions in the garment industry. However, public pressure and information campaigns brought greater attention to the business practices of retailers and resulted in changes in corporate policies. Some reject the changes as insubstantial, but public awareness and disapproval has made retailers more aware of how their practices affect their public image. Young says, “Large retailers cannot be counted on to promote the interests of garment workers; the movement must continue to demand information about their activities and publicize it.”³³¹ Businesses often argue that they must produce their products as cheaply as possible to remain competitive (i.e., they must race to the bottom). She says that governments ought to be pressured to ensure there is a “human rights floor below which wages and working conditions cannot fall.”³³² In this way, no one will need to fear being undersold by those who are willing to violate human rights in the interest of profits. Retailers realize their lack of concern for the plight of workers can affect their sales.

³³⁰ Ibid.

³³¹ Ibid., 134.

³³² Ibid., 132.

Martha Nussbaum also sees protest as an obligation of the global community to create conditions conducive to justice. Nussbaum's fifth principle for the global structure says, "The main structures of the global economic order must be designed to be fair to poor and developing countries."³³³ She acknowledges that there can be much debate about how to create a fair global economy, but she also says the IMF and major trade agreements have not been informed by serious ethical reflection. She sees that many thoughtful people within the World Bank, for example, have tried to devise changes that will be fairer, but bureaucratic structures make it difficult to implement changes quickly.³³⁴ She concludes this section by saying, "The world community must continue to apply pressure to these agencies, since voices of protest have been quite important in getting the voices of deprived people to be heard. In the area of trade, particularly, protests and public pressure are likely to be the only mechanisms that will successfully promote attention to urgent moral norms."³³⁵ She recognizes that we need changes in policy, but she also sees that policy changes will only come as a result of deeper moral vision. Such vision is possible only with greater involvement and education of the global community. Many consumers trust that their products were produced fairly and ethically. When they learn of abusive conditions, they react negatively and change their habits.

As consumers and as citizens of the world, we are all responsible for the human rights abuses incurred in the production of the products that maintain our lifestyle. In discussions of globalization, the phrase "race for the bottom" occurs again and again. People with a heightened sense of moral responsibility will not be willing to enter a race

³³³ Nussbaum, *Frontiers of Justice*.

³³⁴ *Ibid.*, 319.

³³⁵ *Ibid.*, 319.

to the bottom. Making profits at the expense of human life and devastation should be a source of shame, not pride. Yet, current systems reward only the generation of profits and provide few sanctions against ruthless business practices. If we want to live in a world with any sense of decency at all, we must look squarely at the consequences of our actions, take responsibility, and do what we can to remediate them. We must reevaluate what it means to be a good person, to live a good life, and to be part of a community. We must become engaged in the global community, question our consumption, and contemplate our future. If globalization is to create a single economy, it must also create a single moral community.

In order to create a single moral community, many groups with shared goals but diverging views of the world must coalesce for meaningful action. For example, some environmental activists speak from concern for preserving the environment while the focus of others is on the injustice of the negative health effects of pollution. Highlighting changes in environmental activism, Giobanna DiChiro describes the efforts of environmental justice groups in “Nature as Community: The Convergence of Environment and Social Justice.”³³⁶ Drawing a distinction between groups such as the Sierra Club and community-based environmental justice groups, DiChiro says that environmentalism tends to be associated with people of privilege wishing to protect pristine wilderness areas that do not directly impact the lives of people; however, the environmental justice movement has risen in communities affected by poisoning of the environment and the people living and working in it. We get an idea of what DiChiro means when we see how others respond to the environmental movement. In *People or*

³³⁶ Stiglitz, *Making Globalization Work*.

Penguins: The Case for Optimal Pollution, William F. Baxter writes, “Each individual is free to cast his vote so as to benefit sugar pines if that is his inclination. But many of the more extreme assertions that one hears from some conservationists amount to tacit assertions that they are specially appointed representatives of sugar pines.”³³⁷ If Baxter were to confront people suffering from chronic illness resulting from pollution, he could not reasonably deny that they were “specially appointed representatives” of themselves. The people organizing in environmental justice groups are usually directly affected by the environmental degradation they are seeking to stop. DiChiro says environmental activists do not identify with established environmental groups seeking to save wildlife such as whales from extinction. Rather, they see themselves as civil rights or social justice activists.³³⁸ Of environmental justice activists, she says,

Often the only *functional* relationship with nature for many city-dwelling people or those living near toxic waste sites becomes the core of their political strategy. In other words, their knowledge of the destruction of nature and natural systems in their local communities may function to mobilize them to act on these negative experiences.³³⁹

DiChiro primarily describes the activities of environmental justice activists in cities in the United States. The most polluted areas of the United States tend to be urban areas where the poorest citizens live and work.

DiChiro sees it also as a racial movement, as affluent white residents tend to live further away from refineries and manufacturing plants that cause much of the pollution we experience in the United States. DiChiro has perhaps not visited the areas east of

³³⁷ William F. Baxter, “People or Penguins: The Case for Optimal Pollution,” in *Exploring Ethics: An Introductory Anthology*, ed. Steven M. Cahn (New York, NY: Oxford University Press, 2009), 346.

³³⁸ *Ibid.*, 125.

³³⁹ *Ibid.*, 135.

Houston along the ship channel. To be sure, the neighborhoods along the ship channel are working class, but many races are represented, including white workers. Historically, areas such as Pasadena and Channelview were predominately white. The increased diversity of those areas now only reflects the increased diversity of the area in general. It is the working class, of whatever race, who are at greatest risk of environmental injustice. I do not deny unequal distribution of poverty among various racial and ethnic groups, of course, but the effects of poverty are remarkably consistent across all groups. Working in the greater Houston area, but based just east of Houston's downtown, Texas Environmental Justice Advocacy Services works to "promote environmental protection through education, policy development, community awareness, and legal action."³⁴⁰ Like other environmental justice groups, TEJAS is made up of people who live and work in the communities directly affected by environmental hazards. When members of such groups complain of environmental contamination, they are speaking up for their own health and safety, confounding a stereotype of environmentalists as those who put the environment ahead of human needs. Community members show that putting humans first entails protecting public health by keeping the environment inhabitable or by doing everything possible to restore healthy conditions.

Thomas Hall and James Fenelon analyze indigenous movements in opposition to anti-globalization movements in a manner that is similar to DiChiro's comparison of community-based environmental justice movements to mainstream environmentalism. Hall and Fenelon point out that indigenous groups have fought globalization for

³⁴⁰ "Texas Environmental Justice Advocacy Services," *Facebook*, n.d., <http://www.facebook.com/pages/Texas-Environmental-Justice-Advocacy-Services/191569697537978>, accessed March 5, 2012.

centuries. For them it may seem that anti-globalization protesters are latecomers and outsiders to an ongoing struggle for autonomy that is felt as permanent and necessary aspect of life as a sovereign people. Hall and Fenelon say indigenous groups are not interested in reforming the system; rather, they are simply preserving their own “political-cultural space” and autonomy.³⁴¹ A consequence of this different perspective, they say, is that “They are often deeper challenges to neoliberalism than other movements.”³⁴² In this case neoliberalism refers to the belief that unregulated market forces should guide trade decisions, not concerns for social justice or the environment. It may be tempting to dismiss the relevance of indigenous movements as being an extremely small part of the overall resistance to globalization but Hall and Fenlon claim there are more than 300 million indigenous people in the world, “approximately the equivalent of the United States, or of Europe.”³⁴³ While some indigenous people resist neoliberalism, their own struggle is rooted in the principles of liberty and autonomy. Describing these principles as the guiding ideas of the struggles of indigenous peoples, Hall and Fenelon say, “Indigenous peoples have the right to decide what, if anything, they will adopt and adapt from state societies and what they will reject.”³⁴⁴ Libertarian ideas of freedom and autonomy can only be used to promote the abuses of neoliberalism if indigenous people are not recognized as autonomous people, just as slaves are not recognized as being fully human.

³⁴¹ Thomas D. Hall and James V. Fenelon, “Indigenous Movements and Globalization: What Is Different? What Is the Same?,” *Globalizations* 5, no. 1 (March 2008): 1.

³⁴² Ibid.

³⁴³ Ibid., 6.

³⁴⁴ Ibid. 8.

While the differences among groups protesting the effects of neoliberalism trade policies are real and significant, enormous cooperation is both possible and necessary. Environmental justice is a global movement. On May 25, 2010, I attended an event at Rice University titled “The True Cost of Chevron: Public Forum on Struggle and Success.” For approximately two hours, I listened to the stories of people affected by environmental degradation they say is caused by Chevron. I heard the stories of people from the United States (including Alaska), Angola, Australia, Burma, Canada, Colombia, Venezuela, Ecuador, Iraq, Kazakhstan, Nigeria, and the Philippines. Many of the speakers were ill or had family members who had been ill or died. Their stories were moving and compelling. It was their intention to present these stories at the Chevron shareholders meeting on May 26, 2010. Although they had shareholder proxies, most of them were denied entry, and five were arrested.³⁴⁵ One of the people arrested was author and activist Antonia Juhasz of Global Exchange (she is actually a shareholder, not a proxy holder as the others were). Although it would be a major overstatement to say activists are winning in their struggle with Chevron, Juhasz put a personal face on the suffering caused by pollution around the globe. The management of Chevron absolutely does not want the stories of these affected individuals shared. Powerful economists, philosophers, and policy makers at the WTO and other organizations may eventually implement regulations that will limit the damage corporations can do, but it is the people on the ground who will provoke sympathy and outrage at injustice, and that is the only force that will motivate true changes. DiChiro’s comparison of environmental justice

³⁴⁵ Giovanna DiChiro, “Nature as Community: The Convergence of Environment and Social Justice,” in *Privatizing Nature: Political Struggles for the Global Commons*, ed. Michael Goldman (New Brunswick, NJ: Rutgers University Press, 1998).

activists today to civil rights activists of the 60s is appropriate and accurate. We must not forget the successes of the civil rights workers of the past when thinking of the major obstacles facing activists today.

Strategic planning is essential to any successful social movement, of course. David Meyer has analyzed how protesters make use of political opportunities to promote their causes.³⁴⁶ One of the questions he explores is how political actors conceptualized their goals and political opportunities. He notes that some researchers view political actors as self-aware entrepreneurs looking for signals from society as to what political ideas may take hold and foment a movement. The opposing view is that political actors, like many small-business owners, are unduly optimistic about the popularity of their ideas and ignore any evidence that might discourage them from trying to promote their cause. These political actors simply keep trying regardless of their level of success. Meyer notes that the two views are not entirely incompatible. He says, “Whereas committed activists may always be trying to mobilize on behalf of their causes, savvy ones adjust rhetoric, focus, and tactics to respond to political circumstances.”³⁴⁷ It is the state, however, that can motivate widespread rebellion and help people to coalesce under a particular identity. Through policies that are repressive, oppressive, or simply unfair, the state creates “oppositional identities” that motivate individuals to demand changes to policy and practice.³⁴⁸ While Meyer’s analysis is cogent and relevant, I feel it is important to point out that many activists feel they are morally obligated to act for change. They do not feel their obligation is reduced in any way by an apparent lack of

³⁴⁶ David S. Meyer, “Protest and Political Opportunities,” *Annual Review of Sociology* 30 (January 1, 2004): 125–145.

³⁴⁷ *Ibid.*, 139.

³⁴⁸ *Ibid.*, 140.

opportunity for success. They keep trying because they feel they must. Two obvious examples are those opposed to abortion and those opposed to experimentation on animals who will likely protest for their causes regardless of opportunity or chances for success.

Some movements are ultimately successful, though, and activists are inspired by the example established in Bolivia. In Cochabamba, Bolivia a shoemaker named Oscar Olivera led indigenous people in a popular revolt against water privatization that came to be known as the first “water war.”³⁴⁹ Under World Bank supervision, the Bolivian government passed a law privatizing the water and awarded a contract to Bechtel. The corporation immediately tripled the price of water and cut off access to anyone who could not pay. The citizens organized and demanded the government cancel its contract with Bechtel. When the government refused, thousands of protesters took to the streets where they were met with Army violence that killed some protesters. On April 10, 2000, the Bolivian government gave in to the protesters demands and told Bechtel to leave the country.³⁵⁰ In a 2001 interview, Oscar Olivera said that even rich condominium owners joined the actions against the water company.³⁵¹ The action worked in large part because almost all the residents of Cochabamba were united against privatization. Despite the use of tear gas and violent repression, the crowd maintained a blockade in the city. Olivera said the protesters learned three things as a result of the struggle:

First . . . It’s the common people who brought justice. Second, I think that all the sense of individualism, the isolation and the fear of the unemployed disappeared under the spirit of solidarity. This is what came out of the self-mobilization of the people. During the worst fighting, there were people who provided water, who

³⁴⁹ Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*.

³⁵⁰ Ibid., 104.

³⁵¹ Oscar Olivera, “The Fight for Water and Democracy: An Interview with Oscar Olivera,” *Journal of Public Health Policy* 22, no. 2 (January 1, 2001): 230.

provided food, who provided transportation, communication, all the elements of a well-coordinated resistance. People were afraid of bullets, but not anymore.³⁵²

The experience in Bolivia showed protesters, governments, and corporations what is possible when citizens unite. As protesters are emboldened by success, governments and corporations prepare for a stronger defense of neoliberal interests.

Like the protesters in Bolivia, most environmental justice and anti-globalization groups seek non-violent actions that are inclusive and democratic in nature, which follow traditions established by great figures such as Gandhi and Martin Luther King, Jr. Unfortunately, an action with tens of thousands of protesters can be marred by only a few who turn to violence and destruction, but such problems do not alleviate the moral imperative to take action or the hope that success is possible.

Writing in *Social Science Quarterly*, D. Christopher Brooks examines the effects of violent factions on the anti-globalization movement and concludes that the inclusive and democratic nature of the movement leaves it open to infiltration of groups with opposing “frames, tactics, and goals.”³⁵³ Besides the inability of democratic and inclusive groups to exclude violent factions, the movement is hampered on the other side by the actions of the World Trade Organization, World Bank, and International Monetary Fund. These organizations have responded to the massive and violent protest in Seattle of 1999 by moving meetings to locations where local authorities are more willing to use repressive measures against the protesters. While the resolve of the movement remains intact, Brooks concludes, “the anti-globalization movement’s inability to exclude

³⁵² Ibid.

³⁵³ D. Christopher Brooks, “Faction in Movement: The Impact of Inclusivity on the Anti-Globalization Movement,” *Social Science Quarterly* (Blackwell Publishing Limited) 85, no. 3 (2004): 560.

potentially violent factions from its ranks is likely to impede its ability to democratize the institutions of globalization through the tactic of protest alone.”³⁵⁴

No single group working to end the negative effects of globalization is large enough to interrupt the actions of the organizations they wish to affect. As a result, large-scale protests involve the coordination and cooperation of extremely disparate groups. Brooks notes that groups involved in the protests include “anarchists, anti-capitalists, anti-genetic engineering, anti-logging, anti-nuclear, anti-sweatshop, anti-war, biodiversity, Buddhists, Christians, cultural diversity, environmental, feminist, food safety, Gaians, homeless solidarity, indigenous rights, Jews, labor sectors, living wage, migration issues, Muslims, organic farming, pacifists, pagans, political secession, social justice, urban autonomy, urban squatter rights, white supremacy, and many others.”³⁵⁵ Brooks claims that inclusivity enables the groups to attract large numbers of participants, but it limits the effectiveness of the movement overall. He notes that such a decentralized movement cannot impose a hierarchical structure to enforce ideological or tactical standards within the movement, as any attempt to do so would undermine the autonomy of the participating groups. Thus, he says, “Controlling the behavior of participants who are employing or are willing to employ unacceptable methods . . . is left to the authorities.”³⁵⁶ The result, Brooks says, is the “retreat of globalizing institutions to a nondemocratic regime.”³⁵⁷ Brooks concludes with a pessimistic view of the future of the movement and its ability to effect change. While Brooks is certainly correct that violence and destruction damage the effectiveness of the movement, it does not eliminate the

³⁵⁴ Ibid., 561.

³⁵⁵ Ibid., 562-563.

³⁵⁶ Ibid., 563.

³⁵⁷ Ibid., 567.

effectiveness of the movement altogether. Certainly, pro-globalization forces face a similar problem to the protesters, as they would also have an easier time promoting their message if they were not hampered by rogue states and violent businesses. By acknowledging the challenges facing the movement, individuals are likely to develop creative strategies for promulgating their message in an imperfect world.

Even with a movement with imperfect protests sullied by violence and diminishing public support, the anti-globalization movement has accomplished something. This movement has made it extremely difficult for negotiations to continue without considering how the public will perceive trade agreements and how protesters will react. If nothing else, they have made it inconvenient for trade negotiators to carry on with their business. This is a goal of protest. All movements have met criticisms such as those of Brooks, even from supposed allies. Responding to such criticism of the civil rights movement, Martin Luther King, Jr. said,

I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Councilor or the Ku Klux Klanner, but the white moderate who is more devoted to 'order' than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says, "I agree with you in the goal you seek, but I can't agree with your methods of direct action."³⁵⁸

While Martin Luther King faced different circumstances from today, he certainly had to deal with elements in the movement that rejected his appeal to non-violence, but the movement continued and succeeded. King addressed the problem directly:

You asserted that our actions, even though peaceful, must be condemned because they precipitate violence. But can this assertion be logically made? Isn't this like condemning the robbed man because his possession of money precipitated the

³⁵⁸ Martin Luther King, Jr., "Letter From Birmingham Jail," in *Exploring Ethics: An Introductory Anthology*, ed. Steven M. Cahn (New York, NY: Oxford University Press, 2009), 385.

evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical delvings precipitated the misguided popular mind to make him drink the hemlock? Isn't this like condemning Jesus because His unique God-consciousness and never ceasing devotion to his will precipitated the evil act of crucifixion?³⁵⁹

King insists that it is immoral to demand that individuals stop working for justice even if their work is causing violence. It is the structural injustice that is responsible for the conditions of violence, not the peaceful protester. King says, "Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue."³⁶⁰ Indeed, anti-globalization protesters and Occupy Wall Street protesters have succeeded in generating tension. King says that he is grateful that the philosophy of non-violence emerged to temper the rage of the Black nationalists. And he says:

If this philosophy had not emerged, by now many streets of the South would, I am convinced, be flowing with blood. And I am further convinced that if our white brothers dismiss as 'rabble-rousers' and 'outside agitators' those of us who employ nonviolent direct action, and if they refuse to support our nonviolent efforts, millions of Negroes will, out of frustration and despair, seek solace and security in black-nationalist ideologies—a development that would inevitably lead to a frightening racial nightmare.³⁶¹

Non-violent protesters should be respected and engaged. When physical and legal barriers prevent the aggrieved from being heard, violence often results from frustration. Open dialogue, respect, and engagement can reduce tension, but silencing dissent only escalates problems. John Rawls also addresses the possibility that dissent might causes disruptions to social functioning, saying:

³⁵⁹ Ibid., 385.

³⁶⁰ Martin Luther King, Jr., "Letter From Birmingham Jail," *The Martin Luther King, Jr. Research and Education Institute*, April 16, 1963, http://mlk-kpp01.stanford.edu/index.php/resources/article/annotated_letter_from_birmingham/, accessed March 8, 2012.

³⁶¹ Ibid.

If justified civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist.³⁶²

Those who foment dissent are invariably labeled extremists and radicals with destructive intent, but grievances that motivate massive rebellion are motivated by conditions that are themselves intolerable. When the state moves to suppress dissent, movements tend to grow in number and power.

States with enough policing power can, however, successfully eliminate protests. In China, direct action from protestors is generally met with swift and uncompromising police action, making massive protest movements untenable, but environmental activism has been successful there as well. Andrew Mertha describes one failure of activists, one success, and one mixed outcome in *China's Water Warriors: Citizen Action and Policy Change*.³⁶³ The failure he describes is in response to the Pubugou dam project. With very little organization, thousands of protesters gathered at the site and expressed their objections to the dam and the displacement it would cause; they were met by government officials who emphasized the importance of social stability and thousands of police who were on hand to maintain "social stability." Little dialogue or discussion took place (thankfully, there was also no bloodshed), and Mertha blames the failure on what he calls a lack of policy entrepreneurs.³⁶⁴ In Dujiangyan, which is in the same province as Pubugou, the outcome was at the opposite end of the spectrum. The Dujiangyan

³⁶² Rawls, *A Theory of Justice*, 342.

³⁶³ "Chevron Management Hit Hard at Annual Meeting over Ecuador Liability \$38 Billion in Shareholder Value Defies CEO John Watson," *Hot Indie News*, May 27, 2010, <http://www.hotindienews.com/2010/05/27/1024646>.

³⁶⁴ *Ibid.*, 65-93.

Irrigation System was constructed in 251 BCE. In this latter case, the area was designated as a heritage site, with many ties to Chinese history, both ancient and more recent. Those who opposed the project did not frame it as anger against the government but as concern for preserving Chinese heritage. The media became involved and spread the story quickly throughout China. Those opposed to the project also stressed that stopping the project would be the best way to ensure social harmony and stability. All this happened before a great investment of money or time had been made on the project. As a result, Chinese officials could change policy without appearing to lack control. Activism can be successful, but it requires framing and strategy.³⁶⁵ China's suppression of dissent is well known throughout the world, and many decry the lack of free speech of its citizens, but China is hardly alone in working to silence the aggrieved and angry. Protesters face the risk of imprisonment, violence, and death. It takes great courage to put one's body on the line to resist power, but protests can have a positive effect for protesters even when fundamental change does not seem possible.

In "The Myth of Sisyphus," Albert Camus describes a wronged man who faces the greatest power of all, the power of the gods. Sisyphus has no hope of changing his fate; he has no right to appeal and no hope of moving the masses against the gods in his favor. He is alone in the universe, trapped in a pointless task for eternity, but Camus is able to imagine Sisyphus happy because, Camus tells us, Sisyphus still has his scorn. Camus says, "The lucidity that was to constitute his torture at the same time crowns his victory. There is no fate that can not be surmounted by scorn." As Sisyphus pushes his

³⁶⁵ Ibid., 94-109.

boulder onward, he maintains his identity through his resistance, even if silent, to the ultimate injustice, the deprivation of his productive work and autonomy.

In *The Rebel*, Camus says, “In every act of rebellion, the rebel simultaneously experiences a feeling of revulsion at the infringement of his rights and a complete and spontaneous loyalty to certain aspects of himself.”³⁶⁶ Rather than being a negative, rebellion is a positive expression of one’s humanity. To do otherwise is to despair, which is silent. Camus says, “To remain silent is to give the impression that one has no opinions, that one wants nothing, and in certain cases it really amounts to wanting nothing.”³⁶⁷ In the instant we say no to injustice, we have accomplished something. We have moved from passive acceptance to active participant in the search for a better world.

And more than that, we have expressed our care for those who may be denied any form of expression of their own. Camus tells us, “We understand that rebellion cannot exist without a strange form of love. Those who find no rest in God or in history are condemned to live for those who, like themselves, cannot live: in fact, for the humiliated.”³⁶⁸ Rebellion is, then, a rejection of despair, but it is not a declaration of optimism. He says, “Rebellion, without claiming to solve everything, can at least confront its problems.”³⁶⁹ Even if we achieve all our aims, we cannot believe injustice will cease. Camus declares of the rebel:

He should rectify in creation everything that can be rectified. And after he has done so, children will still die unjustly even in a perfect society. Even by his greatest effort man can only propose to diminish arithmetically the sufferings of

³⁶⁶ Albert Camus, *The Rebel: An Essay on Man in Revolt* (New York, NY: Random House, 1956), 13-14.

³⁶⁷ Albert Camus, *The Rebel: An Essay on Man in Revolt* (New York, NY: Random House, 1956), 14.

³⁶⁸ *Ibid.*, 304.

³⁶⁹ *Ibid.*, 305.

the world. But the injustice and suffering of the world will remain and, no matter how limited they are, they will not cease to be an outrage.³⁷⁰

The rebel is not optimistic but also does not descend into despair. Only by resisting injustice does one become fully human. The nihilists are those who have rejected human values of disgust at injustice and inhumanity and have, instead, attempted to create value in themselves as Gods and kings over the masses. In reality, they have lost their identity and put it in the hands of the oppressed. Without the complicity of those they trample, however, their identity is lost. The oppressed establish an identity and an existence when they raise their voices. The virtue of the oppressed is the shame of the oppressor.

Participation in the human community demands rebellion, resistance, and rectification.

CONCLUSION

Just as globalized economic development had the potential to lift people out of poverty but also the potential to promote human rights abuses, social movements have both positive and negative potential to improve lives. Those who participate in and benefit from a system that leads to abuse and suffering are obligated to work to alleviate human rights abuses. It is not necessary that all members of the global community have a unified vision of action; it is only necessary that the global community have a unified goal of creating a just social and economic order. The fact that many disagree on what this entails only means that the conversation must continue, including all actors. While people from affluent societies have an obligation to work toward justice, it is imperative that the autonomy of individuals from all parts of the globe and society be recognized. Working toward a unified goal requires that all voices be heard and recognized. Members of affluent communities sometimes appear to be accepting a burden of alleviating

³⁷⁰ Ibid., 303.

suffering of those who are less fortunate, but the presence of injustice is a threat to everyone, and only by working shoulder to shoulder can protests and other forms of activism have the collective force necessary for monumental moral shifts. We need not raise our voices on behalf of others. We must raise our voices in solidarity with others. A global conversation aimed at the elimination of human rights abuses will not eliminate suffering from poverty, disease, or violence, but it will enable progress. A global moral revolution will consist, if it happens, of a vast accumulation of smaller steps of moral evolution. The examples and arguments of this chapter show that resistance is obligatory and that change is possible. Individual voices not only have the power to change abusive practices but also to personally empower those who engage in resistance. The mere act of raising one's voice can restore a sense of dignity and humanity robbed by poverty, indifference, and violence. In the next chapter, I will suggest the means for society to encourage greater empathy for the voices of the marginalized while also promoting a sense of shame in those who exploit the weaknesses of the least advantaged.

Chapter 6: Humanism, Empathy, and Moral Progress

INTRODUCTION

A theoretical understanding of rights and justice is only useful for people who are motivated to behave in a just manner. This chapter will argue that it takes more than theoretical justification for people to behave in a morally acceptable manner; virtue is an essential bedrock that enables individuals to strive to improve themselves and their society. This need for virtue and character formation applies across cultures and social strata. Humanistic endeavors such as rhetoric, art, literature, philosophy, music, drama, film, and photography help us feel a part of a human community with care and concern for one another. In this sense, the humanist opens a global conversation and listens for all voices and their stories. This expands our ability to understand the experiences of others, even when we do not share their experiences. Optimally, the humanist achieves Aristotle's goal of developing the appropriate emotional responses to the needs of society and the plight of others. This chapter will explore how the humanities help create empathy, broaden social views of which people are of moral concern, and strengthen social responses to unjust conditions. Of particular importance in this section will be the work of Nussbaum and others who claim that education in the humanities is essential to forming a just and empathic society. The humanities help foster a public discourse promoting an emerging truth encompassing a greater range of human concerns. I will show that the study of the arts and humanities improve public discourse, consideration for others, and moral reflection.

SHAME AND BUSINESS

In April of 2011, the top executives of Transocean Ltd. announced they would donate their bonuses awarded for “safety performance” to the victims of the rig explosion that killed 11 workers in 2010.³⁷¹ This single event revealed both the moral myopia of the executives of a transnational corporation and the possibility of moral progress driven more by compassion than profit. I would like to report that after a short course in the humanities, these executives developed a profound and nuanced theory of morality and justice and applied this theory to their daily actions, resulting in greater concern for the well being of the families of the explosion victims, but there is obviously no basis for such a claim. Alternatively, I would like to report that liberal public education in the humanities made it possible to create a groundswell of public support for the victims’ families and condemnation of greedy executives. Although this alternative is slightly more plausible, I cannot claim it is the reason for the sudden moral awareness of Transocean executives.

I will claim, however, that the plight of the victims raised the moral awareness of the general public and that many people vividly imagine the suffering of these families that resulted from what was quite possibly a preventable accident. Because this accident happened in an affluent country and saturated the news, many people are able to imagine themselves in the place of the workers who were killed and of the families mourning their loss of a loved one and struggling with the loss of family income. Many corporate executives have become accustomed to acting in obscurity and anonymity as most people

³⁷¹ CNN Wire Staff, “Transocean Executives Donate Safety Bonuses to Rig Victims’ Families,” *Www.cnn.com*, April 6, 2011, <http://www.cnn.com/2011/US/04/05/gulf.spill.bonuses/index.html>.

affected by oil spills, dangerous working conditions, and environmental degradation live in remote, developing countries. Precisely because we were able to imagine the voices of the victims and their families in this case as our own voices, we were moved to demand justice or at least respectful treatment of them.

This was a result of education from our own lived experience and not exclusively from education in the humanities, but it is education in the humanities and the efforts of humanistic enterprises that expand our ability to imagine ourselves in the position of a much greater variety of humans grappling with the conditions of humanity. Humanists, historically, have engaged in a public discourse hinged not only on rational argument but also on emotional persuasion. Michel de Montaigne is an excellent exemplar for such discourse. In his discussion of people described as “barbarians” by Europeans he first describes the horrors of warfare and cannibalism of a group of people in a wild place he refers to as “Antarctic France.” After provoking the shock of his readers, he says, “I am not sorry that we notice the barbarous horror of such acts, but I am heartily sorry that, judging their faults rightly, we should be so blind to our own.” Montaigne moves his reader through reason, of course, but also emotional responses of both horror and shame. Other humanists have employed art, poetry, drama, music, fiction, and argument in the effort to broaden the social imagination. This humanistic discourse thrives when education in the humanities is deep and broad but as humanities education withers, so the discourse dies.

As educators in the humanities struggle to demonstrate that course offerings in the humanities improve the moral behavior of students, it becomes increasingly evident that a society that does not value the humanities recedes in the race for moral advancement. My

claim, then, is not that humanities courses produce moral individuals but that moral advancement is severely hindered in societies that neglect the humanities. Moral progress occurs gradually in both the intellectual and emotional cores of society. Reasoned arguments for human rights and justice are essential to advancement, but such arguments, no matter how compelling, are effective only when injustice becomes intolerable to the collective consciousness of a society.

My argument is somewhat different from previous arguments for education in the humanities. In the past, humanists have claimed that humanities courses should be required for doctors and business leaders because it will make them better doctors and business leaders. In fact, we may still make this argument, and it may be both correct and useful. The idea of professionals who have technical training and no exposure to the arts and humanities still leaves us feeling uncomfortable and believing a broader education should be required. In a 1954 essay on big business and the humanities, George Horner expounded some of the concerns of business leaders toward humanities education. He said, “Big business recognizes that it can function successfully only in a sympathetic political and social environment, that it owes a debt to the society that contains it and must discharge its obligation, and that its efficient management depends on something more than technological skill, however great that may be.”³⁷² We might believe the executives of the companies involved in the 2010 oil rig explosion (TransOcean, BP, and Halliburton) forgot about the need to operate in a sympathetic political and social environment, but advertising from major oil companies indicates that this need has not been forgotten. For example, Chevron’s “We Agree” campaign is aimed at showing the

³⁷² George F. Horner, “Big Business and the Humanities,” *South Atlantic Bulletin* 20, no. 1 (May 1, 1954): 1–3, doi:10.2307/3196445.

corporation is aware of its obligation to the wider community.³⁷³ Horner goes on to add, “The political and social organization best suited to corporate success is one which encourages freedom of opinion and of action, individual judgment, and personal responsibility.”³⁷⁴ This organization is best encouraged, Horner says, by education in the liberal arts, noting that businesses themselves can provide technical training but are not equipped to provide education in the humanities.

While I would encourage education in the humanities for business leaders, engineers, and all other professionals, it is the pressure of the “social environment” that holds leaders accountable, and that environment depends on a robust flourishing of the humanities throughout society, not merely among its leaders. This lesson must, of course, be imprinted upon individuals, but individuals are formed in part by the weave of the social fabric. In his meditations, Marcus Aurelius said, “So by keeping in mind the whole I form a part of, I’ll accept whatever happens. And because of my relationship to other parts, I will do nothing selfish, but aim instead to join them, to direct my every action toward what benefits us all and to avoid what doesn’t.”³⁷⁵ I would argue that our interdependence has grown much more severe since Aurelius was writing, but insistence on individual independence and self-sufficiency has grown more vehement and vitriolic. Libertarianism, ideally, demands cooperation to mutual benefit among free and autonomous individuals. Unfortunately, the excesses of contemporary libertarianism and its attendant neoliberalism move us closer to mutual destruction. More than ever, our

³⁷³ “We Agree. Do You?” (Chevron), accessed June 14, 2011, www.chevron.com/weagree.

³⁷⁴ Horner, 1.

³⁷⁵ Marcus Aurelius, *Meditations*, trans. Gregory Hays (New York, NY: Modern Library, 2002).

actions affect the air we all breathe, the water we share, and the soil that produces our food. Recognizing our vulnerability to one another would be a first step to global cooperation.

THE POSSIBILITY OF MORAL PROGRESS

Moral progress does not occur as a natural outgrowth of human evolution. Moral progress requires a change both in behavior and in attitude. To effect change, an injustice must first be recognized as an injustice, and injustice is almost invariably the result of an abuse of power. Not surprisingly, those who hold power rarely sacrifice it voluntarily, so those who seek to correct an injustice must either convince those in power to change their behavior, convince those not in power to stand in solidarity against those in power to pressure them to change, or convince those not in power to take action, violent or non-violent, against the power holders. Assuming that violence is a last resort for most people, other forms of persuasion are necessary to affect relevant power structures and gain a foothold for justice. In this sense, the humanistic tradition in philosophy, art, literature, and cultural studies is necessary for advancing civil discourse.

In *The Honor Code: How Moral Revolutions Happen*, Kwame Anthony Appiah describes the process by which slavery became intolerable in British society. Appiah notes that eventually, Britons responded against slavery because “they, like the slaves, labored and produced by the sweat of their brow.”³⁷⁶ Just as many were able to imagine themselves in the position of the victims of the 2010 oil rig explosion, workers in earlier centuries were able to imagine themselves in the place of victims of slavery. Many conditions and activities led to the public turn against slavery, including church sermons,

³⁷⁶ Kwame Anthony Appiah, *The Honor Code: How Moral Revolutions Happen* (New York, NY: W. W. Norton, 2010).

philosophical argument, and public dissent, but literature also played a role. In particular, Appiah mentions novels by Henry Mackenzie (*The Man of Feeling*) and Laurence Sterne (*A Sentimental Journey*). These works emphasized not the rational arguments against slavery but the compassion that all virtuous people should feel when confronted with great misery. The person who is indifferent to such suffering should feel shame. It is Appiah's claim that moral revolutions occur when taking action or not becomes a matter of honor, as it did for the executives of Transocean.

While Appiah speaks specifically of how the slave trade ended, Martha Nussbaum discusses the importance of empathy in helping children recognize the humanity of personhood of those around them.³⁷⁷ In order to develop empathy, children must recognize their own suffering and the suffering of others before they make the final step to show concern for the suffering of others. The ability to recognize the suffering of others is not itself a moral development. As Nussbaum points out, "Empathy is not morality, but it can supply crucial ingredients of morality. As concern develops, it leads to an increasing wish to control one's aggression; children recognize that other people are not their slaves but separate beings with the right to lives of their own."³⁷⁸ We might say that morality supervenes on empathy. Few adults lack the capacity for empathy, but many are unable to feel empathy for certain classes of people. Stigmatized minorities and strangers are often seen as outside the sphere of moral concern. Through a humanistic education, children (and adults) can be exposed to greater variety of human experience in tandem with recognizing the universality of human needs and emotions. Slavery ended

³⁷⁷ Martha C. Nussbaum, *Not For Profit: Why Democracy Needs the Humanities* (Princeton University Press, 2010).

³⁷⁸ Ibid.

only when enough people recognized those humans who were enslaved as members of the circle of moral concern. This circle of moral concern widens with the help of cultural studies, art, literature, and other expressive arts in combination with rigorous logical argument and powerful rhetoric. Certainly, many people educated in the humanities remain stubbornly bigoted, but it is the restriction of humanistic education that impedes a general expansion of concern and understanding.

The slave trade, of course, was an earlier form of forced trade globalization; whether it was more or less coercive than today's global trade practices is a matter of debate. Nonetheless, slavery was profitable for a great many people, and ending the slave trade required a shift from concern for profit only to a concern for decency. The tension between profit and decency has plagued humanists for centuries, of course. In his second letter to Cicero, Petrarch laments, "They still are in existence, glorious volumes, but we of today are too feeble a folk to read them, or even to be acquainted with their mere titles. Your fame extends far and wide; your name is mighty, and fills the ears of men; and yet those who really know you are very few, be it because the times are unfavourable, or because men's minds are slow and dull, or, as I am the more inclined to believe, because the love of money forces our thoughts in other directions."³⁷⁹ As we can see from Petrarch's words, education in the humanities has been in "crisis" for some time. As humanists argue for the value of the humanities, we are participating in a discussion as old as the humanities themselves. In 2010, Martha Nussbaum echoed the complaint of Petrarch, saying, "What we might call the humanistic aspects of science and social

³⁷⁹ Francesco Petrarch, "To Marcus Tullius Cicero (2 of 2)," trans. James Harvey Robinson, accessed May 25, 2011, http://petrarch.petersadlon.com/read_letters.html?s=pet11.html.

science—the imaginative, creative aspect, and the aspect of rigorous critical thought—are also losing ground as nations prefer to pursue short-term profit by the cultivation of the useful and highly applied skills suited to profit-making.”³⁸⁰ When wealth is seen as the measure of greatness, the struggle to become more honorable, more admirable, and more virtuous withers and dies. The humanities help to awaken feelings of concern, shame, compassion, and nobility.

NATURAL VIRTUE AND JUSTICE

The philosopher David Hume described the pursuit of justice as an “artificial virtue,” growing by analogy from the “natural virtues” of caring and compassion for those closest to us, such as our children and members of our community.³⁸¹ Morality, for Hume, arises from emotional responses to events and actions we observe, but our reasoning ability enables us to apply these emotional responses to imagined situations and develop moral rules by extension to others, including those we may not know. In this way, we are motivated to create a just society or even a just world. For Hume, justice is artificial in the sense that it arises not from natural emotional responses, but from a rational response to the world based on extrapolation from natural feelings of compassion, disgust, and so on. While moral codes vary from culture to culture, some initial emotional responses seem to occur throughout the world, though not in every individual. Most people are quite disgusted by the thought of seeing their own child murdered in front of them. As a result, we have no tolerance for people anywhere in the world who would murder their children. Indifference to injustice requires individuals to

³⁸⁰ Nussbaum, *Not For Profit*.

³⁸¹ David Hume, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton (Oxford, UK: Oxford University Press, 2005).

either be unaware of the injustice, to dismiss the moral standing of the victims of injustice, or to blame the victim for the injustice. Humanists can help to remedy all three situations by exposing both the humanity and suffering of victims. In addition to compassion for victims, a sense of responsibility for their suffering can enhance the drive for moral change. Jeremy Bentham famously said that two masters drive us: pleasure and pain; moral progress can be driven by a peculiar type of pleasure, honor, and a corresponding pain, shame.

Humanists, of course, participate in a long tradition of raising the specter of shame for the human race. A. Richard Turner quotes Leonardo da Vinci's lament on the cruelty of man:

Animals will be seen on earth who will always be fighting against each other with the greatest loss and frequent deaths on each side. And there will be no end to their malice; by their strong limbs we shall see a great portion of the trees laid low throughout the universe; and when they are filled with food, the satisfaction of their desires will be to deal death and grief and labour and fears and flight to every living thing; and from their immoderate pride they will desire to rise towards heaven, but the excessive weight of their limbs will keep them down. Nothing will remain on earth, or under the earth, or in the waters, which will not be persecuted, disturbed and spoiled, and those of one country removed into another. And their bodies will become the tomb and the means of transit of all the living beings they have killed.³⁸²

As we read words such as these and recognize the truth of them, we may be motivated to do better and achieve feelings of honor, and, indeed, many humanists also give descriptions of the great honor humans can achieve. Da Vinci almost appears to predict effects of trade globalization, but Turner avers that da Vinci was probably reacting to the horrors of war (in some respects the horrors resulting from global trade recall Thomas

³⁸² A. Richard Turner, *Inventing Leonardo* (Berkeley, CA: University of California Press, 1994).

Hobbes's vision of universal war in a state of nature). The fact remains that the humanist reacts with disgust at the inhumanity of humanity. Given the ongoing cruelty of humans, the effort may seem pointless, but surely a world devoid of the mitigating force and light of compassion shown by humanists would be even more sorrowful than the world we currently inhabit.

EMPATHY, HUMAN RIGHTS, AND POPULAR CULTURE

James Nachtwey is a contemporary artist who highlights the horrors of war and famine through his photography.³⁸³ Christian Frei's 2001 film, *War Photographer*, is a documentary of Nachtwey's work.³⁸⁴ In a sense, the film poses a sort of double aesthetic; it is beautifully filmed and exposes the viewer to the achingly attractive photography of James Nachtwey. The aesthetic qualities of the film place the viewer in a bind, however, as the images are generally of horrific events of human cruelty and suffering. Nachtwey appears to assume that most of his viewers in affluent societies will feel it is inappropriate to witness preventable suffering and take no action to alleviate it. He enters no debate as to how much any one person should do; he merely attempts to make suffering visible and personal. He believes this is an action required of him by basic morality. In this sense, Nachtwey is both moral agent and ethicist. He is attempting to both act morally and to motivate others to adopt his moral position. Of course, affluent people may watch the images, comment on the beauty of the photography, praise the dignity of those suffering, cry a few tears, exhort others to view the images, and then go about their normal routine. However, if affluent citizens will respond to the suffering,

³⁸³ James Nachtwey, "Witness: Photography of James Nachtwey," accessed May 23, 2011, <http://www.jamesnachtwey.com/>.

³⁸⁴ Christian Frei, *War Photographer* Documentary (First Run Features, 2001).

they will be motivated by their knowledge of the suffering, and the disturbing images are likely to provoke at least some people to take positive action. In a sense, Nachtwey has made it easier for concerns of justice to become what Hume would label “natural” virtues.

In 2012, the Museum of Modern Art in New York City featured a synchronous video display by artist Mark Boulos that confronted viewers with the concomitant realities of wealth and violence in the Niger River Delta. One screen of the exhibition, titled “All That Is Solid Melts Into Air,” was filmed in Niger and features militant fighters who kidnap oil workers, sabotage equipment, and fight the Nigerian government.³⁸⁵ Farmers and fisherman in the delta do not receive a share of the profits that oil generates for the central government, and destruction of the environment makes farming and fishing near impossible. The second screen features the trading pit of the Chicago Mercantile Exchange and the frenzy of traders bidding on commodities, including oil. The two screens, on opposite walls, create a cacophony of screams, whoops, chants, bells, and gunfire. In some sense, the movement of the militants is more peaceful than the noisy anarchy of the trading floor. The viewer faces an overwhelming array of sounds, words, and images, creating an indelible connection between the activities of the trading floor and the Nigerian violence, a connection apparently invisible to the traders. The installation, of course, also features information about conditions in Nigeria and the plight of its residents, but it is the visual and aural assault that viewers take away from the museum. Viewers leave the exhibit assaulted with sounds and images

³⁸⁵ Holland Cotter, “Mark Boulos: ‘Projects 97’,” *The New York Times*, June 21, 2012, sec. Arts / Art & Design, <http://www.nytimes.com/2012/06/22/arts/design/mark-boulos-projects-97.html>, accessed August 13, 2012.

and also armed with information. Most viewers come to the exhibit with some prior knowledge of the conditions of both trading and the Niger River Delta, but this exhibit is likely to help bring the information to a level of greater conscious awareness.

In an essay on human-rights themed entertainment, Vivian Nun Halloran described works of popular culture that deal with political activism and the promotion of human rights.³⁸⁶ Halloran mentions a number of works that include film, television, and novels. What the works she describes have in common are heroic health professionals who are Western or Westernized and have transnational affiliations through organizations such as the World Health Organization and Doctors Without Borders. She concludes by saying, “By illustrating how health care professionals strive to preserve the dignity of their patients or ward even in situations that threaten to deprive them of ‘life,’ ‘security of person,’ or ‘health,’ these outlets of low, popular, and high culture promote an image of health care professionals as moral arbiters and ethical agents in a corrupt world.”³⁸⁷ These works of art, then, expand our conception of moral agency and nobility while simultaneously affirming the authority of affluent, Western professionals. What these works do not do, however, is give voice to the victims in developing countries, even while highlighting abuses against them.

CLASSICAL LITERATURE, SLAVERY, AND THE POSSIBILITY OF ACTION

Sometimes rhetoric seems to fail us completely in the search for truth, justice, or compassion. The study of literature enables us to look at the most intractable problems of

³⁸⁶ Vivian Nun Halloran, “Health Professionals, Truth, and Testimony: Witnessing in Human Rights-Themed Entertainment,” *The Journal of the Midwest Modern Language Association* 40, no. 2 (October 1, 2007): 97–114, doi:10.2307/20464234.

³⁸⁷ *Ibid.*, 111.

injustice, feel compassion and outrage, and participate in an ongoing debate of how to proceed. Euripides's *Hecuba* is a case where injustice is overwhelming, and rhetoric seems impotent for the characters in the play.³⁸⁸ Hecuba has become a slave and her daughter is to be sacrificed to honor the ghost of Achilles. Hecuba has already lost her husband, King Priam, and her son, Polydorus. At the beginning of the play, the ghost of Polydorus explains that the Thracian King Polymester murdered him in order to steal the Trojan gold and jewelry Polydorus was carrying. By the end of the play, Hecuba's daughter, Polyxena, is taken from her and murdered as a sacrifice to the spirit of Achilles. Hecuba appeals for both justice and mercy from Odysseus and later from Agamemnon, but neither can be moved. For Odysseus, it is a mere question of expediency. He acknowledges the goodness of Hecuba and of her daughter, but he sees victory as his only concern, and he assumes that the sacrifice will secure his victory. Leaders must make difficult choices, and the view of Odysseus that unpleasant choices must be made is echoed over and over again by leaders who commit atrocious acts for what they see as the greater good of victory.

Agamemnon is also sympathetic to Hecuba as a person, which is shown by his acknowledgment of the points she makes in her plea, but he claims that he can do nothing to help her or he will jeopardize his own position. This leads Hecuba to declare, "There is not in the world a single man free; for he is either a slave to money or to fortune, or else the people in their thousands or the fear of public prosecution prevents him from following the dictates of his heart. But since thou art afraid, deferring too much to the

³⁸⁸ Euripides, *Hecuba*, accessed May 19, 2010, <http://classics.mit.edu/Euripides/hecuba.html>.

rabble, I will rid thee of that fear.”³⁸⁹ Hecuba proceeds, then, to plot her revenge. Hecuba and Agamemnon both know that he is not truly enslaved. Rather he is cowardly. By pointing out his cowardice and unwillingness to pursue justice, Hecuba moves the other women to action. It is only with coordinated efforts that she is able to carry out her revenge on Polymestor. Hecuba’s rhetoric has failed to persuade either Odysseus or Agamemnon to do what is right or to bring about a just outcome, but her rhetoric has not failed to enlist the sympathy and aid of her fellow women.

James Kastely takes Hecuba’s declaration that all men on earth are slaves to be a recognition of her slavery and a realization of her own power.³⁹⁰ He says Agamemnon’s slavery is representative of a “capitulation to private interest or to an unreflective understanding of ethical codes.”³⁹¹ This reading perhaps does both too much and too little. Hecuba takes matters into her own hands after declaring that she sees Agamemnon is enslaved by his position. She says that since he is afraid, then she, a slave, will set him free. When Hecuba makes these declarations, she is not seeking justice, for justice has already been denied. She is seeking relief from her anguish. Agamemnon has nothing to offer other than solidarity, and this he refuses. Kastely says the play can be read as Hecuba’s recovery rather than her defeat.³⁹² Indeed, Hecuba has united the women in anguish and vengeance. Something must be done, and the group collectively seeks action. Though the outcome is tragic, Hecuba and the other women are not powerless, and Agamemnon is not free of responsibility.

³⁸⁹ Ibid.

³⁹⁰ James L. Kastely, *Rethinking the Rhetorical Tradition: From Plato to Postmodernism* (Yale University Press, 1997), 124-125.

³⁹¹ Ibid., 125.

³⁹² Ibid., 125

Kastely says, “The role of violence in *Hecuba* is to challenge this indifference by making those in power feel pain.”³⁹³ If those in power can feel pain, progress is possible, and we may feel relief for *Hecuba* by the end of the play. We feel no pity for Polymestor, but surely the death of his innocent children is an unspeakable tragedy, just as the death of *Hecuba*’s children is an unspeakable tragedy. Viewing the play as rhetoric succeeds in making us question the role of power, justice, and violence. The play demands, as Kastely insists, that the polis “recognize those whom it is presently excluding.”³⁹⁴ To accept the rhetoric of the play, we must take a position of skepticism toward justice and open ourselves to alternative voices. *Hecuba*’s challenge to the authority of the status quo must always remain with us as we pursue justice with an open mind. If we do this, the rhetoric of *Hecuba* has not failed.

It is important to distinguish here between the rhetoric of *Hecuba*, the character, and the rhetoric of Euripides. For a slave such as *Hecuba*, rhetoric is of limited value in correcting an injustice. *Hecuba* is in no position to change the codes that have created her oppression. Within the play, *Hecuba*’s pleas are powerful and win her the support of the community of women, and this is meaningful in its own right. Unlike *Hecuba*, however, Euripides is able to give a voice to the oppressed and disenfranchised of any country in any era. Educators in the humanities serve as a conduit for the voice of Euripides and enable public discourse on preventable tragedy and injustice to continue. It may be even easier for contemporary audiences to recognize the absurdity of honor codes that resulted in the death of *Hecuba*’s children than it was for ancient audiences. Combined with other examples and competent instruction in the humanities, students have an opportunity to

³⁹³ *Ibid.*, 131.

³⁹⁴ *Ibid.*, 132.

examine current codes and laws. Able to imagine the voice of Hecuba, contemporary students are more likely to imagine the voice of current victims of injustice. Many individuals have no better change at restitution than Hecuba, but the greater community of humanity has hope for pressing forward to prevent others from falling victim to the same injustices.

EMPATHY, NARRATIVE, AND EMBODIMENT

In discussing the importance of narrative and artistic expression in the development of empathy, Nussbaum describes the work of Rabindranath Tagore, who used music, theater, poetry, painting, and dance in the education of children.³⁹⁵ Tagore used role-playing of various forms in his education, from Socratic questioning to the experience of religious celebrations for religions other than those of his students. A striking use of role-playing, though, came through his use of dance with the children. Using dance in conjunction with drama and music, he enabled the children to have bodily experiences of others. Given societal restrictions on women and girls with regard to their bodies, he provided carefully choreographed moves to perform and had his sister-in-law design clothing that would not compromise their modesty. One of the students who was influenced by his teaching was Amita Sen, the mother of Amartya Sen. Nussbaum quotes Amita Sen as saying:

His dance was full of emotion. The playful clouds in the sky, the shivering of the wind in the leaves, light glistening on the grass, moonlight flooding the earth, the blossoming and fading of the flowers, the murmur of dry leaves—the pulsing joy in a man’s heart, or the pangs of sorrow, are all expressed in this expressive dance’s movements and expressions.³⁹⁶

³⁹⁵ Nussbaum, *Profit*, 103-106.

³⁹⁶ *Ibid.*, 106.

Nussbaum notes that these words were written by a much older woman remembering her childhood education. How powerful the memory is when we incorporate bodily experiences into education. Of course, a full complement of the arts is best for maximizing the ability of students to experience a full range of emotions and recognize them in others.

Medical humanists are familiar with the importance of narratives of illness. Arthur W. Frank speaks of the importance of the witness and testimony of those who are ill.³⁹⁷ Victims of environmental degradation are not speaking on behalf of the planet; they are speaking of themselves. Their stories have special power because the actions of corporations have changed not just how they live but who they are. Frank describes the testimony of the ill in this way, “Illness stories are told by bodies that are themselves the living testimony; the proof of this testimony is that the witnesses *are* what they testify. Others can *have* the story as content . . . but only the ill person herself can *be* the story, and that being—the excess of any content—is the plentitude of testimony and its demand.”³⁹⁸ While speaking on behalf of those with no voice can be powerful, it cannot match the intensity of confrontation with the suffering embodied in illness. We all share the experience of suffering and illness. If humans do not share a universal moral code or even universal values, we do all share the universal experience of a vulnerable body subject to disease, pain, and suffering. These testimonies do not so much encourage empathy as awaken our common humanity.

³⁹⁷ Arthur W. Frank, *The Wounded Storyteller: Body, Illness, and Ethics* (Chicago, IL: University of Chicago Press, 1997).

³⁹⁸ *Ibid.*, 140-141.

FAILURES IN EMPATHY DEVELOPMENT

Of course, some people do not respond to education in the humanities and arts or the experiences of others with an increased capacity for empathy. When some confront otherness, it only strengthens their prejudices and indifference or, worse, their enmity. Imperialists, explorers, and soldiers have all been known to use their knowledge of other cultures to further dehumanize them. Anthony Appiah recounts the story of the nineteenth century Victorian explorer, Sir Richard Francis Burton, who traveled extensively, knew many languages, and could even be accepted as a native in many foreign societies.³⁹⁹ In spite of Burton's vast knowledge of other languages and cultures, his biases remained quite intact, and he had many unflattering comments and generalizations to make about the people he encountered. Greater understanding of other cultures is certainly no guarantee that any individual will become more compassionate or morally responsible. When Burton needed manual labor completed, he bought slaves with no hesitation.

We might respond that no moral system in itself can make people moral. Certainly Kant would not claim that the categorical imperative would guarantee that everyone would become a good person if his theory were accepted. Utilitarians, of course, must contend with the possibility that some individuals might believe indulging in extreme violence would promote the greatest happiness of the greatest number of people, but we do not abandon our theories so easily. For the moment, we might argue that expanding our knowledge of the experience of others ensures that conversation in the greater human community is possible and that we can at least hope for greater

³⁹⁹ Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers*, (New York: W.W. Norton, 2006).

understanding and cooperation. For his part, Appiah says, “I am urging that we should learn about people in other places, take an interest in their civilizations, their arguments, their errors, their achievements, not because that will bring us to agreement, but because it will help us get used to one another.”⁴⁰⁰ Understanding is not the endpoint of our moral journey, but the beginning.

Even worse than simple failure, though, is the intentional development of hatred and indifference. Antidemocratic instruction has routinely used the arts to dehumanize and vilify members of certain classes, religious groups, or cultures. Nussbaum reminds us that “the imaginative component of democratic education requires careful selectivity.”⁴⁰¹ Rather than expanding the imagination, she argues, racist or objectifying art limits the imagination by portraying certain groups as mere objects, rather than as thinking and feeling human beings. Most people in all cultures recognize certain rights to be granted to members of their moral community. Oppression and injustice thrive only when the circle of humanity is narrowed through the exclusion of some groups. While some art attempts to reduce others to the status of things, it is only the cultivation of a flourishing literary, artistic, and philosophical community that can counter the effects of objectifying arts. Democracy and justice require free artistic expression in order to thrive.

SKEPTICISM AND HUMILITY

Moral movement requires a loss of certainty, and educators in the humanities are uniquely positioned to bring doubt to their students. I once attended a faculty work session with educators in the sciences and mathematics. These educators were driven by what they called the “aha moment.” They said they would explain a problem until they

⁴⁰⁰ Ibid., 78.

⁴⁰¹ Nussbaum, *Profit*, 109.

saw a look of recognition on the faces of the students. I told them that my job was quite the opposite as a philosophy instructor. Most students come to a philosophy class feeling rather sure of their answers to the questions I will pose. I know I have done my job when the students get a look of doubt or confusion on their faces. Some students make comments such as, “I thought I knew what a human was before I took your class.” The humanist tradition forces us to recognize uncertainty but demands that we continue a search for truth. As we gain new knowledge, we carry it along with the weight of skeptical humility and continue the search. It is not that we believe there is no absolute truth in the universe; it is only that we recognize our own limitations in perceiving the absolute truth.

As such, the humanist enters public discourse with the goal of promoting truth and justice in a humble and sincere manner, and this is the method of rhetoric held in high esteem by humanists; it should not be confused with a cruder form of rhetoric aimed at manipulating audiences only to achieve some short-term goal. The virtuous rhetor will persuade audiences with a common search for truth and honor. The use of rhetoric, even the best rhetoric, cannot guarantee success, but it is the best option for motivating people to change their ideas and their behavior. Legal remedies or even brute force will not be effective if the majority of the public is not moved to a new understanding of morality.

Rhetoric that relies on emotional appeals, beautiful language, and artistic expression does not replace the rigor of logical argument in public discourse; rather, it complements and augments well-reasoned, deductive arguments. In fact, the humanist rhetor must assume his audience is capable of following an argument and arriving at conclusions derived from well-established premises. Nussbaum notes that the rhetor who

denies or ignores the cognitive ability of public interlocutors shows them disrespect. She notes, “We do not respect the humanity of any human being unless we assume that person to be capable of understanding the basic issues of consistency and validity and the basic forms of inference. We sell that person short as a human being unless we work to make that person’s potentiality for logical thought into an active reality.”⁴⁰² The rhetor who employs simplistic appeals to emotion and attempts to manipulate the audience is cynical and disparaging of the human spirit. A humanist rhetor must proceed with utmost respect for humanity.

Rhetors face their greatest challenges in cases of extreme power imbalances, deeply entrenched social values, or great cultural disparity. Rhetors opposed to slavery in the United States confronted such challenges and moved many people to oppose slavery but did not eliminate slavery without extreme and pervasive violence. The history of humanity is in some ways a history of extreme violence, but it is also filled with moral progressions. More and more people are now given full consideration as full members of the human community, and even non-human animals are beginning to earn the concern and compassions of their human cohabitants of the earth. It is the success of moral and intellectual change that should motivate the rhetor, even with the recognition that extremely painful or even deadly events are likely to continue to occur.

A valuable rhetor must not be complacent or self-assured of her or his own knowledge. The rhetor must possess skeptical humility and be open to both exposure and change. James Kastely describes this quality eloquently:

⁴⁰² Martha C. Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Harvard University Press, 1998).

Rhetoric needs to make those who are unwilling to undergo suffering do so voluntarily. It needs to remind us that evil is not simply a problem of bad motives but that our languages inevitably limit whom we can see as human. And rhetoric needs to provoke all of us so that we do not rest content in the satisfaction of our good intentions. A philosophical rhetoric will continually seek to refute our understandings of ourselves and of others so that these understandings do not become fixed and thereby close us to the voices of others. If we cannot prevent ourselves from causing inadvertent injury, we can through a philosophical rhetoric open ourselves to claims that we have treated others unjustly.⁴⁰³

In this passage, Kastely beautifully enunciates the required humility required to enter the public arena in search of just social arrangements.

William Bouwsma looks to Socrates and the Sophists for guidance as to what humanists and rhetors should strive for.⁴⁰⁴ Bouwsma notes that Protagoras held a “thorough skepticism” about the ability of humans to arrive at an immutable truth, a stated goal for Socrates and Plato.⁴⁰⁵ Protagoras famously declared that man is the measure of all things. By this he meant that we cannot reach beyond our own experience to another world of immutable truth or ideal reality. Protagoras embraced the realm of human experience and rejected the goals of philosophy as conceived by Socrates and Plato.⁴⁰⁶ Bouwsma points out, “Rhetoric, not philosophy, gave us the humanities. The position represented by Protagoras was further developed by Gorgias and other rhetoricians, converted into a more systematic pedagogy by Isocrates, transmitted to Rome by Greek teachers of rhetoric, and assimilated by Latin orators.”⁴⁰⁷ Ironically, even among humanists, the contributions of the Sophists have been forgotten, and Socrates and

⁴⁰³ Kastely, *Rethinking the Rhetorical Tradition*.

⁴⁰⁴ William J. Bouwsma, *A Usable Past: Essays in European Cultural History* (University of California Press, 1990).

⁴⁰⁵ *Ibid.*, 387.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*, 388.

his philosophy have been elevated to the point that “sophist” is now a term of opprobrium.⁴⁰⁸

Bouwsma claims that humanists have embraced Socrates because “Socrates has allowed them—and us—to cherish the humanities and at the same time to lay claim to a wisdom infinitely more prestigious than anything in the more mundane tradition of Protagoras.”⁴⁰⁹ It is our desire for authority, Bouwsma claims, that makes Socrates so appealing. He says, “There is a further problem for us in the latent influence of philosophy represented among us by Socrates; its authoritarianism. If human culture is a body of sublime insights derived by man’s higher faculties from the heavens above, then its values must apply equally to all men in all times. This conception of what we have to offer puts us in the position of a kind of . . . priesthood.”⁴¹⁰ Bouwsma points out that Socrates was both more and less than we generally perceive him to be. He is variously described as a poet, a dancer, a sculptor, and, of course, a rhetorician. Socrates can and should be recognized as part of the humanistic tradition, but we should also recognize the diversity of our ancient exemplars.⁴¹¹

For Gary Remer, humanist rhetoric is defined by its agonistic structure and denial of the possibility of certain knowledge. If there were certainty, he points out, there would be no controversy and no need for discussion.⁴¹² Similarly, Cicero stated that in judicial disputes, those that had no ambiguity would have no reason for being heard. For that

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid., 392.

⁴¹⁰ Ibid, 394-395.

⁴¹¹ Ibid., 395-396.

⁴¹² Gary Remer, *Humanism and the Rhetoric of Toleration* (Penn State Press, 2008).

reason, and possibly for others, skepticism is an inherent feature of the discussion.⁴¹³ In the absence of absolute certainty, skeptical rhetoricians such as Cicero had to settle for probability.⁴¹⁴ Cicero's notion of establishing the probable is similar to that of the academic skeptics, the philosophical school with which Cicero identified.⁴¹⁵ In *Academica*, Cicero says,

Nor is there any difference between ourselves and those who think that they have positive knowledge except that they have no doubt that their tenets are true, whereas we hold many doctrines are probable, which we can easily act upon but can scarcely advance as certain; yet we are more free and untrammelled in that we possess our power of judgment uncurtailed, and are bound by no compulsion to support all the dogmas laid down for us almost as edicts by certain masters.⁴¹⁶

The value of skepticism is its openness to inquiry and rejection of blind obedience to authority. When any point of view is open to revision, conversation among diverse groups of people is possible without giving over to a hopeless and unfettered relativism. This does not mean, however, that we do not believe that truth can exist in the universe, only that we recognize that others may be just as capable of finding the truth as we are. A collective search for the truth may be complicated and indecisive, but it is our only manner of clawing our way forward on the epistemic incline. Appiah expresses this idea well when he says:

It is not skepticism about the very idea of truth that guides us; it is realism about how hard the truth is to find. One truth we hold to, however, is that every human being has obligations to every other. Everybody matters: that is our central idea. And it sharply limits the scope of our tolerance.⁴¹⁷

⁴¹³ Ibid., 23.

⁴¹⁴ Ibid., 24.

⁴¹⁵ Ibid., 25.

⁴¹⁶ Marcus Tullius Cicero, *De Natura Deorum. Academica* (Cambridge, Mass: Harvard University Press, 1967).

⁴¹⁷ Appiah, *Cosmopolitanism*, 144.

When we realize the limits of our capacity for absolute knowledge, we will welcome the contributions of others to our understanding of life, experience, and the universe.

Writing in the sixteenth century, Montaigne refers to the skepticism of Cicero, saying, “It was without obligation to any party, following what seemed probable to him now in one sect, now in another, keeping himself always in Academic doubt.”⁴¹⁸

Montaigne’s embrace of skepticism was embedded in a call for humility, not for a radical denunciation of efforts to find truth. In “Apology for Raymond Sebond,” Montaigne says, “To really learned men has happened what happens to ears of wheat: they rise high and lofty, heads erect and proud, as long as they are empty; but when they are full and swollen with grain in their ripeness, they begin to grow humble and lower their horns.”⁴¹⁹

It is this humility that helps the humanist to advance both private and public discourse. This idea is echoed in “Of the Art of Discussion” where Montaigne declares, “When someone opposes me, he arouses my attention, not my anger. I go to meet a man who contradicts me, who instructs me. The cause of truth should be the common cause for both.”⁴²⁰

COSMOPOLITANISM, RELATIVISM, AND INVARIANCE

Like humanists in the past, we live in a world of uncertainty with disparate voices constantly bombarding us. Globalization has created one world with many voices. Many have asked whether individuals should be citizens of one nation or citizens of the world, but this question has become increasingly meaningless. We live in a state of interdependence with people from nearly every part of the earth. Humanists traditionally

⁴¹⁸ Michel de Montaigne, *Complete Essays* (Stanford, Calif: Stanford University Press, 1958).

⁴¹⁹ Ibid., 370.

⁴²⁰ Ibid., 705.

have had many disagreements, but I am unaware of any who rejected a commitment to virtue and justice.

The humanist recognizes that we all share the experience of being human, and this shared humanity gives us shared needs, hopes, fears, and values. Humanists can help find these shared experiences in a number of ways, but an obvious way is through education, and many of us are educators. John Dewey noted that social intelligence is essential to democracy and justice, and the job of education should be to promote social intelligence. He says:

Every care would be taken to surround the young with the physical and social conditions which best conduce, as far as freed knowledge extends, to release of personal potentialities. The habits thus formed would have entrusted to them the meeting of future social requirements and the development of the future state of society. Then and only then would all social agencies that are available operate as resources in behalf of a bettered community life.⁴²¹

Martha Nussbaum makes an impassioned plea for education that makes us more sensitive to the needs of others, more compassionate, and more critical.⁴²² She says the abilities we should be teaching include “the ability to think critically; the ability to transcend local loyalties and to approach world problems as a ‘citizen of the world’; and, finally, the ability to imagine sympathetically the predicament of another person.”⁴²³ I have said that globalization has made us interdependent. It would seem that this would engender contact and conversation between groups, but such contact must be facilitated, and that is the job of educators. Nussbaum says, “A surrounding culture can teach children to see new immigrant groups, or foreigners, as a faceless mass that threatens their hegemony—or it

⁴²¹ John Dewey, *The Moral Writings of John Dewey*, ed. James Gouinlock, Revised Edition (Amherst, NY: Prometheus Books, 1994). 261,

⁴²² Nussbaum, *Not For Profit*.

⁴²³ *Ibid.*, 7.

can teach the perception of the members of these groups as individuals equal to themselves, sharing common rights and responsibilities.”⁴²⁴ One way to help students understand the viewpoint of others is to have them participate in arguments in the humanist tradition.

Argument is central to philosophy, and Nussbaum focuses on a somewhat different view of Socrates from Bouwsma’s to offer special advice for philosophy teachers: “Teachers of philosophy betray Socrates’ legacy if they cast themselves as authority figures. What Socrates brought to Athens was an example of truly democratic vulnerability and humility. Class, fame, and prestige count for nothing, and the argument counts for all.”⁴²⁵ As Bouwsma noted, the sophists must be given credit for their contributions to the humanist tradition, but Socrates is also a part of the tradition, and his devotion to rigorous and open analysis must be emulated if we are to maintain a commitment to truth and justice. As students confront the arguments of others, they are more able to understand how others think, and this is a necessary skill to develop empathy. Of course, literature, music, the arts, history, and cultural studies all help students understand and appreciate the experiences of others. It is necessary for schools to give people skills to support themselves through gainful employment, but it is also essential that citizens be able to think critically and with sensitivity.

I said above that humans share the experience of being human. In *Cosmopolitanism*, Kwame Anthony Appiah holds out hope that we can find shared values. He does not promise perfection by any means. He says, “Another aspect of cosmopolitanism is what philosophers call *fallibilism*—the sense that our knowledge is

⁴²⁴ Ibid., 44.

⁴²⁵ Ibid., 51.

imperfect, provisional, subject to revision in the face of new evidence.”⁴²⁶ In spite of this skepticism, he sees hope for nearly universal agreement on certain values such as kindness. It seems unlikely that anyone would not want to be treated kindly. He says, “The concept of kindness, or cruelty, enshrines a kind of social consensus. An individual who decides that kindness is bad and cruelty good is acting like Lewis Carroll’s Humpty-Dumpty, for whom a word ‘means just what I choose it to mean—neither more nor less.’”⁴²⁷ Our human experience makes it possible to understand what others might be feeling in some circumstances. Learning about the differences between people is likely to reveal even more similarities. Appiah says,

There are some values that are, and should be, universal, just as there are lots of values that are, and must be, local. We can’t hope to reach a final consensus on how to rank and order such values. That’s why the model I’ll be returning to is that of conversation—and, in particular, conversation between people from different ways of life.⁴²⁸

Like Nussbaum, he urges us to engage in conversation with the people who share our globe. If we fail to do so, we remain isolated and insensitive to others. In addition to not understanding them, we prevent them from understanding us.

We can also help to make them more sensitive to our point of view. In *The Honor Code: How Moral Revolutions Happen*, Appiah notes that it requires both insiders and outsiders to bring shame to groups of people believed to be acting immorally.⁴²⁹ Appiah recounts a possibly apocryphal encounter between a British colonial official and an Indian family. In this supposed discussion, the British official orders the family to

⁴²⁶ Appiah, *Cosmopolitanism*.

⁴²⁷ Ibid., 28.

⁴²⁸ Ibid., xxi.

⁴²⁹ Appiah, *The Honor Code: How Moral Revolutions Happen*. Norton, 2010), 166.

prevent the widow from being burned on her husband's funeral pyre. When the family protests that it is their custom, the official reportedly replied, "It is our custom to execute murderers."⁴³⁰ We sometimes fear charges of cultural imperialism when we condemn the practices of other nations or ethnic groups, but Appiah avers, "When a nation is doing something profoundly wrong, showing it up in the eyes of the community of nations is exactly what the patriot *should* be doing." Members of one nation do well to remember that they have no monopoly on moral truth; however, it is appropriate to be moved by good will and compassion to speak up on behalf of human decency. While we are skeptical of absolute moral truths, we have enough shared humanity with others to engage in useful conversation to move moral discourse forward, and one hopes moral practice may also advance.

When we remove ourselves from others, we risk injustice and violence. We fail to recognize others as fully human, and they fail to recognize us as fully human. If we want to create a just society, we must come into contact with the joy, but especially the pain, of others. As Kastely says,

The problem of justice is the problem of just response, and the philosophical force of this problem arises because bureaucratic structures allow individuals to inure themselves from the pain of others by disavowing any personal responsibility for their actions or omissions. The ethical problem for such a world is not primarily to avoid doing evil, for evil will come, since the world is not completely under one's control; rather, it is to deal with the unbidden evils in such a way that justice can live.⁴³¹

Humanists have both the skills and the obligation to create the conditions for justice to thrive.

⁴³⁰ Appiah, Honor, 160.

⁴³¹ Kastely, 121.

CONCLUSION

The problems facing the world now are not new. Wars, pollution, and poverty have been with us for centuries. But these same problems are now acute, chronic, and critical. It is easy to despair at our lack of progress, but Martha Nussbaum reminds us that progress has been made. In *Frontiers of Justice*, she says, “Racial hatred and disgust, and even misogynistic hatred and disgust, have certainly diminished in our public culture, through attention to the upbringing of children and their early education. The careful attention to language and imagery that some pejoratively call ‘political correctness’ has an important public purpose, enabling children to see one another as individuals and not as members of stigmatized groups.”⁴³²

One of the more frustrating aspects of the concept of moral progress is that we lack a final destination. If we could identify an end point, we could begin to see a diminishing task before us, rather than a seemingly insurmountable obstacle. This is not the case, but we do well to remind ourselves that some of our efforts have borne fruit. When George Horner wrote his essay in 1954, business leaders paid scant attention to the effects of business on the environment or other cultures, and social justice was not openly discussed as a problem of large corporations. In his 2006 book, *Profits Before People?*, Leonard J. Weber notes that business leaders in the past would respond to ethical questions with the flat statement that “the business of business is business” and not a concern for ethics.⁴³³ Things have changed over the years, however, and Weber notes

⁴³² Nussbaum, *Frontiers of Justice*.

⁴³³ Leonard J. Weber, *Profits Before People?: Ethical Standards and the Marketing of Prescription Drugs* (Bloomington, IN: Indiana University Press, 2006).

that businesses now are more likely to say, “Good ethics is good business.”⁴³⁴ This new concern for ethics is evidenced in the policy statement of Statoil, the Norwegian oil company.⁴³⁵ The Statoil statement has sections devoted not only to ethics but also corporate social responsibility.⁴³⁶ In its policy, Statoil outlines a commitment to ethical behavior that goes beyond the effect it has on workers and shareholders. The stated policy specifically addresses stakeholders who may not own shares, such as affected communities. Among other concerns, the handbook addresses international labor standards, the rights of indigenous peoples, and sustainable social investment “in affected communities so that they can share in the benefits provided by our operations.”⁴³⁷ Activists are justifiably suspicious of such statements from transnational corporations, and they greeted the “We Agree” campaign of Chevron with a healthy dose of skepticism and a fair amount of mockery.⁴³⁸ Activists are suspicious of Chevron in light of ongoing complaints for its human rights violations in Ecuador and elsewhere. The fact that corporations now feel compelled to launch public relations campaigns defending their practices is notable. In order for democracy, justice, and social stability to thrive, businesses must focus on doing profitable business in a manner that includes concern for others and for the planet on the whole. Writing before Horner or Weber, John Dewey noted, “In a justly organized social order, the very relations which persons bear to one another demand of the one carrying on a line of business the kind of conduct which meets

⁴³⁴ Ibid., 14.

⁴³⁵ “The Statoil Book: Version 2.0” (Statoil, 2009).

⁴³⁶ Ibid., 58-60.

⁴³⁷ Ibid., 60.

⁴³⁸ Stuart Elliott, “Pranksters Lampoon Chevron Ad Campaign” New York Times, *Media Decoder*, October 18, 2010, <http://mediadecoder.blogs.nytimes.com/2010/10/18/pranksters-lampoon-chevron-ad-campaign/>.

the needs of others, while they also enable him to express and fulfill the capacities of his own well being.”⁴³⁹ Honor and shame have become part of the public discourse. Some business leaders may be cynical, indeed, but others are surely concerned with operating in an honorable and ethical manner. Such progress must give us hope to continue our journey.

As humanists, we cannot solve the world’s problems, but we can choose to contribute to moral progress and promote greater care and understanding for one another, regardless of how many people join us along the way. The Transocean executives changed their behavior because the public identified with the victims of the tragedy of 2010. Humanists can help expand the moral imagination to include the victims of human rights abuses globally. Rational arguments for human rights and changes in policy must be coupled with emotional appeals that enable us to convert our natural virtues, in Hume’s words, to a concern for global justice.

Morality requires the ability to recognize the experiences of others and to acknowledge that all are born with the same right to a life with dignity and autonomy. When people behave immorally, it is often the result of their failure to view others as moral equals. While nearly everyone values their own worth and those of their families and friends, many fail to consider the needs and worth of those who are different. As a result, there is no shame in exploiting or violating the rights of people who look different or come from different backgrounds. The arts such as literature, film, and drama help to broaden the moral imagination of those exposed to more diverse stories. Education in the humanities helps to create conditions for more artists to work and thrive. Education in the

⁴³⁹ Dewey, *The Moral Writings of John Dewey*.

humanities also provides students with exposure to stories of the oppressed helps to develop what Hume called artificial virtues. Once students are able to imagine the experience of others and acknowledge their worth, any violation of human dignity becomes a source of shame, and shame motivates change. Without the humanities, only the shameless pursuit of profit is left to guide our moral journey, and we have already experienced the hazards of such a singular focus.

Afterword

Obviously, broad cultural shifts are needed to ensure that burdens affecting health are distributed justly. While the task is daunting, similar shifts of the past provide reason to believe progress is possible. Globalization is certainly not new, but citizens from around the world are increasingly interconnected and interdependent, creating a growing urgency for empathy, cosmopolitanism, and global cooperation. Theoretical arguments for the establishment of individual rights, the abolition of slavery, and the suffrage of women all contributed to great moral and social advances. Theory is not impotent, but it must not be divorced from action and more direct appeals for change.

Some writers on justice and economic inequality put forward a list of obligations that any moral or just person has a duty to fulfill, leading to much debate over how much charitable giving is enough or whether we should eat only locally grown and produced food. I would like to avoid a laundry list of requirements for a guilt-free life of affluence. Rather, I propose that a general awareness of current injustice and recognition of human rights violations will result in a general disgust for and intolerance of current conditions, which require change resulting from a demand for justice, not an appeal to pity. From this disgust, remedial actions will flow and the creativity of the world's citizens will shine. Every contribution to the global discourse on human rights and justice and every action aimed toward promoting respect for all is a valuable contribution to justice.

Of course, given the enormity of the problems facing the world's poor and the world in general, it is tempting to give in to despair or resignation, but some developments are encouraging. In its 2012 report on the Millennium Development Goals, the United Nations reports that extreme poverty is falling in all regions, including sub-

Saharan Africa. The number of people living on less than \$1.25 per day fell from 47 percent in 1990 to 24 percent in 2008.⁴⁴⁰ While it is still staggering that 1.4 billion people still live in such extreme poverty, this shows that progress is possible. The report also declares that the proportion of people using improved sources of water such as piped supplies and protected wells rose from 76 percent in 1990 to 89 percent in 2010.⁴⁴¹ Further, the number of residents living in slums fell from 39 percent in 2000 to 33 percent in 2012, and the deaths of children under five fell from 12 million in 1990 to 7.6 million in 2010.⁴⁴² One frustration in interpreting the report is that some progress is reported as percentages while others are reported in raw numbers. Nonetheless, even if the authors choose the rosier lens possible to report the numbers, any progress is welcome and evidence that the effort is indeed worth pursuing. (It is worth noting, also, that the number of people living in hunger is still about 850 million or 15.5 percent of the population.)⁴⁴³ While the scope of the problem is still enormous, continued pressure and great effort can achieve change, and we have a shared responsibility to work toward a more just global economic system. While libertarians may claim that the world's poor are in such a state because they have made poor choices, such an argument is untenable unless one is willing to forget a history of colonization, violence, slavery, and theft. Sharing the wealth gained from the world's resources is not an act of charity but repayment of debt.

⁴⁴⁰ United Nations, *The Millennium Development Goals Report 2012*, Annual (New York, NY: United Nations, 2012), 4.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Ibid., 5.

If most of us, including libertarians, agree that humans possess the basic right to be left alone to make the most of their lives without being harmed by the actions of others, how can we account for the moral blindness that leaves so many in the world without the basic needs for survival? Several answers are possible. First, some simply are not concerned with the suffering of people they do not deem worthy of moral concern. Indigenous people and the extremely poor are not seen as participants in the affairs of the “developed” world. Their status in debates about how best to arrange the world’s markets is hardly better than that of animals in some cases. Many others, though, are not so callous and are instead blinded by false sense of optimism. Many are not aware or simply cannot believe that conditions are as desperate as they are for the world’s victims of poverty and disease. If they are aware of the suffering, they do not believe the wealthy have caused it or are under any obligation to alleviate it. Many feel that the world’s inhabitants are free to enter into contractual agreements in the free market system at any time. They have forgotten or are unaware of how the plundering of the past has enabled the continued exploitation and oppression of the present. Many believe it is only the presence of corrupt foreign governments, not the brutality of the corporate system that produces vast human rights abuses. Control of the world’s natural resources was too often gained through brutal force, and continued dominance of western companies is enabled by that force and continued abuse. Many working with the world’s poor agree with libertarians that aid in the form of either money or free goods is likely only to destroy local markets and create forced dependency, which will benefit no one in the long run. Rather, economic systems and trade agreements must be structured to ensure full access to the market for all the world’s inhabitants. Some have been denied such participation

for so long that they have lost the capability for functioning in such an environment. Martha Nussbaum's and Amartya Sen's suggestions for developing those capabilities can help guide policy to restore the autonomy and dignity of victims of human rights abuses.

Some of us, moved by the plight of the world's starving and diseased, question why any moral argument is needed to motivate action to relieve the suffering. The simple fact that so many people are in constant hunger seems a compelling enough reason to fuel a revolution, but Hannah Arendt might remind us, "History tells us that it is by no means a matter of course for the spectacle of misery to move men to pity."⁴⁴⁴ Arendt follows with the claim that "The only revolution in which compassion played no role in the motivation of the actors is the American Revolution."⁴⁴⁵ Arendt reminds us that William Penn described America as a "good poor man's country" and that Thomas Jefferson described the country as having a "lovely equality," but American citizens were able to enjoy prosperity and equality only because slavery supported their endeavors.⁴⁴⁶ She says:

We are tempted to ask ourselves if the goodness of the poor white man's country did not depend to a considerable degree upon black labour and black misery—there lived roughly 400,000 Negroes along with approximately 1,850,000 white men in America in the middle of the eighteenth century, and even in the absence of reliable statistical data we may be sure that the percentage of complete destitution and misery was considerably lower in the countries of the Old World. From this, we can only conclude that the institution of slavery carries an obscurity even blacker than the obscurity of poverty; the slave, not the poor man, was 'wholly overlooked.'⁴⁴⁷

⁴⁴⁴ Hannah Arendt, "The Social Question," in *The Portable Hannah Arendt*, ed. Peter Baehr (New York, NY: Penguin Books, 2000), 253.

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid.

On the first reading, this may appear to be an anti-American rant, but Arendt quickly assures us that Europeans, who had great compassion for the European poor, were equally indifferent to the suffering of slaves. As a result of this oversight, the American Revolution lacked “the most devastating passion motivating revolutionaries, the passion of compassion.”⁴⁴⁸

Unfortunately, Europeans and Americans often regard citizens of other continents, or even countries, with the same indifference in evidence during the early years of the United States. Even where conditions do not match a technical or legal definition of slavery, extreme poverty reduces humans to a status with no advantages over slavery. If individuals had never been denied control over their own bodies and resources, the current global market arrangements would be impossible. While their suffering arouses compassion in some, their participation and engagement with broader society is denied. A sense of noblesse oblige may motivate charitable giving, but it will not bring revolution, either moral or political. Rather, solidarity grows from a sense of community built on recognition of others are part of our own social group. Greed and callous disregard for the victims of global inequality has created such widespread devastation that some from all parts of the world, including Europe and the United States, are beginning to recognize that no one is free until all are free.

Upon this recognition, still relatively rare in the United States, many feel only a desolate resignation, as they can envision no escape from the ubiquitous presence of corporate tyranny. The struggle against global power structures that control our food, medicine, water, and air seems Sisyphean at best. But there is nobility in resistance and

⁴⁴⁸ Ibid.

shame in acceptance. As individuals connect with others and find both sympathy and strength, a daunting and perhaps impossible task begins to bring meaning and honor to many who will otherwise lose their dignity.

In order to overcome moral blindness, then, we must humanize the victims of abuses, raise awareness of unjust conditions, and show that remediation is indeed possible. The first, and certainly not final, step is to expand the discussion of rights, community, and respect. The act of speech is itself a political and moral action. Communication technology and increased mobility make it increasingly possible to engage in global discussions of well-being that include voices that have been silenced for centuries. In discussing how one ventures into the public realm, Arendt says:

Speaking is also a form of action. That is one venture. The other is: we start something. We weave our strand into a network of relations. What comes of it we never know. . . . And now I would say that this venture is only possible when there is trust in people. A trust—which is difficult to formulate but fundamental—in what is human in all people. Otherwise such a venture could not be made.⁴⁴⁹

As we begin this venture, we must remember it is essential that the conversation include as many voices as possible: if speaking is a political act, listening is a moral obligation. Theorists from a libertarian perspective or any other should recognize that each voice has equal moral worth and demands equal moral concern. No theory of ethics or justice has the power to diminish the voices of the least advantaged or the least empowered. Thus, overcoming moral blindness begins with overcoming moral deafness.

⁴⁴⁹ Hannah Arendt, “‘What Remains? The Language Remains’: Conversation with Gunter Gaus,” in *Essays in Understanding 1930-1954: Formation, Exile, and Totalitarianism*, ed. Jerome Kohn (New York, NY: Schocken Books, 1994), 23.

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